

AGENDA ITEM REPORT

January 13, 2021

ITEM NUMBER: 15.

ITEM: Consideration and Approval of an ordinance on first reading providing for local implementation of the mandatory year-round landscape irrigation conservation measures rule of the South Florida Water Management District. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

It is the intent and purpose of the proposed ordinance to implement procedures to protect the water resources of the Town of Bay Harbor Islands and to promote water conservation through the efficient use of landscape irrigation and consistency with the South Florida Water Management District's (District) mandatory year-round landscape irrigation conservation measures under Chapter 40E-24, Florida Administrative Code, (F.A.C.).

Enclosed is a copy of the proposed ordinance on first reading.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Maria Lasday, Town Manager

ATTACHMENTS

1. 2020.12.18 BHI YRR Ordinance 2-Day-week

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; PROVIDING FOR LOCAL IMPLEMENTATION OF THE MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES RULE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (40E-24, F.A.C.); PROVIDING DEFINITIONS; PROVIDING FOR THE APPLICABILITY OF THE ORDINANCE; PROVIDING THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING FOR A REQUIREMENT TO OPERATE TECHNOLOGY THAT INHIBITS OR INTERRUPTS AN IRRIGATION SYSTEM DURING PERIODS OF SUFFICIENT MOISTURE; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR CODIFICATION OF THE ORDINANCE; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the District promulgated and amended Chapter 40E-24, F.A.C., requiring year-round irrigation conservation measures; and

WHEREAS, Chapter 40E-24, F.A.C., applies to all users as defined in subsection 40E-24.101(14), F.A.C., including permitted and exempt users under Chapter 40E-2, F.A.C.; and

WHEREAS, Chapter 40E-24, F.A.C., calls for year-round and permanent landscape irrigation restrictions, separate and independent from water shortage declarations, in accordance with Chapter 40E-21, F.A.C.; and

WHEREAS, Chapter 40E-24, F.A.C., applies to all landscape irrigation regardless of whether the water comes from ground or surface water, from a private well or pump, or from a public or private utility; and

WHEREAS, Rule 40E-24.301, F.A.C., provides that local governments may adopt a landscape irrigation ordinance that achieves water conservation consistent with Rule 40E-24.201, F.A.C., including variance and enforcement procedures; and

WHEREAS, the District strongly encourages local governments to adopt an ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, it is the desire of the Town Council of the Town of Bay Harbor Islands to adopt such an Ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, the Town Council of the Town of Bay Harbor Islands finds and declares that the adoption of this Ordinance is appropriate, and in the public interest of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That the Town of Bay Harbor Islands Utilities Code is hereby amended to create Article IV, entitled Water Conservation for Landscape Irrigation, adding Sections 20-30 to 20-39, as more fully set forth in the attached Exhibit “A,” and by reference is made a part hereof.

Section 2: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, Florida, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4: All Ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect upon its passage and adoption.

PASSED on First Reading this _____ day of _____, 20__.

PASSED AND ADOPTED on Second Reading this _____ day of _____, 20__.

STEPHANIE BRUDER
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

FRANK C. SIMONE, ESQ.
Town Attorney

EXHIBIT “A”

Amendments to the Town of Bay Harbor Islands, Florida Code of Ordinances

Chapter 20 – UTILITIES

ARTICLE IV - WATER CONSERVATION FOR LANDSCAPE IRRIGATION

Sec. 20-30. - Intent And Purpose.

It is the intent and purpose of this article to implement procedures to protect the water resources of the Town of Bay Harbor Islands and to promote water conservation through the efficient use of landscape irrigation and consistency with the South Florida Water Management District’s (District) mandatory year-round landscape irrigation conservation measures under Chapter 40E-24, Florida Administrative Code, (F.A.C.).

Sec. 20-31. – Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivatives shall have the meaning listed below. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

Address. 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.”

Athletic Play Area. All golf course fairways, tees, roughs, greens, and other athletic play surfaces; including, football, baseball, soccer, polo, tennis, and lawn bowling fields, and rodeo, equestrian, and livestock arenas.

Code Compliance Officer. Any authorized agent or employee of the Town whose duty it is to ensure compliance with the Code.

Consumptive Use Permit (CUP). A permit issued pursuant to Chapter 40E-2, F.A.C., authorizing the consumptive use of water.

District. The South Florida Water Management District, a government entity created under Chapter 373, F.S.

Even Numbered Address. 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. Any landscaping which has been planted and in the ground for more than ninety (90) days.

Landscaping. Shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora not intended for resale, which are situated in such diverse locations as residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way, except athletic play areas, as defined in this section.

Landscape Irrigation. The outside watering of shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora not intended for resale, which are planted and situated in such diverse locations as residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way, except athletic play areas.

Low Volume Hand Watering. The watering of landscape by one (1) person, with one (1) hose,

fitted with a self-canceling or automatic shutoff nozzle.

Low Volume Irrigation. 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. The application of small quantities of water on or below the soil surface as drops or tiny streams of spray through emitter or applicators placed along a water delivery line. Micro-irrigation includes a number of methods or concepts, such as bubbler, drip, trickle, mist or microspray, and subsurface irrigation.

New landscaping. Any landscaping which has been planted in the ground for ninety (90) days or less.

Odd Numbered Address. An address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.

Reclaimed Water. Wastewater that has received at least secondary treatment and basic disinfection, and is reused after flowing out of a wastewater treatment facility as defined by Rule 62-40.210, F.A.C.

User. Any person, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or other legal entity whether natural or artificial, the United States of America, and the State and all political subdivisions, regions, districts, municipalities, and public agencies thereof, which directly or indirectly takes water from the water resource, including uses from private or public utility systems, uses under water use permits issued pursuant to Chapter 40E-2, F.A.C., or uses from individual wells or pumps.

Wasteful and Unnecessary. Allowing water to be dispersed without any practical purpose to the water use; for example, excessive landscape irrigation, leaving an unattended hose on a

driveway with water flowing, allowing water to be dispersed in a grossly inefficient manner regardless of the type of water use; for example, allowing landscape irrigation water to unnecessarily fall onto pavement, sidewalks, and other impervious surfaces; or allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

Water Resource. 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.

Water Shortage. When the District determines there is the possibility that insufficient water will be available to meet the present and anticipated needs of the users, or when conditions are such as to require a temporary reduction in total use within a particular area to protect water resources from serious harm. A water shortage usually occurs due to drought.

Water Shortage Emergency. When the District determines the provisions listed in Part II of Chapter 40E-21, F.A.C., are not sufficient to protect the public health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or commercial, industrial, agricultural, recreational, or other reasonable-beneficial uses.

Sec. 20-32. – Applicability.

The provisions of this article shall apply to each user, as defined in Section 20-31, providing landscape irrigation from all water resources within the boundaries of the Town with the following exceptions:

- (a) The use of reclaimed water, which may or may not be supplemented from another source;
- (b) Irrigation at agricultural and nursery operations; and
- (c) Irrigation of athletic play areas and public parks.

Sec. 20-33. - Year-round landscape irrigation conservation measures.

The Town adopts the rules of the South Florida Water Management District, listed in Subsection 40E-24.201 (1)-(6), F.A.C., including subsequent additions or corrections which are set out as follows:

- (1) The year-round landscape irrigation conservation measures contained in this article are applicable to all users including permitted and exempt users under Chapter 40E-2, F.A.C., unless otherwise indicated. These conservation measures apply to all water resources, unless otherwise indicated. In addition to the requirements of this Section, all permitted users under Chapter 40E-2, F.A.C., are required to maintain compliance with all CUP conditions and terms, including requirements to implement water conservation practices.
- (2) It shall be the duty of each user to keep informed as to the landscape irrigation conservation measures within this article which affect each particular water use.
- (3) In addition to the specific conservation measures, all wasteful and unnecessary water use is prohibited.
- (4) The following requirements shall apply to all users, unless specified in Section 20-32 or Section 20-34.
 - (a) Landscape irrigation shall be prohibited between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided.
 - (b) Irrigation of existing landscaping shall comply with the following provisions:
 - i. Even addresses, as defined in Section 20-31, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address shall have the opportunity to

accomplish necessary landscape irrigation two (2) days a week, only on Thursday and/or Sunday.

- ii. Odd addresses, as defined in Section 20-31, shall have the opportunity to accomplish necessary landscape irrigation two (2) days a week, only on Wednesday and/or Saturday.

(c) Irrigation of new landscaping shall comply with the following provisions:

- i. New landscaping may be irrigated once on the day it is installed without regard to the listed watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is allowed without regard to the normal watering days and times.
- ii. A ninety (90) day establishment period begins on the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.
- iii. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or Sunday.
- iv. Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.
- v. Irrigation of new landscaping is limited to areas only containing the new landscaping. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this Subsection if the zone contains at least 50% new landscaping. If a zone contains less than

50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation. Targeted watering may be accomplished by low volume hand watering, as defined in Section 20-31, or any appropriate method which isolates and waters only the new landscaping.

- (5) Any water shortage, as defined in Section 20-31, 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 article, shall supersede this article for the duration of the applicable water shortage declaration.

Sec. 20-34. - Exceptions to the landscape irrigation schedules.

Landscape irrigation scheduling shall be subject to the following exceptions:

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

- (a) Such watering-in shall be limited to one (1) application, unless the need for more than one (1) application is stated in the directions for application specified by the manufacturer; and
 - (b) Such watering-in shall be accomplished during normally allowable watering days and times set forth in Section 20-33(4)(a) and (b), unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.
- (3) Any plant material may be watered using low volume irrigation or micro-irrigation, as defined in Section 20-31, low volume hand watering method, rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this Section.

Sec. 20-35. - Additional requirements.

Any user who purchases and installs an automatic landscape irrigation system shall properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture in accordance with Section 373.62, F.S.

Sec. 20-36. - Variances.

- (1) A variance from the specific day or days identified in Section 20-33(4)(b) may be granted by the Town Manager if strict application of the restrictions would lead to unreasonable or unfair result; provided the applicant demonstrates with particularity that compliance with the schedule will result in substantial economic, health, or other hardship on the applicant or those served by the applicant. If granted, the applicant shall be required to post a notice at each parcel to which the variance pertains. Relief may be granted only upon a demonstration that such hardship exists, is peculiar to the person or the affected property, is not self-

imposed, and further demonstrates that granting the variance would be consistent with the general intent and purpose of this division.

- (2) The Town recognizes all irrigation variances or waivers issued by the District under Rule 40E-24.501, F.A.C.

Sec. 20-37. - Declaration of water shortage or water shortage emergency.

Declaration of a water shortage condition and/or water shortage emergency, as defined in Section 20-31, within all or parts of the Town by the District's Governing Board or Executive Director shall supersede this article for the duration of the applicable water shortage declaration in accordance with Resolution No. 596 dated 5-13-1985, endorsing voluntary water conservation measures and local implementation of water shortage plan of the South Florida Water Management District. A water shortage usually occurs due to drought.

Sec. 20-38. – Enforcement.

- (1) In the absence of a declaration of water shortage or water shortage emergency within all or any part of the Town by the District's Governing Board or Executive Director, the listed landscape irrigation restrictions shall be subject to enforcement action. Any violation of the provisions of Sections 20-33 and 20-34 shall be a violation of this Section.
- (2) The Town authorizes Code Compliance Officers having jurisdiction in the area governed by this article, to enforce the provisions of this article. In addition, the Town Manager may delegate this article's enforcement responsibility to agencies and departments within the Town government.

Sec. 20-39. – Penalties.

- (1) Violation of any provision of this article shall be subject to the following penalties:
 - (a) For a first violation, a [written warning/fine not to exceed \$____.00].
 - (b) For a second violation, a fine not to exceed \$____.00.
 - (c) For subsequent violations, a fine not to exceed \$500.00.
- (2) Each day in violation of this article shall constitute a separate offense. Code Compliance Officers and others as delegated may provide violators with no more than one (1) written warning. In addition to the civil penalties provided, the Town may take any other appropriate legal action, including, but not limited to, injunctive action to enforce the provisions of this article.

AGENDA ITEM REPORT

January 13, 2021

ITEM NUMBER: 16.

ITEM: Consideration and Approval of the 2020-2021 Collective Bargaining Agreement between the Town and the Dade County Police Benevolent Association, Inc. (PBA). Enclosed is a copy of the Collective Bargaining Agreement.

DESCRIPTION:

The proposed Collective Bargaining Agreement between the Town and the Dade County Benevolent Association "PBA" shall be effective October 1st, 2020 through September 30, 2021. Below is a summary of the proposed changes to the Agreement.

- ARTICLE 8 PERSONNEL RECORDS – Added language that officers will be notified of any public records request having to do with them.
- ARTICLE 9 INTERNAL INVESTIGATIONS – added reference to the Law Enforcement Bill of Rights (F.S. 112.532 & F.S. 112.533).
- ARTICLE 11 BASIC WORKWEEK & OVERTIME – Call Backs increased from 2 hours to 3 hours (at OT rate).
- ARTICLE 14 HOLIDAYS
 - Christmas Eve (December 24th) added as a holiday.
 - If shift is on a holiday pay is at 2 times normal rate (was 1 ½ rate).
- ARTICLE 22 SENIORITY – Officer is to bid for shifts, added will also get to bid for the squad (therefore allowing them to select days off).
- ARTICLE 24 OFF DUTY EMPLOYMENT – Town will implement a private entity to run off duty employment and officers will follow policy detailing the off duty responsibilities.
- ARTICLE 26 LAW ENFORCEMENT TRAINING – Added that if range qualification is scheduled on employee's day off officer is paid at 1 ½ rate of pay.
- ARTICLE 28 WAGES
 - 4% wage increase for the year 2020-2021.
 - Annual Clothing allowance increased to \$750 detectives and \$500 to non-detectives.

The Town Attorney Office has reviewed the proposed draft Collective Bargaining Agreement (CBA) and has suggested material revisions. In order to effectuate these revisions, the proposed CBA has to be rejected/ denied by the Town. Once rejected, the Town and the Police Bargaining Associations (PBA) can engage in negotiations of the revisions.

Enclosed is a copy of the proposed Collective Bargaining Agreement.