**CITY OF SANIBEL**

**ORDINANCE NO. 20-001**

**AN ORDINANCE AMENDING THE SANIBEL CODE OF ORDINANCES, CHAPTER 70-UTILITIES, ARTICLE II – WATER; DIVISION 3 – CONSERVATION; AMENDING SECTION 70-66, WATER SHORTAGE PLAN; ADDING WATER CONSERVATION RESTRICTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS,** the South Florida Water Management District Governing Board adopted the mandatory Year-Round Landscape Irrigation Conservation Measures (Year-Round Irrigation Rule), Chapter 40E-24, Florida Administrative Code (FAC), in 2010; and

**WHEREAS,** the Year-Round Irrigation Rule restricts the times and number of days landscape irrigation is allowed with the District's jurisdiction and follows scientifically-sound recommendations for lawn irrigation in an effort to conserve and protect South Florida's Water Resources; and

**WHEREAS,** the District has asked local governments to review their current local ordinance(s) relative to supporting a continued safe and reliable water supply for the future of South Florida to determine whether updating is required to conform with the District's Year-Round Irrigation Rule; and

**WHEREAS,** the City's current ordinance on irrigation restrictions does not incorporate all of the elements of the District's Year-Round Irrigation Rule; and

**WHEREAS,** the City Council desires for its ordinance to incorporate all of the elements of the District's Year-Round Irrigation Rule; and

**WHEREAS**, The Sanibel Plan emphasizes the importance of native plants for wildlife and landscapes, which native plants require less irrigation and fertilization, supporting the City's efforts in water conservation and water quality, as well as the practicality of the District's Year-Round Irrigation Rule; and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Sanibel, Florida:

**SECTION 1. Sanibel Code of Ordinance Chapter 70 – UTILITIES, ARTICLE II – DIVISION 3 – CONSERVATION, SECTION 70-66 – WATER SHORTAGE PLAN, is hereby amended with ~~strikethrough~~ language indicating deletions and <u>underlined</u> language indicating additions as follows:**

Sec. 70-66. - Water ~~shortage~~ <u>conservation</u> plan.

(a) *Intent and purpose.* It is the intent and purpose of this section to protect the water resources of the city and to promote water conservation consistent with the ~~from the harmful effects of over-utilization during periods of water shortage and to allocate available water supplies by assisting the~~ South Florida Water Management District's mandatory year-round landscape irrigation conservation measures and ~~in the implementation of~~ its water shortage plan.

(b) *Definitions.* For the purpose of this section, the following terms, phrases, words and their derivatives shall have the meanings given in this section. 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. The word "shall" is always mandatory and not merely directory.

(1) *District* means the South Florida Water Management District.

(2) *Low volume device* means:

a. An irrigation system 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 the water use system in most houses and similar establishments for plant propagation. Overhead irrigation and flood irrigation are not included under this definition.

b. Hand watering by one person, with one hose fitted with a self-cancelling or automatic shutoff nozzle, or both.

(3) *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.

(4) *Water shortage condition* means sufficient water is not available to meet present or anticipated needs of persons using the water resource, or conditions require temporary reduction in total water usage within a particular area to protect the water resource from serious harm. A water shortage usually occurs due to drought.

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

(c) *Application of section.* The provisions of this section shall apply to all persons using the water resource within the city, ~~geographical areas subject to the "water shortage" or "water shortage emergency," as determined by the district,~~ whether from public or privately owned water utility systems, private wells, or private connections with surface water bodies. This section shall not apply to persons using treated effluent or saltwater.

(d) *Amendments to mandatory year-round landscape irrigation or water shortage plan.* F.A.C. ch. 40E-24 and 40E-21, as such ~~plan~~ may be amended from time to time, ~~is~~ are incorporated in this section by reference as a part of the Code.

(e) *Permanent and temporary water restrictions~~; declaration of water shortage; water shortage emergency~~.*

(1) *Permanent restriction—Generally.* It shall be unlawful and prohibited for any person to irrigate lawns within the city between the hours of 9:00 a.m. to 5:00 p.m. It shall further be unlawful and prohibited for any person to irrigate lawns within the city except:

a. Residents and businesses with an odd-numbered street address may water lawns and landscapes on Mondays and Thursdays;

b. Residents and businesses with an even-numbered street address, no street address or those that irrigate both even and odd addresses within the same zones, which may include multi-family units and homeowners' associations, may water lawns and landscapes on Tuesdays and Fridays;

c. Additional watering for up to 90 days following installation of new lawns and landscaping is permitted under the following conditions:

1. On the day new landscaping is installed, new plantings and the soil may be irrigated once without regard to the normally allowable watering days and times. Soil irrigation is also allowed immediately prior to planting;

2. New plantings that have been in place for 30 days or less may be watered any day(s) other than Fridays;

3. New plantings that have been in place for 31-90 days may be watered on Mondays, Wednesdays, Thursdays and/or Saturdays; and

4. Irrigation is limited to the areas containing new landscaping only. An entire irrigation zone may be watered only if new landscaping is planted on at least 50 percent of that zone. If new landscaping is planted on less than 50 percent of an irrigation zone, only the new plantings may be watered.

d. The following are excluded from this permanent restriction:

1. ~~With l~~Low-volume devices;

2. ~~b. To~~ M~~m~~aintainance and repair of irrigation systems ~~which are not low volume. Such maintenance shall be~~ limited to ten minutes per zone, no more than once a week; ~~or~~

3. One-day watering-in of fertilizers, insecticides, pesticides, fungicides, and herbicides outside normal watering days, if a professional licensed applicator has posted a temporary sign containing the date of application and date of needed watering-in

4. Use of reclaimed water and harvested rainwater for irrigation purposes is allowed anytime; and

~~c. To apply fertilizers and pesticides.~~

(2) *Permanent restriction—Restaurants.* It shall be unlawful and prohibited for any restaurant within the city to serve water from any public or private well, water supply, or distribution system to any customer except when specifically requested by the customer.

(3) *Permanent restriction—Automatic sprinkler systems.*

a. All automatic landscape irrigation systems must have operable technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

b. Licensed contractors who install or perform work on an automatic landscape irrigation system must test for correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each devise or switch is in proper operating condition before completing other work on the system.

c. Licensed contractors are required to report to city police or city code enforcement any automatic landscape irrigation systems not in compliance with this section.

d. Regular maintenance and replacement of worn or broken technology which interrupts or inhibits the operation of an automatic landscape irrigation system is not a violation of this section if such repairs are conducted within a reasonable time.

(4) *Temporary restriction~~—Declaration of water shortage; w~~Water shortage emergency.* Except as to subsections (e)(1)(d) and (e)(2) of this section, the declaration of a water shortage or water shortage emergency within all or part of the city by the governing board or the executive director of the D~~d~~istrict shall invoke the provisions of this section. Upon such declaration, all water use restrictions or other measures adopted by the D~~d~~istrict pursuant to F.A.C. ch. 40E-21 applicable to the city, or any portion thereof, shall ~~prevail and~~ supersede this Ordinance for the duration of the applicable water shortage declaration and shall be subject to enforcement action pursuant to the enforcement provisions of this section. The South Florida Water Management District "water shortage" plan shall be kept on file with the city manager.

~~(5) Any violation of the provisions of this section, F.A.C. ch. 40E-21, or any order issued pursuant thereto, shall constitute a violation of this section.~~

(f) *Variance Relief.*

(1) Any user affected by this section may apply for a variance. A variance from a specific day or days identified in subsection (e)(1) of this section may be granted if strict application of the restrictions would lead to unreasonable or unfair result, provided the applicant demonstrates with particularity that compliance with the

schedule will result in substantial economic, health, or other hardship on the applicant, or those the applicant serves. Relief may be granted only upon a demonstration that such hardship exists, is peculiar to the person or the affected property, is not self-imposed, and further demonstrates that granting the variance would be consistent with the general intent and purpose of this code.

(2) Upon receipt of an application for variance from the requirements of this section, the city manager or designee shall render a decision on the variance within 30 days. Denials of variance relief may be appealed to the planning commission within 30 days of the user's receipt of the notice of denial. Any notice of denial or subsequent appeal shall be sent by certified mail, return receipt requested.

(3) A variance application shall not stay or abate the enforcement of the provisions of this section.

(4) The city recognizes and adopts all irrigation variances or waivers issued by the District.

(g) *Enforcement.* ~~Every~~ City police and code enforcement ~~officer 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 city manager may also delegate enforcement responsibility for this section to agencies and departments of city government, or cities in the service areas governed by this section, in accordance with state and local law.~~

(h) *Penalties.* Violation of any provision of this section shall be subject to the following penalties: fines of $50 for a first offense, $100 for a second offense, and $250 for a third and subsequent offense.

~~(1) *First violation:* Twenty-five dollars.~~

~~(2) *Second and subsequent violations within one year after previous violation:* Fine not to exceed $500.00 and/or imprisonment not to exceed 60 days.~~ Each day in violation of this section shall constitute a separate offense. ~~In the initial stages of a water shortage or water shortage emergency,~~ City police or code enforcement ~~law enforcement officials~~ may provide violators with no more than one written warning for any type of violation. The city, in addition to the criminal sanctions contained in this subsection, may take any other appropriate legal action, including, but not limited to, emergency injunctive action, to enforce the provisions of this section.

(i) *Water users to accept provisions of section.* No water service shall be furnished to any person by a public or private utility unless such person agrees to accept all the provisions of this section. The acceptance of water service shall be in itself the acceptance of the provisions thereof.

**SECTION 2. Codification**. This ordinance shall be deemed an amendment to the Sanibel Code of Ordinances and shall be codified in the Sanibel Code of Ordinances as such an amendment. The City Clerk is hereby authorized and directed to instruct as part of the

codification that all section numbers amended by this Ordinance are updated and corrected throughout the Code of Ordinances in the event such section numbers are referenced.

**SECTION 3. Conflict**. All ordinances and parts of ordinances in conflict herewith shall be and the same hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed, and the remainder shall have full force and effect and be liberally construed.

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

**SECTION 5. Effective Date**. This ordinance shall be effective 30 days after adoption.

**DULY PASSED AND ORDAINED** by the Council of the City of Sanibel, Florida, this 18th day of August, 2020.

First Reading: July 14, 2020
Publication Notice: August 6, 2020
Second Reading: August 18, 2020

**AUTHENTICATION:**

Kevin Ruane, Mayor

Pamela Smith, City Clerk

**APPROVED AS TO FORM:** 8/11/20

John D. Agnew, City Attorney Date

Vote of Council Members:

| | |
|---|---|
| Ruane | yea |
| Denham | yea |
| Johnson | yea |
| Maughan | yea |
| Smith | yea |

Date Filed with City Clerk: August18, 2020