

**CITY OF MARCO ISLAND
ORDINANCE 02-13**

AN ORDINANCE TO ESTABLISH NEW COMMUNICATION TOWER STANDARDS AND REGULATIONS TO SUPERSEDE, REPLACE, AND/OR SUPPLEMENT STANDARDS AND REGULATIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE, AND CURRENTLY APPLICABLE TO ALL ZONING DISTRICTS ON MARCO ISLAND; ESTABLISHING INTENT AND PURPOSE; ESTABLISHING PERMITTED USES AND DEVELOPMENT STANDARDS; ESTABLISHING DEFINITIONS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; PROVIDING FOR PENALTIES FOR VIOLATION; 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 within one year of Comprehensive Plan adoption; 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 1. Intent and Purpose.

This section applies to specified communication towers that support any antenna designed to receive or transmit electromagnetic energy, such as but not limited to telephone, television, radio or microwave transmissions. This section sets standards for construction and facilities siting; minimizes adverse visual impacts of towers and antennas through careful design; provides siting and vegetation screening; avoids potential damage to adjacent properties from tower failure; maximizes the use of existing rooftops and towers; and minimizes the need to construct new towers.

Section 2. Permitted Uses and Development Standards.

1. Rooftop towers, rooftop antenna structures and rooftop antennas are permitted in all zoning districts except in the residential single family and RMF-6 zoning

districts. Rooftop towers, rooftop antenna structures and rooftop antennas as specified are subject to the following:

- a. Rooftop towers, antenna structures, and antennas are a permitted use up to a height of 20 feet above the maximum roofline (established as the vertical distance from the first finished floor elevation or as measured from the required base flood elevation to the highest point of the roof surface of a flat or Bermuda roof, to the deck line of a mansard roof and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs). Any antenna structure, tower or antenna that exceeds its permitted use height as provided herein shall require a variance, wherein the height of the structure, tower, and all antennas shall be determined on a case by case bases. Distance from residential single family and RMF-6 zoning districts shall be a major consideration in determining the maximum height of rooftop towers, antennas and/or structures for variance considerations.
 - b. Rooftop towers and antenna structures shall be set back from the closest outer edge of the roof a distance not less than ten percent of the rooftop length and width, but not less than five feet, if the antenna can function at the resulting location;
 - c. Rooftop antenna structures and dish type antennas shall be painted to make them unobtrusive;
 - d. Except for antennas that cannot be seen from street level, such as architecturally designed panel antennas on parapet walls, antennas shall not extend out beyond the vertical plane of any exterior wall;
 - e. Where technically feasible dish type antennas shall be constructed of open mesh design;
 - f. Where feasible, the design elements of the building (i.e., parapet wall, screen enclosures, other mechanical equipment) shall be used to screen the rooftop communications tower, structure, and antennas;
 - g. The building and roof shall be capable of supporting the roof-mounted antenna, structure and tower.
2. Ground mounted, self-supporting, guyed, and monopole communication towers are prohibited in all zoning districts except as follows:
- a. All ground mounted communication towers may be allowed as a conditional use on sites approved for fire stations, police departments, substations and governmental offices.

- b. In the single family residential and RMF-6 zoning districts all ground mounted communication towers, ground mounted antennas, or antennas shall only be permitted as follows:
- (1) One satellite dish having a diameter of 1.2 meters (approximately 47 inches) or less shall be allowed without a permit if the dish is located in the rear yard and compliant with accessory structure setbacks. Satellite dishes having a diameter of 36 inches or less shall be allowed without a permit if the dish is attached to the side or rear of the principal structure and within allowed protrusion limits.
 - (2) New satellite dishes over 1.2 meters in diameter, antennae(s) or other signal receiving or transmitting equipment shall be reviewed in accordance with the conditional use procedures as set forth in Section 2.7.4. of the Land Development Code.
 - (3) The installation of antennae(s) or other signal receiving/transmitting equipment that creates electrical interference or is deemed to be out of scale or character of the neighborhood is prohibited unless a compelling public purpose can be established by the applicant, and acknowledged by the City.
 - (4) The maximum permitted height for an antennae and/or antenna structure attached to a residential structure is forty (40) feet as measured from the required base flood elevation or first finished floor elevation (whichever is applicable).
 - (5) The maximum permitted height for an approved freestanding tower inclusive of antennas is thirty-five (35) feet as measured from the required base flood elevation or first finished floor elevation (whichever is applicable).
 - (6) Additional height may be requested under the variance provisions contained in the LDC.
 - (7) All existing satellite dishes located on a single-family lot with a diameter in excess of 1.2 meters (approximately 47 inches) shall be removed by December 31, 2003, provided the satellite dish is inoperable and/or not being utilized.

3. All owners of approved towers are jointly and severally liable and responsible for any damage caused to off-site property as a result of a collapse of any tower owned by them.
4. No tower shall be artificially lighted except as required by the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), or other applicable laws, ordinances or regulations.
5. Any tower that is voluntarily not used for communications for a period of one year shall be removed at the tower owners expense. If a tower is not removed within three (3) months after one year of such voluntary non-use, the City may obtain authorization to remove the tower and accessory items from a court of competent jurisdiction, and after removal shall place a lien on the subject property for all direct and indirect costs incurred in dismantling and disposal of the tower and accessory items, plus court costs and attorney fees.
6. All new metal towers including rooftop towers, shall comply with the standards of the then latest edition published by the Electric Industries Association (currently EIA/TIA 222-E) or the publication's successor functional equivalent unless amended for local application by resolution of the City.
7. A building permit and site plan shall be submitted to the City for all new communication towers and antennas.
8. No communication tower shall be located on any land or water if such location thereon creates or has the potential to create harm to the site as a source of biological productivity, as indispensable components of various hydrologic regimes, or as irreplaceable and critical habitat for native species of flora or fauna.
9. For all towers, a statement from the applicant or an official document that specifies that the tower and its antennas will comply with all applicable regulations of the FCC shall be filed with the City Manager or designee.
10. All new non-ionizing electromagnetic radiation (NIER) sources shall comply with the then current applicable standards adopted by the federal government. The City shall not be required by this section to enforce such standards.
11. As to communications towers and antennas, including rooftop towers, antenna structures and antennas, the height provisions of this section supersede all other height limitations specified in the land development code.
12. Subject to general law, provisions in deed restrictions and private restrictive covenants supersede this section to the extent they are more restrictive.

13. Willful, knowing failure of any owner to comply with any of the provisions herein shall be a violation of this section and shall be subject to general penalty provisions of this ordinance, and shall be grounds for revocation.
14. Notwithstanding anything to the contrary in any City Ordinance, any then nonconforming tower that is destroyed by any means to an extent of more than 50 percent of its actual replacement cost at the time of destruction, as determined by a cost estimate submitted to the Community Development Director, shall not be reconstructed or repaired without conditional use approval.
15. Notwithstanding anything to the contrary in any City Ordinance, including any provision of the general provisions ordinance (ex: nonconformities), a nonconforming tower(s) and/or accessory structure(s) may be voluntarily reconstructed in any zoning district at its site subject to the conditional use procedures of the land development code. The extended useful life of the tower and/or accessory structure that will result from reconstruction shall not be construed to be an enlargement, intensification, increase or extension of the nonconforming use.

Section 3. Definitions.

Definitions. As used herein "antenna" includes wire and dish type antennas. A "tower" is a structure for the primary purpose to raise the height of an antenna. An "antenna structure" is a base, stand, or other method of stabilizing an antenna but the primary purpose is other than raising a height of an antenna. "Zoning district" includes areas zoned conventionally or as planned unit developments (PUD). An "old" tower or site means a tower or site that was approved prior to the effective date of Ordinance No. 91-84. A "new" tower or site means a tower or site that requires approval under this ordinance. An "approved" tower or site is a tower or site that was approved under Ordinance No. 91-84 or is approved under this ordinance. "Rent" means to rent, lease, or otherwise provide tower or site space. "Unavailable to the applicant" means a tower that cannot mandate the applicant's tower, antenna, and related facilities. "Unavailable" means that no additional tower or site capacity is available to anyone. "City Manager" includes designees of the city manager. The singular includes the plural and vice versa unless the context clearly indicates otherwise. "Government" means the United States government and any agency thereof, City of Marco Island and any agency thereof, and any district. Height of towers and structures specified herein are inclusive and any antennas affixed thereto and are measured from the required base flood elevation.

Section 4. 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 Collier County, Florida, all Collier County Ordinances or parts of Ordinances, and all Collier County Resolutions or parts of Resolutions made applicable by City Charter 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 5. Penalties for Violation.

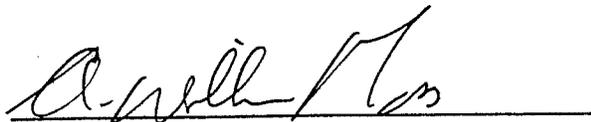
1. Pursuant to Section 162.22, Florida Statutes, a person found to be in violation of this Ordinance may be charged with a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
2. Violation of this Ordinance may also be prosecuted before the Marco Island Code Enforcement Board.

Section 6. Effective Date.

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

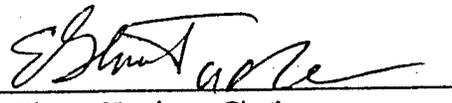
Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 4th day of March 2002.

Attest:



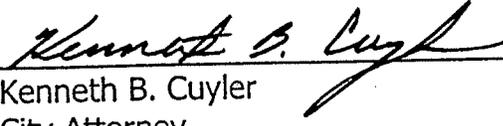
A. William Moss
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:



Kenneth B. Cuyler
City Attorney