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4 **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF**
5 **LAKE WORTH BEACH, FLORIDA, ADOPTING CHAPTER 18**
6 **“UTILITIES,” ARTICLE II “WATER UTILITY,” SECTION 18-21**
7 **“WATER CONSERVATION AND IRRIGATION,” PROVIDING FOR**
8 **LOCAL IMPLEMENTATION OF THE MANDATORY YEAR-ROUND**
9 **LANDSCAPE IRRIGATION CONSERVATION MEASURES RULE OF**
10 **THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (40E-24,**
11 **F.A.C.); PROVIDING FOR DEFINITIONS, APPLICABILITY OF THE**
12 **ORDINANCE, A LANDSCAPE IRRIGATION SCHEDULE,**
13 **EXCEPTIONS TO THE SCHEDULE, OTHER REQUIREMENTS,**
14 **VARIANCES, ENFORCEMENT AND PENALTIES; RENUMBERING**
15 **OF ARTICLE III “EMERGENCY WATER USE AND FOR OTHER**
16 **PURPOSES; AND PROVIDING FOR SEVERABILITY, CONFLICTS,**
17 **CODIFICATION AND AN EFFECTIVE DATE**
18

19 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted
20 municipality having such power and authority conferred upon it by the Florida Constitution
21 and Chapter 166, Florida Statutes; and
22

23 **WHEREAS**, the South Florida Water Management District (“District”) has the
24 responsibility and exclusive authority under Chapter 373, Florida Statutes, for regulating
25 the consumptive use of water; and
26

27 **WHEREAS**, the District has promulgated Chapter 40E-2, Florida Administrative
28 Code (F.A.C), for the consumptive use of water which includes Rule 40E-2.061, F.A.C.,
29 General Consumptive Use Permits by Rule, regulating landscape irrigation at a single
30 family dwelling or duplex, and Rule 40E-2.071, F.A.C., Noticed General and Individual
31 Permits, regulating larger landscape irrigation users; and
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33 **WHEREAS**, the District promulgated and amended Chapter 40E-24, F.A.C.,
34 requiring year-round irrigation conservation measures; and
35

36 **WHEREAS**, Chapter 40E-24, F.A.C., applies to all users as defined in subsection
37 40E-24.101(14), F.A.C., including permitted and exempt users under Chapter 40E-2,
38 F.A.C.; and
39

40 **WHEREAS**, Chapter 40E-24, F.A.C., calls for year-round and permanent
41 landscape irrigation restrictions, separate and independent from water shortage
42 declarations, in accordance with Chapter 40E-21, F.A.C.; and
43

44 **WHEREAS**, Chapter 40E-24, F.A.C., applies to all landscape irrigation regardless
45 of whether the water comes from ground or surface water, from a private well or pump,
46 or from a public or private utility; and
47

48 **WHEREAS**, Rule 40E-24.301, F.A.C., provides that local governments may adopt
49 a landscape irrigation ordinance that achieves water conservation consistent with Rule
50 40E-24.201, F.A.C., including variance and enforcement procedures; and

51 **WHEREAS**, to address utility operational, health, safety and landscape concerns,
52 the City, which lies within Palm Beach County, a designated county under the Rule,
53 wishes to allow landscape irrigation three days per week; and

54
55 **WHEREAS**, the City Commission desires to adopt the encouraged ordinance,
56 including variance and enforcement procedures; and

57
58 **WHEREAS**, the City Commission finds and declares that the adoption of this
59 ordinance is appropriate, and in the best interest of the health, safety and welfare of the
60 City, its residents and visitors.

61
62 **NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
63 **CITY OF LAKE WORTH BEACH, FLORIDA:**

64
65 **Section 1.** The whereas clauses are incorporated herein as true and correct and
66 as the legislative findings of the City Commission.

67
68 **Section 2.** Chapter 18 “Utilities,” Article II “Water Utility,” Section 18-21 “Water
69 conservation and irrigation” is hereby adopted to read as follows:

70
71 **Sec. 18-21. – Water conservation and irrigation.**

- 72
73 (a) *Intent and purpose; applicability.*
74 (1) *Intent and purpose.* It is the intent and purpose of this section to
75 implement procedures that promote water conservation through the
76 efficient use of landscape irrigation.
77 (2) *Applicability.* The provisions of this section shall apply to each user
78 providing landscape irrigation from all water resources within the
79 boundaries of the city with the following exceptions:
80 a. The use of reclaimed water, which may or may not be
81 supplemented from another source;
82 b. Irrigation at agricultural and nursery operations; and
83 c. Irrigation of athletic play areas.

- 84
85 (b) *Definitions.* The following words, terms and phrases, when used in this
86 section, shall have the meanings listed below except where the context
87 clearly indicates a different meaning.

88
89 *Address* means the “house number” (a numeric or alphanumeric
90 designation) that, together with the street name, describes the physical
91 location of a specific property. This includes “rural route” numbers, but
92 excludes post office box numbers. If a lot number in a mobile home park or
93 similar community is used by the U.S. Postal Service to determine a delivery
94 location, the lot number shall be the property’s address. If a lot number in a
95 mobile home park or similar residential community is not used by the U.S.
96 Postal Service (e.g., the park manager sorts incoming mail delivered to the
97 community’s address), then the community’s main address shall be the

98 property's address. If a property has no address, it shall be considered
99 "even-numbered."

100
101 *Athletic play area* means all golf course fairways, tees, roughs, greens, and
102 other athletic play surfaces; including, football, baseball, soccer, polo,
103 tennis, and lawn bowling fields, and rodeo, equestrian, and livestock
104 arenas.

105
106 *Consumptive Use Permit (CUP)* means a permit issued pursuant to Chapter
107 40E-2, F.A.C., authorizing the consumptive use of water.

108
109 *District* means the South Florida Water Management District, a government
110 entity created under Chapter 373, Florida Statutes.

111
112 *Even numbered address* means an address ending in the numbers 0, 2, 4,
113 6, 8, or rights-of-way or other locations with no address, or the letters A-M.

114
115 *Existing landscaping* means any landscaping which has been planted and
116 in the ground for more than ninety (90) days.

117
118 *Landscaping* means shrubbery, trees, lawns, sod, grass, ground covers,
119 plants, vines, ornamental gardens, and such other flora not intended for
120 resale, which are situated in such diverse locations as residential
121 landscapes, recreation areas, cemeteries, public, commercial, and
122 industrial establishments, public medians, and rights-of-way, except athletic
123 play areas.

124
125 *Landscape irrigation* means the outside watering of shrubbery, trees, lawns,
126 sod, grass, ground covers, plants, vines, ornamental gardens, and such
127 other flora not intended for resale, which are planted and situated in such
128 diverse locations as residential landscapes, recreation areas, cemeteries,
129 public, commercial, and industrial establishments, public medians, and
130 rights-of-way, except athletic play areas.

131
132 *Law enforcement officials* mean any law enforcement officer employed by
133 a law enforcement agency charged with the enforcement of laws of the city
134 and state.

135
136 *Low volume hand watering* means the watering of landscape by one (1)
137 person, with one (1) hose, fitted with a self-canceling or automatic shutoff
138 nozzle.

139
140 *Low volume irrigation* means the use of equipment and devices specifically
141 designed to allow the volume of water delivered to be limited to a level
142 consistent with the water requirement of the plant being irrigated, and to
143 allow that water to be placed with a high degree of efficiency in the root
144 zone of the plant. The term also includes water used in mist houses and
145 similar establishments for plant propagation. Overhead irrigation and flood
146 irrigation are not included.

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

152
153 New landscaping means any landscaping which has been planted in the
154 ground for ninety (90) days or less.

155
156 Odd numbered address means an address ending in the numbers 1, 3, 5,
157 7, 9, or the letters N-Z.

158
159 Reclaimed water means wastewater that has received at least secondary
160 treatment and basic disinfection, and is reused after flowing out of a
161 wastewater treatment facility as defined by Rule 62-40.210, F.A.C.

162
163 User means any person, individual, firm, association, organization,
164 partnership, business trust, corporation, company, agent, employee, or
165 other legal entity whether natural or artificial, which directly or indirectly
166 takes water from the water resource, including uses from private or public
167 utility systems, uses under water use permits issued pursuant to Chapter
168 40E-2, F.A.C., or uses from individual wells or pumps.

169
170 Wasteful and unnecessary means allowing water to be dispersed without
171 any practical purpose to the water use; for example, excessive landscape
172 irrigation, leaving an unattended hose on a driveway with water flowing,
173 allowing water to be dispersed in a grossly inefficient manner regardless of
174 the type of water use; for example, allowing landscape irrigation water to
175 unnecessarily fall onto pavement, sidewalks, and other impervious
176 surfaces; or allowing water flow through a broken or malfunctioning water
177 delivery or landscape irrigation system.

178
179 Water resource means any and all water on or beneath the surface of the
180 ground, including natural or artificial watercourses, lakes, ponds, or diffused
181 surface water, and water percolating, standing, or flowing beneath the
182 surface of the ground.

183
184 Water shortage means when the District determines there is the possibility
185 that insufficient water will be available to meet the present and anticipated
186 needs of the users, or when conditions are such as to require a temporary
187 reduction in total use within a particular area to protect water resources from
188 serious harm. A water shortage usually occurs due to drought.

189
190 Water shortage emergency means when the District determines the
191 provisions listed in Part II of Chapter 40E-21, F.A.C., are not sufficient to
192 protect the public health, safety, or welfare, the health of animals, fish, or
193 aquatic life, a public water supply, or commercial, industrial, agricultural,
194 recreational, or other reasonable-beneficial uses.

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- (c) Rules. The city hereby adopts the rules of the District, listed in subsection 40E-24.201 (1)-(5) and (7), 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 section 18-21 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 specified in this subsection (c) or subsection (d) below.
 - 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, 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 Sunday, Tuesday and/or Thursday.
 - ii. Odd addresses shall have the opportunity to accomplish necessary landscape irrigation three (3) days a week, only on Saturday, Monday and/or Wednesday.
 - 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.

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

245 5. Irrigation of new landscaping is limited to areas only
246 containing the new landscaping. An entire zone of an irrigation
247 system shall only be utilized for landscape irrigation under this
248 subsection if the zone contains at least 50% new landscaping. If
249 a zone contains less than 50% new landscaping, or if the new
250 landscaping is in an area that will not typically be irrigated by an
251 irrigation system, only the individual new plantings are eligible for
252 additional irrigation. Targeted watering may be accomplished by
253 low volume hand watering or any appropriate method which
254 isolates and waters only the new landscaping.

255 (5) Any water shortage restrictions or other measures declared pursuant
256 to Chapter 40E-21, F.A.C., or related District governing board or
257 executive director orders which are more restrictive than a measure
258 contained within this section, shall supersede this section for the
259 duration of the applicable water shortage declaration.

260 (d) *Exceptions.* Landscape irrigation scheduling shall be subject to the
261 following exceptions:

262 (1) Landscape irrigation systems may be operated during restricted days
263 and/or times for cleaning, maintenance, and repair purposes with an
264 attendant on site in the area being tested. Landscape irrigation
265 systems may routinely be operated for such purposes no more than
266 once per week, and the run time for any one (1) test should not exceed
267 ten (10) minutes per zone.

268 (2) Landscape irrigation for the purpose of watering-in fertilizers,
269 insecticides, pesticides, fungicides and herbicides, where such
270 watering-in is recommended by the manufacturer, or by federal, state
271 or local law, or best management practices, shall be allowed under the
272 following conditions:

273 a. Such watering-in shall be limited to one (1) application, unless the
274 need for more than one (1) application is stated in the directions
275 for application specified by the manufacturer; and

276 b. Such watering-in shall be accomplished during normally
277 allowable watering days and times set forth in subsection 18-
278 21(c) unless a professional licensed applicator has posted a
279 temporary sign containing the date of application and the date(s)
280 of needed watering-in activity.

281 (3) Any plant material may be watered using low volume irrigation, micro-
282 irrigation, low volume hand watering method, rain barrels, cisterns, or
283 other similar rain-harvesting devices without regard to the watering
284 days or times allowed pursuant to this section.

285 (e) *Additional requirements.* Any user who purchases and installs an automatic
286 landscape irrigation system shall properly install, maintain, and operate technology that
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289 inhibits or interrupts operation of the system during periods of sufficient moisture in
290 accordance with section 373.62, Florida Statutes.

291
292 (f) *Variances.*

293 (1) If a user wishes to request a variance from the specific day or days
294 identified in subsection 18-21(c), the user may file a petition for variance or
295 waiver, in a form satisfactory to the city, with the director of Water Utilities

296 (2) A variance from the specific day or days identified in subsection 18-
297 21(c) may be granted by the city if strict application of the restrictions would
298 lead to an unreasonable or unfair result; provided the applicant
299 demonstrates with particularity that compliance with the schedule will result
300 in substantial economic, health, or other hardship on the applicant or those
301 served by the applicant. Further, relief may be granted only upon a
302 demonstration that such hardship exists, is peculiar to the person or the
303 affected property, is not self-imposed, and that granting the variance would
304 be consistent with the general intent and purpose of this section.

305 (3) The decision of the city shall be final.

306 (4) If granted, the applicant shall be required to post a notice at each
307 parcel to which the variance pertains.

308 (5) The city recognizes all irrigation variances or waivers issued by the
309 District under Rule 40E-24.501, F.A.C.

310 (g) *Declaration of water shortage or water shortage emergency.* Declaration of
311 a water shortage condition and/or water shortage emergency within all or parts of the city
312 by the District's governing board or executive director shall supersede this section for the
313 duration of the applicable water shortage declaration in accordance with the city's Water
314 Shortage Emergencies set forth in Chapter 18, Article III Emergency Water Use. A water
315 shortage usually occurs due to drought.

316
317 (h) *Enforcement.*

318 (1) In the absence of a declaration of water shortage or water shortage
319 emergency within all or any part of the city by the District's governing board
320 or executive director, the listed landscape irrigation restrictions shall be
321 subject to enforcement action.

322 (2) The city authorizes law enforcement officials to enforce the provisions
323 of this section. In addition, the city manager may delegate this section's
324 enforcement responsibility to departments within the city government.

325
326 (i) *Penalties.*

327 (1) Violation of any provision of this section shall be subject to the
328 following penalties:

329 1. First violations, a warning.

330 2. Second violations, a \$50.00 fine.

331 3. Third violations, a \$250.00 fine.

332 4. Fourth and subsequent violations, a \$500.00 fine.

333 (2) Each day a violation of this section occurs shall be a separate
334 offense. Law enforcement officials, and others as delegated, may provide
335 violators with no more than one (1) written warning. In addition to civil
336 penalties, the city may take any other appropriate legal action, including but
337 not limited to, injunctive action to enforce the provisions of this section.

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Secs. 18-22 – 18-23. – Reserved.

Section 3. Chapter 18 Utilities, Article III Emergency Water Use is hereby renumbered as follows.

ARTICLE III. – EMERGENCY WATER USE

Sec. 18-2421. – Definitions.

* * *

Sec. 18-2522. – Intent and purpose.

* * *

Sec. 18-2623. – Applicability.

* * *

Sec. 18-2724. – Enforcement.

* * *

Sec. 18-2822. – Penalties.

* * *

Sec. 18-2922. – Intent and purpose.

* * *

Secs. 18-26 – 18-29. – Reserved.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Codification. The sections of the ordinance may be made a part of the City’s Code of Ordinances and may be re-numbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section”, “division”, or any other appropriate word.

Section 7. Effective Date. This ordinance shall become effective ten (10) days after its final passage.

The passage of this ordinance was moved by _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

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The Mayor thereupon declared this ordinance duly passed on first reading on the _____ of _____ 2022.

The passage of this ordinance on second reading was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2022.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk