

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 96 -09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH WATER SHORTAGE PLAN ORDINANCE; PROVIDING AUTHORITY; TITLE AND CITATION; DEFINITIONS; APPLICATION OF ORDINANCE; PERMANENT WATER RESTRICTIONS/ DECLARATION OF A WATER SHORTAGE/ WATER SHORTAGE EMERGENCY; ENFORCEMENT; PENALTIES; WATER USERS TO ACCEPT PROVISIONS OF ORDINANCE; SEVERABILITY; REPEALING CLAUSE; AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

SECTION ONE: Authority

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Title and Citation

This Ordinance shall be known and may be cited as the "Town of Fort Myers Beach Water Shortage Plan Ordinance."

SECTION THREE: Definitions

For the purpose of this Ordinance the following terms, phrases, words and their derivations 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. The words "shall" and "will" are mandatory and not discretionary.

A. "District" shall mean the South Florida Water Management District.

B. "Low Volume Device" shall mean:

(1) 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.

(2) Hand watering by one person, with one hose fitted with a

self-cancelling or automatic shutoff nozzle or both.

C. "Person" shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

D. "Restaurant" shall mean an establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state. The definition of restaurant shall include both "standard" and "fast food" operations.

E. "Water Resource" shall mean any and all water on or beneath the surface of the ground, including natural or artificial water courses, lakes, ponds, or diffused surface water, and water percolating, standing, or flowing beneath the surface of the ground.

F. "Water Shortage Condition" shall mean 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 generally occurs due to drought.

G. "Water Shortage Emergency" shall mean that situation when the powers which can be exercised under Part II of Chapter 40E-21, Florida Administrative Code, 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.

SECTION FOUR: Application of Ordinance

The provisions of this Ordinance shall apply to all persons using water resources whether from public or privately owned water utility systems, private wells, or private connections with surface water bodies in the Town of Fort Myers Beach. This Ordinance shall not apply to persons using reclaimed water.

SECTION FIVE: Permanent Water Restrictions/ Declaration of a Water Shortage/ Water Shortage Emergency

A. It Shall be unlawful for any person to irrigate lawns within the Town of Fort Myers Beach between the hours of 9:00 A.M. to 5:00 P.M. except:

(1) With low-volume devices;

(2) To maintain irrigation systems which are not low volume. Such maintenance shall be limited to ten (10) minutes per zone, once a week; and,

(3) To apply fertilizers and pesticides.

B. All types of irrigation systems may be used after 5:00 P.M. and until 9:00 A.M. unless water restrictions have been imposed by the District.

C. All restaurants within the Town are prohibited from serving water from any public or private well, water supply, or distribution system to any customer except when specifically requested by the customer.

D. The declaration of a water shortage condition or water shortage emergency condition within all or any part of Lee County by the Governing Board or the Executive Director of the District shall invoke the provisions of this paragraph. Upon such declaration, all water use restrictions or other measures adopted by the District pursuant to Chapter 40E-21, Florida Administrative Code, applicable to Lee County, or any portion thereof, shall be subject to enforcement action pursuant to the enforcement provisions of this Ordinance. The South Florida Water Management District "Water Shortage" plan shall be kept on file with the Clerk of the Town.

E. Any violation of the provisions of Chapter 40E-21, Florida Administrative Code, or any order issued pursuant thereto, shall constitute a violation of this Ordinance.

SECTION SIX: Enforcement

Every officer or sheriff in the Town of Fort Myers Beach, in connection with all other duties imposed by law, shall diligently enforce the provisions of this Ordinance. In addition, the Town Manager may also delegate enforcement responsibility for this Ordinance in accordance with state and local laws.

SECTION SEVEN: Penalties

Violation of any provision of this Ordinance shall be subject to the following penalties:

- | | |
|--|---|
| A. First violation | \$25.00 fine |
| B. Second violation during the same restriction period | \$100.00 fine |
| C. Third or more violations during the same restriction period | Fine not to exceed \$500 and/or imprisonment in the County jail not to exceed 60 days |

Each violation of this Ordinance shall constitute a separate offense. In the initial stages of a water shortage condition or water shortage emergency condition, but not to exceed the first thirty (30) days of such condition, law enforcement officials shall provide violators with no more than one written warning.

SECTION EIGHT: Water Users to Accept Provisions of Ordinance

No water service shall be furnished to any person by Lee County Utilities or any private utilities within the Town, unless such person agrees to accept all provisions of this Ordinance. The acceptance of water service from the Department of Lee County Utilities or other private utility companies within the Town shall in and of itself constitute the acceptance of the provisions herein.

SECTION NINE: Severability

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION TEN: Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION ELEVEN: Effective Date

This ordinance shall become effective September 30, 1996.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member REYNOLDS and seconded by Council Member Murphy and, upon being put to a vote, the result was as follows:


Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 1st day of July, 1996.

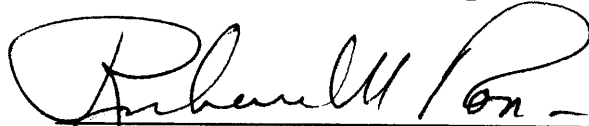
ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney

**CHAPTER 40E-21
WATER SHORTAGE PLAN**

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- 40E-21.501 Specific Restrictions.
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- 40E-21.631 Source Classes.
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PART I GENERAL

- 40E-21.011 Policy and Purpose.

(1) The rules in this chapter comprise the District's water

shortage plan required under subsection 373.246(1), Florida Statutes. The purposes of the plan are to protect the water resources of the District from harm; to assure equitable distribution of available water resources among all water users during times of shortage, consistent with the goals of minimizing adverse economic, social and health related impacts; to provide advance knowledge of the means by which water apportionments and reductions will be made during times of shortage, and to promote greater security for water use permittees.

(2) These rules apply to all water users including those exempt from permitting pursuant to Rule 40E-2.051. However, these rules shall not apply to users whose source of water is limited solely to treated effluent or seawater. Thus, for each regulated source and type of use it is the policy of the District to restrict water users uniformly, regardless of whether the user uses water from a public or private utility system, pursuant to a consumptive use permit issued under Chapter 40E-2, or from a private well for domestic or individual home use.

Specific Authority 373.044, 373.113 FS.
Law Implemented 373.175, 373.246 FS.
History--New 5-31-82.

40E-21.031 Elements of the Plan. The water shortage plan consists of the following elements:

(1) Part I. General - Part I provides the general goals and objectives of the District in developing and adopting the water shortage plan. The various elements of the plan are described, and definitions for key terms used in the plan are provided.

(2) Part II. Declaring and Implementing a Water Shortage - Part II describes the procedures the District will utilize in declaring a water shortage. Provisions are made for comparing estimated present and anticipated water supplies with estimated present and anticipated user needs. The impact on the water resource if demands are met from available supplies is also evaluated. In addition, a method for expressing the severity of a water shortage in terms of four water shortage phases is provided. General user restrictions are established. Finally, procedures for implementing the water shortage declaration are provided.

(3) Part III. Emergency Provisions - Normally, the provisions of Part II will be sufficient to protect users within use classes during times of water shortage. At times, however, due to the peculiar circumstances which apply to each individual user, the class restrictions imposed in Part III may be inadequate to sufficiently protect individual users. In those situations, the Executive Director with the concurrence of the Board may declare a water shortage emergency and impose restrictions on individual users. Part III establishes the procedures for declaring and implementing a water shortage emergency. In addition, provisions are made for establishing water use restrictions, including implementation of the restrictions described in parts II and V.

(4) Part IV. Monitoring and Enforcement - This part describes how the District, in conjunction with local law enforcement officials, will enforce the provisions of a declared water shortage or water shortage emergency. The District's enforcement jurisdiction is described and enforcement procedures are generally outlined. Penalties for violations of the water shortage plan and any order issued pursuant to it are provided. In addition, the District's policy of seeking the cooperation and assistance of local government officials and of assisting such officials in the enforcement of the water shortage plan is generally described. The District's overall program of monitoring surface and ground waters, climatic conditions and water demand during a shortage is generally described. In addition a monitoring program is established to determine the impact of a water shortage on the water resources of the District and the effectiveness of a declaration of water shortage or water shortage emergency.

(5) Part V. Specific Restrictions - Part V establishes specific water use restrictions for each water shortage phase and water use class. These restrictions are in addition to the general restrictions authorized in parts II and III. Water users may refer to this part for specific information concerning the restrictions which apply to them during any phase of a water shortage.

(6) Part VI. The Classification System - Part VI classifies each user according to the source of water supply, method of withdrawal and type of water use. The classification system is utilized in conjunction with Parts II, III and V to determine the water use restrictions with which the users of a particular source must comply. This part is published separately as an appendix.

Specific Authority 373.044, 373.113 FS.
Law Implemented 373.175, 373.246 FS.
History--New 5-31-82.

40E-21.051 Definitions. When used in this chapter:

(1) "Water shortage" means that situation within all or part of the District when insufficient water is available to meet the present and anticipated needs of the users, or when conditions are such as to require temporary reduction in total use within a particular area to protect water resources from serious harm. A water shortage usually occurs due to drought.

(2) "Water shortage emergency" means that situation when the powers which can be exercised under part II of chapter 40E-21 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.

(3) "User" means any person, natural or artificial, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee or other legal entity, 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 but not limited to uses from private or public utility systems, uses under consumptive use permits issued pursuant to chapter 40E-2, or uses from individual wells or pumps for domestic or individual home use. The term does not include persons who use treated effluent or seawater.

(4) "Water resource" means any and all water on or beneath the surface of the ground, including natural or artificial water courses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

(5) "Source class" means the assigned water resource from which a user is obtaining water either directly or indirectly. Source classes within the District are specified in rule 40E-21.631.

(6) "Use class" means the category describing the purpose for which the user is utilizing water. Use classes within the District are specified in rule 40E-21.651.

(7) "Method of withdrawal class" means the type of facility or means of extraction or diversion of the water resource employed by the user. Method of withdrawal classes within the District are specified in rule 40E-21.671.

(8) "Surface water use basin" means the geographical area within which a user obtains water from surface waters. Surface water use basins are a type of source class and are identified in subsection 40E-21.631(1).

(9) "Ground water source" means a source class within which users obtain water directly from water table aquifers or from confined or semi confined aquifers. Ground water sources are a type of source class and are identified in subsection 40E-21.631(2).

(10) "Percent reduction in overall demand" means the weighted average reduction in all water uses within a source class, regardless of the type of use or method of withdrawal, which is necessary to reduce estimated present and anticipated demand to estimated present and anticipated available water supply.

(11) "Plan" means the water shortage plan authorized in section 373.246, Florida Statutes, and contained in this chapter.

(12) "Low-volume irrigation" means 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 use in mist houses and similar establishments for plant propagation. Overhead irrigation and flood irrigation are not included.

(13) "Overhead irrigation" means the use of equipment and devices which deliver water under pressure, through the air, above the level of the plant being irrigated.

(14) "Flood irrigation" means the delivery of plant or crop irrigation water by the design and practice of the flowing of water over the surface to saturate the root zone or in specific applications the raising of the level of groundwater through the

root zone or to the soil surface.

(15) "Low-volume hand watering" means watering by one hose attended by one person, fitted with a self-canceling or automatic shutoff nozzle.

(16) "Low-volume mobile equipment washing" means the washing of mobile equipment with a "bucket" and "sponge" or a hose with a self-canceling or automatic shutoff nozzle or both.

(17) "Low-volume pressure cleaning" means pressure cleaning by means of equipment which is specifically designed to reduce the inflow volume as accepted by industry standards."

(18) "Nursery stock" means all plants, trees, shrubs, vines, bulbs, cuttings, grafts, scions, buds, flowering annual plants, aquatic plants, seeds, corns, or tubers, grown or kept for propagation, distribution or sale.

(19) "Mobile equipment" means any public, private or commercial automobile, truck, trailer, railroad car, camper, boat, or any other type of similar equipment. The term shall not include mobile homes, boats that serve as a primary residence, sanitation or sludge vehicles or food vending or transporting vehicles.

(20) "Even numbered address" means the house address, box number or rural route ending in the numbers 0, 2, 4, 6, 8 or the letters A-M. Post office box numbers are not included.

(21) "Odd numbered address" means the house address, box number or rural route ending in the numbers, 1, 3, 5, 7, 9 or the letters N-Z. Post office box numbers are not included.

(22) "Odd numbered days" means the days whose dates end in the numbers 1, 3, 5, 7, or 9. For purposes of this chapter the date shall be determined by the day during which a watering period ends.

(23) "Low-volume watering" means the use of equipment, devices, materials and/or methods, including low-volume hand watering, which limit the amount of water applied to a surface to the minimum necessary for dust control or evaporation suppression; use of equipment specifically designed to reduce flow and increase saturation efficiency to a level accepted under industry standards.

(24) "License" means, but is not limited to, the appropriate professional registration, occupational license, contractor license or applicator license for the jurisdiction in which work is being performed.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.175, 373.246 FS.

History--New 5-31-82, Amended 1-26-86, 2-14-91.

40E-21.132 Water Use Restrictions.

(1) The Water Shortage Plan in this section establishes the water use restrictions to be followed when the Board declares a water shortage within the Lake Istokpoga-Indian Prairie area. The restrictions are intended to insure that established minimum flows and levels within the area maintained and that the water resources within the area do not suffer serious harm.

(2) If the Board declares a water shortage pursuant to rule

40E-21.231 or the Executive Director with the advice and concurrence of the Board declares a water shortage emergency pursuant to rule 40E-21.331 within the Lake Istokpoga-Indian Prairie Area, then uses from the affected source classes, shall be restricted pursuant to rule 40E-21.271 or rule 40E-21.371 respectively.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.119, 373.175, 373.246 FS.

History--New 9-3-81, Amended 7-4-82, Formerly 16K-30.09.

40E-21.221 Evaluating Water Conditions.

(1) This rule sets forth the steps the District will take to periodically evaluate water conditions within the District in order to determine whether a water shortage should be declared.

(2) The District shall monitor the condition of the water resources in the District as provided in rule 40E-21.401.

(3) Current data shall be compared to historical data to determine whether estimated present and anticipated available water supply within any source class will be insufficient to meet the estimated present and anticipated demands of the users from the source class, or whether serious harm to the water resources can be expected. It shall be the policy of the District to seek the cooperation and assistance of state, county and municipal government officials in developing the historic and technical data used to periodically evaluate water conditions.

(a) Present and anticipated available water supply shall be periodically estimated for each source class. Factors considered in estimating present and anticipated available supply within a source class may include:

1. historic, current and anticipated levels in surface and ground waters, including potentiometric heads in confined and semiconfined aquifers,
2. historic, current and anticipated flows in surface waters,
3. the extent to which water may be transferred from one source class to another,
4. the extent to which present water use restrictions may enhance future supplies, or postpone more stringent restrictions,
5. historic, current and anticipated demand of natural systems, including losses due to evapotranspiration and seepage,
6. historic, current and anticipated seasonal fluctuation in rainfall, and
7. other water resources factors affecting present and anticipated available water supply.

(b) Present and anticipated user demands for each use and method of withdrawal class shall be periodically estimated for each source class. Factors considered in estimating the present and anticipated demands of the users within a source class may include:

1. estimated current and anticipated demands of permitted users,
2. estimated current and anticipated demands of users exempt

History--New 5-31-82, Amended 1-26-86.

40E-21.251 Water Shortage Phases.

(1) This rule establishes four phases of water shortage as a function of the estimated percent reduction in overall demand required to reduce estimated present and anticipated demand to estimated present and anticipated available water supply. The water shortage phase determines the type of water use restrictions which will be ordered in a declared water shortage.

(2) The following water shortage phases are established:

Water Shortage Phase	% reduction in Color Code	overall demand
I. Moderate Water Shortage	Yellow	less than 15%
II. Severe Water Shortage	Orange	less than 30%
III. Extreme Water Shortage	Red	less than 45%
IV. Critical Water Shortage	Purple	less than 60%

(3) Each source class for which a water shortage has been declared shall be assigned a specific water shortage phase. More than one source class may be combined into a single class for this purpose. The water shortage phase selected for a source class may be based upon:

(a) the estimated percent reduction in overall demand as determined in subsection 40E-21.231(4), and

(b) for areas with multiple sources, the extent to which users have the capability to obtain water from a source or sources other than the source class for which a water shortage has been declared.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.175, 373.246 FS.

History--New 5-31-82.

40E-21.271 General Water Use Restrictions.

(1) This rule specifies general water use restrictions for all users for each water shortage phase. Specific restrictions by user class are presented in part V of this chapter. Users desiring detailed information about the specific restrictions applying to their use should refer to part V.

(2) The Board may order the water use restrictions specified in part V for the appropriate water shortage phase for each affected source class. The restricted area may include for enforcement purposes, all or part of a county, municipality, surface water basin or utility service area which impacts a source class for which a water shortage is declared. Further, the Board may order any combination in lieu of or in addition to the restrictions specified in part V of the restrictions described in subsection (3), by use or method of withdrawal class, within each source class, if necessary to achieve the percent reduction in overall demand.

(3) Additional restrictions which may be considered include:

(a) provisions that recognize the right of water users in an area to make voluntary agreements among themselves, with the concurrence of the Board or the Executive Director, providing for the mutual reduction, sharing, or rotation of use,

(b) provisions for the distribution of water to permittees in exchange for ceasing or reducing ground or surface water withdrawals,

(c) provisions for the metering and reporting of all water used, diverted, impounded, extracted or withdrawn,

(d) provisions designed to maintain minimum flows and minimum levels,

(e) provisions which recognize the extent to which users can satisfy water demands from sources for which a water shortage has not been declared,

(f) provisions for monitoring water levels and determining chloride concentrations in order to protect against salt water intrusion or other deterioration of water quality including the closing and plugging of wells,

(g) restrictions on the total amount of water that may be used, diverted, impounded, extracted, or withdrawn during any day, month, or year,

(h) restrictions on the timing of use, diversion, impoundment, extraction, or withdrawal of water,

(i) restrictions on pumping rates or diversion rates, or

(j) such other provisions or restrictions as are necessary to protect the water resources from serious harm.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.175, 373.246 FS.

History--New 5-31-82, Amended 1-26-86.

40E-21.275 Variances.

(1) All users requesting relief from the provisions of this chapter shall file an application for variance but must conform to water use restrictions until the Executive Director grants a temporary variance or the Board grants the variance.

(2) Criteria for Issuance - No application for variance shall be granted unless the applicant provides reasonable assurances that the variance will not otherwise be harmful to the water resources of the District and affirmatively demonstrates that one or more of the following circumstances exists:

(a) The variance is essential to protect health or safety, or

(b) Compliance with the particular rule or order from which a variance is sought will require measures which, because of their extent or cost, cannot be accomplished within the anticipated duration of the shortage, or

(c) Alternative restrictions which achieve the same level of demand reduction as the restrictions from which a variance is sought are available and are binding and enforceable, or

(d) The applicant is a public or private utility that demonstrates that special circumstances exist which necessitate the