

LEE COUNTY ORDINANCE NO. ____

AN ORDINANCE AMENDING LEE COUNTY ORDINANCE NO. 05-10, AS AMENDED BY ORDINANCE 17-04, RELATING TO WATER CONSERVATION IN LEE COUNTY; AMENDING PROVISIONS CONCERNING LANDSCAPE IRRIGATION DAYS; UPDATING FL. STAT. REFERENCES; AMENDING PROVISIONS CONCERNING ENFORCEMENT AND PENALTIES; PROVIDING FOR CODE ENFORCEMENT PROCEDURE, MITIGATION OF PENALTIES AND TEMPORARY RELIEF UPON EXCEPTIONAL CIRCUMSTANCES; PROVIDING FOR CONFLICTS; CODIFICATION AND SCRIVENER'S ERRORS, SEVERABILITY, MODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida is the governing body in and for Lee County, Florida; and

WHEREAS, the Board of County Commissioners of Lee County, Florida is authorized, pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, from time to time the amount of surface and ground water supplies in Lee County may become perilously low during water shortage conditions and become insufficient to meet existing or anticipated demands; and

WHEREAS, throughout Florida more than forty percent (40%) of the produced drinking water is normally consumed for irrigation purposes; and

WHEREAS, it is imperative to the public welfare that certain uses of water be restricted or curtailed, and that available water resources be reasonably allocated; and

WHEREAS, the South Florida Water Management District adopted Florida Administrative Code 40E-21 (A Water Shortage Plan) which restricts water usage during times of drought conditions; and

WHEREAS, the South Florida Water Management District adopted Florida Administrative Code 40E-24 (A Mandatory Year-Round Landscape Irrigation Measures for Lee, Collier and Charlotte Counties) for the purpose of allocating and conserving water resources; and

WHEREAS, Florida Administrative Code ("F.A.C.") Chapters 40E-21.421 and 40E-24.401 strongly encourage counties to adopt ordinances for local enforcement of said Chapters; and

WHEREAS, the Lee County Board of Commissioners ("Board") finds that the conservation of water resources serves a public purpose; and

WHEREAS, the Board previously adopted Ordinance 05-10, as subsequently amended by Ordinance 17-04, an ordinance relating to water conservation in Lee County for the purpose of conserving water resources; and

WHEREAS, it is in the best interest of the public to adopt additional water use restrictions to ensure conservation of water and consistency with the rules of the South Florida Water Management District; and

WHEREAS, due to declining aquifer levels throughout the County, the Board desires to amend the Ordinance by further restricting water usage during the dry season; and

WHEREAS, the Board desires to amend the Ordinance to further effectuate the intent of the Ordinance and to benefit the public health, safety and welfare; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on November 8, 2023 and recommended their adoption.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: AMENDMENT TO CODE OF ORDINANCES CHAPTER 11

Lee County Code of Ordinances Chapter 11 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 11 – ENVIRONMENT AND NATURAL RESOURCES

ARTICLE II. WATER CONSERVATION

Sec. 11-21. - Short title, purpose and territorial scope.

- (a) This article will be known and cited as the “Lee County Water Conservation Ordinance.”
- (b) The purpose of this article is to protect Lee County's water resources from the harmful effects of over utilization throughout the year, as well as during periods of water shortage, and to allocate available water supplies by assisting the South Florida Water Management District in the implementation of its Water Shortage Plan, and Mandatory Year-Round Landscape Irrigation Measures for Lee County provided in F.A.C. Chs. 40E-21 and 40E-24, as may be amended from time to time.
- (c) The territorial scope and provisions of this article shall apply to all persons using water resources, whether from public or privately owned water utility systems,

private wells, or private connections with surface water bodies in the unincorporated areas of Lee County except those persons exempt under F.A.C. Ch. 40E-24 as may be amended from time to time.

Sec. 11-22. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

District means the South Florida Water Management District.

Low volume irrigation systems are defined as misting or drip irrigation systems which are 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, thereby conserving water.

Person shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

Reclaimed water is defined as 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. Reclaimed water blended with other source water is not considered an exempt source.

Restaurant means an establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state. The term “restaurant” includes both “standard” and “fast food” operations, as defined in the Lee County Development Code, as amended.

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.

Water shortage condition means sufficient water is not available to meet present or anticipated needs of persons using the water resource, or conditions require temporary reduction in total water usage within a particular area to protect the water resources from serious harm.

Water shortage emergency means that situation when the powers which can be exercised under F.A.C. Ch. 40E-21, Pt. II are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish or aquatic life, or a public water supply, or commercial, industrial, recreational or other reasonable uses.

Sec. 11-23. - Permanent water restrictions, declaration of water shortage, and water shortage emergency.

- (a) The provisions of F.A.C. Ch. 40E-21, Water Shortage Plan and F.A.C. Ch. 40E-24, Mandatory Year Round Landscape Irrigation restrictions for Lee, Collier and Charlotte Counties, as the same may be amended, renamed or renumbered from time to time, are hereby incorporated by reference in their entirety, except as modified by this article, into the provisions of this article.
- (b) The formal declaration of a water shortage condition or water shortage emergency condition within all or any part of Lee County by the governing board or the Executive Director of the district shall invoke the provisions of this section. Upon such declaration, all water use restrictions or other measures adopted by the district pursuant to F.A.C. Ch. 40E-21, applicable to Lee County, or any portion thereof, shall be subject to enforcement action pursuant to the enforcement provisions of this article. The South Florida Water Management District Water Shortage Plan shall be kept on file with the Clerk of the Board of County Commissioners of Lee County.
- (c) The Board of County Commissioners of Lee County supplements the provisions of F.A.C. Ch. 40E-24 Mandatory Year Round Landscape Irrigation restrictions as follows:
 - (1) Landscape irrigation is prohibited daily between the hours of 9:00 a.m. and 5:00 p.m. Any irrigation performed between 9:00 a.m. to 5:00 p.m. will be subject to fines as stated in this article. Irrigation during these hours wastes water through evaporation.
 - (2) From June 1 through January 31, F.A.C. 40E-24.201(6)(a). eEven-numbered addresses as defined in F.A.C. 40E-24.101(4) and properties with no address, including, but not limited to, community common areas, rights-of-way, etc., may accomplish necessary landscape irrigation only on Thursday and/or Sunday.
 - (3) From June 1 through January 31, F.A.C. 40E-24.201(6)(b). oOdd-numbered addresses, as defined in F.A.C. 40E-24.101(12), may accomplish necessary landscape irrigation only on Wednesday and or Saturday.
 - (4) From February 1 through May 31, even-numbered addresses as defined in F.A.C. 40E-24.101(4) and properties with no address, including, but not limited to, community common areas, rights-of-way, etc., may accomplish necessary landscape irrigation only on Sunday.
 - (5) From February 1 through May 31, odd-numbered addresses, as defined in F.A.C. 40E-24.101(12), may accomplish necessary landscape irrigation only on Saturday.

~~(4) The number of allowable irrigation days as set forth in Subsections (c)(2) and (3) of this section may be changed in response to extreme climatic conditions. The Natural Resources Director or designee shall determine when such climatic conditions exist and change the number of allowable irrigation days accordingly. The natural resources director, or designee, is not authorized to exceed the number of allowable irrigation days as established in F.A.C. Ch. 40E-24.~~

(65) Persons using a low volume irrigation system will be allowed to water ~~anyseven~~ days ~~aof the~~ week except during the hours between 9:00 a.m. and 5:00 p.m. Low volume irrigation systems include systems such as misting and drip irrigation systems which are 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, thereby conserving water.

(76) The low-volume hand watering methods referenced in F.A.C. 40E-24.201 shall be fitted with an automatic shut-off device. The use of hand-held watering devices ~~are is~~ exempt from this article, provided that self-shutting nozzles are used. At no time will an open hose be allowed to flow freely unattended, wasting water.

(87) All restaurants within the unincorporated areas of Lee County are encouraged not to serve water to any customer from any public or private well, water supply, or distribution system except when specifically requested by the customer.

~~(9) The irrigation restrictions with this subsection are specific to Golf Course uses. From February 1 through May 31, all Golf Courses within unincorporated Lee County shall comply with the following irrigation restrictions:~~

~~i. Irrigation of greens and tees shall be voluntarily reduced and shall be accomplished during non-daylight hours.~~

~~ii. Irrigation of fairways, roughs and nonplaying areas on the first nine holes of the course shall be restricted to the hours of 12:01 a.m. to 8:00 a.m. on Wednesday and Saturday.~~

~~iii. Irrigation of fairways, roughs and nonplaying areas on the last nine holes of the course shall be restricted to the hours of 12:01 a.m. to 8:00 a.m. on Thursday and Sunday.~~

iv. Irrigation of seeded and/or sprigged areas that have been in place for less than thirty days shall be allowed daily for 5 minutes per irrigation zone from 11:30 a.m. to 12:00 p.m., 1:30 p.m. to 2:00 p.m. and 3:30 p.m. to 4:00 p.m.

ii.v. Golf Courses that can provide a water efficiency plan that includes the installation of drought-tolerant turf species; soil improvements; installation of real-time pumping technology; installation of advanced/Smart irrigation controllers; retrofitting of landscape irrigation zones with micro-irrigation; and other water use efficiency projects or enrollment in the Audubon Cooperative Sanctuary Program (Audubon 2019) may apply to Lee County for an alternative irrigation variance.

(10) Irrigation of New Landscaping (with proof of receipt) shall comply with the following provisions:

i. 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. This begins a 90-day modified irrigation schedule.

ii. 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.

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 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 Saturday.

v. 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 paragraph if the zone in question is for an area that 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 under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

(11) 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 10 minutes per zone.

(12) 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:

i. 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

ii. Such watering-in shall be accomplished during normally allowable watering days and times, unless a professional licensed applicator has posted a temporary sign containing the date of application.

(13) 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.

(14) Uses of reclaimed water are exempt from the day requirement of this article, however, shall not irrigate from the hours of 9:00 a.m. to 5:00 p.m. Once the one hundred percent reclaimed water is utilized adherence of this article is required.

(15) Locations using a low volume irrigation system will be allowed to water seven (7) days a week except during the hours between 9:00 a.m. and 5:00 p.m.

(d) Any violation of the above provisions, or F.A.C. Ch. 40E-21 or 40E-24, or any order issued pursuant thereto by any person, shall constitute a violation of this article.

Sec. 11-24. - Enforcement and penalties.

(a) *Enforcement.*

(1) All duly sworn Lee County law enforcement officers, police officers or deputy sheriffs in unincorporated Lee County will, in connection with all other duties imposed by law, diligently enforce the provisions of this article. In addition, Lee County employees or agents who are designated as code enforcement officers including, but not limited to, code inspectors, water resource officers, environmental inspectors or utility officers are authorized

and empowered to make inspections of all activities regulated by this article in order to ensure compliance with the provisions of this article.

- (2) The County may provide property owners with a ~~written~~ warning prior to enforcement of this article. The warning will include information to educate property owners on the correct times and dates for landscape irrigation pursuant to this article.
 - (3) This article may be enforced through civil actions pursuant to F.S. § 162.30, through a notice to appear issued in accordance with F.S. § 162.23, through issuance of a citation in accordance with F.S. § 162.21 and Lee County Administrative Code AC 12-5, through a code enforcement action in accordance with Lee County Land Development Code Chapter 2 and Subsection (b) of this section, or by any other method available under the law. A violation of the provisions of this article, provisions of F.A.C. Ch. 40E-21 or 40E-24, or any order issued pursuant thereto by any person, will constitute a violation of this article.
 - (4) Each violation of this article will constitute a separate offense and may be enforced against the property owner, tenant, or known violator if different than the property owner or tenant. The property owner of leased property will remain responsible for violations of this article. An allegation that a tenant violated the article is not a valid defense to finding of violation of this article.
- (b) *Hearing Examiner code enforcement procedure.* Should the code enforcement officer elect to use the Hearing Examiner code enforcement process to enforce this article, the following procedure will be used:
- (1) *Notice of violation.* Once a violation of this article has been identified on a property, the property owner must be given notice describing the violation, the provisions of this article violated, the method of correction, and the time period for correction. The time period for correcting the violation cannot exceed ten days.
 - (2) *Reinspection and notice of hearing.* After the notice of violation is issued, the code enforcement officer must reinspect the subject property to determine whether or not the violation has been corrected within the required timeframe. If the code enforcement officer finds that the violation is still occurring, a hearing will be scheduled before the Lee County Hearing Examiner and written notice of the hearing will be provided to the property owner.
 - (3) *Hearing Examiner authority.* The Lee County Hearing Examiner has the authority to hear and determine violations of this article in accordance with Lee County Land Development Code, Chapter 2, Article VII. Enforcement

will be in accordance with this article and the Lee County Land Development Code. In the event Chapter 2 of the Lee County Land Development Code and this article are in conflict, this article will prevail.

(4) *Hearing Examiner considerations for first violations.* In determining whether or not a violation of this article has occurred, the Hearing Examiner will hear evidence on and consider the following:

- a. Whether or not the property owner, their tenant, guest or invitee, violated the article prior to the issuance of the notice of violation; and
- b. Whether or not the property owner, their tenant, guest or invitee violated the article after the time period indicated in the notice of violation.

If the Hearing Examiner finds that a violation of this article occurred in both of these instances, the Hearing Examiner will issue an order finding violation. Any fines imposed in the order finding violation will be in accordance with Subsection (c) of this section.

(5) *Subsequent violations.* Violations of this article occurring after the first violation will be treated as repeat violations pursuant to Land Development Code Section 2-424, as amended.

(c) *Penalties.* Violation of any provisions of this article shall be subject to the following penalties:

(1) Hearing Examiner order finding violation fines.

- a. First violation: ~~\$50~~100.00 fine.
- b. Second violation: ~~\$4~~250.00 fine.
- c. Third violation: ~~\$2~~500.00 fine.
- d. Subsequent violations: Fines ~~s~~ not to exceed \$500.00.
- e. Notwithstanding the fee schedule above, in the event that a violation of this article occurs during a formal declaration of a water shortage by the District, the Hearing Examiner may impose a fine of up to \$5,000.00 per violation in accordance with Section 2-427(a)(1), Land Development Code and Section 162.09(2)(a), Florida Statutes.

(2) Civil citation fines.

- a. First violation: ~~\$5~~100.00 uncontested, ~~\$1~~500.00 if contested.

- b. Second violation: \$~~150~~250.00 uncontested, \$~~20~~300.00 if contested.
 - c. Third violation: \$~~4~~250.00 uncontested, \$~~5~~300.00 if contested.
 - d. Subsequent violations: Fine not to exceed \$500.00.
- (d) *Mitigation.* Mitigation of the penalties and costs imposed pursuant to this article is permitted. The Director of Natural Resources and the Lee County Hearing Examiner have the authority to mitigate fines and costs resulting from the enforcement of this article upon good cause shown.
- (e) *Variance.* Any person may request a variance from the provisions of this article by applying to the Lee County Division of Natural Resources. A variance may be granted provided that the applicant demonstrates with particularity that compliance with the schedule of days for landscape irrigation will result in a substantial hardship on the applicant. Any variance granted must not exceed one year. A variance can only be issued once per year per parcel and cannot be renewed without proof that the initial reason for the variance was correct. A variance will not be issued for the same reoccurring reason. Should a variance be issued, the applicant must post notice of the variance on the property to which the variance pertains.

Sec. 11-25. - Water service provided by public and private utilities.

The acceptance of water service from Lee County Utilities or any private utility company within the unincorporated areas of Lee County shall in and of itself constitute the acceptance of the provisions of this article.

Sec. 11-26. - Florida Administrative Codes incorporated by reference.

F.A.C. Chs. 40E-21 and 40E-24, as the same may be amended, renumbered or renamed from time to time, are hereby incorporated into the provisions of this article by reference, in their entirety.

Sec. 11-27. - Conflicts.

Whenever the requirements or provisions of this article are in conflict with the provisions of any other lawfully adopted Lee County Ordinance or Florida Statute, the more restrictive requirements will apply, except Section 11-23(c)(~~56~~), which provides incentive for persons utilizing a low volume irrigation system.

Secs. 11-28—11-57. Reserved.

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION THREE: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or designee, without the need for a public hearing.

SECTION FIVE: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SIX: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Commissioner ____ made a motion to adopt the foregoing ordinance, seconded by Commissioner _____. The vote was as follows:

Kevin Ruane _____
Cecil L Pendergrass _____
Raymond Sandelli _____
Brian Hamman _____
Mike Greenwell _____

DULY PASSED AND ADOPTED this ____ day of ____, 2024.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Mike Greenwell, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney

CAO DRAFT January 4, 2024