

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-24.011 Policy and Purpose.

(1) This chapter comprises the ~~South Florida Water Management District's (District)~~ Mandatory Year-Round Landscape Irrigation Conservation Measures ~~for the area within Lee, Collier and that portion of Charlotte County~~ within the boundaries of the South Florida Water Management District (District). These mandatory conservation measures are intended to provide a framework for consistent implementation 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 regulatory means for landscape irrigation by all users. Local governments are encouraged to implement these conservation measures through the adoption of ordinances that would include these measures, variance and enforcement provisions. These measures are in addition to Chapters 40E-2 and 40E-20, F.A.C., provisions and non-regulatory measures, such as education and incentive programs, which are also utilized by the District to promote water conservation. These conservation measures prohibit landscape irrigation during those periods of the day when irrigation efficiency significantly decreases, and limit landscape irrigation water use to a maximum number of two ~~three~~ days per week unless specified otherwise herein.

(2) through (3) No change.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.223, 373.227 FS. History—New 6-12-03, Amended_____.

40E-24.101 Definitions.

When used in this chapter:

(1) "Address" means 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".

(2) “Athletic play area” means all golf course fairways, tees, roughs, and greens, and other athletic play surfaces; including, football, baseball, soccer, polo, tennis and lawn bowling fields, and rodeo, equestrian and livestock arenas.

(3) “Consumptive Use Permit (CUP)” means a permit issued pursuant to Chapter 40E-2 or 40E-20, F.A.C., authorizing the consumptive use of water.

(4) “Even Numbered Address” means 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.

(5) “Existing landscaping” means any landscaping which has been which has been planted and in the ground for more than sixty (60) days.

(6) “Landscaping” means 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 subsection 40E-24.101(2), F.A.C.

(7)(5) “Low Volume Hand Watering” means the watering of landscape by one person, with one hose, fitted with a self-canceling or automatic shutoff nozzle.

(8) “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 used in mist houses and similar establishments for plant propagation. Overhead irrigation and flood irrigation are not included.

(9)(6) “Landscape Irrigation” means the outside watering of delivery of water to shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora, not intended for resale, which are planted and established for more than sixty (60) days and 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 subsection 40E-24.101(2), F.A.C.

(10) “Micro-irrigation” means 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.

(11) “New landscaping” means any landscaping which has been planted and in the ground for sixty (60) days or less.

~~(12)~~(7) “Odd Numbered Address” means an address ending in the numbers 1, 3, 5, 7, 9 or the letters N-Z.

~~(13)~~(8) “Reclaimed Water” means 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.

~~(14)~~ “Supplemented reclaimed water” and “blended reclaimed water” means reclaimed water which has been commingled with other sources of water, such as potable water, groundwater, surface water, and water treatment process by-product by a public or private utility.

~~(15)~~(9) “User” means 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 or 40E-20, F.A.C., or uses from individual wells or pumps.

~~(16)~~(10) “Wasteful and unnecessary” means 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; allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.223, 373.227 FS. History–New 6-12-03, Amended_____.

40E-24.201 Year-Round Landscape Irrigation Conservation Measures.

(1) The year-round landscape irrigation conservation measures contained in this chapter are applicable to all users as defined in subsection 40E-24.101~~(16)~~(10), F.A.C., including permitted and exempt users under Chapter 40E-2, F.A.C., unless indicated otherwise herein. These conservation measures apply to all water sources, except that landscape irrigation accomplished using reclaimed water and/or supplemented reclaimed water is subject to only paragraphs (5)(a), (l) and (5)(b), (l) of this section. In addition to the requirements of this section, all permitted users under Chapters 40E-2 and 40E-20, F.A.C., are required to maintain compliance with all CUP conditions and

terms, including those designed to require the implementation of water conservation practices.

(2) Any restrictions or other measures declared pursuant to Chapter 40E-21, F.A.C., or related Board or Executive Director orders which are more restrictive than a measure contained within this chapter, shall supersede this rule for the duration of the applicable water shortage declaration.

(3) It shall be the duty of each water user to keep informed as to the landscape irrigation conservation measures presented within this chapter, which affect each particular water use.

(4) In addition to the specific conservation measures enumerated below, all wasteful and unnecessary water use as defined in subsection 40E-24.101(10), F.A.C., is prohibited.

(5) The following requirements or exceptions shall apply to all users unless specified otherwise herein:

(a) Irrigation of existing landscaping shall comply with the following provisions:
~~Landscape irrigation shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.~~

1. Landscape irrigation shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.

~~2.(b) Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, including multi-family units and homeowners' associations, and rights-of-way or other locations with no address as defined in Rule subsection 40E-24.101(4), F.A.C., may accomplish necessary landscape irrigation only on Tuesday, and/or Thursday and/or Sunday.~~

~~3.(c) Odd addresses as defined in Subsection 40E-24.101(13)(8), F.A.C., and rights-of-way or other locations without an address may accomplish necessary landscape irrigation only on Monday, and/or Wednesday and/or Saturday.~~

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

1. Irrigation of new landscaping shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.

2. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.

3. The sixty (60) day period begins 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.

4. 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.

5. Irrigation of new landscaping which has been in place for thirty-one (31) to sixty (60) days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.

6. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that 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 under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

(c)(d) 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 test should not exceed 10 minutes per zone.

(d)(e) Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended required by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

1. Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by in the absence of specific alternative instructions from the manufacturer; and

2. Such watering-in shall be accomplished during normally allowable watering days and times set forth in paragraphs (5)(a) and (5)(b) unless a professional licensed applicator has posted a temporary pesticide sign containing the date of application and the date(s) of needed watering-in activity.

(e)(f) Any plant material may be watered using low volume irrigation, micro-irrigation, low-volume hand watering methods, and rain barrels, cisterns, or other rain-harvesting devices without regard to the watering days or times allowed pursuant to this section.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.223, 373.227 FS. History–New 6-12-03, Amended _____.

40E-24.301 Local Government Option.

(1) Local governments that wish to enforce alternative landscape irrigation conservation measures, shall be considered to be in substantial compliance with this rule upon the enactment of an ordinance establishing landscape irrigation measures which achieve water conservation and which allow no more cumulative days and time for landscape irrigation than Subsection 40E-24.201(5), F.A.C. Such ordinance shall provide for variance and enforcement procedures that do not diminish the intent and effectiveness of the measures and which do not conflict with the District's authority under Chapter 373, F.S. and District rules.

(2) Irrigation of landscapes, as defined above, may be further restricted by local governments only in response to concerns directly related to the local water supply system.

(3) Local governments with a jurisdiction divided between the South Florida Water Management District and another water management district may propose an alternative schedule of landscape irrigation conservation measures as necessary for the local government to achieve a uniform schedule within its jurisdiction.

(4) At least thirty (30) days prior to the adoption of an ordinance for alternative landscape irrigation conservation measures, the local government shall submit the proposed ordinance to the District to review for consistency with Chapter 373, F.S., and District rules and approval. The ordinance must be adopted as approved by the District.

(5)(2) In order to evaluate the effectiveness of the approved alternative landscape irrigation conservation measures, such local governments shall provide an annual report to the District which includes any variances granted or denied, enforcement actions taken and any measures proposed to be amended in the next reporting period. Each annual report shall be submitted no later than September 30th of each year following the adoption of this Chapter. The first report shall be submitted no later than January 1, 2004.

(6)(3) Users within the jurisdiction or customers of such local governments shall comply with the alternative landscape irrigation conservation measures contained within the ordinance implementing that program and are not subject to the measures contained in Subsection 40E-24.201(5), F.A.C.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.223, 373.227 FS. History–New 6-12-03, Amended _____.

40E-24.401 Enforcement.

(1) As required by Section 373.609, F.S., each county and city commission, state and county attorney, sheriff, police officer and other appropriate local government official in the region covered by this chapter which is not implementing alternative landscape irrigation conservation measures pursuant to a local government ordinance, shall respond to address-specific or location-specific violations of this chapter upon request from the District.

(2) A local government may enforce Rule 40E-24.201, F.A.C., within its jurisdiction by adopting an ordinance incorporating the provisions specified therein. At least thirty (30) days prior to the adoption of an ordinance to enforce Rule 40E-24.201, F.A.C., the local government shall submit the proposed ordinance to the District to review for consistency with Chapter 373, F.S., and District rules and approval. The ordinance must be adopted as approved by the District. ~~Irrigation of landscapes, as defined above, may be further restricted by local governments only in response to concerns directly related to the local water supply system or as provided in Rule 40E-24.301, F.A.C., above.~~

(3) In enforcing the provisions of this chapter the District will utilize any of the enforcement remedies available pursuant to Chapter 120 or 373, F.S., or applicable District rule. The Executive Director may take appropriate action pursuant to Sections 373.119, 373.175(4), 373.246(7) and 120.69, F.S., to enforce the provisions of this chapter.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.119, 373.171, 373.175(4), 373.227, 373.246(7), 373.603, 373.609 FS. History—New 6-12-03, Amended _____.

40E-24.501 Variances and Waivers.

(1) Users may request relief from the provisions of this Chapter by filing a petition for variance or waiver pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, F.A.C. Examples of circumstances, which subject to the above-referenced statute and rule and the provisions below, may be candidates for the issuance of a variance, include but are not limited to:

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

(b) A public or private water system experiencing, or anticipating distribution problems that cannot be addressed through Rule 40E-24.301, F.A.C.;

(c) A property utilizing modern, properly maintained and highly efficient irrigation technologies, including but not limited to soil moisture sensors and weather/ evapotranspiration-based irrigation controllers.

(2) A variance or waiver is invalid if it has expired or if the user or its agent violates the terms of the variance or waiver.

(3) Where a local government has adopted an ordinance incorporating the provisions set forth in Rule 40E-24.201, F.A.C., or alternative landscape irrigation measures pursuant to Rule 40E-24.301, F.A.C., users requiring relief from such landscape irrigation conservation measures must petition that local government for relief.

Specific Authority 120.542, 373.044, 373.113, 373.171 FS. Law Implemented 120.542, 373.119, 373.171, 373.175(4), 373.227, 373.246(7), 373.603, 373.609 FS. History–
New _____.