



ORDINANCE NO. 429

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, AMENDING CHAPTER 22 ENVIRONMENT, ARTICLE IV WATER CONSERVATION, DIVISION 1 GENERALLY TO ADDRESS TOWN DECLARATIONS OF WATER RESTRICTIONS; PROVIDING FOR THE REPEAL OF CHAPTER 22 ENVIRONMENT, ARTICLE IV WATER CONSERVATION, DIVISION 2 WATER SHORTAGE PLAN; AND ADOPTING AN UPDATED WATER SHORTAGE PLAN; PROVIDING FOR THE INTENT AND PURPOSE, DEFINITIONS, AND APPLICABILITY; PROVIDING FOR THE DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE EMERGENCY AND VARIANCES; PROVIDING FOR ENFORCEMENT AND PENALTIES; 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 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, and municipal governmental officials, law enforcement officials, and police officers 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, it is the desire of the Town Commission to adopt such an ordinance in accordance with Rule 40E-21.421, F.A.C.; 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 2 Water Shortage Plan is hereby repealed in full.

Section 3. Chapter 22 Environment, Article IV Water Conservation, Division 1 Generally, Section 22-91 is hereby adopted to read as follows:

Sec. 22-91. – Declaration of system-based water shortage.

In consultation with Martin County, the town commission, or if an emergency, the mayor or town manager, may impose water restrictions due to a mechanical failure or other operational problem with the Martin County water system serving the town. Such restrictions will not affect the use of private water supplies or irrigation wells within the town.

Section 4. Chapter 22 Environment, Article IV Water Conservation, Division 2 Water Shortage Plan is hereby adopted to read as follows:

DIVISION 2. – WATER SHORTAGE PLAN

Sec. 22-111. – Intent and purpose; applicability.

- (a) Intent and purpose. It is the intent and purpose of this division to protect the water resources of the town from the harmful effects of overutilization during periods of water shortage by assisting the District, as defined below, in the implementation of its water shortage plan, or issued water shortage orders, under Chapter 40E-21, F.A.C.
- (b) Applicability. The provisions of this division shall apply to each user using the water resource within the boundaries of the town when subject to the water shortage condition or water shortage emergency, 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.

Sec. 22-112.- 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.

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

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.

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.

Water resource means any and all water on or beneath the surface of the ground, including natural or artificial water courses, 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 temporary reduction in total use within a particular area to protect water resources from serious harm.

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.

Sec. 22-113. – Declaration of Water Shortage or Water Shortage Emergency.

- (a) 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 town by the District's governing board or executive director, shall invoke the provisions of this division.
- (b) A water shortage, or water shortage emergency order shall supersede mandatory year-round water irrigation measures until the more restrictive measure is rescinded by the District.
- (c) Upon the District issuing a water shortage order, all water use restrictions or other measures adopted by the District applicable to the town, or any portion thereof, shall be subject to enforcement action pursuant to section 58-50 of this Code. Any violation of Chapter 40E-21, F.A.C., or any order issued pursuant thereto, shall be

a violation of this division.

Sec. 22-114. – Variances.

The town recognizes all variances issued by the District pursuant to Rule 40E-21.275, F.A.C.

Sec. 22-115. – Enforcement; penalties.

(a) Enforcement. The town authorizes law enforcement officials having jurisdiction in the area governed by this division 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.

(b) Penalties.

(1) 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.

(2) 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 Fender, and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	<input checked="" type="checkbox"/>	___
JAMES W. CAMPO, VICE MAYOR	<input checked="" type="checkbox"/>	___
FRANK FENDER, COMMISSIONER	<input checked="" type="checkbox"/>	___
DAVE KURZMAN, COMMISSIONER	<input checked="" type="checkbox"/>	___
JOHN TOMPECK, COMMISSIONER	<input checked="" type="checkbox"/>	___

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

Commissioner Kurzman offered the Ordinance for its second 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	<input checked="" type="checkbox"/>	___
JAMES W. CAMPO, VICE MAYOR	<input checked="" type="checkbox"/>	___
FRANK FENDER, COMMISSIONER	<input checked="" type="checkbox"/>	___
DAVE KURZMAN, COMMISSIONER	<input checked="" type="checkbox"/>	___
JOHN TOMPECK, COMMISSIONER	<input checked="" type="checkbox"/>	___

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

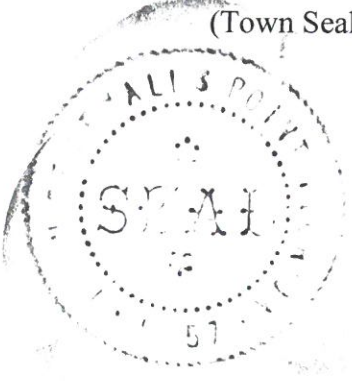
Kaija Mayfield
Kaija Mayfield, Mayor

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