

CITY OF MARCO ISLAND
ORDINANCE NO. 02-31

AN ORDINANCE TO ESTABLISH WATER CONSERVATION REGULATIONS BY DELETING CHAPTER 18, ARTICLE III AND SUBSTITUTING NEW PROVISIONS; PROVIDING REGULATIONS FOR WATER IRRIGATION; PROVIDING APPLICABILITY; PROVIDING FINDINGS, PURPOSE, AND DEFINITIONS; PROVIDING IRRIGATION HOURS AND OPERATIONAL REQUIREMENTS; PROVIDING EXEMPTIONS AND VARIANCE PROCEDURES; PROVIDING PENALTIES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Marco Island City Council has determined that the protection of water resources is in the best interest of and for the long term protection of the health, safety, and welfare of the residents, citizens, and visitors of Marco Island; and

WHEREAS, the Marco Island City Council has also determined that water conservation is an integral part of protecting current and future water resources; and

WHEREAS, The Marco Island City Council has deemed that placing certain restrictions on the use of water for irrigation is an effective means of conserving water.

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

Section 1. Findings.

- 1.1 Irrigation places a significant demand on the water resources of Marco Island, including the potable water supply system.
- 1.2 That adopting this Ordinance to limit allowable hours of irrigation is to promote conservation, to protect water resources, and to reduce demand upon all water sources, including sources of water that can be treated to become potable water.
- 1.3 That restricting allowable hours of irrigation pursuant to this Ordinance will not create undue hardship on the users water from the affected water sources.

Section 2. Purpose and Applicability.

- 2.1 The primary purpose of this Ordinance 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 of Marco Island.
- 2.2 Chapter 18, Article III is hereby repealed. This Ordinance shall be applicable notwithstanding any other Marco Island Ordinance.

Section 3. Definitions.

The following definitions apply throughout this Ordinance:

- 3.1 *City* means the City of Marco Island, a municipality of the State of Florida, by and through its City Council.
- 3.2 *Enforcement Officer* means any authorized agent or employee of the City whose duty it is to enforce the City's codes, and state statutes.
- 3.3 *Impervious Surfaces* means surfaces that do not allow penetration of water, including, but not limited to, paved or concrete roads, paved or concrete sidewalks, paved or concrete driveways, paved or concrete parking lots, or highly compacted areas including shell or clay.
- 3.4 *Irrigation* means the application of water by means other than natural precipitation.
- 3.5 *Irrigation Systems* means equipment and/or devices which deliver water to landscaping being irrigated, including, but not limited to, pumping stations and controls, control structures, ditches, public or private wells, piping, hoses, valves, fittings, and emitters.
- 3.6 *Landscaping* means all residential, commercial, institutional, industrial, and governmental areas which are considered as lawns or ornamentally planted, including, but not limited to, sod, grasses, turf, ground covers, flowers, shrubs, trees, mulch, hedges, and other similar plant materials.
- 3.7 *Low Volume Irrigation Systems* means equipment and devices specifically designed to deliver a volume of water consistent with the water requirement of the plant being irrigated and which delivers the water with a high degree of efficiency directly to the root zone of the plant.
- 3.8 *Low Volume Hand Watering* means watering attended by one person with one hose equipped with a self-canceling or automatic shutoff nozzle.
- 3.9 *Low Volume Mobile Equipment Washing* means the washing of mobile equipment with a bucket and sponge, a single hose with a self-canceling

or automatic shutoff nozzle, low volume pressure cleaning equipment, or any combination of the preceding methods of washing.

- 3.10 *Low Volume Pressure Cleaning* means pressure cleaning by means of equipment that is specifically designed to reduce the volume of water used as accepted by industry standards.
- 3.11 *Pervious Surface* means every improved or unimproved surface that allows water to readily soak into or recharge the water aquifer under such surface.
- 3.12 *Water Resources* means any and all water on or beneath the surface of the ground, including, but not limited to, natural or artificial watercourses, lakes, ponds, and artificial water features, and water percolating, standing, or flowing beneath the surface of the ground.

Section 4. Irrigation; Operational Requirements.

- 4.1 All water irrigation activities within the City, and which are not exempted by Section Five, shall be restricted to the days and hours specified as follows:

City of Marco Island Water Irrigation Restrictions	
Landscaping Irrigation – Established	
ODD Numbered Addresses	3 days each week; Monday, Wednesday, Saturday; 12:01 AM to 8:00 AM for irrigation systems
EVEN Numbered Addresses	3 days each week; Tuesday, Thursday, Sunday; 12:01 AM to 8:00 AM for irrigation systems
Landscaping Irrigation – New (in place less than 60 days)	
ALL Addresses	5 days each week; Monday through Friday; 12:01 AM to 8:00 AM for irrigation systems
Irrigation System Maintenance	
Existing Systems	10 minutes per zone per week; person must be present in zone and working on the system during each such operation
New Systems	30 minutes per zone, one time only; person must be present in zone and working on the system during such operation
Pesticide, Fungicide, Herbicide, Fertilizer Application	
ALL Addresses	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
Other Outdoor Water Uses	
ALL Other Outdoor Water Uses	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.

- 4.2 All water irrigation activities must and shall be operated in an efficient manner so as to not allow water to be applied to any impervious surface travel lanes on adjacent roadways.
- 4.3 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 (1) year of the effective date of this Ordinance.
 - c. The rain sensor switch shall be maintained in fully operational condition at all times by the owner/operator of the irrigation system.
- 4.4 All water irrigation activities prohibited or restricted from time to time by any Water Shortage Emergency Order declared by the South Florida Water Management District and published in a newspaper of general circulation in Marco Island pursuant to Section 373.175, Florida Statutes, shall be automatically incorporated into and be enforceable by application of this Ordinance. Each such Order shall apply to such geographic areas in the City of Marco Island as is specified in the respective Order, or if not specified, as otherwise then provided by law. Each Order shall be subject only to such exceptions as are specified in the respective Order, and if not specified therein, as otherwise then provided by law.

Section 5. Exemptions; Variances.

- 5.1 The following are exempt from all provisions of this Ordinance:
- a. Landscaping irrigation from which the source of the water is 100% reclaimed water.
 - b. Landscaping irrigation from which the source of the water is 100% 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.

- 5.2 Any individual's or entity's irrigation that is affected by this Ordinance may make application to the City Manager, or designee, to request a variance if strict compliance with the restrictions of this Ordinance 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 Ordinance; 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 5.2.a. below.
- a. The City Manager, or designee, shall be the only individual(s) authorized to grant or deny these variances. 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 (10) 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. 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 Ordinance or otherwise.

Section 6. Penalties.

- 6.1 Violators of this Article 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 after receiving a warning or Notice, or refuse to comply with such warning or Notice, shall be issued a citation and fine of ~~One Hundred Dollars (\$100.00)~~ Seventy-five Dollars (\$75.00). Persons who commit repeat violations may also be punished pursuant to Section 162.21, Florida Statutes, as a civil infraction with a maximum civil penalty not to exceed five hundred dollars (\$500.00). Any person who violates any provision of this Ordinance 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 Ordinance occurs by the same individual or entity may be deemed by the finder of fact to constitute a separate violation.

Section 7. Incorporation, Conflict and Severability.

- 7.1 It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.
- 7.2 If any word, phrase, clause, subsection, or section of this Ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the Ordinance.

Section 8. Effective Date.

This Ordinance shall take effect on January 1, 2003.

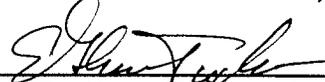
Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 4th day of November, 2002.

Attest:



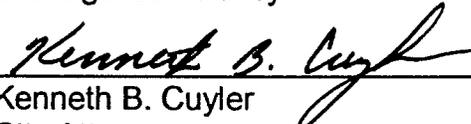
A. William Moss
City Manager

CITY OF MARCO ISLAND, FLORIDA

BY: 

E. Glenn Tucker, Chairman

Approved as to form
and legal sufficiency:



Kenneth B. Cuyler
City Attorney