BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2462-2021

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING CHAPTER 42, ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES ENTITLED "CONSERVATION" IN RESPECT OF STANDARDS FOR THE PROVISION OF REGULATING FLORIDA FRIENDLY LANDSCAPING AND THE USE OF RAIN SENSOR DEVICES ON AUTOMATIC SPRINKLER SYSTEMS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

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WHEREAS, the purpose of this Code of Ordinance amendment is to support the objectives of the City's Comprehensive Plan; and

WHEREAS, the City Commission of the City of Stuart has determined that the amendments set forth in this Ordinance promote the public health, safety, and general welfare of the residents of the City of Stuart by regulating the general landscaping and water conservation regulations by requiring Florida-Friendly landscape practices and irrigation systems; and

WHEREAS, pursuant to Sections 125.568, 166.048, 373.185 F.S. and 373.228, local governments should consider the adoption of Florida-Friendly landscape standards and further Section 373.62 F.S., regulates the installation of rain sensor devices on automatic lawn sprinkler systems; and

WHEREAS, Section 373.228 F.S. requires that ordinances or rules addressing landscaping or irrigation shall follow the standards in Landscape Irrigation and Florida-Friendly Design Standards, December 2006; and

WHEREAS, the City of Stuart recognizes the need for the protection of water as a natural resource through the application of Florida-Friendly Landscape practices; and

WHEREAS, a Florida-Friendly Landscape promotes the conservation of water by the use of site adapted plants and efficient watering methods which generally result in a long-term reduction of irrigation, fertilizer, and pesticide requirements, costs, energy, and maintenance; and

WHEREAS, Florida-Friendly Landscaping™ practices and designs may save significant amounts of water to preserve local water supplies such that cumulative benefits may reduce or postpone the need for community potable water supply expansion; and

WHEREAS, The Florida Legislature enacted Florida Statutes, Chapter 481, Part II and the Board of Landscape Architecture adopted Rule 61-G-10 Florida Administrative Code, which defines and regulates the practice of landscape architecture to protect the public health, safety, and welfare

WHEREAS, it is the further intent of the City to exercise its authority to adopt reasonable and nondiscriminatory rules and regulations to the fullest extent allowed by Federal and State law; and

WHEREAS, the City Commission duly scheduled, advertised, and held a public hearing on March 8, 2021, to consider this ordinance and provide for full public participation in the Code of Ordinance amendment process.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, that:

SECTION 1: The Stuart Code of Ordinances is hereby amended as follows:

DIVISION 4 - CONSERVATION

Section 42-123 – Definitions

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"Florida-Friendly Landscape" means a quality landscape that conserves water, protects the environment, is adaptable to local conditions, and is drought tolerant.The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance. [Ref. s373.185 (1) Fla. Stat.]

"Florida-Friendly Landscaping™ " means the service-marked educational program of the University of Florida Institute of Food and Agricultural Sciences Extension Service, created and delivered in partnership with the Florida Department of Environmental Protection to promote and train people in the principles of designing, installing, and maintaining a Florida-Friendly Landscape as defined in Florida law, especially as it concerns protection of natural resources and water conservation.

"Moisture Sensing Device" means a device to estimate or measure soil moisture in the root zone for the purpose of controlling an irrigation system based on the actual needs of the plant. By law (373.62 F.S.) any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture. See: Rain Sensor, Soil Moisture Sensor, ET controller.

"Licensed Contractor" shall mean any person licensed or registered under chapter 489, Florida Statutes, or authorized under any county or municipal license or tax certificate to design, install, repair, maintain, or adjust a landscape irrigation system within the jurisdiction of City of Stuart). 2. "Soil Moisture Sensor" means a soil-based device that assesses the available plant soil moisture in order to minimize the unnecessary use of water and optimize the effectiveness of an irrigation system.3. "Rain Sensor" means a low voltage electrical or mechanical component placed in the circuitry of an automatic landscape irrigation system that is designed to restrict operation of a sprinkler controller when precipitation has reached a pre-set quantity.4. "Evapotranspiration-based (ET) controller" means a controller that calculates soil moisture from known weather and related inputs. An ET-based controller:

a. Receives and monitors weather data or on-site environmental conditions including, but not limited to, solar radiation, wind speed, temperature, relative humidity, rainfall, and soil moisture; and

b. Calculates or determines the amount of moisture input to and moisture lost from the soil and plants; and

c. Automatically creates or adjusts the irrigation schedule to apply only the amount of water that is necessary to maintain adequate soil moisture.

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Section 42-128 – Year-round landscape irrigation conservation measures

The following requirements or exceptions shall apply to all users unless specified otherwise 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) 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 ten minutes per zone.

(3) 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 application unless the need for more than one 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 subsections (5) and (6) of this section, unless a professional licensed applicator has posted a temporary sign containing the date of application and the date of needed watering-in activity.

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

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

a. 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.

b. The 90-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.

c. Irrigation of new landscaping which has been in place for 30 days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and Sunday.

d. Irrigation of new landscaping which has been in place for 31 to 90 days may be accomplished on Monday, Wednesday, Thursday, and Saturday.

e. 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 subsection if the zone in question is for an area that contains at least 50 percent new landscaping. If a zone contains less than 50 percent 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 subsection. Targeted watering may be accomplished by low volume hand watering or any appropriate method which isolates and waters only the new landscaping.

(6) Irrigation of existing landscaping shall comply with the following provisions:

a. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multifamily units and homeowners' associations, and rights-of-way or other locations with no address shall have the opportunity to accomplish necessary landscape irrigation only on Thursday and Sunday.

b. Odd addresses as defined in F.A.C. 40E-24.101(12) shall have the opportunity to accomplish necessary landscape irrigation only on Wednesday and Saturday.

(7) In accordance with section 373.62(1), Florida Statutes, devices, such as soil moisture sensors, evapotranspiration-based controllers or rain sensors, shall be required on automatic irrigation systems to prevent irrigation during periods of sufficient moisture. Any person who purchases, installs or operates an automatic landscape irrigation system on their property must properly install, maintain, and operate, in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

a. In accordance with section 373.62(2), Florida Statutes, a licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and ensure that each is operating properly before completing other work on the system.

b. In accordance with section 373.62(3)(a) and (b), Florida Statutes, a licensed contractor performing work on an automatic landscape irrigation system shall report systems that are not in compliance with section 373.62, Florida Statutes, to the Public Works Department. Failure of a contractor to report non-compliant systems within five business days is punishable by fines as specified in the Penalties section of this ordinance, Section 42-130. A system that is repaired by the contractor is brought into compliance and need not be reported.

c. In accordance with section 373.62(3)(b), Florida Statutes, regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of section 373.62, Florida Statutes, or this ordinance if such repairs are made within thirty days from the time non-compliance is noted.

(Code 1995, § 82-91; Ord. No. 2050, § 1, 11-14-2005; Ord. No. 2202-10, § 1(82-86), 5-10-2010)

Sec. 42-130. - Penalties.

(a) Violation of any provision of this division shall be subject to the following penalties:

(1) First violation, $25.00;

(2) Second violation, $50.00;

(3) Third and subsequent violations, $100.00 for each violation.

(b) Each day in violation of this division shall constitute a separate offense. Law enforcement and code enforcement officers and others delegated by the city manager shall provide violators with no more than one written warning. In addition to the civil penalties provided herein, the city may seek any other appropriate legal action, including but not limited to injunctive relief to enforce the provisions of this division.

(c) Licensing of Contractors Performing Work on Irrigation Systems

All contractors performing work on irrigation systems within the City of Stuart, shall be licensed or registered under chapter 489, Florida Statutes, or hold a county or municipally-issued license or business tax certificate that permits work on irrigation systems. Failure of a licensed contractor to report to City of Stuart Development Department automatic landscape irrigation systems that are not in compliance with this ordinance and section 373.62, Florida Statutes, which requires properly operating devices to inhibit or interrupt the operation of the irrigation system during periods of sufficient moisture, shall be subject to a fine of not less than $50.00 for a first offense, $100.00 for a second offense, and $250.00 for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by City of Stuart for the administration and enforcement of section 373.62, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation activities

(Ord. No. 2202-10, § 1(82-88), 5-10-2010)

Section 42-133 Florida Friendly Landscaping

A. All development for which landscaping is required by this Code shall comply with the Florida Friendly Landscaping requirements set forth below prior to issuance of a certificate of occupancy. For a development for which a landscape plan is required prior to issuance of a building permit, the selected design options and the accompanying points necessary to meet the following Florida Friendly Landscaping requirements shall be clearly tabulated on the landscape plan.

B. To obtain a development permit, an applicant shall attain a minimum of 50 points from the following table of design options. As used in the table, "list" means the list of drought tolerant species set forth in the most current South Florida Water Management District's Waterwise, South Florida Landscapes, Landscaping to Promote Water Conservation Using the Principles of Florida Friendly Landscaping and best management practices contained in the Landscaping Irrigation and Florida-

Friendly Design Standards adopted by the Department of Environmental Protection. A copy of the guide is available for public inspection and copying at the office of the city development department.

C. Design options:

Option		Points
1	Utilization of moisture sensing controller other than rain switch	5
2	Plan submitted with low, moderate and high water usage zones indicated on the landscape plan	5
3	Grass:	
	25%—50% of the grass areas are made up of drought tolerant grass species from the list	5
	51% or more of the grass areas are made up of drought tolerant grass species from the list	10
4	Shrubs:	
	25%—50% of the required shrubs are made up of drought tolerant species from the list	5
	51% or more of the required shrubs are made up of drought tolerant species from the list	10
5	Trees:	
	25%—50% of the required trees are made up of drought tolerant species from the list	5
	51% or more of the required trees are made up of drought tolerant species from the list	10
6	Extra shade trees in vehicular use areas:	
	25% more than the required shade trees planted in the vehicular use area	5
	50% more than the required shade trees planted in the vehicular use area	10
7	Sod area less than 50% of landscape area	10
8	Utilization of compacted mulched (use of cypress mulch not recommended in order to protect natural cypress wetlands) planting beds at least three inches deep in all planted areas except ground cover	10

This Code supersedes Section 6.04.05 of the City's Land Development Regulations.

(Ord. No. 1284-93, § 6.06.03.E., 4-26-93; Ord. No. 1417-95, 7-1-95)

SECTION 2: All ordinances or parts of ordinances herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: The provision of Sections 1 of this ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption

Passed on first reading the ____ day of _____, 2021.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
EULA R. CLARKE, MAYOR				
MERRITT MATHESON, VICE MAYOR				
BECKY BRUNER, COMMISSIONER				
TROY MCDONALD, COMMISSIONER				
MIKE MEIER, COMMISSIONER				

ADOPTED on second and final reading this _____day of _____, 2021.

ATTEST:

_____ _____

MARY R. KINDEL EULA R. CLARKE

CITY CLERK MAYOR

APPROVED AS TO FORM

AND CORRECTNESS:

_____

MICHAEL J. MORTELL, ESQ.

CITY ATTORNEY