

ORDINANCE NO. 1477

AN ORDINANCE OF THE CITY OF OVIEDO, FLORIDA PROVIDING FOR ADOPTION OF POLICIES AND PROCEDURES FOR THE IMPLEMENTATION OF WATER AND RECLAIMED WATER RESTRICTIONS RELATING TO LANDSCAPING AND OTHER IRRIGATION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR RESTRICTIONS; PROVIDING FOR VARIANCES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICTS INCLUDING THE REPEAL OF ORDINANCE NUMBER 1401 AND SECTION 54-268 AND SECTIONS. 54-301 THROUGH 54-309 OF THE CODE OF ORDINANCES OF THE CITY OF OVIEDO; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Rule 40C-2.042(2)(a), *Florida Administrative Code*, of the St. Johns River Water Management District grants a general permit to each person located within the District to use, withdraw or divert water for small landscape irrigation uses, provided that irrigation occurs in accordance with the Rule which is adopted by reference in this Ordinance; and

WHEREAS, the St. Johns River Water Management District has implemented watering restrictions which are designed to ensure the efficient use of water for landscape irrigation which restrictions allow the use of enough water to maintain healthy landscapes year-round as the mandatory restrictions specify the time when watering may occur, the amount of water that may be applied, and the days when watering may occur for residential and nonresidential locations (the days permitted depending on whether the address ends in an odd or even number, and on the time of year); and

WHEREAS, the St. Johns River Water Management District has responsibility and exclusive authority under Chapter 373, *Florida Statutes*, for regulating the consumptive use of water and is an agency of the State which, under controlling Florida law, has controlling jurisdiction over water supply management and conservation in the geographical area in which the City of Oviedo is located with the District operating under the principal that the State's water resources belong to everyone, not just one geographic area or government; and

WHEREAS, the St. Johns River Water Management District has amended Rule 40C-2.042, *Florida Administrative Code*, its General Consumptive Use Permit by Rule, that regulates small irrigation uses below consumptive use permit thresholds in Rule 40C-2.041(1), *Florida Administrative Code*; and

WHEREAS, Rule 40C-2.042(2)(a), *Florida Administrative Code*, grants a general permit to each person located within the St. Johns River Water Management District to use, withdraw or divert water for small landscape irrigation uses, provided that irrigation occurs in accordance with the Rule; and

MARYANNE MORSE, CLERK OF CIRCUIT COURT SEMINOLE COUNTY, CFN 2009131383 BK 07260 Pgs 0613 - 617, (5pgs) RECD 11/13/2009 02:59:10 PM
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WHEREAS, Rule 40C-2.042(2), *Florida Administrative Code*, applies to 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 40C-2.042(2)(b), *Florida Administrative Code*, strongly encourages a local government to adopt an ordinance to enforce Rule 40C-2.042(2)(a), *Florida Administrative Code*, within its jurisdiction by adopting a landscape irrigation ordinance that incorporates each of the provisions set forth in Rule 40C-2.042(2)(a), *Florida Administrative Code*; and

WHEREAS, the City Council of the City of Oviedo desires to ensure that the water conservation rule of the St. Johns River Water Management District, Rule 40C-2.042(a), *Florida Administrative Code*, is enforced within the City of Oviedo by incorporation of the District's rule into the *Code of Ordinances of the City of Oviedo, Florida* and it is the desire of the City Council to adopt such an ordinance in accordance with Rule 40C-2.042(2)(a) and (b), *Florida Administrative Code*, and

WHEREAS, the City Council of the City of Oviedo hereby finds and declares that the adoption of this ordinance is appropriate, and in the public interest of the citizens of this community in order to support the St. Johns River Water Management District to adopt the District's landscape irrigation Rule as a way to assist the District in the conservation of the water resources.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT.

(a) The City of Oviedo has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

(b) Although not a land development regulation, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Oviedo*, the *Land Development Code of the City of Oviedo*, and other controlling law.

(c) The foregoing recitals (whereas clauses) are adopted as additional legislative findings.

SECTION 2. INCORPORATION OF RULE 40C-2.042(2)(a), FLORIDA ADMINISTRATIVE CODE. A new section of the *Code of Ordinances of the City of Oviedo* is created to read as follows:

Rule 40C-2.042 (2) (a), *Florida Administrative Code*, as adopted by the St. Johns River Water Management District, is hereby adopted and incorporated into the *Code of Ordinances of the City of Oviedo, Florida*, the provisions of which shall be enforced by the City in accordance with Section 4 of this Ordinance. The provisions of this Ordinance shall apply to each person located within the City of Oviedo except that the City's reclaimed water customers who use

reclaimed water for landscape irrigation shall be subject to the provisions of Ordinance Number 1479.

SECTION 3. VARIANCES FROM SPECIFIC DAY OF THE WEEK LIMITATIONS. A new section of the *Code of Ordinances of the City of Oviedo* is created to read as follows:

(a) A variance from the specific landscape irrigation days or days set forth in Rule 40C-2.042 (2) (a), *Florida Administrative Code*, may be granted if strict application of the scheduled days or day would lead to unreasonable or unfair results in particular instances, provided that the applicant demonstrates with particularity that compliance with the schedule of days or day for landscape irrigation will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant. Where a contiguous property is divided into different zones, a variance may be granted hereunder so that each zone may be irrigated on different days or a different day than other zones of the property. However, no single zone may be irrigated more than two (2) days per week during Daylight Saving Time or more than one (1) day a week during Eastern Standard Time.

(b) All petitioners requesting a variance as set forth above shall file with the City Manager, or designee, a petition for variance, but must conform to the greatest possible extent to the provisions of this article until such variance is granted.

(c) A petition for variance shall be in writing and contain, at a minimum, the following:

(1) The petitioner's name and address.

(2) A detailed statement of the facts which the petitioner believes demonstrates that the request qualifies for variance.

(3) A description of the variance desired.

(4) The period of time for which the variance is sought, including the reasons and facts in support thereof.

(5) Other relevant information the petitioner believes supports his/her petition for variance.

(6) Variances granted, and applications denied, under the provisions of this Section shall be issued in writing.

(7) If an application is denied by the designee of the City Manager, an appeal may be filed with the City Manager within ten (10) days of the date of the decision and, if denied by the City Manager, appeals may be filed with the City Council by submission of the appeal within ten (10) days with the City Clerk.

SECTION 4. ENFORCEMENT AND PENALTIES. A new section of the *Code of Ordinances of the City of Oviedo* is created to read as follows:

(a) It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.

(b) The City may enforce the provisions of this Ordinance by any means available to the City under the *Code of Ordinances of the City of Oviedo* or as may be available under the controlling provisions of State law.

(c) The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Oviedo* or as may be available under the controlling provisions of State law; provided, however, that incarceration shall not be an applicable punishment relative to the violation of this Ordinance.

(d) With regard to customers within its utility systems, the City may assess service fees and service charges as a method of collecting such fees and service charges resulting from a utility customer failing to comply with the provisions of this Ordinance or any implementing administrative actions.

(e) Warning notices may be provided to violators by either hanger, facsimile transmittal, any form of mail, hand delivery, or any other manner authorized by controlling law.

SECTION 5. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by means of such administrative actions as may be deemed appropriate and necessary to include, but not be limited to, the adoption of administrative rules.

SECTION 6. SAVINGS. The prior actions of the City of Oviedo relating to water conservation are hereby ratified and affirmed.

SECTION 7. CONFLICTS. All ordinances or part of ordinances pertaining to landscape irrigation, water shortage, or other water usage in conflict with this Ordinance, Rule 40C-2.042(2) (a), *Florida Administrative Code*, or Chapter 373, *Florida Statutes*, are hereby repealed to include, but not be limited to, Ordinance Number 1401/Sections 54-301 through 54-309 of the *Code of Ordinances of the City of Oviedo* and Section 54-268 of the *Code of Ordinances of the City of Oviedo*; provided, however, that the City's reclaimed water customers who use reclaimed water for landscape irrigation shall be subject to the provisions of Ordinance Number 1479

SECTION 8. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 9. CODIFICATION. The provisions of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of Oviedo, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 6, 7, 8, 9, and 10 shall not be codified.

SECTION 10. EFFECTIVE DATE. This Ordinance shall become effective immediately upon enactment.

FIRST READING:

October 19, 2009

SECOND READING:

November 16, 2009

PASSED AND ADOPTED THIS 16th day of November A.D., 2009.

for MARY LOU ANDREWS
Mayor of the City of Oviedo, Florida

ATTEST:

Barbara J. Barbour
BARBARA J. BARBOUR
CITY CLERK

