

ORDINANCE NO. 13-03

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF MARCO ISLAND, CHAPTER 30, SECTION 793 (3), CONCERNING REGULATIONS RELATED TO THE TEMPORARY USE OF VACANT LOTS FOR SEAWALL MANUFACTURE, CONSTRUCTION, REPAIR AND RELATED BOAT DOCK CONSTRUCTION ACTIVITIES UNDER CONSTRUCTION TEMPORARY USE PERMITS; PROVIDING FOR INCLUSION IN THE CODE, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary home rule powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 1.02 of the Marco Island City Charter empowers the City to adopt, amend, or repeal ordinances, resolutions and codes as may be required for the benefit of residents and governance of the City; and

WHEREAS, construction temporary use permits as currently allowed under Article XII, Sec. 30-793 provide for various kinds of temporary construction permits; and

WHEREAS, provisions related to the regulation of seawall staging lots are currently in effect under Article XII, Section 30-793 (3) of the Code of Ordinances and changes to these Code provisions are desired; and

WHEREAS, the Marco Island Planning Board, sitting as the Local Planning Agency, and the Waterways Advisory Committee held duly advertised public hearings on October 5, November 2, and December 7, 2012, and determined that the proposed changes contained in this Ordinance are consistent with the City of Marco Island Comprehensive Plan and Florida law, and recommended adoption of this Ordinance to the City Council by a vote of 5-0; and

WHEREAS, the Marco Island Planning Board and the Waterways Advisory Committee agreed that promotion of and hospitality towards the new seawall construction and repair technologies and methods are of a high importance; and

WHEREAS, after reviewing the City of Marco Island Planning Board's recommendation, the recommendation of City staff, and comments from the public, the City Council finds that the proposed amendments to its Code of Ordinances are in compliance and consistent with Florida law and its adopted Comprehensive Plan; and

WHEREAS, the City Council further finds that adoption of this Ordinance is in the best interest of the residents of the City of Marco Island.

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

SECTION 1. Recitals. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance and are hereby made a specific part of this Ordinance.

SECTION 2. Amendment and Adoption. The amendments to the Code of Ordinances contained in this Ordinance are hereby amended or created and adopted as follows:

1. Article XII, Temporary Use Permits

Sec. 30-793. Construction temporary use permit. During the construction of any development for which a site development plan has been approved or a building permit issued, the developer may request a temporary use permit subject to the following:

(3) In addition to the uses described above, a construction temporary use permit ~~may~~ shall be obtained for the use of a vacant lot for ~~the seawall~~ manufacture, construction, ~~and~~ repair and related boat dock construction activities ~~of seawalls on other~~ all vacant lots or parcels under the following conditions:

(a) The contractor shall notify the city, as part of the building permit application process for seawall manufacture, construction, repair, and related boat dock construction activities ~~work~~, of its intentions to use a vacant lot for such purpose.

(b) The contractor shall ~~have~~ provide written permission from the property owner of the vacant lot. A copy shall be submitted to the city building services division and made a part of the temporary use permit application. The city shall require a signed document holding the city harmless from any claim by the property owner or the permit holder for any damage to the vacant lot or seawall. City staff shall provide notification to the property owner indicating any vacant lot utilized for seawall manufacture, construction, repair, and related boat dock construction activities may not be used again for an additional 365 days following expiration of the last temporary use permit utilized for the subject vacant lot. In addition, ~~the permit application shall contain proof of~~ City staff will provide notification of the proposed temporary use of the vacant lot to all property owners within a 300-foot radius of the subject vacant lot, together with other conditions of the permit as may be required by the city.

(c) The contractor shall post the subject property with a permit board and all applicable permits including a copy of the temporary use permit. ~~and the vacant lot shall be posted with the temporary use permit.~~

(d) Manufacture of precast seawall panels and related boat dock construction activities on a vacant lot shall only be performed for a maximum of ~~120~~ 100 consecutive days while an associated repair permit is active. More than one permitted seawall repair or marine construction contract may be staged at the

vacant lot concurrently. Upon completion of the use and prior to the expiration of the ~~120~~ 100 -day period, the contractor shall restore the lot to pre-use condition. Any vacant lot so used shall not be used ~~again~~ for seawall manufacture, construction, repair, and related boat dock construction activities for an additional 365 days following issuance of the last associated Certificate of Completion or CO, with the exception of an emergency repair or replacement to the seawall at the subject vacant lot.

(e) Failure to comply with the provisions of this subsection shall constitute a violation of this Code. If a violation is found, Code Compliance staff shall provide a notice of violation to the violator and allow for up to ten business days to cure. If the violation is not corrected by the time specified for correction, a Stop Work Order shall be issued by the City of Marco Island Building Services Department. Contractors in violation shall receive a revocation of applicable permit(s) and shall not be granted any additional permits for the period of time a violation exists or until all assessed fines have been paid in full. If the violation has not been cured within time specified in the notice of violation, starting the next day a fine of \$250 per day for a first violation and \$500 per day for a repeat violation shall be assessed until the violation is corrected. If a violation is not corrected within 10 business days from the date of issuance of the notice of violation, the City or City's designee may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with all fines imposed pursuant to this section. Future permits shall not be issued to the contractor until all fees, fines, and costs have been paid in full. Assessed fines may be appealed to the Code Enforcement Board. Repeat violation shall mean a violation of this code by a person who has been previously found to have violated the same provision of this code within 5 years prior to the violation, notwithstanding the violations occur at different locations.

(f) Special exceptions: The contractor may seek an administrative extension beyond the ~~120~~ 100 -day period provided the city manager or designee is presented sufficient information justifying the contractor's need. Justification may include inclement weather, unavailability of materials or other unexpected conditions beyond the control of the contractor. Staff may provide a maximum ~~60~~ 45-day extension provided the request is justified. Exceptions shall not be used to extend use of the vacant lot beyond ~~180~~ 145 consecutive days.

~~(g) No work shall be conducted within the setback areas established for the applicable zoning district. The contractor shall provide a silt fence along the side yard property lines.~~

~~(h) A dumpster or other container must be on the property prior to the demolition of old seawall panels or boat docking facilities. After the demolition of a seawall or boat docking facilities, old seawall panels or boat docking facilities must immediately be placed in the dumpster or container and removed from the site within five working days. Any type of demolition material shall be either removed from the lot or placed in a dumpster within five days. Piling, decking, and boat lift equipment that will be later reused on that lot, shall be permitted to remain on site. Demolition, if by cutting, shall require a wet saw method, except for steel rebar. Demolition activity may not occur outside of the hours of 8:00 A.M. to 5:00 P.M., Monday through Saturday. Dumping or storage of any material not directly associated with current permitted job is expressly prohibited.~~

(i) Manufactured seawalls shall not be stacked more than five feet in height.

(j) The public works department shall determine whether temporary structures will be required to protect the swale area and proper stormwater conveyance.

~~(k) Boat and barge repair shall not be allowed on vacant residentially zoned parcels or adjacent lots, unless involving an emergency repair of a vessel used in the subject seawall repair. The use of any~~

such boat, barge or vessel shall be subject to the specific requirements of Code sections 54-111 and 54-112(i).

(l) Only equipment and vehicles directly associated with the permitted repairs will be allowed on the property, and only during an open permit.

~~(m) Only natural rock can be used for the creation of rip rap. Any material placed on the property not outlined in Article III, Section 6-85 will be considered illegal dumping of material and will be a violation of this code.~~

~~(n) Failure to comply with the provisions of this subsection shall constitute a violation of this Code. Contractors in violation shall receive a revocation of permits and will not be granted additional permits for the period of time a violation exists.~~

SECTION 3. Inclusion in the Code of Ordinances. It is the intention of the City Council and it is hereby ordained that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall become part of the City of Marco Island Code of Ordinances, that the sections of this Ordinance may be renumbered and relettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or other appropriate word.

SECTION 4. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 5. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading. All outstanding permits shall be required to become concurrent with this Amendment.

~~**SECTION 7. Termination Date.** This Ordinance shall terminate six months after adoption by the City Council.~~

ADOPTED BY THE CITY COUNCIL of the City of Marco Island this 4th day of March, 2013.

Attest:

By: 
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND FLORIDA

By: 
Joe Batte, Chairman

Reviewed for legal sufficiency:

By: 
Burt L. Saunders, City Attorney