



CITY COUNCIL AGENDA STATEMENT

Meeting Date: March 9, 2021
To: Honorable Mayor and City Council
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Ordinance 2021-07**; Amending Chapter Fourteen Article IV Entitled Water Conservation, Providing For Local Implementation Of The Mandatory Year-Round Landscape Irrigation Conservation Measures Rule Of The South Florida Water Management District (40e-24, F.A.C.); Providing Definitions; Providing For The Applicability Of The Ordinance; Providing The Landscape Irrigation Schedule; Providing Exceptions To The Landscape Irrigation Schedule; Providing For A Requirement To Operate Technology That Inhibits Or Interrupts An Irrigation System During Periods Of Sufficient Moisture; Providing For Variances From The Specific Day Of The Week Limitations; Providing For Enforcement Of The Ordinance; Providing For Penalties For Violation Of The Ordinance; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; And Providing For Inclusion In The Code; And Providing For An Effective Date.

BACKGROUND:

The attached amended Ordinance will comport with the South Florida Water Management District’s Mandatory Year-Round Landscape Irrigation Conservation Measures Rule [Chapter 40E-24, Florida Administrative Code (FAC)]. Applications for funding under the District’s **Cooperative Funding Program for FY2022** will be evaluated based on several factors including the adoption of an ordinance which fully comports with Chapter 40E-24 F.A.C. This consideration may be extended to other cooperative funding programs in the future as well.

Provisions are still consistent with Policy 3-5.5.4 Comply With SFWMD Water Use Restrictions & Policy 3-5.5.5 Encourage Use of Rainwater

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u> X </u>	<u> </u>
2. Other –Sewer Mandate	<u> </u>	<u> X </u>

FISCAL NOTE:

NA
APPROVED BY FINANCE DIRECTOR:

RECOMMENDATION:

Approval of Ordinance.

Sponsored by: Garrett
Introduction Date: February 9, 2021
Public Hearing Dates: February 9, 2021
March 9, 2021
Enactment Date:

**CITY OF MARATHON, FLORIDA
ORDINANCE 2021-07**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA; AMENDING CHAPTER FOURTEEN ARTICLE IV ENTITLED WATER CONSERVATION, PROVIDING FOR LOCAL IMPLEMENTATION OF THE MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES RULE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (40E-24, F.A.C.); PROVIDING DEFINITIONS; PROVIDING FOR THE APPLICABILITY OF THE ORDINANCE; PROVIDING THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING FOR A REQUIREMENT TO OPERATE TECHNOLOGY THAT INHIBITS OR INTERRUPTS AN IRRIGATION SYSTEM DURING PERIODS OF SUFFICIENT MOISTURE; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT; AND PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

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, the District has promulgated Chapter 40E-2, Florida Administrative Code (F.A.C), for the consumptive use of water which includes Rule 40E-2.061, F.A.C., General Consumptive Use Permits by Rule, regulating landscape irrigation at a single-family dwelling or duplex, and Rule 40E-2.071, F.A.C., Noticed General and Individual Permits, regulating larger landscape irrigation users; and

WHEREAS, the District promulgated and amended Chapter 40E-24, F.A.C., requiring year-round irrigation conservation measures; 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 District strongly encourages local governments to adopt an ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, it is the desire of the City Council of the City of Marathon to adopt such an Ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, the City Council of the City of Marathon finds and declares that the adoption of this Ordinance is appropriate, and in the public interest of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Code of Ordinance Chapter 14 Environmental and Natural Resources, Article IV Water Conservation is hereby amended by the following amendments:

ARTICLE IV. - WATER CONSERVATION

Sec. 14-93. – Intent And Purpose.

The intent and purpose of this article is to establish a regulatory framework to ensure that water and landscape irrigation conservation will be efficient and consistent throughout the City.

(Ord. No. 03-01-04, § 1-1, 1-7-2003)

Sec. 14-94. - Applicability.

(a) This article shall be effective within the City, and shall set restrictions, constraints and prohibitions to enhance the City's water resources and provide water conservation measures.

~~(b) The provisions of this article shall apply to all persons using the water resource within the geographical areas subject to a "water shortage" or "water shortage emergency," as determined by the District, whether from public or privately owned water utility systems, private wells, or private connections with surface water bodies.~~

(b) The provisions of this Article shall apply to each user, as defined in Section 14-95, providing landscape irrigation from all water resources within the boundaries of the City of Marathon with the following exceptions:

(1)The use of reclaimed water, which may or may not be supplemented from another source;

(2)Irrigation at agricultural and nursery operations; and

(3)Irrigation of athletic play areas.

(c) Unless otherwise provided, nothing in this article shall be construed to relieve any ~~person~~ user from compliance with any ordinance.

(Ord. No. 03-01-04, § 1-2, 1-7-2003; Ord. No. 2007-12, § 2, 5-22-2007)

Sec. 14-95. - Definitions.

For the purpose of this article the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

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.”

Agriculture means the growing of farm products including, but not limited to, vegetables, citrus and other fruits, sod or nursery stock including, ornamental foliage and greenhouse plants.

Athletic Play Area means all golf course fairways, tees, roughs, greens, and other athletic play surfaces, including, football, baseball, soccer, polo, tennis, and lawn bowling fields, and rodeo, equestrian, and livestock arenas

Automatic irrigation system means a landscape irrigation unit that runs mechanically without the need for manual operation.

Consumptive Use Permit (CUP) means a permit issued pursuant to Chapter 40E-2, F.A.C., authorizing the consumptive use of water.

District means the South Florida Water Management District.

Even Numbered Address means an address ending in the numbers 0, 2, 4, 6, 8, or rights-of-way or other locations with no address, or the letters A-M.

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

Impervious means land surfaces which do not allow the penetration of water, including paved roads, sidewalks, driveways, parking lots and highly compacted areas including shell or clay.

Irrigation means the direct application of water to any landscaped surface by means other than precipitation.

Irrigation systems means equipment and devices which deliver water to plants being irrigated including, but not limited to, pipelines, control structures, pipes and ditches, pumping stations, emitters, valves and fittings, excluding the transfer of water through water management systems from one location to another.

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 this section.

Landscape Irrigation means the outside watering of shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora not intended for resale, which are planted and 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.

Law Enforcement Officials means any authorized agent or employee of the City whose duty it is to ensure compliance with the Code, or any local government employee who may be responsible for enforcing this Article.

Low Volume Hand Watering means the watering of landscape by one (1) person, with one (1) hose, fitted with a self-canceling or automatic shutoff nozzle.

Low Volume Irrigation means the use of equipment and devices specifically designed to allow the volume of water delivered to be limited to a level consistent with the water requirement of the plant being irrigated, and to allow that water to be placed with a high degree of efficiency in the root zone of the plant. The term also includes water used in mist houses and similar establishments for plant propagation. Overhead irrigation and flood irrigation are not included.

Micro-irrigation means the application of small quantities of water on or below the soil surface as drops or tiny streams of spray through emitter or applicators placed along a water delivery line. Micro-irrigation includes a number of methods or concepts, such as bubbler, drip, trickle, mist or microspray, and subsurface irrigation.

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

Odd Numbered Address means an address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.

~~Person means any person, firm, partnership, association, corporation, company, or organization of any kind.~~

Potable water means water that is suitable for drinking.

Property means and includes any land within the boundaries of the incorporated area of the City of Marathon.

Reclaimed Water means wastewater that has received at least secondary treatment and basic disinfection, and is reused after flowing out of a wastewater treatment facility as defined by Rule 62-40.210, F.A.C.

User means any person, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or other legal entity whether natural or artificial, the United States of America, and the State and all political subdivisions, regions, districts, municipalities, and public agencies thereof, which directly or indirectly takes water from the water resource, including uses from private or public utility systems, uses under water use permits issued pursuant to Chapter 40E-2, F.A.C., or uses from individual wells or pumps.

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; or allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

Water resource means any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water, and water percolating, standing, or flowing beneath the surface of the ground.

Water shortage condition means when sufficient water is not available to meet present or anticipated needs of persons using the water resource, or when conditions are such as to require temporary reduction in total water usage within a particular area to protect the water resource from serious harm. A water shortage usually occurs due to drought.

Water shortage emergency means that situation when the powers which can be exercised under Part II of Chapter 40E-21, Florida Administrative Code, are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish or aquatic life, or a public water supply, or commercial, industrial, agricultural, recreational or other reasonable-beneficial uses.

(Ord. No. 03-01-04, § 1-3, 1-7-2003; Ord. No. 2007-12, § 3, 5-22-2007)

Sec. 14-96. - Hours of irrigation and automatic irrigation systems Year-Round Landscape Irrigation Conservation Measures.

- ~~(a) A person may irrigate with potable water on any property within the City between the hours of 5:00 p.m. and 9:00 a.m. only.~~
- ~~(b) All automatic irrigation systems installed after the effective date of the ordinance from which this article is derived shall include a water sensing device which shall automatically discontinue irrigation during periods of rainfall.~~
- ~~(c) In the event of a declaration of a water shortage or water shortage emergency by the governing board or the executive director of the District, all water use restrictions or other measures adopted by the District applicable to the City, or any portion thereof, shall be subject to enforcement action pursuant to this chapter.~~

The City adopts the rules of the South Florida Water Management District, listed in Subsection 40E-24.201 (1)-(6), F.A.C., including subsequent additions or corrections which are set out as follows:

- (1) The year-round landscape irrigation conservation measures contained in this Article are applicable to all users including permitted and exempt users under Chapter 40E-2, F.A.C., unless otherwise indicated. These conservation measures apply to all water resources, unless otherwise indicated. In addition to the requirements of this Section, all permitted users under Chapter 40E-2, F.A.C., are required to maintain compliance with all CUP conditions and terms, including requirements to implement water conservation practices.
- (2) It shall be the duty of each user to keep informed as to the landscape irrigation conservation measures within this Article which affect each particular water use.
- (3) In addition to the specific conservation measures, all wasteful and unnecessary water use, as defined in Section 14-95, is prohibited.
- (4) The following requirements shall apply to all users, unless specified in Section 14-94 or Section 14-98.
 - (a) Landscape irrigation shall be prohibited between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided.
 - (b) Irrigation of existing landscaping shall comply with the following provisions:
 - i. Even addresses, as defined in Section 14-95, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address shall have the opportunity to accomplish necessary landscape irrigation two (2) days a week, only on Thursday and/or Sunday.
 - ii. Odd addresses, as defined in Section 14-95, shall have the opportunity to accomplish necessary landscape irrigation two (2) days a week, only on Wednesday and/or Saturday.
 - (c) Irrigation of new landscaping shall comply with the following provisions:

i. New landscaping may be irrigated once on the day it is installed without regard to the listed watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is allowed without regard to the normal watering days and times.

ii. A ninety (90) day establishment period begins on the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.

iii. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or Sunday.

iv. Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.

v. Irrigation of new landscaping is limited to areas only containing the new landscaping. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this Subsection if the zone contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation. Targeted watering may be accomplished by low volume hand watering, as defined in Section 14-95, or any appropriate method which isolates and waters only the new landscaping.

(5) Any water shortage, as defined in Section 14-95, restrictions or other measures declared pursuant to Chapter 40E-21, F.A.C., or related District Governing Board or Executive Director orders which are more restrictive than a measure contained within this Article, shall supersede this Article for the duration of the applicable water shortage declaration.

(Ord. No. 03-01-04, § 1-4, 1-7-2003; Ord. No. 2007-12, § 4, 5-22-2007)

Sec. 14-97. - Prohibition.

- (a) It shall be unlawful for any person to irrigate with potable water on any property, except during the hours specified in Section 14-96.
- (b) It shall be unlawful to remove, from an automatic irrigation system, any hardware that would trigger automatic shutoff during rainfall.
- (c) It shall be unlawful to allow an automatic irrigation system installed after the effective date of ~~the statute 373.62, F.S ordinance~~ from which this article is derived to remain in active irrigation during periods of rainfall.

(Ord. No. 03-01-04, § 1-5, 1-7-2003) Sec. 14-98. - Exemptions.

- (a) The following activities shall be exempt from the provisions of this article:

- (1) Landscape irrigation by low volume hand watering using a self-canceling nozzle, micro-irrigation, rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this Article;
 - (2) Landscape irrigation by systems from which the sole source is reclaimed water~~treated wastewater effluent;~~
 - (3) ~~The operation of irrigation systems for system repair and maintenance~~ Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one (1) test should not exceed ten (10) minutes per zone;
 - (4) Flushing of water mains required for normal water main clearance and maintenance and for maintenance of water quality; provided that, where practical, flushed water shall be directed into pervious areas, and flushed at the minimum rate necessary for cleaning and dispersing the water in such a manner as to benefit local vegetation;
 - (5) ~~Landscape irrigation, by a licensed pest control operator, for purposes of watering in fungicides, insecticides and herbicides as required by the manufacturer or by Federal or State laws~~ Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:
 - (a) Such watering-in shall be limited to one (1) application, unless the need for more than one (1) application is stated in the directions for application specified by the manufacturer; and
 - (b) Such watering-in shall be accomplished during normally allowable watering days and times set forth in Section 14-96(4)(a) and (b), unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity;
 - ~~(6) Landscape irrigation for the purpose of watering in newly planted grass and foliage for the first 45 days after initial installation;~~
 - (6) Irrigation activity for dust emissions required by court order or administrative action;
 - (7) Agricultural irrigation where the use of water is permitted by a consumptive or water use permit issued by the District;
 - ~~(8) Landscape irrigation from which the sole source is a cistern;~~
 - ~~(9) Slow drip irrigation systems; and~~
 - (8) Any irrigation approved by the City Manager or his designee under Section 14-99.
- (b) In the event that any regulations promulgated by the District conflict with these exemptions, the District's restrictions shall supersede these exemptions.

(Ord. No. 03-01-04, § 1-6, 1-7-2003; Ord. No. 2007-12, § 6[5], 5-22-2007) Sec. 14-99. - Waiver.

The City Manager may issue a written waiver to the provisions of this article if strict application of the restrictions would lead to unreasonable or unfair result; provided the applicant demonstrates with particularity that compliance with the schedule will result in substantial economic, health, or other hardship on the applicant or those served by the applicant. provided that the following conditions are satisfied:

- (1) A written request containing reasons for the waiver is submitted to the City Manager;
- (2) Upon the City Manager's evaluation, it is in the best interest of the City to approve the request in order to preserve landscaping, relief may be granted only upon a demonstration that such hardship exists, is peculiar to the person or the affected property, is not self-imposed, and further demonstrates that granting the variance would be consistent with the general intent and purpose of this division. Some examples:
 - a. Two (2) or more properties which share a common source of water;
 - b. A public or private water system experiencing or anticipating distribution problems;
 - c. A user maintains an irrigation system that uses soil moisture sensors or weather-based irrigation controllers; or
 - d. Where a contiguous property is divided into different zones, a variance may be granted so that each zone may be irrigated on days different than other zones of the property; or
 - e. Where a user maintains, manages, or owns a non-residential property, such as a house of worship or weekly market (farmer/flea), where the primary day of use, operation, or attendance for the property coincides with the prescribed watering day for the address.
- (3) The waiver is limited to 14 consecutive days for temporary events, and shall be granted in perpetuity for recurring events; and
- (4) If granted, the applicant shall be required to post a notice at each parcel to which the variance pertains.
- (5) The waiver is not inconsistent with any regulations promulgated by the District.
- (6) The City recognizes all irrigation variances or waivers issued by the District under Rule 40E-24.501, F.A.C.

(Ord. No. 03-01-04, § 1-8, 1-7-2003; Ord. No. 2007-12, § 6, 5-22-2007) Sec. 14-100. - Enforcement.

The enforcement of this chapter shall be governed by the provisions in ~~Sections 1-7 and 10-9~~ Chapter 10 of the Marathon Code and Chapter 109 of the Land Development Regulations (LDRs).

(1) In the absence of a declaration of water shortage or water shortage emergency within all or any part of the City by the District's Governing Board or Executive Director, the listed landscape irrigation restrictions shall be subject to enforcement action. Any violation of the provisions of this article shall be a violation.

(2) The City authorizes law enforcement officials, as defined in Section 14-95, having jurisdiction in the area governed by this Article, to enforce the provisions of this Article. In addition, the City Manager may delegate this Article's enforcement responsibility to agencies and departments within the City government.

(Ord. No. 2007-12, § 7, 5-22-2007)

Sec. 14-101. - Declaration Of Water Shortage Or Water Shortage Emergency.

Declaration of a water shortage condition and/or water shortage emergency, as defined in Section 14-94, within all or parts of the City by the District's Governing Board or Executive Director shall supersede this Article for the duration of the applicable water shortage declaration. A water shortage usually occurs due to drought.

Sec. 14-102. - Penalties.

Violations of any provision of this Article may be punished pursuant to Section 162.21, F.S., as amended, as a civil infraction as set forth in Chapter 10 - Code Compliance, as may be amended from time to time.

Sec. 14-100 14-103—14-104. - Reserved.

Section 3. The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. This Ordinance shall become effective immediately upon adoption on second reading.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS ____ DAY OF _____, 2021.**

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(CITY SEAL)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

City Attorney, Steven T. Williams