

ORDINANCE NO. A-196

AN ORDINANCE OF THE CITY OF MARSING, IDAHO, ESTABLISHING A MUNICIPAL IRRIGATION SYSTEM PURSUANT TO CHAPTER 18, TITLE 50, IDAHO CODE, PROVIDING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING CONNECTION PROCEDURE AND REQUIREMENTS; PROVIDING FOR ASSESSMENTS AND FEES; PROVIDING TERMS AND CONDITIONS OF SERVICE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR APPEAL PROCEDURES; PROVIDING CITY RIGHTS; ESTABLISHING AN IRRIGATION FUND; PROVIDING A REPEALER; AND PROVIDING AN EFFECTIVE DATE.

Whereas the City Council and Mayor of the City of Marsing deem it in the best interests of the people of the said City, that the City establish a municipal irrigation system;

Now therefore, be it ordained by the Mayor and Council of the City of Marsing, as follows:

Section 1: That a new Title 10, Marsing City Code is hereby established as follows:

10-1-1: STATEMENT OF PURPOSE: The purpose of the ordinance is to authorize and create the Marsing Municipal Irrigation System, whereby the City of Marsing may acquire, construct, operate, own, maintain and/or control an irrigation system within the boundaries of the City and provided herein, which boundaries may from time to time be modified pursuant to the laws of the State of Idaho. The irrigation system of the City shall be under the sole and exclusive control of the City Council, who may from time to time direct the construction and extension and expansion of such works, including installing pumping facilities and placing of mains and service pipes, as the necessity of the City may require.

Section 10-1-1 TITLE

This Ordinance shall be known as the Marsing Municipal Irrigation System Ordinance.

Section 10-1-2 DEFINITIONS

City: The City of Marsing.

Irrigation Purposes: Includes the use of water for lawns, gardens, pastures, parks, greenbelts, golf courses, and open space.

Irrigation Water: Nonpotable water used for irrigation purposes.

Municipal Irrigation Fund: In accordance with Idaho Code 50-1806, a separate fund which will be the repository for City fees, assessments, and charges arising from the operation of the Marsing Municipal Irrigation system.

Nonpotable Water: Water which does not conform to drinking water quality standards.

Person: Any individual, corporation, partnership, association, firm, public agency or any other legal entity.

Potable water: Water which conforms to drinking water quality standards.

Separate Irrigation System: A system of ditches, piping and water source(s) for delivery of irrigation water that is separate and independent of the potable water system.

User: Any consumer of water from the Marsing Municipal Irrigation System.

Water: When the term water is used in this Title without the prefix "irrigation" or "potable" it shall refer to both irrigation and potable water.

Water Rights: The term water rights means the legal right to divert and beneficially use the public waters of the State of Idaho where such right is evidenced by a decree, a permit or a license issued by the Idaho Department of Water Resources, a beneficial or constitutional use right evidenced by an adjudication claim or claim based on section 42-243, Idaho Code, or a right based on federal law.

Water Stock: The term water stock refers to the document which is evidence of ownership in an irrigation entity. This term has no application to irrigation districts because irrigation districts are quasi-governmental entities who do not offer any form of ownership to the owners of land within the irrigation district.

Section 10-1-3 CONNECTION REQUIREMENTS AND PROCEDURES

1. A landowner desiring to obtain an irrigation system connection permit shall file a written application, with the City, which information shall be in sufficient detail as to adequately inform the City as to the proposed location of the desired irrigation system connection and the demand (estimated consumption) to be used by the connection. The landowner shall be responsible for all construction costs related to the irrigation system connection. Filing of the application with the City does not guarantee that a connection or connections are available and will be provided. All applicable fees and connection charges shall be paid prior to issuing a building permit. If the City Engineer and City Council determine that the irrigation system is at or near capacity, acceptance of applications for irrigation system connections will be stopped until such time that the irrigation system has the capacity available to provide service to the new connections.
2. No irrigation connection shall be allowed until a connection permit application, on a form furnished by the City, has been filed and approved by the City or its authorized employee, and the applicable hookup fees paid. Such form shall require the applicant to notify the City for an inspection of the connection. If any connection is covered prior to the City's inspection, the applicant will be responsible for the cost of uncovering the connection and irrigation line (if needed) and a fine of one hundred dollars (\$100.00), which shall be collected prior to inspection.
3. Every person providing a separate irrigation system who desires to have the system owned, operated and maintained by the City of Marsing shall file an application with the City of Marsing containing the following information:

- a. A description of the area and property to be served by the separate irrigation system.
 - b. For existing systems, a map or drawing of the system indicating the proposed location of all easements, pipes, and other system infrastructure.
 - c. A description of the available surface water irrigation right and the irrigation entity which supplies the water to the system.
 - d. A formal request for inclusion into the Marsing Municipal Irrigation System.
4. The City of Marsing will prepare an agreement with the person containing at least the following provisions:
- a. Definition of ownership, operation and maintenance responsibilities.
 - b. Agreement to abide by the terms of this ordinance including the payment of fees.
 - c. Agreement to abide by all applicable design standards and criteria established by the City.
 - d. The right of the City at any time without notice to shut off the water supply for repairs, extensions, or for any other maintenance and operation procedures. The City shall not be responsible for any damage such as the breaking of any pipe or fixtures, or any other damage resulting from shutting the water off.
 - e. A provision for the assignment of any water stock owned in any irrigation and canal companies who may provide water to the system and a provision for the issuance of a City water certificate. The City may also require that the agreement between the City and irrigation water user be subject to an additional agreement between the City and irrigation entity addressing the delivery of irrigation water to the user's property.
 - f. A provision that the irrigation water to be delivered by the Marsing Municipal Irrigation System may be pooled for delivery.
 - g. When the entity providing water to the Municipal Irrigation System is an irrigation district, the agreement between the irrigation water user and the City shall be contingent upon the execution of a contract between the City of Marsing and the irrigation district which among other things provides that the water may be pooled for delivery and the means and methods of passing on district irrigation assessments.
 - h. Any other terms both parties deem necessary.

Section 10-1-4 ASSESSMENTS AND FEES

As provided by law, when budgeted and appropriated, the funds and credits to the account of the Municipal Irrigation Fund shall be available for the payment of the requirements for the maintenance and operation, repairs and upkeep of the Municipal Irrigation System of the City, and to the extent legally available, for payment into a sinking fund established for the payment of the principal of and interest on any Municipal Irrigation Fund indebtedness of the City which shall from time to time be outstanding. Such fees, charges, and assessments and the schedule for collection of such fees, charges, and assessments shall be set by resolution of the City Council.

Section 10-1-5 TERMS AND CONDITIONS OF SERVICE

1. Payment: All service charges, fees and assessments not paid within thirty (30) days after the due date shall be considered delinquent.
2. Disconnection: The following may be a basis for the disconnection of users of the Municipal Irrigation System:
 - a. Nonpayment of charges, fees, and assessments when due and owing.
 - b. Illegal connection to the system.
 - c. When necessary for the protection of the public health and safety.
 - d. Exceeding the amount of water allocated by the City so as to deprive other users of water.
 - e. Cross connection to a potable water system.
3. Lien: all fees, charges, and assessments levied by the City constitute liens and may be collected in accordance with the provisions of Idaho Code, Title 50, Chapter 18.
4. The City Council may, by resolution, establish fees for the disconnection and reconnection of users to the Municipal Irrigation System.

Section 10-1-6 MISCELLANEOUS REGULATIONS AND REQUIREMENTS:

1. It shall be unlawful for any person, except one duly authorized by the City, to operate, interfere with, or connect anything with any portion of the City Municipal Irrigation System, i.e. valves, pipes, shutoff valves, ditches, pump stations. Further it shall be unlawful for any person to obstruct the access to any Municipal Irrigation System appurtenances.
2. It shall be unlawful for any person to exceed the amount of water allocated to the user by the City so as to deprive other users of water.

3. It shall be unlawful for any person to allow or permit the waste of irrigation water by allowing said water to flow upon or into any storm or sanitary sewer, street, alley or other public right of way, or by allowing said water to flow on or upon adjacent or adjoining property so as to cause unnecessary inconvenience or expense to the owner of such adjacent or adjoining property or by using more of said water than good husbandry requires for the maintenance and cultivation of premises being irrigated.
4. It shall be unlawful for any person to: interconnect or cause to be interconnected the potable and non-potable portions, distribution systems or service lines of dual water supplies or extensions thereof without the installation of an inspected and approved reduced pressure type backflow prevention device.
5. Stopcock: there may be attached to each service pipe, at or near the point of access to irrigation mains, a stopcock which shall be under the exclusive control of the City.
6. No tampering permitted: any person or entity who individually, by family, agents, employees, successors, or assigns uses irrigation water from the irrigation system without first paying therefore as provided for in this title and, without authority, opens any stop box, valve or other fixtures attached to the City's irrigation system, or who in any manner injures, defaces or impairs any part or apparatus or appurtenance of the irrigation system shall be guilty of a misdemeanor for each offense.
7. Illegally turning on irrigation water: any person, who, after the irrigation water has been turned off to the property on account of nonpayment of assessments and/or fees, or other violation of the rules and regulations pertaining to the irrigation system, shall turn on or permit the irrigation water to be turned on, or use or permit the irrigation water to be used without authority, shall be guilty of a misdemeanor.
8. City not liable for shortage: the City shall not be liable for damage to any irrigation water user by reason of the stoppage, or other interruption of his irrigation water supply, caused by scarcity of water, accident to works or mains, alterations, additions, repairs or from other unavoidable causes.
9. Alternate day irrigating: irrigation from the Marsing municipal pressurized irrigation system may be scheduled to occur on alternate days by order of the City or its agent.
10. Homeowners' associations to be obligated for irrigation fees and assessments on common lots and parks: all homeowners' associations using the municipal pressurized irrigation system must pay the fees for the irrigating of common lots and parks within the association's jurisdiction.

Section 10-1-7 ENFORCEMENT

Any person violating any of the provisions of this Title shall be deemed guilty of an infraction and upon conviction shall be subject to a fine of \$50.00. Any subsequent violations within one year of the conviction of the first violation shall be charged as a misdemeanor and upon conviction shall be subject to a fine of up to \$1,000 and/or 30 days in jail

In addition to, and exclusive of the criminal remedy provided by this Title, the following civil remedies may be invoked:

- a. Injunction: The City may seek a temporary restraining order or may institute injunctive, abatement or any other appropriate proceedings to prevent or temporarily or permanently enjoin or abate existing or proposed violations of the provisions of this chapter.
- b. Disconnection: The City may discontinue service to any user who fails to comply with the provisions of this Title after ten (10) days written notice to comply. Except in the case of a threat to the public health and safety, the user may request a hearing before the City Council within ten (10) days of service of notice. The City Council shall conduct a hearing at its earliest possible convenience to determine if disconnection should occur. The user shall be given notice of such hearing and shall be given the opportunity to present evidence at such hearing. The determination of the City Council shall be in writing and may be appealed to the City Council.
- c. Damages: The City may seek civil damages, enforceable in a court of law, from any person violating the provisions of this Title and by such violation causing the City additional costs to maintain and operate the Municipal Irrigation System, or causing the City to be subject to penalties for violation of any State or Federal law.

Section 10-1-8 APPEALS

Any user of the system aggrieved by any administrative decision rendered by the City pursuant to this Title may appeal the decision to the Marsing City Council. Any such appeal shall be in writing, describing the decision and the grounds for appeal, and shall be filed with the City Clerk within ten (10) days after the date of the administrative decision. The City Council shall hold a hearing thereon at its earliest convenience. Notice of the time, place and date of the hearing shall be sent to the aggrieved party at least seven (7) days prior to the hearing date. The decision of the City Council shall be in writing.

Section 10-1-9 CITY RIGHTS

Any landowner who receives Marsing municipal irrigation water, as a condition of receiving said water, agrees to provide access upon the landowner's real property to any authorized agent of the City to all areas supplied with Marsing irrigation water for the purpose of operating valves, making repairs, examining the apparatus and ensuring that the municipal irrigation system is used in accordance with regulations applicable to using the same. The City through its authorized representative bearing proper identification shall be permitted at proper and reasonable hours of the day to enter all properties, premises or buildings to which water is

furnished from the Municipal Irrigation System for any purpose necessary for the proper administration of the Municipal Irrigation System.

Section 10-1-10 SEVERABILITY

Section 1: It is the intention of the Council that the provisions of this Title are severable, and if any provision of this Title shall be declared unconstitutional or invalid by the judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect or invalidate any of the remaining provisions of this Title.

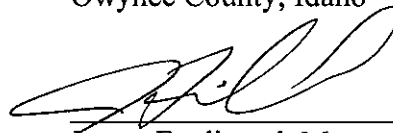
Section 2: If any section, subsection, sentence, clause or phrase of this ordinance is held by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this ordinance. The City Council of the City of Marsing hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3: All previous ordinances, resolutions, orders, or parts thereof, in conflict herewith are hereby repealed, rescinded and annulled.

Section 4: This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon passage, approval, and publication.

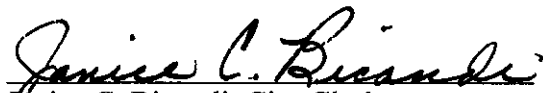
Adopted and approved by the City Council of the City of Marsing this 8th day of February, 2017.

CITY OF MARSING
Owyhee County, Idaho



James Ferdinand, Mayor

ATTEST:



Janice C. Bicandi, City Clerk