**CITY OF MARCO ISLAND**

**ORDINANCE NO. 12-08**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING THE CODE OF ORDINANCES, CHAPTER 50: ARTICLE II, STOPPING, STANDING AND PARKING, TO REVISE SECTIONS 50-34; 50-37; 50-39; 50-41; 50-43; 50-44; 50-45; AND ADDING SECTION 50-46; PROVIDING FOR DEFINITIONS, STANDARDS, REPEAL OF CONFLICTING PROVISIONS AND 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 home rule powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 1.02 of the Marco Island City Charter empowers the City to adopt, amend, or repeal ordinances, resolutions and codes as may be required for the benefit of residents and governance of the City; and

**WHEREAS**, the City Council further finds that adoption of this Ordinance is in the best interest of the residents of the City of Marco Island.

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

**SECTION 1. Recitals.**

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

**SECTION 2. Amendment and Adoption.**

The amendments to the Code of Ordinances contained in this Ordinance are hereby amended or created and adopted as follows:

Sec. 50-34. - Definitions.

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*Parking enforcement officer* includes the Police Chief, and any City Police Officer, any designee of the Police Chief, <u>any Community Service Officer</u>, any City Code Compliance Personnel, the Sheriff and any Deputy Sheriff of Collier County, and any state law enforcement officer.

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Sec. 50-37. - Prohibited parking.

Except when necessary to avoid conflict with other traffic, or in compliance with law or the direction of a law enforcement officer or official traffic control device, no person shall:

(1) Stop, stand or park a vehicle:

(a) Upon a street in such a manner or under such conditions as to obstruct or interfere with the free movement of traffic;

(b) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(c) On a sidewalk, bike path, or bike lane; if any portion of a vehicle obstructs or projects over the edge of the sidewalk, bike path, or bike lane, the vehicle is in violation of this section;

(d) Within an intersection;

(e) On a crosswalk;

(f) Alongside or opposite any street, or obstruction when stopping, standing or parking would obstruct traffic;

(g) Upon any bridge or other elevated structure upon a highway, where parking is not provided for;

(h) Within any appropriately signed or marked fire lane;

(i) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the city manager or the state department of transportation indicates a different length by signs or marking;

(j) Within ~~20~~ <u>50</u> feet of a driveway entrance to any fire station and on the side of a street or highway opposite the entrance to any fire station within 75 feet of said entrance;

(k) In the median area between traffic lanes;

(l) At any place where official signs prohibit standing~~.~~<u>;</u>

<u>(m) On any improved surface adjacent to a roadway designed and marked for parking for a period longer than 72 consecutive hours;</u>

<u>(n) On any improved surface in a city parking lot designed and marked for parking for a period longer than 72 consecutive hours;</u>

<u>(o) On any improved surface meeting the criteria of (m) and (n) of this section: outside of the marked parking space;</u>

<u>(p) Excluding on private property, next to a curb line painted yellow designating a no parking zone;</u>

<u>(q) With expired or unregistered license plates on any street, street right-of-way, swale or public access parking area, except as provided for in Sec. 30-1007.</u>

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(3) Stand or park a vehicle on a swale, or in a swale area, whether the vehicle is occupied or not, except momentarily to pick up or discharge a passenger, or passengers, or property, under the following circumstances:

(a) Between the hours of 2:00 a.m. and 6:00 a.m.;
(b) When prohibited by an official sign;
(c) On any curbed swale;
(d) At any time within 500 feet of the entrance to Resident's Beach;
(e) At any time within 500 feet of the entrance to the South Beach pedestrian access;
(f) At any time within 500 feet of the entrance to the Tigertail Beach;
(g) ~~If the vehicle is a trailer; parking is prohibited at any time except when attached to a vehicle and being used in conjunction with an ongoing maintenance or repair operation such as utility repairs, public works and landscape maintenance.~~ At any time within 500 feet of the entrance to the Madeira beach access path;
(h) At any time within 500 feet of the entrance to the Marriott's Crystal Shores beach access path;
(i) Facing against the direction or flow of traffic for that side of the roadway;
(j) Angled parking unless posted as authorized;
(k) If the vehicle is a trailer; parking is prohibited at any time except when attached to a vehicle and being used in conjunction with an ongoing maintenance or repair operation such as utility repairs, public works and landscape maintenance.

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Sec. 50-39. – Violations

(1) Pursuant to ~~F.S. §~~ Section 318.14, FLA.STATS, any person cited for a violation of sections 50-37 and 50-38 of this article shall be deemed to be charged with a noncriminal violation and shall be assessed a civil penalty according to the following schedule:

(a) Handicapped parking: $250.00 for each uncontested violation of section 50-38 of this article or, as determined by the county judge, up to $250.00 for a contested violation of section 50-38 of this article. Pursuant to ~~F.S. §~~ Section 318.18(6), FLA.STATS, the clerk of courts shall dismiss the handicapped parking citation if the following items of proof are presented to the clerk; (a) proof that the person committing the violation had a valid handicapped parking permit or handicapped license plate for the cited vehicle on the issuance date of the citation, (b) a signed affidavit in accord with ~~F.S. §~~ Section 318.18(6), FLA.STATS, and (c) a $5.00 dismissal fee.

(b) ~~Thirty~~ Ninety-five dollars for a violation of any provision of section 50-37 of this article. Fines and late payment penalty for violations of section 50-37 are to be distributed as follows.

(2) Each day any violation occurs or continues shall be a separate offense. For parking in excess of the time authorized in a public parking space, each succeeding equal time period beyond that authorized as the maximum time period for said parking place shall constitute a separate offense.

(3) The amount of any penalty specified in this section shall be increased by an additional 50 percent of the specified amount if payment is not received by the clerk prior to notice being mailed to the registered owner pursuant to section ~~50-40(c)~~ 41(3).

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Sec. 50-41. - Payment of civil penalties and proceedings to enforce payment violations.

(1) Any person issued a city parking citation, pursuant to sections 50-37 or 50-38, shall answer the citation by either of the following procedures within ten days after the date of issuance of the citation.

(a) Payment of the penalty indicated on the citation may be remitted to the ~~police department~~ City of Marco Island, pursuant to the directions on such citation; or

(b) A hearing may be requested by the person receiving such citation or the cited vehicle's registered owner for the purpose of presenting evidence before a county judge concerning a parking violation. Any person requesting a hearing shall execute a statement on a hearing request form indicating his/her willingness to appear at such hearing at a time and place specified thereon. This hearing request will be filed with the police department, who will schedule a hearing through the clerk of the courts.

Any person who requests a hearing and does not appear in accordance with said statement shall be subject to contempt proceedings or to other such penalties as the court may, in its discretion, impose to require compliance with this article.

(2) Pursuant to the provisions of ~~F.S. §~~ Section 316.1967 FLA.STATS, an election to request a hearing constitutes a waiver of the right to pay the penalty indicated on the parking citation, and a county judge after said hearing may impose a fine not to exceed $100.00, plus court costs for each parking violation. However, an election to request a hearing pertaining to a handicap parking violation constitutes a waiver of the right to pay the penalty indicated on the parking citation, and a county judge after said hearing may impose a $250.00 fine, plus court costs per violation.

(3) Upon receipt of a complete parking citation submitted by a parking enforcement officer, pursuant to sections 50-37 and 50-38, the police department shall notify the registered owner first listed on such citation of its issuance if there has been no response to the citation pursuant to subsection (1)(a) of this section. Such notice shall be sent by regular mail on the fourteenth day after the citation was issued and shall inform said registered owner concerning the nature and location of the parking violation and shall require payment of the fine or attendance at a hearing at a time and place specified in such notice. Pursuant to the provisions of ~~F.S. §~~ Section 316.1967 FLA.STATS, a county judge after said hearing should make a determination as to whether a parking violation has been committed and may impose a fine not to exceed $100.00, plus court costs, except for handicap parking violations, for which a fine of up to $250.00 may be imposed, plus costs. Any person upon which service is obtained, pursuant to this section who does not appear at a hearing as directed by the notice shall be subject to contempt proceedings or to such other penalties as the court may, in its discretion, impose to require compliance with said notice.

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Sec. 50-43. - Disposition of fines and forfeitures for parking violations; authorized costs.

Except as otherwise provided in this section, all moneys received by the clerk of the county court as a result of parking citation issued by a municipality shall be paid to that municipality as provided by Florida State Statute.

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Sec. 50-44. - Impoundment.

(1) The police chief or any police officer is authorized to provide for the removal of a vehicle to a vehicle storage lot (or other place designated by the police chief) ~~when such vehicle is found unattended on a city road right-of-way or other city property in the following instances~~:

(a) Where such vehicle is parked in a posted tow away zone;

(b) Where such vehicle constitutes an obstruction of traffic;

(c) Where such vehicle has been parked or stored without moving for a period exceeding 24 hours;

(d) Where such vehicle has been involved in an accident and the driver is unable to remove the vehicle;

(e) Where such vehicle is wrecked, dismantled, inoperative or in an obvious state of disrepair;

(f) When the driver of a vehicle is taken into custody by the police department and the vehicle would thereby be left unattended upon a street;

(g) When removal is necessary in the interest of public safety because of fire, flood, storm or other emergency reason~~.~~;

(h) When any vehicle has been stolen or operated without the consent of the owner and located on public or private property;

(i) When any vehicle displays illegal license plates or fails to display the current lawfully required plates and is located upon any public street or other property open to the public for the purpose of vehicular travel or parking;

(j) When any vehicle has been operated by a person, known or otherwise, who has failed to stop in the case of a vehicle crash involving personal injury, impaired driving, or property damage in excess of $1,000;

(k) When the vehicle's owner is found to have three or more unpaid parking or traffic citations and is located upon any public street or other property open to the public for the purpose of vehicular travel or parking;

(l) When the vehicle is parked continuously in the same place for more than the permitted amount of time as defined in section 50-37 and the vehicle remains in place for twelve consecutive hours after issuance of a parking citation describing said violation;

(m) The vehicle is parked upon any public street or other property open to the public for the purpose of vehicular travel or parking which has been declared a temporary or no parking zone due to a state of the emergency proclamation issued by the City of Marco Island;

(n) Where such vehicle is parked in a fire lane;

~~(2)~~ (o) If a vehicle is removed pursuant to this section, the registered owner will be notified in writing within 5 business days that the vehicle was towed and the procedure for reclaiming the vehicle ~~the location of the storage area~~. An inventory receipt will be suitable for this purpose. The notification will be sent to the address on record with the state department of highway safety and motor vehicles.

~~(3)~~ (p) The police department will provide the ~~state department of highway safety and motor vehicles~~ Collier County Communications Center with a full description of the towed vehicle within ~~24~~ 12 hours of impoundment. This information will be made available to the applicable storage area upon their request.

~~(4)~~ (q) No vehicle impounded in an authorized storage area pursuant to this section shall be released there from until the charges for towing the vehicle into the storage area and storage

and administrative charges have been paid. The charge for the towing or removal of any impounded vehicle and storage charges shall be ~~fixed~~ set by the city manager, which charges are to be based upon the actual cost of the removal and storage of the vehicle, as may be set forth in the city's contract with the authorized towing service, as well as an administrative fee set by the city manager.

(r) Any person seeking to release an impounded vehicle shall appear at the police department to furnish satisfactory evidence of identity and ownership or right to possess. Proof of current insurance status must also be shown. No vehicle may be released if there is an administrative, evidentiary or judicial hold placed on said vehicle.

(s) No owner or operator shall remove an impounded vehicle from the place of storage without complying with the above procedures. Possession of the vehicle which has been impounded and unlawfully taken from the place of storage, by the owner or operator, shall constitute *prima-facie* evidence that it was removed by the owner or operator.

(t) No vehicle storage facility may release an impounded vehicle without written authorization by the Marco Island police department to do so.

(2) The administrative fees to be charged by the municipality relative to the impoundment of vehicles as authorized by this section are to be set by the city manager.

**SECTION 3. Inclusion in the Code of Ordinances.**

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 become part of the City of Marco Island Code of Ordinances, that the sections of this Ordinance may be renumbered and relettered 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 repealed.

**SECTION 5. Severability.**

If any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 6. Effective Date.**

This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 17th day of September, 2012. Attest:

**CITY OF MARCO ISLAND FLORIDA**

By: _____
Laura M. Litzan, City Clerk

By: _____
Larry Magel, Chairman

(SEAL)

Reviewed for legal sufficiency:

By: _____
Burt L. Saunders, City Attorney