

ORDINANCE 17-XXX

1
2
3 AN ORDINANCE OF THE CITY OF MARCO ISLAND,
4 FLORIDA, RELATING TO STORMWATER MANAGEMENT;
5 MAKING FINDINGS; AMENDING CHAPTER 18, ENTITLED
6 "ENVIRONMENT", ESTABLISHING ARTICLE VIII,
7 ENTITLED "STORMWATER REGULATIONS" BY ADDING
8 NEW SECTIONS 18-210 THROUGH 18-215, INCLUSIVE;
9 PROVIDING A SHORT TITLE AND DEFINITIONS;
10 PROHIBITING ILLICIT DISCHARGES; PROVIDING
11 STORMWATER POLLUTION PREVENTION STANDARDS
12 DURING CONSTRUCTION; PROVIDING FOR THE
13 MAINTENANCE OF STORMWATER MANAGEMENT
14 SYSTEMS; PROVIDING FOR STORMWATER
15 TREATMENT FOR LAND DEVELOPMENT ACTIVITIES;
16 PROVIDING FOR SEVERABILITY AND
17 INTERPRETATION; PROVIDING FOR INCLUSION IN THE
18 CODE; AND PROVIDING FOR AN EFFECTIVE DATE.
19

20 **WHEREAS**, pursuant to Article VIII, Section 2 of the Florida Constitution, and
21 Chapter 166, Florida Statutes, the City of Marco Island is authorized to protect the public
22 health, safety and welfare of its residents and has the power and authority to enact
23 regulations for valid governmental purposes that are not inconsistent with general or
24 special law; and
25

26 **WHEREAS**, Section 1.01 of the Marco Island Charter empowers the City to adopt,
27 amend, or appeal ordinances, resolutions, and codes, as may be required for the benefit
28 of the City; and
29

30 **WHEREAS**, the Marco Island City Council implemented a Phase II Municipal
31 Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System
32 (NPDES) permit effective March 19th, 2015, which mandates the prohibition of illicit
33 discharges into the storm sewer system, requires erosion and sediment control
34 measures, requires construction sites to operate with proper best management practices
35 (BMP) and to minimize the negative environmental effects these discharges have in and
36 on the waterbodies within and around the City of Marco Island, which degrade the quality
37 of life, and jeopardize the health, safety, and welfare of the citizens of Marco Island; and
38

39 **WHEREAS**, there is a need to adopt specific standards and details to guide the
40 development community to ensure the proper design and installation of stormwater
41 facilities, grading techniques, and development practices to ensure that the applicable
42 provisions of the current Marco Island Code of Ordinances and goals of this Ordinance
43 are met; and
44

45 **WHEREAS**, the City of Marco Island will now identify the South Florida Water
46 Management District (SFWMD) criteria as the recommended level of service goal for
47 meeting water quality standards in the City of Marco Island; and
48

49 **WHEREAS**, there is a need to control stormwater from new developments,
50 redevelopments, and substantial improvements which prevent adjacent and downstream
51 property from experiencing erosion, surface flooding, or groundwater seepage; and
52 ensure a reasonable level of water quality treatment of stormwater prior to discharge to
53 downstream stormwater management systems; and
54

55 **WHEREAS**, to provide reasonable flexibility and incentive based options so that
56 the development community can be innovative in meeting goals, the City requires the use
57 of the latest Best Management Practices ("BMP") and encourages Low Impact
58 Development ("LID") approaches as defined by the State of Florida to provide reasonable
59 flexibility and incentive based options so that the development community can be
60 innovative in meeting the requirements; and
61

62 **WHEREAS**, site plan review of all new development and redevelopment and
63 specific stormwater standards for conveyance and water quality has been mandated as
64 being in the best interest of the public for protection of public facilities and private property;
65 and
66

67 **WHEREAS**, Goal 1 of the Infrastructure Element; Stormwater Management Sub-
68 Element provides:
69

70 GOAL 1: TO PROTECT THE HEALTH AND SAFETY OF THE
71 PUBLIC BY ENSURING STORMWATER MANAGEMENT
72 FACILITIES ARE PROPERLY MAINTAIN [sic],
73 ENVIRONMENTALLY SOUND, COST EFFECTIVE, AND
74 MEET THE COMMUNITY'S PRESENT AND FUTURE
75 DEMANDS; and.
76

77 **WHEREAS**, this Ordinance is consistent with Goal 1 of the Infrastructure Element;
78 Stormwater Management Sub-Element, because this Ordinance provides for a
79 reasonable and cost-effective process for creation and maintenance of stormwater
80 systems to treat discharges and to eliminate illicit discharges into the City's MS4
81 stormwater system; and
82

83 **WHEREAS**, Policy 1.1.3 of the Infrastructure Element, Stormwater Management
84 Sub-Element provides:
85

86 Water quality for development runoff from existing sites
87 proposed for redevelopment or expansion shall, to the
88 greatest degree practical, comply with the more stringent
89 permitting standards and policies of either the South Florida
90 Water Management District and [sic] the City of Marco Island.

91 All new developments shall comply fully with permitting
92 standards and policies of the South Florida Water
93 Management District, per F.A.C. Chapter 40E-41 (Surface
94 Water Management, Basin and Related Criteria) or and [sic]
95 the City of Marco Island. All new development shall comply
96 fully with the more stringent permitting standards and policies
97 of either the South Florida Water Management District, per
98 F.A.C: Chapter 40E-41, or the City of Marco Island; and
99

100 **WHEREAS**, this Ordinance is consistent with Policy 1.1.3 of the Infrastructure
101 Element, Stormwater Management Sub-Element, because this Ordinance provides for
102 compliance by new or expanded stormwater systems to be consistent with South Florida
103 Water Management criteria; and
104

105 **WHEREAS**, Objective 1.2 of the Infrastructure Element; Stormwater Management
106 Sub-Element provides:
107

108 To limit public expenditures for stormwater facilities that
109 would have the effect of directly subsidizing private
110 development; and
111

112 **WHEREAS**, this Ordinance is consistent with Objective 1.2 of the Infrastructure
113 Element; Stormwater Management Sub-Element, because this Ordinance provides for
114 development of stormwater systems meeting promulgated standards on private property
115 at the cost of the owner/developer of the property; and
116

117 **WHEREAS**, Policy 1.2.1 of the Infrastructure Element; Stormwater Management
118 Sub-Element provides:
119

120 The City shall limit its funding of public stormwater facility
121 expansion if such funding and such expansion would have the
122 effect of directly subsidizing a specific private development in
123 the City; and
124

125 **WHEREAS**, this Ordinance is consistent with Policy 1.2.1 of the Infrastructure
126 Element, Stormwater Management Sub-Element, because this Ordinance provides for
127 Development of stormwater systems meeting promulgated standards on private property
128 at the cost of the owner/developer of the property; and
129

130 **WHEREAS**, Objective 1.4 of the Infrastructure Element; Stormwater Management
131 Sub-Element provides:
132

133 The City will implement a proactive maintenance program to
134 ensure that all current and future stormwater management
135 facilities operate at designed capacity; and
136

137 **WHEREAS**, this Ordinance is consistent with Objective 1.4 of the Infrastructure
138 Element; Stormwater Management Sub-Element, because this Ordinance provides for
139 construction site inspection of private stormwater systems to assure that the systems
140 meet promulgated standards; and

141
142 **WHEREAS**, Policy 1.2.4 of the Capital Improvements Element provides:

143
144 The City will implement proactive maintenance programs to
145 ensure that all roadways, potable water, sanitary sewer,
146 community parks, and storm water systems continue to
147 function at *or above* adopted LOS standards; and

148
149 (emphasis supplied);

150
151 **WHEREAS**, this Ordinance will provide stormwater system protection at greater
152 than the adopted Level of Service, and this Ordinance is therefore consistent with the
153 Comprehensive Plan; and

154
155 **WHEREAS**, this Ordinance is consistent with Policy 1.2.4 of the Capital
156 Improvements Element, because this Ordinance provides for design standards for
157 stormwater discharge into the City's MS4 stormwater system; and

158
159 **WHEREAS**, the Level of Service ("LOS") standards adopted in the Capital
160 Improvements Element provide:

161
162 (4) Storm water drainage. The LOS design standard for new
163 stormwater management facilities will be the ten-year, one-
164 hour storm event, with a 3.3 inches/hour intensity duration;
165 and

166
167 **WHEREAS**, this Ordinance provides for stormwater systems on private property
168 that will provide greater stormwater protection than is currently required by the
169 Comprehensive Plan, and this Ordinance is therefore consistent with the adopted level of
170 service standards for stormwater systems set by the Capital Improvements Element (see
171 Capital Improvements Element Policy 1.2.4 above); and

172
173 **WHEREAS**, the Planning Board, sitting as the Local Planning Agency, finds that
174 this Ordinance is consistent with the City's Comprehensive Plan and in particular Goal 1,
175 Objectives 1.2 and 1.4, and Policies 1.1.1, 1.1.3, 1.2.1 of the Infrastructure Element;
176 Stormwater Management Sub-Element, and Policy 1.2.4 and the adopted Level of
177 Service standards of the Capital Improvements Element; and

178
179 **WHEREAS**, Marco Island City Council finds it to be in the best interests of its
180 citizens to amend the Marco Island Code of Ordinances accordingly.

181

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

184
185 **SECTION 1. Recitals.** Each and all of the foregoing recitals (“WHEREAS”
186 CLAUSES) be and the same are hereby incorporated in this Ordinance as if specifically set
187 forth herein.

188
189 **SECTION 2. Amendment Adding Stormwater Regulations.** That the Code of
190 Ordinances, City of Marco Island, Florida, is hereby amended by adding new sections, to
191 be numbered 18-201 through 209, which sections read as follows

192
193 **Sec. 18-201 – 18-209. - Reserved.**

194
195 **SECTION 3. Adoption of Code Provision.** That the Code of Ordinances, City of
196 Marco Island, Florida, is hereby amended by adding a new article to be numbered VIII
197 and a new section, to be numbered 18-210, which section reads as follows

198
199 **ARTICLE VIII. – STORMWATER REGULATIONS**

200
201 **Sec. 18-210. - Short title.**

202
203 This article shall be known and may be cited as the "Stormwater Control Ordinance".

204
205 **SECTION 4. Adoption of Code Provision.** That the Code of Ordinances, City of
206 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
207 211, which section reads as follows

208
209 **Sec. 18-211. - Definitions.**

210
211 The following words, terms and phrases, when used in this article, shall have the
212 meanings ascribed to them in this section, except where the context clearly indicates a
213 different meaning:

214
215 *Best management practices or BMPs* means schedules of activities, prohibitions
216 of practices, general good housekeeping practices, pollution prevention and educational
217 practices, maintenance procedures, and other management practices, to prevent or
218 reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters,
219 or stormwater conveyance systems. BMPs also include treatment practices, operating
220 procedures, and practices to control erosion, site runoff, spillage or leaks, sludge or
221 water disposal, or drainage from raw materials storage. BMPs include but are not limited
222 to geosynthetic barriers, temporary or permanent vegetation, sediment traps, silt
223 fences, turbidity barriers, or inlet protection measures.

224
225 *Clean Water Act or CWA* means the federal Water Pollution Control Act (33
226 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

228 Construction activity means any on-site activity which will result in the creation of
229 a new stormwater discharge, including the building, assembling, expansion, modification
230 or alteration of the existing contours of the site, the erection of buildings or other
231 structures, or any part thereof, or land clearing.

232
233 Department means the city's public works department.

234
235 Design storm means a selected rainfall pattern of specified amount, intensity,
236 duration, and frequency, that is used as a basis for design.

237
238 Detention means the collection and temporary storage of stormwater with
239 subsequent release, at a specified rate, into a downstream system.

240
241 Developer means and includes one who develops a parcel of land, an applicant
242 for a city permit to develop a parcel of land, a property owner, and a contractor on a parcel
243 of land.

244
245 Development shall be as defined in s. 163.3164, Florida Statutes.

246
247 Engineer means a Professional Engineer registered in the state, or other person
248 exempted pursuant to the provisions of chapter 471, Florida Statutes.

249
250 Erosion is the action of surface processes such as water flow or wind that remove
251 soil, rock, or dissolved material from one location, then transport it away to another
252 location.

253
254 Exfiltration means a stormwater management procedure which stores runoff in a
255 subsurface collection system and disposes of it by percolation into the surrounding soil.

256
257 Filtration means the selective removal of suspended matter from stormwater by
258 passing the water through at least two (2) feet of suitable fine textured granular media
259 such as porous soil, uniformly graded sand and gravel, or other natural or artificial
260 aggregate, which may be used in conjunction with filter fabric and underdrain pipe.

261
262 Hazardous substances mean any material, including any substance, waste, or
263 combination thereof, which because of its quantity, concentration, or physical, chemical,
264 or infectious characteristics, may cause, or significantly contribute to, a substantial
265 present or potential hazard to human health, safety, property, or the environment, when
266 improperly treated, stored, transported, disposed of, or otherwise managed.

267
268 Illicit connection means either of the following: 1) any drain or conveyance,
269 whether on the surface or subsurface, which allows an illegal or illicit discharge to enter
270 the MS4 including but not limited to any conveyances that allow any non-storm water
271 discharge, including sewage, process wastewater, and wash water to enter the storm
272 drain system and any connections to the MS4 from indoor drains and sinks, regardless
273 of whether said drain or connection had been previously allowed, permitted, or approved

274 by the department; or 2) any drain or conveyance connected from a commercial or
275 industrial land use to the MS4 which has not been documented in plans, maps, or
276 equivalent records and approved by the department.

277

278 *Illicit discharge or illegal discharge or illegal dumping* means any discharge to the
279 city's MS4 which is not composed entirely of stormwater, unless exempted pursuant to
280 this article, or the discharge to the city's MS4 which is not in compliance with federal,
281 state or local permits.

282

283 *Industrial activities* mean activities at facilities identified by the United States
284 Environmental Protection Agency as requiring an NPDES stormwater permit in
285 accordance with 40 CFR §122.26(b)(14) or amendments thereto, or any unit operation,
286 complex, area, or multiple of unit operations, that produce, generate, handle, process,
287 or cause to be processed, any materials which may cause water pollution.

288

289 *Impervious* means land surfaces which do not allow, or minimally allow, the
290 penetration of water; included as examples are building roofs, normal concrete, paver
291 driveways, paver sidewalks, and asphalt pavements and some fine-grained soils such
292 as clays.

293

294 *Maintenance* means routine custodial maintenance needed to ensure the
295 functioning of a stormwater management system to meet original design criteria.

296

297 *Municipal separate storm sewer system or MS4* means a conveyance, storage
298 area or system of conveyances and storage areas (including, but not limited to, roads
299 with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade
300 channels, storm drains, treatment ponds, and other structural BMPs) owned and
301 operated by a local government that discharge to waters of the United States or to other
302 MS4s, that are designed solely for collecting, treating or conveying stormwater, and that
303 are not part of publicly owned treatment works (POTW) as defined by 40 CFR §122.2 or
304 any amendments thereto.

305

306 *National Pollutant Discharge Elimination System (NPDES) stormwater discharge*
307 *permit* means a permit issued by the Florida Department of Environmental Protection
308 (FDEP) that authorizes the discharges of pollutants to waters of the United States.

309

310 *Non-stormwater discharge* means any discharge to the storm drain system that
311 is not composed entirely of stormwater.

312

313 *Person* means an individual, corporation, limited liability company, governmental
314 agency, business trust, estate, trust, partnership, association, two or more persons
315 having a joint or common interest, or any other legal entity.

316

317 *Pollutant* means anything that causes or contributes to pollution. Pollutants may
318 include, but are not limited to paints, varnishes, and solvents; oil and other automotive
319 fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage,

320 litter, or other discarded or abandoned objects, and accumulations, so that the same
321 may cause or contribute to pollution; floatables; pesticides; herbicides; fertilizers;
322 hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved
323 and particulate metals; animal wastes; wastes and residues that result from constructing
324 a building or structure; and noxious or offensive matter of any kind.

325
326 Project site means the area being modified or altered in conjunction with a
327 proposed activity.

328
329 Receiving waters or receiving channel means any water bodies, watercourses
330 and wetlands into which surface waters flow.

331
332 Rendered or Rendition means the issuance of a written order, including approval,
333 approval with conditions, or denial of a determination by the city council, the department
334 director, the city manager (or said manager's designee), or other administrative official,
335 effective upon the date of signing by the authorized city official of such order or final letter
336 of determination and its filing in the records of the city council or said department director,
337 city manager (or said manager's designee), or other administrative official.

338
339 Retention means the prevention of discharge of a given volume of stormwater
340 runoff by complete on-site storage with subsequent release through accepted water
341 treatment facilities or underdrains.

342
343 Roadway means a designated travel pathway, either public or private, which is
344 designed for vehicular traffic and is not used primarily as a driveway access to a property.

345
346 Sediment means material that settles to the bottom of a liquid.

347
348 Short-circuiting means flow characteristics of a detention pond in which a direct
349 flow path exists between the inflow and outflow points, thus diminishing the velocity
350 reduction and settling capability of the pond.

351
352 Solid waste means unregulated under the federal Clean Water Act, sludge from a
353 waste treatment works, water supply treatment plant, or air pollution control facility, or
354 garbage, rubbish, refuse, special waste, or other discarded material, including solid,
355 liquid, semisolid, or contained gaseous material resulting from domestic, industrial,
356 commercial, mining, agricultural, or governmental operations.

357
358 Special waste means solid wastes that can require special handling and
359 management, including, but not limited to, white goods, waste tires, used oil, lead-acid
360 batteries, construction and demolition debris, ash residue, yard trash, and biological
361 wastes.

362
363 Storm sewer system means a stormwater collection and transmission system
364 consisting primarily of inlets and storm sewers.

365

366 Stormwater means any surface flow, runoff, and drainage consisting entirely of
367 water from any form of natural precipitation and resulting from such precipitation.

368
369 Stormwater management system means the designed features of the property
370 which collect, convey, channel, hold, inhibit, or divert, the movement of stormwater.

371
372 SFWMD means the Big Cypress Basin South Florida Water Management District.

373
374 Swale in this section means excavated areas that can be either used for water
375 conveyance, retention or any combination of the two. A roadway swale means a
376 depression along a roadway used to retain and/or convey the movement of surface water
377 runoff. The roadway swale is generally the area between the edge of the pavement of a
378 roadway and the sidewalk or Right-of-Way limit.

379
380 Temporary soil stabilization means the use of seeding, mulching, netting,
381 blankets, or other approved methods, to prevent erosion during construction activities.

382
383 Underdrain means a system of pipes, gravel, sand, and filter cloth used to recover
384 retention volumes from stormwater ponds or lower the water table under roads or
385 stormwater ponds.

386
387 Waters or water body means any natural or artificial pond, lake, reservoir, or other
388 area, which ordinarily or intermittently contains water, and which has a discernible
389 shoreline.

390
391 Watercourse means any natural or artificial stream, creek, channel, ditch, canal,
392 waterway, gully, ravine, or wash, in which water flows in a definite direction, either contin-
393 uously or intermittently, and which has a definite channel, bed or banks.

394
395 **SECTION 5. Adoption of Code Provision.** That the Code of Ordinances, City of
396 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
397 212, which section reads as follows

398
399 **Sec. 18-212. Illicit discharges.**

400
401 (a) Purpose and intent. The purpose of this section is to provide for the health,
402 safety, and general welfare of the citizens of the city through the regulation of non-
403 stormwater discharges to the city's municipal separate storm sewer system (MS4) to the
404 maximum extent practicable. This section establishes methods for controlling the
405 introduction of pollutants into the city's MS4 within the requirements of the National
406 Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this
407 section are:

408 (1) To regulate the contribution of pollutants to the city's MS4 by
409 stormwater discharges by any user;

410 (2) To prohibit illicit connections and discharges to the city's MS4; and

411 (3) To establish legal authority to carry out all inspection, surveillance, and
412 monitoring procedures, necessary to ensure compliance with this section.

413
414 (b) *Applicability.* This section shall apply to the entire city's MS4, unless
415 explicitly exempted by the city in writing.

416
417 (c) *Ultimate responsibility.* The standards set forth herein, and promulgated
418 pursuant to this section, are minimum standards. This section does not intend or imply
419 that compliance by any person will ensure there will be no contamination, pollution, nor
420 unauthorized discharge of pollutants.

421
422 (d) *Control of pollutant contributions from interconnected MS4s.*
423 Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that
424 they do not impair the operation of the receiving MS4 or contribute to the failure of the
425 receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners
426 of sections of an interconnected MS4 shall be responsible for the quality of stormwater
427 within their portion of the system and shall coordinate with the owners of the downstream
428 segments.

429
430 (e) *Prohibitions: Illicit/illegal discharges and illegal dumping.*

431
432 (1) No person shall throw, drain, or otherwise discharge, cause, or allow
433 others under such person's control to similarly discharge into the city's MS4 any
434 pollutants or waters containing any pollutants, other than stormwater, whether such
435 discharges occur through piping connections, runoff, exfiltration, infiltration, seepage, or
436 leaks. Polluting matter includes, but is not limited to, the following:

- 437
438 (i) Petroleum products, including, but not limited to oil, gasoline,
439 grease;
440 (ii) Solid waste;
441 (iii) Paints;
442 (iv) Steam cleaning waste;
443 (v) Pesticides, herbicides or fertilizers, or as regulated by
444 existing ordinance;
445 (vi) Degreasers, solvents;
446 (vii) Sanitary sewage;
447 (viii) Chemically treated cooling water;
448 (ix) Antifreeze and other automotive products;
449 (x) Lawn clippings, leaves, branches, or yard trash;
450 (xi) Animal carcasses;
451 (xii) Recreational vehicle waters;
452 (xiii) Dyes;
453 (xiv) Construction materials and waste;
454 (xv) Any liquids in quantity or quality that are capable of causing
455 a violation of the city's NPDES stormwater permit; and

456 (xvi) Solids in such quantities or of such size capable of causing
457 interference or obstruction to the flow of the city's MS4.

458 (2) No lawn mowing, clipping or other such discharge of debris is
459 permitted towards or into waterbodies or watercourse(s).

460 (3) No direct discharge of roof drains to the city's canal system is
461 permitted.

462
463 (f) Prohibitions; Illicit connections.

464 (1) No person may maintain, use, or establish, any direct or indirect
465 connection to the city's MS4 that results in any discharge in violation of any provision of
466 federal, state, or local governmental law, rule, regulation.

467 (2) This subsection is retroactive and applies to illicit connections made
468 prior to _____, 2017, (the effective date of this code) regardless of whether made under
469 a permit or other authorization, or whether permissible under laws or practices applicable
470 or prevailing at the time the connection was made.

471 (3) A person is considered to be in violation of this section, if the person
472 connects a line conveying sewage to the city's MS4 or allows such a connection to
473 continue.

474
475 (g) Violation of permits. Any discharge into the city's MS4 in violation of any
476 federal, state, or local governmental law, rule, regulation or permit is prohibited, except
477 those discharges set forth in this article or in accordance with a valid NPDES permit.

478
479 (h) Stormwater discharges from commercial, industrial or construction activities
480 to the MS4 or regulated waters.

481 (1) Stormwater from areas of any commercial activity, industrial, or
482 construction activity shall be controlled, treated and managed on-site using best
483 management practices so as not to cause an illicit or illegal discharge to the city's MS4
484 or regulated waters.

485 (2) All erosion, pollutant, and sediment controls required by city code
486 or by any applicable local, state, or federal permit, including elements of a stormwater
487 pollution prevention plan required under an NPDES permit, shall be properly
488 implemented, installed, operated, and maintained.

489 (3) Authorized discharges to the city's MS4 shall be controlled so that
490 they do not impair the operation of the city's MS4 or contribute to the failure meet any
491 applicable local, state, or federal law or regulation.

492 (4) Authorized discharges to regulated waters as defined by the Clean
493 Water Act, shall be controlled so that they do not adversely impact the quality or
494 beneficial uses of those waters, or result in violation of any applicable local, state, or
495 federal law or regulation.

496 (5) Any person who has been issued an NPDES permit authorizing
497 discharges to the city's MS4 shall submit a complete copy of the permit to the city's
498 building department within thirty (30) days after _____, 2017, (the effective date
499 of this section), or within thirty (30) days after the issuance of a permit.

500

501 (h) Authorized exemptions. The commencement, conduct, or continuance of
502 any illicit or illegal discharge to the city's MS4 is prohibited, except as described as
503 follows:

- 504
505 (1) Water line flushing;
506 (2) Flushing of reclaimed water lines;
507 (3) Street cleaning;
508 (4) Diverted stream flows;
509 (5) Rising ground waters;
510 (6) Foundation and footing drains;
511 (7) Dechlorinated swimming pool discharges;
512 (8) Uncontaminated ground water infiltration (as defined at 40 C.F.R. §

513 35.205(20));

- 514 (9) Uncontaminated pumped ground water;
515 (10) Discharges from potable water sources;
516 (11) Air conditioning condensate;
517 (12) Irrigation water, including landscaping and lawn water;
518 (13) Springs;
519 (14) Individual residential car washing;
520 (15) Flows from riparian habitat and wetlands; and
521 (16) Discharges or flows from emergency firefighting activities and
522 emergency response activities done in accordance with an adopted spill response/action
523 plan.

524
525 (i) Non-application of prohibitions. The prohibitions provided in this section
526 shall not apply to any non-stormwater discharge permitted under an NPDES permit,
527 waiver, or waste discharge order issued to the discharger and administered under the
528 authority of the Florida Department of Environmental Protection; provided, that the
529 discharger is in full compliance with all requirements of the permit, waiver, or order and
530 other applicable laws and regulations.

531
532 (j) Emergency conditions.

533
534 (1) Notwithstanding any other provisions of this section, whenever the
535 city manager, or said manager's designee, determines that conditions or activities
536 require immediate action to protect the public health, safety or welfare, or to provide for
537 compliance with these regulations, city approved construction plans, city inspectors and
538 employees are authorized to enter at a reasonable time in or upon any property for the
539 purpose of testing, inspecting, investigating, measuring, sampling and correcting such
540 emergency conditions. Failure to admit personnel responding to emergency conditions,
541 as determined and authorized by the city, shall constitute a separate violation of this
542 section.

543 (2) Suspension due to illicit discharges in emergency situations. The
544 city manager, or said manager's designee, may, without prior notice, suspend MS4
545 discharge access to a person when such suspension is necessary to stop an actual or
546 threatened discharge which presents or may present imminent and substantial danger

547 to the environment, or to the health or welfare of persons, or to the MS4. If the violator
548 fails to comply with a suspension order issued in an emergency, the city may take such
549 steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize
550 danger to persons.

551 (3) Suspension due to the detection of illicit discharge. Any person
552 discharging to the MS4 in violation of this section may have their MS4 access terminated,
553 if such termination would abate or reduce an illicit discharge. It is considered an offense
554 of this section, if the person reinstates MS4 access to premises terminated pursuant to
555 this section without the prior approval of the city.

556
557 (k) *Inspection and monitoring for compliance.* City code inspectors shall be
558 granted access for inspection of facilities discharging or suspected of discharging to the
559 city's MS4 in order to effectuate the provisions of this section and to investigate violations
560 or potential violations of any of the terms herein. All structures and processes which
561 allow discharges to the city's MS4, as well as records connecting them, shall be made
562 accessible to city code inspectors for this purpose. In the event a person who has
563 common authority over facilities regulated hereunder, shall not consent to an inspection,
564 survey and examination of said facilities or records relating to discharges into the city's
565 MS4, said person shall be given the opportunity to reschedule such inspection, survey
566 and examination for a time certain within ten (10) days of the inspector's initial contact.
567 Failure of the person exercising common authority over said facilities, or records relating
568 to discharges into the city's MS4, to thereafter consent to an inspection, survey and
569 examination of the facilities and records relating to discharges into the city's MS4, without
570 just cause, shall be sufficient grounds and probable cause for a court of competent
571 jurisdiction to issue a search warrant for the purpose of inspecting, surveying or examining
572 said facilities and records relating to discharges into the city's MS4.

573
574 **[DRAFTER'S COMMENT: This provision has been held to be constitutional in 2051**
575 **Lush Apartments, LLC, v. City of Lauderhill, ___ F.3d ___, Case No. 16-17194 (11th**
576 **Cir. opinion filed Oct. 2, 2017).**

577
578 (l) *Reporting requirements.* Illicit discharges to the city's MS4 are prohibited.
579 Any person owning or occupying a premise or facility who has knowledge of a discharge
580 of pollutants from those premises or facilities or other type of evidence which might result
581 in a violation of the prohibitions found in this section shall immediately take action to
582 abate the discharge of pollutants and shall notify the department and city code
583 enforcement department within 24 hours of the discharge of pollutants. The initial
584 notification may be by telephone, but the person responsible shall submit a written report
585 within 72 hours of discovery. The written report shall include a description of the
586 discharge volume, content, frequency, discharge point location to the MS4, measures
587 taken or to be taken to terminate the discharge, and the name, address and telephone
588 number of the person who may be contacted for additional information.

589
590 (m) *Penalty; additional remedies.* Penalties for violations of this section shall
591 be as specified in s. 162.22, Florida Statutes, section 1-14 or chapter of this code of
592 ordinances article VIII, chapter 2, or any other appropriate remedy provided by law. The

593 city may seek enforcement action against the owner or developer of record, any person
594 in actual or constructive possession, and any person or entity responsible for carrying
595 out any prohibited action. The provisions of this section are an additional and
596 supplemental means of enforcing city codes and ordinances. Nothing in this section
597 shall prohibit the city from enforcing this code by injunctive relief, or by any other means
598 provided by law.

599
600 (n) Appeals. Appeals relating to any administrative decision or determination
601 concerning implementation or application of the provisions of this section shall be filed
602 in writing within thirty (30) calendar days after the decision is rendered by the city
603 council, city manager (or said manager's designee), department director, or building
604 official, all as provided for herein. Appeal of the decision of the city manager's designee,
605 department director, or building official will be considered by the city manager. Appeal
606 of the city manager's decision will be considered by the city council.

607
608 **SECTION 6. Adoption of Code Provision.** That the Code of Ordinances, City of
609 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
610 213, which section reads as follows

611
612 **Sec. 18-213. Stormwater pollution prevention for construction.**

613
614 (a) Activities; Purpose and Intent. The purpose of this section is to provide for
615 the health, safety, and general welfare of the citizens of the city through the regulation
616 of potential pollution from construction activities. These activities would include
617 connections or areas not connected to the city's MS4 system.

618 (1) No building permit shall be issued for any building in the city, unless
619 a site plan, as provided in the land development code, is submitted with the application
620 for such building permit illustrating the location of driveways, sidewalks if required by this
621 code, parking strips consistent with this code and perimeter retaining structures or a
622 surface water management plan which provides for containment of runoff on-site with
623 surplus routed to rights-of-way or right-of-way swales for drainage as applicable.

624 (2) Site plans for construction projects in all zoning districts shall be
625 reviewed and administratively approved by staff for on-site erosion control per applicable
626 code provisions outlined herein. Appropriate erosion control devices must be planned,
627 implemented, and maintained in accordance with the best management practices (BMPs)
628 described in the Florida Department of Environmental Protection's *Erosion & Sediment*
629 *Control Designer & Reviewer Manual*, most current edition, and required as part of any
630 permit review, approval, and compliance. If approved BMPs are not working properly, it
631 is the responsibility of the developer or contractor to utilize new BMP methods as
632 necessary to provide erosion and sediment control.

633
634 (b) Erosion and sediment control. Construction activity can result in the
635 generation of significant amounts of pollutants which may reach surface or ground
636 waters. One of the primary pollutants of surface waters is sediment due to erosion.
637 Excessive quantities of sediment which reach water bodies of floodplains have been
638 shown to adversely affect their physical, biological, and chemical properties.

639 Transported sediment can obstruct stream channels, reduce the hydraulic capacity of
640 water bodies of floodplains, reduce the design capacity of culverts and other works, and
641 eliminate benthic invertebrates and fish spawning substrates by siltation. Excessive
642 suspended sediments reduce light penetration and, therefore, reduce primary
643 productivity. Therefore, the minimum standards set forth in sub-section (c) below shall
644 apply to any construction activity within the city.

645
646 (c) *Minimum standards.* The minimum standards referenced in sub-section
647 (b) include:

648 (1) Sediment basins and traps, perimeter dikes, sediment barriers and
649 other measures intended to trap sediment shall be constructed as a first step in any
650 land-disturbing activity and shall be made functional before upslope land disturbance
651 takes place;

652 (2) All sediment control measures are to be adjusted to meet field
653 conditions at the time of construction and be constructed prior to any grading or
654 disturbance of existing surface material on the balance of site. Perimeter sediment
655 barriers shall be constructed to prevent sediment or trash from flowing or floating on to
656 adjacent properties;

657 (3) Permanent or temporary soil stabilization shall be applied to
658 denuded areas within seven (7) days after final grade is reached on any portion of the
659 site. Where practicable, temporary soil stabilization shall be applied within seven (7)
660 days to denuded areas that may not be at final grade but will remain undisturbed for
661 longer than thirty (30) days. Permanent stabilization shall be applied to areas that are to
662 be left undisturbed for more than 90 days;

663 (4) During construction of a project, soil stock piles shall be stabilized
664 or protected with sediment trapping measures. The developer is responsible for the
665 temporary protection and permanent stabilization of all soil stockpiles on site as well as
666 soil intentionally transported from the project site;

667 (5) A permanent vegetative cover shall be established on denuded
668 areas not otherwise permanently stabilized. Permanent vegetation shall not be
669 considered established until a ground cover is achieved that, in the opinion of the city's
670 reviewer, is uniform, and mature enough to survive and will inhibit erosion;

671 (6) Stabilization measures shall be applied to earthen structures, such
672 as dams, dikes and diversions immediately after installation;

673 (7) After any significant rainfall, sediment control structures will be
674 inspected for integrity. Any damaged devices shall be corrected immediately;

675 (8) Concentrated runoff shall not flow down, cut, or fill slopes, unless
676 contained within an adequate temporary or permanent channel, flume or slope drain
677 structure;

678 (9) Whenever water seeps from a slope face, adequate drainage or
679 other protection shall be provided;

680 (10) Sediment will be prevented from entering any storm drain system,
681 ditch, or channel. All storm sewer inlets that are made operable during construction shall
682 be protected so that sediment-laden water cannot enter the conveyance system without
683 first being filtered, or otherwise treated, to remove sediment;

684 (11) Before temporary or newly constructed stormwater conveyance
685 channels are made operational, adequate outlet protection, and any required temporary
686 or permanent channel lining, shall be installed in both the conveyance channel and
687 receiving channel;

688 (12) When work in a live watercourse is performed, precautions shall be
689 taken to minimize encroachment, control sediment transport and stabilize the work area
690 to the greatest extent possible during construction. Non-erodible material shall be used
691 for the construction of causeways and cofferdams. Earthen fill may be used for these
692 structures if armored by non- erodible cover materials;

693 (13) When a live watercourse must be crossed by construction vehicles,
694 a temporary stream crossing constructed of non-erodible material shall be provided;

695 (14) The bed and banks of a watercourse shall be stabilized immediately
696 after work in the watercourse is completed;

697 (15) Periodic inspection and maintenance of all sediment control
698 structures must be provided to ensure the intended purpose is accomplished. The
699 developer shall be continually responsible for all sediment leaving the property.
700 Sediment control measures shall be in working condition at the end of each working day;

701 (16) Underground utility lines shall be installed in accordance with the
702 following standards in addition to other applicable criteria:

703 (A) No more than 500 linear feet of trench may be opened at one
704 time;

705 (B) Excavated material shall be placed on the uphill side of
706 trenches;

707 (C) Effluent from dewatering operations shall be filtered or
708 passed through an approved sediment trapping device, or both, and discharged in a
709 manner that does not adversely affect flowing streams or off-site property; and

710 (D) Re-stabilization shall be accomplished in accordance with
711 these regulations;

712 (17) Where construction vehicle access routes intersect paved public
713 roads, provisions shall be made to minimize the transport of sediment by tracking onto
714 the paved surface. Where sediment is transported onto a public road surface with curbs
715 and gutters, the road shall be cleaned thoroughly at the end of each work day. Sediment
716 shall be removed from the roads by shoveling or sweeping and transported to a sediment
717 control disposal area. Street washing shall be allowed only after sediment is removed
718 in this manner. This provision shall apply to individual subdivision lots as well as to
719 larger land-disturbing activities;

720 (18) All temporary erosion and sediment control measures shall be
721 removed within thirty (30) days after final site stabilization or after the temporary
722 measures are no longer needed, in the opinion of the city's reviewer. Disturbed soil
723 areas resulting from the disposition of temporary measures shall be permanently
724 stabilized to prevent further erosion and sedimentation;

725 (19) Properties and waterways downstream from construction sites shall
726 be protected from sediment deposition and erosion;

727 (20) Phased projects should be cleared in conjunction with construction
728 of each phase;

729 (21) The city permit reviewer may approve modifications or alternate
730 plans to these erosion control criteria due to site specific conditions.

731
732 (d) Development of an erosion and sediment control plan. An erosion and
733 sediment control plan must be submitted as part of the building permit application that
734 include land disturbing activities. This plan and its implementation is a way of providing
735 reasonable assurance that water quality standards will not be violated during the
736 construction phase of a project. The plan must identify the location, relative timing, and
737 specifications for all erosion and sediment control and stabilization measures that will be
738 implemented as part of the project's construction. This plan can be prepared on a site
739 plan/plot plan depicting the improvements proposed. The plan must illustrate methods
740 that would provide reasonable assurances that no offsite discharges of pollutants will be
741 allowed. Said plan shall be prepared by a Florida licensed Professional Engineer. The
742 preparer will certify the plans to and for reliance by the city with the submittal that they
743 are familiar with Florida stormwater best management practices, and that the proposed
744 plan meets or exceeds those criteria.

745
746 (e) Development of a Stormwater Pollution Prevention Plan (SWPPP) for
747 NPDES Requirements. Applicants are advised that preparation and adherence to a SW
748 PPP is required where the permitted activity also requires an NPDES construction permit
749 pursuant to subsection 62-621.300(4), Florida Administrative Code. Namely, those
750 construction activities resulting in greater than one acre of soil disturbance discharging to
751 waters of the state or a permitted MS4 must also apply for and receive coverage from
752 Florida Department of Environmental Protection under Florida's NPDES Generic Permit for
753 Stormwater Discharge from Large and Small Construction Activities (CGP) before
754 disturbing the soil.

755
756 **SECTION 7. Adoption of Code Provision.** That the Code of Ordinances, City of
757 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
758 214, which section reads as follows

759
760 **Sec. 18-214. Maintenance of stormwater management systems.**

761
762 Proper maintenance of a stormwater management system shall include at a minimum
763 the following items:

764 (1) Retention/detention system or pond side slopes shall be vegetated or other
765 approved methods for erosion control;

766 (2) Retention/detention system storage volume and geometry shall be
767 maintained to the dimensions shown on the approved plans;

768 (3) Littoral zone coverage with wetland plants shall be maintained to South
769 Florida Water Management District standards;

770 (4) Vegetation shall be mowed frequently enough to provide easy access to
771 the ponds for inspections and maintenance;

772 (5) Weirs and orifices shall be kept clear of debris to allow their proper
773 functioning;

774 (6) Skimmer blades shall be maintained to minimize floating debris and oils
775 from leaving the ponds and allow unrestricted flow through the control structure;

776 (7) The dimensions and elevations of control structures shall be preserved;

777 (8) Underdrains shall be properly functioning;

778 (9) Channel dimensions and geometry shall be maintained to approved
779 designs;

780 (10) Vegetation in dry ponds and channels shall be kept to a minimum to
781 maintain flow and storage capacities; and.

782 (11) Underground stormwater management systems (exfiltration systems,
783 underdrains, and similar types of structures and systems) shall be maintained and kept
784 clear of debris to allow for their proper functioning, as designed. If stormwater
785 management system effluent degradation is identified, effluent testing can be directed
786 by city department or environmental staff.

787
788 **SECTION 8. Adoption of Code Provision.** That the Code of Ordinances, City of
789 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
790 215, which section reads as follows

791
792 **Sec. 18-215. Stormwater treatment for land development activities.**

793
794 (a) Purpose and Intent. The purpose of this section is to provide for the
795 health, safety, and general welfare of the citizens of the city through the regulation of
796 potential pollution from stormwater sources and provides for minimum stormwater
797 treatment standards. For construction activities that fall below the permitting thresholds
798 of the South Florida Water Management District, such as the construction (or
799 redevelopment) of single family residences, the following minimum stormwater treatment
800 criteria is required:

801
802 (b) Retention / Detention Criteria. Volumetric Requirements:
803 Retention, detention both retention and detention in the overall system, including swales,
804 lakes, canals, greenways, etc., shall be provided for one of the three following criteria or
805 equivalent combinations thereof:

806 (1) Wet detention volume shall be provided for the first inch of runoff from the
807 developed project, or the total runoff of 2.5 inches times the percentage of
808 imperviousness, whichever is greater.

809 (2) Dry detention volume shall be provided equal to 75 percent of the above
810 amounts computed for wet detention.

811 (3) Retention volume shall be provided equal to 50 percent of the amounts
812 computed for wet detention. Retention volume included in flood protection
813 calculations requires a guarantee of the long-term operation and maintenance
814 of system bleed-down ability.

815
816 The submitted site plan will provide the city plan reviewer assurance that the stormwater
817 runoff is directed to the proposed retention areas. An example would be, retention areas

818 proposed in the rear and front lots, the site will be graded so that runoff sources will be
819 routed to the proposed retention area(s) in a manner that runoff from the site will be
820 directed to these retention areas preventing offsite untreated discharge as much as
821 practicable.

822

823 Retention volume calculations and the site plan for a single-family residence shall be
824 prepared by a Florida licensed Professional Engineer. The preparer will certify the
825 retention volume calculations and plans to and for reliance by the city with the submittal
826 that they are familiar with the required stormwater treatment volume calculations and that
827 the site plan and calculations meet or exceed these standards.

828

829 Completed retention areas shall be shown on the final record and "as-built" survey by a
830 Florida Professional Surveyor and Mapper/ Florida Professional Land Surveyor. The
831 survey shall be certified to and for reliance by the city and shall show at a minimum the
832 retention areas delineated on the survey with elevations, and dimensions as constructed,
833 showing conformance to the approved and permitted design. The final survey shall be
834 completed after final sodding or approved stabilization is completed.

835

836 **SECTION 9. Codification.** It is the intention of the City Council, and it is hereby
837 ordained that the amendments in Sections 2. through 8. of this Ordinance made to the
838 City of Marco Island Code of Ordinances shall constitute a new Article VIII to Chapter 18
839 of the City of Marco Island Code of Ordinances, and that the sections of this Ordinance
840 may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be
841 changed to "Section, "Article" or other appropriate word. Sections 1., 9. Through 11. shall
842 not be codified. The City Clerk is directed to insert the effective date of this Ordinance in
843 the appropriate blank set forth in Section 18-212(f)(2) and (h)(5) in this Ordinance.

844

845 **SECTION 10. Severability/Interpretation.**

846

847 (a) If any term, section, clause, sentence or phrase of this Ordinance is for any
848 reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction,
849 the holding shall not affect the validity of the other or remaining terms, sections, clauses,
850 sentences, or phrases portions of this Ordinance, and this Ordinance shall be read and/or
851 applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or
852 section did not exist.

853

854 (b) In interpreting this Ordinance, underlined words indicate additions to
855 existing text, and ~~stricken-through~~ words include deletions from existing text. Asterisks (*
856 * * *) indicate a deletion from the Ordinance of text, which continues to exist in the Code
857 of Ordinances. It is intended that the text in the Code of Ordinances denoted by the
858 asterisks and not set forth in this Ordinance shall remain unchanged from the language
859 existing prior to adoption of this Ordinance.

860

861 (c) The Drafter's Comments in Section 5. shall not be codified.

862

863 **SECTION 11. Effective Date.** This Ordinance shall become effective immediately
864 upon its adoption by the City Council.

865
866 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this ____
867 day of _____, 2017.

868
869

870 **ATTEST:**

CITY OF MARCO ISLAND, FLORIDA

871

872 _____
873 Laura M. Litzan, City Clerk

By: _____
Larry Honig, Chairman

874

875

876 Approved as to form and legal sufficiency:

877

878

879 _____
880 Alan L. Gabriel, City Attorney

881