



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING
FIRST FLOOR CONF. RM. 1B
1500 MONROE STREET, FORT MYERS**

**WEDNESDAY, NOVEMBER 8, 2023
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes - September 13, 2023
3. Revisions to Lee County Water Conservation Ordinance 17-04
4. Adjournment – Next Meeting Date: January 10, 2024

To view a copy of the agenda, go to www.leegov.com/dcd/calendar
For more information, contact Belinda Odom, (239) 533-8348 or BOdom@leegov.com
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**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(ERO)
Wednesday, September 13, 2023
2:00 p.m.**

Committee Members Present:

Tracy Hayden, Vice-Chair
Sam Hagan
Bill De Deugd
Tim Keene
Michael Reitmann

Excused / Absent:

Randal Mercer, Chairman	Mike Roeder
Victor DuPont	Bob Knight
Matt Roepstorff	Ian Moore
Carl Barraco, Jr.	Jim Ink

Lee County Staff Present:

Anthony Rodriguez, DCD, Zoning Manager
Adam Mendez, DCD, Zoning Senior Planner
Joe Adams, Assistant County Attorney Belinda
Odom, DCD Administration

Outside Consultants/Members of the Public Present:

Ms. Kate Welch, Lee County Sheriff's Office
Lt. Richard Castellon, Animal Abuse Task Force, Lee County Sheriff's Office
Detective, Lee County Sheriff's Office

Ms. Roseanne Duffy, Wildblue Resident
Member of the Public, Wildblue Resident
Ms. Marsha Ellis, Fort Myers, Florida

CALL TO ORDER AND AFFIDAVIT:

Ms. Tracy Hayden, Vice-Chair called the meeting to order at 2:15 p.m. The meeting was held in the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida, Conference Room 1B.

Mr. Joe Adams, Assistant County Attorney, confirmed the Affidavit of Publication was legally sufficient as to form and content and the meeting could proceed.

APPROVAL OF MINUTES – May 10, 2023

Ms. Tracy Hayden stated the Minutes of the last meeting were provided to the members of the Committee in the packet and asked if there were any questions, comments, or suggestions regarding those Minutes. There was none.

Mr. Michael Reitmann made a motion to approve the May 10, 2023 minutes as written, Mr. Sam Hagen seconded. The motion was called and carried unanimously.

Annual Lee County Animal Abuse Registry Ordinance

Mr. Joe Adams, Assistant County Attorney introduced Ms. Kate Welch with the Lee County Sheriff's Office and Attorney's Office. He stated that they worked with the Lee County Sheriff's Office on drafting this Animal Abuse Registry Ordinance.

The main purpose of the Ordinance is to create an online data base Registry to establish identifying individuals residing in Lee County convicted of certain animal abuse crimes that will prevent these individuals from adopting, purchasing, possessing, or otherwise obtaining animals from any animal shelter, pet seller, or other person or entity involved in the exchange of animals by adoption, sale, or other means.

This ordinance protects the animals and Lee County from animal abuse crimes by creating this Registry. Pet stores and animal shelters have the obligation to check the Registry and will be able to easily identify individuals who have been convicted of animal abuse, crimes, or have been enjoined from animal possession by a court order and cannot purchase or adopt animals by virtue of court order or by being listed on the Registry. The Registry will contain the names, residence, photo, and other related information of certain Abusers living in the County who are convicted of an Abuse Offense on or after the effective date of this Ordinance. The Ordinance and the importance of having such a Registry would protect animals from being placed in homes that previously had convictions. The Lee County Sheriff's Office will maintain the registry and there will be some fees collected that will go toward their cost in running the program. The Registry will be listed on The Sheriff's official website. There are several other Counties throughout the State that have adopted similar ordinance and we met with one of them and they stated it was very easy to do and effective.

Mr. Adams asked Ms. Welch if she had anything to add. Ms. Welch stated that they have seen a big spike in animal abuse crimes in Lee County and the Sheriff wants to crack down on them. The Sheriff wants to make sure that everybody who adopts or sells has this as a resource to make sure they are not giving an animal to someone who is going to abuse it.

Ms. Hayden asked if there was anyone here from the public to speak on this item. No one responded.

There was discussion among the committee members. Mr. Bill De Deugd asked if this would be a publicized registry. Ms. Welch replied yes, it will be on the Sheriff's website. Ms. Hayden asked if there has been any input from the pet stores. Mr. Adams replied that there will be educational outreach to make sure the public is aware of the Registry. Mr. Tim Keene asked how long someone stays on the Registry and what happens if someone inadvertently gives an animal to someone on the list. Ms. Welch replied it would depend on if it was a civil matter and would be based on it when it comes to a conviction as it is laid out in Section Three. There was discussion about Section Three, A, B, and C that it states the

length of time and that when it comes to enforcement the Sheriff's Office and the County choose whether or not to enforce it. She also stated that for a first offense they would only get a warning and the warnings would not be published on the website. There were a couple of members that thought this was too broad and needed additional language. Ms. Hayden asked for clarification for "what kind of other information" in Section Four, C, 6. Ms. Welch responded that if something fishy, like an address doesn't seem right they will be able to request additional documentation.

Ms. Hayden asked for a motion to approve, or any changes. Mr. Bill De Deugd stated he was going to abstain on this. Ms. Hayden responded that he was not able to abstain and without a motion to approve or deny she didn't know if they could do anything with it.

Mr. Bill De Deugd made a motion to approve as its written, Mr. Reitmann seconded to approve as written.

Mr. Hagan and Mr. Keene brought up Section Two, L, definition of a person. There was a discussion about this. Ms. Hayden asked Mr. Adams if there was a way to come up with something that addresses what Mr. Keene's concerns are toward not having to affect someone who totally had no knowledge of the Registry. Ms. Welch stated that it is on us to enforce it.

A question came up to get clarification that if someone gave an animal to a person who was on the Registry and had no idea of it, they would only get a warning, and not be put on the website and in return it would educate them to be aware of this. Ms. Welch replied yes, and it could be a verbal warning, not a written. Lt. Castellon with the animal Task Force, stated that education is a huge part of what they do, as the enforcement part. Last year they had 4,256 calls for service, animal related and out of those calls they made about 24/28 felony arrests. They deal with local rescue groups, cat rescue groups, 501 (C)(3)'s, Muttie Paws, and many more. People aren't even aware of some of the Ordinances like tethering Ordinances. The purpose of us getting this out here is a tool that is not only for us but to help educate the public.

Marsha Ellis, member of the public, spoke up and thanked the officer for bringing in the education piece as part of the service of what they offer to people. She mentioned her concern of vigilantism of individuals acting out against these people.

Ms. Hayden stated we have a motion on the floor to approve as written and a second to approve as written. The motion was called, and motion passes 3 to 2.

Noise Ordinance Amendment

Mr. Adam Mendez, Senior Planner, Lee County Community Development Zoning Department gave a brief overview of the Ordinance. The Board of County Commissioners adopted an amendment to the Noise Control Ordinance (Ordinance 14-18) on April 19, 2022 (Ordinance 22-10). Ordinance 22-10, as adopted, addressed the measurement of C-weighted sound pressures (Network dBC), pure tone analysis, and measures of enforcement, including an alternative maximum noise level table addressing the measurement of sound levels by emitting land use (Table 2). At the adoption hearing for Ordinance 22-10, the Board received public input expressing concern with respect to the exclusion of manufacturing and industrial land uses from Table 2. In the motion approving the adoption of Ordinance 22-10, the Board included direction to staff to perform further analysis to establish legally defensible sound level limits for manufacturing and industrial land uses in Table 2 to avoid the potential for a regulatory taking of a

business enterprise. Based on this direction, staff evaluated noise exposure standards established by the Occupational Safety and Health Act (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) to establish a baseline for decibel values associated with the potential for hearing impairment, damage or loss. OSHA establishes a 90-dBA criterion for an 8-hour time weighted permissible exposure limit. Employers conducting business activities at or beyond this threshold are required to provide a hearing conservation program or action level plan, in addition to other requirements. The OSHA 90 dBA 8-hour time weighted average limitation is less restrictive than the NIOSH 85 dBA recommended 8-hour time weighted average. Staff, with assistance from the Lee County Sheriff's Office, performed noise level testing within a series of industrial areas in unincorporated Lee County to determine if noise levels exceeding 90 dBA and 95 dBC were present at the property line of the respective noise source. As recorded within nine distinct industrial areas throughout unincorporated Lee County, the average peak volume noise was recorded at 69.4 dBA and 76.6 dBC. These figures were considerably lower than the above-referenced OSHA and NIOSH values, especially when considering noise energy exposure doubles every 3 decibels (dB). For example, 63 dBA carries twice as much sound level pressure as 60 dBA. The limited amendment contained herein establishes an alternative sound level standard for manufacturing and industrial land uses that may be used at the discretion of the Lee County Sheriff's Office consistent with standards established in Ordinance 22-10.

Ms. Tracy Hayden asked for public comment.

Ms. Marsha Ellis, member of the public, had passed out a handout to all in attendance in opposition of this noise. She stated that the purpose of her letter was to advocate for protection of public health, life, safety, and private property interests in unincorporated Lee County through preservation of common-sense noise level protections, as derived from accepted community noise standards.

Ms. Roseanne Duffy, member of the public, asked for clarification if the ordinance was just for the levels for pure tone. Mr. Mendez replied, the purpose of this ordinance is to establish a standard, where no standard currently exists. There is a pure tone adjustment that is proposed here if a pure tone is detected then the decimal level drops by 5 according to the way the ordinance is proposed.

Ms. Hayden suggested they go around the room to each member to see if anyone has any questions or comments.

Mr. Sam Hagan asked if under the existing statute, is manufacturing and Industrial exempt. Mr. Mendez replied that he wouldn't call it exempt, Table 1 still applies so people who have that issue in their receiving land use there is just no standard for Manufacturing and Industrial at this time and this is what they are trying to rectify.

Ms. Hayden asked Mr. Mendez if she is standing on the Ajax property line, can she expect to have the 75/80? Adam Mendez replied that he wanted to make sure everyone understood which land use came first with an explanation referring to Table 1 residential. Table 1 is not going away; it is actually an extra layer of protection.

Mr. Bill De Deugd stated that he had a conflict of interest for this matter and would have to abstain from voting. A form will be provided for him to fill complete.

Mr. Joe Adams stated he wanted to clarify procedurally, yes, this vote can move forward, and it requires 3 affirmative votes to pass a motion.

Ms. Hayden called for a motion to approve as written or amended. Sam Hagan made a motion to approve as written, Mr. Tim Keene seconded.

Ms. Hayden asked if there were any comments from the board. There was none. The vote was called. Motion passes 4 with 1 abstained.

Ms. Tracy Hayden adjourned the meeting at 3:09 p.m.

Ms. Roseanne Duffy asked if any adjustments could be made to these levels if there are still some questions about whether it's gone far enough and if it is warranted?

Mr. Mendez replied that this will be going to go through another committee review as the local Planning Agency is going to hear this, so between now and then if someone has some suggestions on standards that work with the parameters and the direction they were given, it will be heard and taken under advisement before it goes to the board which is the next step.

There was no further business.

The next meeting is tentatively scheduled for Wednesday, November 8, 2023.

MEMORANDUM
FROM
PUBLIC WORKS
Natural Resources Division

**TO: Executive Regulatory Oversight
Committee (EROC)**

DATE: October 19, 2023

FROM: Phil Gillogly
Operations Manager,
Department of Natural
Resources

SUBJECT: Revisions to Lee County Water Conservation Ordinance 17-04

The Board of County Commissioners adopted a Water Conservation Ordinance (Ordinance 05-10) on June 14, 2005 and later amended the ordinance in 2017 (Ordinance 17-04). Ordinance 17-04 amended provisions concerning the landscape irrigation days, updated Florida Statutes, amended provisions of the enforcement procedure, addressed mitigation of penalties and temporary relief upon exceptional circumstances.

Lee County staff has been monitoring the Sandstone aquifer in Lehigh Acres and the Mid Hawthorn aquifer in South Fort Myers since May of 2020. This program was initiated due to the increased volume of well permits issued year over year and to supplement the data collected by the United States Geological Survey (USGS). The goal was to monitor the effects growth places on the groundwater resource. Last year the South Florida Water Management District (SFWMD) raised concern with water levels within the Sandstone Aquifer in eastern Lehigh Acres. On October 6th, 2023, the SFWMD notified Lee County in writing to cease issuance of irrigation well construction permits within a six square mile area of Southeastern Lehigh Acres. Though SFWMD identified an area within Lehigh, the monitoring wells throughout the County have shown the same declining trend.

In order to address the declining aquifer levels throughout the county, staff is proposing revisions to the current Water Conservation Ordinance. The major revision is to implement a one day a week watering schedule between the beginning of February through the end of May. Typically, the aquifers peak towards the end of rainy season and show the most stress during the April-May timeframe. One day a week irrigation during the dry season helps conserve water and protect the aquifer from the continued population growth. Exemptions are proposed as well for golf courses who would see the biggest impact to their business.

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Lee County Water Conservation Ordinance

1. What is the public interest that the Ordinance is designed to protect?

Existing and Future water resources for Lee County

2. Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?

The proposed changes to the ordinance will provide for better enforcement ability by placing watering days when County employees are not at work during the driest months. Education will take place through a campaign; however, it is not enough to protect the water resource.

3. Is the regulation required by State or Federal law? If so, to what extent does the county have the authority to solve the problem in a different manner?

The State has the ability to limit water use when they determine conservation is necessary. Lee County Water Conservation Ordinance has been in place since 2005 and was created to protect our water resources. The county has the authority to place a more restrictive regulation in place than the state regulation.

4. Does the regulation duplicate State or Federal program? If so, why?

This does not duplicate regulation but places more restrictive use in the driest time of the year, February through May.

5. Does the regulation contain market-based incentives? If not, could that be used effectively?

By following the revised ordinance, the incentive will be a decreased electric bill along with preserving the health of the aquifer for future growth.

6. Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?

Yes, the revisions are designed to address declining water level in Lee County which affects all residents.

7. Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?

One day a week irrigation during the dry season helps conserve water and protect the aquifer from the continued population growth, while still providing enough water to sustain healthy turf and plant life during the dormant season. The proposed changes also help ease the burden of golf courses by allowing additional watering flexibility.

8. Does the regulation impact vested rights?

No, it does not, irrigation is still allowed.

9. Does the regulation provide prompt and efficient relief mechanism for exceptional cases?

Yes, through a variance procedure.

10. Even though there is an interest to be protected, is it really worth another regulation?

The regulation is already in place, we are revising it to better protect the water resource for future growth.

11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?

Water use restrictions have been utilized across the State when drought conditions have existed. They have been effective when they have been enacted. This revision to the ordinance is to utilize the successful approach each year during the dry months.

12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?

If this is enacted there is no cost involved. If not enacted the loss of resource could be devastating to the water resources of Lee County, in addition to creating a moratorium due to lack of usable water.

**LEE COUNTY, FLORIDA
BUSINESS IMPACT ESTIMATE
PROPOSED COUNTY ORDINANCE**

NAME OF ORDINANCE: Water Conservation Ordinance

I. SUMMARY OF ORDINANCE

A. Statement of Purpose

Protect water resources for future and continued use.

B. Narrative Summary of Ordinance (Several Sentence Summary)

Last year the South Florida Water Management District (SFWMD) raised concern with water levels within the Sandstone Aquifer in eastern Lehigh Acres. On October 6th, 2023, the SFWMD notified Lee County in writing to cease issuance of irrigation well construction permits within a six square mile area of Southeastern Lehigh Acres. Though SFWMD identified an area within Lehigh, the monitoring wells throughout the County have shown the same declining trend.

In order to address the declining aquifer levels throughout the county, staff is proposing revisions to the current Water Conservation Ordinance. The major revision is to implement a one day a week watering schedule between the beginning of February through the end of May. Typically, the aquifers peak towards the end of rainy season and show the most stress during the April-May timeframe. One day a week irrigation during the dry season helps conserve water and protect the aquifer from the continued population growth, while still providing enough water to sustain healthy turf and plant life during the dormant season.

II. BUSINESS IMPACT ESTIMATE

- A. Estimate of direct compliance costs that businesses may reasonably incur if the ordinance is enacted: **Businesses should see a reduction in electric from the reduced irrigation taking place.**
- B. Identification of any new charge or fee on businesses subject to the proposed ordinance or for which businesses will be financially responsible: **The major revision is to implement a one day a week watering schedule between the beginning of February through the end of May. And a proposed increase to the fine fee schedule.**
- C. Estimate of the county's regulatory costs, including estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs: **The only revenue would be from repeat offenders, and that would be an increasing fine scale per incident.**
- D. Estimate of the number of businesses likely to be impacted by the ordinance: **Exemptions are proposed as well for golf courses who would see the biggest impact to their business.**

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\(6\)\(a\)](#). ~~e~~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 Thursday and/or Sunday.
- (3) [From June 1 through January 31, F.A.C. 40E-24.201\(6\)\(b\)](#). ~~o~~Odd-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 ~~any~~[seven](#) days ~~a~~[of 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 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 AM to 5:00 PM. 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.

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- (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 5 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, ~~\$15~~90.00 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 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.

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.