ORDINANCE NO. 13-05

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING THE CODE OF ORDINANCES, CHAPTER 54: ARTICLE V. SEA TURTLE PROTECTION, TO UPDATE SECTIONS 54-141 TO 54-149; AND CHAPTER 18: ARTICLE V. ENDANGERED, THREATENED OR LISTED SPECIES, TO UPDATE SECTIONS 18-141 TO 18-145; PROVIDING FOR DEFINITIONS, STANDARDS, REPEAL OF CONFLICTING PROVISIONS AND AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the 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 of the City of Marco Island, Florida ("City Council") recognizes that changes to the adopted Code of Ordinances and Land Development Code are periodically necessary in order to ensure that the City's Codes are current and consistent with the City's planning and regulatory needs; and

WHEREAS, Sections 54-141 to 54-149 do not currently include a definitions section which defines beach, sea turtle nesting and hatching season and take or taking; and

WHEREAS, Sections 18-141 to 18-145 do not currently include a definitions section which defines, listed species, protection zones and taking; and

WHEREAS, the Marco Island Planning Board, sitting as the Local Planning Agency, held a duly advertised public hearing on September 7, 2012 and determined that the proposed changes contained in this Ordinance are consistent with the City of Marco Island Comprehensive Plan and Florida law, and recommended adoption of this Ordinance to the City Council; and

WHEREAS, after reviewing the City of Marco Island Planning Board's recommendation, the recommendation of City staff, and comments from the public, the City Council after holding an advertised public hearing finds that the proposed amendments to its Code of Ordinances are in compliance and consistent with Florida law and its adopted Comprehensive Plan; 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:

Chapter 54
Article V. SEA TURTLE PROTECTION
Sec. 54-141 TO 54-149.

Sec. 54-141. Purpose and intent.
The purpose of this ordinance 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.

Sec. 54-142. Applicability.
For the purposes of this ordinance, the beaches of Marco Island shall be designated as those sandy areas facing the Gulf of Mexico, including ~~Coconut Island~~, 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.

Sec. 54-143. Definitions.

a. *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.*
b. *Sea Turtle Nesting and Hatching Season – means May 01 through October 31 yearly.*
c. *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.*

Sec. 54-144. New Development.
Lighting associated with any construction or development activity that is within 300 feet of the line of mean high water, or if there are any light sources or any reflective surfaces illuminated by such sources that will be visible from the beach, such lighting shall be in compliance with Ordinance 99-7 and the following:

1. Outdoor lighting shall be the minimum necessary for security and safety. Floodlights and landscape or accent lighting shall be prohibited.

2. All lighting including wall-mounted fixtures, pole lighting, lights on balconies, and any other type of lighting not specifically referenced by this section, shall be of low intensity and shall be fitted with hoods or positioned so that the light sources or any reflective surface illuminated by such sources are not visible from the beach.
3. 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 do not create shadows on the beach.
4. Dune crosswalks shall utilize low profile shielded luminaries directed and positioned so that light sources or any reflective surfaces illuminated by such sources are not visible from the beach. Dune crossover lighting shall be limited to the area landward of the primary dune.
5. Windows that are visible from the beach shall be tinted or glazed to achieve an industry approved light transmittance value of 45 percent or less. Such transmittance shall be limited to the visible spectrum (400 to 700 nanometers) and shall be measured as the percentage of light that is transmitted through the glass, inside to outside.
6. Temporary security lights at construction sites shall not be mounted more than 15 feet above the ground. Light sources or any reflective surfaces illuminated by such sources shall not be visible from the beach.

Sec. 54-145. 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 ordinance.

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.

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 re-positioned to minimize or eliminate any adverse effects.

Sec. 54-147. Unlawful to kill, molest, or injure sea turtles.

1. 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.
2. 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).
3. 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.
4. 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 PM during sea turtle nesting season.

Sec. 54-148. Construction during nesting season.

It shall be unlawful to construct any structure, add any fill, mechanically clean any beach, or grade any ~~dirt~~ 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. 54-149. Violations.

Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Any person or firm who violates this division or fails to comply with any of its requirements shall upon conviction thereof be fined, or imprisoned, or both, as provide by law. 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 criminal sanctions contained herein, may take any other appropriate legal action, including but not limited to injunctive action, to enforce the provisions of this division.

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Chapter 18
Article V. ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION
Sec. 18-141 TO 18-145.

Sec. 18-141. Purpose and intent.
The purpose of this ordinance is to protect the species currently listed by the Florida Fish and Wildlife Conservation Commission (FWC), United States Fish and Wildlife Service (USFWS) and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as endangered, threatened or of special concern or status in the City of Marco Island, Florida by including measures for protection and/or relocation of endangered, threatened, or species of special concern or status.
The presence of ~~protected~~ listed species on a parcel of property presents legitimate hardship, and may constitute reasonable grounds for consideration of a variance for construction setbacks and/or landscape requirements.

Sec. 18-142. Definitions.

a. *Listed Species* - Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and is listed by CITES, USFWS and FWC.
b. *Protective Zone* - The 25 foot diameter area that surrounds the listed species habitat and/or burrow.
c. *Taking* - means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or an attempt to engage in any such conduct.

Sec. 18-143. New Development.
For new development the following, as applicable, shall serve as guidelines or standards for the protection of endangered, threatened or species or special concern or status as prescribed by the goals, objectives and policies of the conservation element of the Marco Island Comprehensive Plan:

1. Prior to submission of a building permit application, the applicant must survey the affected property for the most commonly found listed species on Marco Island: the Burrowing Owl (*Speotyto cunicularia floridana*), ~~and~~ the Gopher Tortoise (*Gopherus polyphemus*) burrows, American Osprey *(Pandion haliaetus)* and Bald Eagle *(Haliaeetus leucocephalus)* nests. If a listed species is on the property, the appropriate State and/or Federal agency must be contacted for management guidelines.
2. If a listed species is found on the property, then the applicant must include the survey with the building permit application and indicate a state or federal permit is being pursued for removal, relocation or protection of the listed species onsite. ~~complete a Species of Special Concern Affidavit along with required building plan. This document shall inform the applicant that the owl and/or tortoise are protected species and that certain Federal, State, and City regulations apply and must be followed during the building activity on the property. The applicant shall provide the following information on the Affidavit:~~
   ~~(i) Applicant's name address, and phone number~~
   ~~(ii) Address of property to be developed (Unit, Block, Lot)~~
   ~~(iii) Number and location of burrows located on property~~

~~(iv) Indicate whether State or Federal permits are needed to physically take the species and the burrow.~~

~~(v) Signature of applicant~~

~~(vi) Signature of witness~~

~~This information shall be posted at the site during all phases of construction activity. Any false information will be considered a violation of this ordinance and will place the applicant subject to penalty.~~

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

Sec. 18-144. Activities within protection zones.

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

(a) City approved volunteers who maintain burrows in designated zones in the City of Marco Island may conduct maintenance activities that shall include the clipping of vegetation within the protection zone, staking and ~~roping~~ posting the zone with flagging tape and signage, and recording pertinent data.

(b) Contractors may enter the protection zone to remove debris with the full understanding that they can do nothing to disturb of harm the species or burrow in any manner. Contractors and lawn/lot maintenance companies shall accept full responsibility for the actions of their employees to ensure that all laws protecting such species are adhered to.

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

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

(e) Authorized representatives of developers including, but not limited to, professional environmental consultants that are conducting surveys or monitoring in conjunction with private or municipal construction.

Sec. 18-145. Protection and taking procedures.

Requirements for taking or protecting the species are as follows:

(i) No active or inactive owl and/or gopher tortoise burrow, or nests of any other listed species, may be taken without proper State permits issued by the FWC.

(ii) If State permit(s) are issued, they shall be posted on site during all phases of the construction.

(iii) During the Burrowing Owl nesting season as designated by FWC (February 15 through July 10) no City building permits will be issued for applicants ~~needing~~ to take an owl burrow, unless the FWC has issued permits to take the owl burrow(s) during nesting season or permits have been issued to take the owl burrow(s) after nesting season and the construction can commence with a protection zone in place. No City building permits will be issued for applicants to take a Gopher Tortoise burrow, unless FWC has issued permit to take the tortoise burrow(s) and construction can commence with a protection zone in place.

The protection zone requirements shall be:

(a) A protection zone, consisting of construction silt fencing, having a diameter of at least twenty-five (~~2~~ 25) feet will be erected around each affected burrow during all phases of construction.
(b) Contractors will be responsible for maintaining the zone and informing all workers and subcontractors to avoid the zone and to do nothing to violate the burrow(s) in such a way as to make it collapse. Any violation or destruction will place the contractor subject to penalty.

All protection plans shall be subject to review and approval by the environmental specialist of the ~~development services~~ Community Affairs Department. The city may consider and utilize recommendations and letters of technical assistance of the FWC, and recommendations and guidelines of the USFWS, in issuing development orders on property containing wildlife species of special status.

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

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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 4th day of September, 2013.

ATTEST:

By: _____
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND FLORIDA

By: _____
Joe Batte, Chairman

(SEAL)

Reviewed for legal sufficiency:

By: _____
Burt L. Saunders, City Attorney