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ORDINANCE 20-02

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING CHAPTER 52 "ENVIRONMENT," ARTICLE II "UTILITY OPERATION AND REGULATIONS," DIVISION 2 "WATER," AND SUBDIVISION B "CONSERVATION LANDSCAPE IRRIGATION REGULATIONS," IN ORDER TO AUTHORIZE AND PROVIDE FOR LANDSCAPE IRRIGATION RESTRICTIONS; 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 South Florida Water Management District (District) has the responsibility and exclusive authority under Chapter 373, Florida Statutes (F.S.), for regulating the consumptive use of water; and

WHEREAS, Chapter 40E-24, F.A.C., applies to all users as defined in subsection 40E-24.101(14), F.A.C., including permitted and exempt users under Chapter 40E-2, F.A.C.; and

WHEREAS, Chapter 40E-24, F.A.C., calls for year-round and permanent landscape irrigation restrictions, separate and independent from water shortage declarations, in accordance with Chapter 40E-21, 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-24.301, F.A.C., provides that local governments may adopt a landscape irrigation ordinance that achieves water conservation consistent with Rule 40E-24.201, F.A.C., including variance and enforcement procedures; 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 within the City; and

47 **WHEREAS**, the City Council desires to amend Sec. 52-71 "Year Round
48 Landscape Irrigation Restrictions" of the Code of Ordinances, in order to include the table
49 providing for landscape irrigation restrictions, specifying the permissible days and times,
50 within the Code; and

51
52 **WHEREAS**, the City Council hereby rescinds Resolution 10-20 in its entirety.
53

54 **WHEREAS**, the City Council hereby finds and declares that adoption of this
55 Ordinance serves a municipal and public purpose and is in the best interest of the public
56 health, safety, and welfare of the City's residents.
57

58 **NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Marco
59 Island, Florida:
60

61 **SECTION 1. Recitals.**

62 The foregoing "WHEREAS" clauses are ratified and confirmed as being true, correct,
63 and reflective of the legislative intent underlying this Ordinance and are hereby made a
64 specific part of this Ordinance.
65

66 **SECTION 2. Amendment and Adoption.**

67 The amendments to the Code of Ordinances contained in this Ordinance are
68 hereby adopted as follows:
69

70 1. Subdivision B. "Conservation Landscape Irrigation Regulations" of Division 2
71 "Water" of Article II entitled "Utility Operations and Regulations" of Chapter 52
72 "Environment" is hereby amended as follows.
73

74 **Sec. 52-71. - Year-round Landscape irrigation restrictions.**
75

76 (a) Purpose and Applicability.
77

78 (1) The primary purpose of this section is to provide the regulatory framework
79 to assist in conservation of water resources through consistent and uniform
80 application of restrictions on use of water for irrigation in the city.
81

82 (2) This section shall be applicable notwithstanding any other city ordinance.
83

84 (b) Irrigation; operational requirements.
85

86 ~~(4)~~ All water irrigation activities within the city, which are not exempted by
87 section 52-71(c), shall be restricted to the days and hours specified as
88 follows: ~~within Resolution 10-20 which provides for the permissible dates~~
89 ~~and times of irrigation, as authorized pursuant to this section.~~
90
91
92

<u>City of Marco Island Water Irrigation Restrictions</u>	
<u>Landscaping Irrigation--Established</u>	
<u>Odd numbered addresses</u>	<u>3 days each week; Monday, Wednesday, Saturday; 12:01 a.m. to 8:00 a.m. for irrigation systems</u>
<u>Even numbered addresses</u>	<u>3 days each week; Tuesday, Thursday, Sunday, 12:01 a.m. to 8:00 a.m. for irrigation systems</u>
<u>Landscaping Irrigation--New (in place less than 90 days)</u>	
<u>All addresses</u>	<u>First 30 days every day, except Friday, 12:01 a.m. to 8:00 a.m. for irrigation systems; In place between 31 to 90 days, Monday, Wednesday, Thursday, and Saturday, 12:01 a.m. to 8:00 a.m. for irrigation systems</u>
<u>Irrigation System Maintenance</u>	
<u>Existing systems</u>	<u>10 minutes per zone per week; person must be present in zone and working on the system during each such operation</u>
<u>New systems</u>	<u>30 minutes per zone, one time only; person must be present in zone and working on the system during such operation</u>
<u>Pesticide, Fungicide, Herbicide, Fertilizer Application</u>	
<u>All addresses</u>	<u>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</u>
<u>Other Outdoor Water Uses</u>	
<u>All other outdoor water uses</u>	<u>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 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</u>

93 (2) All wasteful and unnecessary water use, as defined in section 52-41, shall be
94 prohibited. All water irrigation activities must and shall be operated in an efficient
95 manner so as to not allow water to be applied to travel lanes on adjacent roadways,
96 parking lots, sidewalks, and other paved surfaces.

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

99

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

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

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

107 (c) Exemptions; variances.

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

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

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

113 c. Irrigation wholly from a low volume irrigation system.

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

116 (2) A variance from specific day or days identified in ~~Resolution 10-20 Subsection~~
117 (b)(1) may be granted if strict application of the restrictions would lead to
118 unreasonable or unfair result in particular instances, provided that the applicant
119 demonstrates with particularity that compliance with the schedule will result in
120 substantial economic, health, or other hardship on the applicant requiring a
121 variance or those served by the applicant. Where a contiguous property is divided
122 into different zones a variance may be granted hereunder so that each zone may
123 be irrigated on days different than other zones of the property. However, no single
124 zone may be irrigated more than three days per week.

125 a. The city manager, or designee, shall be the only individual(s) authorized to grant
126 or deny variances pursuant to this subsection. A decision to grant or deny the
127 variance should be made within ten days after actual receipt of a complete
128 application for the variance.

129 b. Any individual or entity aggrieved by the denial of a variance from this section
130 shall have the right of appeal to the city council. Such appeal shall be taken by
131 filing with the city manager, within 14 days after notice of the denial of the variance
132 has been delivered to such person or entity's last known address, a written
133 statement setting forth fully the grounds for the appeal. The city manager shall set
134 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 days before the date of said hearing. The decision and order of the city council on such appeal shall be final.

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 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 F.S. § 373.62(7).

(d) Penalties. Violators of 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 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 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.

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.

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 were 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 17th day of August 2020.

177 **ATTEST:** **CITY OF MARCO ISLAND, FLORIDA**
178
179 _____ By: _____
180 Laura M. Litzan, City Clerk Erik Brechnitz, Chairman
181
182
183 Approved as to form and legal sufficiency:
184
185 _____
186 Alan L. Gabriel, City Attorney