



ORDINANCE NO. 428

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, REPEALING CHAPTER 22 ENVIRONMENT, ARTICLE IV WATER CONSERVATION, DIVISION 3 IRRIGATION RESTRICTIONS AND ADOPTING AN UPDATED DIVISION 3 IRRIGATION RESTRICTIONS 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 FOR DEFINITIONS, APPLICABILITY OF THE ORDINANCE, A LANDSCAPE IRRIGATION SCHEDULE, EXCEPTIONS TO THE SCHEDULE, RAIN SENSOR REQUIREMENT, AND VARIANCES; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE, PENALTIES FOR VIOLATION OF THE ORDINANCE; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF ALL CONFLICTING ORDINANCES, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town of Sewall's Point, Florida (the "Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the South Florida Water Management District ("District") has the responsibility and exclusive authority under Chapter 373, Florida Statutes, 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 Town Commission desires to adopt the encouraged ordinance, including variance and enforcement procedures; and

WHEREAS, the Town Commission finds and declares that the adoption of this ordinance is appropriate, and in the best interest of the health, safety and welfare of the Town, its residents and visitors.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. Chapter 22 Environment, Article IV Water Conservation, Division 3 Irrigation Restrictions is hereby repealed in full.

Section 3. Chapter 22 Environment, Article IV Water Conservation, Division 3 Irrigation Restrictions is hereby adopted to read as follows:

Sec. 22-141. – General.

(a) Intent and purpose. It is the intent and purpose of this division to implement procedures that promote water conservation through the efficient use of landscape irrigation.

(b) Applicability. The provisions of this division shall apply to each user providing landscape irrigation from all water resources within the boundaries of the town with the following exceptions:

- (1) The use of reclaimed water, which may or may not be supplemented from another source;
- (2) Irrigation at agricultural and nursery operations; and
- (3) Irrigation of athletic play areas.

Sec. 22-142. – Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings listed below except where the context clearly indicates a different meaning.

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.”

Athletic play area means 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.

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

District means the South Florida Water Management District, a government entity created under Chapter 373, Florida Statutes.

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.

Existing landscaping means any landscaping which has been planted and in the ground for more than ninety (90) days.

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.

Landscape irrigation means 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.

Law enforcement officials mean any law enforcement officer employed by a law enforcement agency charged with the enforcement of laws of the town and of the state.

Low volume hand watering means the watering of landscape by one (1) person, with one (1) hose, fitted with a self-canceling or automatic shutoff nozzle.

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.

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.

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

Odd numbered address means an address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.

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.

User means any person, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or other legal entity whether natural or artificial, 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 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; or allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

Water resource means 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 means 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 means 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. 22-143. – Year-round landscape irrigation conservation measures.

The town hereby adopts the rules of the 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 division 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 division 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 this subsection 22-143 or subsection 22-144.

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, 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 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 or any appropriate method which isolates and waters only the new landscaping.

(5) Any water shortage 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 division, shall supersede this division for the duration of the applicable water shortage declaration.

Sec. 22-144. – Exceptions to 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 subsection 22-143(4)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, micro-irrigation, 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 division.

Sec. 22-145. – 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, Florida Statutes.

Sec. 22-146. – Variances

(a) A variance from the specific day or days identified in subsection 22-143(4)b. may be granted by the town if strict application of the restrictions would lead to an 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.

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

Sec. 22-147. – Declaration of Water Shortage or Water Shortage Emergency.

Declaration of a water shortage condition and/or water shortage emergency within all or parts of the town by the District’s governing board or executive director shall supersede this division for the duration of the applicable water shortage declaration in accordance with the town’s Water

Shortage Plan set forth in Chapter 22, Article IV, Division 2. A water shortage usually occurs due to drought.

Sec. 22-148. –Enforcement.

- (a) 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.
- (b) The town authorizes law enforcement officials to enforce the provisions of this division. In addition, the town manager may delegate this division’s enforcement responsibility to departments within the town government.

Sec. 22-149. - Penalties.

- (a) Violation of any provision of this division shall be subject to the following penalties:
 - a. First violations, a warning.
 - b. Second violations, a \$50.00 fine.
 - c. Third violations, a \$250.00 fine.
 - d. Fourth and subsequent violations, a \$500.00 fine.
- (b) Each day a violation of this division occurs shall be a separate offense. Law enforcement officials, and others as delegated, may provide violators with no more than one (1) written warning. In addition to civil penalties, the town may take any other appropriate legal action, including but not limited to, injunctive action to enforce the provisions of this division.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent

jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. Codification. The sections of the ordinance may be made a part of the Town Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 8. Effective Date. This ordinance shall take effect immediately upon adoption.

Vice Mayor Campo offered the Ordinance for its first reading and moved its adoption. The motion was seconded by Commissioner Tompeck, and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	✓	—
JAMES W. CAMPO, VICE MAYOR	✓	—
FRANK FENDER, COMMISSIONER	✓	—
DAVE KURZMAN, COMMISSIONER	✓	—
JOHN TOMPECK, COMMISSIONER	✓	—

Passed first reading at the Regular Meeting of the Town Commission held on the 15th day of December, 2020.

Commissioner Fender offered the Ordinance for its second reading and moved its adoption. The motion was seconded by Commissioner Kurzman and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	✓	—
JAMES W. CAMPO, VICE MAYOR	✓	—
FRANK FENDER, COMMISSIONER	✓	—
DAVE KURZMAN, COMMISSIONER	✓	—
JOHN TOMPECK, COMMISSIONER	✓	—

Passed second reading at the Regular Meeting of the Town Commission held on the 26th day of January, 2021. The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission on this 26th day of January, 2021.

TOWN OF SEWALL'S POINT, FLORIDA

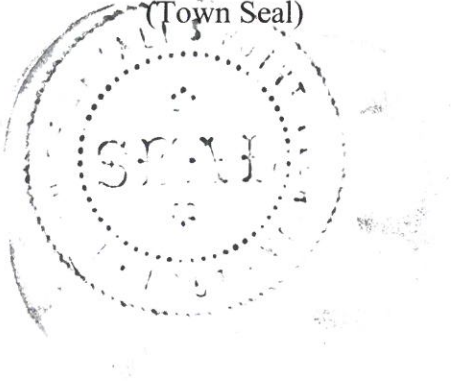
Kaija Mayfield
Kaija Mayfield, Mayor

ATTEST:

April Stoncius

April Stoncius, CMC, Town Clerk

(Town Seal)



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:

Glen J. Torcivia
Glen J. Torcivia, Town Attorney
Florida Bar No. 343374