

R5 B AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 110 OF THE CITY CODE, ENTITLED "UTILITIES," BY AMENDING ARTICLE II, ENTITLED "WATER," BY CREATING A NEW DIVISION 3, ENTITLED "PERMANENT YEAR-ROUND LANDSCAPE IRRIGATION RESTRICTIONS," TO COMPLY WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT'S MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES PER CHAPTER 40E-24, FLORIDA ADMINISTRATIVE CODE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Interim City Manager Rickelle Williams
DATE: June 26, 2024 10:15 a.m. Second Reading Public Hearing

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 110 OF THE CITY CODE, ENTITLED "UTILITIES," BY AMENDING ARTICLE II, ENTITLED "WATER," BY CREATING A NEW DIVISION 3, ENTITLED "PERMANENT YEAR-ROUND LANDSCAPE IRRIGATION RESTRICTIONS," TO COMPLY WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT'S MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES PER CHAPTER 40E-24, FLORIDA ADMINISTRATIVE CODE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends the Mayor and City Commission approve the subject ordinance at Second Reading following a public hearing.

BACKGROUND/HISTORY

On July 20, 2023, the South Florida Water Management District ("District") notified the City of Miami Beach (the "City") that Miami-Dade County (the "County") revised Section 32-8.2 of the County Code of Ordinances to strengthen and update existing, permanent year-round landscape irrigation restrictions (the "Irrigation Ordinance").

The County's Irrigation Ordinance sets forth the minimum standards for landscape irrigation within the incorporated and unincorporated areas of the County, among other things, and is applicable to the City. Specifically, the Irrigation Ordinance provides that it "shall apply to both the incorporated and unincorporated areas of the County ... and in the incorporated areas of the County shall be enforced by the municipalities, unless the County is notified by a municipality, in the form of a letter from an authorized representative of the municipality or by a duly adopted resolution, that the municipality desires the County to enforce the restrictions identified in th[e] [Irrigation Ordinance] within that municipality." Accordingly, the City is currently opting to adopt its own year-round landscape irrigation restrictions ordinance with accompanying enforcement provisions.

As part of the District's notification on July 20, 2023, the District advised the City that not all provisions of the County's Irrigation Ordinance were self-executing and requested that the City clarify how it intends to address the County's Irrigation Ordinance updates to ensure consistency with Chapter 40E-24 of the Florida Administrative Code. The Ordinance accompanying this memorandum was prepared to address the District's comments, and if adopted, will formally adopt and incorporate the County's Irrigation Ordinance, as amended, into the City Code and provide for local enforcement by City staff.

ANALYSIS

As South Florida continues to see rapid growth and is among the country's fastest-growing regions, this division to Chapter 110 of the City Code has been drafted to adopt regulations consistent with South Florida's Water Management District's mandatory year-round landscape irrigation conservation measures under Chapter 40E-24, Florida Administrative Code, (F.A.C.).

The Ordinance restricts the times and number of days landscape irrigation is allowed within the City's jurisdiction. Additionally, a variance procedure has been included for residents who cannot adhere to the specific days and hours for landscape irrigation outlined in the ordinance.

Between First and Second reading of the Ordinance, the Ordinance was amended to fix a scrivener's error, and to amend the dates of prohibited application period of fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants to May 15 through November 1 to capture both City and County's prohibited application period.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on June 7, 2024. See BIE at:
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

FINANCIAL INFORMATION

CONCLUSION

The Administration recommends the Mayor and City Commission approve changes to Chapter 110 Utilities Article II Water by adding a division on permanent landscape irrigation restrictions to comply with the District's Year-round Landscape Irrigation Conservation Measures, as well as changes to align the ordinance with County efforts to conserve and protect its water resources and clarify enforcement and administration of the ordinance.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Code Compliance

Sponsor(s)

Commissioner Laura Dominguez

Co-sponsor(s)

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 110 OF THE CITY CODE, ENTITLED "UTILITIES," BY AMENDING ARTICLE II, ENTITLED "WATER," BY CREATING A NEW DIVISION 3, ENTITLED "PERMANENT YEAR-ROUND LANDSCAPE IRRIGATION RESTRICTIONS," TO COMPLY WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT'S MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES PER CHAPTER 40E-24, FLORIDA ADMINISTRATIVE CODE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, on July 20, 2023, the South Florida Water Management District ("District") notified the City of Miami Beach (the "City") that the Miami-Dade County (the "County") Board of County Commissioners amended Section 32-8.2 of the County Code of Ordinances to strengthen and update existing, permanent year-round landscape irrigation restrictions (the "Irrigation Ordinance"); and

WHEREAS, the County's Irrigation Ordinance sets forth the minimum standards for landscape irrigation within the incorporated and unincorporated areas of the County, and the City is currently opting to adopt its own year-round landscape irrigation restrictions ordinance with accompanying enforcement provisions; and

WHEREAS, as part of the District's notification on July 20, 2023, the District advised the City that not all provisions of the County's Irrigation Ordinance were self-executing and requested that the City clarify how it intends to address the County's Irrigation Ordinance updates to ensure consistency with Chapter 40E-24 of the Florida Administrative Code; and

WHEREAS, this Ordinance amends Chapter 110 of the City Code, entitled "Utilities," by creating a division on permanent landscape irrigation restrictions to comply with the District's Year-round Landscape Irrigation Conservation Measures, and formally adopt and incorporate the County's Irrigation Ordinance, as amended, to align with County efforts to conserve and protect water resources, and clarify enforcement and administration of the ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Division 3 of Article II of Chapter 110 of the Code of the City of Miami Beach is hereby created as follows:

CHAPTER 110. UTILITIES

* * *

ARTICLE II. WATER

* * *

DIVISION 3. PERMANENT YEAR-ROUND LANDSCAPE IRRIGATION RESTRICTIONS

Sec. 110-74. Intent and purpose.

It is the intent and purpose of this division to protect the water resources of the city from the harmful effects of overutilization, 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 that causes water to be wasted. This division has been drafted in order to adopt regulations consistent 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.).

Sec. 110-75. Definitions.

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

Address shall mean the "house number" (a numeric or alphanumeric designation) that, together with the street name, describes the physical location of a specific property. This excludes post office box numbers.

Athletic play area shall mean all golf course fairways, tees, roughs and greens and other athletic play surfaces and areas including, without limitation, football, baseball, and soccer fields, polo grounds, tennis courts, and lawn bowling fields.

Director shall mean the Director of the Miami Beach Parks & Recreation Department or its successor agency.

District Governing Board shall mean the South Florida Water Management District, a government entity created under Chapter 373, Florida Statutes.

Even-numbered address shall mean 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 landscaping shall mean any landscaping that has been planted and in the ground for more than ninety (90) consecutive days.

Irrigation shall mean the application of water by means other than natural precipitation.

Irrigation systems shall mean equipment and devices which deliver water to the landscaping being irrigated including, but not limited to, pumping stations, controls, main and submain pipelines, lateral pipelines, emitters, valves, fittings, and safety devices.

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 landscaping except in athletic play areas as defined herein.

Low-volume Hand Watering shall mean the watering of landscaping by one person, with one hose, fitted with a self-canceling or automatic shutoff nozzle.

Low-volume Irrigation shall mean 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.

Micro-irrigation shall mean 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 techniques such as bubbler, drip, trickle, mist or micro spray, and subsurface irrigation.

New landscaping shall mean any landscaping 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.

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 uses from private or public utility systems, individual wells or pumps and uses under water use permits issued pursuant to Chapter 40E-2, F.A.C.

Wasteful and unnecessary shall mean 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; allowing waterflow through a broken or malfunctioning water delivery or landscape irrigation system.

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.

Sec. 110-76. Application.

The provisions of this division shall apply to all users of any water resource within the city, 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, agricultural and nursery operations, irrigation performed using reclaimed water, and during irrigation system repairs or tests.

Sec. 110-77. Permanent landscape irrigation restrictions.

a) It shall be the duty of each user to keep informed as to the landscape irrigation conservation measures established in this section, which affect each particular water use.

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

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

i. It shall be unlawful for any user to irrigate or to cause, let, permit, allow or suffer the irrigation of any residential, commercial, institutional,

governmental, or industrial landscaping areas between the hours of 10:00 a.m. and 4:00 p.m. daily except as otherwise provided herein.

- ii. It shall be unlawful for any user to operate or cause, let, permit, 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.
- iii. Even-Numbered Addresses shall only conduct necessary landscape irrigation on Thursday and/or Sunday.
- iv. Odd-Numbered Addresses shall only conduct necessary landscape irrigation on Wednesday and/or Saturday.

(2) Users irrigating new landscaping shall comply with the following:

- i. 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.
- ii. 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 is allowed twenty-four (24) hours before installation without regard to the normal allowable watering days and times.
- iii. The new landscaping shall be installed within a reasonable time from the date of purchase.
- iv. The date of purchase of new landscaping may be demonstrated with a dated receipt or invoice.
- v. Irrigation of new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least fifty (50) percent new landscaping. If a zone contains less than fifty (50) percent 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 under this paragraph. Targeted watering may be accomplished by low-volume hand watering, or any appropriate method which isolates and waters only the new landscaping.
- vi. New landscaping which has been in place for thirty (30) days or less may be irrigated on Monday, Tuesday, Wednesday, Thursday, Saturday and/or Sunday.
- vii. New landscaping which has been in place for thirty-one (31) to ninety (90) days may be irrigated on Monday, Wednesday, Thursday and/or Saturday.

(3) Any water shortage restrictions or other measures declared pursuant to Chapter 40E-21, F.A.C., or related, by the District Governing Board or District 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.

- (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.
- (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 the Florida Green Industries Best Management Practices for Protection of Florida Water Resources Manual, shall be allowed under the following conditions:
- i. Such watering-in of fertilizers containing nitrogen or phosphorus and application of fertilizers containing nitrogen or phosphorus for turf or landscaping are not allowed only from May 15 through November 1 of each year pursuant to Section 46-219(a) of this Code and Section 18-C-4(A)(1) of the Code of Miami-Dade County, Florida.
 - ii. 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.
 - iii. Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by the manufacturer: and
 - iv. Such watering-in shall be accomplished during normally allowable watering days and times set forth in sections 110-77(b)(1) and (b)(2) 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.
- (6) Any landscaping may be irrigated using low volume irrigation, micro-irrigation, or low-volume hand watering methods including but not limited to the use of rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this section.
- (7) 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, Florida Statutes.

Sec. 110-78. Enforcement.

This division shall be enforced by the City's code compliance department.

Sec. 110-79. Penalties.

(a) A violation of any provision of this division shall be subject to the following penalties:

(1) First violation, \$75.00.

(2) Each day in violation of this division shall constitute a separate offense.

Sec. 110-80. Alternate method of compliance.

a) *Policy and intent.* It is the policy of the City to provide an alternate method of compliance to its year-round landscape irrigation restrictions for persons who demonstrate the need for such an alternate method of compliance to obtain reasonable and fair results. The purpose of this section is to establish a procedure for requesting and obtaining approval for an alternate method of compliance.

b) *Applicability.* Any person seeking an alternate method of compliance in the application of the year-round landscape irrigation restrictions may request such accommodation pursuant to this section. A request for an alternate method of compliance shall be made in the manner prescribed in this section, which shall be the exclusive administrative remedy.

c) *Application for an alternate method of compliance.* An application for an alternate method of compliance shall provide, at a minimum, the following information on a form prescribed by the Director:

(1) Petitioner's name;

(2) Petitioner's address of the property for which a request for an alternate method of compliance is made;

(3) Petitioner's telephone number and email address;

(4) Permit number and project name (if applicable);

(5) Name and contact information for petitioner's representative (if applicable);

(6) Water use activity;

(7) Description of relief requested;

(8) Demonstration that the request qualifies for an alternate method of compliance;
and

(9) Such other reasonable information or pertinent facts as the Director may require to verify that the requested alternate method of compliance is necessary.

d) *Review and approval procedures.* An application for an alternate method of compliance shall be reviewed and decided in accordance with the following procedures:

- (1) Reviewing authority. The Director shall, in their sole discretion, designate an Alternate Method of Compliance Evaluator (the "AMC Evaluator") to review and decide on all applications for an alternate method of compliance. Appeals of such decisions shall be permitted only in accordance with the procedures below and shall be decided by the Director, whose decision shall be final, notwithstanding any other provisions of the Code governing appeals of administrative decisions.
- (2) Decision. The AMC Evaluator shall make a written determination within twenty-one (21) days of filing a complete alternate method of compliance application, as determined by the Director, and shall either grant, grant with modifications, or deny the application. The applicant will be notified of the determination by certified mail to the property's physical address.
- i. The determination shall be made in accordance with the review criteria set forth below and, when necessary, shall involve consultation with the applicant or, where appropriate, the person or persons acting on behalf of, or for the benefit of, the applicant.
 - ii. The AMC Evaluator may impose any reasonable and necessary conditions of approval, including the condition that the alternate method of compliance shall terminate either on the date indicated in the determination or, if no termination date is indicated in the decision, shall not run with the land and shall terminate upon any change to the ownership or occupancy of the subject property, to ensure that the alternate method of compliance does not result in negative or detrimental impacts to the City, its water conservation efforts, or the neighborhood and uses surrounding the applicant's property.
- (3) Review criteria. The written decision to grant or deny a request for an alternate method of compliance shall be consistent with Chapter 40E-24, Florida Administrative Code, and shall be based on whether the applicant has demonstrated that the restrictions would lead to an unreasonable or unfair result; provided the applicant demonstrates with particularity that compliance with the schedule will result in substantial hardship to the applicant, those served by the applicant, or the affected property. A substantial hardship as identified herein includes, but is not limited to, an economic hardship, a substantial negative impact on health or public safety, or other hardship on the applicant or those served by the applicant. 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 upon a demonstration that granting the alternative method of compliance would be consistent with the general intent and purpose of this section.
- (4) If granted, the applicant shall be required to post a notice at each parcel to which the alternate method of compliance applies.

- (5) An alternative method of compliance shall automatically be deemed invalid if it has terminated or if the user or its agent violates the terms of the approved alternative method of compliance.
- e) Appeal of determination. An aggrieved or adversely affected party may appeal the AMC Evaluator's decision to the Director in accordance with the following procedures:
- (1) Time to appeal. The applicant may file an appeal within thirty (30) days of the date of the AMC Evaluator's written decision.
 - (2) Filing the appeal. Appeals shall be filed with the Department on a form prescribed by the Director. Where the appeal is filed by a party other than the applicant, the Department shall provide the applicant written notice of such appeal, and the applicant may submit a written response within thirty (30) days of the date of such written notice.
 - (3) Director's decision. Within sixty (60) days of the date the appeal is filed or the date the applicant submits a written response, whichever is later, the Director shall approve or deny the appeal and may affirm, modify, or reverse the decision under review. The applicant will be notified of the determination via certified mail to the property's physical address.
 - i. The Director's decision shall be consistent with and based on the above-referenced state laws and the review criteria set forth above, the stated basis for the appeal, and the applicant's response if any.
 - ii. Except as provided in this section, the Director's decision shall be set forth in writing and shall be final, notwithstanding any other provisions of the code governing appeals of administrative decisions.
- f) Fees.
- (1) There shall be no fee for an application requesting an alternate method of compliance from the AMC Evaluator in accordance with this section.
 - (2) There shall be no fee for an applicant's appeal or other parties appealing the AMC Evaluator's decision in accordance with this section.
 - (3) If the project for which the request is being made includes requests for other approvals or permits, such other application fees shall continue to apply.
- g) Exhaustion of remedies.
- (1) To the extent permitted by federal and state laws, any applicant aggrieved or adversely affected by any decision or determination of an administrative official shall exhaust the administrative remedies prescribed in this section prior to applying to any enforcing agency or court for relief.
 - (2) No party aggrieved or adversely affected by any decision or determination or an administrative official may apply to any court for relief unless such person has first exhausted the remedies provided for in this Section and taken all available steps provided for herein.

Secs. 110-81. Declaration of water shortage or water shortage emergency.

The declaration of a water shortage condition and/or water shortage emergency by the District's Governing Board or District's Executive Director, within all, part, or multiple parts of the City shall supersede this division for the duration of the applicable water shortage declaration in accordance with Chapter 110, Article II, Division 2, entitled "Conservation."

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2024.

PASSED AND ADOPTED this ____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(sponsored by Vice-Mayor Laura Dominguez)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

July 20, 2023

Alina Hudak
City Manager
City of Miami Beach
1700 Convention Center Dr
Miami Beach, FL 33139-1819

**Subject: Protecting South Florida's Water Resources
 Water Conserving Landscape Irrigation Ordinances**

Dear Manager Hudak:

With South Florida's growing demands for water, it's especially important that we work closely together to properly manage and conserve our precious water resources. Implementing water conservation measures promotes efficient water use and decreases water waste.

Since February 2020, the South Florida Water Management District ("District") has been engaged in an initiative to have all local governments within its jurisdiction, including those in Miami-Dade County, adopt permanent local year-round irrigation ordinances that comport with the District's Year-round Landscape Irrigation Conservation Measures ("Year-Round Irrigation Rule") contained in Chapter 40E-24, Florida Administrative Code ("F.A.C."). The District's Year-Round Irrigation Rule is a year-round measure that restricts the times and number of days landscape irrigation is allowed.

Several municipalities in Miami-Dade County have previously indicated a desire to utilize or want to be consistent with Miami-Dade County's irrigation ordinance. In March of 2023, Miami-Dade County ("County") updated their Permanent Landscape Irrigation Restrictions, which can be found in Chapter 32, Article I, Sec 32-8.2, of their County Code (copy attached). The County's updates include provisions that comport with Chapter 40E-24, F.A.C. These newly adopted revisions apply to the entire county (unincorporated and incorporated areas), contain variance (Alternative Method of Compliance) provisions, and address local enforcement of the County codes. The District's preference is for each local government to adopt their own year-round landscape irrigation ordinance equivalent to or more stringent than the County's.

However, if a municipality prefers to rely on the County's ordinance, not all provisions of the County's ordinance are self-implementing. For instance, the provision regarding enforcement (County Code [Sec 32-8.2(a)]) states:

"...in the unincorporated areas of the County shall be enforced as described in section 32-8.2(e), in the incorporated areas of the County shall be enforced by the municipalities, unless the County is notified by a municipality, in the form of a letter from an authorized representative of the municipality or by a duly adopted resolution, that the municipality desires the County to enforce the restrictions identified in this section within that municipality. Any municipality may establish and enforce its own ordinance provided such ordinance is equivalent to or more stringent than the provisions of this section."

Identifying the responsibilities of each entity involved ensures irrigation restrictions are comprehensively addressed and applied consistently countywide. At this time, the District is seeking to ascertain which of the below options your municipality may elect to utilize regarding the restriction of landscape irrigation year-round within your incorporated boundaries:

- a. Adoption of your own year-round landscape irrigation ordinance equivalent to or more stringent than the County's; or
- b. Rely on Miami-Dade's Permanent Landscape Irrigation Restrictions ordinance and enforcement with **submission of a letter** from an authorized representative to the County requesting the County enforce the ordinance within your jurisdiction; or
- c. Rely on Miami-Dade's Permanent Landscape Irrigation Restrictions ordinance and enforcement with **adoption of a resolution** requesting the County to enforce the ordinance within your jurisdiction; or
- d. Rely on Miami-Dade's Permanent Landscape Irrigation Restrictions ordinance but provide enforcement locally either with or without adopting a formal resolution to do so.

As part of each of these options, water conservation education and outreach are necessary components to ensure irrigation is effectively applied when needed, produces healthy landscape and results in the sustainable use of the water resources. Following Miami-Dade County's irrigation ordinance will: (1) increase water use efficiency; (2) prevent and curtail wasteful irrigation practices; (3) prohibit the operation of irrigation systems in a manner causing water to be wasted; and (4) allow for consistent messaging so that residents understand and comply with all irrigation requirements. The District will assist municipalities in adoption and implementation of mandatory year-round landscape irrigation conservation measures, as well as partner in water conservation education and outreach.

We look forward to working with you and your staff to help put consistent rules and ordinances in place across South Florida so that residents clearly understand and comply with all irrigation requirements. The District requests that you please respond to this letter by August 15th, 2023 with which option above your municipality intends to pursue.

If you have any questions or would like to discuss how we can assist, please contact me at melsner@sfwmd.gov or (561) 682-6156; or Jim Harmon, the District's Water Conservation Supervisor, at jharmon@sfwmd.gov or (561) 682-6777.

Sincerely,



Mark E. Elsner, P.E.
Water Supply Bureau Chief

ME/jh

Attachment: Miami Dade County Code, Chapter 32, Article I, Sec 32-8.2

- c: Patrick Martin, Miami-Dade Water and Sewer Department
Armando Vilaboy, South Florida Water Management District

Sec. 32-8.2. - Permanent year-round landscape irrigation restrictions.

- (a) *Intent and purpose.* To protect the water resources of Miami-Dade County, Florida (County) from the harmful effects of overutilization, 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.). This program provides a minimum standard and shall apply to both the incorporated and unincorporated areas of the County, and in the unincorporated areas of the County shall be enforced as described in Section 32-8.2(e), and in the incorporated areas of the County shall be enforced by the municipalities, unless the County is notified by a municipality, in the form of a letter from an authorized representative of the municipality or by a duly adopted resolution, that the municipality desires the County to enforce the restrictions identified in this section within that municipality. Any municipality may establish and enforce its ordinance provided such ordinance is equivalent to or more stringent than the provisions of this section.
- (b) *Definitions.* In constructing the provisions of this section, the following definitions shall apply:
- (1) *Address* shall mean 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* shall mean all golf course fairways, tees, roughs and greens and other athletic play surfaces; including, football, baseball, and soccer fields, polo grounds, tennis courts, or lawn bowling fields, and rodeo, equestrian and livestock arenas.
 - (3) *Director* shall mean the Director of the Miami-Dade Water and Sewer Department or its successor agency.
 - (4) *District Governing Board* shall mean the South Florida Water Management District, a government entity; created under Chapter 373, F.S.
 - (5) *Even-numbered address* shall mean 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* shall mean any landscaping that has been planted and in the ground for more than ninety (90) consecutive days.
 - (7) *Irrigation* shall mean the application of water by means other than natural precipitation.
 - (8) *Irrigation systems* shall mean equipment and devices which deliver water to the landscaping being irrigated including, but not limited to, pumping stations, controls, main and submain pipelines, lateral pipelines, emitters, valves, fittings, and safety devices.
 - (9) *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.
 - (10) *Landscape Irrigation* shall mean the outside watering of landscaping except athletic play areas as defined herein.
 - (11) *Low-volume Hand Watering* shall mean the watering of landscaping by one person, with one hose, fitted with a self-canceling or automatic shutoff nozzle.
 - (12)

Low-volume Irrigation shall mean 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.

- (13) *Micro-irrigation* shall mean 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 techniques such as bubbler, drip, trickle, mist or microspray, and subsurface irrigation.
- (14) *New landscaping* shall mean any landscaping that has been planted in the ground for ninety (90) days or less.
- (15) *Odd-Numbered Address* shall mean an address ending in the numbers 1, 3, 5, 7, 9, or the letters N—Z.
- (16) *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.
- (17) *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 uses from private or public utility systems, individual wells or pumps and uses under water use permits issued pursuant to Chapter 40E-2, F.A.C.
- (18) *Wasteful and unnecessary* shall mean 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; allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.
- (19) *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.
- (20) *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.
- (21) *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 County, 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, agricultural and nursery operations and irrigation performed using reclaimed water.
- (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, allow or suffer the irrigation of any residential, commercial, institutional, governmental or industrial landscaping 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, 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) An Even-Numbered Address that has an irrigation system 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 landscape irrigation on Thursday and/or Sunday.
 - (d) Odd-Numbered Addresses shall only conduct necessary landscape irrigation on 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 is allowed twenty-four (24) hours before installation without regard to the normal allowable watering days and times.
 - (c) The new landscaping shall be installed within a reasonable time from the date of purchase.
 - (d) The date of purchase of new landscaping may be demonstrated with a dated receipt or invoice.
 - (e) Irrigation of new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least fifty (50) percent new landscaping. If a zone contains less than fifty (50) percent 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 under this paragraph. Targeted watering may be accomplished by low-volume hand watering, or any appropriate method which isolates and waters only the new landscaping.
 - (f) New landscaping which has been in place for thirty (30) days or less may be irrigated on Monday, Tuesday, Wednesday, Thursday, Saturday and/or Sunday.
 - (g) New landscaping which has been in place for thirty-one (31) to ninety (90) days may be irrigated on Monday, Wednesday, Thursday and/or Saturday.
- (3) 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.
- (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.
- (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 the 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.

- (c) Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by the manufacturer: and
- (d) Such watering-in shall be accomplished during normally allowable watering days and times set forth in subsections 32-8.2(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.
- (6) Any landscaping may be irrigated using low volume irrigation, micro-irrigation, or low-volume hand watering methods including but not limited to the use of rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this section.
- (7) 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 County 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 32-8.2(d) herein shall be a violation of this section.
 - (1) Every law enforcement officer, code inspector as defined in Chapter 8CC, or sheriff, 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. In addition, the County Mayor may delegate this section's enforcement responsibility to agencies and departments within the County government.
 - (2) Officers and code inspectors may provide violators with no more than one written warning. This section shall also be enforceable in accordance with the provisions of Chapter 8CC. The County 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 penalties enumerated in Chapter 8CC. Each day in violation of this section shall constitute a separate offense.
- (g) *Alternate method of compliance.*
 - (A) *Policy and intent.* It is the policy of Miami-Dade County to provide an alternate method of compliance to its year-round landscape irrigation restrictions for persons who demonstrate the need for such an alternate method of compliance to obtain reasonable and fair results. The purpose of this subsection is to provide persons with a process for making a request for and obtaining such an alternate method of compliance.
 - (B) *Applicability.* Any person who requires an alternate method of compliance in the application of the year-round landscape irrigation restrictions may request such accommodation pursuant to this subsection. A request for an alternate method of compliance shall be made in the manner prescribed in this subsection, which shall be the exclusive administrative remedy.
 - (C) *Application for an alternate method of compliance.* An application for an alternate method of compliance shall provide, at a minimum, the following information on a form prescribed by the Director:
 - (1) Petitioner's name;
 - (2) Petitioner's address of the property for which a request for an alternate method of compliance is made;
 - (3) Petitioner's telephone number or other contact information if Petitioner does not have a telephone number;
 - (4) South Florida Water Management District permit number and project name (if applicable);
 - (5) Petitioner's representative (if applicable);
 - (6) Water use activity;

- (7) Description of relief desired;
 - (8) Demonstration that the request qualifies for an alternate method of compliance; and
 - (9) Such other reasonable information or pertinent facts as the Director may require to verify that the requested alternate method of compliance is necessary.
- (D) *Review and approval procedures.* An application for an alternate method of compliance shall be reviewed and decided in accordance with the following procedures:
- (1) *Reviewing authority.* The Director shall, in his or her sole discretion, designate an Alternate Method of Compliance Evaluator (the "AMC Evaluator") to review and decide on all applications for an alternate method of compliance based on the criteria provided below in subsection 32-8.2 (g)(D)(3) of the Code of Miami-Dade County, Florida. Appeals of such decisions shall be permitted only in accordance with the procedures below and shall be decided by the Director, whose decision shall be final, notwithstanding any other provisions of the Code governing appeals of administrative decisions.
 - (2) *Decision.* The AMC Evaluator shall make a written determination within twenty-one (21) days of filing a complete alternate method of compliance application, as determined by the Director, and shall either grant, grant with modifications, or deny the application. The applicant will be notified of the determination by certified mail to the property's physical address.
 - (a) The determination shall be made in accordance with the review criteria set forth below and, when necessary, shall involve consultation with the applicant or, where appropriate, the person or persons acting on behalf of, or for the benefit of, the applicant.
 - (b) The AMC Evaluator may impose any reasonable and necessary conditions of approval, including the condition that the alternate method of compliance shall terminate either on the date indicated in the determination or, if no termination date is indicated in the decision, shall not run with the land and shall terminate when the applicant no longer resides at the subject property, to ensure that the alternate method of compliance does not result in negative or detrimental impacts to the County, its water conservation efforts, or the neighborhood and uses surrounding the applicant's property.
 - (3) *Review criteria.* The written decision to grant or deny a request for an alternate method of compliance shall be consistent with Chapter 40E-24, Florida Administrative Code and shall be based on whether the applicant has demonstrated that the restrictions would lead to an unreasonable or unfair result; provided the applicant demonstrates with particularity that compliance with the schedule will result in substantial hardship to the applicant, those served by the applicant, or the affected property. A substantial hardship as identified herein includes, but is not limited to, an economic hardship, a substantial negative impact on health or public safety, or other hardship on the applicant or those served by the applicant. 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 a demonstration that granting the alternative method of compliance would be consistent with the general intent and purpose of this section.
 - (4) If granted, the applicant shall be required to post a notice at each parcel to which the alternate method of compliance applies.
 - (5) An alternative method of compliance shall automatically be deemed invalid if it has terminated or if the User or its agent violates the terms of the approved alternative method of compliance.
- (E) *Appeal of determination.* An aggrieved or adversely affected party may appeal the AMC Evaluator's decision to the Director in accordance with the following procedures:
- (1) *Time to appeal.* The applicant may file an appeal within thirty (30) days of the date of the AMC Evaluator's written decision.
 - (2) *Filing the appeal.* Appeals shall be filed with the Department on a form prescribed by the Director. Where the appeal is filed by a party other than the applicant, the Department shall provide the applicant written notice of such appeal, and the applicant may submit a written response within thirty (30) days of the date of such written notice.

(3) *Director's decision.* Within sixty (60) days of the date the appeal is filed or the date the applicant submits a written response, whichever is later, the Director shall approve or deny the appeal and may affirm, modify, or reverse the decision under review. The applicant will be notified of the determination via certified mail to the property's physical address.

(a) The Director's decision shall be consistent with and based on the above-referenced state laws and the review criteria set forth above, the stated basis for the appeal, and the applicant's response if any.

(b) Except as provided in this section, the Director's decision shall be set forth in writing and shall be final, notwithstanding any other provisions of the code governing appeals of administrative decisions.

(F) *Fees.*

(1) There shall be no fee for an application requesting an alternate method of compliance from the AMC Evaluator in accordance with this section.

(2) There shall be no fee for an applicant's appeal or other parties appealing the AMC Evaluator's decision in accordance with this section.

(3) If the project for which the request is being made includes requests for other approvals or permits, such other application fees shall continue to apply.

(G) *Exhaustion of remedies.*

(1) To the extent permitted by federal and state laws, any applicant aggrieved or adversely affected by any decision or determination of an administrative official shall exhaust the administrative remedies prescribed in this section prior to applying to any enforcing agency or court for relief.

(2) No party aggrieved or adversely affected by any decision or determination of an administrative official may apply to any court for relief unless such person has first exhausted the remedies provided for in this Section and taken all available steps provided for herein.

(h) *Declaration of water shortage or water shortage emergency.* Declaration of a water shortage condition and/or water shortage emergency, as declared by the District's Governing Board or District's Executive Director, within all, part, or multiple parts of the County shall supersede this section for the duration of the applicable water shortage declaration in accordance with Section 32-8.1, Water Shortage Emergency Restrictions. A water shortage usually, but not always, occurs due to drought.

(Ord. No. 91-18, § 3, 2-19-91; Ord. No. 91-78, § 1, 7-9-91; Ord. No. 09-25, § 1, 4-7-09; Ord. No. 23-11, § 2, 2-7-23)