

ORDINANCE NO. 98- 4

AN ORDINANCE TO BE KNOWN AS THE CITY OF MARCO ISLAND CODE ENFORCEMENT BOARD ORDINANCE; SETTING FORTH FINDINGS AND PURPOSE; SETTING FORTH APPLICABILITY; PROVIDING DEFINITIONS; ESTABLISHING THE CODE ENFORCEMENT BOARD COMPOSITION, MEMBERSHIP APPOINTMENT AND TERMS OF MEMBERS; PROVIDING FOR ORGANIZATION; PROVIDING AN ENFORCEMENT PROCEDURE; PROVIDING FOR CONDUCT OF HEARINGS; SETTING FORTH THE POWERS OF THE CODE ENFORCEMENT BOARD; PROVIDING FOR SUBPOENA PROCEDURES; ESTABLISHING PENALTIES; PROVIDING FOR REHEARING OF BOARD ACTION; PROVIDING FOR APPEALS TO THE CIRCUIT COURT; DEFINING NOTICES; PROVIDING THAT PROVISIONS OF THIS ORDINANCE ARE SUPPLEMENTAL; PROVIDING THAT THIS ORDINANCE REPLACES AND SUPERSEDES COLLIER COUNTY ORDINANCE NO. 83-43 AND COLLIER COUNTY ORDINANCE NO. 88-89 WITHIN THE JURISDICTIONAL LIMITS OF THE CITY OF MARCO ISLAND; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the Constitution of the State of Florida authorizes municipalities to exercise broad home rule powers; and

WHEREAS, Chapter 162 and Chapter 166, Florida Statutes, authorize municipalities to establish, and maintain a code enforcement board to ensure compliance with municipal code of ordinances and regulations; and

WHEREAS, the City Council for the City of Marco Island is desirous of establishing the City of Marco Island Code Enforcement Board for the purpose of assuring compliance with the Codes and Ordinances of the City of Marco Island;

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

SECTION ONE: FINDINGS AND PURPOSE.

The City Council for the City of Marco Island, Florida (hereinafter the "Council") does hereby make the following findings:

1. It is the intent and purpose of this Ordinance to promote, protect and improve the health, safety and welfare of the citizens of the City of Marco Island by authorizing the creation of a code enforcement board, with authority to impose administrative fines and other non-criminal penalties.

2. The purpose and function of such code enforcement board is to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances of the City of Marco Island, with the exception of traffic violations, where a pending or repeated violation continues to exist, including, but not limited to housing, occupational licenses, fire, development standards, building, zoning, and sign codes.

3. It is in the best interests of the citizens of the City of Marco Island to create such a code enforcement board as a supplemental and additional means of enforcement.

SECTION TWO: TITLE AND CITATION.

This Ordinance shall be known and may be cited as the "City of Marco Island Code Enforcement Board Ordinance."

SECTION THREE: APPLICABILITY.

This Ordinance shall apply to and be enforced within the territorial limits of the City of Marco Island.

SECTION FOUR: DEFINITIONS.

1. "Clerk to the Code Enforcement Board" means the Clerk to the City Council, or the designee of such person, who shall be responsible for minutes and other records of a Code Enforcement Board, and such other matters as provided for herein.
2. "Enforcement Board" means the City of Marco Island Code Enforcement Board.
3. "Code Enforcement Official" means any authorized agent or employee of the City of Marco Island whose duty it is to assure code and ordinance compliance, and who is responsible for the enforcement or implementation of codes and ordinances of the City of Marco Island.
4. "Council" means the City Council which is the local governing body in and for the City of Marco Island, Florida.
5. "City Attorney" means the legal counsel to the Council.
6. "Person" means an individual, association, firm, partnership, corporation, or other legal entity recognized under the laws of the State of Florida.
7. "Prosecutor" means the City Attorney and/or any member of the City staff who presents cases before an Enforcement Board, as applicable.
8. "Violator" means a person alleged to, or who has been found to, have violated any ordinance or code of the City of Marco Island which a Code Enforcement Board has jurisdiction to enforce.
9. "Hold-Over Term" means the continuation of an expired term of a Code Enforcement Board member who, prior to the expiration date of such member's term, presided over the presentation of a case hearing that had not reached conclusion with a final vote by the time of the expiration date of such term. Such continuation of a member's expired term shall be extended for the limited time and for the limited purpose of presiding over such particular

case(s) until conclusion and final vote and the time for rehearing has passed. In the event a rehearing is granted, such member's term shall continue for the limited time and limited purpose to rehear the matter and reach conclusion by final vote.

SECTION FIVE: COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS.

1. The Council may appoint one seven (7) member Enforcement Board. All members of the Enforcement Board shall be permanent residents and electors of the City of Marco Island and shall serve without compensation. Members may be reimbursed for such travel, mileage and per diem expenses as may be authorized, in advance, by the Council.

2. Prior to making appointments to the Enforcement Board, the Council's staff shall provide the Council with a list which outlines the qualifications of each candidate for Board membership, along with a list detailing the qualifications and term expiration of present members of the Enforcement Board, if applicable.

3. The appointment of members to the Enforcement Board shall be made on the basis of experience or interest in the fields of zoning and building control, or other areas as are relevant to the codes or ordinances of the City which are to be enforced. The membership of the Enforcement Board shall, whenever possible, include, but not be limited to, an architect, a businessman, an engineer, a general contractor, a subcontractor and a Realtor.

4. The initial terms of appointment of members shall be as follows:

- (a) Two (2) members appointed for a term of one (1) year.
- (b) Three (3) members appointed for a term of two (2) years.
- (c) Two (2) members appointed for a term of three (3) years.

5. In the event any member's term expires during the pendency of any case(s) which has not reached conclusion by a final vote, such member's expired term shall be extended for the

limited time and for the limited purpose of presiding over such particular case(s) until conclusion and final vote and the time for rehearing has passed. In the event a rehearing is granted, such member's terms shall continue for the limited time and limited purpose to rehear the matter and reach conclusion by final vote.

6. After initial appointments, all appointments shall be made for a term of three (3) years. A member may be reappointed by the Commission for one (1) successive term, provided, however, that nothing herein shall prohibit any individual from being reappointed to the Enforcement Board for an additional term(s) after a hiatus of two (2) years. An appointment to fill a vacancy on the Enforcement Board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive board meetings without a satisfactory excuse and without prior approval of the Chairman, the Enforcement Board shall declare the member's office vacant and the Council shall promptly fill the vacancy. Vacancies occurring on the Enforcement Board shall be publicized, but need not be advertised, in a publication of general circulation within the City, and vacancy notices are to be posted in the City hall. Members of the Enforcement Board serve at the pleasure of the Council and may be suspended or removed, with or without cause, by the Council.

SECTION SIX: ORGANIZATION.

1. At the first meeting of the Enforcement Board, the members shall elect a Chairman and Vice-Chairman, who shall be voting members, from among the members of the Board.

2. The presence of four (4) or more members shall constitute a quorum of the Enforcement Board necessary to take action.

3. The Enforcement Board may adopt such rules and regulations as they may deem necessary to carry out the duties of the Enforcement Board in accordance with the provisions and

intent of this Ordinance.

4. The Council shall provide such clerical and administrative personnel and legal services as may be reasonably required by the Board for the proper performance of its duties.

5. The City Attorney, or his designee, shall either be counsel for the Enforcement Board or shall represent the City by presenting cases before the Enforcement Board, but in no case shall the City Attorney or a member of his staff serve in both capacities for the same case or at the same time.

6. The Enforcement Board shall provide to the Council written quarterly reports of the activities of the Board, which reports shall delineate the name of the cases heard for the quarter, the date of hearing and the resolution of the cases.

SECTION SEVEN: ENFORCEMENT PROCEDURE.

1. It shall be the duty of the Code Enforcement Official to initiate enforcement proceedings. No member of the Enforcement Board shall have the power to initiate enforcement proceedings.

2. Except as provided in Subsection 5 of this Section, if a violation of a code or ordinance is found to exist, the Code Enforcement Official shall first notify the violator and shall give the violator a reasonable time to correct the violation. Notice shall be given in writing pursuant to Section 14 of this Ordinance, and shall specify the alleged violation, the required corrective action and the time period for correction.

3. Should the violation continue beyond the time specified for correction, the Code Enforcement Official shall execute a written Affidavit of Violation which shall include a statement of the facts and circumstances of the alleged violation and shall identify the code or ordinance which has been violated. Upon notification and request by the Code Enforcement

Official, the Enforcement Board, through its clerical staff, shall schedule a public hearing. Written notice of the scheduled hearing, which shall contain the date, time and place of the hearing, and a copy of the Affidavit of Violation shall be provided to the violator pursuant to the provisions of Section Fourteen of this Ordinance. Failure to provide proper notice may be grounds for continuing the hearing but shall not be grounds for dismissal of the charges.

4. If the violation is corrected and thereafter recurs, or if the violation is not corrected by the time specified for correction, the case shall be presented to the Enforcement Board even if the violation has been corrected prior to the Board meeting, and, if practicable, the notice shall so state.

5. If the Code Enforcement Official has reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the Code Enforcement Official shall make a reasonable effort to notify the violator and may immediately notify the Enforcement Board and request a hearing. Under such circumstances the Code Enforcement Official shall not be required to adhere to the notice requirements set forth in Section Fourteen of this Ordinance.

SECTION EIGHT: CONDUCT OF HEARING.

1. Upon the request of the Code Enforcement Official, or at such other time as may be necessary, the Chairman of the Enforcement Board may call hearings of the Enforcement Board. At any hearing, the Enforcement Board may set a future hearing date. The Enforcement Board shall attempt to convene no less frequently than once every three months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings of the Enforcement Board, and all hearings and proceedings shall be open to the public.

2. Each case before the Enforcement Board shall be presented by the City Attorney or, alternatively, by a member of the City staff.

3. Assuming proper notice of the hearing has been provided to the alleged violator as provided in Section Fourteen of this Ordinance, a hearing may proceed in the absence of the alleged violator.

4. The Enforcement Board shall proceed to hear the cases on the agenda for that day. All testimonies shall be under oath and shall be recorded. The Enforcement Board shall take testimony from the Code Enforcement Official and alleged violator, and from such other witnesses as may be called by the respective parties. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

5. Irrelevant, immaterial or unduly repetitious evidence shall be excluded; but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida.

6. Any member of the Enforcement Board, or any attorney appointed to represent the Board, may inquire of any witness before the Board. The alleged violator, or his/her attorney, the attorney representing the City and the Prosecutor shall be permitted to inquire of any witness before the Board.

7. At the conclusion of the hearing, the Enforcement Board shall issue findings of fact based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein and by Florida Statutes. The order shall be stated orally at the hearing and shall be reduced to writing and mailed to the violator within ten (10) days after the hearing. The findings shall be by motion approved by a majority of those

members present and voting, except that at least four (4) members of the Board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date.

8. Should the Enforcement Board be unable to issue a decision immediately following any hearing because of questions of law or other matters of such nature that a decision cannot be immediately made, the Board may withhold issuing its decision until a subsequent meeting. In such case, further discussion of the pending matter and all deliberations relating thereto by members of the Enforcement Board shall occur at a public meeting of the Board. The Board shall thereafter issue its decision pursuant to Subsection 7 of this Section.

SECTION NINE: POWERS OF THE CODE ENFORCEMENT BOARD.

The Code Enforcement Board shall have the power to:

- (1) Adopt rules and regulations for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to appear at its hearings, which subpoenas may be served by the Sheriff of Collier County, or any person permitted to serve subpoenas under Florida law.
- (3) Subpoena evidence including, but not limited to, records, surveys, plats, and other documentary evidence, which subpoenas may be served by the Sheriff of Collier County, or any person permitted to serve subpoenas under Florida law.
- (4) Take testimony under oath.
- (5) Hold hearings.
- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- (7) Order the payment of fines as provided for herein.

SECTION TEN: SUBPOENA PROCEDURES.

1. Every subpoena for testimony before the Enforcement Board shall be issued by the Clerk of the Circuit Court, or by any person permitted to issue a subpoena under Florida law, as Ex-Officio Clerk to the Board, under the seal of the City of Marco Island. Each subpoena shall state the name of the Enforcement Board, the title of the action, the case number of the action, the name and address of the person to whom the subpoena is issued, and the time, place and location of the hearing at which the person is directed to appear, and shall be prepared by the party requesting issuance.

2. A subpoena for production of documentary evidence may also be issued to command the person to whom it is directed to produce the books, papers, documents or tangible items designated therein. The Enforcement Board, upon motion to quash made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible items.

3. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party to the action and who is not less than eighteen (18) years of age. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so. Proof of service shall be filed with the Clerk to the Enforcement Board. Payment of any service fee shall be made by the party at whose request the service is made.

4. Persons subpoenaed, with the exception of the alleged violator, shall be entitled to a witness fee and mileage compensation as provided for in Section 92.142, Florida Statutes.

The cost of the witness fee and mileage compensation shall be borne by the party at whose request the subpoena is issued and shall be paid to the witness at or before the time of service.

SECTION ELEVEN: PENALTIES.

1. The Enforcement Board, upon notification by the Code Enforcement Official, that a previous order of the Board for a first violation has not been complied with by the specified time, may order the violator to pay a fine which shall not exceed two hundred fifty dollars (\$250.00) per day for each day the first violation continues past the date set for compliance; or in the case of a repeat violator, may order the repeat violator to pay a fine which shall not exceed five hundred dollars (\$500.00) per day for each day the repeat violation continues, and a hearing shall not be necessary for the issuance of the order. If the Enforcement Board finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.

2. In determining the amount of the fine, if any, the Enforcement Board shall consider the following factors:

- (a) The gravity of the violation;
- (b) Any actions taken by the violator to correct the violation; and
- (c) Any previous violations committed by the violator.

3. A certified copy of an order imposing a fine may be recorded in the public records 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; and it may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After six (6) months from the filing of any such lien which remains unpaid, the Enforcement Board

may authorize the City Attorney to foreclose on the lien. No lien created pursuant to this Ordinance may be foreclosed on real property which is a homestead under Section 4, Article X of the Florida Constitution.

No lien provided under this Ordinance shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a Notice of Lis Pendens is recorded.

SECTION TWELVE: REHEARING OF BOARD ACTION.

1. Either the Prosecutor or the violator may request a rehearing of the decision of the Enforcement Board. A request for rehearing shall be made in writing and shall be filed with the City Manager, c/o Clerk to the Enforcement Board, within ten (10) days of the date of receipt of the Board's written order, but in not event more than twenty (20) days from the date of mailing of the written order. A request for rehearing shall be based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law which was fundamental to the decision of the Enforcement Board. The written request for rehearing shall specify the precise reasons therefor.

2. The Enforcement Board shall make a determination as to whether or not to rehear the matter and its decision shall be made at a public meeting, reduced to writing and mailed to the interested parties within ten (10) days after the decision is made. If the Enforcement Board determines it will grant a rehearing, it may:

- (a) Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited by the Enforcement Board to the specific reasons for which the rehearing was granted; or
- (b) Modify or reverse its prior order, without receiving further evidence, providing that the change is based on a finding that the prior decision of the Enforcement Board resulted from a ruling on a question of law which the Enforcement Board has been informed was an erroneous ruling.

3. The original order of the Enforcement Board shall be stayed and the time for taking an appeal, pursuant to Section Thirteen of this Ordinance, shall not commence to run until a request for rehearing has been denied or otherwise disposed of and the written decision has been received by the interested parties; provided, however, that in no event shall the order be stayed for a period longer than twenty (20) days from the date of mailing of the rehearing decision.

SECTION THIRTEEN: APPEALS.

1. Any aggrieved party, including the Council, may appeal a final administrative order of the Enforcement Board to the Circuit Court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Enforcement Board. Any appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

2. In the event that a party to the proceedings before the Enforcement Board should elect to appeal, a verbatim record of the proceedings may be required or may be desirable. It shall be the sole responsibility of each party to the proceedings to ensure that a record is made which includes the testimony upon which an appeal may be taken. Neither the City nor the Enforcement Board shall have any responsibility to provide a verbatim transcript of the proceedings.

SECTION FOURTEEN: NOTICES.

1. All notices required by this Ordinance shall be provided by certified mail, return receipt requested, or by hand delivery by the director, sheriff or other law enforcement officer, Code Enforcement Official, or other person designated by the Board, or by leaving the notice at the violator's usual place of residence with some person of his/her family over fifteen (15) years of age and informing such person of the contents of the notice.

2. In addition to providing notice as set forth in Subsection 1 of this Section, at the option of the Board, notice may also be served by publication, as follows:

- (a) Such notice shall be published once during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the City of Marco Island. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.
- (b) Proof of publication shall be made as provided in Sections 50.041 and 50.051, Florida Statutes.
- (c) In lieu of publication as described in Subsection (2)(a) of this Section, such notice may be posted for at least ten (10) days in at least two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the City Hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

Notice by publication may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under Subsection 1 of this Section.

3. Evidence that an attempt has been made to hand deliver or mail notice as provided in Subsection 1 of this Section, together with proof of publication as provided in Subsection 2

of this Section, shall be sufficient to show that the notice requirements of this Ordinance have been met, without regard to whether or not the alleged violator actually received such notice.

SECTION FIFTEEN: SUPPLEMENTAL PROVISION.

It is the intent of this Ordinance to provide additional or supplemental means of obtaining compliance with local codes and ordinances. Nothing contained under this Ordinance shall prohibit the City from enforcing its codes by any appropriate civil action, or by referral to the State Attorney's Office for prosecution in the case of a criminal violation, and/or by presentation to any other city board or agency with jurisdiction to hear and act upon the alleged code or ordinance violation.

SECTION SIXTEEN: CONFLICT AND SEVERABILITY.

In the event this Ordinance conflicts with any other ordinance of the City of Marco Island or Collier County, 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 SEVENTEEN: CODIFICATION.

Upon codification of the Code of Ordinances of the City of Marco Island, this Ordinance shall be incorporated within such code in such section as may be determined appropriate.

SECTION EIGHTEEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.

Passed in open and regular session of the City Council for the City of Marco Island,
Florida, this 1st day of June, 1998.

Attest:

CITY OF MARCO ISLAND, FLORIDA

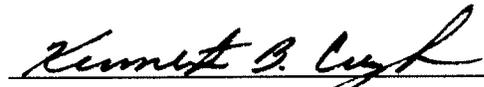


A. William Moss
City Manager/City Clerk

By: 

Harry J. Cowin, Chairman

Approved as to form and
legal sufficiency:



Kenneth B. Cuyler
City Attorney