

**CITY OF MARCO ISLAND
ORDINANCE 01- 24**

AN ORDINANCE TO ESTABLISH THE CITY OF MARCO ISLAND POST-DISASTER REDEVELOPMENT PLAN; ESTABLISHING PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING RECOVERY COORDINATION; ESTABLISHING POST-DISASTER REDEVELOPMENT PRIORITIES; PROVIDING FOR THE RESTORATION OF ESSENTIAL SERVICES; PROVIDING FOR POST-DISASTER DEBRIS REMOVAL; PROVIDING FOR DETERMINATION OF DAMAGE AND BUILDBACK POLICY; PROVIDING FOR MORATORIA; PROVIDING FOR EMERGENCY REPAIRS AND PERMITTING; ESTABLISHING ECONOMIC REDEVELOPMENT POLICIES; PROVIDING GUIDELINES FOR ACQUIRING DAMAGED PROPERTY; PROVIDING FOR AUTHORITY; PROVIDING FOR PENALTIES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island is located on a barrier island, and subject to severe natural and other disasters that can cause significant damage to real property and public improvements; and

WHEREAS, Chapter 252 Florida Statutes provides for municipalities to create emergency management programs; and

WHEREAS, the development of reasonable policies associated with post-disaster redevelopment provide for a coherent strategy to address community needs in the aftermath of a disaster; and

WHEREAS, objective 3.3 of the Conservation Element of the Comprehensive Plan requires the City to develop and approve a Post-Disaster Redevelopment Plan with associated build-back policies; and

WHEREAS, section 1.01 of the Marco Island City Charter empowers the City to adopt, amend, or repeal such ordinances, resolutions, and codes as may be required for the good governing of the City.

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

SECTION ONE: PURPOSE AND INTENT

It is the intent of the City to identify opportunities to mitigate future damages from major or catastrophic disasters through the prudent management and enforcement of community reconstruction. To further this intent, the City will make every effort

to develop its capacity to identify and coordinate various post-disaster recovery and reconstruction resources while at the same time ensuring maximum local control over the recovery and reconstruction process.

Following a major or catastrophic disaster, sufficient time must be provided to conduct damage assessments, classify and categorize individual structure damage, and evaluate the effectiveness and enforcement of the existing building code. It is further the intent of the City to allow rebuilding and reconstruction in an orderly manner by controlling the issuance of building permits, development orders and site plans in order to manage the location, timing, and sequence of reconstruction and repair.

SECTION TWO: DEFINITIONS

The following terms and definitions apply for the purposes of this Ordinance:

"Building Value" means the latest assessment of all improvements on a parcel of land as recorded in the Collier County Property Appraiser's file before the structure was damaged.

"Catastrophic Disaster" is defined as an event that overwhelms local response capabilities and will require mutual aid, state response, federal disaster relief programs, and activation of the state and federal response plans.

"Chief Building Official" means the Chief of Building Services who is hereby designated by the City Council to implement, administer and enforce the building permit moratorium provision of this Ordinance.

"Current regulatory standards for new construction" includes consideration of the following:

Density, floodplain management, building code, Land Development Code and Comprehensive Plan requirements, site location, and parking requirements.

"Damage Assessment" means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The assessment may be used to determine if the damaged area can qualify for federal or state disaster assistance.

"Damage Assessment Team" means a local group of qualified individuals charged with providing an initial assessment of damage to private and public properties in the aftermath of a significant natural or man-made event.

“Destroyed Structure” means a structure that is total loss or damaged to such an extent that repairs are not technically or economically feasible. The indicator for this category is if the cost to repair exceeds fifty percent (50%) of the replacement cost at the time of damage or destruction.

“Development Order” means any order, permit, determination, or action granting with conditions an application for any final development order, building permit, temporary use permit, temporary construction and development permit, spot survey, electrical permit, plumbing permit, boat-dock permit, septic tank permit, right-of-way permit, construction approval for infrastructure (including water, sewer, grading, paving) development of regional impact (DRI) development order, zoning ordinance amendment, comprehensive plan amendment, flood variance, coastal construction control line variance, vegetation removal permits, agricultural clearing permits, site development plan approval, subdivision approval (including plats, plans, variances and amendments), rezoning PUD amendment, certification, conditional use, variance, or any other official action of the City having the effect of permitting development as defined in the Land Development Code.

“Major Disaster” is defined as an event that may require mutual aid, State response assistance and Federal disaster relief programs.

“Major Damaged Structure” means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than twenty percent (20%) and up to and including fifty percent (50%) of the replacement cost at the time of damage.

“Minor Disaster” means a structure that is likely to be within the response capabilities of local government and to result in only a minimal need for State or Federal assistance.

“Minor Damaged Structure” means a structure that can be made habitable in a short period of time with minimal repairs. Damages may include doors, windows, floors, roofs, central air conditioners, and other minor structural damage. The indicator for this category is if the cost to repair is twenty percent (20%) or less than the replacement cost at the time of damage.

“Replacement Cost” means the actual cost to repair, reconstruct, rebuild or replace a damaged structure. It will not include the following parts of a structure or items not considered a permanent part of the structure: building plans, surveys, permits, sidewalks, pools, screens, sheds, gazebos, fences, furniture and carpeting. For purposes of this Ordinance, the replacement cost will be compared to the structure’s replacement value to determine the percent of the structural damage.

“Replacement Value” of a structure means the market building value contained in the Collier County Property Appraiser’s File multiplied by one of the following factors:

- 120% in a major disaster,
- 150% in a catastrophic disaster.

The structure’s owner can opt to establish replacement value by hiring a State licenses contractor to make such determinations rather than use the formula stated in this definition.

“Structure” means anything constructed or erected requires a fixed location on the ground, or attached to something having a fixed location on or in the ground.

SECTION THREE: RECOVERY COORDINATION

Recovery coordination shall follow policies and procedures contained in the Comprehensive Emergency Management Plan (CEMP), and the Hurricane Action Plan (HAP). Local recovery efforts will be coordinated with Collier County Emergency Management based on existing mutual aid and other interlocal agreements.

SECTION FOUR: POST-DISASTER REDEVELOPMENT PRIORITIES

The following priority sequence will govern community rebuilding and redevelopment efforts:

1. Re-establishing services that meet the physical and safety needs of the community to include: water, food, ice; medical care; emergency access; continuity of governmental operations; communications; security of residents and possessions from harm; health, and temporary housing.
2. Re-establishing infrastructure necessary for community reconstruction such as: electrical distribution systems; potable water and sanitary sewer service; restoring medical and health care; rebuilding damaged stormwater and transportation facilities; and housing facilities.
3. Restoring the community’s economic base per accepted econometric principles and practices.
4. Improving the community’s ability to withstand the effects of future major or catastrophic disasters.
5. Re-opening or re-establishment of public beach access points

SECTION FIVE: ESSENTIAL SERVICE AND FACILITY RESTORATION PRIORITIES

Priorities for power, water and sewerage treatment, and communication restoration will be in accordance with existing protocols established by the individual utilities and any terms and conditions contained in executed franchise agreements with the City. All protocols are intended to emphasize health, safety and essential community services as priorities.

SECTION SIX: POST-DISASTER DEBRIS CLEARANCE AND DISPOSAL STRATEGIES

The following policies will govern emergency debris clearance, removal and disposal strategies:

1. Clearing debris from roads and streets beginning with arterials, then local collectors, then local streets.
2. Priorities will be to clear roadways and bridges to provide for emergency operations, to provide access to critical public service locations, and access to designated staging areas and distribution centers supporting disaster relief efforts.
3. City parks and other public properties will be used to store debris on an interim basis.

The City shall have in place executed contracts with qualified debris management firms to effectuate the implementation of this section in the aftermath of a disaster event.

SECTION SEVEN: DETERMINATION OF DAMAGE AND BUILDBACK POLICY

1. Determination of Damage. The primary task of the local damage assessment team is to identify structures which have been damaged as a result of the disaster. The City damage assessment team will catalogue and report to the Chief of Building Official those structures which have:
 - (a) been destroyed
 - (b) received major damage; and
 - (c) received minor damage.

The Chief Building Official will then, as may be necessary, inspect the damaged structures and place each structure in one of the damage categories provided for by this Ordinance. The assessment will also serve as a basis for determining if Federal and State disaster declaration are warranted.

2. **Buildback Policy:** Structures which have been damaged by natural or manmade disasters to the extent that the cost of their reconstruction or repair exceed fifty percent (50%) of the replacement value of the structure may be reconstructed, but in accordance with the legally documented actual use, density, size, style and type of construction including square footage existing at the time of destruction, thereby allowing such structures to be rebuilt or replaced to the size, style, and type of their original construction, including their original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all applicable Federal and State regulations and local regulations which do not preclude reconstruction otherwise intended by this Policy.

In accordance with this Policy:

- (a) Structures damaged up to and including fifty percent (50%) of their replacement value at the time of disaster can be rebuilt to their original conditions, with repair work subject to current building and life safety codes.
- (b) Structures damaged by the disaster by more than fifty percent (50%) of their replacement value at the time of disaster can be rebuilt to their original square footage and density, provided that they comply with:
 - (i) Federal requirements for elevation above the 100-year flood level;
 - (ii) The City of Marco Island Building Code requirements for flood proofing;
 - (iii) Current building and life safety codes;
 - (iv) Marco Island and State of Florida Department of Environmental Protection Coastal Construction Control Line regulations;
 - (v) Applicable disability access regulations of the Americans with Disability Act (ADA); and
 - (vi) Any required Marco Island zoning or other development regulations with the exception of existing density or intensity requirements established, unless compliance with such zoning

or other development regulations would preclude reconstruction otherwise intended by this Buildback Policy as determined by City Council.

- (c) To minimize the need for individual variances or compliance determinations prior to reconstructions, the regulations of Marco Island Land Development Code affecting setbacks, parking, buffering and open space may be modified. City Manager or designee may require documentation as to the actual uses, densities, and intensities existing prior to the disaster event and at the time of the original construction through such means as photographs, diagrams, plans, affidavits, and permits prior to authorizing modifications to the above requirements. These requirements may be modified as follows:
- (i) Front, rear, side or water body setbacks may be modified to permit the reconstruction of existing structures that are nonconforming with regard to a specific setback so long as the reconstruction will not result in an increase in the height of the structure as defined by the Land Development Code; and the reconstruction will not result in a further diminution of the setback. City Manager or designee may approve bay windows, chimneys and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
 - (ii) Front, rear, side, or water body setbacks may be modified to permit the construction of a handicapped access appurtenance to any reconstruction.
 - (iii) Front, rear, side or water body setbacks may be modified to allow for the replacement of stairs or decking that provides access into any reconstructed dwelling unit.
 - (iv) Front, rear, side or water body setbacks may be modified to legitimize minor existing encroachments in setbacks discovered at the time of reconstruction.
 - (v) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted prior to the adoption of such regulations shall be considered legally non-conforming and may also be reviewed by the City Manager or designee under this Section.

- (vi) A diminution of the front yard setbacks on a collector or arterial roadway shall be consistent with future road widening requirements.
- (d) The City Manager or designee is authorized to modify the parking requirements for non-residential uses as established by the Marco Island Land Development Code. In no instance shall the parking requirements be modified where the reconstruction involves the increase of density or intensity of use. Such requirements may be modified under the following circumstances:
 - (i) To improve ingress and egress to the site in accordance with the County Access Management Plan.
 - (ii) To eliminate or reduce the instances where conditions require that parked vehicles back out onto the public streets.
 - (iii) To allow for the provision of handicapped parking spaces in accordance with the Marco Island Land Development Code.
- (e) The City Manager or designee is authorized to modify the buffering or open space requirements of the Land Development Code when such modifications and reconstruction will:
 - (i) Accommodate modifications to existing parking or additional parking.
 - (ii) To accommodate changes as a result of reconstruction.

In no instance shall buffering or open space areas be eliminated.

- (f) Damaged structures may not be reconstructed at a more intense use or higher density than originally permitted by the Comprehensive Plan and Land Development Code. No redevelopment at a higher density or more intense use will be permitted unless appropriate zoning, development review, building permit and other applicable land development approvals are granted through normal processes as set forth in the Land Development Code.

SECTION EIGHT: MORATORIA

City Council may, pursuant to Chapter 252, Florida Statutes, declare a moratorium under the following conditions in order to prioritize the repair and reconstruction of

damaged critical public facilities immediately needed for public health, safety and welfare purposes.

1. Initial Building Moratorium

An initial building moratorium may be declared when one or more of the following actions or findings occur:

- a. The City is declared a disaster area by either the Governor of the State of Florida or the President of the United States.
 - b. A finding has been made by the City Council that a state of local emergency exists in accordance with Chapter 252 of the Florida Statutes;
 - c. Fifty (50) or more structures have received major damage or have been destroyed as determined by the Chief Building Official; or
 - d. The City is unable to maintain minimum acceptable levels of service expected during non-emergency situations as provided for by the Capital Improvement Element of the Comprehensive Plan.
2. Destroyed Structure Moratorium. No building permit will be issued for at least thirty (30) days following the expiration of the initial building moratorium for the replacement of any structure which has been destroyed. When a building permit is issued, structures damaged can be rebuilt in accordance with the Buildback Policy set forth herein.
 3. Major Damaged Structure Moratorium. No building permit for repairs of a major damaged structure will be issued for at least ten (10) days following the expiration of the initial building moratorium.
 4. Minor Damaged Structure Moratorium. No building permits for the repair of minor damaged structures will be issued for at least five (5) days following the expiration of the initial building moratorium.
 5. New Development Moratorium. No building permit for new construction or reconstruction unrelated to rebuilding or repairing structures damaged by the disaster will be accepted nor building permits will be issued for at least thirty (30) days following the expiration of the initial building moratorium so that damage may be assessed and repairs be made. The City Manager will determine and advise the City Council whether a new development moratorium is required based upon the results of damage assessment and recommendations from the Chief Building Official.

6. Outstanding Building Permit Inspection Moratorium.

- a. All building permits that were issued prior to the disaster will be suspended for a minimum period of thirty days (30) following the expiration of the initial building moratorium, unless the Chief Building Official determines on an individual case-by-case basis that sufficient inspection staff is available to adequately inspect the structures should construction begin or resume. Suspension of the building permit means that no further construction authorized by the building permit is permitted and that no inspections by the Marco Island Building Department will be performed during the moratorium period. Applications for inspections relating to building permits suspended under this Section shall be adjusted accordingly to reflect the time period covered by this thirty (30) day moratorium.
- b. The City reserves the right to reinspect any and all construction in progress pursuant to validly issued pre-disaster building permits to verify that the work in place suffered no damage as a result of the disaster. In the event that the City determines that such construction sustained damage during the disaster or suspects that damage occurred, the property owner and/or general contractor is responsible for rework, removal, retesting, and uncovering work to facilitate inspection so that compliance with the building permit and the building code can be ensured.

7. Outstanding Development Order Moratorium.

- a. All development orders as defined herein issued prior to the disaster will be suspended for a minimum period of thirty (30) days following the expiration of the initial building moratorium. Suspension of the development order means that no development order work is authorized and that no development order inspections by the Community Development Department will be performed during the moratorium. Applications for development orders suspended under this section will be adjusted accordingly to reflect the time period covered by this thirty (30) day moratorium.
- b. The City reserves the right to reinspect any and all development order work in place prior to the disaster to verify that the work in place was not damaged during the disaster. In the event that the City determines that development order work in place was damaged during the disaster or suspects that damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to

facilitate inspection so that compliance with the development order documents and the Land Development Code can be ensured.

8. Site Development Plan, Subdivision Plat Review, and Zoning Request Moratorium
 - a. Site Plans which have been submitted to the City prior to the disaster will not be reviewed by the City Staff for a period of thirty (30) days following the expiration of the initial building moratorium. All submittal dates and review periods will be adjusted accordingly to reflect the time period covered by this thirty (30) day moratorium.
 - b. No new site plans, zoning requests or subdivision plats will be accepted by the City for a period of thirty (30) days following the expiration of the initial building moratorium.
 - c. All submittal dates and review periods will be adjusted accordingly to reflect the time period covered by this thirty (30) day moratorium.
9. Duration of Moratoria. All moratoria other than the initial building moratoria as enacted will be in effect for the length of time described above and may be terminated or extended by the City Council.

SECTION NINE: EMERGENCY REPAIRS AND EMERGENCY PERMITTING

1. Emergency Repairs
 - a. No construction or reconstruction activity may be undertaken without a building permit, while a building moratorium is in effect; however, emergency repairs necessary to prevent injury, loss of life, imminent collapse of a structure or other additional damage to the structure or its contents will not be subject of the temporary moratoria provided for by this Ordinance and shall not require individual building permits. Such emergency repairs shall include but not be limited to:
 - (i) Temporary roof repairs with plywood or plastic sheeting to make structures habitable or to prevent continuing damage due to rain and wind to building interiors and exteriors,
 - (ii) Covering exterior wall openings with plywood or plastic sheeting,
 - (iii) Repairs to interior ceilings to make buildings habitable or to drain accumulated flood waters,

- (iv) Repairs to steps, and
 - (v) Temporary stabilization measures to avoid imminent building or structure collapse.
- b. Emergency repairs to buildings or infrastructure that house the following organizations or activities shall not be subject to any temporary moratorium because of their necessity to protect the public health and safety by providing electrical power, potable water, waste water, and communications facilities; emergency stabilization of roadways; police, fire and medical facilities; essential governmental facilities; response/recovery centers and distribution centers; debris removal activities; and stabilization or removal of structures about to collapse.
 - c. Nothing in this Ordinance shall be construed to suspend State and Federal permit regulations.

2. Emergency Permitting

- a. An Emergency Permitting System will be established by the most recent building and construction administrative codes to assure the quality of the reconstructed buildings and structures, and to implement the City's Buildback policy as set forth herein.

SECTION TEN: ECONOMIC REDEVELOPMENT POLICIES

- 1. The following general policies will guide the use resources employed towards rebuilding of the community's economic base
 - a. Reopen the business community
 - b. Re-establish the tourist industry
- 2. Damaged businesses and other economic enterprises necessary for the public health and safety and for restoring the community's economic base will be allowed to use temporary structures such as modular buildings, mobile homes, or similar type structures to carry out their activities, until their damaged structure is rebuilt or replaced according to applicable development and redevelopment regulations.

SECTION ELEVEN: GUIDELINES FOR ACQUIRING DAMAGED PROPERTY

When determined to be in the public interest, the City Council may enter into negotiation with a property owner or owners whose improved real estate property has been damaged by the disaster for the purpose of acquiring such buildings and associated land or lot for transfer by sale, lease or donation to Marco Island when the following conditions are met:

- a. The property must be located in an area damaged by the disaster;
- b. The property should be free of any encumbrances; and
- c. The building structure must:
 - (i) have been damaged substantially beyond repair or must have been damaged to the extent that the cost of reconstruction or repairs exceeds fifty percent (50%) of the replacement value of the buildings or structures at the time of the disaster; or
 - (ii) not be capable of repair because of buildback policy provisions herein or significantly increased building costs; or have been abandoned by its owner.

Property acquired under these conditions must be dedicated for such purposes as the City Council may agree are consistent with:

- i. Open space uses; or
- ii. Managing the land for its dedicated purposes, future uses which would likely result in threats to human life or property damage of the same type that has occurred during previous disasters will not be permitted.

Allowable open space uses include parks for outdoor recreational activities, nature preserves or trails, beach access, unimproved parking lots, and structures functionally related to these uses such as open-sided picnic facilities, refreshment stands, or other non-habitable structures primarily supporting the recreational activities.

SECTION TWELVE: AUTHORITY

Nothing in the ordinance limits the authority of the Marco Island City Council to declare, repeal or extend a state of local emergency.

SECTION THIRTEEN: PENALTIES

Any person, firm, company or corporation who fails to comply with or violates any section of this Ordinance, or the emergency measures which may be effective pursuant to this Ordinance, is guilty of a misdemeanor of the second degree, and upon conviction for such offense, may be punished by a fine not to exceed five-hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the Collier County Jail, or both, in discretion of the Court hearing the case. Each day of continued non-compliance or violation will constitute a separate offense. In addition to this penalty, any construction licensee of Marco Island or the State of Florida who violates any provision of this Ordinance or the emergency measures which are effective as a result of this Ordinance, will be charged with said violation and have the matter heard before the appropriate City Board, state administrative body, or court of law.

Nothing contained herein prevents the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any failure to comply with, or violation of, this Ordinance or the emergency measures which may be made effective according to this Ordinance. Such other lawful action includes, but it is not limited to, an equitable action for injunctive relief or an action at law for damages.

SECTION FOURTEEN: 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.

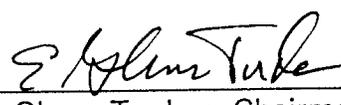
SECTION FIFTEEN: EFFECTIVE DATE

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

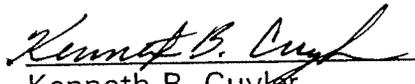
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 1st day of October, 2001.

Attest:

CITY OF MARCO ISLAND, FLORIDA

 By: 
A. William Moss E. Glenn Tucker, Chairman
City Manager/City Clerk

Approved as to form and
Legal sufficiency:


Kenneth B. Cuyler
City Attorney