

LEE COUNTY ORDINANCE NO. 17-04

AN ORDINANCE AMENDING LEE COUNTY ORDINANCE NO. 05-10, 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, 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-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 South Florida Water Management District has requested the assistance of Lee County in the enforcement of the provisions of Chapters 40E-21 and 40E-24, F.A.C.; and

WHEREAS, the Lee County Board of Commissioners ("Board") finds that the conservation of water resources serves a public purpose; 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, the Board previously adopted Ordinance 05-10, an ordinance relating to water conservation in Lee County for the purpose of conserving water resources; and

WHEREAS, the Board desires amend Ordinance No. 05-10 to further effectuate the intent of Ordinance 05-10 and to benefit the public health, safety and welfare.

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

SECTION ONE: AMENDMENT TO ORDINANCE 05-10.

Lee County Ordinance 05-10 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underline.

SECTION TWO: DEFINITIONS

- 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~~ Development Code, as amended.

**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, are hereby incorporated by reference in their entirety, except as modified by this Ordinance, into the provisions of this Ordinance.
- 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~~ is prohibited daily between the hours of 9:00 a.m. and 5:00 p.m. Any irrigation performed ~~from~~ between 9:00 a.m. to 5:00 p.m. will be subject to fines. Irrigation during these hours ~~wilts sod and plants and wastes water through evaporation.~~
 2. ~~Chapter 40E-24.201(5)(b)(6)(a).~~ Even numbered addresses as defined in Rule ~~40E-24.101(4)~~, Florida Administrative Code, 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. Chapter 40E-24.201~~(5)(e)(6)(b)~~. Odd numbered addresses as defined in Rule 40E-24.101~~(712)~~, 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. The number of allowable irrigation days as set forth in Section Three: Paragraphs C.(2) and C.(3) above may be changed in response to extreme climatic conditions. The ~~Public Works Director~~ Natural Resources Director, or designee, shall determine when such climatic conditions exist and change the number of allowable irrigation days accordingly. The ~~Public Works Director~~ Natural Resources Director, or designee, is not authorized to exceed the number of allowable irrigation days as established in Chapter 40E-24, Florida Administrative Code.
5. *No change.*
6. The low-volume hand watering methods referenced in Chapter 40E-24.201~~(5)(f)~~ shall be fitted with an automatic shut-off device. The use of hand held watering devices are exempt from this Ordinance provided ~~providing~~ that self shutting nozzles are used. At no time will an open hose be allowed to flow freely unattended, wasting water.
7. All restaurants within the unincorporated areas of Lee County are ~~prohibited from serving~~ 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.

SECTION FOUR: ENFORCEMENT AND PENALTIES

A. Enforcement:

All duly sworn Lee County law enforcement officers, police officers or deputy sheriffs of ~~Lee County~~ in unincorporated Lee County ~~shall will~~, in connection with all other duties imposed by law, diligently enforce the provisions of this Ordinance. In addition, ~~the Lee County Manager, 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.~~ 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 Ordinance in order to ensure compliance with the provisions of this Ordinance.

The County may provide property owners with a written warning prior to enforcement of this Ordinance. The warning will include information to educate property owners on the correct times and dates for landscape irrigation pursuant to this Ordinance.

This Ordinance may be enforced through civil actions pursuant to §162.30, F.S., through a Notice to Appear issued in accordance with §162.23, F.S., through issuance of a citation in accordance with §162.21, F.S. and Lee County Administrative Code AC12-5, through a Code Enforcement action in accordance with Lee County Land Development Code Chapter 2 and subsection B of this Ordinance, or by any other method available

under the law. A violation of the provisions of this ordinance, provisions of Chapter 40E-21 or 40E-24 of the Florida Administrative Code, or any order issued pursuant thereto by any person, will constitute a violation of this Ordinance.

Each violation of this ordinance 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 Ordinance. An allegation that a tenant violated the Ordinance is not a valid defense to finding of violation of this Ordinance.

B. Hearing Examiner Code Enforcement Procedure: Should the code enforcement officer elect to use the code enforcement process to enforce this Ordinance, the following procedure will be used:

1. *Notice of Violation.* Once a violation of this Ordinance has been identified on a property, the property owner must be given notice describing the violation, the provision(s) of this Ordinance violated, the method of correction, and the time period for correction. The time period for correcting the violation cannot exceed 10 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 Ordinance in accordance with Lee County Land Development Code, Chapter 2, Article VII. Enforcement will be in accordance with this Ordinance and the Lee County Land Development Code. In the event Chapter 2 of the Lee County Land Development Code and this Ordinance are in conflict, this Ordinance will prevail.

4. *Hearing Examiner Considerations for First Violations.* In determining whether or not a violation of this Ordinance 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 Ordinance prior to the issuance of the Notice of Violation; and

b. Whether or not the property owner, their tenant, guest or invitee violated the Ordinance after the time period indicated in the Notice of Violation.

If the Hearing Examiner finds that a violation of the Ordinance 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 Section C below.

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

BC. Penalties:

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

Hearing Examiner Order Finding Violation Fines:

1. First Violation: ~~\$25.00 fine~~ \$50.00 fine
2. Second Violation: ~~\$100.00 fine~~ \$150.00 fine.
3. Third Violation: ~~\$250.00 fine Fine not to exceed \$500.00 and/or imprisonment in the County jail not to exceed sixty (60) days.~~
4. Subsequent Violations: Fine not to exceed \$500.00

Civil Citation Fines:

1. First Violation: \$50.00 uncontested, \$100.00 if contested
2. Second Violation: \$150.00 uncontested, \$200.00 if contested
3. Third Violation: \$250.00 uncontested, \$300.00 if contested
4. Subsequent Violations: Fine not to exceed \$500.00

~~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 all fines and if the violator is a customer of Lee County Utilities, the fine will be added to their monthly utility bill.~~

D. Mitigation:

Mitigation of the penalties and costs imposed pursuant to this Ordinance 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 Ordinance upon good cause shown.

E. Variance:

Any person may request a variance from the provisions of this Ordinance by applying to the Lee County Division of Natural Resources. A variance maybe 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.

SECTION TWO: **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.(5) which provides incentive for persons utilizing a low volume irrigation system.

SECTION THREE: **CODIFICATION AND SCRIVENER'S ERRORS**

The Board intends that this Ordinance be made part of the Lee County Code of Ordinances; and that sections of this Ordinance can be renumbered or re-lettered and the word "Ordinance" can be changed to "Section", "Article", or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the County Manager without the need for a public hearing.

SECTION FOUR: **SEVERABILITY**

It is the Board'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 be considered a separate provision and will not affect the remaining provisions of this Ordinance. The Board further declares its intent that this Ordinance would have been adopted if such invalid or unconstitutional provision was not included.

SECTION FIVE: **MODIFICATION**

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

SECTION SIX: **EFFECTIVE DATE**

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

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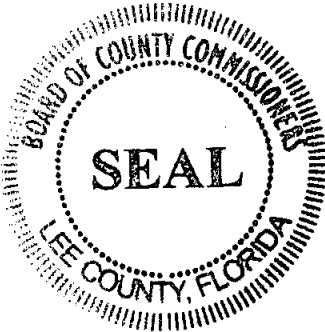
Commissioner Kiker made a motion to adopt the foregoing ordinance, seconded by Commissioner Hamman. The vote was as follows:

John E. Manning	Aye
Cecil Pendergrass	Aye
Brian Hamman	Aye
Larry Kiker	Aye
Frank Mann	Aye

DONE AND ADOPTED this 20th day of June, 2017.

ATTEST:
LINDA DOGGET, CLERK

BY: *Linda Dogget*
Deputy Clerk



LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: *John E. Manning*
John E. Manning, Chairman

Approved as to form for the reliance of Lee
County only:

[Signature]
County Attorney's Office



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 23, 2017

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Theresa King

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Ordinance No. 17-04, which was filed in this office on June 23, 2017.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb