

VILLAGE HALL
500 NE 87TH ST
EL PORTAL, FL 33138
CHRISTIA ALOU
VILLAGE MANAGER



MAYOR OMARR C. NICKERSON
VICE MAYOR ANDERS URBOM
COUNCILPERSON LUIS PIRELA
COUNCILPERSON DR. ANNA WARD
COUNCILPERSON DARIAN MARTIN

Special Council Meeting
Tuesday, June 8, 2021
Agenda
7:00 PM

Statement of Decorum

Any person making a racial or slanderous remark or who becomes boisterous while addressing the Village Council, Staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. No signs or placards shall be allowed in the Village Hall. Person exiting the Village Hall shall do so quietly.

“Pursuant to Florida Statutes, Chapter 286.0105: If a person decided to appeal any decision made by the Board, Agency or Committee with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.”

- A. **CALL TO ORDER**Omarr C. Nickerson, Presiding
- B. **SILENT MEDITATION & PLEDGE**Salute American Flag in Unison
- C. **ROLL CALL** Yenise Jacobi, Village Clerk
- D. **APPROVAL OF AGENDA**
- E. **GOOD AND WELFARE**
(Note: This section of the agenda is reserved in the spirit of a representative democracy “of, by, and for the people” and is specifically provided as a mechanism for the input and solutions on matters of concern of Villagers. We request that comments be limited to **3 MINUTES PER PERSON**, and that speakers and the audience maintain proper decorum at-large. The speaker should keep to only issues on the agenda

F. RESOLUTIONS/ORDINANCES:

F1. ORDINANCE AMENDMENT FOR DEVELOPMENT AGREEMENT

AN ORDINANCE OF THE VILLAGE OF EL PORTAL AMENDING ORDINANCES AMENDING ORDINANCE 2019-08, AND THE DEVELOPMENT AGREEMENT APPROVED THEREIN; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

F2. ORDINANCE WATER CONSERVATION ORDINANCE FOR LANDSCAPE IRRIGATION

AN ORDINANCE OF THE VILLAGE OF EL PORTAL, FLORIDA; 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 DEFINITIONS; PROVIDING FOR THE APPLICABILITY OF THE ORDINANCE; PROVIDING THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING FOR A REQUIREMENT TO OPERATE TECHNOLOGY THAT INHIBITS OR INTERRUPTS AN IRRIGATION SYSTEM DURING PERIODS OF SUFFICIENT MOISTURE; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR CODIFICATION OF THE ORDINANCE; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

F3. ORDINANCE DESIGN REVIEW BOARD

AN ORDINANCE OF THE VILLAGE OF EL PORTAL CREATING A DESIGN REVIEW BOARD; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Special Council Meeting

June 8, 2021

Meeting Agenda

G. GOOD AND WELFARE

(Note: This section of the agenda is reserved in the spirit of a representative democracy “of, by, and for the people” and is specifically provided as a mechanism for the input and solutions on matters of concern of Villagers. We request that comments be limited to **3 MINUTES PER PERSON**, and that speakers and the audience maintain proper decorum at-large. The speaker should keep to only issues on the agenda.)

H. ADJOURNMENT:

Mayor & Councilpersons

In accordance with the American With Disabilities Act of 1990, all persons with disabilities and who need special accommodations to participate in this meeting due to that disability should contact the Village Clerk’s Office at (305) 795-7880 no later than two (2) business days prior to such proceeding.

Special Council Meeting
June 8, 2021
Meeting Agenda

VILLAGE OF EL PORTAL, FLORIDA

ORDINANCE NO. 2021-05

AN ORDINANCE OF THE VILLAGE OF EL PORTAL CREATING A DESIGN REVIEW BOARD; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal desires to create a Design Review Board.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA:

SECTION 1. The foregoing "**WHEREAS**" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The following ordinance creating a Design Review Board is as follows:

Section 1. MEMBERS

The Board membership shall consist of five (5) members whose residence, term of office, place of business, and appointment are consistent with the requirements as listed in the Village Code. All members shall serve without compensation and shall hold no other Village of El Portal municipal office. The Planning Director, or designee, and one person appointed by the Village Manager, or their designees, are ex-officio members without the right to vote.

Section 2. OFFICERS

At the regular meeting in January of each year or as soon after as is practical, the Board shall elect a Chairperson and Vice-Chairperson.

Section 3. CHAIRPERSON: POWERS AND DUTIES

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, the Chairperson shall decide all points of order unless overruled by a majority of the Board in session at the time. The Chairperson shall appoint such committees as may be found necessary or desirable. The Chairperson or Vice-Chairperson in his/her absence shall preside over meetings and shall administer oaths.

Section 4. VICE-CHAIRPERSON

The Vice-Chairperson shall act as Chairperson in case the Chairperson is absent, disabled, or otherwise unable to perform his duties.

Section 5. CLERK

The Planning Director or his designated representative shall act as Clerk or Secretary for the Board. The Clerk shall prepare all of the clerical work of the Board including: all correspondence of the Board, sending all notices required by law and rules of order of the Board, keep dockets and minutes of the Boards proceedings, compile all required records, maintain necessary files and indexes, and prepare and file an order in each case. The clerk shall keep the minutes of the Board's proceedings showing vote of each member upon each question, or if absent, or failing to vote, indicating such fact.

Section 6. QUORUM AND VOTING REUIREMENTS

Four (4) members must be present at any meeting of the Board to constitute a quorum. If a quorum is not present, all applications and matters will be continued until the next meeting or as otherwise provided by the present members of the Board. An affirmative vote of four (4) members shall be required to approve an application for Design Review and to take any action with respect to a Design Review application, including, without limitation, continuance, deferral, extension and modification. Except as provided in the foregoing sentence, the affirmative vote of a majority of the quorum shall be required for Board action.

Section 7. CONFLICT OF INTEREST

Members of the Board shall abide by the applicable provisions of Florida Statutes, Ch. 112 (1995), Miami Dade County Code, and the Village of EL Portal code.

Section 8. REGULAR MEETINGS

Regular meetings of the Board are open to the public and shall be held from time to time in City Hall. Change of meeting date/time may be at the call of the Chairperson and as the Board may determine with a minimum of fifteen (15) days notice.

Section 9. SPECIAL MEETINGS

Special meetings may be called by the Chairperson, or at the written request of three (3) members. Written notice of such special meeting as to time, place and subject matter shall be given by mail or telecopier to each member of the Board, Village Manager at least 48 hours before the time set. Notice of a special meeting shall be transmitted in the most expeditious manner available under the circumstances to such news media as is usually notified of Board meetings. Except that the announcement of a special session at any meeting at which a quorum is present shall be sufficient notice of such meeting.

Section 10. WITHDRAWAL AND CONTINUANCES

An application may be withdrawn without prejudice by written request to the Clerk at any time prior to the giving of any required notice. Except in the instance of an application which would relieve an existing violation, if notice has not been mailed, the applicant may withdraw an application by written request to the Clerk. In the instance where there is an existing violation or notice has been mailed, any request to withdraw an application granted by the Board, in its discretion, shall be with prejudice (i.e. the application cannot be refiled within six months), except in the event the Board permits the withdrawal without prejudice at the time the request is considered; provided, however, no application may be withdrawn after final action has been taken.

For projects placed and noticed on a regular agenda and not heard by the Board because of a lack of a quorum, or cancellation of a meeting, such projects shall be automatically continued to the next regularly scheduled meeting. The noticing requirements for the following meeting shall be consistent with the normal notice requirements for a regularly continued item (newspaper notice and not a mailed notice).

In the instance where there is an existing violation or notice has been mailed, a request for continuance must be submitted in writing by the applicant prior to the meeting, and the applicant or his representative shall be present to hear any protest and to present his case if the Board decides against a continuance and to hear the case.

Deferrals or continuances for an application shall not exceed one (1) year cumulatively for all such continuances or deferrals made by the Board, or the application shall be deemed null and void.

Section 11. AMENDMENT

These rules may be amended by an affirmative vote of not less than four (4) members of the Board.

Section 12. RULES OF ORDER

Robert's Rules of Order, as amended, shall govern the Design Review Board in all cases to which they are applicable and are not inconsistent with the By-laws or special rules of order of the Board.

ARTICLE II

APPLICATIONS TO THE BOARD

Section 1. APPLICATIONS

Every application for action by the Board shall be made on the appropriate official form. These forms shall be furnished by the Clerk upon request. The Planning Department shall be responsible for determining the requirements for a complete application, which shall include, among other requirements, and exhibits as listed in the application instructions, as amended by the Planning Director, as well as the completion and submission of a financial affidavit (in approved form) attesting to the officers and the stockholders, partners, beneficiaries or other interested parties, as applicable, so that the identity of the individuals having the ultimate ownership interest in the entity is disclosed. Any communication, purporting to be an application, shall be treated as mere notice of intention to complete and submit an application, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed before the deadline date, as determined by the Planning Department. If the application, required exhibits, and information is not complete and correct before the deadline date, consideration of the application or request shall not be placed on the agenda for that meeting and shall not be placed on an agenda until the application is complete and correct.

Section 2. DEADLINE FOR APPLICATIONS

All applications and requests (including supplementary materials) must be completed and on file with the Clerk of this Board no later than 12:00 p.m. of the deadline date. The Planning Director shall determine the final date for acceptance of applications for each meeting.

Section 3. BOARD TO HEAR ONLY BONAFIDE CASES

The Board may hear only those applications for design review brought by the legal title owner of record of the subject property, by a prospective purchaser holding an option to purchase the property in question, pursuant to a binding contract entered into with the legal title owner of record, or a

tenant pursuant to a written lease agreement provided that the fee simple owner authorizes and joins in the application.

ARTICLE III
THE HEARING/MEETING

Section 1. NOTICE

- A. Not less than fifteen (15) days prior to the public hearing date on an application for Design Review approval, a description of the request and the time and place of such hearing shall be advertised in a paper of general paid circulation in the City; notice shall also be given by mail to owners of record of land lying within 375 feet of the subject property.
- B. The Board shall request the appearance at the meeting of such representatives of any municipal department, any municipal board, agency, trust, commission, building inspector, zoning inspector, or other officer having supervision of the construction of buildings or the power of enforcing municipal building and zoning laws as are deemed necessary or helpful in making its decisions upon the application.

Section 2. ORDER OF BUSINESS OF THE HEARING

The Board shall conduct its public hearing in accordance with the quasi judicial procedures otherwise utilized by the Village of El Portal.

The order of business at all regular meetings of the Board shall be as follows, except to the extent modified by the Chairperson at his/her discretion:

- I. Attendance
- II. Approval of Minutes
- III. Request for Deferrals/Continuances
- IV. Old/New Business
- V. Requests for Extensions of Time
- VI. Applications for Design Review Approval
 - A. Returning applicants
 - B. Revisions to previously approved plans
 - C. New applicants
- VII. Future Meeting Date Reminder

VIII. Adjournment.

Section 3. TESTIMONY AND DOCUMENTS

- A. At the hearing of an application or request before the Board, the applicant shall appear in his/her own behalf or be represented by counsel or agent. Presentations by applicants shall not exceed ten (10) minutes, unless otherwise authorized by the Chairperson of the Board, in his/her discretion.
- B. Any person interested in any application or request before the Board is entitled to be heard when the application or request is called and may appear in person, or be represented by an attorney or agent.
- C. Any person testifying shall clearly identify himself, his interest in the proceedings, any special credentials that he may have pertaining to the subject matter of his testimony. All testimony shall be limited to the issues surrounding the pertinent agenda items only and testimony from those parties not affiliated with a particular applicant shall be limited to two (2) minutes or as determined by the Board Chairperson.
- D. The Board may listen to any testimony and inspect any data, or any sites as it may deem necessary to enable it to render a fair and informed decision.
- E. Any person before the rostrum shall abide by the order and direction of the Chairperson. Discourtesy or disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chairperson deems proper.
- F. Any documents provided shall be clearly identified by name, or some other designation, and the persons so providing them shall also be identified.
- G. A record shall be made of all the proceedings by either a tape recorder or some other appropriate means.
- H. Written protests or petitions shall be filed with the Clerk and submitted to the Board at any time before the hearing.
- I. The Chairperson shall have the discretion to establish time limitations for all presentations before the Board.

Section 4. DECISIONS OF THE BOARD

After making a decision on the application, the Design Review Board shall issue a written decision stating its finding of facts, its conclusions, and the reasons therefore.

ARTICLE IV
DISPOSITION BY THE BOARD

Section 1. PETITIONS FOR REHEARING

Cases heard and decided by this Board will not be again set down for hearing by this Board within six (6) months of the date of such decision unless the Board makes its decision without prejudice to refile within such time limitation.

The Design Review Board may hear a Petition for Rehearing by an applicant, by the City Manager on behalf of the Administration, or by an affected person, as more particularly provided in the City Code. The Board may rehear a case, take additional testimony, reaffirm their previous decision or issue a new decision. The petition must demonstrate to the Board that (1) there is newly discovered evidence which will probably change the result if a rehearing is granted, or (2) the Board has overlooked or failed to consider something which renders the decision issued erroneous. A Petition for Rehearing must be filed within fifteen (15) days of the date of the Board's written order issued with respect to the application.

Section 2. APPEAL OF DESIGN REVIEW DECISIONS

Appeals of Design Review Board decisions shall be made in compliance with Article VI of the Land Development Regulations of the City Code, and any other applicable provisions, of the City Code.

Section 3. APPEAL PERIOD AFTER FILING OF BOARD DECISION

A period of twenty (20) days after the filing of the Board's decision must elapse before permits can be issued by the Building Official upon presentation of a copy of the final decision of this Board. Where appeals are taken to the City Commission, or a court of competent jurisdiction, no permits will be issued until the final resolution of all administrative and/or court proceedings, including the expiration of any applicable appeal periods.

SECTION 3. All ordinances or parts of ordinances in conflict herewith or inconsistent herewith, are hereby repealed, but only insofar as such ordinances may be inconsistent or in conflict with this Ordinance.

SECTION 4. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall

not be affected.

SECTION 5. It is the intention of the Village Council that the provisions of this Ordinance shall become and be made a part of and known as the "Code of Ordinances" of the Village of El Portal, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention, and same shall be codified whenever the Code is re-codified.

SECTION 6. If the Official Code of Ordinances of the Village of El Portal Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 7. This ordinance shall become effective immediately upon approval on second reading.

PASSED AND ADOPTED by the Village Council of the Village of El Portal Florida, this ____ day of _____, 2021.

Omarr C. Nickerson, Mayor
Village Of El Portal

ATTEST: _____
Yenise Jacobi CMC, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney, Greenspoon Marder, LLP

By: _____
Joseph S. Geller, Esq.

Vote:

Mayor Nickerson: ___(Yes) ___(No)
Vice Mayor Urbom: ___(Yes) ___(No)
Councilperson Lightfoot-Ward: ___(Yes) ___(No)

Councilperson Martin:
Councilperson Pirela:

____(Yes) ____ (No)
____(Yes) ____ (No)

I, Yenise Jacobi, CMC, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Ordinance No.: 2021-____ adopted on this ____ day of ____, 2021, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this ____ day of _____, 2021.

Yenise Jacobi
Village Clerk

VILLAGE OF EL PORTAL, FLORIDA

ORDINANCE NO. 2021-03

AMENDMENT FOR DEVELOPMENT AGREEMENT

AN ORDINANCE OF THE VILLAGE OF EL PORTAL AMENDING ORDINANCES AMENDING ORDINANCE 2019-08, AND THE DEVELOPMENT AGREEMENT APPROVED THEREIN; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal adopted Ordinance 2021-03, on May 25, 2021, amending Ordinances 2019-06 and 2019-07; and

WHEREAS, Section 4 of Ordinance 2021-03 states “Any existing or future Development Agreement between the Village and any Third Party Developer, including the one authorized by Ordinance 2019-08, may be amended to reflect the Amendments to the Village Code authorized in this Ordinance, and in keeping with the spirit of those Amendments. The appropriate Village officials are hereby authorized to execute any and all necessary and desirable documents to effectuate the intent of said Amendments.”

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA:

SECTION 1. The foregoing "**WHEREAS**" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Paragraph D of the Development Agreement previously entered into between the Village of El Portal and BH 495 NE 83rd St., LLC is hereby amended to read as follows:

“In exchange for the proposed bonus height, the Developer intends to make a contribution to the Village's Public Benefits program, including, but not limited to, the acquisition of land for parks and open space, reinvestment in capital improvements to existing parks and open space, tree planting, and capital expenditures for landscaping within the Village boundaries, and for any other lawful purposes.”

SECTION 3. Paragraph H of The Development Agreement previously entered into between the Village of El Portal and BH 495 NE 83rd St., LLC is hereby amended to read as follows:

H “The contribution of \$ 1,100,000.00 to the Village's Public Benefits program will allow for the acquisition of land for parks and open space, reinvestment in capital improvements to existing parks and open space, tree planting, and capital expenditures for landscaping within the Village boundaries, and for any other lawful purposes.”

1. \$366,666.67 upon approval by the Village Council and execution of this agreement;
2. \$366,666.67 contemporaneous with the approval of the master building permit for the structure; and
3. \$366,666.66 at the issuance of a Temporary Certificate of Occupancy (TCO), for the structure.

SECTION 4. All ordinances or parts of ordinances in conflict herewith or inconsistent herewith, are hereby repealed, but only insofar as such ordinances may be inconsistent or in conflict with this Ordinance.

SECTION 5. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 6. It is the intention of the Village Council that the provisions of this Ordinance shall become and be made a part of and known as the "Code of Ordinances" of the Village of El Portal, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention, and same shall be codified whenever the Code is re-codified.

SECTION 7. If the Official Code of Ordinances of the Village of El Portal Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 8. This ordinance shall become effective immediately upon approval on second reading.

PASSED AND ADOPTED by the Village Council of the Village of El Portal Florida, this ____ day of _____, 2021.

Omarr C. Nickerson, Mayor
Village Of El Portal

ATTEST: _____

Yenise Jacobi CMC, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney, Greenspoon Marder, LLP

By: _____

Joseph S. Geller, Esq.

Vote:

Mayor Nickerson: _____(Yes) _____ (No)

Vice Mayor Urbom: _____(Yes) _____ (No)

Councilperson Lightfoot-Ward: _____(Yes) _____ (No)

Councilperson Martin: _____(Yes) _____(No)

Councilperson Pirela: _____(Yes) _____ (No)

I, Yenise Jacobi, CMC, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Ordinance No.: 2021-____ adopted on this ____ day of ____, 2021, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this _____ day of _____, 2021.

Yenise Jacobi
Village Clerk

VILLAGE OF EL PORTAL, FLORIDA

ORDINANCE NO. 2021-04

WATER CONSERVATION ORDINANCE FOR LANDSCAPE IRRIGATION

AN ORDINANCE OF THE VILLAGE OF EL PORTAL, FLORIDA; 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 DEFINITIONS; PROVIDING FOR THE APPLICABILITY OF THE ORDINANCE; PROVIDING THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING FOR A REQUIREMENT TO OPERATE TECHNOLOGY THAT INHIBITS OR INTERRUPTS AN IRRIGATION SYSTEM DURING PERIODS OF SUFFICIENT MOISTURE; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR CODIFICATION OF THE ORDINANCE; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the South Florida Water Management District (District) has the responsibility and exclusive authority under Chapter 373, Florida Statutes (F.S.), 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 District strongly encourages local governments to adopt an ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

WHEREAS, the Village Council of the Village of El Portal desires to adopt the encouraged ordinance, including variance and enforcement procedures; and

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

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA:

WATER CONSERVATION ORDINANCE FOR LANDSCAPE IRRIGATION

Section 1. RECITALS.

The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. INTENT AND PURPOSE

It is the intent and purpose of this Ordinance to implement procedures that promote water conservation through the efficient use of landscape irrigation.

Section 3. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning listed below. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- (1) “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."

- (2) "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.
- (3) "Consumptive Use Permit" (CUP) means a permit issued pursuant to Chapter 40E-2, F.A.C., authorizing the consumptive use of water.
- (4) "District" means the South Florida Water Management District, a government entity created under Chapter 373, F.S.
- (5) "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.
- (6) "Existing landscaping" means any landscaping which has been planted and in the ground for more than ninety (90) days.
- (7) "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, as defined in Section 2(2).
- (8) "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.
- (9) "Law Enforcement Officials" *The Village should include the definition of a law enforcement, code enforcement, or any local government employee who may be responsible for enforcing this Ordinance.*
- (10) "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.
- (11) "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.

- (12) “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.
- (13) “New landscaping” means any landscaping which has been planted in the ground for ninety (90) days or less.
- (14) “Odd Numbered Address” means an address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.
- (15) “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.
- (16) “User” means any person, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or other legal entity whether natural or artificial, the United States of America, and the State and all political subdivisions, regions, districts, municipalities, and public agencies thereof, 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.
- (17) “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.
- (18) “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.
- (19) “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.
- (20) “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.

Section 4. APPLICABILITY

The provisions of this Ordinance shall apply to each user, as defined in Section 2(16), providing landscape irrigation from all water resources within the boundaries of the Village of El Portal with the following exceptions:

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

Section 5. YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES

The Village of El Portal adopts the rules of the South Florida Water Management 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 Ordinance 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 Ordinance which affect each particular water use.
- (3) In addition to the specific conservation measures, all wasteful and unnecessary water use, as defined in Section 2(17), is prohibited.
- (4) The following requirements shall apply to all users, unless specified in Section 3 or Section 5.
 - (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, as defined in Section 2(5), 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, as defined in Section 2(13), 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, as defined in Section 2(10), or any appropriate method which isolates and waters only the new landscaping.
- (5) Any water shortage, as defined in Section 2(19), 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 Ordinance, shall supersede this Ordinance for the duration of the applicable water shortage declaration.

Section 6. EXCEPTIONS TO THE LANDSCAPE IRRIGATION 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 4(4)(a) and (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, as defined in Section 2(11), micro-irrigation, as defined in Section 2(12), 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 Section.

Section 7. 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, F.S.

Section 8. VARIANCES

- (1) A variance from the specific day or days identified in Subsection 4(4)(b) may be granted by the Village if strict application of the restrictions would lead to 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.
- (2) The Village recognizes all irrigation variances or waivers issued by the District under Rule 40E-24.501, F.A.C.

Section 9. DECLARATION OF WATER SHORTAGE OR WATER SHORTAGE EMERGENCY

Declaration of a water shortage condition and/or water shortage emergency, as defined in Section 2(20), within all or parts of the Village of El Portal by the District's Governing Board or Executive Director shall supersede this Ordinance for the duration of the applicable water shortage declaration. A water shortage usually occurs due to drought.

Section 10. ENFORCEMENT

- (1) In the absence of a declaration of water shortage or water shortage emergency within all or any part of the Village by the District's Manager, the listed landscape irrigation restrictions shall be subject to enforcement action. Any violation of the provisions of Section 4 and 5 shall be a violation of this Section.
- (2) The Village of El Portal authorizes law enforcement officials, as defined in Section 2(9), having jurisdiction in the area governed by this Ordinance, to enforce the provisions of this Ordinance. In addition, the Village of El Portal Manager may delegate this Ordinance's enforcement responsibility to agencies and departments within the Village of El Portal's government.

Section 11. PENALTIES

Violations of any provision of this Ordinance may be punished pursuant to Section 162.21, F.S., as amended, as a civil infraction as set forth in the code enforcement citation ordinance of Village of El Portal , as may be amended from time to time.

- (1) Each day in violation of this Ordinance shall constitute a separate offense. Law enforcement officials and others as delegated may provide violators with no more than one (1) written warning. In addition to the civil penalties provided, the Village of El Portal may take any other appropriate legal action, including, but not limited to, injunctive action to enforce the provisions of this article.

Section 12. CODIFICATION

It is the intention of the Village Council that the provisions of this Ordinance shall become and be made a part of and known as the "Code of Ordinances" of the Village of El Portal, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention, and same shall be codified whenever the Code is re-codified.

Section 13. ORDINANCES REPEALED

If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 14. SEVERABILITY

If any Section, Subsection, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 15. EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Village Council of the Village of El Portal Florida, this ____ day of _____, 2021.

Omarr C. Nickerson, Mayor
Village Of El Portal

ATTEST: _____
Yenise Jacobi CMC, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney, Greenspoon Marder, LLP

By: _____
Joseph S. Geller, Esq.

Vote:
Mayor Nickerson: ___(Yes) ___(No)
Vice Mayor Urbom: ___(Yes) ___(No)
Councilperson Lightfoot-Ward: ___(Yes) ___(No)
Councilperson Martin: ___(Yes) ___(No)
Councilperson Pirela: ___(Yes) ___(No)

I, Yenise Jacobi, CMC, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true

and correct copy of Ordinance No.: 2021-
____ adopted on this ____ day of ____, 2021, as
shown in the Official Records of the Village
of El Portal, Miami-Dade County, Florida.
Given under my hand and seal, this _____
day of _____, 2021.

Yenise Jacobi
Village Clerk