

CITY OF MARCO ISLAND

ORDINANCE 02- 23

VEGETATION REMOVAL AND PROTECTION

AN ORDINANCE TO ESTABLISH NEW VEGETATION REMOVAL AND PROTECTION STANDARDS AND REGULATIONS TO SUPERCEDE, SUPPLEMENT, AND/OR REPLACE STANDARDS AND REGULATIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO VEGETATION REMOVAL AND PROTECTION ON MARCO ISLAND; ESTABLISHING PURPOSE AND INTENT; ESTABLISHING APPLICABILITY; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PERMIT APPLICATION REQUIREMENTS; PROVIDING FOR REVIEW PROCEDURES; PROVIDING FOR PROHIBITED EXOTIC VEGETATION REMOVAL; PROVIDING FOR VEGETATION PROTECTION AND REMOVAL; PROVIDING FOR RESTORATION AND PENALTIES; PROVIDING FOR APPEAL FROM ENFORCEMENT; PROVIDING FOR SUSPENSION OF PERMIT REQUIREMENT; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; 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 may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, state law requires municipalities to adopt Land Development Regulations consistent with the adopted Comprehensive Plan; and

WHEREAS, the Marco Island Planning Board, as the Local Planning Agency, has conducted all required public hearings related to this ordinance, and has forwarded this ordinance to City Council with a recommendation of approval.

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

SECTION ONE: PURPOSE AND INTENT

The purpose of this division is the protection of existing vegetation within the City of Marco Island by regulating its removal; to assist in the control of flooding, soil erosion, dust, heat, air pollution and noise; to maintain property, aesthetic and health values within Marco Island; to limit the use of irrigation water in open space areas by promoting the preservation of existing plant communities; to limit the removal of existing viable vegetation when no landscape plans have been prepared for the site.

It is not the intent of this division to restrict the mowing of nonprotected vegetation in order to meet the requirements of other sections of this code.

SECTION TWO: APPLICABILITY

For the purpose of this ordinance, unless listed under Exemptions of this code, it shall be unlawful to remove or cause to be removed, native and/or exotic species of vegetation without first obtaining a vegetation removal permit and/or an exotic vegetation removal permit from the community development director.

For the purpose of this ordinance, native vegetation references shall meet the statutory definitions and/or lists found in the Florida Division of Forestry, the Florida Department of Agriculture and the Florida Department of Natural Resources. References to a specimen tree(s) in this ordinance shall refer to any tree(s) listed under the U.S. Endangered Species Act, Section 6.

Properties may be subject to provisions contained in the final Deltona Settlement Agreement (1982) which could affect the applicability of this ordinance. It is incumbent upon the property owner to ascertain whether their property is within the Settlement area, and to know what limitations may apply subject to the Settlement Agreement. Inclusion of property in the Settlement area may not relieve the owner of other jurisdictional, statutory or agency requirements.

SECTION THREE: EXEMPTIONS

A generalized vegetation removal permit is not required for the removal of protected vegetation other than specimen trees when one of the following conditions is met:

1. A building permit has been issued for the principal structure.

2. The principal structure has been constructed, and the property owner or authorized agent is conducting the removal.
3. Property zoned agriculture (A) where the property is to be used for a bona fide agricultural use as defined by the Land Development Code and application for an agricultural clearing permit has been filed with and approved by the community development director.
4. A site plan and vegetation protection plans have been reviewed and approved by the community development director as part of the final development order.
5. A Florida licensed tree farm/nursery, where such vegetation is intended for sale in the ordinary course of the licensee's business and was planted for the described purpose.
6. A Florida licensed land surveyor in the performance of his/her duties, provided such removal is for individual trees within a swatch less than three feet in width.
7. Mangrove alteration projects that are exempted from Florida Department of Environmental Protection permit requirements by Florida Administrative Code 17-321.060.
8. The City of Marco Island Planning Board may grant a variance to the provisions of this section if compliance with the mangrove tree preservation standards of this division would impose a unique and unnecessary hardship on the owner or any other person in control of affected property. Relief shall be granted only upon demonstration by the landowner or affected party that such hardship is peculiar to the affected property and not self-imposed, and that the grant of a variance will be consistent with the intent of this ordinance and the Comprehensive Plan.

SECTION FOUR: VEGETATION REMOVAL PERMIT APPLICATION REQUIREMENTS

1. The community development director shall not issue a vegetation removal permit until all applicable federal, state, and local approvals have been obtained. These approvals may include, but are not limited to:
 - (a) Building permits.
 - (b) Special treatment (ST) development permits.

- (c) U.S. Army Corps of Engineers permits / exemptions.
- (d) Florida Department of Environmental Protection permits / exemptions.
- (e) South Florida Water Management District permits / exemptions.
- (g) Other applicable agency reviews / permits / exemptions.
- (h) Other city approvals.

2. Application for a vegetation removal permit shall be submitted to the community development director in writing on a form provided by the community development department.

The application shall include the following information:

- (i) A generalized vegetation inventory, based upon the most current available information, shall show the approximate location and extent of vegetation upon the site. For nonresidential and multifamily development, the inventory may be in the form of an aerial or a field survey, and may be accompanied by photographs or videotapes illustrating typical areas of vegetation referenced to positions on the aerial or survey.
- (ii) A brief written inventory assessment and evaluation of the plant communities that have been identified on the site shall be prepared by a person knowledgeable in the identification and evaluation of vegetative resources, such as a forester, biologist, ecologist, horticulturist, landscape architect, or certified nurseryman. The assessment shall include an evaluation of character and quality of the plant communities identified, including their rarity, viability, and such other physical characteristics and factors that may affect their preservation.
- (iii) A site plan which includes:
 - a. Property dimensions.
 - b. Location of existing infrastructures and alterations.
 - c. Location of proposed structures, infrastructure and alterations.
 - d. The location and species of all protected vegetation. Large stands of a single species, such as mangroves, may be indicated as a group with an approximate number or area.
 - e. Specific identification of all specimen trees.
 - f. Designation of all protected vegetation proposed for removal.
 - g. Location of detail of protective barricading of the vegetation to be retained.

- h. Description of any proposed alteration of mangroves.
 - i. Description of any proposed maintenance trimming of mangroves.
- (iv) An executed statement that includes:
- (a) Name, address, and phone of property owner.
 - (b) Name, address, and phone of authorized agent and on-site representative.
 - (c) Proof of ownership.
 - (d) Legal description.
 - (e) Reason for proposed removal.
 - (f) Method to distinguish vegetation to be removed from vegetation to be preserved and method of removal. It should be noted that the root system of the vegetation shall also be protected.
 - (g) Signature of property owner or copy of a specific contract signed by property owner.
- (v) Vegetation relocation plan.
- If vegetation relocation is proposed by the applicant prior to site development plan, construction plan or other final approvals, a vegetation relocation permit (vegetation removal permit) may be issued by the community development director provided that it can be demonstrated that early transplantation will enhance the survival of the relocated vegetation. A vegetation relocation plan shall document methods of relocation, timing of relocation, watering provisions, maintenance and other information as required by the development services director.

SECTION FIVE: REVIEW PROCEDURES

1. Issuance of permit. Based on the information contained in the application and obtained from the on-site inspection, the community development director may approve or deny an application. An approved vegetation removal permit is valid for a period not to exceed 180 days except for mangrove alteration. Mangrove alteration permits shall be valid for the date of issuance by the Florida Department of Environmental Protection. An extension requested prior to expiration of the original permit may be granted for good cause shown upon written application to the community development director. The community development director may attach conditions to the permit relative to the methods of designating and protecting vegetation not proposed for removal. A violation of these conditions shall be cause to void the vegetation removal permit.

2. Denial of permit. In the event the community development director denies an application, the reason(s) shall be noted on the application and returned promptly.
3. Permit fees. All vegetation removal and clearing permit applications requiring review and approval shall be charged a review fee unless specifically exempted by the community development director pursuant to this code. The city council shall establish and adopt, by resolution, a schedule of fees for vegetation removal, review and approval permits. The schedule of fees and the resolution establishing such fees shall be on file with the city clerk. The schedule of fees may be changed by resolution of the City Council.

SECTION SIX: PROHIBITED EXOTIC VEGETATION REMOVAL

Exotic vegetation removal is unlawful without first obtaining a permit. A vegetation removal fee shall not be required to remove currently listed prohibited exotic vegetation. Prior to issuance of a building permit, prohibited exotic vegetation may be removed from lots which are zoned residential single-family (RSF), and mobile home (MH).

The city may require an adjoining property owner(s) to remove prohibited exotic species from adjacent properties at the time a building permit is issued. And further, the city shall require property owners to remove exotic species that are deemed to present a threat to public health, safety, and welfare. The following list is an example of exotic vegetation found on Marco Island:

- (i) Australian Pine (*Casuarina* spp.)
 - (ii) Melaleuca (*Melaleuca* spp.)
 - (iii) Brazilian Pepper (*Schinus terebinthifolius*)
 - (iv) Earleaf Acacia (*Acacia auriculiformis*)
 - (v) Catclaw Mimosa (*Mimosa pigra*)
 - (vi) Java Plum (*Syzygium cumini*)
 - (vii) Downy Rosemyrtle (*Rhodomyrtus tomentosus*)
 - (viii) Women's Tongue (*Albizia lebeckii*)
- a. Prohibited exotic vegetation removal and methods of removal shall be conducted in accordance with the specific provisions in each local development order.
 - b. Protection of native vegetation shall be required during prohibited exotic vegetation removal.

- c. Prohibited exotic vegetation shall be removed:
 - (i) From all rights-of-way, common area tracts not proposed for development and easements prior to preliminary acceptance of the phase of the required subdivision improvements;
 - (ii) From within the associated phase of the final site development plan prior to the issuance of a certificate of occupancy.
 - (iii) From single-family and two-family lots for all new principal dwelling units before a certificate of occupancy is granted. The removal of prohibited exotic vegetation shall be required in perpetuity.

- d. Verification of prohibited exotic vegetation removal shall be performed by the community development director's field representative.
 - (i) Herbicides utilized in the removal of prohibited exotic vegetation shall have been approved by the U.S. Environmental Protection agency.
 - (iv) When prohibited exotic vegetation is removed, but the base of the vegetation remains, the base shall be treated with an U.S. Environmental Protection Agency approved herbicide and a visual tracer dye shall be applied.

- e. A maintenance plan shall be submitted to the community development director for review on sites which require prohibited exotic vegetation removal prior to the issuance of the local development order. This maintenance plan shall describe specific techniques to prevent reinvasion by prohibited exotic vegetation of the site in perpetuity. This maintenance plan shall be implemented on a yearly basis at a minimum.

SECTION SEVEN: VEGETATION PROTECTION AND REMOVAL

1. Vegetation Protection.

In general, during construction, all reasonable steps necessary to prevent the destruction or damaging of vegetation shall be taken, including the installation of protective barriers. All new development

not specifically exempted by this ordinance shall retain existing native vegetation to the maximum extent possible, especially where said native vegetation exists within required buffer areas. Vegetation destroyed or receiving major damage must be replaced by vegetation of equal environmental value, as specified by the community development department, before occupancy or use unless approval for their removal has been granted under permit.

- (a) Filling and construction debris. During construction, unless otherwise authorized by the vegetation removal permit, no excess soil, additional fill, equipment, liquids, or construction debris, shall be placed within the dripline of any vegetation that is required to be preserved in its present location.
- (b) Attachments. Unless otherwise authorized by the vegetation removal permit, no attachments or wires other than those of a protective or nondamaging nature shall be attached to any vegetation during construction.
- (c) Excavation. Unless otherwise authorized by the vegetation removal permit, no soil is to be removed from within the dripline of any vegetation that is to remain in its original location.
- (d) Protective barriers. All protective barriers shall be installed and maintained for the period of time beginning with the commencement of any phase of land clearing or building operations and ending with the completion of that phase of the construction work on the site, unless otherwise approved to be removed by the community development director's field representative. All protective barriers shall be installed pursuant to the Tree Protection manual for Builders and Developers, Division of Forestry, State of Florida or other methods approved by the community development director.
 - (i) Areas to be preserved shall be protected during land alteration and construction activities by placing a continuous barrier around the perimeter of the area of vegetation to be preserved. This barrier shall be highly visible and constructed of wood stakes set a maximum of ten feet apart, at a height range of two to four feet, all covered continuously with brightly colored, all-weather mesh material or equal type barrier method. An equivalent method may be substituted with the approval of the community development director.

- (ii) When the preservation of single trees is required by this code, a protective barrier shall be placed around the tree at a distance from the trunk of six feet or beyond the dripline, whichever is greater, or as otherwise approved by the community development director's field representative.

2. Removal of protected vegetation.

The Community Development Director may approve an application for vegetation removal permit based on the following criteria:

- a. Protected vegetation is a safety hazard to pedestrian or vehicular traffic, public services, utilities, or to an existing structure.
- b. Diseased, dead or otherwise unhealthy vegetation as determined by standard horticultural practices and if required, a site inspection by the community development director's field representative.
- c. A final local development order has been issued which requires removal of the protected vegetation.
- d. Compliance with other codes and/or ordinances may involve protected vegetation removal.
- e. The approval for an application involving vegetation removal activity shall be granted only if the community development director finds that reasonable efforts have been undertaken in the layout and design of the proposed development to preserve existing vegetation and to otherwise enhance the aesthetic appearance of the development by the incorporation of existing vegetation in the design process. Relocation or replacement of vegetation may be required as a condition to the issuance of an approval in accordance with the criteria set forth in this division.
- f. Protected vegetation proposed for removal is nonnative. Replacement of nonnative vegetation shall be with native vegetation of comparable caliper and area and shall be subject to the approval of the community development director or his/her designee. In the event that comparable caliper or diameter at breast heights (dbh) vegetation is not available,

smaller dbh trees that total the requisite caliper may be substituted. Under no circumstances will a tree or shrub less than the minimum size requirement for landscaping be accepted. Replacement native vegetation shall be planted within 14 calendar days of removal.

- g. On a parcel of land zoned residential single-family (RSF) or other nonagricultural, noncommercial zoning district in which single-family lots have been subdivided for single-family use only, a vegetation removal permit may be issued for any permitted accessory use to that zoning.
- h. The proposed mangrove alteration has a Florida Department of Environmental Protection permit or meets the permitting standards in Florida Administrative Code 17-321.030, 17-321.050, 17-321.100, 17-321.801, 17-321.802, or 17-321.803 as may be amended.

SECTION EIGHT: RESTORATION AND PENALTIES

1. Restoration standards. The person(s) responsible for violations of the environmental sections of this ordinance shall be notified according to this ordinance and shall have 30 days to prepare a mitigation plan that is acceptable to the City to resolve the violation. The mitigation plan shall be submitted to the Community Development Director and/or staff for review and comment. Once the community development director accepts the plan, the responsible party shall have 15 days to complete the mitigation unless other arrangements are specified and agreed upon in the mitigation plan.

- a. Requirements for a mitigation plan.

- (i) A copy of the deed, contract for sale or agreement for sale or a notarized statement of ownership clearly demonstrating ownership and control of the subject lot or parcel of land, or permission from the landowner to mitigate on his or her site shall be provided.
- (ii) The mitigation plan shall be prepared by a person who meets or exceeds the credentials specified in this ordinance.
- (iii) The plan shall designate the person's name, address and telephone number that prepared the plan.
- (iv) A north arrow, scale, and date shall be required on the plan.

- (v) Existing vegetation areas shall be shown.
- (vi) The proposed planting areas shall be clearly defined.
- (vii) The plan shall denote the number and location of each plant to be planted, or for the case of ground covers, show them in groupings. Large mitigation areas may be designated by a more simplified method.
- (viii) All plants proposed shall be denoted by genus, species, and the common name.
- (iv) The plan shall identify what is adjacent to the mitigation areas, i.e. existing forest (provide type), farm, natural buffer area, lake, etc.

b. The mitigation plan shall include the following minimum planting standards:

- (i) In the successful replacement of trees illegally removed, replacement trees shall be of sufficient size and quantity to replace the diameter at breast height (dbh) inches removed. In addition, the understory vegetation shall be restored to the area from which protected trees were unlawfully removed. The selection of plants shall be based on the characteristics of the Florida Land Use, Covers and Form Classifications System (FLUCCS) code. Shrubs, ground cover, and grasses shall be restored as delineated in the FLUCCS code. The species utilized shall be with relative proportions characteristic of those in the FLUCCS code. The exact number and type of species required may also be based upon the existing indigenous vegetation on the adjacent property at the discretion of the community development director. (Dbh is defined for the purposes of this ordinance as diameter of the tree, measured at a height of 4.5 feet above natural grade.)
- (ii) Each replacement tree shall be native Florida grade no. 1 as graded by the Florida Department of Agriculture and Consumer Services, grades and standards for Nursery Plants. All plants not listed in this manual shall conform to FL no. 1 as to health and vitality, conditions of foliage, root system and free of pest or mechanical damage.
- (iii) All replacement trees shall be nursery grown, containerized and at a minimum be seven to eight feet in height, have minimum caliper of one to 1 ½ inches at 12 inches above natural grade.

- (iv) Replacement trees shall have a guarantee of 80 percent survivability for a period of not less than three years. A maintenance provision of not less than three years must be provided in the restoration plan to control invasion of currently listed exotic vegetation.
- (v) It shall be at the discretion of the community development director to allow for any deviation from the above specified ratio.
- b. In the event that identification of the species of trees is impossible for any reason on the property where protected trees were unlawfully removed, it shall be presumed that the removed trees were of a similar species mix as those found on adjacent properties.
- d. If the unlawful removal of trees has caused any change in hydrology, ground elevations or surface water flows, then the hydrology, ground elevation or surface water flows shall be restored to pre-violation conditions.
- e. In the event of impending development on property where protected trees were unlawfully removed, the restoration plan shall indicate the location of the replacement stock consistent with any approved plans for subsequent development. For the purposes of this ordinance, impending development shall mean that a developer has made application for a development order or has applied for a building permit.
- f. The community development director may, at his discretion, allow the replacement stock to be planted off-site where impending development displaces areas to be restored. In such situations, off-site plantings shall be on lands under the control of a public land and/or agency. The off-site location shall be subject to the approval of the community development director.
- g. The donation of land and/or of funds under the control of a public agency may be made if none of the above are viable alternatives. This donation of land and/or funds shall be equal to or greater than the total sum it would cost to restore the area in which the violation occurred.

(Preservation of different contiguous habitats is to be encouraged.)

- h. The existing soil types shall be identified. Plants proposed for planting shall be compatible with the soil type. The 1954 or the 1992 soil survey of Collier County shall be used to determine if the plants proposed for planting are compatible with the existing or proposed soil types.
- i. The source and method of providing water to the plants shall be indicated on the plan and subject to review and approval.
- j. A program to control prohibited exotic vegetation in the mitigation area shall be required.
- k. City review of mitigation plan.
 - (i) The Community Development Department will review the plan based on, but not limited to, the preceding requirements within 15 days. Additional relevant information may be required when requested.
 - (i) Should the city reject the mitigation plan, the reasons will be provided so the applicant can correct the plan and resubmit for city review.
- l. Monitoring and replanting.
 - i. A monitoring program shall be required that would determine the survivability by species of the plants used in the mitigation effort. A minimum of five reports will be submitted. Reports shall be due at one-year intervals.
 - (ii) Eighty percent survival by species shall be required for a five-year period unless other arrangements are specified and agreed upon in the mitigation plan. Replanting shall be required each year if the mortality exceeds 20 percent of the total number of each species in the mitigation plan.
 - (ii) The soil and hydrological conditions for some mitigation areas may favor some of the plants and preclude others. Should the city and/or consultant find that over time,

some of the species planted simply do not adjust, both the consultant and the city shall reevaluate the mitigation plan, and a revised plan will be instituted. This condition shall not apply to all mitigation areas and each case will be evaluated individually, based on the supporting data submitted by the mitigator.

2. Penalties, fines and imprisonment. Any person violating any provisions of this code or the conditions of a permit issued here under, and not specifically covered in this ordinance, shall constitute a misdemeanor and each protected living, woody plant, constituting protective vegetation, removed in violation of this code shall constitute a separate and distinct offense and upon conviction shall be punished by a fine not to exceed \$500.00 per violation or by imprisonment in the county jail not to exceed 60 days, or by both such fine and imprisonment. In addition to or in lieu of the penalties provided by general law for violation of ordinance, the city council may bring injunctive action to enjoin the removal of vegetation in violation of this code.

SECTION NINE: APPEAL FROM ENFORCEMENT

Any person, who feels aggrieved by the application of this division, may file, within 30 days after said grievance, a petition with the community development director, to have the case reviewed by the City of Marco Island Code Enforcement Board.

SECTION TEN: SUSPENSION OF PERMIT REQUIREMENT

The City of Marco Island City Council may, by emergency resolution, suspend the permit requirement for vegetation removal in the aftermath of a natural disaster, such as a hurricane, when the following conditions are met and contained in the resolution:

1. The suspension is for a defined period of time not to exceed 30 days or as otherwise set by the City of Marco Island City Council.
2. The vegetation removal is necessitated by disaster related damage.
3. The suspension is not applicable to vegetation within habitats containing listed species.
4. The vegetation to be removed is not a specimen tree.

SECTION ELEVEN: INCORPORATION, CONFLICT AND SEVERABILITY

- [A] 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.
- [B] All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County ordinances or parts of ordinances, and all Collier County resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.
- [C] 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 TWELVE: 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 3rd day of September, 2002.

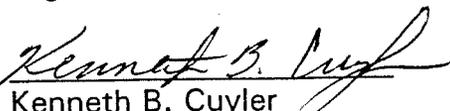
Attest:

CITY OF MARCO ISLAND, FLORIDA

By: 
A. William Moss
City Manager/City Clerk


E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:


Kenneth B. Cuyler
City Attorney