



City of Marco Island

Meeting Date: May 4, 2015
To: City Council
From: Chief Al Schettino
Through: Roger T. Hernstadt, City Manager
Re: March 2015 Monthly City Council Report

The City's first Code Enforcement Special Magistrate Hearing will be held on May 12, 2015, at 4:00 PM. Seven cases are on the draft docket. "Special Magistrate Policies & Procedures" as well as a summary of code issues on Castaway alley are attached to this report.

I'm pleased to announce that MIPD's Community Policing efforts resulted in an 81% increase in foot patrols in 2014 versus 2013. There was a significant increase in foot, bike, motorcycle and marine patrols in 2014. During the first quarter, MIPD's foot patrols totaled 945. During the final quarter, we conducted over 3,700 foot patrols – an increase of 294%.

In addition, in late 2014, MIPD resumed utilization of two full-time (versus collateral duty) Marine Officers, which resulted in a 700% increase in marine patrols in 2014.

When measuring quality of life statistics on Marco Island, we noted a 6% decrease in overall noise complaints, and conversely, a 42% increase in parking complaints when comparing 2013 to 2014. We are very mindful of these statistics when considering deployment options and community response.

Significant Events

- March 6 Automatic License Plate Reader Demo held at MIPD.
- March 8 Marco PD Marine Officer Ferris assisted with beached civilian boat on Sand Dollar Island.
- March 9 MIPD, Naples PD & CCSO conducted a joint underage alcohol enforcement operation.
- March 12 MIPD & MIFD rescued an injured kayaker in Roberts Bay.
- March 22 Bikes for Tykes donated 6 refurbished police bikes to MIPD.
- March 24 MIPD KOPS (Kindness on Patrol) Program roll-out.

Investigations

- **Investigations/Follow-Up Investigations:**
 - Detectives conducted Sixty-Four (64) follow-up investigations for the month.
- **Significant Incidents/Investigations:**
 - A joint operation conducted by MIPD and CCSO during the month of March resulted in the arrest of a Naples man, Jamie W. Stewart, 47, on 4/2/15. He was subsequently charged with two counts of Sale of a Controlled Substance.
 - MIPD Officers conducted a traffic stop in which the driver was found to have an active warrant from the Charlotte County Sheriff's Office. Arrested person was transported to the Naples Jail Center. Citation issued for no proof of insurance.
 - MIPD Officers conducted a traffic stop in which the operator's driving privileges were suspended and a seize tag order was in place for the vehicle. The driver was issued citations for no insurance and driving while license suspended. Further investigation revealed narcotic paraphernalia. The driver was placed under arrest and transported to the Naples Jail Center.
 - MIPD Officers responded to a call in reference to a suspicious vehicle that was parked at a residence while the homeowners were away. Upon Officers' arrival and making contact with the persons, Officers detected an odor of marijuana. Further investigation revealed that the registered owner of the vehicle was in possession of marijuana. Subject was placed under arrest and transported to the Naples Jail Center.
 - MIPD officers responded to a S. Collier Blvd. business on a report of disorderly persons. Upon Officers' arrival, two female subjects were observed being disruptive and causing a disturbance. Both subjects were arrested for disorderly intoxication and transported to the Naples Jail Center.
 - MIPD Marine patrol responded to a call at the ABC Islands in reference to a boat that was within the Wildlife Management Area. Upon arrival, Officer observed the vessel with three male subjects fishing in between the ABC Islands in Sanctuary Sound. These islands are clearly posted with multiple signs stating (Closed to Public Access - Critical Wildlife Area). Boat operator was issued a notice to appear in court.
 - MIPD Officers responded to a S. Collier Blvd. location in reference to a reported sexual battery. MIPD detectives conducted a follow-up investigation and identified a suspect. Investigation is continuing.
 - MIPD Officers responded to a local residence in reference to a grand theft and credit card fraud. Victim's credit card was being used without her knowledge. MIPD Detectives conducted a follow-up investigation and identified a suspect. Total theft was over \$1,000. Warrant request submitted to State Attorney's Office
 - MIPD Officers responded to S. Collier Blvd. to investigate a hit and run vehicle accident with property damage. MIPD Officers conducted a search of the area and located the vehicle and operator. The driver of the vehicle was arrested and transported to the Naples Jail Center.
- **Aid/Assist Other Agencies:**
 - MIPD Detectives provided one aid/agency assist for the month.
- **Warrant Checks:**
 - MIPD Detectives conducted one hundred seventy three (173) warrant checks to determine if any of the active warrants were applicable to our jurisdiction.

- **Warrant Arrests:**
One (1)
 - MIPD Officers conducted a traffic stop in which the driver was found to have an active warrant from the Charlotte County Sheriff's Office. Arrested person transported to the Naples Jail Center. Citation issued for no proof of insurance.
- **Department of Children and Families (DCF) Referrals/Follow-Ups:**
 - MIPD Detectives conducted no follow-ups for DCF this period.
- **Subpoena Requests:**
 - MIPD Detectives submitted one (1) subpoena request to the State Attorney's Office for review.
- **Warrant Requests:**
 - MIPD Detectives submitted two (2) warrant requests to the State Attorney's Office for review. Both are still pending at this time.
- **Crime Bulletins:**
 - Detectives created and disseminated one (1) bulletin regarding criminal activity or suspect information.
- **Crime Stoppers Tips:**
 - Detectives followed up on one (1) Crime Stoppers tip regarding the possible location of a wanted subject. The Officers were unable to locate the subject. The tip is unfounded at this time.

Current Case Status			
Open	Closed	Cleared	Inactive
24	56	13	7
Cases worked during the month = 47			

Note: The quarterly sex offender checks were completed last month and all pertinent information was updated and disseminated to the proper entities.

Twitter Engagement

MIPD currently has 814 Followers and has sent 1283 Tweets. MIPD tweeted on the following topics in March:

- Domestic Violence
- Drug-Abuse Prevention
- Missing Child
- Boating Safety
- Scams/Identity Theft
- Traffic Advisories
- Wanted Persons
- Charity/Local Events
- Power Outages
- Boil Water Notices
- Underage Drinking
- CCSO Bulletins
- Wildlife Updates (Turtles)
- Child Safety Seats
- Bullying
- Bicycle Safety
- MIPD Job Announcements
- Drunk Driving Awareness

Special Details (Paid by Outside Entities)

14 Unique Events = 285 Hours

Farmer's Market	64 hrs.
San Marco Catholic Church	41 hrs.
Marco Island Writers' Club (AuthorFest)	4 hrs.
Marco Island Center for the Arts	12 hrs.
St. Patrick's Day Parade	24 hrs.
Keller Williams Open House	3 hrs.
St. Mark's Episcopal Church (Art Show)	12 hrs.
Marco Island Art Festival	24 hrs.
Marco Island Half Marathon	18 hrs.
YMCA (Mutts & Martini's at Esplanade)	3 hrs.
Marco Island Seafood Festival	62 hrs.
Marco Island Center for the Arts (Car Show)	6 hrs.
Marco Island Foundation for the Arts (ArtFest)	4 hrs.
Marco Lutheran Church	8 hrs.

Office Walk-ins 296

CAD Report (Dispatched & Self-initiated Patrol Events)

<u>CAD Incident Type</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>
ABANDONED VEHICLE	1	3	2
ACCIDENT-VEH VS PEDES	3	1	0
ACCIDENT-VEHICLE	40	72	61
ACCIDENT-VEHICLE VS BLDG	1	0	3
ACCIDENT-BOATING	0	0	1
ACCIDENT-ENTRAPMENT	0	0	1
ALARM-COMMERCIAL FIRE	18	11	14
ALARM-COMMERCIAL RES	4	0	4
ALARM-HIGH RISE FIRE	6	9	11
ALARM-RESIDENTIAL	9	12	7
ALARM-COMMERCIAL BURG	26	15	19
ALARM-RESIDENTIAL BLDG	63	48	41
ANIMAL COMPLAINT	25	30	28
ASSAULT/BATTERY	3	2	2
ATTEMPT TO CONTACT-RES	2	7	9
BURGLARY-COMMERCIAL	0	0	1
BURGLARY-CONVEYANCE	0	3	2
BURGLARY-RESIDENTIAL	1	3	3
CARDIAC CALL (AED NEEDED)	13	9	16
CONDUCT INVESTIGATION	24	19	34
CONVOY OR ESCORT	3	14	21
COPS ACTIVITY	16	20	24
COPS BICYCLE PATROL	1	0	1

CAD Incident Type	JAN	FEB	MAR
COPS MOTORCYCLE ACTIVITY	0	1	1
COUNTY/CODE VIOLATION	8	36	125
CRIMINAL MISCHIEF/VAND	1	4	5
DEAD PERSON	1	0	1
DISABLED BOAT	6	1	5
DISABLED VEHICLE	13	13	13
DISTURBANCE	12	15	19
DOMESTIC DISTURBANCE	5	7	5
DROWNING	0	0	1
DRUG CASE	1	1	1
DRUNK PEDESTRIAN	8	5	7
ELECTROCUTION	5	6	7
EXTRA PATROL-ALCOHOL	1	2	5
EXTRA PATROL-BOAT/VESSEL	60	28	67
EXTRA PATROL-CRITICAL	0	0	2
EXTRA PATROL-DISTRICT 6	10	8	12
EXTRA PATROL-HOME/RES	155	159	174
EXTRA PATROL-MARCO	4	2	2
EXTRA PATROL-YARD	9	3	4
EXTRA PATROL-CITIZEN	1	0	0
EXTRA PATROL-COMMERCIAL	357	352	449
EXTRA PATROL-CRITICAL SITES	1	7	8
FIGHT	6	1	1
FIRE-COMMERCIAL STR	0	0	2
FIRE-ELECTRICAL/POWER	1	3	8
FIRE-RESIDENTIAL	0	0	4
FIRE-SMOKE/FIRE AB	0	0	1
FIRE-HIGH RISE STRUCTURE	1	1	0
FIRE-SMOKE INVESTI	1	0	0
FIRE-TRASH/DUMPSTER	2	0	0
FIRE-VEHICLE (PASS	4	2	0
FIRE-UNKNOWN TYPE	0	1	0
FIRE-WOODS/BRUSH	2	1	1
FLEX OP	0	0	2
FOOT PATROL	1134	1014	992
FORGERY/FRAUD	6	8	18
GAS LEAK/SMELL-OUTSIDE	1	2	0
GUNSHOTS HEARD	1	0	0
HAZARDOUS MATERIAL I	2	2	0
HIGHWAY OBSTRUCTION	5	4	6
ILLEGAL BURN	0	1	1
INCIDENTS INVOLVING	0	1	1
LAW ENFORCEMENT AGENCY	4	1	1
LEGAL ADVICE	81	64	80
LOST PROPERTY	15	14	16
MARINE ANIMAL COMPLA	0	0	1
MEDICAL ALARM	6	9	10
MEDICAL CALL/AMBULANCE	176	189	195
MENTALLY ILL PERSON	1	0	1
MISSING PERSON-ELDERLY	1	2	1
MISSING PERSON-ROU	6	5	6
MISSING PERSON-YOU	1	2	5
MULTIPLE TYPE ALARM	6	3	5

CAD Incident Type	JAN	FEB	MAR
NOISE COMPLAINT	22	16	39
OBSCENE/HARASSING PHONE	2	0	2
PARKING VIOLATION	14	62	60
PARTY-CAUSING DIST	2	0	4
PERSON DOWN-UNKNOWN	2	3	7
PROBATION CHECKS	0	1	0
PROPERTY DAMAGE	2	4	9
PUBLIC ASSIST/NON-EMER	35	34	44
PURSUIT-VEHICLE	0	1	0
RADAR DETAIL	65	52	57
RECOVERED PROPERTY	9	11	15
RED LIGHT DETAIL	3	3	4
RELAY	0	0	2
REPO	2	0	0
RESCUE-ELEVATOR	13	5	10
RESCUE-WATER	1	2	4
ROBBERY-RESIDENCE	1	0	0
SCHOOL CROSSING	24	46	38
SERVING A WARRANT	0	4	2
SERVING CIVIL PROCES	0	0	3
SEX CRIME	0	0	1
SHOOTING	0	0	2
SPEED ENFORCEMENT DETAIL	6	15	24
SUICIDAL PERSON	2	1	3
SUICIDAL PERSON W/GUN	0	0	1
SUICIDE ATTEMPT	0	0	1
STOLEN BOAT/VESSEL	1	0	4
STOLEN TAG	2	1	0
SUSPICIOUS AIRCRAFT	1	0	0
SUSPICIOUS BOAT	3	2	4
SUSPICIOUS INCIDENT	48	52	53
SUSPICIOUS INCIDENT-INVEST	1	1	0
SUSPICIOUS PERSON	28	11	23
SUSPICIOUS VEHICLE	18	21	21
TENANT/LANDLORD DISPUTE	0	1	0
THEFT	13	7	17
TRAFFIC PROBLEM/DIRE	8	15	9
TRAFFIC STOP	431	503	442
TRAFFIC STOP-BOAT	22	12	45
TRAFFIC STOP-SPECIAL	2	3	4
TRANSPORTING PRISONER	0	1	1
TRESPASSING	1	1	5
UNVERIFIED 911	158	103	167
VEHICLE INSPECTION	0	1	1
VERIFY VIN	11	15	8
VESSEL INSPECTION	2	3	3
WELFARE CHECK-ELDERLY	1	2	2
WELFARE CHECK-SUSPICIOUS	8	6	11
WRECKLESS BOAT OPERATOR	2	1	5
WRECKLESS DRIVER	21	16	26
YOUTH/CHILD ABUSE	0	0	1
TOTALS	3369	3296	3760

CAD Activity				
This Month	This Month – Last Year	Last Month	Total For This Year	Total for Last Year
3759	2173	3296	10397	42600*
Crime / Incident Report				
This Month	This Month – Last Year	Last Month	Total For This Year	Total for Last Year
108	125	75	264	1146
Traffic Citations				
This Month	This Month – Last Year	Last Month	Total For This Year	Total for Last Year
79	107	79	216	939
Traffic & Vessel Written Warnings				
This Month	This Month – Last Year	Last Month	Total For This Year	Total for Last Year
139	301	173	447	2294

*Shifted to CAD from CFS data.

Crime & Incident Report Highlights: 03/15/15 - 04/15/15

DATE & TIME: 03/18/2015 01:30 PM

LOCATION: 720 Bald Eagle Drive/Progressive Car Wash

INCIDENT: Grand Theft

Officers were dispatched to Progressive Car Wash in reference to a female subject that claimed cash was stolen from the trunk of her car. Investigation continues.

DATE & TIME: 03/19/2015 07:00 PM

LOCATION: Hartley Ave.

INCIDENT: Residential Burglary

Officers were dispatched to a residence on Hartley Ave. in reference to a residential burglary report. The homeowner reported that his iPhone was stolen. Also, an unknown subject had installed a new door knob on the front door. Investigation continues.

DATE & TIME: 03/19/2015 09:00 PM

LOCATION: Tigertail Beach

INCIDENT: Vehicle Burglary

Officers were dispatched to the Tigertail Beach parking lot in reference to a vehicle that had a smashed driver-side window. Clothing was also reportedly taken from the vehicle. Investigation continues.

DATE & TIME: 03/22/2015 03:30 PM

LOCATION: Bahama Ave.

INCIDENT: Accidental Discharge of a Firearm

Officers and Medics were dispatched to a residence on Bahama Ave. regarding a male subject who accidentally shot himself in the leg. Investigation continues.

DATE & TIME: 03/24/2015 07:00 AM

LOCATION: 500 Block of North Collier Blvd.

ARRESTED: Hector Obrajero, 26/ Driving while License Suspended

INCIDENT: Notice to Appear for Court Summons

An Officer conducted a traffic stop on a vehicle that ALPR (automatic license plate reader) alerted to as a suspended licensed driver. The driver was given a Notice to Appear in Court Summons for driving on a suspended license.

DATE & TIME: 03/24/2015 06:00 PM

LOCATION: N. Collier Blvd. and Rose Court

ARRESTED: James Wilson, 57/ DUI / DUI Crash with Property Damage

INCIDENT: Arrest

Officers were dispatched to the vicinity of N. Collier Blvd. and Rose Court in reference to a vehicle accident involving an intoxicated driver. The driver of one of the vehicles was arrested for DUI, DUI crash with property damage, and was transported to the Naples Jail Center.

DATE & TIME: 03/26/2015 05:00 AM

LOCATION: Swallow Avenue

INCIDENT: Death Investigation

Officers were dispatched to a residence located on Swallow Avenue in reference to a death investigation. Investigation continues.

DATE & TIME: 03/27/2015 03:30 PM

LOCATION: 400 Block of South Collier Blvd.

ARRESTED: David Shaw, 43/ Hit and Run

INCIDENT: Arrest

Officers were dispatched to the 400 block of South Collier Blvd. in reference to a vehicle hit and run accident. The driver, David Shaw, was located and arrested for leaving the scene of an accident with property damage. He was transported to the Naples Jail Center.

DATE & TIME: 03/30/2015 11:30 AM

LOCATION: Nassau Road

INCIDENT: Death Investigation

Officers were dispatched to a residence located on Nassau Road in reference to a death investigation. Investigation continues.

DATE & TIME: 04/03/2015 10:00 AM

LOCATION: Winterberry Drive

ARRESTED: Ann Pierson, 51/ Beth Lia, 46/ Disorderly Intoxication

INCIDENT: Arrest

Officers were dispatched to a construction site located on Winterberry Drive in reference to a table saw and stand that were stolen from the garage of a residence under construction. Investigation continues.

DATE & TIME: 04/06/2015 08:00 PM

LOCATION: 175 S. Barfield/ Publix

INCIDENT: Theft

Officers were dispatched to the business of Publix located on South Barfield in reference to a stolen wallet. The victim states his wallet was stolen after he accidentally left it on the check-out counter. Investigation continues.

DATE & TIME: 04/09/2015 08:30 AM

LOCATION: 2300 Block of San Marco Road

ARRESTED: Lisbeth Arreaga, 32/ Driving without a Driver's License

INCIDENT: Summons for Court Appearance

An Officer conducted a traffic stop on a vehicle traveling at a high rate of speed. The driver, Lisbeth Arreaga, 32, was given a summons to appear in court for driving without a driver's license.

DATE & TIME: 04/13/2015 04:30 PM

LOCATION: 1100 N. Collier Blvd.

ARRESTED: Kenneth Kozlowski, 64/ DUI

INCIDENT: Arrest

Officers were dispatched to the area of the Jolly Bridge in reference to a possible DUI driver entering Marco Island. The vehicle was reportedly being driven without a front tire. Officers located the vehicle and the driver, Kenneth Kozlowski, 64. He was arrested for DUI and transported to the Naples Jail Center.

Beach Patrol

Ninety-two unique events included 39 Police or Community Service Officer initiated patrols on land or water adjacent to the beach, 28 foot patrols, 3 traffic issues and 4 unverified 911 calls.

Animal Complaint	2
Community Policing Activity	1
Beach/Boat Patrol	11
Officer Initiated Patrol	38
Food Patrol	28
Medical Call/Ambulance	2
Missing Person – Youth	1
Rescue – Water	1
Suspicious Incident	1
Traffic Stop	3
Unverified 911	4

Community Service Officers / Code Enforcement

During March, six part-time Community Service Officers answered 125 Code Enforcement-related calls and assisted with 56 parking-related events. These calls resulted in 37 Code Enforcement cases filed. After further community interaction and case investigation, 2 cases were declared unfounded, 16 were closed with compliance obtained, and 19 remain active / open.

Chief Schettino, Captain Baer and Community Service Officers attended several large code enforcement-related events during the month of March. These initiatives included rental & noise ordinance reviews, collaborative Front Street and Castaway Alley area reviews, design and implementation of daily activity reports, and logistical and IT-related groundwork necessary for EnerGov software training scheduled for April.

A new schedule was deployed in March, which under optimum conditions, provides for rotating zone coverage 12 hours daily, 7 days a week.

In early March, a 2015 Jeep Wrangler was purchased with impact fee funds. It will be used by Police and CSO's when patrolling the beach or during affiliated duties. The Jeep is currently being custom striped for police use.



Training

- March 3 Sgt. Ojanovac attended the Terminal Agency Coordinator (TAC) class in Tampa, FL.
- March 2–11 Ofc. Inlow and Ofc. Smith attended the Florida General Instructor Techniques class at the Southwest Florida Public Safety Service Academy in Ft. Myers, FL.
- March 25 Sgt. Ojanovac attended FALCON (Florida's Integrated Criminal History System) Training at FDLE in Miami, FL.
- March 27 Six (6) officers attended a Patrol Rifle class instructed by Sgt. Spina at MIPD.
- Ongoing Various Officers – Online Training: Police Law Institute

Personnel

Reserve & Auxiliary Officer Activity Hours

Administrative	8
Background Investigation	0
Beach Patrol	36
Community Event	13
Investigation/Follow-up	0
Marine Patrol	0
Monthly Meeting	0
Park Patrol	13
Special Duty (Paid)	68
Special Duty (Unpaid)	8
Solo Patrol	52
2 nd Ofc. Patrol	21
RAOSS	3
Training	16
Weather Event	0
Other	0
Total	238

In mid-March, IT Specialist John DePrisco physically transferred to the City's IT Dept. located at the Fire Station.

Summary of code issues on Castaway alley concerning several businesses in the 200 block of Collier Blvd.:

Notices were sent to all addresses on Tuesday, April 7, via Registered Mail. Expected compliance dates vary based on the violation and the complexity of the remediation necessary.

1. **227 N. Collier Blvd.** owned by 227 North Collier Blvd. LLC - Sami's Qwik Stop building. The trash dumpster needs a permitted enclosure. He was issued a courtesy notice with a compliance date of May 31. A second violation relates to the percentage of window covered by signage. We expect compliance on or before May 4.
2. **241 N. Collier Blvd.** owned by S and J Holdings LLC - Verdi's occupies this building. The trash dumpster needs a permitted enclosure. Additionally, they have an unpermitted awning and shed outside the rear of the business. They were given a courtesy notice with a compliance date of May 31.
3. **247 N. Collier Blvd.** owned by South Seas Plaza - The Italian Deli occupies this building. The trash dumpster needs a permitted enclosure. A trailer that was being used for business purposes, and was therefore considered an unpermitted accessory use, was originally located on site, but was removed after a courtesy notice was issued. They were given a courtesy notice with a compliance date of May 31 for installing a permitted enclosure for the trash dumpster.
4. **257 N. Collier Blvd.** owned by Joey's Pizza Inc. The trash dumpster needs a permitted enclosure. Joey's was sent a courtesy notice with a compliance date of May 31.
5. **267 N. Collier Blvd.** owned by "Collier Building" - Doreen's Cup of Joe occupies this building. The trailers in the rear of the property, as used, were not a permitted accessory use. After discussion with the property owner, the trailers have been removed. The trash dumpster needs a permitted enclosure. They were sent a courtesy notice with a compliance date for both issues of May 31.
6. **277 N. Collier Blvd.** owned by Stokes and Lombardi Farms, LLC - Empire Bagel occupies this building. The trash dumpster needs a permitted enclosure. They were sent a courtesy notice with a compliance date of May 31.
7. **297 N. Collier Blvd.** owned by Buell Brothers Inc. ML Whitaker Trust. The trash dumpster is often overflowing with litter, causing litter to be strewn on the ground. Additionally, the trash dumpster needs a permitted enclosure. They were sent a courtesy notice with a compliance date of May 31.
8. **317 N. Collier Blvd.** owned by Paradise Plaza Condominium of Marco. The trash dumpster needs a permitted enclosure. There are also two unpermitted awnings on the back of the building. They were sent a courtesy notice with a compliance date for both issues of May 31.

**CITY OF MARCO ISLAND
SPECIAL MAGISTRATE POLICIES AND PROCEDURES**

Section 1. Enforcement procedure.

(a) *Verifying existence of violation.* The code enforcement official shall enforce the provisions of the City Code, Florida Building Code, and Fire Prevention and Life Safety Codes, as they may be amended from time to time (collectively referred to as the "City Code"). After a field inspection, it may be necessary to research building permits, re-zoning files, special exception files, variance files and other municipal records to ensure the problem is a violation.

(b) *Photo and field report.* The code enforcement official needs to take a photo of the violation at the time of the first inspection and fill out a field inspection report with all required information. The individual the code enforcement official is citing should include the property owner. (In the case of a corporation, the inspector will cite an officer or a registered agent of the corporation.) The property owner can be obtained through the County property records clerk or property appraiser website. The registered agent or corporate officer can be obtained by contacting the Secretary of State Office or reviewing the corporate documentation on sunbiz.org.

(c) *Notification to violator and time for correction.* Except as provided in subsections (d) and (e), if a violation of the City Code is found, the code enforcement official shall notify the violator and give the violator a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement official shall notify the special magistrate¹ of the charges and request a hearing pursuant to the procedure in Section 3. Notice shall be provided pursuant to Section 2.

(d) *Repeat Violations.* If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement official, the case may be presented to the Special Magistrate even if the violation has been corrected prior to the magistrate hearing, and the notice shall so state. If a repeat violation is found, the code enforcement official shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement official, upon notifying the violator of a repeat violation, shall notify the Special Magistrate and request a hearing. The special magistrate, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to Section 2. The case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to the magistrate hearing, and the notice shall so state. "Repeat violation" means a violation of a provision of a code or ordinance by a person who has been previously found, through a code enforcement board, Special Magistrate or other quasi-judicial or judicial process, to have violated or has admitted violating the same provision within five (5) years prior to the violation.

¹ References to "Special Magistrate" shall include code enforcement boards previously utilized by the City if the context requires.

(e) *Serious threats to public health, safety and welfare.* If the code enforcement official has reason to believe a violation presents a serious threat to the public health, safety, and welfare, the code enforcement official may proceed directly to the procedure in Section 3 without notifying the violator.

(f) *Transfer of property ownership.* If the owner of the property which is subject to an enforcement proceeding before the Special Magistrate transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
- (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
- (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
- (4) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five (5) days after the date of the transfer.

New Owner to be provided reasonable time to correct. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Section 2. Notices.

(a) *Hand Delivery and Mail Notice Methods.* All notices required for enforcement of the City Code shall be provided to the alleged violator by:

- (1) Certified mail, return receipt requested. It is important that the envelope and the green card be properly marked with the proper return address information so the code enforcement official is guaranteed that they are returned to for the code enforcement official's records. If such notice is sent to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the City by such owner and is returned as unclaimed or refused, notice may be provided by (i) posting as described below and (ii) by first class mail directed to the addresses furnished to the City with a properly executed proof of mailing or affidavit confirming the first class mailing; or
- (2) Hand delivery by the a law enforcement officer, code enforcement official, or other person designated by the City Council; or

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) *Alternative posting method.*

(1) *Posting in two locations.* In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at a City designated location at City Hall.

(2) *Affidavit Required.* Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) *Evidence of notice.* Evidence that an attempt has been made to hand deliver or mail notice as provided in paragraph (a), together with proof of publication or posting as provided in subsection (b)(2), shall be sufficient to show that the notice requirements have been met, without regard to whether or not the alleged violator actually received such notice.

Section 3. Special Magistrate Hearings; First Hearings.

(a) *Frequency; Minutes; Open Meetings.* The City shall attempt to hold hearings no less frequently than once every two months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings, and all hearings and proceedings shall be open to the public. The City shall provide clerical and administrative personnel as may be reasonably required by the Special Magistrate for the proper performance of its duties.

(b) *Required notice prior to hearing.* No hearing shall be scheduled less than ten days from the date of service of the notice unless there is a reason to believe that a violation presents a serious threat to the public health, safety and welfare.

(c) *Presentation of case.* Each case before the Special Magistrate shall be presented by a code enforcement official and/or city attorney or assistant city attorney appointed by the city manager for that purpose.

(d) *Testimony; evidence; due process required.* The Special Magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the code enforcement official, the alleged violator, and any witnesses called. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the hearings

(e) *First hearing decision.* After all evidence and testimony is given, the Special Magistrate shall enter a decision. There are four separate actions the Special Magistrate may take:

1. Decide against the City and find that the violation does not exist. In which case, the code enforcement official will need to re-evaluate the problem and see if there are other means to prosecute the violation.
2. Dismiss the case without prejudice. In this case, the code enforcement official may refile the same case with more or different evidence.
3. Continue the case to a later hearing in which case the code enforcement official will need to monitor the violation and be prepared to again present the case at the next scheduled hearing. The Inspector must also take new photographs for the re-hearing.
4. Find the alleged violator guilty, set a date for compliance, impose a fine and schedule the case for a Hearing to Certify Fine if necessary. In this situation, the code enforcement official must monitor the violation and start preparing for the Hearing to Certify Fine.

(f) *Order to pay fine.* The Special Magistrate may order the violator to pay a fine in an amount determined by the Special Magistrate for each day the violation continues past the date set by the Special Magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation. A case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to a scheduled hearing date.

(g) *Amount of fine.* In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors:

- (1) The gravity of the violation;
- (2) Any actions taken by the violator to correct the violation; and
- (3) Any previous violations committed by the violator.

(h) *Costs of repairs.* The Special Magistrate may direct the City to perform all reasonable repairs that are required to bring the property into compliance and charge the Violator with the reasonable cost of the repairs along with a fine imposed pursuant to this Section.

(i) *Alternative procedures.* In accordance with Section 5, special magistrates are hereby authorized to conduct administrative hearings, as required, for designated civil citations issued by code enforcement officials.

Section 4. Hearing to Certify Fine; Liens.

(a) *Hearing to certify fines.* If the violation is not corrected before or on the day set for compliance by the Special Magistrate, a hearing shall be scheduled to certify the fine(s).

(b) *Decision.* After all evidence and testimony is given at the hearing to certify fines, the Special Magistrate shall enter a decision. There are four separate actions the Special Magistrate may take:

1. Decide against the City and find that the violation has been corrected. In which case, the City must drop the existing case on this particular violation. It may be necessary to re-evaluate the circumstance and determine if a new citation should be issued or the case re-filed under a repeating violation procedure
2. Dismiss the case without prejudice. In this case, the code enforcement official shall consult with a supervisor about re-filing the case.
3. Grant a continuance to a later date in which case the code enforcement official will need to monitor the violation and be prepared to again present the case at the next scheduled hearing. The Inspector must also take new photographs for the hearing.
4. Find the violation has not been corrected within the specified time period, certify the fine and authorize a lien to be placed on the property.

(c) *Recording of order; liens.* A certified copy of an order certifying a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists, or, if the violator does not own the land, upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment, including execution and levy against the personal property of the violation but such order shall not be deemed otherwise to be a judgment of a court except for enforcement purposes.

(d) *Foreclosure of liens.* A fine imposed shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After three months from the filing of any such lien which remains unpaid, the Special Magistrate may authorize the city attorney to foreclose on the lien. No lien may be foreclosed on real property, which is a homestead under Section 4, Art. X of the State Constitution.

Section 5. Alternate code enforcement procedures; Civil Citations; Notices to Appear.

(a) *Alternative procedures.* The City has adopted alternate code enforcement procedures that provide authority to code enforcement officials to issue citations and notices to appear at a hearing conducted by a county court, and for code enforcement officials to issue civil citations for administrative hearings to be heard by designated special magistrates and assess fines against violators of the City Code.

(b) *Notices to appear:*

- (1) If a code enforcement official, based upon personal investigation, has reasonable cause to believe that a person has violated the City Code, the code enforcement official shall provide written notice to the person that the person has committed a code violation and shall establish a reasonable period of time within which the person must correct the violation. Such time period shall be based on considerations of fairness, practicality, ease

of correction, nature, extent and probability of danger or damage to the public or property, and any other relevant factor relating to the reasonableness of the time period to correct the violation. Such time period shall be no fewer than five days and no more than thirty days.

(2) The code enforcement official is not required to provide the alleged violator with a reasonable period of time to correct the violation prior to issuing the notice to appear if (i) a repeat violation is found, or (ii) if the code enforcement official has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or (iii) that the violator is engaged in violations of a transient nature, or (iv) if the violation is irreparable or irreversible. A repeat violation is a violation of the City Code by a person who has been previously found in violation by the Special Magistrate or any other quasi-judicial or judicial process, to have violated, or who has admitted violating the same provision within five (5) years prior to the violation, regardless of whether the violations occur at different locations.

(3) If, upon personal investigation, a code enforcement official finds that the person has not corrected the violation within the designated time period, the code enforcement official may issue a notice to appear to the person who has committed the violation. The notice to appear shall require the alleged violator to appear at a hearing in county court. If a person issued a notice to appear refuses to sign such a notice, the code enforcement official has no authority to arrest such person; however, nothing precludes the code enforcement official from requesting the assistance of a law enforcement official. The notice to appear form shall contain, but not be limited to the following:

- (a) Date and time of issuance;
- (b) Name of the code enforcement official and jurisdiction;
- (c) Name and address of the violator;
- (d) Code section that has been violated;
- (e) Brief description of the nature of the violation, including location, date and time of the violation; and
- (f) Date, time and location of the county court hearing, including the courthouse address, or a statement that the date, time and place of the court hearing will be set.

(c) *Citations.*

(1) Code enforcement officials shall have the authority to initiate enforcement proceedings by issuing civil citations that may require an appearance of the violator at a county court hearing or an administrative hearing before a special magistrate.

(2) Prior to issuing a citation, the code enforcement official shall provide a written notice (warning) to the person in violation that the person has committed a violation of the City Code and establish a reasonable period of time for the person to correct the violation. Such time period shall be no more than thirty calendar days. If, upon personal investigation, the code enforcement official finds that the person has not corrected the violation within the designated time period, the code enforcement official may issue a civil citation to the person who has committed the violation.

(3) The code enforcement official is not required to provide the alleged violator with a reasonable period of time to correct the violation prior to issuing the citation if (i) a repeat violation is found, or (ii) if the code enforcement official has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or (iii) that the violator is engaged in violations of a transient nature, or (iv) if the violation is irreparable or irreversible.

(4) The citation form shall include, but not be limited to the following:

- (a) Date and time of issuance;
- (b) Name of the code enforcement official and jurisdiction;
- (c) Name and address of the violator;
- (d) Code section that has been violated;
- (e) Brief description of the nature of the violation, including location, date and time of violation;
- (f) Amount of the applicable civil penalty;
- (g) Procedure of the person to follow to pay the civil penalty, or to contest the citation;
- (h) Notice that if the person fails to pay the civil penalty within the time allowed, and fails to appear in court (if assigned to county court), or fails to request an administrative hearing within ten (10) calendar days of service (if case assigned to special magistrate), the person shall be deemed to have waived their rights to contest the citation and that, in such case, judgment may be entered up to the maximum civil penalty.
- (i) Notice that the person may be liable for reasonable costs of the hearing should the violator be found guilty of the violation.

(5)(a) For an administrative citation which may result in an administrative hearing before a special magistrate, service of the citation shall be evidenced by a citation signed by the violator or by certified mail, return receipt requested, provided the citation is sent to the

owner of the property in question at the address listed with the property appraiser's office and at any other address provided to the local government by such owner. If the certified mail is returned as unclaimed or refused, service may be provided by posting at least ten (10) days prior to the scheduled hearing date, in at least two (2) locations, one of which shall be the property upon which the violation exists and the other shall be in a City designated location at City Hall. In addition, a copy of the citation must be sent by first class mail.

(b) Proof of posting shall be by affidavit of the person posting the citation, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(D) Options of persons issued a notice to appear in County Court.

(a) The person who has been served with a notice to appear in county court shall either correct the violation, and pay the civil penalty in the manner indicated on the citation; or

(b) Appear on the designated court date and contest the citation before a county judge. Failure to appear in county court on the designated court date shall be deemed a waiver of the rights of the person to contest the citation and may result in the imposition of a fine against the violator for an amount up to the maximum civil penalty.

(E) Options of persons issued a civil citation.

(a) The person who has been served with a civil citation shall either correct the violation, and pay the civil penalty in the manner indicated on the citation; or

(b) Request an administrative hearing before a Special Magistrate to appeal the decision of the code enforcement official. Said appeal shall be filed not later than ten calendar days after the service of the citation.

(c) Failure of the violator to appeal the decision of the code enforcement official within the ten calendar days shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing may result in the imposition of a fine against the violator for an amount up to the maximum civil penalty.

(d) Should the violator appeal the citation and be found in violation by the Special Magistrate, in addition to the imposition of a fine, the violator shall be assessed an administrative cost of fifty dollars. The Special Magistrate shall not waive the administrative costs.

Section 6. Reduction of fines requests.

(1) The Special Magistrate may hear requests for reduction of fines pursuant to this section and make the final decision on behalf of the city.

(2) *Written application required.* A written application to reduce a fine amount shall be required from the property owner or the violator. An application for reduction of fine may be filed only after an affidavit of compliance has been issued. Should the property not be in compliance and there is a pending transfer of the property, the property owner or the violator may submit an application for a stipulated agreement as provided in paragraph (7) below.

(3) *Application required; Filing fee.* For all requests for reduction of fine(s), all applications shall be filed with the code enforcement division on the forms required and provided by the city and the application shall include a payment of a non-refundable fine reduction application fee of _____ (\$ _____), which amount may be adjusted by a resolution adopted by the City Council.

(4) *Written recommendation from city; Criteria.* The City shall submit a written recommendation to the Special Magistrate regarding properly submitted applications for fine reductions. In formulating the recommendation, the City shall consider criteria, which includes, but is not limited, to the following:

- a. The cooperation of the respondent, including whether the respondent had appeared before the Special Magistrate at the original hearing;
- b. The documentation provided by the property owner or violator in support of the request;
- c. Whether the property owner or violator has new evidence or information that could not be provided at the original hearing;
- d. Whether there was any extraordinary hardship which existed or currently exists;
- e. Whether the applicant was the property owner when the fine or lien was imposed;
- f. The number of days that the violation existed;
- g. Whether the respondent has been deemed a repeat violator by the board or special magistrate;
- h. Whether the property is homestead or non-homestead property;
- i. The administrative cost to the city for the handling of the case, including the preparation of lien, recording and release of lien fees.
- j. Whether the city lien is, in a practical sense, interfering with the sale or restoration of the property or will prevent the property from being conveyed to a new owner;
- k. Whether the property is abandoned and in need of restoration;

l. For abandoned property, whether the police department has advised that the property is declining from acts of vandalism, is a potential site for criminal activity, or otherwise presents any criminal or public safety concerns which should be considered in reducing the fine or lien so as to enable the asset to be placed in the hands of a new owner;

m. The costs, if any, charged to city to abate a violation on the subject property.

(5) *Appearance at hearing required.* The property owner or violator requesting the reduction of fine must appear at the hearing for the reduction of fine unless they have designated an agent, in which case the designated agent shall appear at the hearing. Should the property owner or violator designate an agent, an affidavit must be filed with the code enforcement division designating the agent. The property owner or violator, or the designated agent, shall be notified by the City of the scheduled hearing date.

(6) *No waiver of administrative fees.* The Special Magistrate shall not waive administrative costs incurred by the City in enforcing the City Code. In addition, the Special Magistrate shall not waive costs of repairs incurred by the City.

(7) *Stipulated agreement:* To assist in the transfer of property where the property is not complied, the city may consider an application for a stipulated agreement.

a. For property where there is a pending transfer of the property and the property is not in compliance with the order(s) of the special magistrate, the property owner or violator may submit an application for a stipulated agreement. The application shall be filed with the code enforcement division on the forms required and provided by city and the application shall include a payment of a non-refundable application fee of _____ (\$_____), which amount may be adjusted by a resolution adopted by the City Council.

b. The criteria as outlined in paragraph (4) above shall be considered for this application in the same manner as the request for reduction where the property is in compliance.

c. The code enforcement division and/or fire division shall re-inspect the property to determine if there are any new violations on the property since the issuance of and any orders by the special magistrate, including any new or pending cases that have not yet been presented to the special magistrate.

d. The stipulation shall include, but not be limited to the following information: reduction of fine amounts, including administrative costs, due city; notice of any additional violation(s) on the property; and a compliance date for the potential purchaser based upon the projected closing date. The violator or current property owner and the potential purchaser must execute the stipulated agreement. The monies due city shall be paid no later than the date of closing on the property.

e. Once the city receives the executed stipulated agreement, together with the monies due to the city, the code enforcement division shall prepare and record the applicable release

of lien. Once the agreement is executed by city, the parties to the agreement shall be provided with a copy.

Section 7. Counsel.

The city attorney or assistant city attorney shall represent the city as the City Prosecutor by presenting cases before the Special Magistrate. The City Prosecutor shall have prosecutorial discretion, including but not limited to, the right to negotiate a plea with the violator and present that plea to the Special Magistrate for approval, to recommend disposition of a case to eth Special magistrate, and to decline to prosecute the case.

Section 8. Collection and recovery of civil penalties.

(a) The city manager, or designee, shall provide the appropriate guidelines and procedures for the administration, collection, record keeping, reporting and accountability of fines assessed.

(b) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(c) If the Special Magistrate finds that a violation exists and assesses the fine, or if the violator does not contest the citation, and the violator fails to pay the applicable fine, the Special Magistrate may enter an order imposing the fines previously set, plus administrative costs.

(d) A certified copy of the order imposing a civil penalty, plus administrative costs, may be recorded in the public records and thereafter shall constitute a lien against the real or personal property of the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment, including a levy against personal property, but not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien remains unpaid, the city may foreclose or otherwise execute on the lien. No lien may be foreclosed on real property that is homestead under Section 4, Article X of the State Constitution.

Section 9. Appeals.

(a) *Motion for rehearing.* A party may seek a rehearing of a case heard by the Special Magistrate by filing a written motion for rehearing within ten calendar days of rendition of the decision by the special magistrate. The motion for rehearing shall set forth issues which were overlooked or omitted at the hearing but shall not consist of re-argument of the case. The motion shall be filed with the Special Magistrate Clerk, Code Enforcement Division, City of Marco Island, 51 Bald Eagle Drive, Marco Island, Florida 34145. The party filing the motion is responsible for forwarding a copy of the motion to the other party. The Special Magistrate clerk shall immediately forward the motion for rehearing to the special magistrate. Within ten days of receipt of the motion, the Special Magistrate may enter an order on the motion for rehearing or schedule a hearing on the motion. If the motion for rehearing is granted, the case shall be set for rehearing as soon as possible thereafter.

(B) *Appeal to circuit court.* A party may appeal a decision of a Special Magistrate by certiorari to the Twentieth Judicial Circuit within thirty (30) days of the date of the rendition of the decision of the Special Magistrate as provided by the Florida Rules of Appellate Procedure.