

**CITY OF MARCO ISLAND**  
**ORDINANCE 10-05**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING CHAPTER 18 "ENVIRONMENT," ARTICLE III "UTILITY OPERATION AND REGULATIONS," DIVISION 2 "WATER," IN ORDER TO AUTHORIZE AND PROVIDE FOR THE ADOPTION AND AMENDMENT OF LANDSCAPE IRRIGATION RESTRICTIONS BY RESOLUTION OF THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR REPEAL OF CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Chapter 180, Florida Statutes, empowers municipalities with certain powers and authority to control and regulate municipal public works; and

WHEREAS, Section 180.02, Florida Statutes, allows a municipality to execute all powers granted under Chapter 180, Florida Statutes within its corporate limits; and

WHEREAS, the City Council of the City of Marco Island ("City Council") finds that the efficient use and conservation of water reflects responsible use of a limited and precious resource that is essential to life, and will prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources; and

WHEREAS, it is the desire of the City Council to locally enforce year-round landscape irrigation water conservation measures; and

WHEREAS, the South Florida Water Management District has responsibility and exclusive authority under Chapter 373, Florida Statutes, for regulating the consumptive use of water; and

WHEREAS, the South Florida Water Management District has amended Chapter 40E-24, Florida Administrative Code ("F.A.C."), requiring year-round water conservation for landscape irrigation; and

WHEREAS, Chapter 40E-24, F.A.C., applies to all users as defined in Subsection 40E-24.101(9), F.A.C., including permitted users under Chapters 40E-2 and 40E-20, F.A.C.; and

WHEREAS, Chapter 40E-24, F.A.C., applies to all landscape irrigation regardless of whether the water comes from ground or surface water, from a private well or pump, or from a public or private utility; and

WHEREAS, Rule 40E-24.501(3), F.A.C. provides that a local government may adopt an ordinance to locally enforce the year-round landscape irrigation water conservation measures; and

WHEREAS, Chapter 40E-24.301(1), F.A.C., provides that local governments that wish to enforce alternative landscape irrigation conservation measures shall be considered to be in substantial compliance upon the enactment of an ordinance establishing landscape irrigation measures which achieve water conservation consistent with the number of days and times for landscape irrigation set forth in subsections 40E-24.201(5)-(7), F.A.C.; and

WHEREAS, the City Council finds that the proposed alternative landscape irrigation conservation measures included in this ordinance will achieve water conservation while addressing local considerations, consistent with the landscaping dates and times provided in subsections 40E-24.201(5)-(7), F.A.C.; and

WHEREAS, the City Council desires to amend Sec. 18-75 "Year Round Landscape Irrigation Restrictions" of the Code of Ordinances, in order to authorize the adoption by resolution of requirements specifying the permissible days and times of landscape irrigation within the City; and

WHEREAS, the City Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marco Island, Florida:

**SECTION 1. Recitals.** The foregoing "WHEREAS" clauses are 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 adopted as follows:

1. Division 2 "Water" of Article III entitled "Utility Operations and Regulations" of Chapter 18 "Environment" is hereby amended as follows.

**Sec. 18-62. Definitions.**

Address means the "house number" (a numeric or alphanumeric designation) that, together with the street name, describes the physical location of a specific property. This includes "rural route" numbers but excludes post office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Service to determine a delivery location, the lot number shall be the property's address. If a lot number in a mobile home park or similar residential community is not used by the U.S. Postal Service (e.g., the park manager sorts incoming mail delivered to the community's address), then the community's main address shall be the property's address. If a property has no address it shall be considered "even-numbered".

Existing landscaping means any landscaping which has been planted and in the ground for more than ninety (90) days.

Landscaping means shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora, not intended for resale, which are situated in such diverse locations as residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way except athletic play areas as defined in subsection 40E-24.101(2), F.A.C.

New landscaping means any landscaping which has been planted and in the ground for ninety (90) days or less.

Wasteful and unnecessary means allowing water to be dispersed without any practical purpose to the water use; for example, excessive landscape irrigation, leaving an unattended hose on a driveway with water flowing, allowing water to be dispersed in a grossly inefficient manner, regardless of the type of water use; for example, allowing landscape irrigation water to unnecessarily fall onto pavement, sidewalks and other impervious surfaces; allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

**Sec. 18-75. Year Round Landscape Irrigation Restrictions.**

- (a) Purpose and Applicability.
  - (1) The primary purpose of this ~~article~~ section is to provide the regulatory framework to assist in conservation of water resources through consistent and uniform application of restrictions on use of water for irrigation in the city.
  - (2) This ~~article~~ section shall be applicable notwithstanding any other city ordinance.
- (b) Irrigation; operational requirements.
  - (1) All water irrigation activities within the city, and which are not exempted by ~~section 16(e)18-75(c)~~, shall be restricted to the days and hours specified ~~as follows~~ within Resolution 10-20 which provides for the permissible dates and times of irrigation, as authorized pursuant to this section.

<b>City of Marco Island Water Irrigation Restrictions</b>	
<b>Landscaping Irrigation—Established</b>	
<b>Odd-numbered addresses</b>	<del>3 days each week; Monday, Wednesday, Saturday, 12:01 a.m. to 8:00 a.m. for irrigation systems</del>
<b>Even-numbered addresses</b>	<del>3 days each week; Tuesday, Thursday, Sunday, 12:01 a.m. to 8:00 a.m. for irrigation systems</del>
<b>Landscaping Irrigation—New (in place less than 60 days)</b>	
<b>All addressees</b>	<del>5 days each week; Monday through Friday, 12:01 a.m. to 8:00 a.m. for irrigation systems</del>
<b>Irrigation System Maintenance</b>	
<b>Existing systems</b>	<del>10 minutes per zone per week; person must be present in zone and working on the system during each such operation</del>
<b>New systems</b>	<del>30 minutes per zone, one time only; person must be present in zone and working on the system during each operation</del>
<b>Pesticide, Fungicide, Herbicide, Fertilizer Application</b>	
<b>All addressees</b>	<del>Application shall be coordinated with the scheduled day/time for landscaping irrigation; if applied outside of the allowed hours, and "watering in" is specified by the manufacturer of the applied material, a licensed application technician must be on the premises</del>
<b>Other Outdoor Water Uses</b>	
<b>All other outdoor water uses</b>	<del>Other outdoor water uses, including low volume hand watering, car, truck, and boat washing and the washing of exterior home surfaces and roofs, shall be allowed</del>

	<del>anytime with the use of low volume pressure cleaning equipment, low volume mobile equipment washing and/or water hose equipped with an automatic self-canceling or automatic shutoff nozzle; in all cases, the water used must drain to a pervious surface or to a water recycling/reuse system</del>
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(2) All wasteful and unnecessary water use, as defined in Section 18-62, shall be prohibited. All water irrigation activities must and shall be operated in an efficient manner so as to not allow water to be applied to travel lanes on adjacent roadways, parking lots, sidewalks and other paved surfaces.

(3) All water irrigation systems shall be equipped with a properly installed rain sensor switch.

a. A rain sensor switch shall be required on all new installations of irrigation systems.

b. A rain sensor switch shall be retrofitted on existing systems, installed after May 1, 1991, within one year of the effective date of the ordinance from which this article section derives.

c. The rain sensor switch shall be maintained in fully operational condition at all times by the owner/operator of the irrigation system.

(c) Exemptions; variances.

(1) The following are exempt from all provisions of this article section:

a. Landscaping irrigation from which the source of the water is 100 percent reclaimed water.

b. Landscaping irrigation from which the source of the water is 100 percent saltwater.

c. Irrigation wholly from a low volume irrigation system.

d. Use of low volume mobile equipment washing provided all unused water drains into only a pervious ground surface.

~~e. Water use to the extent authorized by a specific consumptive use permit, or similar permit, issued to the respective water user by the South Florida Water Management District.~~

~~(2) Any individual's or entity's irrigation that is affected by this article may make application to the city manager, or designee, to request a variance if strict compliance with the restrictions of this article will impose a unique, unnecessary, and inequitable hardship on such irrigation. Variance relief may be granted only upon a written application applying for the variance, which application contains proof that the irrigation hardship is peculiar to that individual, entity, or that affected property; that the hardship is not self-imposed; that the granting of the variance would be consistent with the general intent and purpose of this article; that the variance is necessary to eliminate an inequitable irrigation hardship; and that each variance shall vary the irrigation restrictions only to the minimum extent required to resolve the unreasonableness of the irrigation hardship that would exist but for the variance. No variance shall be granted unless the applicant is able to persuade the city manager or designee of the necessity~~

~~for the variance. If the initial decision is made by the designee, the only appeal shall be to the city manager, and the city manager's decision upon appeal to grant or deny the requested variance shall be further reviewable only as specified in subsection (a) below. A variance from specific day or days identified in Resolution 10-20 may be granted if strict application of the restrictions would lead to unreasonable or unfair result in particular instances, provided that the applicant demonstrates with particularity that compliance with the schedule will result in substantial economic, health, or other hardship on the applicant requiring a variance or those served by the applicant. Where a contiguous property is divide into different zones a variance may be granted hereunder so that each zone may be irrigated on days different than other zones of the property. However, no single zone may be irrigated more than three days per week.~~

a. ~~The city manager, or designee, shall be the only individual(s) authorized to grant or deny these variances pursuant to this subsection. A decision to grant or deny the variance should be made within ten (10) days after actual receipt of a complete application for the variance. Denial of a variance request by the designee of the city manager may be appealed to the city manager not later than ten days of actual receipt by the applicant of the decision on the initial request. The city manager's decision upon appeal shall be final.~~

b. Any individual or entity aggrieved by the denial of a variance from this section shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the city manager, within fourteen (14) days after notice of the denial of the variance has been delivered to such person or entity's last known address, a written statement setting forth fully the grounds for the appeal. The city manager shall set a hearing on such appeal for the next available City Council meeting. Notice of such hearing shall be given to the appellant at least ten (10) days before the date of said hearing. The decision and order of the City Council on such appeal shall be final.

~~b- c.~~ An application for variance and/or the granting of a variance shall operate prospectively and shall not affect any then pending enforcement action pursuant to this article section or otherwise.

d. The City hereby recognizes any and all variances issued by the South Florida Water Management District to those users who operate and maintain smart irrigation systems which meet the requirements of Section 373.62(7), Fla. Stat.

(d) Penalties.

(1) ~~Violators of this article~~ the landscape irrigation requirements of this section, including requirements adopted by Resolution 10-20 as authorized under subsection (b)(1), shall be issued a verbal or written warning, or a "notice of violation" with a special period to correct violation. Persons who violate this article section after receiving a warning or notice, or refuse to comply with such warning or notice, shall be issued a citation and fine of \$75.00. Persons who commit repeat violations may also be punished pursuant to F.S. § 162.21, as a civil infraction with a maximum civil penalty not to exceed \$500.00. Any person who violates any provision of this article section

shall also be subject to the city's remedies as authorized the city's Code of Ordinances, or as otherwise then allowed by law. The applicable penalties shall be determined by the forum selected to enforce the violation.

- a. Each day, or part thereof commencing at noon of the respective day, that a violation of this ~~article~~ section occurs by the same individual or entity may be deemed by the finder of fact to constitute a separate violation.

**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 Code of Ordinances adopted by this Ordinance shall be included and become a part of the Code of Ordinances of the City of Marco Island. The Sections of this Ordinance, as adopted, may be renumbered or relettered and that the word "ordinance" may be changed to "Section," "Article," or other appropriate word.

**SECTION 4. Conflicts and Severability.** If any word, phrase, clause, Subsection, or Section of this Ordinance is for any reason held unconstitutional or invalid for any reason or cause, the remaining portion of this Ordinance shall remain in full force and effect and shall be valid as if the invalid portion was not included in the Ordinance. All Sections or parts of Sections of all existing ordinances in conflict with this Ordinance shall be and the same are hereby repealed to the extent of such conflict.

**SECTION 5. Effective Date.** This Ordinance shall take effect immediately upon adoption.

ADOPTED BY THE CITY COUNCIL of the City of Marco Island this 17<sup>th</sup> day of May 2010.

Attest:

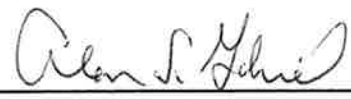
**CITY OF MARCO ISLAND, FLORIDA**

By:   
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Laura M. Litzan, City Clerk

By:   
\_\_\_\_\_  
Frank R. Recker, Chairman

(SEAL)

Reviewed for legal sufficiency:

By:   
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Alan L. Gabriel, City Attorney