

CITY OF MARCO ISLAND  
ORDINANCE 04-11

AN ORDINANCE TO AMEND CHAPTER 18 OF THE MARCO ISLAND CODE OF ORDINANCES BY ADDING NEW ARTICLE VI ENTITLED PALM LETHAL YELLOW (PLY) DISEASE; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR DECLARATION OF LOCALIZED PALM LETHAL YELLOWING EMERGENCY; PROVIDING FOR EMERGENCY MEASURES; PROVIDING FOR UNLAWFUL ACTIVITIES AND MANDATORY INOCULATION; PROVIDING FOR PUBLIC NOTICE; PROVIDING FOR DETERMINATION OF COMPLIANCE WITH MANDATORY INOCULATION AND INOCULATION BY OWNERS; PROVIDING FOR DISPOSAL OF PLY INFECTED TREES; PROVIDING FOR LIABILITY OF OWNER COSTS; PROVIDING FOR ASSESSMENT OF WORK DONE BY CITY; PROHIBITING THE INTRODUCTION OF DISEASED TREES OR CARRIERS; PROVIDING FOR VIOLATION AND PENALTIES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the plant disease known as Palm Lethal Yellowing affects 38 plant species and specifically attacks the Coconut palm (*Cocos nucifera*) and the Christmas palm (*Adonidia merrillii*), thereby posing a continuous and dangerous threat to the existence of the Coconut palm as a viable plant species; and

WHEREAS, Palm Lethal Yellowing poses a threat of substantial damage to and loss of property, and as such, the threat is considered an "emergency" as defined in Chapter 252, Florida Statutes; and

WHEREAS, preventive injection of Coconut palms with antibiotics is the only known and recognized method of suppressing the Palm Lethal Yellowing disease, and results in the remission or stopping of the Palm Lethal Yellowing symptoms; and

WHEREAS, the continued health of existing Coconut palms promotes the economic welfare and general prosperity of the City of Marco Island, and the welfare of the public would be best served by a mandatory injection and/or removal program within the City of Marco Island; and

WHEREAS, the City of Marco Island has plenary power to abate public nuisances that affect the residents and citizens of the City of Marco Island.

**SECTION ONE: Intent and Purpose.**

It is the purpose of this ordinance to establish regulations and management practices to protect the community from potential adverse impacts related to Palm Lethal Yellowing (PLY). It is the intent of this ordinance to proactively identify and contain PLY within the city through a PLY Suppression Inoculation Program for tree species susceptible to PLY and to mandate removal of PLY infected or carrier trees.

## **SECTION TWO: Definitions.**

*Certified contractor* means a contractor licensed by the State of Florida which license permits the contractor to inoculate trees with the antibiotic(s) for PLY.

*Coconut Palm Tree* means any and all varieties of palm trees of the genera Cocos nucifera.

*Collier County owned disposal site* means the Collier County Solid Waste Transfer Station located on Marco Island or the Collier County Landfill.

*Localized State of Emergency* means a determination that PLY conditions exist within or proximate to a specific geographical area that require immediate waiver of procedures and formalities otherwise required in order to take whatever prudent action is necessary to ensure the public health, safety and welfare.

*PLY (Palm Lethal Yellowing)* means the disease that is spread by an insect, the Plant Hopper, and is known to affect at least 38 species of palm trees.

*Public Nuisance* shall mean any tree infected with a plant disease known as the PLY, including without limitation, all species of Coconut Palm Trees and any tree that is a carrier of the disease.

## **SECTION THREE: Declaration of localized palm lethal yellowing (PLY) emergency.**

(1) Chapter 252, Florida Statutes, authorizes the waiver of procedures and formalities otherwise required in order to take whatever prudent action is necessary to ensure the health, safety and welfare of a community in the event of a state of emergency. In the case of PLY City Council shall make a determination that a localized state of emergency exists. However, if the threat is deemed imminent, the city manager or designee may make the declaration, subject to ratification by City Council at the next regularly scheduled meeting. The city manager or designee shall provide City Council with the boundary for the area(s) subject to the localized state of emergency.

(2) Upon declaration, the localized state of emergency from the PLY shall continue until the city manager or designee determines that the threat of danger no longer exists and terminates the emergency. The declaration of termination of the localized state of emergency is subject to ratification or rejection by the City Council at the next regularly scheduled meeting after the declaration or termination occurs.

## **SECTION FOUR: Emergency measures within designated areas.**

In addition to any other powers conferred by law, the city manager, or designee, may order and promulgate one or more of the following measures to be effective within designated areas during the period of such declared emergency, and with such limitations and conditions as may be deemed appropriate to protect against damage or loss of property by PLY:

- (1) Require the mandatory inoculation of all Coconut Palm Trees.
- (2) Require removal of palm trees found to be infected by, or a carrier of PLY, by the property owner within five (5) days from the date the tree(s) are found to be diseased or as determined by the city manager or designee.
- (3) Utilize all available resources of the city government as reasonably necessary to cope with the emergency, including expenditures for the survey of the existing Coconut Palm Tree population, the inoculation of city-owned Coconut Palm Trees, the removal of infected trees on city-owned property and on private property when the owner has failed to comply with mandated inoculation or removal thereof, and to make other reasonable expenditures in implementing this code.
- (4) Have suspected trees inoculated or have such trees removed in lieu of mandating inoculation or removal by landowner.
- (5) Curtail the transportation of Coconut Palm Trees into or out of the city.

The city manager or designee shall set boundaries for the areas requiring mandatory inoculation.

#### **SECTION FIVE: Unlawful activities and mandatory inoculation.**

- (1) Upon declaration of a localized state of emergency, it shall be unlawful for any owner of any parcel of land within an area designated for mandatory inoculation to keep or maintain any Coconut Palm Tree, Christmas Palm Tree or other carrier of PLY without providing inoculation and/or treatment documentation as approved by the city manager or designee.
- (2) If inoculation of a tree(s) is mandated pursuant to this ordinance, it shall be the duty and responsibility of the owner of any such property or parcel of land containing such tree to have the tree inoculated with an antibiotic approved by the city manager or designee.
- (3) Inoculations shall be performed a minimum of three (3) times a year, at the intervals of every 100 to 120 days, with inoculation to begin within fifteen (15) days after public notification of the mandatory inoculation. Trees which were inoculated within ninety (90) days prior to public notification of the state of local emergency may continue inoculations at intervals of 100 to 120 days from the last inoculation, provided proof of that inoculation is given to the city manager or designee within 30 days after public notification. The inoculation schedule may be modified by the city manager or designee as necessary to affect the intent and purpose of this ordinance.

#### **SECTION SIX: Public notice.**

At least 15 days prior to the mandated inoculation periods, the city manager or designee shall place a public notice in a newspaper of general circulation published within the city,

a notice shall be posted in City Hall and on the City's website to inform property owners of their duties and responsibilities under this code.

**SECTION SEVEN: Determination of compliance with mandatory inoculation; inoculations by owner.**

- (1) Certified contractors that inoculate affected palms must submit a list of inoculated palms within five days of inoculation to the city manager or designee. These lists should include the name of the contractor, license number, the name of the property owner, property address, number and species of palms located on the property, and the number of palms inoculated.
- (2) After the 15-day time period for compliance with provisions for inoculation described in this code, the city manager or designee may make a determination of and compile a list of those persons owning land or parcels of property upon which susceptible palm tress are located who have not complied with the requirement of this code or have not submitted a certificate of compliance.
- (3) A property owner may at any time inoculate the property owner's trees; however if any such inoculation is required, the antibiotic and treatment procedures used must be in accordance with generally accepted inoculation practices.
- (4) Property owners who inoculate trees after the city manager or designee has determined such inoculation is required, shall within ten (10) days of having the treatment performed, provide to the city manager or designee written proof of purchase for materials and equipment used in this treatment and execute a certificate of compliance.
- (5) Examples of PLY susceptible palm species within the City of Marco Island shall include without limitation, the following:

Coconut	Date	Jamaican Tall
Christmas	Malayan Dwarf	<i>Pritchardia</i> sp.
Clustering Fishtail	Malayan	Maypan cultivar
Windmill	Screwpine	Panama Tall

\*Note: PLY does not attack Cabbage, Royal, Mexican washingtonia, Foxtail, Alexandra, Thatch or Queen palms.

**SECTION EIGHT: Disposal of PLY trees.**

It shall be unlawful for any owner of any parcel of land within the city to permit or retain on said property any tree infected with PLY. Trees determined to be infected with PLY by the city manager or designee must be removed and disposed of by burial at a Collier County owned disposal facility within five (5) days after notification to owner.

**SECTION NINE: Liability of owner costs.**

- (1) Within the time period referred to in this ordinance for mandated inoculation, the property owner of any parcel of land within the city on which said trees are located must inoculate or make provision for inoculation of trees by persons who have been approved by the city manager or designee to provide the treatment necessary to abate PLY.
- (2) If a property owner fails to provide for inoculation, the city may inoculate or have its agent inoculate such trees and the property owner shall be liable for the expenses incurred by the city, its agents or contractors, in treating the affected palms. The expenses of inoculation shall constitute a lien on the real property upon which the inoculation has taken place in accordance with Section 10.
- (3) If infected trees have not been removed by owner within 5 days after notification, the city shall abate the nuisance and shall, through its employees, agents or contractors, be authorized to enter upon the property and take steps as are reasonably required to effect abatement. The expenses of tree removal shall constitute a lien on the real property upon which the tree removal has taken place, in accordance with Section 10.

**SECTION TEN: Assessment for work done by City.**

- (1) For abatement work performed by the city as provided for in section 9(2) and 9(3), an invoice shall be mailed to the property owner for all costs associated with the inoculation or tree removal, including any administrative costs actually incurred by the city.
- (2) If the property owner fails to pay the invoice within a 20-day period the city may assess such costs against such parcel. The costs shall be reported to the City Council. Thereupon, the City Council, by resolution, may assess the costs against such parcel. The resolution shall describe the land and show the cost of inoculation(s) and/or tree removal, and administrative costs actually incurred by the city. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid. The assessment shall be due and payable 20 days following the mailing of the notice of assessment, after which interest shall accrue at the rate of twelve percent per annum on any unpaid portion thereof.
- (3) The city manager shall mail a notice to the owner of record of each of the parcels of land described in the resolution, at the last available address for such owner, which notice shall be in substantially the following form:

City of Marco Island

Legal Notice of Assessment of Lien, Date, Lien Number

Legal Description:

You, as the owner of record of the property above described, are hereby advised that the City of Marco Island, Florida, did, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ order the \_\_\_\_\_ of trees on said property.

A copy of such order has been heretofore sent to you or the owners of record at that time. Failure to comply with Palm Lethal Yellow (PLY) regulations required actions by the City of Marco Island at a direct cost of \$\_\_\_\_\_ and administrative costs of \$\_\_\_\_\_, for a total cost of \$\_\_\_\_\_.

Such costs by a resolution of City Council have been assessed against the above property on \_\_\_\_\_, \_\_\_\_\_, and shall become a lien on the property twenty (20) days after such assessment.

- (4) If an owner fails to pay any such assessment within twenty (20) days after said assessment has been made, the city manager shall cause a certified copy of the assessment resolution to be recorded in the Public Records and the assessment shall constitute a lien on the property as of the date of the recording.
- (5) After the expiration of one year from the date of recording of the assessment of lien, as provided for in this section, a suit may be filed to foreclose the lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the procedures for foreclosure on municipal special liens as set forth in Chapter 173, Florida Statutes, which provisions are hereby incorporated in this section in their entirety to the same extent as if such provisions were set forth in this section verbatim.
- (6) The liens for delinquent assessments imposed under this section shall remain liens coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided in this section.

**SECTION ELEVEN: Introduction of diseased trees or carriers prohibited.**

No person shall knowingly sell, offer for sale, transport into the city for sale, plant or cause to be planted, trees with or carriers of PLY. The city manager or designee is authorized to conduct reasonable inspections to verify that this code section is not being violated.

**SECTION TWELVE: Violations and penalties.**

- (1) Pursuant to Section 162.22, Florida Statutes, a person found to be in violation of this Ordinance may be charged with a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, or by both such a fine or imprisonment. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
- (2) Nothing contained in this section shall prevent or restrict the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions

shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

- (3) Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this article by means of a code enforcement board established pursuant to the authority of Chapter 162, Florida Statutes, and Chapter 14, Article II of the Marco Island Code of Ordinances.
- (4) All remedies and penalties provided for in this section shall be cumulative and independently available to the city, and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

**SECTION THIRTEEN: Incorporation, conflict and severability.**

- (1) It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or relettered, and that the word "ordinance" may be changed to "section," "article," or other appropriate word.
- (2) All sections or parts of sections of the Code of Laws and Ordinances of Marco Island, Florida, all Marco Island ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.
- (3) If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

**SECTION FOURTEEN: Effective Date.**

This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 2nd day of August 2004.

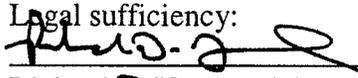
Attest:

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

CITY OF MARCO ISLAND FLORIDA

By:   
\_\_\_\_\_  
Terri DiSciullo  
Chairwoman

Approved as to form and  
Legal sufficiency:

  
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Richard D. Yovanovich  
City Attorney

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