

**MODEL CODE LANGUAGE FOR LOCAL GOVERNMENTS
TO ACCOMPANY THE MANDATORY YEAR-ROUND LANDSCAPE
IRRIGATION CONSERVATION MEASURES MODEL ORDINANCE OF
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

Year-round landscape irrigation measures; variances; enforcement; penalties.

Intent and purpose

It is the intent and purpose of this Code to implement procedures to protect the water resources of city/county/village/town and to promote water conservation through the efficient use of landscape irrigation and consistency with the South Florida Water Management District's (District) mandatory year-round landscape irrigation conservation measures under Chapter 40E-24, Florida Administrative Code, (F.A.C.). This Code will increase water use efficiency; prevent and curtail wasteful irrigation practices by providing mandatory landscape irrigation conservation measures; and prohibit the operation of irrigation systems in a manner causing water to be wasted.

OR [REFERENCING A COUNTY ORDINANCE, IF APPLICABLE]

It is the intent and purpose of this Code to establish a regulatory framework which will protect the water resources of the city/county/village/town, and to implement procedures to promote water conservation through the efficient use of landscape irrigation by assisting _____ County in the implementation of its mandatory year-round landscape irrigation conservation measures (*Section/Chapter/Article* _____). The County's *Section/ Chapter/Article* _____ is consistent with Rules 40E-24.201 and 40E-24.301, F.A.C. This Code will increase water use efficiency; prevent and curtail wasteful irrigation practices by providing mandatory landscape irrigation conservation measures; and prohibit the operation of irrigation systems in a manner causing water to be wasted.

Definitions

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

- (1) "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."

- (2) "Athletic Play Area" means all golf course fairways, tees, roughs, greens, and other athletic play surfaces; including, football, baseball, soccer, polo, tennis, lawn bowling fields, and rodeo, equestrian and livestock arenas.
- (3) "Consumptive Use Permit" (CUP) means a permit issued pursuant to Chapter 40E-2, F.A.C., authorizing the consumptive use of water.
- (4) "District" means the South Florida Water Management District, a government entity created under Chapter 373, Florida Statutes.
- (5) "Even-Numbered Address" means an address ending in the number 0, 2, 4, 6 or 8; rights-of-way or other locations with no address; or the letters A-M.
- (6) "Existing Landscaping" means any landscaping which has been planted in the ground for more than ninety (90) days.
- (7) "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.
- (8) "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 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.
- (9) "Law Enforcement Official(s)" means city/county/village/town should include a definition of a law enforcement, code enforcement, or any local government employee who may be responsible for enforcing this Ordinance.
- (10) "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.
- (11) "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.

- (12) “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 micro-spray, and subsurface irrigation.
- (13) “New Landscaping” means any landscaping which has been planted and established for ninety (90) days or less.
- (14) “Odd-Numbered Address” means an address ending in the number 1, 3, 5, 7 or 9; or the letters N-Z.
- (15) “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.
- (16) “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.
- (17) “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.
- (18) “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.
- (19) “Water Shortage” means when the District determines there is the possibility that insufficient water will be available to meet the present and anticipated needs of the users, or when conditions are such as to require a temporary reduction in total use within a particular area to protect water resources from serious harm. A water shortage usually occurs due to drought.
- (20) “Water Shortage Emergency” means when the District determines the provisions listed in Part II of Chapter 40E-21, F.A.C., are not sufficient to protect the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water

supply; or commercial, industrial, agricultural, recreational, or other reasonable-beneficial uses.

OR

The words, terms and phrases, when used in this Code, shall have the meaning assigned to them in Rule 40E-24.101, F.A.C. , and 40E-21.051, F.A.C. In addition, for the purpose of this Code, the following terms, phrases, words and their derivatives shall have the meaning listed below. When not inconsistent with the context, words used in the present tense also include the future, and words used in the singular also include the plural. The word "shall" is always mandatory and not merely directory.

- (1) "District" means the South Florida Water Management District, a government entity created under Chapter 373, Florida Statutes.
- (2) "Law Enforcement Official(s)" means city/county/village/town should include a definition of a law enforcement, code enforcement, or any local government employee who may be responsible for enforcing this Ordinance.

Application

The provisions of this Code shall apply to each user providing landscape irrigation from all water resources within the boundaries of the county/city/unincorporated areas of the county. The provisions of this Code/section/chapter/article shall not apply to athletic play areas or agricultural operations (including nurseries), and irrigation accomplished using reclaimed water or saltwater.

Declaration of a water shortage condition and/or water shortage emergency within all or parts of the county/city by the District's Governing Board or Executive Director shall supersede this Code for the duration of the applicable declaration, in accordance with Ordinance No. _____ [WATER SHORTAGE ORDINANCE REFERENCE]. A water shortage usually occurs due to drought.

Such a declaration would apply to all users 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, but shall not apply to users using reclaimed water or saltwater.

Year-Round Permanent Landscape Irrigation Measures

The following requirements or exceptions shall apply to all users, unless otherwise specified.

- (1) Landscape irrigation shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m., except as provided below.

- (2) Irrigation of existing landscaping shall comply with the following provisions:
 - a. Even-Numbered Addresses and rights-of-way, or other locations without an address, may accomplish necessary landscape irrigation only on Thursdays, and/or Sundays.
 - b. Odd-Numbered Addresses may accomplish necessary landscape irrigation only on Wednesdays, and/or Saturdays.
- (3) Irrigation of new landscaping shall comply with the following provisions:
 - a. 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 listed watering days and times.
 - b. A ninety (90) day establishment period begins on the day 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.
 - c. 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.
 - d. 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.
 - e. Irrigation of the new landscaping is limited to areas containing only the new landscaping. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this Code if the zone in question is for an area that contains at least fifty percent (50%) new landscaping. If a zone contains less than fifty percent (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, or any appropriate method which isolates and waters only the new landscaping.
- (4) Irrigation systems may be operated outside restricted days and/or times for cleaning, maintenance, and repair 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.

- (5) Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides, and herbicides, where such watering-in is required by the manufacturer, or by federal, state or local law, shall be allowed under the following conditions:
 - a. Such watering-in shall be limited to one (1) application in the absence of specific alternative instructions from the manufacturer; and
 - b. Such watering-in shall be accomplished during normal watering days and times listed above 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) Any plant material may be watered using low volume irrigation, micro-irrigation, low volume hand watering methods, rain barrels, cisterns, or other similar rain-harvesting devices without regard to the listed watering days or times.
- (7) In addition to the specific listed measures, all wasteful and unnecessary water use is prohibited.
- (8) In the event the District imposes restrictions on landscape irrigation for new and existing installations which are more restrictive than those imposed by this Code, such as under the declaration of a water shortage or water shortage emergency, the more restrictive regulations shall apply for the applicable duration of the more restrictive regulations.
- (9) It shall be the duty of each user to keep informed as to the landscape irrigation conservation measures within this Code, which affect each particular water use.

Additional Measures

Any user who purchases and installs an automatic landscape irrigation system shall properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture in accordance with Section 373.62, Florida Statutes and Code/Section/Chapter/Article.

Variance Relief

- (1) Any user affected by this Code may apply for a variance to the city/county/village/town manager/administrator, or their designee. A variance from specific day or days identified in Code/Section/Chapter/Article may be granted 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 the applicant serves. 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 Code.

- (2) Examples of circumstances for a variance include, but are not limited to:
- 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.

[FOR VARIANCE CONSIDERATION]

However, no single zone may be irrigated more than two (2) days per week unless a user maintains an irrigation system that uses soil moisture sensors or weather-based irrigation controllers.

- (3) Upon receipt of an application for variance from the requirements of this Code/section/chapter/article, the city/county/village/town manager/administrator or designee shall render a decision on the variance within ____ days. Denials of variance relief may be appealed to the city/county/village/town council/governing body within __ days of the user's receipt of the notice of denial. Any notice of denial or subsequent appeal shall be sent by certified mail, return receipt requested.

OR [A CITY/COUNTY/VILLAGE/TOWN MAY CHOOSE TO INCLUDE A DESCRIPTION OF ITS OWN VARIANCE APPLICATION AND APPEAL PROCESS]

- (4) A variance application and/or granting a variance under provisions of this code/section/chapter/article shall operate prospectively, shall not stay or abate the enforcement of the provisions of this code/section/chapter/article, and shall not affect any prior or pending enforcement actions against the affected person that have been initiated pursuant to the provisions of this code/section/chapter/article.

- (5) If a variance is granted, the user shall be required to post a notice at each parcel to which the variance pertains.
- (6) A variance is invalid if it has expired or if the user or its agent violates the terms of the variance.
- (7) Recognition of District Variances. The city/county/village/town recognizes and adopts all irrigation variances or waivers issued by the District.

Enforcement

Every law enforcement official having jurisdiction in the area governed by this Code shall, in connection with all other duties imposed by law, diligently enforce the provisions of this Code by issuance of a citation, summons, or notice to appear in county court, or by filing an action in civil court for injunctive relief. The city/county/village/town administrator/manager may also delegate enforcement responsibility for this Code to other departments of the town government, or cities in the service areas governed by this Code, in accordance with state and local law.

Penalties

Any user who violates any provision of this Code shall also be subject to the city/county/village/town remedies as authorized the city/county/village/town Code of Ordinances, or as otherwise then allowed by law. The applicable penalties shall be determined by the forum selected to enforce the violation.

OR

- (1) Violation of any provision of this Code shall be subject to the following penalties:
 - a. First violation can be a written warning. No more than one (1) written warning shall be issued.
 - b. Second violations, fine not to exceed _____ dollars (\$__.00).
 - c. Third violations, _____ dollars (\$__.00).
 - d. Fourth and subsequent violations, _____ dollars (\$__.00).

OR

- a. First violations, fine not to exceed _____ dollars (\$__.00).
- b. Second violations, fine not to exceed _____ dollars (\$__.00).
- c. Third violations, _____ dollars (\$__.00).
- d. Fourth and subsequent violations, _____ dollars (\$__.00).

[FOR PENALTIES CONSIDERATION]

- (2) Wasteful and unnecessary water use violations that are irreparable or irreversible in nature which shall include without limitations, a broken irrigation system and/or water pipe that allows water to flow from a broken sprinkler head, outdoor faucet, or other malfunctioning plumbing or irrigation system component, or other water system malfunction that continuously disperses a high quantity of water, shall be subject to the following provisions:
- a. City/county/village/town to insert optional penalty matrix.
- (2 or 3) Each day a violation occurs is a separate offense. The city/county/village/town, in addition to the criminal sanctions, may take any other appropriate legal action, including, emergency injunctive action to enforce Code provisions.
- (3 or 4) Notice of alleged violations shall be provided to the alleged violator by a local law enforcement official(s), code inspector or any other person designated by the city/county/village/town manager/administrator, or by certified mail, return receipt requested, to the owner of the property in question at the address listed with the tax collector's office for tax notices, or property appraiser's records, and at any other address provided to the city/county/village/town. If notice is provided by certified mail and returned unclaimed or refused, notice may be provided by posting same in a conspicuous location at the subject property.