

ORDINANCE NO. 2009- 81

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3
4 A SECOND AMENDED EMERGENCY ORDINANCE OF THE CITY
5 OF TAMPA, FLORIDA; PROVIDING FOR REVISED EMERGENCY
6 MEASURES IN RESTRICTING WATER USE AND CURTAILING
7 NONESSENTIAL USES OF WATER; SUPERSEDING AMENDED
8 EMERGENCY ORDINANCE 2009-57 and 2009-48; PROVIDING FOR
9 ENFORCEMENT AND PENALTIES; SUSPENDING ANY
10 PROVISIONS OF CITY OF TAMPA CODE INCLUDING SECTION 26-
11 97, IN CONFLICT WITH THE PROVISIONS HEREIN DURING THE
12 EFFECTIVE PERIOD OF THIS ORDINANCE; PROVIDING FOR
13 SEVERABILITY; PROVIDING AN EFFECTIVE DATE.
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15
16 WHEREAS, the City of Tampa is responsible for providing water service to the
17 citizens of Tampa, Florida, portions of the City of Temple Terrace and portions of
18 unincorporated Hillsborough County; and
19

20 WHEREAS, the Southwest Florida Water Management District (hereinafter
21 referred to as the "District") has adopted Modified Phase IV Extreme Water Shortage
22 Restrictions applicable to all water customers of the members of Tampa Bay Water in
23 Pasco, Pinellas and Hillsborough counties and the cities of St. Petersburg, New Port Richey
24 and Tampa; and
25

26 WHEREAS, the City of Tampa purchases water from Tampa Bay Water to
27 supplement the City's supply from its Reservoir; and
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29 WHEREAS, the City of Tampa's water system has certain requirements in order
30 to operate at its optimum level of efficiency; and
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32 WHEREAS, the City Council of the City of Tampa discussed at its regularly
33 scheduled meeting on May 21, 2009 that when the City's reservoir reached a level of
34 twenty-one (21) feet at the dam and the Hillsborough River flows reached at least sixty (60)
35 million gallons per day (MGD) flow as measured at the Morris Bridge gauge would the
36 City would consider revising its irrigation restrictions; and
37

38 WHEREAS, due to the rainfall received within the Hillsborough River basin, as of
39 Tuesday, May 26, 2009 the City's reservoir level at the dam was at 21.67 feet and the
40 Hillsborough River flow at the Morris Bridge gauge was approximately 83 MGD, current
41 conditions allow for revision of the City's restrictions to conform with the Southwest
42 Florida Water Management District's current restrictions in its Modified Phase IV
43 Emergency Water Shortage Order No. 09-012.
44

45 NOW, THEREFORE,
46

47 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:
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1 **Section 1.** The recital clauses set forth above are hereby adopted and incorporated
2 herein by reference.

3
4 **A. *Application.*** The provisions of this second amended emergency ordinance
5 shall apply to all customers of the City of Tampa Water System, within the corporate limits
6 of the City and to its customers outside the corporate limits of the City, to the extent
7 permitted by law. All other users of water inside the City are subject to and shall comply
8 with the applicable water shortage restrictions adopted by the Southwest Florida Water
9 Management District.

10
11 **Section 2. Restriction of Water Uses**

12
13 **A. *Restriction of water uses.***

14
15 (a) Irrigation of established landscaping and turf shall be permitted one day
16 per week as follows:

- 17
18 1. At even-numbered addresses only on Tuesdays;
19
20 2. At odd-numbered addresses only on Sundays;
21
22 3. At locations with no address, including medians, rights of way and
23 common areas only on Sundays.

24
25 (b) All water use restrictions, not inconsistent with Section 2.A(a) above as
26 contained within the Southwest Florida Water Management District's Water Shortage
27 Orders Nos. SWF 07-02 as modified; 08-044 as modified and 09-012, as well as all
28 applicable provisions of Chapter 40D-21 and 22 Florida Administrative Code in effect
29 pursuant to said orders, are adopted and incorporated by reference.

30
31 (c) Any water use restrictions subsequently adopted and imposed by the
32 Southwest Florida Water Management District which are more stringent than those
33 referenced in this section shall supersede such restrictions in conflict herein and shall
34 automatically become part of this Ordinance and enforceable by the City.

35
36 **B. *Variances from water use restrictions.***

37
38 (a) All variances previously issued by the City from the provisions of its
39 Amended Emergency Ordinance are terminated and rescinded as of June 1, 2009. The
40 variance procedure and other criteria are as follows:

41
42 (b) *General.* Users of the City of Tampa's water system may request relief
43 from the Section 2 A.(a) above of this ordinance by filing a petition for variance with the
44 City. All requests for variances from the remainder of the restrictions shall be filed with
45 the Southwest Florida Water Management District in accordance with applicable District
46

1 provisions. The following provisions on variances shall apply to petitions for variances
2 filed with the City.

3
4 (c) *Criteria for issuance.* No petition for variance shall be granted unless the
5 petitioner affirmatively demonstrates:

6
7 1. The variance is essential to protect public health or safety; and one or both
8 of numbers 2 or 3 below apply.

9
10 2. Compliance with this section will require measures which, because of
11 their extent or cost impose undue hardship, cannot be accomplished within the
12 anticipated duration of the shortage or will not ensure equitable distribution;

13
14 3. Alternative restrictions which achieve the same level of demand reduction
15 as the restrictions from which a variance is sought are available and are binding
16 and enforceable.

17
18 a. These alternative restrictions shall be summarized within a short-
19 term water reduction plan, prepared by the petitioner, to be submitted to
20 the Director for consideration.

21
22 b. Any user who has submitted a short-term water reduction plan in
23 compliance with the City's emergency rules and regulations shall, upon
24 approval, be bound by such plan. Any change to such plan must be
25 submitted to the City for consideration in accordance with the criteria
26 herein.

27
28 (d) *Petitions for variance.* The petition shall be filed with the Director and
29 contain the following:

30
31 1. The petitioner's name, address, telephone number and address of
32 property for which the petition for variance is being sought;

33
34 2. The specific section of this Ordinance from which the petitioner is
35 requesting relief;

36
37 3. A detailed statement of the facts which the petitioner believes
38 demonstrates that the request qualifies for a variance, which may include reports
39 by qualified technical experts;

40
41 4. A description of the relief desired;

42
43 5. The period of time for which the variance is sought, including the reasons
44 and facts in support thereof;

45
46 6. The damage or harm resulting or which may result to petitioner from

1 compliance with the restrictions or criteria herein;
2

3 7. The restrictions which petitioner can meet and the date when petitioner
4 can comply with such restrictions;
5

6 8. A short-term water use reduction plan, describing any and all alternative
7 reductions implemented in lieu of the restrictions for which variance is sought, if
8 applicable;
9

10 9. The steps the petitioner is taking to meet the code, ordinance, rules,
11 regulations or specific restrictions from which the variance is sought and when
12 compliance will be achieved; and
13

14 10. Any other information the petitioner believes is material.
15

16 **C. *Southwest Florida Water Management District.*** Any water use supplied
17 by the City of Tampa's water system is subject to the "day of the week" restrictions as
18 indicated herein in Section 2 and the remaining restrictions pursuant to the rules,
19 regulations and orders of the District and shall comply with such requirements and
20 restrictions as applicable. Such rules, regulations, and orders promulgated from time to
21 time by the District which are applicable to water uses served by the City of Tampa are
22 hereby adopted and incorporated by reference and made a part hereof and shall be subject
23 to the same enforcement and penalty provisions of this section.
24

25 **D. *Appeals from Decisions on Petitions for Variance.*** Any person who
26 wishes to appeal the decision of the Director regarding the decision on a petition for a
27 variance from the City from the provisions of Section 2A.(a) of this second amended
28 emergency ordinance, shall file a request to review the Director's official decision in
29 accordance with Section 1-19 of the City Code.
30

31 **E. *Definitions.*** Except as defined hereunder, the definitions found in Florida
32 Administrative Code (FAC), Chapter 40D-21, Water Shortage Plan, as now or hereafter
33 amended, are hereby adopted and made applicable to this section:
34

35 *City* means the City of Tampa, Florida.
36

37 *Director* means the Director of the City of Tampa Water Department.
38

39 *District* means the Southwest Florida Water Management District.
40

41 *Even-numbered address* means the house address, box number or rural route
42 ending in the numbers 0, 2, 4, 6, 8 or the letters A-M, or at locations with no
43 address at the even-numbered side of the street. Post office box numbers are not
44 included.
45

1 *Hand watering* means watering plants, turf or crops with one hand held hose,
2 fitted with a self-canceling or automatic shutoff nozzle, or a watering can or pail.

3
4 *Landscaping* means ground cover plants, shrubs, trees or other vegetation
5 excluding turf or lawns.

6
7 *Lawn or Turf* means lawn grasses, including but not limited to, St. Augustine,
8 Bahia, Bermuda or Zoysia that are mowed.

9
10 *Low volume irrigation* means the use of Hand Watering, Micro-irrigation or other
11 equipment and devices which apply no more than thirty (30) gallons per hour per
12 emitter and are specifically designed to allow the volume of water delivered to be
13 limited to a level consistent with the water requirement of the plant being irrigated
14 and designed to allow that water to be placed with a high degree of efficiency
15 within the root zone of the plant.

16
17 *Low volume pressure washing* means the use of a device that dispenses water at a
18 minimum of one thousand p.s.i. (pounds per square inch) at a maximum of five
19 gallons per minute. Using a hose fitted with an automatic shutoff nozzle is not
20 considered a low volume pressure washing method.

21
22 *Manager* means the manager of the water conservation program.

23
24 *Micro-irrigation* means any irrigation device that distributes water near or within
25 the root zone through low flow rate and emitters. Examples of such irrigation
26 devices include drip, line source, micro-spray, micro-sprinkler, bubbler and
27 similar types of systems. The term specifically includes propagation mist heads,
28 capillary mats and soaker hoses. The term also includes water use in mist houses
29 and similar establishments for plant propagation and production, but excludes any
30 form of turf irrigation other than in a sod production ("turf farming") setting.

31
32 *Odd-numbered address* means the house address, box number or rural route
33 ending in the numbers 1, 3, 5, 7, 9 or the letters N-Z, or at locations with no
34 address at the odd-numbered side of the street. Post office box numbers are not
35 included.

36
37 *Person* means any individual; religious organization; club; firm; society;
38 partnership; association; or public profit or non-profit corporation.

39
40 *Wasteful and unnecessary* use of water shall include but not be limited to:

41
42 (a) allowing water to be dispersed without any practical purpose to the
43 water user, regardless of the type of water used;

44
45 (b) allowing water to be dispersed in a grossly inefficient manner,
46 regardless of the time of the water use;

1
2 (c) allowing water to be dispersed to accomplish a purpose for which
3 water use is unnecessary or which can be readily accomplished through
4 alternative methods without water use.

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6 *Water* means water taken from any groundwater system (wells and springs), surface
7 water system (lakes, reservoirs or other impoundments), or public water supply.

8
9 **Section 3. Enforcement and Penalties.**

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11 **A. Enforcement of water use restrictions.**

12
13 (a) Pursuant to Florida Statutes § 166.0415(2), any person who violates the
14 provisions of this second amended emergency ordinance shall not receive a
15 warning and shall immediately receive a citation in writing. A violation of this
16 section is a civil infraction and shall be enforced under the City of Tampa
17 Supplemental Enforcement Procedures Ordinance (Chapter 23.5 of this Code).
18 Each and every violation of this section shall constitute a separate offense.

19
20 (b) Mandatory court appearances are required for all third and subsequent
21 violations of any City of Tampa Emergency Ordinance restricting water use;
22 except if a user has not violated the provisions of any effective ordinance
23 restricting water use for three (3) consecutive years from the date of the previous
24 violation, the next violation will be considered that user's first offense. The
25 citation shall clearly inform the user of the mandatory court appearance.
26 Defendants required to appear in court do not have the option of paying the
27 penalty instead of appearing in court.

28
29 (c) No individual, entity or organization shall require, cause or induce any
30 person to violate the water use restrictions herein. Any such action is a violation
31 of this Ordinance.

32
33 (d) Any person who uses a pond or other impoundment for irrigation of turf or
34 non turf landscaping and does so and augments the pond in any amount using
35 water from the City of Tampa's system is in violation of this Ordinance. Such a
36 violation will be considered to be a violation equal to that of a third offense
37 requiring a mandatory court appearance as provided in section 3.A (b) herein.

38
39 (e) In addition, the City may enforce this section by any action at law and in
40 equity, including actions for injunctive relief and, if the City prevails in any such
41 action, the City shall be entitled to its costs and reasonable attorneys' fees.

42
43 (f) The Director shall have all powers, duties and responsibilities to
44 administer and enforce all provisions of this section and shall be deemed to be an
45 officer for the purpose of enforcing the provisions of this section under authority
46 provided in Chapter 26, Section 5, of this Code. Any action to be taken by the

1 Director pursuant to the enforcement of any section herein shall be considered
2 cumulative and in addition to penalties and to other remedies provided elsewhere
3 by ordinance or law.
4

5
6 (g) Hillsborough County and the City of Temple Terrace shall have
7 enforcement powers in the City's service area outside the City's corporate limits
8 and within their respective jurisdictions unless and until these powers are
9 delegated by these governments to the City.
10

11 (h) If a violation of this ordinance occurs and the user cannot be readily
12 identified because the violation was caused by an in-ground irrigation system or a
13 hose-end sprinkler attached to a hose bib, the user whose name appears on the
14 utility account shall be considered the violator of this ordinance as the entity that
15 controls the use of water resources on that property; or if the in-ground system or
16 the hose-end sprinkler is part of or attached to a private well system, then the
17 property owner shall be considered the violator for the same reasons.
18

19 **Section 4. *Water Conservation Fund.*** To the extent permitted by law, all funds
20 collected from penalties paid for violations of this section shall be remitted to the City's
21 Director of Revenue and Finance and deposited in the Water Department's water
22 conservation fund. All monies in the water conservation fund shall be used only for water
23 conservation activities of the Water Department.
24

25 **Section 5.** All ordinances or parts of ordinances of the City of Tampa's Code of
26 Ordinances in conflict herewith, including but not limited to Chapter 13 and, Section 26-
27 97, are hereby suspended during the effective period of this Second Amended Emergency
28 Ordinance, and shall remain suspended during the effective period of this ordinance.
29

30 **Section 6.** If any part of this second amended emergency ordinance shall be
31 declared unconstitutional or invalid in a court of competent jurisdiction, the remaining
32 provisions shall remain in full force and effect.
33

34 **Section 7.** This Second Amended Emergency ordinance shall become effective
35 immediately upon becoming law and shall remain in effect until such time as the
36 Southwest Florida Water Management District revises, amends, repeals or revokes its
37 Water Shortage Orders identified herein. At such time that the Southwest Florida Water
38 Management District revises or amends its Water Shortage Orders, such revisions or
39 amendments are considered adopted and incorporated by reference to this Second
40 Amended Emergency Ordinance. Such revisions or amendments will be effective as to
41 the City's water customers on the same date identified in the Water Shortage Order
42 containing such revisions or amendments. If the District repeals, revokes or rescinds its
43 water shortage orders restricting the water use of the City's customers, then this
44 Second Amended Ordinance will be considered repealed as of the date of the District's
45 Order. The implementation of the restrictions on Water Uses enumerated herein shall be
46 effective and enforceable on June 1, 2009.

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PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA,
FLORIDA, ON MAY 28 2009

ATTEST:



CHAIRMAN, CITY COUNCIL



CITY CLERK ~~DEPUTY CLERK~~

APPROVED: **MAY 28 2009**



PAM IORIO, MAYOR

PREPARED BY:



JANICE M. McLEAN
ASSISTANT CITY ATTORNEY