

ORDINANCE NO. 11-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES BY AMENDING TITLE 5, "PUBLIC WORKS," CHAPTER 52, "WATER," BY ENACTING A NEW SECTION 52.07, "LANDSCAPE IRRIGATION," TO IMPLEMENT THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES RULE, ESTABLISH A LANDSCAPE IRRIGATION SCHEDULE AND EXCEPTIONS THERETO, REQUIRE IRRIGATION SYSTEMS TO UTILIZE TECHNOLOGY THAT INHIBITS OR INTERRUPTS WATERING DURING PERIODS OF SUFFICIENT MOISTURE, PROVIDE FOR VARIANCES FROM THE LANDSCAPE IRRIGATION SCHEDULE, AND PROVIDE FOR ENFORCEMENT OF THIS ORDINANCE; AMENDING SECTION 52.99, "PENALTY," TO ESTABLISH PENALTIES FOR VIOLATIONS OF THIS ORDINANCE AND TO REMOVE CRIMINAL SANCTIONS BUT INCREASE THE FINANCIAL PENALTY FOR VIOLATIONS OF SECTIONS 52.65 THROUGH 52.70, WHICH PLACE RESTRICTIONS ON WATER USE DURING WATER SHORTAGE EMERGENCIES, AND INCREASE THE FINANCIAL PENALTY FOR VIOLATIONS OF SECTIONS 52.80 THROUGH 52.85, REQUIRING THE INSTALLATION AND MAINTENANCE OF BACKFLOW PREVENTION DEVICES; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING 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 of Delray Beach to adopt such an ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Delray Beach as set forth in Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, and other applicable controlling laws; and

WHEREAS, the City Commission deems approval of this Ordinance to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. Title 5, “Public Works,” Chapter 52, “Water,” of the Code of Ordinances of the City of Delray Beach, Florida, is hereby amended by enacting a new Section 52.07, “Landscape Irrigation,” to read as follows:

Sec. 52.07. – LANDSCAPE IRRIGATION

(A) **INTENT AND PURPOSE.** It is the intent and purpose of this Section to implement procedures that promote water conservation through the efficient use of landscape irrigation.

(B) **DEFINITIONS.** For the purpose of this Section, 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 include the future, words in the plural include the singular, and words in the singular include the plural.

- (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, and 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., as amended from time to time, 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 numbers 0, 2, 4, 6, 8, or rights-of-way or other locations with no address, or the letters A-M.
- (6) *Existing landscaping* means any landscaping which has been planted and 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 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 Officials* means any Code Enforcement Officer, Police Officer, or any other individual authorized to issue code violations in the City of Delray Beach.
- (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 emitters 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.
- (13) *New landscaping* means any landscaping which has been planted in the ground for ninety (90) days or less.
- (14) *Odd Numbered Address* means an address ending in the numbers 1, 3, 5, 7, 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., as amended from time to time.
- (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 sufficient water is not available to meet present or 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 a situation when the powers which can be exercised under 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, or a public water supply, or commercial, industrial, agricultural, recreational, or other reasonable-uses.

(C) **APPLICABILITY.** The provisions of this Section shall apply to each User providing landscape irrigation from all water resources within the municipal boundaries of the City of Delray Beach with the following exceptions:

- (1) The use of reclaimed water;
- (2) Irrigation at agricultural and nursery operations; and
- (3) Irrigation of athletic play areas.

(D) **YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES.** The City adopts the rules of the South Florida Water Management District, listed in 40E-24.201(1)-(6), F.A.C., as amended from time to time, including subsequent additions or corrections which are set out as follows:

- (1) The year-round landscape irrigation conservation measures contained in this Section 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 Section which affect each particular water use.

(3) In addition to the specific conservation measures, all Wasteful and Unnecessary water use is prohibited.

(4) The following requirements shall apply to all Users, unless otherwise specified in Subsection (D)(3) or Subsection (D)(5).

(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:

1. Even Numbered Addresses, 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 three (3) days a week, only on Tuesday and/or Thursday and/or Sunday.

2. Odd Numbered Addresses, shall have the opportunity to accomplish necessary landscape irrigation three (3) days a week, only on Monday and/or Wednesday and/or Saturday.

(c) Irrigation of new landscaping shall comply with the following provisions:

1. 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.

2. 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.

3. 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.
4. 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.
5. 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, or any appropriate method which isolates and waters only the new landscaping.

(5) Any Water Shortage, 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 Section, shall supersede this Section for the duration of the applicable water shortage declaration.

(E) **EXCEPTIONS.** Landscape irrigation scheduling shall be subject to the following exceptions:

- (1) 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.
- (2) 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 Subsections D(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.
- (3) Any plant material may be watered using Low Volume Irrigation, Micro-irrigation, Low Volume Hand Watering method, rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this Section.
- (F) **ADDITIONAL REQUIREMENTS.** 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, as may be amended from time to time.
- (G) **VARIANCES.**
- (1) A variance from the specific day or days identified in Subsection D(4)(b) may be granted by the City Manager, or designee, 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. If granted, the applicant shall be required to post a notice at each parcel to which the variance pertains. 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.
- (2) The City of Delray Beach will also abide by and enforce all irrigation variances or waivers issued by the District under Rule 40E-24.501, F.A.C.
- (H) **DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE EMERGENCY.** Declaration of a water shortage condition and/or Water Shortage Emergency, within all or parts of the City of Delray Beach, by the District's Governing Board or Executive Director shall supersede this Section for the duration of the applicable water shortage declaration in accordance with Sections 52.65 through 52.70.
- (I) **ENFORCEMENT**

- (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 Subsections (D) and (E) shall be a violation of this Section.
- (2) The City of Delray Beach authorizes Law Enforcement Officials, having jurisdiction in the area governed by this Section, to enforce the provisions of this Section. In addition, the City Manager may delegate the enforcement responsibility to agencies and departments within the City of Delray Beach government.

Section 3. Title 5, "Public Works," Chapter 52, "Water," Section 52.99, "Penalty," of the Code of Ordinances of the City of Delray Beach, Florida, is amended as follows:

Sec. 52.99. – PENALTY.

- (A) Any person, firm, or corporation who violates any provision of this Chapter for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding sixty (60) days, or both. Each day any violation shall continue to exist shall constitute a separate offense. The person, firm or corporation may also be subject to action under Chapter 37 of the Code of Ordinances.
- (B) Any person, firm, or corporation who violates ~~Violation of~~ any provision of Section 52.07 or Sections 52.65 through 52.70 shall be subject to the following penalties: First violation, ~~twenty-five dollars (\$25.00)~~ a fine not to exceed fifty dollars (\$50.00); second and subsequent violations, a fine not to exceed ~~five hundred dollars (\$500.00)~~ one hundred fifty dollars (\$150.00) or imprisonment not to exceed ~~sixty (60) days~~. Each day in violation of Section 52.07 or Sections 52.65 through 52.70 shall constitute a separate offense. The City, ~~in addition to the criminal sanctions contained herein,~~ may take any other appropriate legal action, including but not limited to emergency injunctive action, to enforce the provisions of Section 52.07 or Sections 52.65 through 52.70.
- (C) The owner or authorized agent of the owner responsible for the maintenance of the plumbing systems in the building who knowingly permits a violation of Sections 52.80 through 52.85 to remain uncorrected after the expiration of time set by the City Manager ~~Director of Environmental Services,~~ or his or her designee, shall, upon conviction thereof by the appropriate court, be required ~~be required~~ subject to pay a fine of not more than ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000.00) for each violation. Each day of failure to comply with the requirements of Sections 52.80 through 52.85 after the specified time provided under Section 52.85, shall constitute a separate violation.

Section 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 5. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 6. Specific authority and direction is hereby given to the City Clerk to codify this Ordinance.

Section 7. That this Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2022.

ATTEST:

Katerri Johnson, City Clerk
First Reading_____
Second Reading_____

Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney