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ORDINANCE 187-

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO STORMWATER MANAGEMENT; MAKING FINDINGS; AMENDING CHAPTER 18, ENTITLED "ENVIRONMENT", ESTABLISHING ARTICLE VIII, ENTITLED "STORMWATER REGULATIONS" BY ADDING NEW SECTIONS 18-210 THROUGH 18-215, INCLUSIVE; PROVIDING A SHORT TITLE AND DEFINITIONS; PROHIBITING ILLICIT DISCHARGES; PROVIDING STORMWATER POLLUTION PREVENTION STANDARDS DURING CONSTRUCTION; PROVIDING FOR THE MAINTENANCE OF STORMWATER MANAGEMENT SYSTEMS; PROVIDING FOR STORMWATER TREATMENT FOR LAND DEVELOPMENT ACTIVITIES; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

[DRAFTER'S COMMENT: The term *illicit discharge* is defined pursuant to National Pollutant Discharge Elimination System (NPDES) regulations for Municipal Separate Storm Sewers. See 40 CFR 122.26(b)(2). The Florida Department of Environmental Protection (FDEP) is authorized to establish and administer the state NPDES Program for municipal storm sewer systems under section 403.0885, Florida Statutes. The term is also defined in the FDEP's regulations for Municipal Separate Storm Sewer Systems. See Fla. Admin Code r. 62-624.200(2)]

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

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

WHEREAS, the Marco Island City Council implemented a Phase II Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit effective March 19th, 2015, which ~~mandates the prohibition of restricts~~ illicit discharges into the storm sewer system, requires erosion and sediment control measures, requires construction sites to operate with proper best management practices (BMP) and to minimize the negative environmental effects these discharges have in and

45 on the waterbodies within and around the City of Marco Island, which degrade the quality
46 of life, and jeopardize the health, safety, and welfare of the citizens of Marco Island; and

47
48 **WHEREAS**, there is a need to adopt specific standards and details to guide the
49 development community to ensure the proper design and installation of stormwater
50 facilities, grading techniques, and development practices to ensure that the applicable
51 provisions of the current Marco Island Code of Ordinances and goals of this Ordinance
52 are met; and

53
54 **WHEREAS**, the City of Marco Island will now identify the South Florida Water
55 Management District (SFWMD) criteria as the recommended level of service goal for
56 meeting water quality standards in the City of Marco Island; and

57
58 **WHEREAS**, there is a need to control stormwater from new developments,
59 redevelopments, and substantial improvements which prevent adjacent and downstream
60 property from experiencing erosion, surface flooding, or groundwater seepage; and
61 ensure a reasonable level of water quality treatment of stormwater prior to discharge to
62 downstream stormwater management systems; and

63
64 **WHEREAS**, to provide reasonable flexibility and incentive based options so that
65 the development community can be innovative in meeting goals, the City requires the use
66 of the latest Best Management Practices (“BMP”) and encourages Low Impact
67 Development (“LID”) approaches as defined by the State of Florida to provide reasonable
68 flexibility and incentive based options so that the development community can be
69 innovative in meeting the requirements; and

70
71 **WHEREAS**, site plan review of all new development and redevelopment and
72 specific stormwater standards for conveyance and water quality has been mandated as
73 being in the best interest of the public for protection of public facilities and private property;
74 and

75
76 **WHEREAS**, Goal 1 of the Infrastructure Element; Stormwater Management Sub-
77 Element provides:

78
79 GOAL 1: TO PROTECT THE HEALTH AND SAFETY OF THE
80 PUBLIC BY ENSURING STORMWATER MANAGEMENT
81 FACILITIES ARE PROPERLY MAINTAIN [sic],
82 ENVIRONMENTALLY SOUND, COST EFFECTIVE, AND
83 MEET THE COMMUNITY’S PRESENT AND FUTURE
84 DEMANDS; and.

85
86 **WHEREAS**, this Ordinance is consistent with Goal 1 of the Infrastructure Element;
87 Stormwater Management Sub-Element, because this Ordinance provides for a
88 reasonable and cost-effective process for creation and maintenance of stormwater

89 systems to treat discharges and to eliminate illicit discharges into the City's MS4
90 stormwater system; and

91
92 **WHEREAS**, Policy 1.1.3 of the Infrastructure Element, Stormwater Management
93 Sub-Element provides:

94
95 Water quality for development runoff from existing sites
96 proposed for redevelopment or expansion shall, to the
97 greatest degree practical, comply with the more stringent
98 permitting standards and policies of either the South Florida
99 Water Management District and [sic] the City of Marco Island.
100 All new developments shall comply fully with permitting
101 standards and policies of the South Florida Water
102 Management District, per F.A.C. Chapter 40E-41 (Surface
103 Water Management, Basin and Related Criteria) or and [sic]
104 the City of Marco Island. All new development shall comply
105 fully with the more stringent permitting standards and policies
106 of either the South Florida Water Management District, per
107 F.A.C. Chapter 40E-41, or the City of Marco Island; and
108

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

113
114 **WHEREAS**, Objective 1.2 of the Infrastructure Element; Stormwater Management
115 Sub-Element provides:

116
117 To limit public expenditures for stormwater facilities that
118 would have the effect of directly subsidizing private
119 development; and
120

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

125
126 **WHEREAS**, Policy 1.2.1 of the Infrastructure Element; Stormwater Management
127 Sub-Element provides:

128
129 The City shall limit its funding of public stormwater facility
130 expansion if such funding and such expansion would have the
131 effect of directly subsidizing a specific private development in
132 the City; and
133

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

138
139 **WHEREAS**, Objective 1.4 of the Infrastructure Element; Stormwater Management
140 Sub-Element provides:

141 The City will implement a proactive maintenance program to
142 ensure that all current and future stormwater management
143 facilities operate at designed capacity; and
144

145
146 **WHEREAS**, this Ordinance is consistent with Objective 1.4 of the Infrastructure
147 Element; Stormwater Management Sub-Element, because this Ordinance provides for
148 construction site inspection of private stormwater systems to assure that the systems
149 meet promulgated standards; and

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

151 The City will implement proactive maintenance programs to
152 ensure that all roadways, potable water, sanitary sewer,
153 community parks, and storm water systems continue to
154 function at *or above* adopted LOS standards; and
155

156
157 (emphasis supplied);

158
159 **WHEREAS**, this Ordinance will provide stormwater system protection at greater
160 than the adopted Level of Service, and this Ordinance is therefore consistent with the
161 Comprehensive Plan; and

162
163 **WHEREAS**, this Ordinance is consistent with Policy 1.2.4 of the Capital
164 Improvements Element, because this Ordinance provides for design standards for
165 stormwater discharge into the City's MS4 stormwater system; and
166

167
168 **WHEREAS**, the Level of Service ("LOS") standards adopted in the Capital
169 Improvements Element provide:

170 (4) Storm water drainage. The LOS design standard for new
171 stormwater management facilities will be the ten-year, one-
172 hour storm event, with a 3.3 inches/hour intensity duration;
173 and
174

175
176 **WHEREAS**, this Ordinance provides for stormwater systems on private property
177 that will provide greater stormwater protection than is currently required by the
178 Comprehensive Plan, and this Ordinance is therefore consistent with the adopted level of

For Second Reading

Redlined (2.26.18)

179 service standards for stormwater systems set by the Capital Improvements Element (see
180 Capital Improvements Element Policy 1.2.4 above); and

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

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

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

190 **SECTION 1. Recitals.** Each and all of the foregoing recitals ("WHEREAS"
191 CLAUSES) be and the same are hereby incorporated in this Ordinance as if specifically set
192 forth herein.

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

200 **Sec. 18-201 – 18-209. - Reserved.**

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

204 **ARTICLE VIII. – STORMWATER REGULATIONS**

205 **Sec. 18-210. - Short title.**

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

207 **SECTION 4. Adoption of Code Provision.** That the Code of Ordinances, City of
208 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
209 211, which section reads as follows

210 **Sec. 18-211. - Definitions.**

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:

224 Best management practices or BMPs means schedules of activities, prohibitions
225 of practices, general good housekeeping practices, pollution prevention and educational
226 practices, maintenance procedures, and other management practices, to prevent or
227 reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters,
228 or stormwater conveyance systems. BMPs also include treatment practices, operating
229 procedures, and practices to control erosion, site runoff, spillage or leaks, sludge or
230 water disposal, or drainage from raw materials storage. BMPs include but are not limited
231 to geosynthetic barriers, temporary or permanent vegetation, sediment traps, silt
232 fences, turbidity barriers, or inlet protection measures.

233
234 Clean Water Act or CWA means the federal Water Pollution Control Act (33
235 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

236
237 Construction activity means any on-site activity, which will result in the creation
238 of a new stormwater discharge, including the building, assembling, expansion,
239 modification or alteration of the existing contours of the site, the erection of buildings or
240 other structures, or any part thereof, or land clearing.

241
242 Department means the city's public works department.

243
244 Design storm means a selected rainfall pattern of specified amount, intensity,
245 duration, and frequency, that is used as a basis for design.

246
247 Detention means the collection and temporary storage of stormwater with
248 subsequent release, at a specified rate, into a downstream system.

249
250 Developer means and includes one who develops a parcel of land, an applicant
251 for a city permit to develop a parcel of land, a property owner, and a contractor on a parcel
252 of land.

253
254 Development shall be as defined in s. 163.3164, Florida Statutes.

255
256 Emergency means , as provided in section 10-1 of this Code, any occurrence, or
257 threat thereof, whether natural, technological, or manmade, in war or in peace, which
258 results or may result in substantial injury or harm to the population or substantial damage
259 to or loss of property.

260
261
262 Engineer means a Professional Engineer registered in the state, or other person
263 exempted pursuant to the provisions of chapter 471, Florida Statutes.

264
265 Erosion is the action of surface processes such as water flow or wind that remove
266 soil, rock, or dissolved material from one location, then transport it away to another
267 location.

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

271
272 Filtration means the selective removal of suspended matter from stormwater by
273 passing the water through at least two (2) feet of suitable fine textured granular media
274 such as porous soil, uniformly graded sand and gravel, or other natural or artificial
275 aggregate, which may be used in conjunction with filter fabric and underdrain pipe.

276
277 Hazardous substances mean any material, including any substance, waste, or
278 combination thereof, which because of its quantity, concentration, or physical, chemical,
279 or infectious characteristics, may cause, or significantly contribute to, a substantial
280 present or potential hazard to human health, safety, property, or the environment, when
281 improperly treated, stored, transported, disposed of, or otherwise managed.

282
283 Illicit connection means either of the following: 1) any drain or conveyance,
284 whether on the surface or subsurface, which allows an illegal or discharge to enter the
285 MS4 including but not limited to any conveyances that allow any non-storm water
286 discharge, including sewage, process wastewater, and wash water to enter the storm
287 drain system and any connections to the MS4 from indoor drains and sinks, regardless
288 of whether said drain or connection had been previously allowed, permitted, or approved
289 by the department; or 2) any drain or conveyance connected from a commercial or
290 industrial land use to the MS4 which has not been documented in plans, maps, or
291 equivalent records and approved by the department.

292
293 Illicit discharge or illegal discharge or illegal dumping means any discharge to the
294 city's MS4 which is not composed entirely of stormwater, unless exempted pursuant to
295 this article, or the discharge to the city's MS4 which is not in compliance with federal,
296 state or local permits.

297
298 Industrial activities mean activities at facilities identified by the United States
299 Environmental Protection Agency as requiring an NPDES stormwater permit in
300 accordance with 40 CFR §122.26(b)(14) or amendments thereto, or any unit operation,
301 complex, area, or multiple of unit operations, that produce, generate, handle, process,
302 or cause to be processed, any materials which may cause water pollution.

303
304 Impervious means land surfaces which do not allow, or minimally allow, the
305 penetration of water; included as examples are building roofs, normal concrete, paver
306 driveways, paver sidewalks, and asphalt pavements and some fine-grained soils such
307 as clays.

308
309 Maintenance means routine custodial maintenance needed to ensure the
310 functioning of a stormwater management system to meet original design criteria.

311
312 Municipal separate storm sewer system or MS4 means a conveyance, storage
313 area or system of conveyances and storage areas (including, but not limited to, roads

314 with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade
315 channels, storm drains, treatment ponds, and other structural BMPs) owned and
316 operated by a local government that discharge to waters of the United States or to other
317 MS4s, that are designed solely for collecting, treating or conveying stormwater, and that
318 are not part of publicly owned treatment works (POTW) as defined by 40 CFR §122.2 or
319 any amendments thereto.

320
321 *National Pollutant Discharge Elimination System (NPDES) stormwater discharge*
322 *permit* means a permit issued by the Florida Department of Environmental Protection
323 (FDEP) that authorizes the discharges of pollutants to waters of the United States.

324
325 *Non-stormwater discharge* means any discharge to the storm drain system that
326 is not composed entirely of stormwater.

327
328 *Person* means an individual, corporation, limited liability company, governmental
329 agency, business trust, estate, trust, partnership, association, two or more persons
330 having a joint or common interest, or any other legal entity.

331
332 *Pollutant* means anything that causes or contributes to pollution. Pollutants may
333 include, but are not limited to paints, varnishes, and solvents; oil and other automotive
334 fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage,
335 litter, or other discarded or abandoned objects, and accumulations, so that the same
336 may cause or contribute to pollution; floatables; pesticides; herbicides; fertilizers;
337 hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved
338 and particulate metals; animal wastes; wastes and residues that result from constructing
339 a building or structure; and noxious or offensive matter of any kind.

340
341 *Project site* means the area being modified or altered in conjunction with a
342 proposed activity.

343
344 *Receiving waters or receiving channel* means any water bodies, watercourses
345 and wetlands into which surface waters flow.

346
347 *Rendered or Rendition* means the issuance of a written order, including approval,
348 approval with conditions, or denial of a determination by the city council, the department
349 director, the city manager (or said manager's designee), or other administrative official,
350 effective upon the date of signing by the authorized city official of such order or final letter
351 of determination and its filing in the records of the city council or said department director,
352 city manager (or said manager's designee), or other administrative official.

353
354 *Retention* means the prevention of discharge of a given volume of stormwater
355 runoff by complete on-site storage with subsequent release through accepted water
356 treatment facilities or underdrains.

357

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

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

362
363 Short-circuiting means flow characteristics of a detention pond in which a direct
364 flow path exists between the inflow and outflow points, thus diminishing the velocity
365 reduction and settling capability of the pond.

366
367 Solid waste means unregulated under the federal Clean Water Act, sludge from a
368 waste treatment works, water supply treatment plant, or air pollution control facility, or
369 garbage, rubbish, refuse, special waste, or other discarded material, including solid,
370 liquid, semisolid, or contained gaseous material resulting from domestic, industrial,
371 commercial, mining, agricultural, or governmental operations.

372
373 Special waste means solid wastes that can require special handling and
374 management, including, but not limited to, white goods, waste tires, used oil, lead-acid
375 batteries, construction and demolition debris, ash residue, yard trash, and biological
376 wastes.

377
378 Storm sewer system means a stormwater collection and transmission system
379 consisting primarily of inlets and storm sewers.

380
381 Stormwater means any surface flow, runoff, and drainage consisting entirely of
382 water from any form of natural precipitation and resulting from such precipitation.

383
384 Stormwater management system means the designed features of the property
385 which collect, convey, channel, hold, inhibit, or divert, the movement of stormwater.

386
387 SFWMD means the Big Cypress Basin South Florida Water Management District.

388
389 Swale means excavated areas that can be either used for water conveyance
390 retention or any combination of the two. A roadway swale means a depression along a
391 roadway used to retain and/or convey the movement of surface water runoff. The
392 roadway swale is generally the area between the edge of the pavement of a roadway and
393 the sidewalk or Right-of-Way limit.~~a man-made trench that:~~

394 ~~Has a top width to depth ratio of the cross-section equal to or greater than 6:1, or~~
395 ~~side slopes equal to or greater than three feet horizontal to one foot vertical;~~

396 ~~Contains contiguous areas of standing or flowing water only following a rainfall~~
397 ~~event;~~

398 ~~Is planted with or has stabilized vegetation suitable for soil stabilization, stormwater~~
399 ~~treatment, and nutrient uptake; and~~

400 ~~Is designed to take into account the soil erodibility, soil percolation, slope, slope~~
401 ~~length, and drainage area so as to prevent erosion and reduce pollutant concentration of~~
402 ~~any discharge. [Section 403.803(14), F.S.]~~

403
404 Temporary soil stabilization means the use of seeding, mulching, netting,
405 blankets, or other approved methods, to prevent erosion during construction activities.

406
407 Underdrain means a system of pipes, gravel, sand, and filter cloth used to recover
408 retention volumes from stormwater ponds or lower the water table under roads or
409 stormwater ponds.

410
411 Waters or water body means any natural or artificial pond, lake, reservoir, or other
412 area, which ordinarily or intermittently contains water, and which has a discernible
413 shoreline.

414
415 Watercourse means any natural or artificial stream, creek, channel, ditch, canal,
416 waterway, gully, ravine, or wash, in which water flows in a definite direction, either
417 continuously or intermittently, and which has a definite channel, bed or banks.

418
419 **SECTION 5. Adoption of Code Provision.** That the Code of Ordinances, City of
420 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
421 212, which section reads as follows

422
423 **Sec. 18-212. Illicit discharges.**

424
425 (a) Purpose and intent. The purpose of this section is to provide for the health,
426 safety, and general welfare of the citizens of the city through the regulation of non-
427 stormwater discharges to the city's municipal separate storm sewer system (MS4) to the
428 maximum extent practicable. This section establishes methods for controlling the
429 introduction of pollutants into the city's MS4 within the requirements of the National
430 Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this
431 section are:

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

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

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

437
438 (b) Applicability. This section shall apply to the entire city's MS4, unless
439 explicitly exempted by the city in writing.

440
441 (c) Ultimate responsibility. The standards set forth herein, and promulgated
442 pursuant to this section, are minimum standards. This section does not intend or imply
443 that compliance by any person will ensure there will be no contamination, pollution, nor
444 unauthorized discharge of pollutants.

445
446 (d) Control of pollutant contributions from interconnected MS4s.
447 Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that

448 they do not impair the operation of the receiving MS4 or contribute to the failure of the
449 receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners
450 of sections of an interconnected MS4 shall be responsible for the quality of stormwater
451 within their portion of the system and shall coordinate with the owners of the downstream
452 segments.

453 (e) Prohibitions; Illicit/illegal discharges and illegal dumping.

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

- 459 (i) Petroleum products, including, but not limited to oil, gasoline,
460 grease;
461 (ii) Solid waste;
462 (iii) Paints;
463 (iv) Steam cleaning waste;
464 (v) Pesticides, herbicides or fertilizers, or as regulated by
465 existing ordinance;
466 (vi) Degreasers, solvents;
467 (vii) Sanitary sewage;
468 (viii) Chemically treated cooling water;
469 (ix) Antifreeze and other automotive products;
470 (x) Lawn clippings, leaves, branches, or yard trash;
471 (xi) Animal carcasses;
472 (xii) Recreational vehicle waters;
473 (xiii) Dyes;
474 (xiv) Construction materials and waste;
475 (xv) Any liquids in quantity or quality that are capable of causing
476 a violation of the city's NPDES stormwater permit; and
477 (xvi) Solids in such quantities or of such size capable of causing
478 interference or obstruction to the flow of the city's MS4.

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

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

483 (f) Prohibitions; Illicit connections.

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

487 (2) This subsection is ~~retroactive~~ effective upon adoption of the
488 Ordinance and applies to illicit connections made prior to _____, 2018~~7~~, (the effective

493 date of this Ordinance ~~code~~) regardless of whether made under a permit or other
494 authorization, or whether permissible under laws or practices applicable or prevailing at
495 the time the connection was made.

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

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

504 (h) Stormwater discharges from commercial, industrial or construction activities
505 to the MS4 or regulated waters.

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

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

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

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

521 (5) Any person who has been issued an NPDES permit authorizing
522 discharges to the city's MS4 shall submit a complete copy of the permit to the city's
523 building department within thirty (30) days after _____, 2018~~7~~, (the effective date
524 of this Ordinance~~section~~), or within thirty (30) days after the issuance of a permit.

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

530 (1) Water line flushing;

531 (2) Flushing of reclaimed water lines;

532 (3) Street cleaning;

533 (4) Diverted stream flows;

534 (5) Rising ground waters;

535 (6) Foundation and footing drains;

536 (7) Dechlorinated swimming pool discharges;

- 537 (8) Uncontaminated ground water infiltration (as defined at 40 C.F.R.
- 538 §35.205(20));
- 539 (9) Uncontaminated pumped ground water;
- 540 (10) Discharges from potable water sources;
- 541 (11) Air conditioning condensate;
- 542 (12) Irrigation water, including landscaping and lawn water;
- 543 (13) Springs;
- 544 (14) Individual residential car washing;
- 545 (15) Flows from riparian habitat and wetlands; and
- 546 (16) Discharges or flows from emergency firefighting activities and
- 547 emergency response activities done in accordance with an adopted
- 548 spill response/action plan.

549
550 (i) Non-application of prohibitions. The prohibitions provided in this section
551 shall not apply to any non-stormwater discharge permitted under an NPDES permit,
552 waiver, or waste discharge order issued to the discharger and administered under the
553 authority of the Florida Department of Environmental Protection; provided, that the
554 discharger is in full compliance with all requirements of the permit, waiver, or order and
555 other applicable laws and regulations.

556
557 (j) Emergency conditions.

558
559 (1) Notwithstanding any other provisions of this section, whenever the
560 city manager, or said manager's designee, or as otherwise provided pursuant to
561 section 10-3 of the Marco Island Code of Ordinances, is code, determines that
562 emergency conditions or activities require immediate action to protect the public health,
563 safety or welfare, or to provide for compliance with these regulations, city approved
564 construction plans, city inspectors and employees are authorized to enter at a
565 reasonable time in or upon any property, consistent with subsection (k) of this provision,
566 for the purpose of testing, inspecting, investigating, measuring, sampling and correcting
567 such emergency conditions. Failure to admit personnel responding to emergency
568 conditions, as determined and authorized by the city, shall constitute a separate violation
569 of this section.

570 (2) Suspension due to illicit discharges in emergency situations
571 conditions. The city manager, or said manager's designee, may, without prior notice,
572 suspend MS4 discharge access to a person when such suspension is necessary to stop
573 an actual or threatened discharge, which presents or may present imminent and
574 substantial danger to the environment, or to the health or welfare of persons, or to the
575 MS4. If the violator fails to comply with a suspension order issued in an emergency, the
576 city may take such steps as deemed necessary to prevent or minimize damage to the
577 MS4 or to minimize danger to persons.

578 (3) Suspension due to the detection of illicit discharge. Any person
579 discharging to the MS4 in violation of this section may have their MS4 access terminated,
580 if such termination would abate or reduce an illicit discharge. It is considered an offense

Commented [AMD1]: Section 10-3 outlines the authority to declare a local state of emergency. Section 10-3 sets the priority of who can issue an emergency declaration as follows: 1) chairman, 2) vice-chair, then 3) city manager.

581 of this section, if the person reinstates MS4 access to premises terminated pursuant to
582 this section without the prior approval of the city.

583
584 (k) *Inspection and monitoring for compliance.* City code inspectors may
585 request shall be granted access for inspection of facilities discharging or suspected of
586 discharging to the city's MS4 in order to effectuate the provisions of this section and to
587 investigate violations or potential violations of any of the terms herein. All structures and
588 processes, which allow discharges to the city's MS4, as well as records connecting them,
589 shall be made accessible to city code inspectors for this purpose. In the event a person
590 who has common authority over facilities regulated hereunder, shall not consent to an
591 inspection, survey and examination of said facilities or records relating to discharges into
592 the city's MS4, said person shall be given the opportunity to reschedule such inspection,
593 survey and examination for a time certain within ten (10) days of the inspector's initial
594 contact. Failure of the person exercising common authority over said facilities, or records
595 relating to discharges into the city's MS4, to thereafter consent to an inspection, survey
596 and examination of the facilities and records relating to discharges into the city's MS4,
597 without just cause, shall be sufficient grounds and probable cause for a court of competent
598 jurisdiction to issue an ~~search~~ inspection warrant pursuant to Chapter 933, Florida
599 Statutes, for the purpose of inspecting, surveying or examining said facilities and records
600 relating to discharges into the city's MS4.

601
602 **[DRAFTER'S COMMENT: This provision has been held to be constitutional in 2051**
603 **Lush Apartments, LLC, v. City of Lauderhill, ___ F.3d ___, Case No. 16-17194, 2017**
604 **WL 4350761 (11th Cir. - Oct. 2, 2017 opinion filed Oct. 2, 2017).]**

605
606 (l) *Reporting requirements.* Illicit discharges to the city's MS4 are prohibited.
607 Any person owning or occupying a premise or facility who has knowledge of a discharge
608 of pollutants from those premises or facilities or other type of evidence which might result
609 in a violation of the prohibitions found in this section shall immediately take action to
610 abate the discharge of pollutants and shall notify the department and city code
611 enforcement department within 24 hours of the discharge of pollutants. The initial
612 notification may be by telephone, but the person responsible shall submit a written report
613 within 72 hours of discovery. The written report shall include a description of the
614 discharge volume, content, frequency, discharge point location to the MS4, measures
615 taken or to be taken to terminate the discharge, and the name, address and telephone
616 number of the person who may be contacted for additional information.

617
618 (m) *Penalty; additional remedies.* Enforcement of this Stormwater Control
619 Ordinance shall be conducted pursuant to Chapter 162, Florida Statutes. Penalties for
620 violations of this Storm Water Control Ordinance section shall be as specified therein,
621 ~~s. 162.22, Florida Statutes, section 1-14 or chapter of this code of ordinances article VIII,~~
622 ~~chapter 2,~~ or any other appropriate remedy provided by law. The city may seek
623 enforcement action against the owner or developer of record, any person in actual or
624 constructive possession, and any person or entity responsible for carrying out any
625 prohibited action. The provisions of this section are an additional and supplemental

626 means of enforcing city codes and ordinances. Nothing in this section shall prohibit the
627 city from enforcing this code by injunctive relief, or by any other means provided by law.

628
629 (n) Appeals. Appeals relating to any administrative decision or determination
630 concerning implementation or application of the provisions of this section shall be filed
631 in writing within thirty (30) calendar days after the decision is rendered by the city
632 council, city manager (or said manager's designee), department director, or building
633 official, all as provided for herein. Appeal of the decision of the city manager's designee,
634 department director, or building official will be considered by the city manager. Appeal
635 of the city manager's decision will be considered by the city council.

636
637 (o) Injunctive and other relief. City Council, through the City Attorney, may file
638 a petition in the name of the City in the Circuit Court of the County or such other courts
639 as may have jurisdiction seeking the issuance of an injunction, damages, or other
640 appropriate relief to enforce the provisions of this Stormwater Control Ordinance or other
641 applicable law or regulation. Suit may be brought to recover any and all damages suffered
642 by the City as a result of any action or inaction of any person who causes or suffers
643 damage to occur to the City's storm sewer system, or for any other expense,
644 loss or damage of any kind or nature suffered by the City.

645
646 **SECTION 6. Adoption of Code Provision.** That the Code of Ordinances, City of
647 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
648 213, which section reads as follows:

649
650 **Sec. 18-213. Stormwater pollution prevention for construction.**

651
652 (a) Activities; Purpose and Intent. The purpose of this section is to provide for
653 the health, safety, and general welfare of the citizens of the city through the regulation
654 of potential pollution from construction activities. These activities would include
655 connections or areas not connected to the city's MS4 system.

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

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

671
672 (b) Erosion and sediment control. Construction activity can result in the
673 generation of significant amounts of pollutants, which may reach surface or ground
674 waters. One of the primary pollutants of surface waters is sediment due to erosion.
675 Excessive quantities of sediment which reach water bodies of floodplains have been
676 shown to adversely affect their physical, biological, and chemical properties.
677 Transported sediment can obstruct stream channels, reduce the hydraulic capacity of
678 water bodies of floodplains, reduce the design capacity of culverts and other works, and
679 eliminate benthic invertebrates and fish spawning substrates by siltation. Excessive
680 suspended sediments reduce light penetration and, therefore, reduce primary
681 productivity. Therefore, the minimum standards set forth in sub-section (c) below shall
682 apply to any construction activity within the city.
683

684 (c) Minimum standards. The minimum standards referenced in sub-section

685 (b) include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

743 (B) Excavated material shall be placed on the uphill side of
744 trenches;

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

748 (D) Re-stabilization shall be accomplished in accordance with
749 these regulations;

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

758 (18) All temporary erosion and sediment control measures shall be
759 removed within thirty (30) days after final site stabilization or after the temporary
760 measures are no longer needed, in the opinion of the city's reviewer. Disturbed soil

761 areas resulting from the disposition of temporary measures shall be permanently
762 stabilized to prevent further erosion and sedimentation;

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

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

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

769
770 (d) *Development of an erosion and sediment control plan.* An erosion and
771 sediment control plan must be submitted as part of the building permit application that
772 include land disturbing activities. This plan and its implementation is a way of providing
773 reasonable assurance that water quality standards will not be violated during the
774 construction phase of a project. The plan must identify the location, relative timing, and
775 specifications for all erosion and sediment control and stabilization measures that will be
776 implemented as part of the project's construction. This plan can be prepared on a site
777 plan/plot plan depicting the improvements proposed. The plan must illustrate methods
778 that would provide reasonable assurances that no offsite discharges of pollutants will be
779 allowed. Said plan shall be prepared by a Florida licensed Professional Engineer. The
780 preparer will certify the plans to and for reliance by the city with the submittal that they
781 are familiar with Florida stormwater best management practices, and that the proposed
782 plan meets or exceeds those criteria.

783
784 (e) *Development of a Stormwater Pollution Prevention Plan (SWPPP) for*
785 NPDES Requirements. Applicants are advised that preparation and adherence to a SW
786 PPP is required where the permitted activity also requires an NPDES construction permit
787 pursuant to subsection 62-621.300(4), Florida Administrative Code. Namely, those
788 construction activities resulting in greater than one acre of soil disturbance discharging to
789 waters of the state or a permitted MS4 must also apply for and receive coverage from
790 Florida Department of Environmental Protection under Florida's NPDES Generic Permit for
791 Stormwater Discharge from Large and Small Construction Activities (CGP) before
792 disturbing the soil.

793
794 **SECTION 7. Adoption of Code Provision.** That the Code of Ordinances, City of
795 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
796 214, which section reads as follows

797
798 **Sec. 18-214. Maintenance of stormwater management systems.**

799
800 Proper maintenance of a stormwater management system shall include at a minimum
801 the following items:

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

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

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

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

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

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

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

815 (8) Underdrains shall be properly functioning;

816 (9) Channel dimensions and geometry shall be maintained to approved
817 designs;

818 (10) Vegetation in dry ponds and channels shall be kept to a minimum to
819 maintain flow and storage capacities; and,

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

825
826 **SECTION 8. Adoption of Code Provision.** That the Code of Ordinances, City of
827 Marco Island, Florida, is hereby amended by adding a new section, to be numbered 18-
828 215, which section reads as follows

829
830 **Sec. 18-215. Stormwater treatment for land development activities.**

831
832 (a) Purpose and Intent. The purpose of this section is to provide for the
833 health, safety, and general welfare of the citizens of the city through the regulation of
834 potential pollution from stormwater sources and provides for minimum stormwater
835 treatment standards. For construction activities that fall below the permitting thresholds
836 of the South Florida Water Management District, such as the construction (or
837 redevelopment) of single family residences, the following minimum stormwater treatment
838 criteria is required:

839
840 (b) Retention / Detention Criteria. Volumetric Requirements:
841 Retention, detention both retention and detention in the overall system, including swales,
842 lakes, canals, greenways, etc., shall be provided for one of the three following criteria or
843 equivalent combinations thereof:

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

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

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

853
854 The submitted site plan will provide the city plan reviewer assurance that the stormwater
855 runoff is directed to the proposed retention areas. An example would be, retention areas
856 proposed in the rear and front lots, the site will be graded so that runoff sources will be
857 routed to the proposed retention area(s) in a manner that runoff from the site will be
858 directed to these retention areas preventing offsite untreated discharge as much as
859 practicable.

860
861 Retention volume calculations and the site plan for a single-family residence shall be
862 prepared by a Florida licensed Professional Engineer. The preparer will certify the
863 retention volume calculations and plans to and for reliance by the city with the submittal
864 that they are familiar with the required stormwater treatment volume calculations and that
865 the site plan and calculations meet or exceed these standards.

866
867 Completed retention areas shall be shown on the final record and “as-built” survey by a
868 Florida Professional Surveyor and Mapper/ Florida Professional Land Surveyor. The
869 survey shall be certified to and for reliance by the city and shall show at a minimum the
870 retention areas delineated on the survey with elevations, and dimensions as constructed,
871 showing conformance to the approved and permitted design. The final survey shall be
872 completed after final sodding or approved stabilization is completed.

873
874 **DRAFTER'S COMMENT: Requiring professionals to prepare calculations and**
875 **survey is consistent with Section 30-435(e)(3) of the City's Land Development**
876 **Code, which requires new single family, addition and alteration, pool and site**
877 **permits to submit impervious surface ratio worksheets prepared by a Registered**
878 **Architect or Professional Engineer.]**

879
880
881 **SECTION 9. Codification.** It is the intention of the City Council, and it is hereby
882 ordained that the amendments in Sections 2. through 8. of this Ordinance made to the
883 City of Marco Island Code of Ordinances shall constitute a new Article VIII to Chapter 18
884 of the City of Marco Island Code of Ordinances, and that the sections of this Ordinance
885 may be renumbered and re-lettered as necessary, and that the word “Ordinance” may be
886 changed to “Section, “Article” or other appropriate word. Sections 1., 9. Through 11. shall
887 not be codified. The City Clerk is directed to insert the effective date of this Ordinance in
888 the appropriate blank set forth in Section 18-212(f)(2) and (h)(5) in this Ordinance.

889 **SECTION 10. Severability/Interpretation.**
890
891

For Second Reading

Redlined (2.26.18)

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

898 (b) In interpreting this Ordinance, underlined words indicate additions to
899 existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (*
900 * * *) indicate a deletion from the Ordinance of text, which continues to exist in the Code
901 of Ordinances. It is intended that the text in the Code of Ordinances denoted by the
902 asterisks and not set forth in this Ordinance shall remain unchanged from the language
903 existing prior to adoption of this Ordinance.

904 (c) The Drafter's Comments [located below the Title and](#) in Sections 5. and 8.
905 shall not be codified.

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

908 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this ____
909 day of _____, 2018~~7~~.

910 **ATTEST:** **CITY OF MARCO ISLAND, FLORIDA**
911 By: _____ By: _____
912 Laura M. Litzan, City Clerk Jared Grifoni, Chairman

913 Approved as to form and legal sufficiency:

914 By: _____
915 Alan L. Gabriel, City Attorney