

ORDINANCE NO. 07- 03

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AUTHORIZING A REFERENDUM PROPOSING AN AMENDMENT TO THE MARCO ISLAND CITY CHARTER TO PROVIDE THAT EXPENDITURES RELATED TO EXTENSION OF THE CITY'S WASTEWATER UTILITY SYSTEM WHICH ARE FUNDED BY GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS APPROVED BY REFERENDUM, AND DEBT SERVICE PAYMENTS RELATED TO SUCH OBLIGATIONS, ARE NOT SUBJECT TO CHARTER EXPENDITURE LIMITATIONS; AUTHORIZING A REFERENDUM REGARDING THE ISSUANCE OF GENERAL OBLIGATION BONDS NOT TO EXCEED \$88,600,000 TO PARTIALLY FINANCE THE CONSTRUCTION OF SANITARY SEWER LINES FOR THE SEPTIC TANK REPLACEMENT PROGRAM; ESTABLISHING ITS INTENT TO REIMBURSE SUCH CAPITAL EXPENITURES INCURRED WITH PROCEEDS OF SUCH GENERAL OBLIGATION BONDS; PROVIDING FOR AN ALTERNATE SEPTIC TANK REPLACEMENT PROGRAM FINANCING OPTION IN THE EVENT THAT A CITY CHARTER AMENDMENT AND GENERAL OBLIGATION BOND ISSUE ARE NOT APPROVED THROUGH REFERENDA; PROVIDING FOR AND CALLING REFERENDA OF THE QUALIFIED ELECTORS OF THE CITY TO BE HELD ON JUNE 26, 2007; PROVIDING FOR OFFICIAL BALLOTS; PROVIDING FOR REFERENDUM PROCEDURES; AND PROVIDING 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 powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 7.01 of the Charter of the City of Marco Island provides that the Charter may be amended in accordance with the provisions for charter amendments as specified in the Municipal Home Rules Powers Act, Chapter 166, Florida Statutes, as the same may be amended from time to time, or its successor, or as may otherwise be provided by general law; and

**WHEREAS**, the City Council adopted the Utility Business Plan on January 31, 2005, including the ten-year Capital Improvement Program that provided for the extension of the sanitary sewer collection system to serve the unsewered areas on and around Marco Island, hereinafter referred to as the Septic Tank Replacement Program; and

**WHEREAS**, the City Council has initiated an expansion program for its utility system, with the intent to construct and provide, in a series of phases or assessment areas to be determined from time to time, within geographic assessment areas served by, or capable of being served by, the utility system, certain wastewater capacity improvements and wastewater treatment collection improvements in order to provide central wastewater service to owners of vacant parcels and owners and users of parcels served by on-site sewage

treatment and disposal systems, including but not limited to septic systems located within the City (the "Septic Tank Replacement Program" or "Program"); and

**WHEREAS**, as previously determined and approved by the City Council, it is the policy of the City of Marco Island, through Marco Island Utilities, to extend the central sewer collection system in phases and that the Septic Tank Replacement Program shall be funded, in whole or in part, through the imposition of special assessments upon those properties benefiting from receipt of the extended central sewer collection system, from grants that have or may be received for the program, and from any other legally available revenue sources that have been or may be determined to be appropriate for funding of the Septic Tank Replacement Program; and

**WHEREAS**, the City Council has already established seven assessment areas for the Septic Tank Replacement Program and intends to create additional assessment areas in phases over approximately the next five years or sooner if feasible; and

**WHEREAS**, the City Council desires to establish a policy that assessments to property owners receiving the new sanitary sewer service shall be limited to \$10,000 per Equivalent Residential Connection, and that such assessment shall consist of a wastewater capacity improvements cost of \$4,610 and a wastewater treatment collection improvement cost of \$5,390, provided the balance of the wastewater collection improvement cost in each assessment area is paid by proceeds from a general obligation bond or loan authorized by referendum as provided for herein; and

**WHEREAS**, the financing option to limit the assessment to \$10,000 per Equivalent Residential Connection with the balance of the wastewater treatment collection improvements to be funded by the proceeds of a general obligation bond or a loan shall be subject to a City Charter Amendment and proposed bond referendum approved by the qualified electors of the City; and

**WHEREAS**, the City Council intends to establish an alternate policy that shall be implemented for the financing of the Septic Tank Replacement Program in the event that the City Charter Amendment and proposed bond referendum are not both approved by the qualified electors of the City; and

**WHEREAS**, this Ordinance is intended to constitute a "declaration of official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations which were promulgated pursuant to the Internal Revenue Code of 1986, as amended, with respect to the debt incurred to finance the Septic Tank Replacement Program.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Marco Island, Florida:

**Section 1. Authority for Ordinance; Recitals.** This Ordinance is enacted by the City Council of the City of Marco Island, Florida (the "City") pursuant to the Constitution and laws of the State of Florida, Chapter 100.201 through 100.351, Florida Statutes, Chapter 166, Florida Statutes, the Charter of the City, and other applicable provisions of law. The recitals above are hereby incorporated herein.

## **Section 2. Septic Tank Replacement Program Policy.**

(A) The Septic Tank Replacement Program and the special assessment associated with the Program shall be limited to \$10,000 per Equivalent Residential Connection, of which \$4,610 shall represent the wastewater treatment capacity improvement component and \$5,390 shall represent the wastewater collection improvement component of the assessment. In the event the City Charter Amendment and the proposed bond referendum are both approved, the balance of the Septic Tank Replacement Program cost shall be funded in whole or in part through the issuance of general obligation bonds or a loan in an amount not to exceed \$88,600,000. Any Septic Tank Replacement Program costs in excess of the \$10,000 per Equivalent Residential Connection shall be paid by the proceeds of the general obligation bonds or loan.

(B) The previously adopted policy of the City Council, dated October 9, 2006, to remove the cost of street resurfacing from the assessment, with such costs to be paid through an increase in the general utility rate base, shall be replaced by this revised policy upon approval of the electorate of both the City Charter Amendment and bond referendum.

(C) The Voluntary Assessment Program, established by Resolution No. 06-46, shall be suspended pending the referenda decisions. If the majority of the electorate votes "Yes" to both the City Charter Amendment and bond referendum, the Voluntary Assessment Program will be terminated.

**Section 3. Alternate Septic Tank Replacement Program Policy.** If a majority of the electorate votes "No" for either the City Charter Amendment or the bond referendum, the financing policy of the City Council for the Septic Tank Replacement Program shall be as follows:

(A) The Program shall be financed through the previously adopted special assessment process for the wastewater capacity improvements and wastewater treatment collection improvements.

(B) The assessments shall be reduced by the cost to resurface streets associated with the wastewater treatment collection improvements for each assessment area. The costs associated with street resurfacing shall be paid through an increase in the utility rate base.

(C) The wastewater treatment collection improvements for each assessment area shall be reduced by \$2,758 to offset any costs associated with the upgrades to the existing wastewater treatment facilities that are financed through the utility rate base. This cost reduction in the assessment shall be paid through an increase in the utility rate base.

(D) The Voluntary Assessment Program shall be available to all property owners who expressed an interest in participating in the Program on or before February 28, 2007 and who subsequently execute the required Voluntary Assessment Agreement. Any future increases in costs for wastewater collection construction improvements beyond the 2006 "lock-in" assessment associated with the Program shall be paid by funds from the utility rate base.

**Section 4. Referenda.** A City Charter Amendment referendum and general obligation bond referendum of the qualified electors of the City is hereby called to be held on June 26, 2007 to determine, respectively, whether the City Charter shall be amended as proposed in Section 5 hereof and whether general obligation bonds or a loan shall be authorized in an aggregate amount not to exceed Eighty-eight Million Six Hundred Thousand Dollars (\$88,600,000) in order to finance a portion of the cost of the Septic Tank Replacement Program. All qualified electors in the City shall be entitled and permitted to vote in both Referenda. Voting shall be by mail ballot.

**Section 5. City Charter Amendment.** It is hereby proposed that Section 1.03 of the City Charter be amended to read as follows:

Deletions are ~~struck through~~ and additions are underlined.

**Section 1.03 Expenditure Limitations.**

Notwithstanding section 1.02 above, operating expenditures shall be limited to an increase from the prior year' expenditures of three percent (3%) plus the then-current Federal C.O.L.A. (Department of Labor, Bureau of Statistics, Consumer Price Index) per annum following the third full year of incorporation; except that this shall not apply to: emergencies; capital expenditures as provided in section 6.01; expenditures relating to projects or programs funded by grants, gifts, or impact fees; ~~and~~ expenditures, including debt service payments, relating to utility or other enterprise funds which are intended to be self-supporting for governmental accounting purposes; expenditures related to extension of the City's wastewater utility system to serve unsewered areas provided such expenditures are funded by general obligation bonds or other obligations, including loans, approved by referendum of the electors of the City; and debt service payments related to such obligations.

**Section 6. Referenda Date.** The proposed City Charter Amendment referendum and general obligation bond referendum shall be submitted, by mail ballot, to the qualified electors of the City on June 26, 2007 to determine whether or not to amend the City Charter and to authorize the issuance of general obligation bonds or incur a loan in the aggregate amount not to exceed Eighty-eight Million, Six Hundred Thousand Dollars (\$88,600,000).

**Section 7. Notice of Referenda.** At least thirty (30) days' notice of the City Charter Amendment referendum and bond referendum shall be published in a daily newspaper of general circulation in the City, at least twice, once in the fifth week and once in the third week prior to the week in which the Referenda are held, in the form attached hereto as Exhibit "A" and in the manner provided in Chapter 100.342, Florida Statutes.

**Section 8. Official Ballot.** The form of ballot for voting in the City Charter Amendment referendum and bond referendum shall be in substantially the following form:

**OFFICIAL BALLOT  
CITY OF MARCO ISLAND, FLORIDA  
CITY CHARTER AMENDMENT  
June 26, 2007**

Shall the City of Marco Island, Florida amend City Charter Section 1.03 to exclude from the expenditure limitation of that section expenditures related to extension of the City's wastewater utility system to serve unsewered areas provided such expenditures are funded by general obligation bonds or other obligations, including loans, approved by referendum of the electors of the City and debt service payments related to such obligations?

- Yes, FOR Charter Amendment
- No, AGAINST Charter Amendment

**OFFICIAL BALLOT  
CITY OF MARCO ISLAND, FLORIDA  
SEPTIC TANK REPLACEMENT PROGRAM BOND/LOAN REFERENDUM  
June 26, 2007**

Shall the City of Marco Island, Florida issue general obligation Bonds or receive a loan in an amount not to exceed \$88,600,000, bearing interest not to exceed the maximum legal rate, maturing not more than 25 years after issuance, payable from a levy of an unlimited special ad valorem tax on all taxable property in the City to partially finance wastewater collection improvements associated with the Septic Tank Replacement Program?

- Yes, FOR Bonds and Levy of Tax
- No, AGAINST Bonds and Levy of Tax

**Section 9. Referenda Results.** If a majority of the electorate votes "Yes" for both the City Charter Amendment and the issuance of the general obligation bonds or loan, such general obligation bonds or loan shall be approved, the issuance of which shall be thereby approved, and such obligations shall be issued in the manner provided by the City Council, as governing body of the City. If a majority of the electorate votes "No" for either the City Charter Amendment or the issuance of the general obligation bonds or loan, the financing shall be defeated, and no such obligations shall be issued pursuant to this Ordinance.

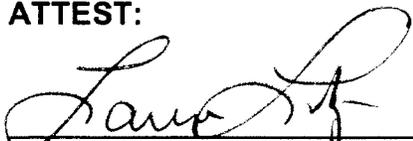
**Section 10. Intent to Reimburse.** The City Council hereby expresses its intention that the City be reimbursed from the proceeds of the general obligations, the bond, or loan for costs relating to the Septic Tank Replacement Program. Pending reimbursement,

the City expects to use funds on deposit in the City's general fund or other appropriate fund or account to pay such costs. This Ordinance is intended to constitute with respect to the Septic Tank Replacement Program a "declaration of official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations.

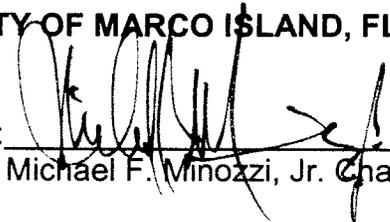
**Section 11. Effective Date.** This Ordinance shall take effect immediately upon adoption by the Marco Island City Council; provided, however, that the proposed City Charter Amendment shall be effective only upon, and immediately upon approval by the voters at the referendum election to be held on June 26, 2007, in accordance with the provisions of Section 166.031, Florida Statutes.

Passed in open and regular session through roll call vote of the City Council of the City of Marco Island, Florida, this 9<sup>th</sup> day of April, 2007.

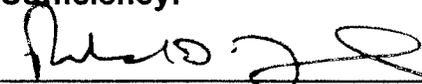
**ATTEST:**

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

**CITY OF MARCO ISLAND, FLORIDA**

By:   
\_\_\_\_\_  
Michael F. Minozzi, Jr. Chairman

**Approved as to Form and Legal  
Sufficiency:**

  
\_\_\_\_\_  
Richard D. Yovanovich, City Attorney

**EXHIBIT "A"**

**NOTICE OF REFERENDUM  
CITY CHARTER AMENDMENT  
JUNE 26, 2007**

**CITY OF MARCO ISLAND, FLORIDA**

To be held on Tuesday, June 26, 2007, as provided by an Ordinance of the City Council, as governing body of the City of Marco Island, Florida enacted on April 9, 2007

Notice is hereby given that a charter amendment referendum will be held in the City of Marco Island, Florida on Tuesday, June 26, 2007. The charter amendment referendum will be held to determine whether to amend City Charter Section 1.03 to exclude from the expenditure limitation of that section expenditures related to extension of the City's wastewater utility system provided such expenditures are funded by general obligation bonds or other obligations, including loans, approved by referendum of the electors of the City and debt service payments related to such obligations.

All qualified electors residing in the City shall be entitled to vote in the bond referendum.

Laura Litzan, City Clerk,  
City of Marco Island, Florida

**NOTICE OF BOND/LOAN REFERENDUM  
FOR THE SEPTIC TANK REPLACEMENT PROGRAM  
JUNE 26, 2007**

**CITY OF MARCO ISLAND, FLORIDA**

To be held on Tuesday, June 26, 2007, as provided by an Ordinance of the City Council, as governing body of the City of Marco Island, Florida enacted on April 9, 2007

Notice is hereby given that a bond/loan referendum will be held in the City of Marco Island, Florida on Tuesday, June 26, 2007. The bond/loan referendum will be held to determine whether there shall be issued general obligation bonds of the City in one or more series or receipt of a loan in an amount not to exceed \$88,600,000, maturing in not more than 25 annual installments beginning the year after issuance, bearing interest at a rate not to exceed the maximum rate permitted by law at the time of the sale of the bonds, to be payable from a levy of an unlimited special ad valorem tax on all taxable property in the City to partially finance wastewater collection improvements associated with Septic Tank Replacement Program.

All qualified electors residing in the City shall be entitled to vote in the bond referendum.

Laura Litzan, City Clerk,  
City of Marco Island, Florida