

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050270

1. ACTION REQUESTED/PURPOSE:

Conduct a Public Hearing and consider the adoption of an Ordinance to be known and cited as the "Lee County Water Conservation" Ordinance.

2. WHAT ACTION ACCOMPLISHES:

Sets the Lee County Water Conservation Ordinance for public hearing and adoption.

3. MANAGEMENT RECOMMENDATION:

Staff recommends approval.

4. Departmental Category:

5:00 #4

5. Meeting Date:

06-14-2005

6. Agenda:

7. Requirement/Purpose: (specify)

8. Request Initiated:

<input type="checkbox"/>	Consent
<input type="checkbox"/>	Administrative
<input type="checkbox"/>	Appeals
<input checked="" type="checkbox"/>	Public
<input type="checkbox"/>	Walk-On

<input type="checkbox"/>	Statute
<input checked="" type="checkbox"/>	Ordinance
<input type="checkbox"/>	Admin. Code
<input type="checkbox"/>	Other

Commissioner	
Department	County Attorney
Division	General Services
By: <u>Scott S. Covert</u>	
Assistant County Attorney	

9. Background:

Ordinance 90-03, the Lee County Water Shortage Plan, as amended by Ordinance 91-24, provides permanent water restrictions and prohibit restaurants from serving water unless requested by the customer. South Florida Water Management District has requested Lee County to implement a Water Shortage Plan and Mandatory Year-Round Landscape Irrigation Measures as written in Chapters 40E-21 and 40E-24, Florida Administrative Code.

Chapters 40E-21 and 40E-24, together with language prohibiting restaurants from serving water unless requested by the customer eliminates the need for Lee County Ordinance Nos. 90-3 and 91-24. If the "Lee County Water Conservation Ordinance" is adopted, Lee County Ordinance Nos. 90-3 and 91-24 will be redundant and should be repealed.

ATTACHMENTS: Proposed Water Conservation Ordinance
Financial & Administrative Impact Statement
Notice of Intent To Enact A County Ordinance

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
N/A	N/A	N/A	N/A		Analyst RK 4/26	Risk 4/27/05	Grants 4/27/05	Mgr. 4/27/05	<i>[Signature]</i>

11. Commission Action:

ON 05-24-05 ~~Approved~~ **CONTINUED**
~~Deferred To 6-14-05~~
~~Denied~~
 ~~Other~~
CS00PH
J/H

CO. ATTY.
reassigned
to CO. ADMIN.
5/24/05

RECEIVED BY
COUNTY ADMIN:
4-26-05 MGP
115 pm
COUNTY ADMIN
FORWARDED TO: JH
4-28-05
2:00 pm

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Staff recommends approval.

4. Departmental Category:

5:00 #4

5. Meeting Date:

05-21-2005

6. Agenda:

7. Requirement/Purpose: (specify)

<input type="checkbox"/>	Consent
<input type="checkbox"/>	Administrative
<input type="checkbox"/>	Appeals
<input checked="" type="checkbox"/>	Public
<input type="checkbox"/>	Walk-On

<input type="checkbox"/>	Statute
<input checked="" type="checkbox"/>	Ordinance
<input type="checkbox"/>	Admin. Code
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8. Request Initiated:

Commissioner _____
 Department County Attorney
 Division General Services
 By: _____
 Scott S. Covert
 Assistant County Attorney

9. Background:

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Chapters 40E-21 and 40E-24, together with language prohibiting restaurants from serving water unless requested by the customer eliminates the need for Lee County Ordinance Nos. 90-3 and 91-24. If the "Lee County Water Conservation Ordinance" is adopted, Lee County Ordinance Nos. 90-3 and 91-24 will be redundant and should be repealed.

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					Analyst	Risk	Grants	Mgr.	
N/A	N/A	N/A	N/A		RK 5/26	5/27/05	4/21/05	4/27/05	[Signature]

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATT. FORWARDED TO CO. ADMIN. 4/27/05

RECEIVED BY COUNTY ADMIN: 4-26-05 NCS
 1:15 pm
 COUNTY ADMIN FORWARDED TO: [Signature]
 4-28-05

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE RELATING TO WATER CONSERVATION IN LEE COUNTY; REPEALING LEE COUNTY ORDINANCE NOS. 90-03 AND 91-24; PROVIDING FOR SHORT TITLE, PURPOSE AND TERRITORIAL SCOPE; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMANENT WATER RESTRICTIONS, DECLARATION OF WATER SHORTAGE, AND WATER SHORTAGE EMERGENCY; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR WATER SERVICE PROVIDED BY PUBLIC AND PRIVATE UTILITIES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS; PROVIDING FOR FLORIDA ADMINISTRATIVE CODES INCORPORATED BY REFERENCE AND PROVIDING FOR 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, the South Florida Water Management District adopted Florida Administrative Code 40E-21 "Water Shortage Plan" that restricts water usage during times of drought conditions; and

WHEREAS, upon the existence of such conditions it becomes 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-24 "Mandatory Year-Round Landscape Irrigation Measures for Lee, Collier and Charlotte Counties" for the purpose of allocating and conserving water resources; and

WHEREAS, the South Florida Water Management District has requested the assistance of Lee County in the enforcement of the provisions of Florida Administrative Code 40E-21 and 40E-24; and

WHEREAS, the Board of Commissioners of Lee County finds that it serves a public purpose and is in the best interest of the public to adopt a Water Shortage Plan and Mandatory Year-Round Landscape Irrigation Measures as contained herein to provide additional water use restrictions which insure the conservation of water and are consistent with the rules of the South Florida Water Management District.

WHEREAS, Lee County previously adopted Ordinance 90-03 as amended by Ordinance 91-24 to protect the water resources; and

WHEREAS, Lee County now desires to establish a new Ordinance, for the purpose of conserving water resources, which is consistent with the rules of the South Florida Water Management District.

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

SECTION ONE: **SHORT TITLE, PURPOSE AND TERRITORIAL SCOPE**

Lee County Ordinances 90-03 and 91-24 are hereby repealed in their entirety and replaced with the provisions of this Ordinance.

- A. This Ordinance will be known and cited as the "Lee County Water Conservation Ordinance".
- B. The purpose of this Ordinance 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 the Florida Administrative Code 40E-21, and 40E-24, as may be amended from time to time.
- C. The territorial scope and provisions of this Ordinance 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 Florida Administrative Code 40E-24 as may be amended from time to time.

SECTION TWO: **DEFINITIONS**

For the purpose of this Ordinance, the following words and phrases are defined and shall have the meaning assigned except in those instances where the context

clearly indicates a different meaning. The words “shall” and “will” are mandatory and not discretionary. The word “may” is permissive.

- A. *District* shall mean the South Florida Water Management District
- B. *Person* shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.
- C. *Restaurant* shall mean an establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state. The definition of restaurant shall include both “standard” and “fast food” operations, as defined in the Lee County Zoning Ordinance No. 86-17, as amended.
- D. *Water Resource* shall mean 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.
- E. *Water Shortage Condition* shall mean 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.
- F. *Water Shortage Emergency* shall mean that situation when the powers which can be exercised under Part II of Chapter 40E-21, Florida Administrative Code, 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.

SECTION THREE: PERMANENT WATER RESTRICTIONS, DECLARATION OF WATER SHORTAGE, AND WATER SHORTAGE EMERGENCY

- A. The provisions of Chapter 40E-21, Florida Administrative Code, "Water Shortage Plan" and Chapter 40E-24, Florida Administrative Code, "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, is hereby incorporated by reference in its entirety into the provisions of this Ordinance.
- 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 ~~the~~ this paragraph. Upon such declaration, all water use restrictions or other measures adopted by the District pursuant to Chapter 40E-21, Florida Administrative Code, applicable to Lee County, or any portion thereof, shall be subject to enforcement action pursuant to the enforcement provisions of this Ordinance. 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 Chapter 40E-24, Florida Administrative Code, as follows:
 - (1) Chapter 40E-24.201(5)(a). Landscape irrigation shall be prohibited daily between the hours of 9:00 a.m. and 5:00 p.m.

- (2) Chapter 40E-201.(5)(b). Even addresses as defined in Rule 40-24.101(4), Florida Administrative Code, may accomplish necessary landscape irrigation only on Thursday and/or Sunday.
- (3) Chapter 40E-24.201(5)(c). Odd addresses as defined in Rule 40E-24.101(7), Florida Administrative Code, and rights-of-way or other locations without an address may accomplish necessary landscape irrigation only on Wednesday and/or Saturday.
- (4) Chapter 40E-24 does not apply to any person using an irrigation system 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 the water use system in most houses and similar establishments for plant propagation.
- (5) All restaurants within the unincorporated areas of Lee County are prohibited from serving water to any customer from any public or private well, water supply, or distribution system except when specifically requested by the customer.

D. Any violation of the above provisions, or Chapter 40E-21 or 40E-24, Florida Administrative Code, or any order issued pursuant thereto by any person, shall constitute a violation of this Ordinance.

SECTION FOUR: ENFORCEMENT AND PENALTIES

A. Enforcement:

Every municipal or other duly sworn law enforcement officer, police officer or deputy sheriff of Lee County in any service areas governed by this Ordinance shall, in connection with all other duties imposed by law, diligently enforce the provisions of this Ordinance. In addition, the Lee County Manager, or designee, may also delegate enforcement responsibility for this Ordinance to agencies and departments of County government in the service areas governed by this Ordinance, in accordance with State and local law.

B. Penalties:

Violation of any provisions of this Ordinance shall be subject to the following penalties:

1. First Violation: \$25.00 fine
2. Second Violation: \$100.00 fine
3. Third Violation: Fine not to exceed \$500.00 and/or imprisonment in the County jail not to exceed sixty (60) days.

Each violation of this Ordinance shall constitute a separate offense. In the initial stages of a water shortage condition or water shortage emergency condition, but not to exceed the first thirty (30) days of such condition, law enforcement officials may provide violators with no more than one (1) written warning. Lee County Utilities will bill any violators for fines and if the violator is a customer of Lee County Utilities, the fine will be added to their monthly utility bill.

SECTION FIVE: **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 Ordinance.

SECTION SIX: **FLORIDA ADMINISTRATIVE CODES INCORPORATED BY REFERENCE**

Chapters 40E-21 and 40E-24, Florida Administrative Code, as the same may be amended, renumbered or renamed from time to time, are hereby incorporated into the provisions of this Ordinance by reference, in their entirety.

SECTION SEVEN: **CONFLICT**

Whenever the requirements or provisions of this Ordinance 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 Three, C(4) which provides incentive for persons utilizing a low volume irrigation system.

SECTION EIGHT: **SEVERABILITY**

The provisions of this Ordinance are severable and it is the intention to confer upon the whole or any part, the powers herein provided for. If any provision, paragraph, word, section or article of this Ordinance is invalidated by a court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and ordinances shall not be affected and shall continue in full force and effect.

SECTION NINE: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance will become and be made a part of the Lee County Code; and that sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the County Manager, or the County Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Clerk of Circuit Court.

SECTION TEN: EFFECTIVE DATE

This Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

(Balance of Page Left Intentionally Blank)

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

BOB JANES _____
DOUGLAS ST. CERNY _____
RAY JUDAH _____
TAMMY HALL _____
JOHN E. ALBION _____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2005.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

Lee County Water Conservation.wpd SSC

DRAFT

May 25, 2005