

## **ORDINANCE 22-03**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY AMENDING CHAPTER 54, "WATERWAYS AND BEACHES," ARTICLE V, "SEA TURTLE PROTECTION," TO PROVIDE REGULATIONS CONCERNING LIGHTING FOR BUILDINGS CLOSE TO THE BEACHES NECESSARY TO PROTECT SEA TURTLE NESTING HABITATS FROM ARTIFICIAL LIGHT; TO PROVIDE REGULATIONS RESTRICTING THE PLACEMENT OF BEACH FURNITURE IN THE VICINITY OF SEA TURTLE NESTING HABITATS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the City Council adopted Ordinance No. 13-05 on February 4, 2013, to adopt regulations to protect threatened and endangered sea turtles that nest along the beaches of Marco Island by safeguarding sea turtles from sources of artificial light and prohibiting the injury or harassment of adult sea turtles, hatchlings, nests, and eggs; and

**WHEREAS**, as a result of improvements to materials used to provide artificial lighting, the City Council desires to amend the existing sea turtle artificial lighting regulations further; and

**WHEREAS**, the City Council, in order to further protect sea turtles finds that it is necessary and appropriate to adopt new requirements requiring an approved lighting plan prior to the issuance of a development order or building permits for all new structures and significant improvements as defined to existing structures in the Sea Turtle Lighting District; and

**WHEREAS**, the City Council, in order to further protect sea turtles finds that it is necessary and appropriate to adopt regulations related to lighting of outdoor areas, parking areas, pool areas, pier structures, dune walkovers, special events, and construction taking place on, or adjacent to the beach; and

**WHEREAS**, the City Council, to protect sea turtles finds that it is necessary and appropriate to adopt regulations prohibiting the placement of beach furniture in the vicinity of sea turtle nesting habitat, and to further regulate the practice of beach raking during the sea turtle nesting season; and

**WHEREAS**, the City Council finds that this Ordinance serves a municipal and public purpose, and is in the best interest of the health, safety, and welfare of the citizens and residents of the City of Marco Island.

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

**Section 1. Recitals.**

The foregoing "WHEREAS" clauses are true and correct and reflective of the legislative intent underlying this Ordinance and are hereby ratified and made a specific part of this Ordinance.

**Section 2. Chapter 54, "Waterways and Beaches," of the City Code of Ordinances is Amended.**

That Chapter 54, "Waterways and Beaches," Article V, "Sea Turtle Protection," of the City of Marco Island Code of Ordinances be, and the same is hereby amended to read as follows:

**Chapter 54**

**ARTICLE V. - SEA TURTLE PROTECTION**

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

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

The purpose of this ordinance is to protect sea turtles that nest along the beaches of Marco Island by safeguarding them from the adverse effects of artificial lighting and from injury or harassment by prohibiting activities disruptive to sea turtles, while also maintaining public access and public safety. As part of this ordinance, the city will educate residents and beach users on the importance of appropriate coastal lighting to sea turtle nesting and perform inspections to ensure compliance with this ordinance.

**Sec. 54-142. – Applicability - Sea Turtle Lighting District**

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

An overlay district, known as the *Sea Turtle Lighting District*, is hereby established in the City of Marco Island. The Sea Turtle Lighting District is defined as all beachfront properties from Cape Marco to Hideaway Beach. Within this district, this ordinance applies to all light visible from the beach.

## **Sec. 54-143. - 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:

~~*Beach* means the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high water line.~~

~~*Sea turtle nesting and hatching season* means May 1 through October 31 yearly.~~

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

*Artificial Light* means the light emanating from any human-made device.

*Beach* means the sand portion of land lying seaward of a seawall or line of permanent vegetation and landward of the mean high-water line.

*Development* means the carrying out of any building activity, the making of any material change in the use or appearance of any structure of land. For the purposes of this article, this would include any construction, change, or improvements regarding artificial lighting, windows, and windowed doors.

*Directly Visible* means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light source by an observer standing anywhere on the beach.

*Disorientation* means an event caused by direct or indirect artificial lighting on sea turtle nesting habitat resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from the beach.

*False Crawl* means Sea turtles leave the security of the ocean and crawl up onto Florida beaches at night during the summer to dig a hole and lay their eggs. Sometimes they crawl back to the water without digging a nest and without laying eggs. This is called a "false crawl."

*Foot Candle* means the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot; equal to 10.76 lux.

*Frontal Dune* means the first natural or man-made mound or bluff of sand which is located landward of the beach, and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

*Full Cutoff* means a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90° as determined by photometric test or certified by the manufacturer.

Fully Shielded means a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.

Handheld Devices include any portable device that can be carried and held in one's palm. A handheld can be any computing or electronic device that is compact and portable enough to be held and used in one or both hands. A handheld may contain cellular communication, but this category can also include other computing devices.

Harass means an intentional or negligent act or omission which creates the likelihood or injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, nesting, breeding, feeding, or sheltering.

Hatchling means any species of marine turtle, within or outside of a nest, which has recently hatched from an egg.

Indirectly Visible means visibility of reflected light as a result of glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer standing anywhere on the beach without the light source being directly visible.

Irreparable or irreversible event means an irreversible action leading to a false crawl, disorientation, injury, or death of a sea turtle or their young. This also includes but is not limited to any irreversible harm or damage to the nest.

Lighting Plan means plan view and cross section drawings describing location, number, wattage, wavelength, elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or externally lighted signs.

Long Wavelength means a luminaire emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers. Lamps that meet the definition of Long Wavelength using filters, gels, or lenses are not permitted.

Nest means an area where marine turtle eggs have been naturally deposited or subsequently relocated.

Nesting Season means the nesting period for sea turtles is from May 1st through October 31st of each year. Nesting season may be extended **up to 30 days by the city manager or their designee** before or after these dates on an annual basis based on nesting activity observed in the City of Marco Island.

New Development includes new construction or remodeling of existing structures when such remodeling includes alteration of exterior lighting and/or replacement of all glass or glazing.

Nighttime means the locally effective time between 9 pm and 6 am.

Non-egress Lighting means lighting that is not being used to light a distinct path or meet minimum requirements for emergency egress, including but not limited to decorative lights (e.g., Christmas lights, strobe lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and up lights.

Outdoor Area means any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to pathway lighting, landscape lighting, pool lighting, etc.

Person means any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county, or municipal government.

Sea Turtle means any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kempi*). For the purposes of this ordinance, the term sea turtle is synonymous with marine turtle.

Sea Turtle Nesting Habitat means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.

Special Event is an event such as a beach activity, sports, religious, and community event, or other similar events that requires preparation, planning, and municipal resources, and may require public area or roadway closures, and often a city Permit.

Substantial remodeling means anything that requires a permit with regards to glass/windows, substantial remodeling refers to 100 percent of all windows that may have light transmittance toward the beach.

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

Temporary Lighting means any non-permanent light source that may be hand-held or portable including but not limited to tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

Tinted glass means glass modified via tinting, film, or other material to reduce the inside to outside light transmittance value.

"Turtle-friendly bulbs." Bulbs that are FWC Certified Wildlife Lighting, or a bulb that produces only long wavelength light (560 nanometers (nm) or longer) without the use of filters, gels, or lenses, and meet the same lighting standards for FWC Certified Wildlife Lighting, as may be amended from time to time.

"Turtle-friendly fixtures." Fixtures that are FWC Certified Wildlife Lighting, or fixtures that are fully shielded, downward direct, meet or exceed full cut-off, and with non-reflective opaque interior surfaces, and meet the same lighting standards for FWC Certified Wildlife Lighting, as may be amended from time to time.

Visible from the Beach means visible to a person standing on any portion of the beach.

**Sec. 54-144. - Existing development.**

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

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

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

- ~~a. Windows shall be tinted or glazed to achieve an industry approved light transmittance value of 45 percent or less; or~~
- ~~b. Window treatments such as blinds or curtains shall be used to prevent interior light from emanating outside; or~~
- ~~c. Lighting sources such as lamps shall be relocated away from windows, and turned off after 9:00 p.m.~~

Lighting associated with existing development within the Sea Turtle District that was permitted prior to the date of this ordinance and visible from the beach, except for turtle friendly long wavelength bulbs, low, and shielded light, and shielded recessed fixtures with turtle friendly bulbs, shall follow Ordinance 99-7 and the following.

(1) Exterior Lighting.

- (a) All exterior lights shall be turned off after 9:00 PM during turtle nesting season.

- (b) Lights illuminating dune crosswalks shall be turned off after 9:00 PM or fitted with a hood during turtle nesting season.
- (c) High-intensity lighting, including security lighting, shall not be visible from the beach during turtle nesting season.
- (d) Within five years, all existing multi-unit or commercial structures shall use turtle-friendly bulbs and turtle-friendly fixtures on all external sources of artificial light that are visible from the beach.

## (2) Interior Lighting

To reduce or eliminate the negative effects of interior lighting emanating from windows and doors that is visible from the beach, one or more of the following actions shall be taken during sea turtle nesting season:

- (a) Turn off all unnecessary interior lights after 9:00 PM.
  - (b) Use opaque shades or darkening window treatments (e.g., blinds, shutters, or curtains) to shield interior lights from the beach.
  - (c) Rearrange moveable light fixtures away from windows so they are not visible from the beach.
  - (d) Apply a window tint or film to an inside-to-outside light transmittance value of 45% or less. Light transmittance values greater than 15% will require additional window treatments or lights to be turned off to be compliant with requirements.
- (3) Emergency lights are not subject to the above standards if on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.

## **Sec. 54-145. - New development**

Lighting associated with new development that is within the Sea Turtle District and visible from the beach shall be in compliance with Ordinance 99-7 and the following:

- (1) Outdoor artificial lighting that is visible from the beach for any new development and not specifically referenced in this section shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles. This includes indirect visible light sources that can be seen from the beach.
- (2) All exterior non-egress lighting shall not be directly or indirectly visible from the beach.

- (3) All interior egress lighting shall not exceed the federal, state, and local safety requirements for the number of fixtures and foot-candles.
- (4) Low-profile luminaries shall be used in parking lots and such lighting shall be fitted with hoods or positioned so that the light sources or any reflective surfaces illuminated by such sources are not visible from the beach.
- (5) Windows and doors whose light is visible from the beach at nighttime shall:
  - (a) use tinted glass with an inside to outside light transmittance value of 45% or less and opaque shades or darkening window treatments (e.g., blinds, curtains, or screens) to shield interior lights from the beach during turtle nesting season; or
  - (b) use tinted glass with an inside to outside light transmittance value of 15% or less with no additional window treatments; or
  - (c) as an alternative, turn off all lights after 9 pm. that are within the line of sight of the beach. Rearrange lamps and other moveable fixtures away from windows.
- (6) Temporary security lights at construction sites shall not be visible from the beach during sea turtle nesting season or shall meet turtle friendly lighting standards.
- (7) Emergency lights shall be on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.
- (8) Common areas including but not limited to stairwells, elevators, parking garages, pools, or courtyards shall not produce light that is directly or indirectly visible from any portion of the beach.
- (9) The City Manager or designee may waive these requirements with an alternative solution that meets the intent and purpose of this section.

#### **Sec. 54-146. Publicly owned lighting.**

~~Publicly owned lighting with light sources that are visible from the beach or that illuminate reflective surfaces that are visible from the beach, should be fitted with a hood or repositioned to minimize or eliminate any adverse effects.~~

Publicly owned lighting with light sources that are visible from the beach or that illuminate reflective surfaces that are visible from the beach, not limited to streetlights, parking lot lights and beach access lightings, shall be fitted with a hood, or re-positioned so that the point source of artificial light is not visible from the beach and does not directly or indirectly illuminate the beach.

#### **Sec. 54-147 Outdoor Areas**

Lighting associated with any outdoor areas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.



- a. All pathway lighting shall utilize low-level fixtures that do not exceed 42 inches in height. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.
- b. All non-egress outdoor lighting shall not be directly or indirectly visible from any portion of the beach.
- c. Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures and shall not produce light that is directly or indirectly visible from any portion of the beach.
- d. Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly or indirectly visible from any portion of the beach.
- e. Excluding a special event permit, outdoor televisions or monitors shall only be located landward of the dune and shall be shielded or positioned such that they are not directly or indirectly visible from any portion of the beach.
- f. Handheld and other portable temporary lighting may only be used on the beach at nighttime during nesting season if it is long wavelength and not directed toward or used in a manner that disturbs sea turtles.

#### **Sec. 54-148 Parking Areas**

Lighting associated with any new development in parking areas shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state, and local law.

- a. Parking area lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including but not limited to vehicular headlights, from producing light that is directly or indirectly visible from any portion of the beach. Lighting of parking areas shall consist of either:
  - 1. Ground-level downward-directed fixtures, equipped with interior dark non- reflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or
  - 2. Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded 180 degrees on the side facing the beach, or
  - 3. Pole-mounted lights, if required, which shall:

- a. Only be used in parking areas when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.
  - b. Located on the landward sides of buildings and shall not produce light that is directly or indirectly visible from any portion of the beach.
  - c. Mounted at the minimum height necessary to meet the minimum light level requirement.
  - d. Downward directed onto non-reflective surfaces.
4. Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained herein.

#### **Sec. 54-149 Pool Areas**

Lighting associated with any with pool decks, pool facilities, swimming pools, and spas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.

- a. Lighting of the pool water surfaces, and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.
- b. Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures set forth herein.
- c. Underwater lighting of pools or spa light shall:
  - (1) Be mounted in the wall
  - (2) Not produce light that is directly or indirectly visible from any portion of the beach, and
  - (3) Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

#### **Sec. 54-150 Dune Walkovers and Beach Access Points**

Lighting associated with any beach access points shall be restricted to that portion of the structure landward of the dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly or indirectly visible from any portion of the beach.

Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly or indirectly visible from any portion of the beach.

**Sec. 54-151 Special Events, Vehicles, Raking, Temporary Lighting, and Beach Furniture**

All special events or development taking place on or adjacent to the beach requires a permit from the City of Marco Island in addition to any required permit from the Florida Department of Environmental Protection. Lighting associated with any special events at night shall be turned off at 9 pm during turtle nesting season.

Exception: Through a Special Event Exception permit, event may go till 10 pm. on the condition that the event is monitored by any person who can provide credentials or proof of having received training on sea turtle lighting. All lighting, including vehicles on the beach, must meet sea turtle friendly lighting standards.

The operation of all vehicles, except emergency, law enforcement, code enforcement, or community service officer vehicles or those permitted on the beach for sea turtle conservation in accordance with Section 379.2431(1), Florida Statutes, as may be amended, or other research and conservation, shall be prohibited on the beach from 9 pm. to 8 am. during sea turtle nesting season.

Beach raking activities during sea turtle nesting season, if permitted by the City of Marco Island, shall not:

1. Operate after 9 pm.
  2. Begin before 8:00 am. or before the completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first.
  3. Occur within twenty-five (25) feet of any marked sea turtle nest.
- a. During sea turtle nesting season, temporary work zone lighting for roadway construction and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.
  - b. All other temporary construction lighting shall be:

- (1) Inclusive of all the standards herein, including utilizing fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach; and
- (2) Turned off from 9:00 p.m. to 6:00 a.m. in sea turtle nesting season, or if temporary lighting is deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 a.m. to 9:00 p.m., must be restricted to the minimal amount necessary, and shall incorporate all the standards herein; and
- (3) Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and
- (4) Restricted to the minimal number of foot-candles necessary to conform to the applicable construction safety regulations.
- c. Man-made moveable objects shall not obstruct sea turtle nesting habitat during nesting season during nighttime. All obstructions, including but not limited to beach furniture, cabanas, umbrellas, tents, personal watercraft, bikes, vehicles, and boats, shall be removed from the sea turtle nesting habitat, and shall be removed between 9:00 p.m. and 8:00 a.m., or prior to the completion of daily monitoring for sea turtle nesting activity by the FWC authorized marine turtle permit holder, whichever comes first.
- d. During sea turtle nesting season, beach vendors with a valid beach vendor permit are authorized to store registered equipment and vehicles at or adjacent to the beach vendor operations office or storage area, which shall be located at the dune vegetation line or at another acceptable location.
- e. No beach furniture or other man-made object shall be placed within twenty-five (25) feet of a marked sea turtle nest.

**Sec. 54-152. Unlawful to kill, molest, or injure sea turtles.**

- ~~(a) It shall be unlawful for any person to kill, molest, or cause direct or indirect injury to any species of sea turtle, their nests, and/or eggs in the City of Marco Island or within its jurisdictional waters. It shall be unlawful to take, collect or possess any part of a sea turtle or eggs.~~
- ~~(b) It shall be unlawful to relocate or possess a sea turtle or eggs without first obtaining a permit from the Florida Department of Environmental Protection (FDEP).~~
- ~~(c) When a sea turtle nest is created, a permitted sea turtle monitor posts it on the beach with stakes, flagging tape and signage. It shall be unlawful to enter the posted nest area or impact the posted nest area in any manner. A minimum of a 25-foot perimeter with no activity within should be given to the posted nest area for protection.~~

~~(d) It shall be unlawful to conduct sustained flashlight use, mobile phone light use or electronic light use, to use flash photography or lantern or other source of light on the beach after 9 p.m. during sea turtle nesting season.~~

- a. It shall be unlawful for any person, firm, or corporation to kill, molest, cause a disorientation, or cause direct or indirect injury to any species of sea turtle or sea turtle hatchlings, their nests, and/or eggs in the City of Marco Island or within its jurisdictional waters. It shall be unlawful to take, collect or possess any part of a sea turtle or eggs.
- b. It shall be unlawful for any person, firm, or corporation to relocate or possess a sea turtle or eggs without first obtaining a permit from the Florida Department of Environmental Protection (FDEP)/Florida Fish and Wildlife Conservation Commission (FWC). A person, not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species.
- c. When a sea turtle nest is created, a permitted sea turtle monitor posts it on the beach with stakes, flagging tape and signage. It shall be unlawful to enter the posted nest area or impact the posted nest area in any manner. A minimum of a 25-foot perimeter with no activity within should be given to the posted nest area for protection.

#### **Sec. 153. - Construction during nesting season.**

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

#### **Sec. 154. - Violations.**

Violation of the provisions of this article or failure to comply with any of its requirements shall constitute a code violation. Any person or firm who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined, or imprisoned, or both, as provide by law. After an appropriate period to correct the violation, each day such violation continues shall be considered a separate offense. Additionally, each sea turtle or eggs that are killed injured, or molested shall constitute a separate violation. Any other person, who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

The city, in addition to the sanctions contained herein, may take any other appropriate legal action, including, but not limited to, injunctive action, to enforce the provisions of this article.

**Sec. 54-155. - Jurisdiction and enforcement.**

This article is enforceable by any duly authorized law enforcement officer, City of Marco Island code enforcement officer or designee, the Marco Island Police Department, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the Collier County Sheriff's Office, and any other state or federally authorized law enforcement agency.

- a. Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with the provisions of this article or cause any inspections to be made of all vessels in accordance with this article and the Florida Statutes.
- b. Any official with jurisdiction is authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ensure compliance with the provisions of this article. Any person who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work.
- c. ~~Bi-monthly~~ Every two weeks, lighting compliance inspections shall be conducted by the City of Marco Island Code Enforcement or City designee during sea turtle nesting season to ensure compliance with this ordinance.

**Sec. 54-156. - Penalties.**

(a) After one warning in a calendar year excluding an irreparable event, in addition to and as a supplement to any civil and criminal penalties provided by state and federal statutes, and the City's Code of Ordinances, the following shall apply:

1. Any person who is found to have violated any provision of this article, 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; and

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 \$2,000.00, as provided for in F.S. §162.09; and

d. Irreparable event- up to the maximum possible as provided for in F.S. §162.09.

2. 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.

3. 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.

4. If a state of Emergency is declared by the Governor of the State of Florida or there is a significant weather event, the City of Marco Island Code Enforcement may issue more than one warning for non-compliance with this ordinance.

### **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 new provisions within the 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.

### **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 March 2022.

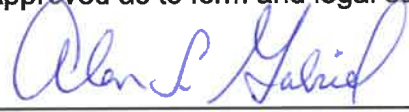
**ATTEST:**

  
\_\_\_\_\_  
Laura Litzan, City Clerk

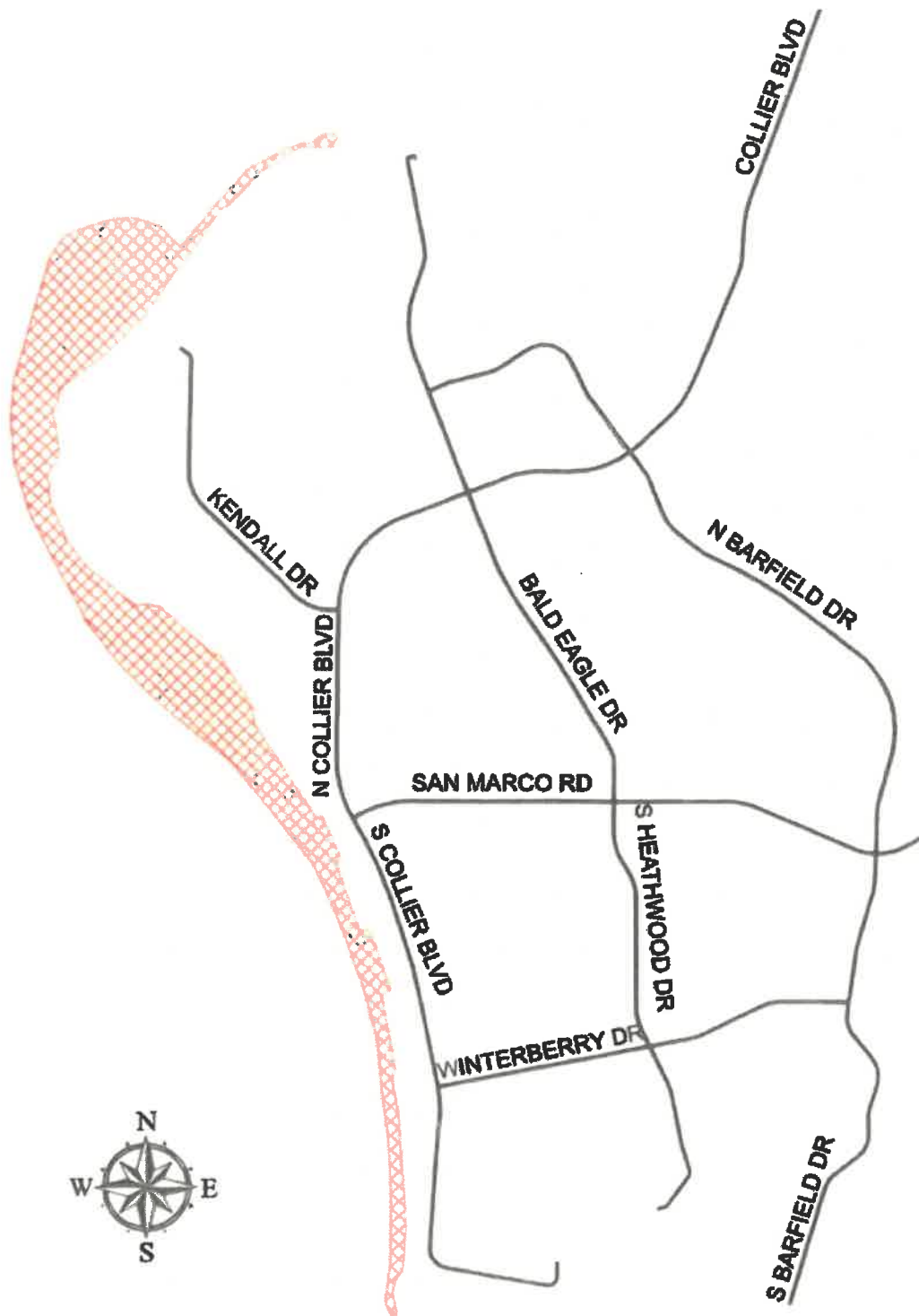
**CITY OF MARCO ISLAND, FLORIDA**

By:   
\_\_\_\_\_  
Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:

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





**Beach**

**SEA TURTLE LIGHTING DISTRICT**

