

ORDINANCE NO. 21 - 07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONITA SPRINGS, FLORIDA; PROVIDING FOR THE INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR LOCAL IMPLEMENTATION OF THE MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES RULE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (40E-24, F.A.C.); PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; 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, the City of Bonita Springs relies upon the guidance and regulations issued by the District in the drafting, adopting, and implementing this Ordinance; and

WHEREAS, it is the desire of the City Council of the City of Bonita Springs to adopt this Ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, the City Council finds and declares that the adoption of this Ordinance is appropriate, and in the public interest of this community.

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

Section 1. Recitals.

Each and all of the foregoing recitals are hereby incorporated into this Ordinance as if specifically set forth herein.

Section 2. Intent and Purpose.

It is the intent and purpose of this Ordinance to implement procedures to protect the water resources of City and to promote water conservation through the efficient use of landscape irrigation and consistency with the South Florida Water Management District's mandatory year-round landscape irrigation conservation measures under Chapter 40E-24, Florida Administrative Code, (F.A.C.). This Code will increase water use efficiency; prevent and curtail wasteful irrigation practices by providing mandatory landscape irrigation conservation measures; and prohibit the operation of irrigation systems in a manner causing water to be wasted.

Section 3. Definitions.

For the purpose of this Ordinance, 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., authorizing the consumptive use of water.
- (4) "District" means the South Florida Water Management District, a government entity created under Chapter 373, F.S.
- (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, as defined in Section 3(2).
- (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 designated code inspectors and code enforcement officers of the City.
- (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 emitter 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.
- (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 the District determines 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 due to drought.
- (20) “Water Shortage Emergency” means when the District 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.

Section 4. Applicability.

The provisions of this Ordinance shall apply to each user, as defined in Section 3(16), providing landscape irrigation from all water resources within the boundaries of the City with the following exceptions:

- (1) The use of reclaimed water or saltwater, which may or may not be supplemented from another source;
- (2) Irrigation at agricultural and nursery operations; and
- (3) Irrigation of athletic play areas.

Section 5. Year-Round Landscape Irrigation Conservation Measures.

The City adopts the rules of the South Florida Water Management District, listed in Subsection 40E-24.201 (1)-(6), 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 Ordinance 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 Ordinance which affect each particular water use.
- (3) In addition to the specific conservation measures, all wasteful and unnecessary water use, as defined in Section 3(17), is prohibited.
- (4) The following requirements shall apply to all users, unless specified in Section 3 or Section 6.
 - (a) Landscape irrigation shall be prohibited between the hours of 9:00 a.m. and 5:00 p.m., except as otherwise provided.
 - (b) Irrigation of existing landscaping shall comply with the following provisions:
 - i. Even addresses, as defined in Section 3(5), 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 two (2) days a week, only on Thursday or Sunday, or both.
 - ii. Odd addresses, as defined in Section 3(13), shall have the opportunity to accomplish necessary landscape irrigation two (2) days a week, only on Wednesday or Saturday, or both.
 - (c) Irrigation of new landscaping shall comply with the following provisions:

- i. 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.
 - ii. 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.
 - iii. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on any day of the week except Friday.
 - iv. Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) days may be accomplished on any day of the week except Tuesday, Friday or Sunday.
 - v. 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, as defined in Section 3(10), or any appropriate method which isolates and waters only the new landscaping.
- (5) Any water shortage, as defined in Section 3(19), 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 Ordinance, shall supersede this Ordinance for the duration of the applicable water shortage declaration.

Section 6. Exceptions to the Landscaping Irrigation Schedules.

Landscape irrigation scheduling shall be subject to the following exceptions:

- (1) 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 (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 Subsection 5(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, as defined in Section 3(11), micro-irrigation, as defined in Section 3(12), 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.

Section 7. 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, F.S.

Section 8. Variances.

- (1) A variance from the specific day or days identified in Subsection 5(4)(b) may be granted by the City 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) Upon receipt of an application for variance from the requirements of this Ordinance, the City Manager or designee shall render a decision on the variance within 45 days. Denials of variance relief may be appealed to the City Council within 45 days of the user's receipt of the notice of denial. Notices shall be sent certified mail, return receipt requested.
- (3) The City shall recognize all irrigation variances or waivers issued by the District under Rule 40E-24.501, F.A.C.

Section 9. Declaration of Water Shortage or Water Shortage Emergency.

Declaration of a water shortage condition or water shortage emergency, as defined in Section 3(20), within all or parts of the City by the District's Governing Board or Executive Director shall supersede this Ordinance for the duration of the applicable water shortage declaration in

accordance with Ordinance No. 21-06. A water shortage usually occurs due to drought.

Section 10. Enforcement.

The City authorizes law enforcement officials having jurisdiction within the City to enforce the provisions of this Ordinance. In addition, the City may delegate this Ordinance's enforcement responsibility to other agencies and departments within the City government or other governmental entities through interlocal agreement.

Section 11. Penalties.

Violations of any provision of this Ordinance may be punished pursuant to Chapter 162, Florida Statutes, however the City may also take any other appropriate legal action, including but not limited to injunctive action to enforce the provisions of this Ordinance.

Section 12. Codification.

The City Council intends that this Ordinance be made part of the Code of the Laws and Ordinances, of the City of Bonita Springs, Florida; and that the sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the City Manager without the need for a public hearing.

Section 13. Conflict.

All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this Ordinance are hereby repealed to the extent inconsistent herewith.

The following provisions of the Bonita Springs City Code are hereby amended with additions represented through underlined language and the use of ~~strikethrough~~ for deletions:

~~Sec. 42-47. Short title, purpose and scope.~~

~~(a) This article will be known and cited as the "Bonita Springs Water Conservation Ordinance."~~

~~(b) The purpose of this article is to protect the city's water resources from the harmful effects of over utilization throughout the year, as well as during periods of water shortage, and to allocate available water supplies by assisting the South Florida Water Management District in the implementation of its water shortage plan, and mandatory year round landscape irrigation measures for the city provided in the F.A.C. chs. 40E-21 and 40E-24, as may be amended from time to time.~~

~~(c) It is further the purpose of this ordinance to encourage gray water residential building design by adopting Appendix C, Gray Water Recycling Systems, of the plumbing portion of the Florida Building Code, as it may be amended from time to time.~~

~~(d) — The city is also amending this article to require the following:~~

~~(1) — All new car washes (self-serve and automatic) shall implement best management practices (BMPs) to minimize runoff from, or run-on to, the site as required by state law in F.A.C. 62-660.803, General Permit for Car Wash Systems.~~

~~(2) — Permitting and design review shall be required for ornamental water fountains and water features to ensure the water feature recirculates water and serves a beneficial use. Ornamental water features, which includes fountains, ponds, waterfalls, manmade streams, and other decorative water-related constructions, should recirculate water and serve a beneficial use (e.g., habitat for wildlife, stormwater management, cooling properties) as set forth in section III.A.5, Ornamental Water Features, of the 2014 EPA Resource Manual for New Homes.~~

~~(3) — Encourage alternative onsite wastewater and water reuse technologies. These could include the use of gray water harvesting through the use of rain barrels, water cisterns and air conditioning condensate for irrigation.~~

~~(e) — The territorial scope and provisions of this article shall apply to all persons using water resources, whether from public or privately owned water utility systems, private wells, or private connections with surface water bodies in the corporate areas of the city, except those persons exempt under F.A.C. ch. 40E-24, as may be amended from time to time.~~

1
2 **Sec. 42-48. Definitions.**

3 The following words, terms and phrases, when used in this article, shall have the meanings ascribed
4 to them in this section, except where the context clearly indicates a different meaning:

5 *District* means the South Florida Water Management District.

6 *Person* means any person, firm, partnership, association, corporation, company, or organization of
7 any kind.

8 *Restaurant* means an establishment whose principal business is the sale of food and/or beverages
9 in a ready-to-consume state. The definition of restaurant shall include both standard and fast food
10 operations, as defined in the city Land Development Code, as amended.

11 *Water resource* means any and all water on or beneath the surface of the ground, including natural
12 or artificial watercourses, lakes, ponds, or diffused surface water, and water percolating, standing,
13 or flowing beneath the surface of the ground.

14 *Water shortage condition* means sufficient water is not available to meet present or anticipated
15 needs of persons using the water resource, or conditions require temporary reduction in total water
16 usage within a particular area to protect the water resources from serious harm.

17 *Water shortage emergency* means that situation when the powers which can be exercised under
18 F.A.C. ch. 40E-21, Part II are not sufficient to protect the public health, safety, or welfare, or the
19 health of animals, fish or aquatic life, or a public water supply, or commercial, industrial,
20 recreational or other reasonable uses.

21
22 **Sec. 42-49. Permanent water restrictions, declaration of water shortage, and water shortage
23 emergency.**

24 (a) — The provisions of Chapter 40E-21, Florida Administrative Code, Water Shortage Plan, and
25 Chapter 40E-24, Florida Administrative Code, Mandatory Yearround Landscape Irrigation
26 Restrictions for Lee, Collier and Charlotte Counties, as the same may be amended, renamed or
27 renumbered from time to time, is hereby incorporated by reference in its entirety into the provisions
28 of this article.

29 (b) — The formal declaration of a water shortage condition or water shortage emergency
30 condition within all or any part of the city by the city council or the executive director of the district
31 shall invoke the provisions of this subsection. Upon such declaration, all water use restrictions or
32 other measures adopted by the district pursuant to Chapter 40E-21, Florida Administrative Code,
33 applicable to the city, or any portion thereof, shall be subject to enforcement action pursuant to the
34 enforcement provisions of this article. The South Florida Water Management District water
35 shortage plan shall be kept on file with the clerk of the city.

36 (c) — The city supplements the provisions of F.A.C. ch. 40E-24, as follows:

37 (1) — F.A.C. 40E-24.201(5)(a). Landscape irrigation shall be prohibited daily between the hours
38 of 9:00 a.m. and 5:00 p.m. Any irrigation performed from 9:00 a.m. to 5:00 p.m. will be subject to
39 fines. Irrigation during these hours wilts sod and plants and wastes water through evaporation.

40 (2) — Persons using a low volume irrigation system will be allowed to water seven days a week
41 except during the hours between 9:00 a.m. and 5:00 p.m. Low volume irrigation systems include
42 systems such as misting and drip irrigation systems which are specifically designed to allow the
43 volume of water delivered to be limited to a level consistent with the water requirement of the
44 plant being irrigated and to allow that water to be placed with a high degree of efficiency in the
45 root zone of the plant, thereby conserving water.

1 (3) ~~— The low volume hand watering methods referenced in F.A.C. 40E-24.201(5)(f) shall be~~
2 ~~fitted with an automatic shutoff device. The use of handheld watering devices are exempt from~~
3 ~~this article providing that self-shutting nozzles are used. At no time will an open hose be allowed~~
4 ~~to flow freely unattended, wasting water.~~

5 (4) ~~— All restaurants within the city are prohibited from serving water to any customer from any~~
6 ~~public or private well, water supply, or distribution system, except when specifically requested by~~
7 ~~the customer.~~

8 (d) ~~— Any violation of subsection (c) of this section, or F.A.C. ch. 40E-21 or 40E-24, or any~~
9 ~~order issued pursuant thereto by any person, shall constitute a violation of this article.~~

10
11 **~~Sec. 42-50. Enforcement and penalties.~~**

12 (a) ~~— *Enforcement.* All duly sworn county law enforcement officers, police officers or deputy~~
13 ~~sheriffs in the city shall, in connection with all other duties imposed by law, diligently enforce the~~
14 ~~provisions of this article. In addition, the city manager, or designee, may also delegate enforcement~~
15 ~~responsibility for this article to code enforcement, in accordance with state and local law.~~

16 (b) ~~— *Penalties.*~~

17 (1) ~~— Violation of any provisions of this article shall be subject to the following penalties:~~

18 a. ~~— First violation: \$25.00 fine.~~

19 b. ~~— Second violation: \$100.00 fine.~~

20 c. ~~— Third violation: Fine not to exceed \$500.00 and/or imprisonment in the county jail not to~~
21 ~~exceed 60 days.~~

22 (2) ~~— Each violation of this article shall constitute a separate offense. In the initial stages of a~~
23 ~~water shortage condition or water shortage emergency condition, but not to exceed the first 30~~
24 ~~days of such condition, law enforcement officials may provide violators with no more than one~~
25 ~~written warning.~~

26
27 **~~Sec. 42-51. Water service provided by public and private utilities.~~**

28 ~~The acceptance of water service from city utilities or any private utility company within the city~~
29 ~~shall in and of itself constitute the acceptance of the provisions of this article.~~

30
31 **~~Sec. 42-52. State administrative codes incorporated by reference.~~**

32 ~~F.A.C. chs. 40E-21 and 40E-24, as the same may be amended, renumbered or renamed from time~~
33 ~~to time, are hereby incorporated into the provisions of this article by reference, in their entirety.~~

34
35 **Section 14. Severability.**

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37 In the event that any portion of this ordinance is for any reason held invalid or
38 unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate,
39 distinct and independent provision, and such holding shall not affect the validity of the remaining
40 portions of this ordinance.

41
42 **Section 15. Effective Date.**

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44 This Ordinance shall take effect immediately upon adoption.
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2
3 **DULY PASSED AND ENACTED** by the City Council of the City of Bonita Springs,
4 Florida this 1st day of September, 2021.

5
6 Attest:

CITY OF BONITA SPRINGS, FLORIDA

7
8
9 By: 

10 City Clerk

By: 

11 Mayor

12
13
14 Reviewed for legal sufficiency:

15
16
17 By: 

18 City Attorney

19
20
21
22 Vote:

23 Carr	Aye	Gibson	Aye
24 Purdon	Aye	Quaremba	Aye
25 Forbes	Aye	Steinmeyer	Aye
26 Corrie	Aye		

27
28
29 Date filed with City Clerk: 9/3/2021