

**Ordinance No. 2008-002**

**AN ORDINANCE OF SARASOTA COUNTY, FLORIDA, CONSOLIDATING PROVISIONS FROM ORDINANCE NOS. 98-025, 2003-052, 2007-024, 2007-091, AND 2007-097 OF THE LAWS AND ORDINANCES OF SARASOTA COUNTY RELATING TO THE PROTECTION OF THE MYAKKA RIVER AND THE MYAKKA RIVER PROTECTION AREA IN THE UNINCORPORATED AREAS OF SARASOTA COUNTY; PROVIDING FINDINGS; STATING PURPOSE; CREATING DEFINITIONS; IDENTIFYING APPLICABILITY AND INTERPRETATION; REGULATING STANDARDS OF DEVELOPMENT; PROVIDING REVIEW AUTHORITY; ESTABLISHING THE MYAKKA RIVER STANDARDS RELIEF COMMITTEE; PROVIDING STIPULATIONS AND CONDITIONS PROVIDING FOR REGULATION REGARDING VIOLATIONS AND COMPLIANCE; PROVIDING FOR AFTER THE FACT AUTHORIZATION; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

BOARD RECORDS  
FILED FOR RECORD  
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**WHEREAS**, the existing Sarasota County Ordinances pertaining to the Myakka River including County Ordinance No. 2003-052, as amended, commonly referred to as the Zoning Ordinance (Appendix A to this Code), County Ordinance No. 2007-097, as amended, commonly referred to as the Land Development Regulations, Environmental Technical Manual (Chapter 74 of this Code), County Ordinance No. 2007-024, as amended, commonly referred to as the Earthmoving Ordinance (Chapter 54, Article XII of this Code), County Ordinance No. 2007-091, as amended, commonly referred to as the Tree Protection Ordinance (Chapter 54, Article XVIII of this Code), and Ordinance No. 98-025, as amended commonly referred to as the Myakka River Protection Zone Code (Chapter 54, Article XXI of this Code) have been consolidated.

**WHEREAS**, the County desires to continue its regulation of activities along the Myakka River and the Myakka River Protection Zone in the unincorporated area of Sarasota County;

**WHEREAS**, consolidation of existing ordinances will ensure that Development does not adversely affect natural resources, and the public's health, safety, and welfare;

**WHEREAS**, consolidation of existing ordinances will better protect the rights of the public utilizing the Myakka River and River Area, and protect the property owners and the public using the Myakka River and River Area, and;

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:**

**Section 1:** Chapter 54, Article XXXIII, Sections 54-1031 through 54-1042 of the Sarasota County Code is hereby created as follows.

02008-002

**Sec. 54-1031. Findings.**

The Board of County Commissioners of Sarasota County, hereinafter referred to as the "Board," makes the following findings:

- (1) In 1985, the Legislature of the State of Florida and Governor enacted the Myakka River Wild and Scenic Designation and Preservation Act (the "Act"). Chapter 258, Part III, Florida Statutes.
- (2) The Act designates a corridor between River Mile 7.5 and River Mile 41.5 of the Myakka River as a Florida Wild and Scenic River. This portion of the Myakka River is more commonly referred to as that stretch between State Road 780 in Sarasota County as it flows southward toward the Sarasota-Charlotte County line. The Act describes the "Wild and Scenic Protection Zone" as the area which extends 220-feet landward from the River Area.
- (3) The Act provides for the permanent preservation of the Myakka River through a plan for permanent administration by State and local agencies.
- (4) The Act requires the Department of Environmental Protection (the "Department"); and a Coordinating Council created by the Department, to jointly develop a management plan for the Myakka River.
- (5) In May 1990, the Governor and Cabinet approved the Myakka Wild and Scenic River Management Plan in accordance with the Act.
- (6) In 1991, Florida Administrative Code Chapter 64D-15, entitled "Myakka River Wild and Scenic River Rule," was established for the purposes of implementing the Myakka Wild and Scenic River Management Plan.
- (7) The Act directed the Department of Environmental Protection, the Department of Community Affairs, and Sarasota County to create an intergovernmental agreement specifying guidelines and performance standards for activities in the Myakka River Protection Zone.
- (8) On July 17, 1993, Sarasota County Comprehensive Plan amendment RU-14 was challenged in the case styled Maynard Hiss v. Department of Community Affairs, Sarasota County et al., Case No. 93-4217GM.
- (9) On March 15, 1994, the Board approved a settlement agreement in the Hiss case which required the Board to establish an advisory board, to adopt a Myakka River protection ordinance containing a plan and to continue its efforts in carrying out the terms of the State-local agreement.
- (10) Resolution No. 94-236, adopted by the Board on September 20, 1994, established the Myakka River Planning Advisory Board.

- (11) On December 11, 1997, the Board approved, with modifications, the recommendations of the Myakka River Protection Plan (the "Plan"), in accordance with the settlement agreement.
- (12) On December 16, 1997, the Board accepted the intergovernmental agreement (the "Agreement") establishing interagency coordination for administering rules and regulations pertaining to the Myakka River Protection Zone in accordance with the Act. Local adoption of the Act required adoption or amendment of any necessary ordinances, land development regulations and Comprehensive Plan goals, policies and objectives within one year after the approval of the Agreement.
- (13) It is necessary to enact this Article setting forth adoption of the plan and assisting in the implementation of the Sarasota County Comprehensive Plan. As identified in the Plan, the Sarasota County Comprehensive Plan contains a number of goals, policies and objectives for protecting the Myakka River consistent with the requirements of the Act; thus, the Sarasota County Comprehensive Plan shall not require any additional amendments thereto.
- (14) On December 8, 1998, the Board adopted the Myakka River Protection Plan.
- (15) Resolution No. 99-120 established the Myakka River Planning Advisory Council, with direction to review and make recommendations to the Board regarding development, administration, implementation, and updating of a Myakka River Protection Ordinance.
- (16) The Board held workshops and public hearings on the proposed amendments described herein in accordance with the requirements of Sarasota County Ordinance No. 75-38, and has considered the information received at the said workshops and public hearings.
- (17) The Board, sitting as the Sarasota County Land Development Regulation Commission, has reviewed the ordinance codified in this Article and has found the ordinance consistent with the Sarasota County Comprehensive Plan, as amended.

**Sec. 54-1032. Purpose.** The Board finds that the consolidation of the existing code provisions will serve the following goals:

- (1) Maintain the outstandingly remarkable ecological, fish and wildlife, and recreational values that are unique in the State of Florida.
- (2) Permanently preserve and enhance the Myakka River and its Resource Values for the citizens of the State of Florida, both present and future.

- (3) Promote the beneficial and appropriate Development of all land contained within the Myakka River Protection Zone and the most consistent use of land in accordance with the Sarasota County Comprehensive Plan;
- (4) Protect the character and the established pattern of compatible Development in the Myakka River Protection Zone;
- (5) Minimize potential adverse physical and visual impacts on Resource Values in the River Area;
- (6) Minimize adverse impacts on private landowners' use of land for residential purposes;
- (7) Maintain property values by stabilizing expectations and ensuring predictability in Development; and
- (8) Establish a process that effectively and fairly applies the regulations and standards of these regulations and respects the rights of property owners and the interests of citizens of the County.

**Sec. 54-1033. Definitions.**

The following terms and phrases, when used in this Article, shall have the meaning ascribed to them in this section:

*Accessory Structure* means a structure of a nature customarily incidental and subordinate to the principal use or structure and unless otherwise provided, on the same premises. "On the same premises" with respect to accessory uses and structures shall be construed as meaning on the same lot or on a contiguous lot in the same ownership. Examples include, but are not limited to, swimming pools, spas, sheds, gazebos, etc. Where a building is structurally attached to the Principal Structure, it shall be considered a part thereof, and not an accessory building.

*Agriculture or Agricultural* means a commercial enterprise using lands classified by the County Property Appraiser under the agricultural assessment provisions of section 193.461 Florida Statutes, for the production and marketing of agricultural products.

*Applicant* means the individuals, firms, partnership, corporation, association, organization, trust, company, government agency, or any other legal entity that has applied for a Development proposal.

*Article* means Chapter 54, Article XXXIII of the Sarasota County Code of Ordinances, as amended by this Ordinance.

*Board* means the Board of County Commissioners of Sarasota County, Florida.

Buffer means an area adjacent to a Wetland or other habitat that protects the habitat from the adverse impacts of Development. The Buffer of the River Area is a minimum of 50-feet wide unless a variance is granted by the Board or the Myakka River Standards Relief Review Committee.

Code Administrator means the Sarasota County Administrator, or an administrative official of Sarasota County Government designated by the County Administrator to administer and enforce the provisions of this Code.

Construction means the placing, building, erection, extension, or material alteration of any structure the use of which requires a permanent or temporary location on the ground or attachment to a structure having a permanent or temporary location on the ground. "Construction" shall include, but is not limited to, the installation of residences, buildings, fences, parking lots, driveways, tennis courts, swimming pools, patios, or any similar hard surfaced structures.

County means Sarasota County, a political subdivision of the State of Florida.

Development means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels as defined in sections 163.3164 and 380.04, Florida Statutes.

Development Permit means any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting Development.

Earthmoving means any movement or management of any type of fill, including excavating, dredging, burying, filling, grading, mounding, piling, hauling, or transporting of any type of fill.

Listed Species means any animal afforded protection pursuant to the Florida Administrative Code, including but not limited to, species categorized as endangered, threatened, and species of special concern; or any plant or animal categorized as endangered or threatened pursuant to the U.S. Endangered Species Act.

Myakka River Protection Zone or MRPZ means an upland buffer that extends 220-feet on each side of the Myakka River measured from the landward edge of the River Area.

Myakka River Standards Relief Review Committee means a committee consisting of the Sarasota County General Manager of Planning Services, the Zoning Administrator and the Manager of Resource Protection, or their designee. If the duties of the aforementioned titles are reassigned to another organizational entity, responsibility for determinations specified herein will be made by that entity serving on the Relief Committee.

Person means any individual, corporation, governmental agency, business trust, estate trust, partnership, association, two or more persons having a joint or common interest or any other legal entity.

Principal Structure means a structure used for the primary use of the property as distinguished from an accessory use.

Resource Value means any one or more of the specific economic, scenic, recreational, geologic, fish and wildlife, historic, cultural, or ecological features associated with the River Area.

River Area means the corridor of land beneath and surrounding the Myakka River from river mile 7.5 to river mile 41.5, together with a corridor of land including the maximum upland extent of Wetlands vegetation as determined by the Department of Environmental Protection pursuant to Chapter 373, Florida Statutes, and Florida Administrative Code Chapter 62-340.

Sarasota County Comprehensive Plan means the framework adopted by the Sarasota Board of County Commissioners under Ordinance No. 89-18, as amended, to comply with the Local Government Comprehensive Planning and Land Development Regulation Act of 1985.

Silviculture means a commercial enterprise controlling the establishment, growth, composition, health, and quality of forests and woodlands of desired characteristics with the intent to produce, reproduce, or manage a stand of pines (*Pinus* spp.) for the eventual sale to a timber company as a pulp, paper or other timber products. This includes site preparation activities, prescribed burning and harvesting of trees for sale.

Stipulation means a statement or a condition issued with a Development Permit or with an approved plan, with which compliance is necessary for continued validity of the Development Permit or other approval.

Tree means a living, woody, self-supporting plant, which when mature will reach ten feet or more in height, having a main stem or cluster of main stems, and any one stem measuring 4 ½ inches Diameter at Breast Height (DBH). For the purpose of this Article, all rooted species of mangrove or two inch DBH scrub oak, including red mangrove (*Rhizophora mangle*), white mangrove (*Laguncularia racemosa*), black mangrove (*Avicennia germinans*), buttonwood mangrove (*Conocarpus erectus*), sand live oak (*Quercus geminata*), myrtle oak (*Quercus myrtifolia*), and chapman oak (*Quercus chapmanii*) are hereby declared to be Trees, and are hereby protected by the provisions of this article, regardless of size, except where State law supersedes local jurisdiction. In addition, all palms with more than 4 1/2 feet of clear trunk are declared to be Trees and are protected by the provisions of this Article. It includes any tree planted, relocated or replaced pursuant to this Article.



Watercourse means any natural or artificial channel, ditch, canal, stream, river, creek, waterway or wetland through which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed, banks or other discernible boundary. Watercourse shall not include irrigation and drainage ditches constructed in the uplands which are not more than 35 square feet in total cross section area and which normally has a water depth of no more than 3-feet, provided they are not in and do not directly connect to Outstanding Florida Waters, Class I Waters and Class II Waters.

Wetland or Wetlands means those areas, as defined in Florida Administrative Code, Chapter 62-340, that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in Wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in Wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida Wetlands generally include swamps, sloughs, marshes, wet prairies, bayheads, bogs, cypress domes and strands, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps, and other similar areas. Florida Wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

#### **Sec. 54-1034. Applicability and Interpretation**

##### **(1) Applicability.**

(a) The provisions of this Article shall be applicable and enforceable within the Myakka River Protection Zone throughout the unincorporated area of Sarasota County, Florida. The provisions of this Article are not applicable to upland cut man-made canals or tributaries.

(b) The Board may provide for the enforcement of this Article within any municipality through an interlocal agreement.

(c) This Article shall apply to all properties located within the Myakka River Protection Zone.

(d) Earthmoving authorized under a valid earthmoving permit, agricultural exemption, written non-agricultural exemption, issued by the County prior to December 8, 2003, or the continuation of uninterrupted bona fide Agricultural earthmoving operations and maintenance in existence prior to October 13, 1981, may continue to completion of the earthmoving project, until expiration of said authorization, or until cessation of the Agricultural operation, provided no expansion or intensification of such authorized Earthmoving occurs.

(2) Interpretation. The provisions of this Article shall be interpreted in the following manner:

(a) In the interpretation of this Article, all provisions shall be considered minimal requirements and construed liberally to effectuate the purposes of this Article.

(b) This Article is not intended to repeal, abrogate, or impair any existing statutes, laws, ordinances, easements, covenants, or deed restrictions which impose more stringent restrictions on the Development proposal.

(c) Where this Article conflicts with or overlaps another ordinance or statute, whichever imposes the more stringent restrictions shall prevail.

(d) Each separate provision of this Article is deemed independent of all provisions herein, so that if any provision or provisions of this Article are declared invalid or unconstitutional by any court of competent jurisdiction, all other provisions shall remain valid and enforceable.

(3) Simultaneous Reviews. In the event that an Applicant seeks authorization to conduct activities which are subject to overlapping code provisions from different Articles of Chapter 54 of the Sarasota County Code, County staff shall perform simultaneous natural resource reviews to the greatest extent practicable.

(4) Listed Species. In cases where impacts to Listed Species may occur, Applicants shall be required to consult with the appropriate Federal and State wildlife agencies, to use recognized sampling techniques as defined by accepted methodology of the agency to identify Listed Species, and to provide documentation of such coordination and compliance prior to County approval to conduct any activities that could disturb Listed Species or the habitat.

(5) Annexation. Where any property permitted under the provisions of this Article is annexed into an incorporated area, the governmental body for the incorporated area will enforce any lawful conditions imposed by the County in conjunction with the issuance of land use and Development Permits unless and until such conditions are modified, changed and/or deleted through the City's comprehensive plan and land development regulations. Areas designated on a County-issued Earthmoving permit or Earthmoving exemption determination shall remain as preservation areas as part of a municipal-issued Development Permit or Development order, unless modified, changed and/or deleted by the municipality through the municipality's comprehensive plan and land development regulations.

**Sec. 54-1035. Review authority.**

(1) The County Administrator or designee is herein authorized to review and provide a written determination as to whether any project or application for Development



or activity proposed within the Myakka River Protection Zone is consistent with the provisions of this Article.

- (2) The County Administrator or designee is herein authorized to impose conditions for any Development Permit or activity within the Myakka River Protection Zone in order to ensure consistency with the provisions of this Code and the Sarasota County Comprehensive Plan. This determination may be made with the advice of the Office of the County Attorney.

**Section 54-1036. Myakka River Protection Zones.**

- (1) For the purposes of this Article, the 220-foot wide Myakka River Protection Zone consists of four zones, which are delineated graphically below, and are described as follows:

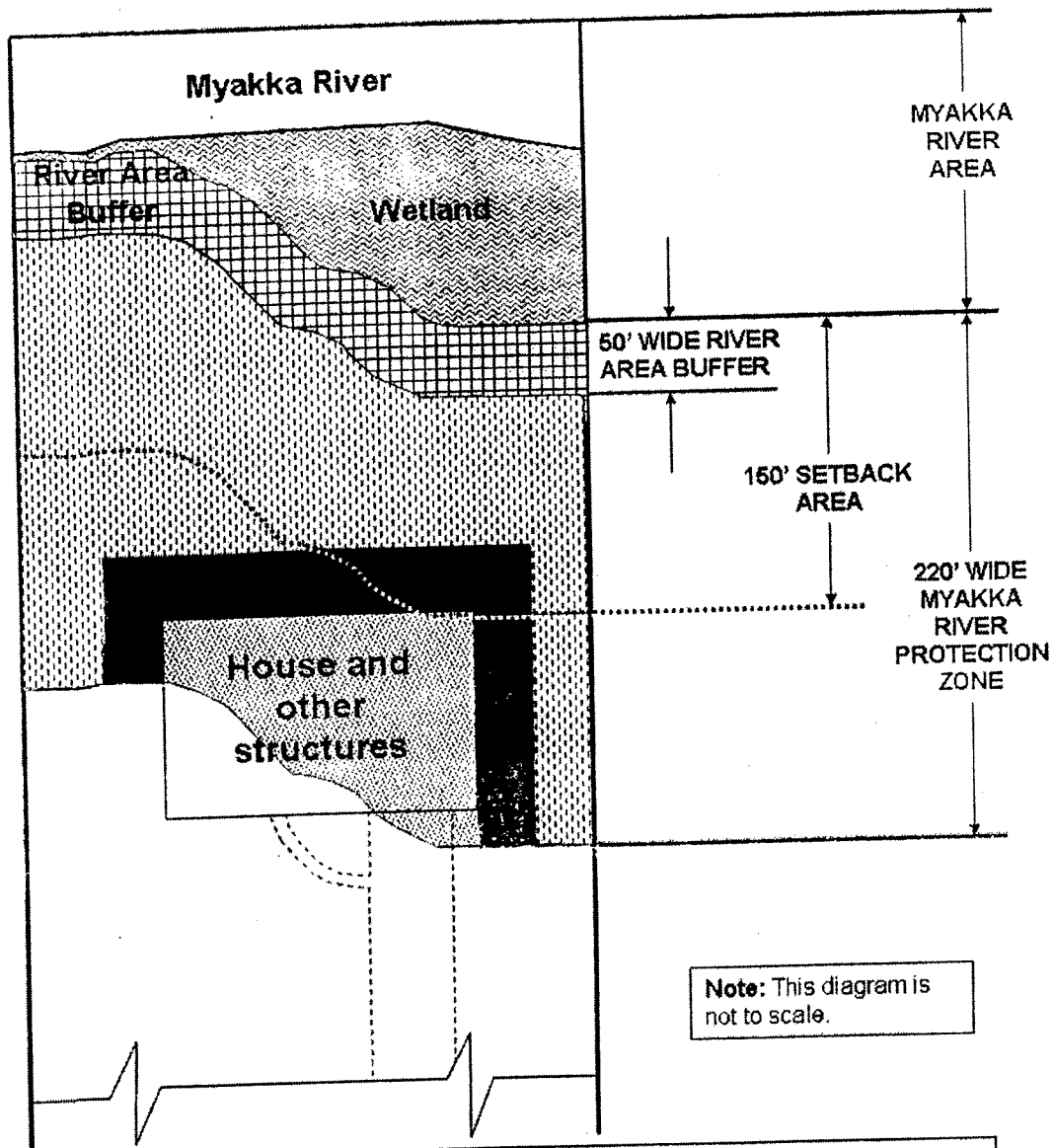
(a) Zone 1. The fire protection zone. That zone, of variable width, constituting the minimum allowable vegetative removal and turfgrass installation area necessary to allow for fire protection purposes such as the positioning of fire trucks and hoses, as well as to serve as a fire protection defensible space as determined by the Code Administrator.

(b) Zone 2. The house and other structures, on a lot or parcel, as well as the area between the house and the street.

(c) Zone 3. The area between the landward extent of Zone 4 and the landward extent of the Myakka River Protection Zone, excluding Zones 1 and 2.

(d) Zone 4. The 50-foot River Area Buffer.

# Myakka River Protection Zones Diagram



Zone 1 (Clear Zone for Fire Safety)	
Zone 2 (House, other structures, and street yard)	
Zone 3 (Conservation Area)	
Zone 4 (River Area Buffer)	

**Section 54-1037. Regulated Activities within the Myakka River Protection Zone.**

(1) Prohibition: The following activities are prohibited within the Myakka River Protection Zone, unless otherwise authorized herein:

(a) Construction and Development. Construction and Development within the 50-foot River Area Buffer and Wetlands is prohibited, unless otherwise authorized herein.

(b) Earthmoving. Persons may not conduct Earthmoving within the Myakka River Protection Zone for all purposes except Earthmoving meeting exemption criteria pursuant to any of Sections 54-349(3)(a-g)(i-l)(n-s) and filling around the perimeter of a structure of a maximum 30-foot width to establish the entirety or a portion of a fire protection clear zone as defined in the County's Land Development Regulations. The Administrator may request information from the Applicant, including evidence of prior approval by the appropriate agency(ies), for any of the above-referenced exemption sections to confirm that the Earthmoving meets the exemption criteria.

(c) On-site sewage disposal systems. Persons may not construct on-site sewage disposal systems unless the system is located landward of the Principal Structure and subject to all other applicable regulations.

(d) Vegetation removal. Persons may not remove native vegetation or install turfgrass within the Myakka River Protection Zone with the exception of continuation of yard maintenance activities such as mowing, trimming, or pruning of vegetation that had been conducted within the Myakka River Protection Zone prior to December 1, 2003 and/or as otherwise authorized herein.

(e) Tree Removal. Persons may not remove a Tree without a Tree Permit, except where the Tree being removed is a minimum of 2,200-feet from the bank of the main stem of the Myakka River. Where Tree removal is located a minimum of 2,200-feet from the top of bank of the main stem of the Myakka River, no Tree Permit is required for Tree removal landward of the 50-foot River Area Buffer where there is an existing owner-occupied residential dwelling. This exception does not apply within a Wetland or Watercourse Buffer required by County Code. Tree and Grand Tree removal shall be subject to the regulations contained in Sarasota County Code Section 54, Article XVIII (Tree Protection Code).

(f) Wetlands not contiguous to the River Area. A minimum 30-foot wide upland Buffer of native vegetation shall be provided around preserved Wetlands where the Wetland is not contiguous to the River Area and located within the Myakka River Protection Zone. Where the upland vegetation surrounding any Wetland contains mesic hammock habitat, the minimum upland Buffer width shall be 50-feet.

(2) Exceptions to the prohibited activities within the Myakka River Protection Zone:

(a) Removal of nonnative, nuisance and invasive species or poison ivy. Persons may remove nonnative, nuisance, and invasive species, as described in Land Development Regulations, Environmental Technical Manual Section F, Tables 1-3, provided such removal does not damage native vegetation. The limited removal of poison ivy (*Toxicodendron radicans*), nettles (*Urtica* spp.), and sandspur (*Cenchrus* spp.) for public health reasons is exempt provided that no impacts to existing native vegetation occur.

(b) Zone 1 and 2 exceptions. Vegetative removal may be allowed in association with County-approved Permits for Construction of structures or to create or maintain a fire protection clear zone around the structure. The fire protection clear zone for structures in the Myakka River Protection Zone shall be determined by the Fire Marshal and Code Administrator during the permitting process.

(c) Zone 3 exceptions. Native vegetation removal may be allowed in Zone 3 only after review and written approval by the Code Administrator only for the following purposes:

(1) To create or maintain private nature trails.

(2) To create or maintain a single access to a permitted dock or pier.

(3) To conduct native understory vegetation management, in accordance with a County-approved management plan.

(4) Reasonable selective pruning of side branches to enhance a view from a Principal Structure within or outside the Myakka River Protection Zone. Such selective pruning shall not occur within the River Area and the view "window" through the Myakka River Protection Zone shall be co-aligned with other approved vegetative removal (e.g., paths or access to a dock or pier).

(5) Native vegetation removal associated with and limited to exempt Earthmoving activities listed in Chapter 54, Article XII of the Sarasota County Code.

(d) Zone 4 exceptions. Native vegetation removal may be allowed in Zone 4 only after review and written approval by the Code Administrator and only for the following purposes:

(1) To create or maintain private nature trails.

(2) To create or maintain a single access to a permitted dock or pier.

- (3) To conduct native understory vegetation management, in accordance with a County-approved management plan.
- (4) Reasonable selective pruning of side branches to enhance a view from a primary structure within or outside the Myakka River Protection Zone. Such selective pruning shall not occur within the River Area and the view "window" through the Myakka River Protection Zone preferably should be co-aligned with other approved vegetative removal (e.g. paths or access to a dock or pier).
- (e) For properties with a lot area of less than five (5) acres, family recreation, including but not limited to, the placement of swing sets, barbeque grills, and children's swimming pools may be allowed as follows provided that it does not conflict with the purposes of this Article:
- (1) Lots with existing cleared areas. Family recreation is allowed provided that it occurs within existing cleared areas and requires no native vegetation removal.
- (2) Lots with no existing cleared areas. No more than 144 square feet of native vegetation may be removed for the purposes of family recreation provided that written approval is obtained from the Code Administrator. The principles of avoidance and minimization shall be applied when determining the location and extent of clearing.
- (f) Native vegetation removal associated with and limited to exempt Earthmoving activities listed in Sections 54-349(3)(a-g)(i-l)(n-s), Chapter 54, Article XII of the Sarasota County Code.
- (g) When Tree removal is located a minimum of 2,200-feet from the top of bank of the main stem of the Myakka River, and where there is an existing owner-occupied residential dwelling, Tree removal landward of the 50-foot River Area Buffer is exempt from the requirement to obtain a Tree permit, unless otherwise stipulated or required pursuant to Chapter 54, Article XVIII. The removal of Grand Trees, as defined in Chapter 54, Article XVIII, is not exempt.
- (h) A lot or portion thereof that is classified by the County Property Appraiser prior to any Tree removal as bona fide Agricultural land under the agricultural assessment provisions of the Florida Right to Farm Act, Section 193.461, Florida Statutes, and where Tree removal is undertaken solely for Agricultural or Silvicultural purposes. This exemption shall not apply to any Tree removal in preparation for, or in anticipation of, any Development or any Construction of non-Agricultural improvements. For the purposes of this Article, evidence of such preparation or anticipation includes submittal of an application for a building

permit for non-Agricultural use, a special exception, a rezone, a Development of Regional Impact, a site and development plan, a preliminary subdivision plan, a conceptual Development plan, or other Development approval. Other than for properties that are sold to settle an estate, submittal of plans listed in this section within six years of the date of Tree removal would invalidate this exemption and require an after-the-fact permit and/or mitigation in accordance with the provisions of this Article.

(i) Nothing herein shall be construed to affect the right of any Person engaged in the commercial enterprise of Agriculture or Silviculture. Any stand of timber that is harvested in the Myakka River Protection Zone shall be regenerated either by replanting, natural regeneration or by leaving a sufficient number of young trees to replace the stand of timber. This exemption does not apply within a Wetland or Watercourse Buffer required by the County.

(j) Earthmoving authorized under a valid Earthmoving permit, Agricultural exemption, written non-agricultural exemption, issued by the County prior to December 8, 2003, or the continuation of uninterrupted bona fide Agricultural Earthmoving operations and maintenance in existence prior to October 13, 1981, may continue to completion of the Earthmoving project, until expiration of the authorization, or until cessation of the agricultural operation, provided no expansion or intensification of such authorized Earthmoving occurs.

(k) For the purposes of flood protection, elevation of an existing structure on a new foundation, within the existing building footprint and located no closer to the River Area.

(l) Maintenance or repair of any existing structure or Construction and related infrastructure and facilities provided that the maintenance or repair is undertaken within the limits of the existing foundation.

#### **Sec. 54- 1038. Standards for Development.**

(1) *Pre-application Conference.* A pre-application conference in accordance with Section 3.1.5 of the Zoning Regulations, as amended, is required prior to submittal of any application for a Development Permit.

(2) *Land Uses within the Myakka River Protection Zone.* All land uses for parcels located within the Myakka River Protection Zone shall be consistent with the Zoning Ordinance, as amended.

(3) All applications for Development Permits shall be consistent with the provisions of this Article and the Sarasota County Comprehensive Plan.

(4) The County Administrator or designee shall review and provide a written determination on whether the application for a Development Permit is consistent with this Article.



(5) For all Development, the Applicant shall obtain all of the applicable Development Permits prior to commencing Construction, Development, or Earthmoving activities.

(6) For lots less than five (5) acres.

(a) Development and Construction of all new Principal Structures shall be located landward of the 50-foot River Area Buffer. Other structures and Earthmoving shall be located landward of the 50-foot River Area Buffer, unless they meet the criteria described in Section 54-1038(6)(b) of this Article.

(b) For properties with an existing Principal Structure, Development and Construction may be approved by the Myakka River Standards Relief Review Committee if the following criteria are met:

(1) The proposed Development and Construction is designed to minimize impacts to the River Area to the maximum extent practicable.

(2) Development and Construction shall be located no closer than 25-feet from the River Area.

(3) Sufficient buffering (e.g. native vegetation and structure design considerations) shall be provided to minimize visual impacts to the River and the purposes of this Article and as determined by the Code Administrator. If nuisance/invasive species exist within 50-foot River Area Buffer, they shall be removed and be replaced with appropriate native species to provide visual buffering.

(4) No impacts to native habitat shall occur.

(c) Native vegetation shall not be removed from Buffers except as necessary and as authorized by the County for the following purposes:

(1) County maintenance and access;

(2) Road and utility crossings;

(3) Nature trails;

(4) Access to water dependent uses such as docks or piers.

In these instances, the principles of avoidance first and then minimization shall be used in the design of all proposed projects located within the 50-foot River Area Buffer.

(7) For lots equal to or greater than five (5) acres.

(a) All new Construction, Development and Earthmoving shall be located no closer than 150-feet from the River Area, except as provided below:

(1) Elevated patios, decks and walkways;

(2) Caged or non-caged swimming pools;

(3) Gazebos up to 400 square feet in floor area;

(4) Water dependent structures such as boat docks and piers; and

(5) All structures more than 2,200-feet from the bank of the main stem of the Myakka River.

(b) All nonresidential Principal and Accessory Structures shall be located no closer than 220-feet measured from the River Area.

(c) If compliance with the provisions contained in Section 4.10.5.e.1.i. of the Zoning Regulations, as amended and Sec. 54-1038, above, is not attainable, eligible applicants may seek relief from those provisions through either Section 2.6 or Section 3.8 of the Zoning Ordinance, as amended, through the Myakka River Standards Relief Review Committee. The Myakka River Standards Relief Review Committee may require the removal of nuisance/invasive species and sufficient buffering (e.g. native vegetation and structure design considerations) to minimize visual impacts to the River.

(d) If compliance with the provisions contained in Section 4.10.5.e.1.ii. of the Zoning Ordinance, as amended is not attainable when expanding structures built prior to March 18, 2003, eligible Applicants may seek relief from those provisions through the Myakka River Standards Relief Review Committee as described in Section 2.6 of the Zoning Ordinance, as amended. The Myakka River Standards Relief Review Committee may require the removal of nuisance/invasive species and sufficient buffering (e.g. native vegetation and structure design considerations) to minimize visual impacts to the River.

(e) Driveways, tennis courts and other impervious surfaces (excluding elevated patios, gazebos up to 400 square feet in floor area, decks and walkways, and also excluding swimming pools) shall be located no closer to the River Area than the Principal Structure.

(8) *Administrative Adjustments.* All Construction located within the Myakka River Protection Zone shall be consistent with the Development Standards as described above. Where these standards cannot be met, an administrative adjustment in

accordance with the Zoning Ordinance, as amended may be sought from the Zoning Administrator.

(a) For all properties, the River Area Buffer may be reduced to no less than 50-feet from the River Area, unless a variance is granted by the Board pursuant to Section 1039 or the Myakka River Standards Relief Committee pursuant to Section 1038.

(b) For all properties, the River Area setback may be reduced to no less than 25-feet from the River Area.

#### **Section 54-1039. Variances**

(1) Procedures. The Board may grant a variance from the terms of these regulations when such variance will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship on the land. Such variance shall not be granted if it has the effect of nullifying the intent and purpose of these regulations. Furthermore, such variance shall not be granted by the Board unless and until:

(a) A written application for a variance shall be submitted to the appropriate department in three (3) copies together with a processing fee as required in this Article (check made payable to the Board of County Commissioners) and demonstrating:

- (1) That special conditions and circumstances exist which are peculiar to the land, Structures, or required improvements involved;
- (2) That a literal interpretation of the provisions of these regulations would deprive the applicant of reasonable use of his property;
- (3) That the special conditions and circumstances do not result from the actions of the applicant;
- (4) That the granting of the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, Structures, or required improvements under similar conditions. No pre-existing conditions on neighboring lands, which are contrary to these regulations, shall be considered grounds for the issuance of a variance;
- (5) That, with respect to a right-of-way or improvement requirement, such requirement does not bear a reasonable relationship or rational nexus between the need for additional capital facilities and the demands generated by the Development along with other Development within the area.

(b) Public hearing. A public hearing shall be held by the Board of County Commissioners. Any party may appear personally or by agent or attorney. The staff report on the petition shall be presented prior to the close of the public hearing on the petition. The Applicant shall have the right, prior to the close of the

public hearing, to cross-examine persons presenting testimony, to respond to any contentions presented by any testimony or other evidence presented during the public hearing, and to respond to the staff report, after receipt of which the hearing shall be concluded, unless the hearing is continued and the matter is referred back to staff for further consideration of such matters as the Board of County Commissioners may direct. If referred back to staff, the matter shall be given the next available agenda position. All testimony submitted during the public hearing shall be under oath or affirmation.

(c) Notice of public hearing. Notice of public hearing shall be given at least fifteen (15) days in advance of the public hearing. The owner of the property for which the variance is sought or his agent or attorney designated by him on his petition shall be notified by mail. Notice of the public hearing shall be advertised in a newspaper of general circulation in the County at least one (1) time at least fifteen (15) days prior to the public hearing.

(d) Approval by the Board of County Commissioners. The Board shall consider the variance during a regularly scheduled meeting and said variance shall be listed as a public hearing item. A variance may be considered separately, or at the same time the preliminary subdivision plan or Site and Development Plan is being considered. The Board shall find that the requirements of this Article have been met. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.

#### **Sec. 54-1040. Stipulations and Conditions**

Approvals granted pursuant to this Code may contain Stipulations or conditions that are designed to avoid, minimize and mitigate the impact of the authorized activity on the environment and the public rights and interests or to assure that authorized activity will conform to the requirements of this Code.

#### **Sec. 54- 1041. Compliance and Enforcement.**

Sarasota County has the authority to enforce any Development Permit or Stipulation, as well as, any provisions of this Article per Chapter 2, Article VIII of the Sarasota County Code of Ordinances and per provisions of the Florida Statutes Chapter 162. Each day of any such violation shall constitute a separate and distinct offense.

(1) Civil and Administrative.

(a) The Code Administrator may withhold issuance of a Development Permit or deny an application or other authorization if there is an existing unresolved violation of the Sarasota County Code on the subject property.

(b) The Code Administrator will issue a stop work order when it has been determined that work at the site:

(1) Is proceeding in violation of this Article, a Development Permit or other authorization issued hereunder or proceeding without any required authorization; or

(2) Poses an imminent and significant hazard to the public health, safety, or welfare, or to the environment.

(c) The Code Administrator may issue an After-the-Fact authorization to correct a violation when:

(1) The activities meet all of the standards in this Article and Chapter 74 of the Sarasota County Code of Ordinances at the time that the activities was conducted.

(2) The activities can be authorized without approval by the Board of County Commissioners.

(3) The Applicant agrees to a consent order to pay the appropriate fees and penalties.

(2) Enforcement and Penalties.

(a) Any Person who fails to comply with the requirements of this Article shall be required to restore the affected or impacted portion of the Myakka River Protection Zone, as determined by the Code Administrator. The Person shall be required to monitor and maintain the restored vegetation for a minimum of one (1) year, or until success criteria are met, as determined by the Code Administrator.

(b) Notwithstanding any other provisions of this Article for enforcement or penalties, the Board may also enforce this Article by actions at law or in equity seeking damages and injunctive relief in the appropriate court. In the event the Board prevails in any such action, the Board shall be entitled to an award of its costs and attorney's fees.

(3) Enforcement of Code by other means. A violation of any of the provisions of this Article or of any regulations adopted or permit conditions approved pursuant to this Article shall be punishable in the same manner as a misdemeanor as provided by law.

**Section 54-1042. Severability.**

Each separate provision of this Article is deemed independent of all provisions herein, so that if any provision or provisions of this Article are declared invalid or unconstitutional by any court of competent jurisdiction, all other provisions shall remain valid and enforceable.

**Sec. 54- 1043. Fees.**

The Board of County Commissioners is authorized to set reasonable fees and charges for the implementation of this Article. Such fees may be set by resolution. Fees charged will substantially finance the expenditures of reviewing projects pursuant to this Article.

- (1) A variance application fee of one-thousand dollars (\$1,000.00) shall be remitted upon application to the Code Administrator, unless otherwise determined by the most recent fee resolution adopted by the Board.
- (2) The Applicant shall be responsible for all costs associated with the requested variance, including processing and advertising.
- (3) An Applicant's failure to pay the requisite filing fees and costs may result in removal of the application from consideration by the Code Administrator for approval.
- (4) Applicants for After-the-Fact authorization shall be assessed three times the standard fee amount plus the original permit fee in addition to any fines and penalties assessed, providing the property owner(s) that committed the violation still owns the property. A single fee shall apply to any new owners of the property.
- (5) For any proposal or appeal requiring a hearing before the Board of County Commissioners, all required fees shall be paid no later than seven (7) days before the scheduled hearing date.

**Section 54-1044. Supremacy.**

The provisions of this Article shall supersede any provisions of existing ordinances in conflict herewith.

**Section 54-1045. Reserved.**



Section 3. Effective Date: This Ordinance shall take effect immediately upon receipt by the Office of the Secretary of the State of Florida.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Sarasota County, Florida, this 22<sup>nd</sup> day of APRIL, 2008.

BOARD OF COUNTY COMMISSIONERS  
OF SARASOTA COUNTY, FLORIDA

By: 

Chairman

ATTEST:

KAREN E. RUSHING, Clerk of Circuit Court  
and Ex-Officio Clerk of the  
Board of County Commissioners of  
Sarasota County, Florida

By: 

Deputy Clerk

STATE OF FLORIDA  
COUNTY OF SARASOTA  
I HEREBY CERTIFY THAT THE FOREGOING IS A  
TRUE AND CORRECT COPY OF THE ORIGINAL FILED  
IN THIS OFFICE. WITNESS MY HAND AND OFFICIAL  
SEAL THIS DATE 4/24/08  
KAREN E. RUSHING, CLERK OF CIRCUIT COURT  
EX-OFFICIO CLERK OF COUNTY  
COMMISSIONERS, SARASOTA COUNTY, FLORIDA  
BY 