

RESOLUTION NUMBER 2021-09

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA, DIRECTING THE CITY TO CONTINUE TAKING A PROACTIVE AND COMPREHENSIVE APPROACH TO FINDING SOLUTIONS TO IMPROVE THE AVAILABILITY AND RELIABILITY OF THE CITY'S POTABLE AND RECLAIMED WATER SERVICES FOR CURRENT AND FUTURE NEEDS; INITIATING AN INVESTIGATION PURSUANT TO SECTION 4.11 OF THE CITY CHARTER GENERALLY RELATED TO THE CITY'S EXISTING CONSUMPTIVE USE PERMITS ISSUED BY ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND THE MULTI-PHASE EXPANSION OF THE CITY'S RECLAIMED AUGMENTATION PLANT AT LAKE JESUP AND RELATED DISTRIBUTION SYSTEM WHICH WERE IDENTIFIED AND PROPOSED IN THE WINTER SPRINGS RECLAIMED WATER AUGMENTATION STUDY DATED SEPTEMBER 20, 2005; PROVIDING A TEMPORARY ADVISORY TO THE PUBLIC AND PROSPECTIVE DEVELOPERS RELATED TO COMPLIANCE WITH WATER CONCURRENCY REQUIREMENTS AND DEMONSTRATING THE AVAILABILITY OF ADEQUATE CITY WATER SUPPLIES AND POTABLE WATER FACILITIES FOR PROPOSED NEW DEVELOPMENT; PROVIDING SEVERABILITY, REPEAL OF PRIOR INCONSISTENT RESOLUTIONS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Springs owns and operates a potable water and reclaimed water utility within the jurisdictional limits of the City of Winter Springs; and

WHEREAS, maintaining adequate and reliable potable and reclaimed water services is vital to the Winter Springs community and an utmost priority for the City Commission; and

WHEREAS, in furtherance of operating these utilities for the Winter Springs community, the City of Winter Springs has obtained two consumptive use permits ("CUP") issued by the St. Johns River Water Management District; and

WHEREAS, CUP # 8238 was issued on January 25, 2010, related to ground water for potable use and reclaimed/surface water for irrigation use and will expire on January 25, 2029; and

WHEREAS, CUP #105763 was issued on April 10, 2007, related to surface water from Lake Jesup and artesian well water for irrigation use and will expire on April 10, 2027; and

WHEREAS, pursuant to CUP # 8238, the maximum annual groundwater withdrawals from the City's ground wells have been required to annually decrease to a lower stabilized maximum annual ground water withdrawal limit starting in 2013 (1,715.50 million gallons) and ending in 2023 (1,511.10 million gallons), while the maximum annual quantities of

reclaimed/surface water for landscape irrigation was required to correspondingly increase to make up for the reduction in allocation of ground water; and

WHEREAS, in support of the CUPs, the City constructed the Lake Jesup Surface Water Plant for purposes of supplementing the City's supply of reclaimed water by approximately 2.25 million gallons a day, but the plant has not produced irrigation water as intended since the time construction was completed; and

WHEREAS, the City's 2010 Comprehensive Plan also contemplated that the City's potable water consumption would decrease from historical patterns given, in part, the City's future expansion of the reclaimed water system and conservation programs. See Infrastructure Element, Potable Water Sub-Element, IV-(E), Water Supply Concurrency; and

WHEREAS, the City's 2010 Comprehensive Plan, Potable Water Sub-Element IV, also stated that the future expansion of reclaimed and alternative water sources was supposed to reduce the demands on potable water so the City could meet its level of service standards, and the City projected that by 2025, the expansion of reclaimed water would likely be available to every single family detached home connected to the City's sewer system; and

WHEREAS, based on information provided by the City Manager and Utilities Director, it appears that the City did not increase its production and distribution of reclaimed/surface water for landscape irrigation as intended by the 2010 Comprehensive Plan and CUPs #8238 and #105763, and that new development projects have continued to rely on potable water for landscape irrigation even though some projects are plumbed with reclaimed water systems; and

WHEREAS, reliance on potable water for irrigation purposes, especially by several new large development projects recently, has placed a significant burden on the City to maintain adequate potable water supplies, especially at Water Treatment Plant #1 during periods of low rainfall; and

WHEREAS, the City Commission recognizes that the City has historically experienced large variations of potable and reclaimed water usage between wet and dry seasons; and

WHEREAS, recently in May/June of 2021, the City experienced a temporary water shortage condition at Water Treatment Plant #1 due to inadequate rainfall and increased potable water demand for household and irrigation usage and, as a result of the water shortage condition, the City Commission adopted Resolution No. 2021-08, confirming a Declaration of Emergency executed by Deputy Mayor Ted Johnson authorizing temporary restrictions related to irrigation with potable water; and

WHEREAS, the City determined in January 2021, based on an evaluation of the City's finished water meter records, that the amount of ground water withdrawn from existing wells appears to have exceeded the maximum annual groundwater withdrawals authorized by St. Johns River Water Management District under CUP #8238 for the year 2020; and

WHEREAS, notwithstanding the City’s ability to pump more water from the ground, the ability of the City’s water system to meet consumptive demand is limited by law and the terms and conditions of the City’s CUP issued by the St. John’s River Water Management District; and

WHEREAS, the City Commission further recognizes that several additional large scale projects have been permitted by the City and are currently under construction; and

WHEREAS, when these additional new projects obtain their respective certificates of occupancy in the future, the projects will place an additional usage demand on the City’s water and reclaimed services; and

WHEREAS, based on the aforesaid, the City Commission is directing that the City continue to take a proactive and comprehensive approach to finding solutions to improve the supply and reliability of the City’s potable and reclaimed water services for purposes of satisfying current and future demands including, but not limited to, increasing the City’s reclaimed infrastructure to distribute more reclaimed irrigation water to customers and reducing the amount of potable water irrigation, completing improvements to the City’s water treatment facilities, requiring new developments to use xeriscape or other alternative sources of water, such as stormwater ponds for irrigation, modifying the City’s conservation plan to include full or partial funding for water saving devices, evaluating the availability of alternative water sources, increasing enforcement actions on property owners that purposefully do not comply with the City’s irrigation restrictions, and making the Lake Jesup Surface Water Plant operational and productive to the extent feasible; and

WHEREAS, the City has also proactively approached St. Johns River Water Management District regarding the City’s current situation and future water needs, and is taking appropriate actions to improve the City’s potable and reclaimed water facilities when feasible and pursuing a modification of the City’s existing CUPs so the City’s future withdrawals are in compliance with the City’s permitted maximum annual quantities of ground and reclaimed/surface water; and

WHEREAS, the City Commission also recognizes that Florida law requires adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. See 163.3180(2), Florida Statutes; See also, 2010 Winter Springs Comprehensive Plan, Infrastructure Element, Potable Water Sub-Element IV(E) (“In order to ensure that water is available at time of development, a concurrency management procedure has been implemented...[e]nsuring that the approval of development orders are coordinated with the availability of a water supply.”); and

WHEREAS, the City Commission desires to provide transparency to prospective developers seeking permits for proposed new development within the jurisdictional limits of the City and advises that pending the City’s implementation of the aforesaid comprehensive approach to addressing the City’s current and future potable and reclaimed water needs, and obtaining a modification to its existing CUPs, adequate City water supplies and potable water

facilities may not, for a temporary period of time, be in place or available to serve proposed new development by the time the developer intends or plans on requesting approval of a development permit including a certificate of occupancy or its functional equivalent; and

WHEREAS, the City Commission further advises prospective applicants seeking development permits for new development that the City has the right to deny, approve, or approve with conditions any proposed development permit application under consideration based on whether the developer can demonstrate compliance with all required concurrency requirements including, but not limited to, the provision that adequate water supplies and potable water facilities shall be in place and available to serve the proposed new development; and

WHEREAS, the City Commission has further been apprised that a Reclaimed Water Augmentation Study was previously prepared for the City by CPH Engineers, Inc., dated September 20, 2005 (“2005 Reclaimed Study”), and the 2005 Reclaimed Study was apparently used to support the issuance of CUP # 105763 by St. Johns River Water Management District; and

WHEREAS, the 2005 Reclaimed Study identified a two-phased augmentation plant utilizing Lake Jesup (and possibly an artesian well located within Parkstone Subdivision) as an alternative source of water for irrigation purposes and a seven (7) phase expansion of the City’s reclaimed water distribution system to be completed during a 15 year time period; and

WHEREAS, the 2005 Reclaimed Study projected an average reclaimed need of 5.0 MGD by year 2020 which would consist of 2.77 MGD provided by the effluent generated by the City’s sewer system and 2.23 MGD to be provided by the planned augmentation plant at Lake Jesup; and

WHEREAS, the reclaimed augmentation and expansion plans contemplated by the 2005 Reclaimed Study were only partially implemented when the City constructed the Lake Jesup Surface Water Plant, and the seven phase expansion of the distribution system did not occur; and

WHEREAS, in furtherance of finding long term solutions to improve the reliability of City’s potable and reclaimed water supplies consistent with the maximum allowable withdrawals permitted under the existing or to be modified CUPs, the City Commission desires to understand why the aforementioned plan was not fully implemented and whether the plan is viable today, however, the technical personnel and consultants utilized by the City in 2005 to prepare the plan and obtain CUP # 105763 are no longer employed by the City; and

WHEREAS, therefore, with respect to taking a comprehensive approach to planning to satisfy the City’s current and future potable and reclaimed water needs for the betterment of the Winter Springs community, the City Commission finds it is also necessary to investigate the manner in which the City’s reclaimed water utility was previously evaluated, permitted, expanded and operated, particularly with respect to discontinuing the implementation of the expansion plans set forth in the 2005 Reclaimed Study; and

WHEREAS, this Resolution is hereby deemed by the City Commission to be in the best interest of the public health, safety and welfare of the citizens and businesses of the City of Winter Springs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA, AS FOLLOWS:

SECTION 1. Recital. The foregoing recitals are hereby incorporated herein by this reference and are a material part of this Resolution.

SECTION 2. Improvement of Water and Reclaimed Services. The City Commission hereby directs that the City continue to take a proactive and comprehensive approach to finding solutions to improve the availability and reliability of the City's potable and reclaimed water services for purposes of satisfying current and future demands including, but not limited to, increasing the City's reclaimed infrastructure to distribute more reclaimed irrigation water to customers and reducing the amount of potable water irrigation, completing improvements to the City's water treatment facilities, requiring new developments to use xeriscape or other alternative sources of water, such as stormwater ponds for irrigation, modifying the City's conservation plan to include full or partial funding for water saving devices, evaluating the availability of alternative water sources, increasing enforcement actions on property owners that purposefully do not comply with the City's irrigation restrictions, and making the Lake Jesup Surface Water Plant operational and productive to the extent feasible.

SECTION 3. Authorized Investigation.

Pursuant to Section 4.11 of the City Charter, the City Commission hereby desires to officially initiate an investigation into the affairs of the City and such affected City departments and offices for purposes of producing relevant evidence to the City Commission related to the provision of potable and reclaimed water services, as follows:

1. Identify and explain the factual projections and supporting data and analysis that were prepared and produced by the City related to obtaining the following two consumptive use permits ("CUP") issued to the City by St. Johns River Water Management District: (1) CUP #8238 (Ground water for potable use and reclaimed/surface water for irrigation); and (2) CUP # 105763 (Surface water from Lake Jesup and artesian well water for irrigation use).

2. Identify and explain the factual history behind the design, permitting, construction, operation and maintenance of the Lake Jesup Reclaimed Augmentation Plant, as well as the current condition and feasibility of utilizing the Lake Jesup Reclaimed Augmentation Plant in the future.

3. Identify and explain the factual history behind the reasons why the City did not complete the multi-phased expansion of the City's reclaimed distribution facilities as identified in the City of Winter Springs Reclaimed Water Augmentation Study prepared by CPH

Engineers, Inc., dated September 20, 2005. A copy of said study is attached hereto as **EXHIBIT “A.”**

Such investigation shall be conducted under the oversight and direction of the City Commission with the administrative assistance by the City Manager and such other persons directed by the City Commission.

SECTION 4. Advisory Related to Water Concurrency. The City Commission hereby adopts the following advisory to be publicly published by the City related to new development inquiries and development permit applications:

TEMPORARY ADVISORY - WATER CONCURRENCY

The City of Winter Springs is currently working on several significant water and reclaimed improvement projects and seeking a modification of the City’s Consumptive Use Permit (CUP) with the St. John’s River Water Management District in order to increase the City’s available water supply to meet anticipated future water demands. Pending the completion of these projects and modification of the CUP, the City Commission hereby advises the public and all applicants seeking a development permit for proposed new development that adequate City water supplies and potable water facilities may temporarily not be in place or available to serve the proposed new development by the time the developer intends or plans on requesting a development permit including a certificate of occupancy or its functional equivalent for purposes of complying with the concurrency requirements set forth in Section 163.3180(2), Florida Statutes. In addition, the City has the right to deny, approve or approve with conditions any proposed development permit application under consideration based on whether the developer can demonstrate compliance with all required concurrency requirements, including the provision that adequate water supplies and potable water facilities shall be in place and available to serve the proposed new development.

Please refer to City Commission Resolution No. 2021-09 for additional information.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 6. Repeal of Prior Inconsistent Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Commission, or parts or ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

SECTION 7. Effective Date. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the City Commission of the City of Winter Springs, Florida, in a Regular Meeting duly assembled on the 13th day of July 2021.

KEVIN McCANN, Mayor

ATTEST:

CHRISTIAN GOWAN, City Clerk

**Approved as to legal form and sufficiency for
the City of Winter Springs, Florida only:**

ANTHONY A. GARGANESE, City Attorney