



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.3.

10/12/2021

Subject:

Legislative Intent and Permission to Advertise Amendments to Chapter 46 of the Brevard County Code, creating a new article, Article XI, entitled Landscape Irrigation

Fiscal Impact:

None, unless directed to pursue pro-active enforcement

Dept/Office:

Natural Resources Management Department

Requested Action:

Board consideration of options and for the selected option, approve legislative intent and permission to advertise amendments to create a new article in Chapter 46 of the Brevard County Code, Article XI, entitled Landscape Irrigation

Summary Explanation and Background:

On January 12, 2021, the St. Johns River Water Management District Governing Board approved updates to their Districtwide Cost-Share Program. These updates included a new requirement that to be eligible for District Cost-Share grants, municipalities and counties must have a landscape irrigation ordinance that is consistent with the District's model ordinance. Currently, District grants provide up to 25% of construction-only costs for shovel-ready projects.

Excess irrigation wastes freshwater and carries pollution to sensitive waterways including the Indian River Lagoon. To discourage excess irrigation, the District has established watering schedules based on time of year and street address. For example, during Daylight Savings Time, residential landscape irrigation at odd numbered addresses or no address may occur only on Wednesday and Saturday, while irrigation at even numbered addresses may occur only on Thursday and Sunday. During Eastern Standard Time, residential landscape irrigation at odd numbered addresses or no address may occur only on Saturday, while irrigation at even numbered addresses may occur only on Sunday. Year-round, irrigation shall not occur between 10:00 and 4:00.

For enforcement, the District recommends a written warning for first violations, a \$25 penalty for second violations, and subsequent fines not to exceed \$50 per day of violation. However, in July the District's Office of General Counsel determined that adoption of the model ordinance sections related to enforcement and penalties are optional.

Adopting the watering schedules could provide a beneficial opportunity for local outreach on the importance of water conservation and pollution control. Additionally, including the watering restrictions within the

County Code may make the rules easier for people to find than having to search the Florida Administrative Code.

Options for Board Consideration: Approve legislative intent and permission to advertise amendments to Chapter 46 of the Brevard County Code, creating a new article, Article XI, entitled Landscape Irrigation, as follows:

- **Option 1:** With enforcement provisions delegated to Brevard County Code Enforcement and law enforcement entities having jurisdiction.
- **Option 2:** Without enforcement provisions, leaving enforcement to the District.
- **Option 3:** Take no action and forego future District Cost-Share funding opportunities.
- **Option 4:** Other Board direction.

Clerk to the Board Instructions:

None.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

October 13, 2021

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item J.3., Legislative Intent and Permission to Advertise Amendments to Chapter 46 of the Brevard County Code, Creating a New Article, Article XI, Entitled Landscape Irrigation

The Board of County Commissioners, in regular session on October 12, 2021, approved legislative intent and granted permission to advertise amendments to create a new article in Chapter 46 of the Brevard County Code, Article XI, entitled Landscape Irrigation; and approved Option 2, without enforcement provisions, leaving enforcement to the District.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/cld

ORDINANCE NO. 21-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, CREATING A NEW ARTICLE IN CHAPTER 46 OF THE BREVARD COUNTY CODE OF ORDINANCES; SPECIFICALLY CREATING CHAPTER 46, ARTICLE XI, ENTITLED "LANDSCAPE IRRIGATION"; PROVIDING FOR LOCAL IMPLEMENTATION OF THE WATER CONSERVATION RULE FOR LANDSCAPE IRRIGATION OF THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT; PROVIDING FOR DEFINITIONS; PROVIDING FOR LANDSCAPE IRRIGATION SCHEDULES; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULES; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR APPLICABILITY OF THE ORDINANCE; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the St. Johns River Water Management District has responsibility and exclusive authority under Chapter 373, Florida Statutes, for regulating the consumptive use of water; and

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

WHEREAS, Rule 40C-2.042(2)(a), F.A.C., grants a general permit to each person located within the District to use, withdraw or divert water for small landscape irrigation uses, provided that irrigation occurs in accordance with Sections 3 and 5, subject to the exceptions set forth in Section 4; and

WHEREAS, Rule 40C-2.042, F.A.C., applies to landscape irrigation regardless of whether the water comes from ground or surface water, from a private well or pump, or from a public or private utility; and

WHEREAS, Rule 40C-2.042(2)(b), F.A.C., strongly encourages a local government to adopt an ordinance to enforce Rule 40C-2.042(2)(a), F.A.C., within its jurisdiction by adopting a landscape irrigation ordinance that incorporates each of the provisions set forth in Rule 40C-2.042(2)(a), F.A.C.; and

WHEREAS, the St. Johns River Water Management District's Districtwide Cost-

Share Program requires local governments to adopt an ordinance pertaining to landscape irrigation consistent with the District's model irrigation ordinance in order to be eligible for grant funds; and

WHEREAS, it is the desire of the Board of County Commissioners of Brevard County, Florida, to adopt such an ordinance in accordance with Rules 40C-2.042(2)(a) and (b), F.A.C.; and

WHEREAS, the Board hereby finds and declares that the adoption of this ordinance is appropriate, and in the public interest of the citizens of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY FLORIDA, AS FOLLOWS

Section 1. Recitals. The foregoing recitals are incorporated by reference into this Ordinance.

Section 2. Landscape Irrigation Regulations. Chapter 46, Article XI of the Brevard County Code, entitled "Landscape Irrigation", is hereby created to read as follows:

CHAPTER 46, ARTICLE XI – LANDSCAPE IRRIGATION

Section 46-402. Intent and Purpose

It is the intent and purpose of this Ordinance to implement procedures that promote water conservation through the more efficient use of landscape irrigation.

Section 46-403. Definitions

For the purpose of this Article the following terms, phrases, words and their derivatives shall have the meaning given herein. 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.

- (a) "Address" means the house number of a 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. An "even numbered address" means an address ending in the numbers 0, 2, 4, 6, 8 or the letters A-M. An "odd numbered address" means an address ending in the numbers 1, 3, 5, 7, 9 or the letters N-Z.

- (b) "District" means the St. Johns River Water Management District.

- (c) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- (d) "Landscape irrigation" means the outside watering of plants in a landscape such as shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens and other such flora that are situated in such diverse locations as residential areas, public, commercial, and industrial establishments, and public medians and rights-of-way. "Landscape irrigation" does not include agricultural crops, nursery plants, cemeteries, golf course greens, tees, fairways, primary roughs, and vegetation associated with intensive recreational areas such as playgrounds, football, baseball and soccer fields.
- (e) "Residential landscape irrigation" means the irrigation of landscape associated with any housing unit having sanitary and kitchen facilities designed to accommodate one or more residents, including multiple housing units and mobile homes.
- (f) "Non-residential landscape irrigation" means the irrigation of landscape not included within the definition of "residential landscape irrigation," such as that associated with public, commercial and industrial property, including commercial or transient housing units, hotel and motel units, and public medians and rights-of-way.

Section 46-404. Landscape Irrigation Schedules

1. When Daylight Savings Time is in effect, landscape irrigation shall occur only in accordance with the following irrigation schedule:
 - a. Residential landscape irrigation at odd numbered addresses or no address may occur only on Wednesday and Saturday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
 - b. Residential landscape irrigation at even numbered addresses may occur only on Thursday and Sunday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
 - c. Non-residential landscape irrigation may occur only on Tuesday and Friday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
 - d. No more than $\frac{3}{4}$ inch of water may be applied per irrigation zone on each day that irrigation occurs, and in no event shall irrigation occur for more than 1 hour per irrigation zone on each day that irrigation occurs.
2. When Eastern Standard Time is in effect, landscape irrigation shall occur only

in accordance with the following irrigation schedule:

- a. Residential landscape irrigation at odd numbered addresses or no address may occur only on Saturday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
 - b. Residential landscape irrigation at even numbered addresses may occur only on Sunday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
 - c. Non-residential landscape irrigation may occur only on Tuesday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
 - d. No more than $\frac{3}{4}$ inch of water may be applied per irrigation zone on each day that irrigation occurs, and in no event shall irrigation occur for more than 1 hour per irrigation zone on each day that irrigation occurs.
3. All landscape irrigation shall be limited to only that necessary to meet landscape needs.

Section 46-405. Exceptions to the Landscape Irrigation Schedules

Landscape irrigation shall be subject to the following irrigation schedule exceptions:

1. Irrigation using a micro-spray, micro-jet, drip or bubbler irrigation system is allowed anytime.
2. Irrigation of new landscape is allowed at any time of day on any day for the initial 30 days and every other day for the next 30 days for a total of one 60-day period, provided that the irrigation is limited to the minimum amount necessary for such landscape establishment.
3. Watering in of chemicals, including insecticides, pesticides, fertilizers, fungicides, and herbicides, when required by law, the manufacturer, or best management practices, is allowed at any time of day on any day within 24 hours of application. Watering in of chemicals shall not exceed $\frac{1}{4}$ inch of water per application except as otherwise required by law, the manufacturer, or best management practices.
4. Irrigation systems may be operated at any time of day on any day for maintenance and repair purposes not to exceed 20 minutes per hour per zone.
5. Irrigation using a hand-held hose equipped with an automatic shut-off nozzle is allowed at any time of day on any day.

6. Discharge of water from a water-to-air air-conditioning unit or other water-dependent cooling system is not limited.

7. The use of water from a reclaimed water system is allowed anytime. For the purpose of this paragraph, a reclaimed water system includes systems in which the primary source is reclaimed water, which may or may not be supplemented from another source during peak demand periods.

8. The use of recycled water from wet detention treatment ponds for irrigation is allowed anytime provided the ponds are not augmented from any ground or off-site surface water, or public supply sources.

Section 46-406. Additional Requirement

Any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

Section 46-407. Variance from Specific Day of the Week Limitations

After receiving a notice of violation from an agency having jurisdiction, a variance from the specific landscape irrigation days or day set forth in Section 3 may be granted if strict application of the scheduled days or day would lead to unreasonable or unfair results in particular instances, provided that the applicant demonstrates with particularity that compliance with the scheduled days or day will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant. Where a contiguous property is divided into different zones, a variance may be granted hereunder so that each zone may be irrigated on different days or day than other zones of the property. However, in no event shall a variance allow a single zone to be irrigated more than two days per week during Daylight Savings Time or more than one day per week during Eastern Standard Time

Section 46-408. Application of Article

The provisions of this Article shall apply throughout the County except in municipalities that have adopted an ordinance(s) regulating the subject matter addressed herein.

Section 46-409. Enforcement Officials

Law enforcement officials having jurisdiction in the area governed by this Article are hereby authorized to enforce the provisions of this Article. Brevard County Code Enforcement is also delegated enforcement responsibility for enforcing this Article.

Section 46-410. Penalties

First violation	Written Warning
Second violation	\$25.00
Subsequent violations	Fine not to exceed \$50.00

Each day in violation of this Article shall constitute a separate offense. Enforcement officials shall provide violators with no more than one written warning. In addition to the civil sanctions contained herein, the County may take any other appropriate legal action, including, but not limited to, prosecuting a violation in accordance with Section 1-7 of the Brevard County Code.

Section 3. Area Encompassed. This Ordinance shall apply County-wide except in municipalities that have adopted an ordinance regulating the subject matter addressed herein.

Section 4. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 5. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 6. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 7. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. Unless specified otherwise, this Ordinance shall take effect upon adoption and filing as required by law.

DONE, ORDERED AND ADOPTED, in Regular Session, this _____ day of _____, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk
(SEAL)

Rita Pritchett, Chair

As approved by the Board on _____

ORDINANCE NO. 21-_____

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WHEREAS, Rule 40C-2.042(2)(a), F.A.C., grants a general permit to each person located within the District to use, withdraw or divert water for small landscape irrigation uses, provided that irrigation occurs subject to the rules and regulations outlined in Chapter 40C, F.A.C., and this ordinance; and

WHEREAS, Rule 40C-2.042, F.A.C., applies to landscape irrigation regardless of whether the water comes from ground or surface water, from a private well or pump, or from a public or private utility; and

WHEREAS, Rule 40C-2.042(2)(b), F.A.C., strongly encourages a local government to adopt an ordinance pertaining to landscape irrigation that incorporates the provisions set forth in Rule 40C-2.042(2)(a), F.A.C.; and

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primary source is reclaimed water, which may or may not be supplemented from another source during peak demand periods.

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Section 46-408. Application of Article

The provisions of this Article shall apply throughout the County except in municipalities that have adopted an ordinance(s) regulating the subject matter addressed herein. This Article is for informational purposes only and shall not create a basis for the County to bring any code enforcement or other type of action against those who do not comply with the regulations outlined herein.

Section 3. Area Encompassed. This Ordinance shall apply County-wide except in municipalities that have adopted an ordinance regulating the subject matter addressed herein.

Section 4. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

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DONE, ORDERED AND ADOPTED, in Regular Session, this _____ day of _____, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk
(SEAL)

Rita Pritchett, Chair

As approved by the Board on _____