

ORDINANCE NO. 99-23

AN ORDINANCE REGULATING PRIVATE CONSTRUCTION ACTIVITIES IN THE PUBLIC RIGHTS-OF-WAY; PROHIBITING THE PLACEMENT OF OFFENDING MATERIALS; ESTABLISHING PENALTIES; ADOPTING, BY REFERENCE, A CONSTRUCTION STANDARDS HANDBOOK FOR WORK WITHIN THE PUBLIC RIGHTS-OF-WAY; REQUIRING PERMITS FOR WORK OR THE PLACEMENT OF MATERIALS; REQUIRING THE REMOVAL OF OFFENDING MATERIAL; PROVIDING FOR INCORPORATION IN THE CODE OF LAWS AND ORDINANCES, 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, to perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law, and

WHEREAS, Section 1.01 of the Marco Island City Charter empowers the City to adopt, remand, or repeal ordinances, resolutions, and codes as may be required for the good governing of the City; and

WHEREAS, the City of Marco Island has determined that the promotion of the health, safety, and welfare of the residents and visitors will be accomplished by establishing standards for private construction in the public rights-of-way and by regulating the placement of obstructions in the public rights-of-way; and

WHEREAS, it is in the public interest to develop construction standards and regulations in the public rights-of-way to protect the structural and physical integrity of City-controlled public rights-of-way facilities and materials including, but not limited to roads, sidewalks, soils, bridges, swales, and drainage facilities.

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

Section 1. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *City:* The City of Marco Island, including the office of the City Manager, the Public Works Department, or designee.

(b) *Offending Material:* Any object placed, constructed, or grown in any public right-of-way without a county or city permit and that may endanger any person, damage the right-of-way, restrict existing or planned drainage, or impair normal maintenance. Offending material does not include any such object placed, constructed, or grown, which conforms to an approved city right-of-way landscaping design, including a subdivision plan, according to the city approved final construction plans and specifications, or an approved county permit issued prior to October 1, 1998.

(c) *Responsible Person:* The individual, person, firm, private or governmental entity, corporation, association, department or authority under whose control, authorization, or direction any offending material has been placed, constructed or grown in any city or county right-of-way. Whenever the true identity of any such responsible person remains unknown, "responsible person" shall then include all owners of the fee title to the real property upon or over which the offending material has been placed.

Section 2. Penalties

(a) A violation of this article is a civil violation. If any person, whether public or private, shall fail or refuse to obey or comply with any provision of this article, upon conviction thereof shall be punished by a fine not to exceed \$500.00 in the discretion of the court. Each day of violation or noncompliance may be considered as a separate and distinct violation. In addition, any person convicted of violating any provision of this article shall pay all costs and expenses involved in the case.

(b) Nothing herein contained shall prevent or restrict the city from taking such other lawful action in any court or 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 and an action at law for damages.

(c) Nothing in this article shall be construed to prohibit the city from prosecuting any violation of this article by means of the Code Enforcement Board of the city.

(d) All remedies and penalties provided for in this article shall be cumulative and independently available to the city, which is authorized to pursue any and all remedies set forth in this article or otherwise lawful.

Section 3. Purpose

This article is to protect the public health, safety, and welfare against hazards and inconveniences resulting from private construction in the public rights-of-way and to protect the structural and physical integrity of city-owned or city-controlled public road rights-of-way facilities and materials including and not limited to roads, soils, bridges, and/or drainage facilities.

Section 4. Adoption of Handbook

The Construction Standards Handbook For Work Within the Public Right-of-Way, Marco Island, Florida, is incorporated herein by reference and is made a part hereof. The City Manager is authorized to amend said Handbook as may be required to maintain adequate standards for construction.

Section 5. Permits

(a) It shall be unlawful for any responsible person to dig, excavate, obstruct, or place any construction or other material, to place any object, including landscape material, or perform any other work which disturbs the existing structure and/or compaction of soil in any right-of-way provided for public use in the city, including any public right-of-way maintained by the county within the boundaries of the city, without first obtaining a permit for such work from the City Manager, Public Works Department, or designee as specified herein or in the handbook adopted by this article.

(b) Application for each permit shall be made on forms provided by the city. Such application shall include, but not necessarily be limited to, the following information:

- (1) The precise physical location of the construction.
- (2) The type of facility to be constructed.
- (3) The method of construction to be used.
- (4) The expected time schedule for completion of construction.
- (5) Sketches and drawings in duplicate to completely depict the nature of the proposed construction.
- (6) Any other information required in the Handbook.
- (7) Any additional information reasonably required by the city because of unique circumstances of the project.

(c) The permittee shall be responsible for all conditions of the permit and to pay the applicable permit fee then established by resolution of City Council.

(d) The city shall either approve the application and issue the permit or notify the applicant of the reason for delay or denial. If a notice of delay is issued, that notice shall state the time period within which the city intends to take further action regarding that application. If no such time period is specified in the notice of delay, the permit shall be deemed to be denied if final action is not taken by the city within 30 days after the issuance date of the notice of delay. Expiration of that 30-day period without final action shall constitute a denial of the permit application.

(e) If the city denies the issuance of such a permit, the applicant may appeal the denial by filing a written notice of appeal with the Construction Board of Appeals and Adjustments, not later than ten working days after the effective date of the notice of denial. The appellant may appear before the Board. The decision of the Board shall be final.

(f) No permit shall be issued unless the proposed construction conforms with the then current edition of the following referenced publications. In the case of conflict or inconsistency, the more restrictive rule shall apply:

- (1) The Handbook.
- (2) Construction methods or specifications contained in Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction, and the FDOT Road Design Standards.
- (3) The FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.
- (4) Collier County Unified Land Development Code, or City of Marco Island Land Development Code, whichever is applicable.

If standards for the proposed construction are not contained in these references, the city may impose (as reasonable applicable standards) additional conditions and/or stipulations, including as to sidewalks/bikeways, traffic control devices, and roadway improvements, as part of the permit for the proposed construction.

(g) All work performed under any city permit shall be at the expense of the permittee and at no expense to the city.

(h) The city may suspend or revoke the permit whenever any stipulation and/or condition of permit is not being fully and promptly complied with, or when deemed necessary by the city to protect the physical safety and welfare of the public.

Section 6. Removal of Offending Material

Offending material is a public nuisance and is subject to removal by the city as follows:

- (1) Upon becoming aware of the presence of offending material, the city shall attempt to notify any responsible person. Notice shall be deemed served by personal service, mail, or posting of Notice of Violation upon the property adjacent to the right-of-way. The Notice shall require removal of the offending material not later than 7 days after receipt of such Notice, unless otherwise directed by the City Manager or designee.
- (2) After expiration of the designated grace period, the city may cause any then remaining offending material to be removed and be disposed of at the expense of the responsible person or persons.
- (3) If, in the opinion of the City Manager or designee, emergency removal is necessary to protect the physical safety of the traveling public and/or to protect public property, or if the offending material is an unauthorized sign, the offending material may be removed without any attempt to provide notice to any responsible person or persons.
- (4) After the property owner or his agent has refused to abate the activity or condition described in the Notice by the specified date, the City may, through its employees, servants, agents, or contractors, enter upon the property and take such steps as are reasonably required to affect the abatement of the nuisance.
- (5) After the abatement of the nuisances by the City the cost to the City shall be calculated and shall include an administrative fee of One Hundred Dollars (\$100) per parcel. An invoice shall be sent to the property owner or his agent and shall be paid within twenty (20) days of the mailing of the invoice.
- (6) If the invoice is not paid in full, a certified letter, return receipt requested, shall be mailed to the property owner or agent advising that a Notice of Assessment of Lien shall be

recorded in the Official Records of Collier County and, thereafter, shall constitute a lien against the land on which the violation occurred or exists and upon any other real or personal property owned by the violator. The Notice of Assessment of Lien shall include the lien number, date, legal description of the property, name of recorded owners, and an explanation of the cause of the Lien. The owner or agents shall be afforded the opportunity to pay all assessments due, plus a Twenty-five Dollar (\$25) late fee, within fourteen (14) days from the date of mailing. If full payment is not received within the fourteen (14) day period, the City Manager or his designee shall record the Notice of Assessment of Lien in the Official Records of Collier County, Florida. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid.

- (7) After the expiration of one (1) year from the date of recording of the Notice of Assessment of Lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the procedures for the Foreclosure of Municipal Special Assessment Liens, as set forth in Chapter 173, Florida Statutes, which provisions are incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.
- (8) The liens for delinquent assessments imposed herein shall remain liens co-equal with the lien of all state, county, district, and municipal taxes superior in dignity to all other file liens and claims until paid as provided herein.

Section 7. Rule of Construction

This article is cumulative and in addition to any other applicable city ordinance, rule or regulation.

Section 8. 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 a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or re-lettered 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) In the event this Ordinance conflicts with any other Ordinance of the City of Marco Island or other applicable law, the more restrictive shall apply. If any phrase or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

Section 9. 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 November, 1999.

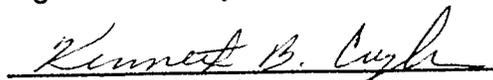
Attest:


A. William Moss
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

BY: 
David E. Brandt, Chairman

Approved as to form and
legal sufficiency:


Kenneth B. Cuyler
City Attorney

Naples Daily News
Naples, FL 34102

Affidavit of Publication
Naples Daily News

CITY OF MARCO ISLAND
ATT: DEE PHILLIPS
950 N COLLIER BLVD #308
MARCO ISLAND FL 34145

REFERENCE: 054361
57950283 SECOND READING & PUB

State of Florida
County of Collier

Before the undersigned authority, personally appeared B. Lamb, who on oath says that she serves as the Assistant Corporate Secretary of the Naples Daily News, a daily newspaper published at Naples, in Collier County, Florida: that the attached copy of advertising was published in said newspaper on dates listed.

Affiant further says that the said Naples Daily News is a newspaper published at Naples, in said Collier County, Florida, and that the said newspaper has heretofore been continuously published in said Collier County, Florida, each day and has been entered as second class mail matter at the post office in Naples, in said Collier County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

PUBLISHED ON: 10/22

AD SPACE: 48.000 INCH
FILED ON: 10/22/99

SECOND READING &
PUBLIC HEARING
ORDINANCE
CITY OF
MARCO ISLAND

The City Council of Marco Island, meeting in regular session at 6:00 p.m., on November 1, 1999, at the Marco Island YMCA, 101 Sand Hill Street, Marco Island, Florida, will consider:

AN ORDINANCE REGULATING PRIVATE CONSTRUCTION ACTIVITIES IN THE PUBLIC RIGHTS-OF-WAY; PROHIBITING THE PLACEMENT OF OFFENDING MATERIALS; ESTABLISHING PENALTIES; ADOPTING BY REFERENCE, A CONSTRUCTION STANDARDS HANDBOOK FOR WORK WITHIN THE PUBLIC RIGHTS-OF-WAY; REQUIRING PERMITS FOR WORK OR THE PLACEMENT OF MATERIALS; REQUIRING THE REMOVAL OF OFFENDING MATERIAL; PROVIDING FOR INCORPORATION IN THE CODE OF LAWS AND ORDINANCES, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Members of the Public are invited to make oral or written comments in regards to this Ordinance. October 22 No. 1495128

Signature of Affiant

Sworn to and Subscribed before me this 22 day of Oct 19 99

Personally known by me



Susan D Flora
My Commission CC581717
Expires Dec. 10, 2000