

City of North Port

**ORDINANCE NO. 2008-36
(Adding Chapter 57, the Myakka River Protection Zone to the Unified Land
Development Code
(ULDC))**

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA CREATING A MYAKKA RIVER PROTECTION ZONE CODE AND PROVIDING REGULATIONS FOR DEVELOPMENT ACTIVITIES WITHIN THE MYAKKA RIVER PROTECTION ZONE; PROVIDING FINDINGS OF FACT; STATING PURPOSE AND INTENT; CREATING DEFINITIONS; IDENTIFYING APPLICABILITY AND INTERPRETATION; ESTABLISHING REVIEW AUTHORITY AND PROCESS; PROVIDING DESCRIPTIONS OF FOUR SUB-ZONES; PROVIDING REGULATED ACTIVITIES WITHIN THE PROTECTION ZONE; PROVIDING STANDARDS FOR DEVELOPMENT; PROVIDING PROHIBITED USES; PROVIDING PROCEDURES FOR VARIANCES; PROVIDING CONDITIONS OF COMPLIANCE AND ENFORCEMENT; PROVIDING SEVERABILITY; PROVIDING FEES REQUIRED FOR IMPLEMENTATION; PROVIDING FOR CONFLICTS; PROVIDING FOR APPEALS; PROVIDING FOR APPEALS OF INTERPRETATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City Commission of the City of North Port, in conformance with the Myakka River Wild and Scenic Designation and Preservation Act, section 258.501, Florida Statutes, as amended, has entered an Agreement with Florida Department of Environmental Protection (DEP) and the Florida Department of Community Affairs (DCA) for the management of the established Myakka River Wild and Scenic Protection Zone (Protection Zone) within the City of North Port;

WHEREAS, the Agreement was formally executed by all parties on November 13, 2007;

WHEREAS, the Protection Zone consists of an area 220-feet wide along the designated River Area, whose approximate boundary has been delineated and has been approved by the City, DCA, and DEP;

WHEREAS, the City's review and regulation of activities within the Protection Zone is required in conformance with the Myakka Wild and Scenic Designation and Preservation Act, section 258.501. F. S. as amended, the Myakka River Wild and Scenic River

Management Plan (the Plan), approved by the Governor and Cabinet on May 22, 1990, and the Agreement;

WHEREAS, the City Commission of the City of North Port desires to regulate activities within the Protection Zone so as to minimize potential adverse environmental and visual impacts on the resource values in the River Area, and to minimize adverse impacts to landowners' use of land for residential purposes;

WHEREAS, the City Commission of the City of North Port has incorporated the Plan by reference in its Comprehensive Plan;

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA, TO WIT:

SECTION 1- ADOPTION.

- 1.01 The City of North Port Planning and Zoning Advisory Board (PZAB) at its regularly scheduled meeting of September 4, 2008, voted unanimously to recommend approval to the City of North Port City Commission.
- 1.02 The City of North Port, Florida, City Commission hereby approves and adopts the complete text of this Ordinance of the Unified Land Development Code, as amended, pursuant to "Exhibit A" attached hereto.

SECTION 2- SEVERABILITY.

- 2.01 If any section, subsection, sentence, clause, or provision of this ordinance is finally held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, or provision shall be deemed a separate, distinct, and independent section, subsection, sentence, clause, or provision, and such holding shall not affect the validity of the remaining sections, subsections, sentences, clauses, or provisions.

SECTION 3- CONFLICTS.

- 3.01 In the event of any conflict between the provisions of this Ordinance and any other City of North Port City Ordinance or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 4- EFFECTIVE DATE.

- 4.01 This Ordinance and the provision thereof shall take effect immediately upon the adoption by the City of North Port City Commission.

PASSED AND DULY ADOPTED on the second and final reading in public session this
_____ day of _____, 2008.

NORTH PORT, FLORIDA

By: _____
FRED E. TOWER, III,
COMMISSION CHAIR

ATTEST:

HELEN RAIMBEAU, M.M.C.
City Clerk

Approved as to form and correctness:

ROBERT K. ROBINSON
City Attorney

Exhibit A

Chapter 57 MYAKKA RIVER PROTECTION ZONE REGULATIONS

Sec. 57-1. Findings.

The City Commissioners of the City of North Port, Florida, hereinafter referred to as the "Commission," makes the following findings:

- A. In 1985, the Legislature of the State of Florida and the Governor enacted the Myakka River Wild and Scenic Designation and Preservation Act (the "Act") Chapter 258, Part III, Florida Statutes.
- B. 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 to the Sarasota-Charlotte County line. The Act describes the "Wild and Scenic Protection Zone" as the area which extends 220 feet landward from the Myakka River Area.
- C. The Act provides for the permanent preservation of the Myakka River through a plan for permanent administration by State and local agencies.
- D. The Act requires the State of Florida, Department of Environmental Protection (the "Department") and a Coordinating Council created by the Department, to jointly develop a management plan for the Myakka River.
- E. In May 1990, the Governor and Cabinet approved the Myakka Wild and Scenic River Management Plan in accordance with the Act.
- F. In 1991, Florida Administrative Code Chapter 62D-15, entitled "Myakka River Wild and Scenic River Rule," was established for the purposes of implementing the Myakka Wild and Scenic River Management Plan.
- G. The Act directed the Department of Environmental Protection, the Department of Community Affairs, and the City of North Port to create a State-local agreement specifying guidelines and performance standards for activities within the Myakka River Protection Zone.
- H. On November 13, 2007, the Commission adopted a State-local agreement (the "Agreement") establishing interagency coordination for administering rules and regulations pertaining to the Myakka River Wild and Scenic Protection Zone in accordance with the Act. Local adoption of the Act requires adoption or

amendment of any necessary ordinances, land development regulations, and Comprehensive Plan goals, objectives and policies within one year after adoption of the Agreement.

- I. It is necessary to enact this Chapter to assist in the implementation of the City of North Port Comprehensive Plan. The City of North Port Comprehensive Plan contains a number of goals, objectives and policies for protecting the Myakka River consistent with the requirements of the Act; thus, the Comprehensive Plan shall not require any additional amendments thereto.
- J. The Commission held public hearings on the regulations described herein in accordance with the requirements of City of North Port Unified Land Development Code, and has considered the information received at the public hearings.
- K. The Commission has reviewed the ordinance codified in this Chapter and has found that the ordinance is consistent with the City of North Port Comprehensive Plan, as amended.

Sec. 57-2. Purpose.

The Commission finds and determines that these provisions will serve the following goals:

- A. Maintain the outstanding remarkable ecological, fish and wildlife, and recreational values that are unique in the State of Florida;
- B. Permanently preserve and enhance the Myakka River and its Resource Values for the citizens of the State of Florida, both present and future;
- C. Promote the beneficial and appropriate Development of all land contained within the Myakka River Protection Zone, (“MRPZ”) and the most consistent use of land in accordance with the City of North Port Comprehensive Plan;
- D. Protect the character and the established pattern of compatible Development in the Myakka River Protection Zone;
- E. Minimize potential adverse physical and visual impacts on Resource Values in the Myakka River Area;
- F. Minimize adverse impacts on private landowners’ use of land for residential purposes;
- G. Prevent or minimize land use incompatibilities and conflicts among different land uses;

- H. Maintain property values by stabilizing expectations and ensuring predictability in Development; and
- I. 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 City.

Sec. 57-3. Definitions.

General definitions may be found in Chapter 61, Definitions, of the Unified Land Development Code.

MYAKKA RIVER AREA- Consists of 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.

MYAKKA RIVER PROTECTION ZONE (MRPZ) - Consists of an upland buffer that extends 220 feet on each side of the Myakka River measured from the landward edge of the Myakka River Area.

MYAKKA RIVER AREA BUFFER- Consists of the area adjacent to a wetland or other habitat that protects the habitat from the adverse impacts of development. This buffer extends 50 feet landward of the River Area and falls within the 220 foot Myakka River Protection Zone.

MRPZ FIRE PROTECTION CLEAR ZONE- That zone which is 35 feet deep along the waterward facing exterior wall of the Primary Structure, and a minimum of 35 feet deep from the remaining exterior walls of the Primary Structure.

MYAKKA RIVER WILD AND SCENIC RIVER RESOURCE VALUE- Refers to any one or more of the specific scenic, recreational, geologic, fish and wildlife, historic, cultural, or ecological features associated with the Myakka River Area, as set forth in the Myakka Wild and Scenic River Management Plan.

Sec. 57-4. Applicability and Interpretation.

A. *Applicability.*

- (1) The provisions of this Chapter, as adopted by the Commission shall be applicable and enforceable within the Myakka River Protection Zone,

throughout the City of North Port, in Sarasota County, Florida. The provisions of this Chapter are not applicable to upland cut man-made canals or tributaries.

- (2) The Commission may provide for the enforcement of this Chapter within this municipality through an interlocal agreement.
- (3) This Chapter shall apply to all applicants and to all properties located within the Myakka River Protection Zone, as adopted by the Commission.
- (4) Earthmoving authorized under a valid permit, Agricultural exemption, written non-Agricultural exemption, issued by the City prior to the effective date of this Chapter, or the continuation of uninterrupted bona fide Agricultural earthmoving operations and maintenance in existence prior to the effective date of this Chapter 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.

B. *Interpretation.* The provisions of these regulations shall be interpreted in the following manner:

- (1) In the interpretation of these regulations, all provisions shall be considered minimal requirements and construed liberally to effectuate the purposes of these regulations.
- (2) These regulations are 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.
- (3) Where these regulations conflict with or overlap another ordinance or statute, whichever imposes the more stringent restrictions on construction and excavation shall apply.
- (4) Each separate provision of these regulations is deemed independent of all other provisions herein so that if any provision or provisions of these regulations is declared invalid or unconstitutional by any court of competent jurisdiction, all other provisions shall remain valid and enforceable.

C. *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 City approval to conduct any activities that could disturb Listed Species or their habitat.

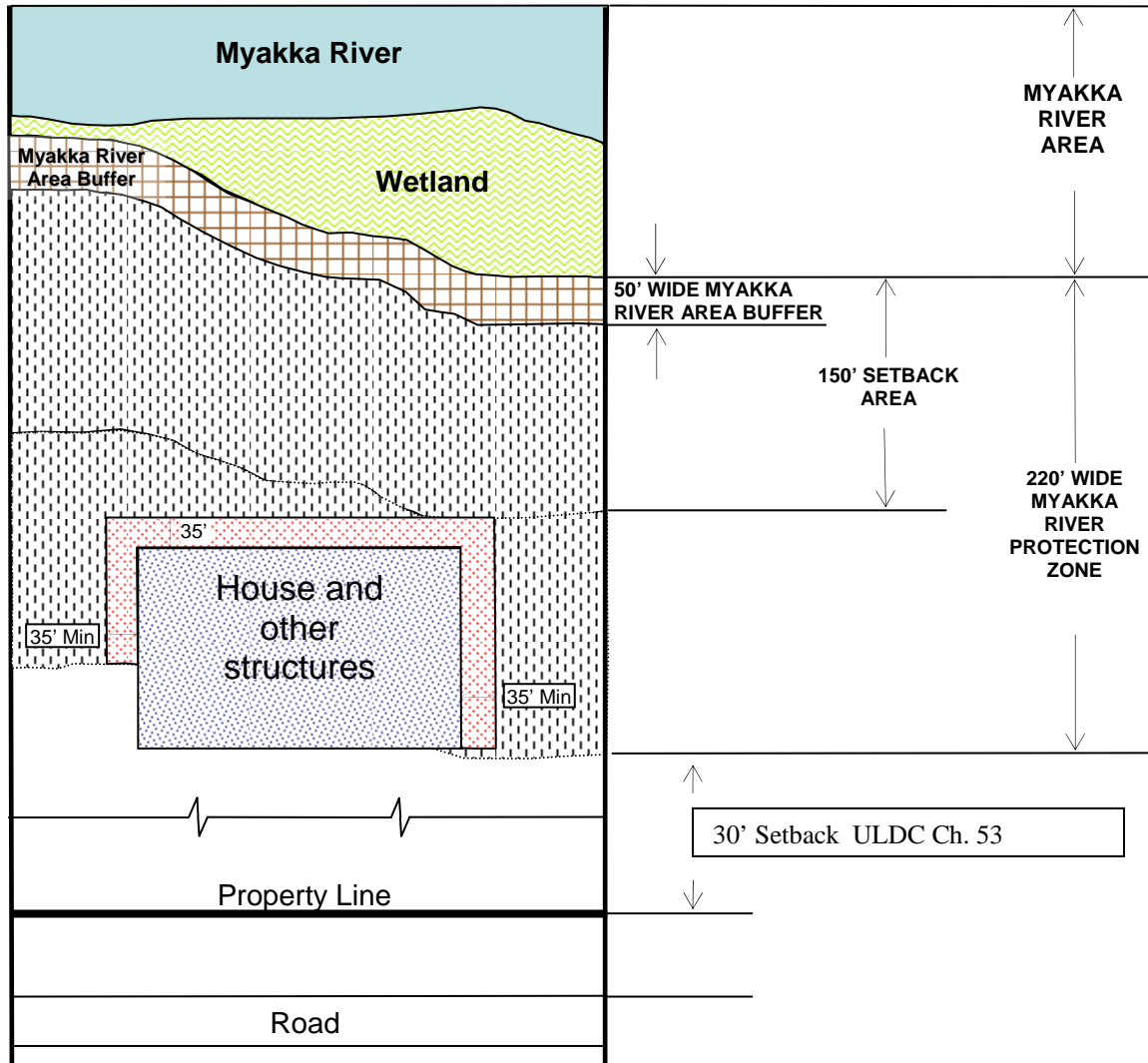
Sec. 57-5. Review Authority and Process.

- A. The City Manager or designee shall 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 Chapter.
- B. The City Manager or designee shall impose conditions for any Development Permit or activity within the Myakka River Protection Zone in order to ensure consistency with the provisions of this Chapter and the City of North Port Comprehensive Plan.
- C. All applications within the Myakka River Protection Zone will proceed through the review process as stipulated in the City of North Port Unified Land Development Code.

Sec. 57-6. Myakka River Protection Zone.

- A. For the purposes of this Article, the 220 foot wide Myakka River Protection Zone consists of four sub-zones, which are delineated graphically below, and are described as follows:
 - (1) *Zone 1.* The MRPZ fire protection clear zone. A zone, which is 35 feet deep along the waterward facing exterior wall of the Primary Structure and a minimum of 35 feet deep from the remaining exterior walls of the Primary Structure. This clear zone constitutes the required vegetative removal and turfgrass installation area necessary to allow for fire protection purposes and to serve as a fire protection defensible space as determined by the City of North Port Fire Rescue District. The MRPZ fire protection clear zone shall not encroach within the 150-setback of the Myakka River Area.
 - (2) *Zone 2.* The house and other structures, on a lot or parcel, as well as the area between the house and the street.
 - (3) *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.
 - (4) *Zone 4.* The 50- foot Myakka River Area Buffer.

MYAKKA RIVER PROTECTION ZONES DIAGRAM



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

Note: This diagram is not to scale.

Sec. 57-7. Regulated Activities within the Myakka River Protection Zone.

- A. *Prohibition:* The following activities are prohibited within the Myakka River Protection Zone, unless otherwise authorized herein:
- (1) *Construction and Development.* Construction and Development within the 50-foot Myakka River Area Buffer and Wetlands is prohibited unless otherwise authorized herein.
 - (2) *Earthmoving.* Persons may not conduct Earthmoving within the Myakka River Protection Zone for any purpose except Earthmoving meeting exemption criteria pursuant to any of Sections within this chapter and filling within the MRPZ fire protection clear zone as defined in Section 57-4(1)(a). The Environmental Services Division, or other City department 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.
 - (3) *On-site sewage disposal systems.* Persons may not construct on-site sewage disposal systems, or replacement systems, unless the system is located in the landward area of the Primary Structure and subject to all other applicable regulations. An alternative waste system shall be required for all new systems and replacement of existing systems, as defined in Chapter 9 of the City's Unified Land Development Code.
 - (4) *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 the adoption date of this Chapter.
 - (5) *Tree Removal.* Persons may not remove a Tree without a Tree Permit. Tree removal shall be subject to the regulations contained in Chapter 45 of the City of North Port Unified Land Development Code.
 - (6) *Wetlands not contiguous to the Myakka 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 Myakka 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.

B. *Exceptions to the prohibited activities within the Myakka River Protection Zone:*

- (1) *Removal of invasive exotic plant species or poison ivy, nettles and sandspurs.* Persons may remove invasive exotic plant species, as described in the most current Florida Exotic Pest Plant Council (FLEPPC) Invasive Plant Lists as amended, 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.
- (2) *Zone 1 and 2 exceptions.* Native Vegetation removal may be allowed in association with City-approved Permits for Construction of Primary Structures or to create or maintain a MRPZ fire protection clear zone around the Primary Structure.
- (3) *Zone 3 exceptions.* Native Vegetation removal may be allowed in Zone 3 only after review and written approval by the City's Environmental Services Division only for the following purposes:
 - (a) To create or maintain private nature trails with a maximum width not to exceed four feet.
 - (b) To create or maintain a single access to a permitted dock or pier.
 - (c) 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 Myakka 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).
 - (d) Native Vegetation removal associated with, and limited to exempt Earthmoving activities listed in Chapter 14 of the City of North Port Unified Land Development Code.
- (4) *Zone 4 exceptions.* Native Vegetation removal may be allowed in Zone 4 only after review and written approval by the City's Environmental Services Division and only for the following purposes:
 - (a) To create or maintain private nature trails.
 - (b) To create or maintain a single access to a permitted dock or pier.
 - (c) Reasonable selective pruning of side branches to enhance a view from a Principal Building within or outside the Myakka River

Protection Zone. Such selective pruning shall not occur within the Myakka 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) *Zone 4 use exception.* Family recreation, including, but not limited to, the placement of swing sets, barbeque grills, benches, and children's swimming pools may be allowed provided that it occurs within existing cleared areas, requires no Native Vegetation removal, and does not conflict with the purposes of this Chapter.
- (6) Native Vegetation removal associated with and limited to exempt Earthmoving activities listed in Chapter 14 of the City of North Port Unified Land Development Code.
- (7) 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 Chapter, evidence of such preparation or anticipation includes submittal of an application for a building permit for non-Agricultural use, a variance, 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.
- (8) 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 City.
- (9) Earthmoving authorized under a City authorized Earthmoving permit, Agricultural exemption, written non-agricultural exemption, issued by the City prior to adoption of this Chapter, or the continuation of uninterrupted bona fide Agricultural Earthmoving operations and maintenance in existence prior to adoption of this Chapter, 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, or for a period no greater than 2 years.

- (10) 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 Myakka River Area.
- (11) 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 shall require new permits issued by the City of North Port Building Department.

Sec. 57-8. Standards for Development.

- A. *Applications.* Any application for development located within the MRPZ must disclose such, and is therefore subject to the provisions of this Chapter.
- B. *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 City of North Port Unified Land Development Code.
- C. All applications for Development Permits shall be consistent with the provisions of this Chapter and the City of North Port Comprehensive Plan.
- D. The City Manager or designee shall review and provide a written determination on whether the application for a Development Permit is consistent with this Chapter.
- E. All applications for Construction, Development, and Earthmoving within the Myakka River Protection Zone must undergo review by the City's Building Department and Environmental Services Division.
- F. For all Development, the Applicant shall obtain all of the applicable Development Permits prior to commencing Construction, Development, or Earthmoving activities.
- G. For all residential lots.
 - (1) All new Construction, Development, and Earthmoving shall be located landward of the 150-foot setback of the Myakka River Area, except as provided below:
 - (a) Elevated patios, decks, and walkways;
 - (b) Caged or non-caged swimming pools;

- (c) Gazebos up to 400 square feet in floor area;
 - (d) Water dependent structures such as boat docks and piers.
 - (e) Public utility and drainage projects as authorized by the City.
- (2) All MRPZ Accessory Structures not referenced in Sec. 57-8 G (1) shall be located no closer than 220 feet measured landward from the Myakka River Area.
- (3) For properties with an existing Primary Structure, Development and Construction shall be approved by the City of North Port Building Department and Environmental Services Division if the following criteria are met:
- (a) The proposed Development and Construction is designed to minimize impacts to the Myakka River Area to the maximum extent practicable.
 - (b) Sufficient buffering (e.g. Native Vegetation and structure design considerations) shall be provided to minimize visual impacts to the Myakka River and the purposes of this Chapter and as determined by the City's Environmental Services Division. If nuisance/invasive species exist within the 50-foot Myakka River Area Buffer, they shall be removed with no impact to Native Vegetation and be replaced with appropriate native species to provide visual buffering.
 - (c) Driveways, tennis courts, and other impervious surfaces shall be located no closer to the Myakka River Area than the Primary Structure.
 - (d) Elevated patios, gazebos up to 400 square feet in floor area, decks, and walkways, and caged or non-caged swimming pools are permitted as per Sec. 57-8 G (1)(a-d).
- (4) Native Vegetation shall not be removed from Zone 3 or Zone 4 except as necessary and as authorized by the City for the following purposes:
- (a) City maintenance and access;
 - (b) Road and utility crossings;
 - (c) Nature trails;
 - (d) Access to water dependent uses such as docks or piers;

- (e) Public utility and drainage projects as authorized by the City.

In (a) – (e) above, the principles of avoidance first, and then minimization, shall be used in the design of all proposed projects located within the 50-foot Myakka River Area Buffer.

Sec. 57-9. Prohibited Uses.

A. Any use or structure not specifically permitted by the underlying zoning district or the MRPZ is prohibited.

- (1) The following uses shall be prohibited in the MRPZ:
 - (a) Commercial uses. Only those commercial uses legally existing prior to October 14, 2008 shall be allowed to continue.
 - (b) Membership club or lodge.
 - (c) Townhouse and multifamily residential development. Only those legally existing prior to October 14, 2008 shall be allowed to continue.
 - (d) Manufactured home/subdivision. Only those legally existing prior to October 14, 2008 shall be allowed to continue.
 - (e) Monastery or convent.
 - (f) Landfill.
 - (g) Recycling Center.
 - (h) Any waste treatment facilities containing raw wastewater.
 - (i) Jails, detention facilities, or work-camps.
 - (j) All light industrial services/facilities.
 - (k) All heavy industrial uses.
 - (l) All sales oriented uses.
 - (m) Outdoor storage yard.
 - (n) Educational Facilities.

- (o) Circus ground.
- (p) Winter quarters or training quarters.
- (q) Library.
- (r) City, county, state, or federal government office.
- (s) Aircraft landing strip or helicopter landing facility.
- (t) Excavation of sand, gravel, or minerals, borrow pit.
- (u) Livestock auction.
- (v) Packing house for fruits and vegetables.
- (w) Processing of food or related products.
- (x) Retail or wholesale sales of agriculturally related supplies and equipment.
- (y) Animal hospital or veterinarian.
- (z) Animal boarding facility.
- (aa) Wild animal sanctuary.
- (bb) Housing for farm or ranch labor, including mobile homes.
- (cc) Hospice, nursing, or convalescence home.
- (dd) Hospitals, including temporary housing for relative of patients.
- (ee) Residential assisted living facility without individual units.
- (ff) Orphanage.
- (gg) Alternative or post-incarceration facility, exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents.
- (hh) Group home for the physically disabled, mentally retarded, or emotionally disturbed with 14 or more residents.
- (ii) Group home for drug and alcohol treatment, treatment center.

- (jj) Golf course/country club.
- (kk) Miniature golf facility.
- (ll) Golf driving range.
- (mm) Aquaculture.
- (nn) Cemetery.

Sec. 57-10. Variances.

A. The Zoning Board of Appeals may grant a variance from the Myakka River Protection Zone 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 this chapter would result in unnecessary hardship. Such variance shall not be granted if it has the effect of nullifying the intent and purpose of this chapter. The granting of a variance requires a majority vote by the Zoning Board of Appeals.

(1) Considerations.

In reaching this decision, the Zoning Board of Appeals shall consider the following criteria, recommendations, and testimony:

- (a) Exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure, or building involved, and such exceptional or extraordinary conditions or circumstances create an undue hardship on the property owner and are not generally applicable to other lands, structures, or buildings;
- (b) Without the variance, the provisions of this chapter would deprive the applicant of all reasonable use of his property;
- (c) The special conditions and circumstances do not result from the actions of the applicant;
- (d) The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or required improvements under similar conditions. No pre-existing conditions on neighboring lands which are contrary to this chapter shall be considered grounds for the issuance of a variance;
- (e) The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building, or structure;

- (f) The variance, if granted, will not be injurious to the neighborhood or otherwise detrimental to the public welfare;
- (g) Staff recommendations;
- (h) Testimony from the applicant; and
- (i) Testimony from the public.

(2) Findings.

- (a) Before granting a variance, the Zoning Board of Appeals shall find that all of the following exist:
 - [1] That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
 - [2] That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of this chapter. (Any action taken by an applicant pursuant to lawfully adopted regulations preceding this chapter will not be considered self-created.)
 - [3] That such variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
 - [4] That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - [5] That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent in nature as to make it more reasonable and practical to amend these regulations.

In the granting of a variance, the City may require the removal of invasive exotic plant species and sufficient buffering (e.g. Native Vegetation and structure design considerations) to minimize visual impacts to the Myakka River.

A variance shall not be granted for Development and Construction located closer than 100 feet from the Myakka River Area.

Sec. 57-11. Compliance and Enforcement.

The City of North Port has the authority to enforce any Development Permit or condition as well as, any provisions of the City of North Port Unified Land Development Code and any provisions of the Florida Statutes Chapter 162. Each day of any such violation shall constitute a separate and distinct offense.

A. *Civil and Administrative.*

- (1) The Building Department or the City's Environmental Services Division may withhold issuance of a Development Permit or deny an application or other authorization if there is an existing unresolved violation of the City of North Port Unified Land Development Code on the subject property.
- (2) The Building Department will issue a stop work order when it has been determined that work at the site:
 - (a) Is proceeding in violation of this Chapter, a Development Permit or other authorization issued hereunder or proceeding without any required authorization; or
 - (b) Poses an imminent and significant hazard to the public health, safety, or welfare, or to the environment.

B. *Enforcement and Penalties.*

- (1) Any person who fails to comply with the requirements of this Chapter shall be required to restore the affected or impacted portion of the Myakka River Protection Zone, as determined by the Environmental Services Division. The Person shall be required to monitor and maintain the restored vegetation for a minimum of one year, or until success criteria are met, as determined by the Environmental Services Division.
- (2) Notwithstanding any other provisions of this Chapter for enforcement or penalties, the Commission may also enforce this Chapter by actions at law or in equity seeking damages and injunctive relief in the appropriate court. In the event the Commission prevails in any such action, the Commission 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 Chapter or of any regulations adopted or permit conditions approved pursuant to this Chapter shall be punishable in the same manner as a misdemeanor as provided by law.

Sec. 57-12. Severability.

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

Sec. 57-13. Fees.

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

- A. The Applicant shall be responsible for all costs associated with the requested variance, including processing and advertising.
- B. An Applicant's failure to pay the requisite filing fees and costs may result in removal of the application from consideration by the Building Department for approval.
- C. For any proposal or appeal requiring a hearing before the North Port Zoning Board of Appeals, all required fees shall be paid no later than 7 days before the scheduled hearing date.

Sec. 57-14. Conflicts.

Whenever the requirements of these regulations differ from those imposed by the City, Federal, or State regulation, law or statute, the most restrictive or imposing the higher standards shall govern.

Sec. 57-15. Appeals.

Any person aggrieved by the Zoning Board of Appeals decision regarding any variance, may file a petition for a writ of certiorari in the Circuit Court of Sarasota County within 30 days of such decision.

Sec. 57-16. Appeals of Interpretations.

Any person aggrieved by a City Environmental Services Division interpretation may appeal to the City Manager. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation is inconsistent with the provisions of this Chapter. The granting of any appeal shall not be in conflict with Florida State Statutes. The City Manager's decision may be appealed to the City Commission. The City Commission's decision, based upon evidence submitted to the

City Manager and the City Manager's finding(s), may be appealed to the Circuit Court of Sarasota County within 30 days of such decision.

Sec. 57-17. Effective Date:

This Ordinance shall take effect immediately upon receipt by the Office of the Secretary of the State of Florida.