

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: February 8, 2022 ☐ **Consent** ☒ **Regular**
☐ **Ordinance** ☐ **Public Hearing**

Department: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on February 24, 2022, at 9:30 a.m.: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida; repealing Chapter 27, Article VI, Sections 27-111 through 27-117 of the Palm Beach County Code (Ordinance No. 93-3) in its entirety and replacing it with the Palm Beach County Mandatory Year-Round Landscape Irrigation Conservation Measures Ordinance; providing for a title; providing for applicability; providing for definitions; providing for year-round landscape irrigation conservation measures; providing for exceptions to the landscape irrigation schedules; providing for variances; providing for enforcement; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the code of laws and ordinances; providing for captions; providing for savings clause; and providing an effective date.

Summary:

The Palm Beach County (County) Water and Irrigation Conservation Ordinance (adopted in 1991 and repealed and replaced in 1993) is a Countywide ordinance that includes permanent restrictions on landscape irrigation and a regulatory framework and guidance document to help ensure consistent water and landscape irrigation conservation throughout the County. In an effort to increase water resources conservation and improve regulatory consistency with the South Florida Water Management District's (SFWMD) Mandatory Year-Round Landscape Irrigation Conservation Measures Rule that was adopted in 2010, it is necessary to adopt a new landscape irrigation conservation measures ordinance. In January 2021, the Palm Beach County Water Resources Task Force adopted a resolution encouraging the County, and all municipalities within the County, to promote water conservation through the adoption of local ordinances in accordance with the SFWMD Landscape Irrigation Rule. While the existing Water and Irrigation Conservation ordinance applies Countywide, based on discussion with the Palm Beach County League of Cities, Inc., this new Ordinance applies only to water users within unincorporated areas of the County. Countywide (MJ)

Background and Policy Issues (continued on Page 3):

It is estimated that 50 percent or more of potable water used is for landscape irrigation and considerable water savings can be achieved by implementing water conservation ordinances and educating residents through consistent public outreach.

Attachments:

1. Palm Beach County Mandatory Year-Round Landscape Irrigation Conservation Measures Ordinance

Recommended by: J. McBratney 1-28-2022
County Water Resources Manager Date

Approved By: _____ **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	\$0	\$0	\$0	\$0	\$0
External Revenues	\$0	\$0	\$0	\$0	\$0
Program Income (County)	\$0	\$0	\$0	\$0	\$0
In-Kind Match (County)	\$0	\$0	\$0	\$0	\$0
NET FISCAL IMPACT	\$0	\$0	\$0	\$0	\$0
#ADDITIONAL FTE POSITIONS (CUMULATIVE)	0	0	0	0	0

Is Item Included in Current Budget? Yes ☐ No X
Does this item include the use of federal funds? Yes ☐ No X

Budget Account No:
Fund Dept Unit Object

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

for review account 2/1/22
Theresa Mader 2/1/22
OFMB 94131/22

Shirley L. Jacobson 2/1/22
Contract Dev. & Control
2-1-22 TW

B. Legal Sufficiency:

 2/2/22
Assistant County Attorney

C. Other Department Review

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues (continued from Page 1):

In 1991, the County adopted Ordinance No. 91-52, known as the Palm Beach County Water and Irrigation Conservation Ordinance (which was thereafter repealed and replaced in its entirety in 1993 by Ordinance No. 93-3), a Countywide ordinance imposing permanent restrictions on landscape irrigation and establishing a regulatory framework and guidance document to help ensure consistent water and landscape irrigation conservation throughout the County.

The SFWMD authorizes the consumptive use of water for landscape irrigation by rule and through individual and public water supply permits. In 2010, the SFWMD adopted a Mandatory Year-Round Landscape Irrigation Conservation Measures Rule (Chapter 40E-24, Florida Administrative Code (F.A.C.) (Landscape Irrigation Rule) which calls for year-round mandatory landscape irrigation restrictions, separate and independent from water shortage declarations, in accordance with Chapter 40E-21, F.A.C., and is intended to ensure the long-term sustainability of the water resources of the region, increase water use efficiency, and prevent and curtail wasteful water use practices through landscape irrigation restrictions by all users.

The SFWMD Landscape Irrigation Rule: 1) applies to all water users in Palm Beach County, unless otherwise specified, 2) prohibits landscape irrigation daily between the hours of 10:00 a.m. and 4:00 p.m., 3) authorizes landscape irrigation three days per week in Palm Beach County, 4) allows local governments to enact ordinances establishing alternative landscape irrigation conservation measures, 5) allows local governments the ability to grant variances and waivers, 6) temporarily allows irrigation up to six days per week for newly installed landscaping, 7) provides special provisions to operate irrigation systems for cleaning, maintenance, and repair purposes, and 8) requires local governments to respond to address-specific or location-specific violations of the Landscape Irrigation Rule at the SFWMD's request.

The SFWMD Landscape Irrigation Rule also encourages each local government to adopt an ordinance in accordance with 40E-24.201, F.A.C. that achieves water conservation consistent with the SFWMD Landscape Irrigation Rule, including variance and enforcement procedures.

In February 2020, the SFWMD sent a letter to the County stating that the SFWMD was conducting a review of all local irrigation ordinances and offering assistance to County staff in enacting or updating irrigation ordinances.

In March 2020, the County's 10-Year Water Supply Facilities Work Plan (which has been incorporated into the County's Comprehensive Plan) was updated to include a commitment to review the County's existing landscape irrigation ordinance and develop an action plan to update the landscape irrigation ordinance in accordance with the SFWMD Landscape Irrigation Rule.

Additional updates to the Unified Land Development Code and Code of Ordinances may be needed in the future to ensure consistency with water conservation measures.

ORDINANCE NO. 2022-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; REPEALING CHAPTER 27, ARTICLE VI, SECTIONS 27-111 THROUGH 27-117 OF THE PALM BEACH COUNTY CODE (ORDINANCE NO. 93-3) IN ITS ENTIRETY AND REPLACING IT WITH THE PALM BEACH COUNTY MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES; PROVIDING FOR EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULES; PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; PROVIDING FOR SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

1 **WHEREAS**, the South Florida Water Management District (District) has the
2 responsibility and exclusive authority under Chapter 373, Florida Statutes (F.S.), for
3 regulating the consumptive use of water; and

4 **WHEREAS**, the District has promulgated Chapter 40E-2, Florida Administrative
5 Code (F.A.C.), for the consumptive use of water which includes Rule 40E-2.061, F.A.C.,
6 General Permits by Rule, regulating landscape irrigation at a single family dwelling or
7 duplex, and Rule 40E-2.071, F.A.C., Noticed General and Individual Permits, regulating
8 larger landscape irrigation users; and

9 **WHEREAS**, the District promulgated and amended Chapter 40E-24, F.A.C.,
10 requiring year-round landscape irrigation conservation measures within the boundaries of
11 the District; and

12 **WHEREAS**, Chapter 40E-24, F.A.C., applies to all users as defined in Rule 40E-
13 24.101(14), F.A.C., including permitted and exempt users under Chapter 40E-2, F.A.C.,
14 unless indicated otherwise therein; and

15 **WHEREAS**, Rule 40E-24.501, F.A.C., provides that local governments that have
16 adopted an ordinance incorporating the provisions set forth in Rule 40E-24.201, F.A.C.,
17 may grant variances from the specific day or days for landscape irrigation identified in the
18 ordinance provided that the applicant demonstrates with particularity that compliance with

1 the schedule of days for landscape irrigation in the ordinance will result in a substantial
2 hardship on the applicant requesting the variance or those served by the applicant; and

3 **WHEREAS**, Rule 40E-24.401, F.A.C. strongly encourages local governments to
4 enforce mandatory year-round landscape irrigation conservation measures within their
5 jurisdictions through adoption of an ordinance that incorporates the provisions set forth in
6 Rule 40E-24.201, F.A.C.; and

7 **WHEREAS**, Chapter 125, F.S. authorizes the Board of County Commissioners of
8 Palm Beach County (County) to adopt ordinances as necessary for the health, safety and
9 welfare of the residents of Palm Beach County; and

10 **WHEREAS**, it is the intent and policy of the Board of County Commissioners to
11 conserve and protect its valuable and critical water resources and ensure the continued
12 health, safety, welfare, and quality of life for existing and future residents of and visitors
13 to Palm Beach County by assisting in the conservation of its water resources; and

14 **WHEREAS**, on January 19, 1993, the Board of County Commissioners adopted
15 Ordinance No. 93-3 (which repealed and replaced Ordinance No. 91-52), a countywide
16 ordinance imposing permanent restrictions on landscape irrigation and establishing a
17 regulatory framework and guidance document which intended to help ensure that water
18 and landscape irrigation conservation was consistent throughout Palm Beach County; and

19 **WHEREAS**, the Board of County Commissioners finds that the adoption of this
20 Ordinance is appropriate, in the public interest and necessary for the public health, safety,
21 and welfare of the residents of Palm Beach County by promoting water conservation
22 through the efficient use of landscape irrigation; and

23 **WHEREAS**, the Board of County Commissioners has conducted a duly noticed
24 public hearing to consider this Ordinance in accordance with Section 125.66, F.S.; and

25 **WHEREAS**, the Board of County Commissioners, pursuant to its authority under
26 the Florida Constitution, Article VIII, Chapter 125, F.S., and the Palm Beach County
27 Charter, hereby adopts the Palm Beach County Mandatory Year-Round Landscape
28 Irrigation Conservation Measures Ordinance.

29 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
30 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

1 Chapter 27, Article VI of the Palm Beach County Code (Ordinance No. 93-3) is hereby
2 repealed and replaced with the following:

3

4 **SECTION 1. TITLE**

5 This Ordinance shall be titled the “Palm Beach County Mandatory Year-Round Landscape
6 Irrigation Conservation Measures Ordinance.”

7

8 **SECTION 2. APPLICABILITY**

9 The provisions of this Ordinance shall apply to all Users providing Landscape Irrigation
10 from all Water Resources within the boundaries of unincorporated Palm Beach County
11 with the following exceptions:

12 (a) The use of Reclaimed Water, which may or may not be supplemented from
13 another source; and

14 (b) Irrigation for Agriculture; and

15 (c) Irrigation at Athletic Play Areas.

16 Unless otherwise provided, nothing in this Ordinance shall be construed to relieve any
17 person from compliance with any applicable County or municipal regulations.

18

19 **SECTION 3. DEFINITIONS**

20 For the purpose of this Ordinance, the following terms, phrases, words and their derivatives
21 shall have the meanings ascribed to them unless the text requires or specifies a different
22 meaning:

23 i. ***Address*** means the “house number” (a numeric or alphanumeric designation)
24 that, together with the street name, describes the physical location of a specific
25 property. This includes “rural route” numbers, but excludes post office box
26 numbers. If a lot number in a mobile home park or similar community is used
27 by the U.S. Postal Service to determine a delivery location, the lot number shall
28 be the property’s Address. If a lot number in a mobile home park or similar
29 residential community is not used by the U.S. Postal Service (e.g., the park
30 manager sorts incoming mail delivered to the community’s Address), then the
31 community’s main Address shall be the property’s Address. If a property has no
32 Address, it shall be considered an “Even Numbered Address.”

33

- 1 ii. ***Agriculture*** means the growing of farm products including, but not limited to,
2 sugar cane, vegetables, citrus and other fruits, pasture land, sod or nursery stock
3 including, but not limited to, ornamental foliage and greenhouse plants.
4
- 5 iii. ***Athletic Play Area*** means all golf course fairways, tees, roughs, greens, and
6 other athletic play surfaces; including, football, baseball, soccer, polo, tennis,
7 and lawn bowling fields, and rodeo, equestrian, and livestock arenas.
8
- 9 iv. ***Code Enforcement Officer*** means any authorized agent or employee of the
10 County whose duty is to ensure compliance with the provisions of this
11 Ordinance, including, but not limited to, law enforcement officers, code
12 inspectors and designated employees of the County.
13
- 14 v. ***Consumptive Use Permit*** means a permit issued pursuant to Chapter 40E-2,
15 F.A.C., authorizing the consumptive use of water.
16
- 17 vi. ***District*** means the South Florida Water Management District, a government
18 entity created under Chapter 373, F.S.
19
- 20 vii. ***Even Numbered Address*** means an Address ending in the numbers 0, 2, 4, 6, 8,
21 the letters A-M, or rights-of-way or other locations with no Address.
22
- 23 viii. ***Existing Landscaping*** means any Landscaping which has been planted and in
24 the ground for more than ninety (90) days.
25
- 26 ix. ***Irreparable or Irreversible*** means a violation of this Ordinance that is not able
27 to be undone. For example, the unauthorized use of irrigation in excess of the
28 days permitted by this Ordinance, during hours prohibited by this Ordinance, or
29 on a day not allowed under this Ordinance is irreparable or irreversible in nature.
30
- 31 x. ***Landscaping*** means shrubbery, trees, lawns, sod, grass, ground covers, plants,
32 vines, ornamental gardens, and such other flora not intended for resale, which
33 are situated in such diverse locations as residential landscapes, recreation areas,
34 cemeteries, public, commercial, and industrial establishments, public medians,
35 and rights-of-way, except Athletic Play Areas.
36
- 37 xi. ***Landscape Irrigation*** means the outside watering of shrubbery, trees, lawns,
38 sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora
39 not intended for resale, which are planted and situated in such diverse locations
40 as residential landscapes, recreation areas, cemeteries, public, commercial, and
41 industrial establishments, public medians, and rights-of-way, except Athletic
42 Play Areas.
43
- 44 xii. ***Low Volume Hand Watering*** means the watering of landscape by one (1)
45 person, with one (1) hose, fitted with a self-cancelling or automatic shutoff
46 nozzle.

- 1 xiii. ***Low Volume Irrigation*** means the use of equipment and devices specifically
2 designed to allow the volume of water delivered to be limited to a level
3 consistent with the water requirement of the plant being irrigated and to allow
4 that water to be placed with a high degree of efficiency in the root zone of the
5 plant. The term also includes water used in mist houses and similar
6 establishments for plant propagation. Overhead irrigation and flood irrigation
7 are not included.
8
- 9 xiv. ***Micro-irrigation*** means the application of small quantities of water on or below
10 the soil surface as drops or tiny streams of spray through emitter or applicators
11 placed along a water delivery line. Micro-irrigation includes a number of
12 methods or concepts such as bubbler, drip, trickle, mist or microspray, and
13 subsurface irrigation.
14
- 15 xv. ***New Landscaping*** means any Landscaping which has been planted and in the
16 ground for ninety (90) days or less.
17
- 18 xvi. ***Odd Numbered Address*** means an Address ending in the numbers 1, 3, 5, 7, 9
19 or the letters N-Z.
20
- 21 xvii. ***Reclaimed Water*** means wastewater that has received at least secondary
22 treatment and basic disinfection and is reused after flowing out of a wastewater
23 treatment facility as defined by Rule 62-40.210, F.A.C.
24
- 25 xviii. ***User*** means any person, individual, firm, association, organization, partnership,
26 business trust, corporation, company, agent, employee, or other legal entity
27 whether natural or artificial, the United States of America, and the State and all
28 political subdivisions, regions, districts, municipalities, and public agencies
29 thereof, which directly or indirectly takes water from the Water Resource,
30 including uses from private or public utility systems, uses under water use
31 permits issued pursuant to Chapter 40E-2, F.A.C., or uses from individual wells
32 or pumps.
33
- 34 xix. ***Wasteful and Unnecessary*** means allowing water to be dispersed without any
35 practical purpose to the water use; for example, excessive Landscape Irrigation,
36 leaving an unattended hose on a driveway with water flowing, allowing water to
37 be dispersed in a grossly inefficient manner regardless of the type of water use;
38 for example, allowing Landscape Irrigation water to unnecessarily fall onto
39 pavement, sidewalks, and other impervious surfaces; or allowing water flow
40 through a broken or malfunctioning water delivery or Landscape Irrigation
41 system.
42
- 43 xx. ***Water Resource*** means any and all water on or beneath the surface of the ground,
44 including natural or artificial water courses, lakes, ponds, or diffused surface
45 water and water percolating, standing, or flowing beneath the surface of the
46 ground.

1 xxi. ***Water Shortage*** means that situation within all or part of the District when
2 insufficient water is available to meet the present and anticipated needs of the
3 Users, or when conditions are such as to require temporary reduction in total use
4 within a particular area to protect Water Resources from serious harm. A Water
5 Shortage usually occurs due to drought.

6
7 xxii. ***Water Shortage Emergency*** means that situation when the powers which can be
8 exercised under Chapter 40E-21, part II, F.A.C., are not sufficient to protect the
9 public health, safety, or welfare, or the health of animals, fish, or aquatic life, or
10 a public water supply, or commercial, industrial, agricultural, recreational, or
11 other reasonable uses.

12
13 **SECTION 4. YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION**
14 **MEASURES**

15 (a) Palm Beach County adopts the rules of the District, listed in Rule 40E-
16 24.201(1)-(5) and (7), F.A.C., which are set out as follows:

17 (1) The year-round Landscape Irrigation conservation measures
18 contained in this Ordinance are applicable to all Users including
19 permitted and exempt Users under Chapter 40E-2, F.A.C., unless
20 otherwise indicated. These conservation measures apply to all water
21 sources, unless otherwise indicated. In addition to the requirements of
22 this Section, all permitted Users under Chapter 40E-2, F.A.C., are
23 required to maintain compliance with all Consumptive Use Permit
24 conditions and terms, including those designed to require the
25 implementation of water conservation practices.

26 (2) It shall be the duty of each User to keep informed as to the Landscape
27 Irrigation conservation measures within this Ordinance, which affect
28 each particular water use.

29 (3) In addition to the specific conservation measures enumerated below,
30 all Wasteful and Unnecessary water use is prohibited.

31 (4) The following requirements shall apply to all Users, unless otherwise
32 specified herein.

33 i. Landscape Irrigation shall be prohibited between the hours of
34 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.

1 ii. Irrigation of Existing Landscaping shall comply with the
2 following provisions:

3 a. Even Numbered Addresses, installations with irrigation
4 systems that irrigate both Even Numbered and Odd
5 Numbered Addresses within the same zones, such as multi-
6 family units and homeowners' associations, and rights-of-
7 way or other locations with no Address shall have the
8 opportunity to accomplish necessary Landscape Irrigation
9 three (3) days a week, only on Tuesday, Thursday and
10 Sunday.

11 b. Odd Numbered Addresses shall have the opportunity to
12 accomplish necessary Landscape Irrigation three (3) days a
13 week, only on Monday, Wednesday, and Saturday.

14 iii. Irrigation of New Landscaping shall comply with the following
15 provisions:

16 a. New Landscaping may be irrigated once on the day it is
17 installed without regard to the normally allowable watering
18 days and times. Irrigation of the soil immediately prior to the
19 installation of the New Landscaping is also allowed without
20 regard to the normally allowable watering days and times.

21 b. A ninety (90) day establishment period begins on the day the
22 New Landscaping is installed. The New Landscaping shall
23 be installed within a reasonable time from the date of
24 purchase, which may be demonstrated with a dated receipt
25 or invoice.

26 c. Irrigation of New Landscaping which has been in place for
27 thirty (30) days or less may be accomplished on Monday,
28 Tuesday, Wednesday, Thursday, Saturday, and Sunday.

29 d. Irrigation of New Landscaping which has been in place for
30 thirty-one (31) to ninety (90) days may be accomplished on
31 Monday, Wednesday, Thursday, and Saturday.

- 1 e. Irrigation of New Landscaping is limited to areas containing
2 the New Landscaping only. An entire zone of an irrigation
3 system shall only be utilized for Landscape Irrigation under
4 this Subsection if the zone in question is for an area than
5 contains at least 50% New Landscaping. If a zone contains
6 less than 50% New Landscaping, or if the New Landscaping
7 is in an area that will not typically be irrigated by an
8 irrigation system, only the individual new plantings are
9 eligible for additional irrigation under this Subsection.
10 Targeted watering may be accomplished by Low Volume
11 Hand Watering or any appropriate method which isolates
12 and waters only the New Landscaping.
- 13 (b) Any User who purchases and installs an automatic Landscape Irrigation
14 system must properly install, maintain, and operate technology that inhibits
15 or interrupts operation of the system during periods of sufficient moisture
16 in accordance with Section 373.62, F.S.

17

18 **SECTION 5. EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULES**

19 Landscape Irrigation scheduling shall be subject to the following exceptions in accordance
20 with Rule 40E-24.201, F.A.C.:

- 21 (a) Landscape Irrigation systems may be operated during restricted days and/or
22 times for cleaning, maintenance, and repair purposes with an attendant on
23 site in the area being tested. Landscape Irrigation systems may routinely be
24 operated for such purposes no more than once per week, and the run time
25 for any one (1) test should not exceed ten (10) minutes per zone.
- 26 (b) Landscape Irrigation for the purpose of watering-in fertilizers, insecticides,
27 pesticides, fungicides and herbicides, where such watering-in is
28 recommended by the manufacturer, or by federal, state or local law, or best
29 management practices, shall be allowed under the following conditions:

1 (1) Such watering-in shall be limited to one (1) application unless the
2 need for more than one (1) application is stated in the directions for
3 application specified by the manufacturer; and

4 (2) Such watering-in shall be accomplished during normally allowable
5 watering days and times set forth in Subsection 4(a)(4)i. and ii. unless
6 a professional licensed applicator has posted a temporary sign
7 containing the date of application and the date(s) of needed watering-
8 in activity.

9 (c) Any plant material may be watered using Low Volume Irrigation, Micro-
10 irrigation, Low Volume Hand Watering, rain barrels, cisterns, or other
11 similar rain-harvesting devices without regard to the watering days or times
12 allowed pursuant to this Ordinance.

13
14 **SECTION 6. VARIANCES**

15 (a) Any User may request relief from the provisions of Subsection 4(a)(4)ii. for
16 Landscape Irrigation within unincorporated areas of Palm Beach County by
17 filing a petition for variance with the Director of the Palm Beach County
18 Water Utilities Department.

19 (b) Petitions may request a variance from the specific day or days for
20 Landscape Irrigation identified in Subsection 4(a)(4)ii. and must
21 demonstrate with particularity that compliance with the schedule of days for
22 Landscape Irrigation will result in a substantial hardship on the petitioner
23 requesting the variance or those served by the petitioner. The following are
24 examples of circumstances that may be candidates for the issuance of a
25 variance:

26 (1) Two or more properties which share a common source of water; or

27 (2) A public or private water system experiencing, or anticipating
28 distribution problems that cannot otherwise be addressed; or

29 (3) User maintains an irrigation system that uses soil moisture sensors
30 with remote monitoring and adjustment capabilities that satisfies the
31 requirements set forth in Section 373.62(7), F.S.

- 1 (c) Each variance granted shall include a requirement for the petitioner to post
2 a notice at each parcel to which the variance pertains providing that the
3 parcel is subject to a variance for Landscape Irrigation issued pursuant to
4 this Ordinance and the days on which irrigation of the parcel is authorized
5 by the variance.
- 6 (d) A variance under this Section is invalid if it has expired or if its terms are
7 violated by the User or any officer or agent of the User.
- 8 (e) A petition must contain the following information and shall be submitted
9 on a form provided by the Palm Beach County Water Utilities Department:
- 10 (1) A caption including "Petition for Variance from Chapter 27, Article
11 VI of the Palm Beach County Code (Landscape Irrigation
12 Conservation Measures)"; and
- 13 (2) The name, address, telephone number, electronic mail address and any
14 facsimile number of the petitioner and any attorney or qualified
15 representative of the petitioner; and
- 16 (3) The specific day or days for Landscape Irrigation that pose a
17 substantial hardship to comply with, and the alternative day or days
18 during which the petitioner can comply without such hardship; and
- 19 (4) The specific facts that demonstrate with particularity that compliance
20 with the schedule of days for Landscape Irrigation will result in a
21 substantial hardship on the petitioner or those served by the petitioner;
22 and
- 23 (5) The reason why the variance requested would be consistent with the
24 general intent and purpose of this Ordinance; and
- 25 (6) A statement of whether the variance requested is permanent or
26 temporary. If the variance is temporary, the petition shall include the
27 dates during which the petitioner requests the variance to be in effect;
28 and
- 29 (7) The address, parcel control number, and a map or survey of each
30 parcel affected by the requested variance.

- 1 (f) The decision of the Director of the Palm Beach County Water Utilities
2 Department to approve or deny a variance shall be final.
- 3 (g) Palm Beach County recognizes all irrigation variances or waivers issued by
4 the District under Rule 40E-24.501, F.A.C.
5

6 **SECTION 7. ENFORCEMENT**

- 7 (a) Any restrictions or other measures declared pursuant to Chapter 40E-21,
8 F.A.C., or related District Governing Board or Executive Director orders,
9 such as a Water Shortage or Water Shortage Emergency, issued for all or
10 parts of unincorporated Palm Beach County, which are more restrictive than
11 a measure contained within Chapter 40E-24, F.A.C., or within this
12 Ordinance, shall supersede this Ordinance in the affected areas for the
13 duration of the applicable restriction, declaration, or order.
- 14 (b) Code Enforcement Officers and any other enforcement personnel as
15 authorized by the County Administrator are authorized to enforce the
16 provisions of this Ordinance.
- 17 (c) Code Enforcement Officers and other authorized enforcement personnel do
18 not have to provide a reasonable time period to correct the violation prior to
19 issuing a citation or notice of violation and may immediately issue a citation
20 or notice of violation if a repeat violation is found or if the code enforcement
21 officer has reason to believe that the violation presents a serious threat to
22 the public health, safety, or welfare, or if the violation is irreparable or
23 irreversible.
- 24 (d) The violation of any provision of this Ordinance may be enforced pursuant
25 to terms and procedures in Chapter 162, F.S., Local Government Code
26 Enforcement Boards Act, and Article 10 of the Palm Beach County Unified
27 Land Development Code, all as may be amended or recodified from time to
28 time. Pursuant to Section 162.09(2)(d), F.S., the Palm Beach County
29 Special Master may impose fines that shall not exceed one thousand dollars
30 (\$1,000.00) per day per violation for a first violation, five thousand dollars
31 (\$5,000.00) per day per violation for a repeat violation, and up to fifteen

1 thousand dollars (\$15,000.00) per violation if the Palm Beach County
2 Special Master finds the violation to be irreparable or irreversible in nature.
3 In determining the amount of the fine, the Palm Beach County Special
4 Master shall consider:

- 5 (1) The gravity of the violation; and
- 6 (2) Any actions taken by the violator to correct the violation; and
- 7 (3) Any previous violations committed by the violator.

8 (e) The violation of any provision of this Ordinance may also be enforced
9 pursuant to the procedures and penalties of Chapter 162, F.S., Supplemental
10 County or Municipal Code or Ordinance Enforcement Procedures as may
11 be amended or recodified from time to time, as follows:

- 12 (1) The County court shall have jurisdiction over all civil citations
13 issued pursuant to this Ordinance.
- 14 (2) The County shall maintain a system by which violators are given
15 written notice of all violations.
- 16 (3) Code Enforcement Officers and other authorized enforcement
17 personnel who have reasonable cause to believe that a person has
18 committed an act in violation of this Ordinance, shall issue civil
19 citations in the amount of one hundred dollars (\$100.00) for the first
20 violation, two hundred and fifty dollars (\$250.00) for a second
21 violation, and five hundred dollars (\$500.00) for each additional
22 violation. If the person who has committed the violation does not
23 contest the citation, the fines shall not exceed fifty dollars (\$50.00)
24 for the first violation, one hundred and twenty-five dollars for a
25 second violation (\$125.00), and two hundred fifty dollars (\$250.00)
26 for each additional violation.
- 27 (4) Payment shall be made, either by mail or in person, to the location
28 and within the time specified upon the citation. If such person
29 follows this procedure, the person shall be deemed to have admitted
30 to the infraction and to have waived the right to a hearing on the
31 issue of the commission of the infraction.

1 (5) Funds generated by penalties imposed under Subsection 4(a) shall
2 be paid into the Palm Beach County Pollution Trust Fund or such
3 other place as may be designated by Resolution of the Board of
4 County Commissioners. Funds generated by penalties imposed under
5 Subsection 4(b) shall be used by the County for the administration and
6 enforcement of this Ordinance and to further water conservation
7 activities.

8 (6) Any person who fails to make payment within the time period
9 specified on the citation shall be deemed to have waived the right to
10 pay the civil penalty as set forth in the citation and shall appear
11 before the County court.

12 (7) Any person who elects to appear before the court to contest the
13 citation shall be deemed to waive the right to pay the civil penalty.
14 The court, after a hearing, shall make a finding as to whether a
15 violation has occurred and may impose a civil penalty not to exceed
16 five hundred dollars (\$500.00) plus court costs.

17 (8) If a person fails to pay the civil penalty or fails to appear in court to
18 contest the citation, he shall be deemed to have waived his right to
19 contest the citation and, in such case, a default judgment shall be
20 entered and the judge may impose a penalty up to the maximum civil
21 penalty of five hundred dollars (\$500.00) plus court costs.

22 (9) Any person who refuses to sign and accept a citation issued pursuant
23 to this Section shall be guilty of a misdemeanor of the second degree,
24 punishable as provided by Sections 775.082 or 775.083, F.S.

25 (f) The violation of any provision of this Ordinance may be enforced pursuant
26 to Section 125.69, F.S., as may be amended or recodified from time to time,
27 and upon conviction shall be punished by a fine not to exceed five hundred
28 dollars (\$500.00) or by imprisonment in the County jail not to exceed sixty
29 (60) days or by both such fine and imprisonment. If the County is the
30 prevailing party, the County may recover the court fees and costs paid by it

1 and the fees and expenses paid to court-appointed counsel as part of its
2 judgment.

3 (g) In addition to the sanctions contained herein, the County may take any other
4 appropriate legal action to enforce the provisions of this Ordinance,
5 including, but not limited to, cease and desist orders, instituting civil action,
6 and requesting temporary and permanent injunctions.

7 (h) It is the purpose of this Ordinance to provide additional cumulative
8 remedies.

9 (i) Each day in violation of the provisions of this Ordinance shall constitute a
10 separate violation or offense and be punishable as such.

11

12 **SECTION 8. REPEAL OF LAWS IN CONFLICT**

13 All local laws and ordinances in conflict with any provision of this Ordinance are hereby
14 repealed to the extent of such conflict.

15

16 **SECTION 9. SEVERABILITY**

17 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
18 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or
19 void, such holding shall not affect the remainder of this Ordinance.

20

21 **SECTION 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES**

22 The provisions of this Ordinance shall become and be made a part of the Palm Beach
23 County Code. The sections of this Ordinance may be renumbered or relettered to
24 accomplish such, and the word Ordinance may be changed to section, article, or other
25 appropriate word.

26

27 **SECTION 11. CAPTIONS**

28 The captions, section headings, and section designations used in this Ordinance are for
29 convenience only and shall have no effect on the interpretation of the provisions of this
30 Ordinance.

1 **SECTION 12. SAVINGS CLAUSE**

2 Notwithstanding anything to the contrary, all provisions of Palm Beach County Ordinance
3 No. 93-3, which were previously codified in Chapter 27, Article VI of the Palm Beach
4 County Code, are specifically preserved and remain in full force and effect for the limited
5 purpose of enforcing any alleged violations of said Code which occurred prior to its repeal
6 or amendment.

7

8 **SECTION 13. EFFECTIVE DATE**

9 This Ordinance shall become effective upon filing with the Secretary of State.

10

11 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm
12 Beach County, Florida, on this the ____ day of _____, 2022.

13

14 **JOSEPH ABRUZZO, CLERK OF**
15 **THE CIRCUIT COURT AND**
16 **COMPTROLLER**

PALM BEACH COUNTY, FLORIDA,
 BY ITS BOARD OF COUNTY
 COMMISSIONERS

17

18

19 By: _____
20 Deputy Clerk

By: _____
 Robert S. Weinroth, Mayor

21

22

23

24 **APPROVED AS TO FORM AND**
25 **LEGAL SUFFICIENCY**

26

27

28 By: _____
29 County Attorney

30

31 **EFFECTIVE DATE: Filed with the Department of State on the ____ day of**
32 _____, 2022.