

CITY OF HOMESTEAD, FLORIDA

ORDINANCE NO. 2024-01-05

AN ORDINANCE OF THE CITY OF HOMESTEAD, FLORIDA, **AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 28 “UTILITIES,” DIVISION 5, “LANDSCAPE IRRIGATION,” SECTION 28-70, “PERMANENT LANDSCAPE IRRIGATION RESTRICTIONS” TO UPDATE LANDSCAPE IRRIGATION PROCEDURES;** PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Homestead, Florida (the “City Council”) finds it periodically necessary to amend its Code of Ordinances (the “City Code”) in order to update regulations and procedures to implement municipal goals and objectives; and

WHEREAS, the City Council desires to amend the City Code in order to update regulations to conform the City’s permanent landscape irrigation restrictions with that of Miami-Dade County; and

WHEREAS, the City Council has reviewed this Ordinance at a duly noticed public hearing in accordance with law and determined that it is consistent with the City Code; and

WHEREAS, the City Council finds that this proposed Ordinance serves to further enhance the protection of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOMESTEAD, FLORIDA:

Section 1. Recitals Adopted. The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. City Code Amended. That Chapter 28 “Utilities,” Division 5, “Landscape Irrigation,” Section 28-70, “Permanent Landscape Irrigation Restrictions” of the City Code is hereby amended to read as follows:

DIVISION 5. - LANDSCAPE IRRIGATION

Sec. 28-70. Permanent landscape irrigation restrictions.

- (a) *Intent and purpose.* To protect the water resources of the City of Homestead, Florida from the harmful effects of over utilization, increase water use efficiency and prevent and curtail wasteful water use practices by providing mandatory year-round landscape irrigation conservation measures and prohibiting the operation of irrigation systems in a manner causing water to be wasted, and to be consistent with the South Florida Water Management District’s (District Governing Board) mandatory year round landscape irrigation conservation measures under chapter 40E-24, Florida Administrative Code. (F.A.C.)
- (b) *Definitions.* In constructing the provisions of this section, the following definitions shall apply:

Athletic play area shall mean all golf course fairways, tees, roughs and greens and other athletic play surfaces; including, football, baseball, soccer fields, polo, grounds, tennis courts and or lawn bowling fields, rodeo, equestrian and livestock arenas.

Director shall mean the Director of the Public Works Department or designee.

District Governing Board shall mean the South Florida Water Management District, a government entity; created under chapter 373, F.S.

Even-numbered address shall 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 landscape shall mean any landscaping ~~where a period of ninety (90) days has lapsed from the date of purchase that has been planted and in the ground for more than ninety (90) consecutive days.~~

Irrigation systems shall mean equipment and devices which deliver water to the ~~landscape~~ landscaping being irrigated including, but not limited to, pumping stations,

controls, main and submain pipelines, lateral pipelines, emitters, valves, fittings, and safety devices.

Landscape shall mean all residential, commercial, institutional, industrial or governmental areas which are ornamentally planted including, but not limited to, turf, ground covers, flowers, shrubs, trees, sand, mulch, hedges and similar plant materials, lawns, sod, grass and such other flora, not intended for resale, which are situated in locations including, but not limited to, residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way except athletic play areas and public gardens as defined herein. Landscaping shall mean 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.

Landscape irrigation shall mean 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~~ landscaping except athletic play areas and ~~public gardens~~ as defined herein.

New landscaping shall mean any landscaping ~~where the period of time from the date of purchase is~~ that has been planted in the ground for ninety (90) days or less.

Odd-numbered address shall mean an address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.

~~*Public gardens* shall mean botanical gardens and zoological parks and any planned outdoor space where landscaping is cared for and exhibited and the facility is open to the public at least six (6) months during a twelve-month period.~~

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

User shall mean 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 users of private or public utility systems, individual wells or pumps and uses under water use permits issued pursuant to chapter 40E-2, F.A.C.

Water resource shall mean any and all water on or beneath the surface of the ground including, but not limited to, natural or artificial watercourses, water bodies,

lakes, ponds, or diffused surface water, and water percolating, standing, or flowing beneath the surface of the ground.

Water shortage shall mean when the district governing board determines via formal declaration that 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, but is not limited to occurring, due to drought.

Water shortage emergency shall mean when the District Governing Board 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

(c) *Application of section.* The provisions of this section shall apply to all users of any water resource within the City of Homestead, whether from publicly or privately owned water utility systems, private wells, or private connections with surface water bodies. The provisions of this section shall not apply to athletic play areas ~~and public gardens~~ agricultural and nursery operations and irrigation performed using reclaimed water as defined herein and users under water use permits issued pursuant to Chapter 40E-2 and 40E-20, F.A.C.

(d) Permanent landscape irrigation restrictions:

(i) It shall be the duty of each user to keep informed as to the landscape irrigation conservation measures presented within this section, which affect each particular water use.

(ii) The following requirements shall apply to all users unless specified otherwise herein:

(1) Irrigation of existing landscaping shall comply with the following:

a. It shall be unlawful for any user to irrigate or to cause, let, permit, or allow the irrigation of any residential, commercial, institutional, governmental or industrial landscape areas between the hours of 10:00 a.m. and 4:00 p.m. daily except as otherwise provided herein.

b. It shall be unlawful for any user to operate or cause, let, permit, or allow or suffer the operation of any irrigation system or device in a wasteful and unnecessary manner including, but not limited to, watering paved areas, sidewalks, driveways, and parking lots.

c. ~~Even addresses,~~ An Even-Numbered Address that has an installations with irrigation systems that irrigates both even numbered and odd numbered addresses within the same zones, including multifamily units and homeowners' associations, and rights-of-way or other locations with no address, as defined in this

section shall only conduct necessary landscaping irrigation on Thursday and/or Sunday ~~or both Thursday and/or Sunday~~.

- d. ~~Odd addresses~~ Odd-Numbered Addresses ~~as defined in this section~~ shall only conduct necessary landscape irrigation on Wednesday and/or Saturday ~~or both Wednesday and/or Saturday~~.

- (2) Users irrigating new landscaping shall comply with the following:
 - a. Irrigation of new landscaping shall be prohibited between the hours of 10:00 a.m. and 4:00 p.m. daily, except as otherwise provided herein.
 - b. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil ~~immediately prior to the installation of the new landscaping is also allowable~~ is allowed twenty-four (24) hours before installation without regard to the normal allowable watering days and times.
 - c. ~~Irrigation of new landscaping which has been purchased for ninety (90) days or less may be conducted on any day except Friday. The~~ new landscaping shall be installed within a reasonable time from the date of purchase.

- (3) Any water shortage restrictions or other measures declared pursuant to chapter 40e21, 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.

- (~~3~~4) Landscape irrigation systems may be operated during restricted days and 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 test should not exceed ten (10) minutes per zone

- (4~~5~~) 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 by Florida Green Industries Best Management Practices for Protection of Florida Water Resources Manual, shall be allowed under the following conditions:

- a. Such watering-in of fertilizers containing nitrogen or phosphorus and application of fertilizers containing nitrogen or phosphorus for turf or landscaping are allowed only from November 1 to May 14 of

each year pursuant to Section 18C-4 of the Code of Miami-Dade County, Florida.

b. Such watering-in of fertilizers containing phosphorus and application of fertilizers containing phosphorus for turf or landscaping plants shall be limited to areas where a phosphorus deficiency has been demonstrated in the soil underlying the respective turf and landscaping by a soil analysis test performed by a State of Florida certified laboratory as required pursuant to Section 18C-4(C)(4) of the Code of Miami-Dade County, Florida.

~~a, c.~~ 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, d.~~ Such watering-in shall be accomplished during normally allowable watering days and times set forth in subsections (d)(ii)(1)c. and (d)(ii)(1)d. unless a professional licensed applicator has posted on the date the fertilizer is applied a temporary sign containing the date of application and the date(s) of needed watering-in activity.

(56) Any landscaping may be irrigated using low volume irrigation, micro-irrigation, low-volume hand watering methods including but not limited to the use of a hose with a self-canceling or closing nozzle, rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this section.

~~(6) Any landscaping may be irrigated with reclaimed water in accordance with federal, state and local water reuse quality standards, or the use of saltwater without regard to the watering days or times allowed pursuant to this section.~~

~~(7) Irrigation of new lawns and landscaping shall be allowed between 11:00 a.m. and 12:01 p.m. daily for a period of thirty (30) days or until the lawn or landscaping is considered established, whichever period is shorter. Any user who purchases and installs an automatic landscape irrigation system shall properly install, maintain, and use technology that inhibits or interrupts the operation of the system during periods of sufficient moisture as required by section 373.62, F.S.~~

(e) *Enforcement.* 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 district's executive director, compliance with the landscape irrigation restrictions of this section shall be subject to enforcement action. Any violation of the provisions of subsection 28-70 (d) herein shall be a violation of this section.

Every ~~police~~ law enforcement officer or code enforcement officer having jurisdiction in the area governed by this section shall, in connection with all other duties imposed by law, diligently enforce the provisions of this section.

Officers may provide violators with no more than one (1) written warning. This section shall also be enforceable in accordance with the provisions of Chapter 7 of this code. The city may take any appropriate legal action, including but not limited to emergency prohibitory and mandatory injunctive action to enforce the provisions of this section.

- (f) *Penalties.* Violations of any provision of this section shall be subject to the following penalties: First violation: Seventy-five dollar (\$75.00) fine. Second and subsequent violations: Fine not to exceed five hundred dollars (\$500.00). Each day in violation of this section shall constitute a separate offense.

(g) Alternate method of compliance.

- (1) Any user affected by this division may apply for a variance to the city manager, or designee. A variance from specific day or days identified in this division 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 division.

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

- (1) Two or more properties that share a common source of water;

- (2) A public or private water system experiencing or anticipating distribution problems;

- (3) A user maintains an irrigation system that uses soil moisture sensors or weather-based irrigation controllers; or

- (4) 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.

However, no single zone may be irrigated more than two (2) days per week.

- (3) Upon receipt of an application for variance from the requirements of this division, the city manager or designee shall render a decision on the variance within fourteen (14) business days. Denials of variance relief may be appealed to the city council within thirty (30) 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.

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

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason 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. Inclusion in the code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the City of Homestead; that the 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. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 7. Effective date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED on first reading this 13th day of December, 2023.

PASSED AND ADOPTED on second reading this 24th day of January, 2024.

STEVEN D. LOSNER,
Mayor

ATTEST:

ELIZABETH SEWELL, MPA, MMC, FCRM
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND BENEFIT OF THE CITY ONLY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
City Attorney

Motion to adopt by Councilwoman Bailey, seconded by Vice Mayor Fletcher.

FINAL VOTE AT ADOPTION

<i>Mayor Steven D. Losner</i>	<u>YES</u>
<i>Vice-Mayor Sean L. Fletcher</i>	<u>YES</u>
<i>Councilwoman Erica G. Ávila</i>	<u>YES</u>
<i>Councilwoman Jenifer N. Bailey</i>	<u>YES</u>
<i>Councilman Clemente Canabal</i>	<u>YES</u>
<i>Councilman Thomas Davis</i>	<u>YES</u>
<i>Councilman Larry Roth</i>	<u>YES</u>