

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

ORDINANCE NO. 2021 - 06

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA; PROVIDING FOR THE INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR THE DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE EMERGENCY; PROVIDING FOR VARIANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; 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, for implementation of a water shortage plan; and

WHEREAS, the District has promulgated and amended Chapter 40E-21, Florida Administrative Code (“F.A.C.”), which comprises the District’s water shortage plan required under subsection 373.246(1), Florida Statutes, the purpose of which is to protect the water resources of the District from serious harm; to ensure 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; and

WHEREAS, Chapter 40E-21, F.A.C., applies to all users as defined in subsection 40E-21.051(3), F.A.C., including permitted and exempt users under Chapter 40E-2, F.A.C.; and

WHEREAS, Rule 40E-21.421, F.A.C., seeks the cooperation and assistance of state, county, municipal governmental, and law enforcement officials in the enforcement of the water shortage plan or any issued water shortage orders; and

WHEREAS, Rule 40E-21.421, F.A.C., authorizes and encourages counties and municipalities throughout the District’s jurisdiction to adopt ordinances which provide for local enforcement of the water shortage plan or any issued water shortage orders; and

WHEREAS, the Village of Estero relies upon the guidance and regulations issued by the District in the drafting, adopting, and implementing this Ordinance; and

WHEREAS, it is the desire of the Village Council of the Village of Estero to adopt such an Ordinance in accordance with Rule 40E-21.421, F.A.C.; and

WHEREAS, the Village Council of Village of Estero finds and declares that the adoption of this Ordinance is appropriate, and in the public interest of this community.

1 **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE**
2 **VILLAGE OF ESTERO, FLORIDA:**

3
4
5 **Section 1.** **Recitals.**

6
7 Each and all of the foregoing recitals are hereby incorporated into this Ordinance as if
8 specifically set forth herein.

9
10 **Section 2.** **Purpose.**

11
12 It is the intent and purpose of this Ordinance to protect the water resources of the Village
13 of Estero from the harmful effects of overutilization during periods of water shortage by assisting
14 the District in the implementation of its water shortage plan, or issued water shortage orders, under
15 Chapter 40E-21, F.A.C.

16
17 **Section 3.** **Definitions.**

18
19 For the purpose of this Ordinance, the following terms, phrases, words, and their
20 derivatives shall have the meaning listed below. When not inconsistent with the context, words
21 used in the present tense include the future, words in the plural include the singular, and words in
22 the singular include the plural. The word "shall" is always mandatory and not merely directory.

23
24 (1) “District” means the South Florida Water Management District, a government
25 entity created under Chapter 373, Florida Statutes.

26
27 (2) “Law Enforcement Officials” means designated code inspectors and code
28 enforcement officers of the Village.

29
30 (3) “User” means any person, individual, firm, association, organization, partnership,
31 business trust, corporation, company, agent, employee or other legal entity whether natural or
32 artificial, the United States of America, and the State and all political subdivisions, regions,
33 districts, municipalities, and public agencies thereof, which directly or indirectly takes water from
34 the water resource, including uses from private or public utility systems, uses under water use
35 permits issued pursuant to Chapter 40E-2, F.A.C., or uses from individual wells or pumps.

36
37 (4) “Water Resource” means any and all water on or beneath the surface of the ground,
38 including natural or artificial water courses, lakes, ponds, or diffused surface water, and water
39 percolating, standing, or flowing beneath the surface of the ground.

40
41 (5) “Water Shortage” means when the District determines there is the possibility that
42 insufficient water will be available to meet the present and anticipated needs of the users, or when
43 conditions are such as to require temporary reduction in total use within a particular area to protect
44 water resources from serious harm.

45
46 (6) “Water Shortage Emergency” means when the District has determined that 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.

Section 4. Applicability.

The provisions of this Ordinance shall apply to each user, as defined in Section 3. (3), using the water resource, as defined in Section 3. (4), within the geographical areas subject to the water shortage condition or water shortage emergency, as defined in Section 3. (6), as determined by the District, whether from publicly or privately-owned water utility systems, private wells, or private connections with surface water bodies. This Section shall not apply to users using reclaimed water or saltwater.

Section 5. Declaration of Water Shortage or Water Shortage Emergency.

(1) A declaration of a water shortage condition and/or water shortage emergency in accordance with Part II of Chapter 40E-21, F.A.C., within all or parts of the Village by the District's Governing Board or Executive Director, shall invoke the provisions of this Ordinance.

(2) A water shortage, as defined in Section 3 (5), or water shortage emergency order shall supersede mandatory year-round water irrigation measures until the more restrictive measure is rescinded by the District.

(3) Upon the District issuing a water shortage order, all water use restrictions or other measures adopted by the District applicable to the Village, or any portion thereof, shall be subject to enforcement action by the Village officials pursuant to Section 7 of this Ordinance. Any violation of Chapter 40E-21, F.A.C., or any order issued pursuant thereto, shall be a violation of this Ordinance.

Section 6. Variances.

The Village shall recognize all variances issued by the District pursuant to Rule 40E-21.275, F.A.C.

Section 7. Enforcement.

The Village authorizes law enforcement officials having jurisdiction within the Village to enforce the provisions of this Ordinance. In addition, the Village may delegate this Ordinance's enforcement responsibility to other agencies and departments within the Village government or other governmental entities through interlocal agreement.

Section 8. Penalties.

Violations of any provision of this Ordinance may be punished pursuant to Chapter 162, Florida Statutes, however the Village may also take any other appropriate legal action, including but not limited to injunctive action to enforce the provisions of this Ordinance.

1
2 **Section 9. Codification.**
3

4 The Village Council intends that this Ordinance be made part of the Code of the Laws and
5 Ordinances, of the Village of Estero, Florida; and that the sections of this Ordinance can be
6 renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and
7 regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-
8 lettered and typographical errors and clarification of ambiguous wording that do not affect the
9 intent can be corrected with the authorization of the Village Manager without the need for a public
10 hearing.

11
12 **Section 10. Conflict.**
13

14 All ordinances, resolutions, official determinations or parts thereof previously adopted or
15 entered by the Village or any of its officials and in conflict with this Ordinance are hereby repealed
16 to the extent inconsistent herewith.

17
18 **Section 11. Severability.**
19

20 In the event that any portion of this ordinance is for any reason held invalid or
21 unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate,
22 distinct and independent provision, and such holding shall not affect the validity of the remaining
23 portions of this ordinance.

24
25 **Section 12. Effective Date.**
26

27 This Ordinance shall take effect immediately upon adoption.

28
29 **PASSED** on first reading this 21st day of April 2021.

30
31 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
32 Florida this 5th day of may, 2021.

33
34 Attest:

VILLAGE OF ESTERO, FLORIDA

35
36
37 By: 

38 Carol Sacco, Village Clerk

By: 

Katy Errington, Mayor

39
40
41
42 Reviewed for legal sufficiency:

43
44
45 By: 

46 Burt Saunders, Esq., Village Attorney

1			
2			
3			
4			
5			
6	Vote:	AYE	NAY
7	Mayor Errington	<u>X</u>	_____
8	Vice Mayor McLain	<u>X</u>	_____
9	Councilmember Ribble	<u>X</u>	_____
10	Councilmember Boesch	<u>X</u>	_____
11	Councilmember Fiesel	<u>X</u>	_____
12	Councilmember Ward	<u>X</u>	_____
13	Councilmember Wilson	<u>X</u>	_____
14			