

LEE COUNTY ORDINANCE NO. 02-32

AN ORDINANCE PROVIDING FOR THE RATES, CHARGES AND FEES FOR THE LEE COUNTY WATER AND SEWER SYSTEM AS OWNED AND OPERATED BY LEE COUNTY; PROVIDING FOR THE EFFECT OF THE ORDINANCE; ESTABLISHING PROCEDURES FOR ADOPTING FUTURE RATES, CHARGES AND FEES FOR THE LEE COUNTY WATER AND SEWER SYSTEM; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES AND RATES RESOLUTIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Lee County is a political subdivision and charter county of the State of Florida; and

WHEREAS, the Board of County Commissioners (“Board”), is the governing body in and for Lee County; and,

WHEREAS, Lee County owns, operates and maintains the Lee County Water and Sewer System (“System”) through its Division of Utilities; and,

WHEREAS, there exists a need from time to time to adjust and reclassify the rate structures of the Water and Sewer System, and to establish the basis for each of the service classifications, rates, charges and fees for the Water and Sewer System; and,

WHEREAS, the Board is desirous of providing for the adjusting and restructuring of the rates, charges and fees for the System from time to time so as to adequately provide sufficient revenues for the most effective and efficient means of operation of the System; and,

WHEREAS, the Board is desirous of providing for the adjusting and structuring

of the rates, charges and fees for the System from time to time so as to provide sufficient revenues to cover the required debt service and other obligations necessitated by bond covenants; and,

WHEREAS, the Board is desirous of providing for properly and fairly allocating the costs of the rates and fees of the System to all customers that are receiving the benefits from their connection to and use of the services of the System; and,

WHEREAS, the Board recognizes that the rates, charges and fees of the System need to be adjusted and structured from time to time so as to continue to insure a sound operational and financial basis for the System while fairly distributing the costs of the rates, charges and fees to all customers of the System; and,

WHEREAS, the Board has previously adopted Lee County Ordinance No. 87-3, relating to the rates, charges and fees to be charged by the Lee County Water and Sewer System (“System”); and,

WHEREAS, the Board previously adopted Lee County Ordinance No. 88-28 and Lee County Ordinance No. 89-19, amending Lee County Ordinance No. 87-3; and,

WHEREAS, Lee County Ordinance No. 87-3, as amended, and all prior Rates Resolutions adopted pursuant to Lee County Ordinance No. 87-3, now need to be repealed and superseded to correct inconsistent provisions as the result of changes in facts and law since their adoption; and,

WHEREAS, after being advised in the premises at a duly held public hearing in Lee County, the Board finds that the repeal of Lee County Ordinance No. 87-3, as amended, by this Ordinance, and the ratifying of Lee County Resolution No. 02-07-44 by its incorporation herein, serves a public purpose and is to the public’s benefit.

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

SECTION ONE: **RATES, CHARGES AND FEES FOR THE LEE COUNTY WATER AND SEWER SYSTEM**

The rates, charges and fees for the Lee County Water and Sewer System (“System”) as adopted by the Board at public hearing on July 9, 2002 in Lee County Resolution No. 02-07-44, are hereby adopted, confirmed, ratified and established for the System by the incorporation of Lee County Resolution No. 02-07-44 herein, as Exhibit A, hereto.

SECTION TWO: **EFFECT OF THE ORDINANCE ON THE LEE COUNTY WATER AND SEWER SYSTEM**

All customers and users of the Lee County Water and Sewer System (“System”) as it is presently configured, are subject to all terms and conditions of this Ordinance. Additions to the System as they may be made by the County from time to time, to include both infrastructure components and/or customers, will be subject to the terms and conditions of this Ordinance as such infrastructure and/or customers are incorporated into the System.

SECTION THREE: **PROCEDURES FOR ADOPTING FUTURE RATES, CHARGES AND FEES ADJUSTMENTS FOR THE WATER AND SEWER SYSTEM**

(a) All future rates, charges and fees for the Lee County Water and Sewer System (“System”) will be made by County Resolution adopted by a majority of the Board of County Commissioners in session at a public hearing duly noticed pursuant to, and in

conformance with, general law. Such future rates, charges and fees Resolutions, or any amendments thereto, will not be required to be incorporated into this Ordinance in order to be of effect as of their implementation date as established by the Board of County Commissioners at the scheduled and noticed public hearing.

(b) In the event of an emergency for the adoption of any rates, charges and fees, the Board shall so officially state and define the emergency and may waive the advertising and notice requirements before adopting the emergency rates, charges or fees by Resolution at a regularly scheduled or emergency meeting as called by the Board of County Commissioners. Should any rates, charges or fees be increased pursuant to this emergency procedure, a public hearing shall be held within sixty (60) days of such adoption, which will conform to the then applicable statutory notice requirements for the adoption of a County Ordinance; and the Board at such public hearing, shall reaffirm the emergency rates, charges or fees by subsequent County Resolution.

SECTION FOUR: **ANNUAL REVIEW**

The Division of Lee County Utilities shall conduct an annual review of all Lee County Utilities User Rates, Fees and Charges so as to assure adequate revenue for the operation, maintenance and replacement of the System, and to insure that the appropriate proportional distribution of the operation, maintenance and replacement costs is fairly allocated among all customers and users of the System.

SECTION FIVE: **ANNUAL NOTIFICATION TO CUSTOMERS**

The Division of Lee County Utilities shall notify all customers and users of the Lee County Utilities System of the applicable rates, charges and fees, by mail on an annual

basis, at the beginning of each fiscal year, or upon implementation of any changes to those rates, charges and fees, whichever shall apply. In any event, at least one annual notification by mail, shall be provided to all customers and users of the System, at the beginning of each fiscal year, in addition to the regular monthly billing for that month.

SECTION SIX: **INVALIDATION OF INCONSISTENT AGREEMENTS**

Any outstanding agreements, contracts or other such negotiated instruments between the Board of County Commissioners and any person, partnership, corporation, special district, governmental entity, or the like, for the providing of water or sewer services by the System, are hereby declared invalid to the extent that their terms and conditions are inconsistent with the provisions of this Ordinance or the accompanying Rates, Charges and Fees Resolution; to wit, Lee County Resolution No. 02-07-44, attached hereto as Exhibit A.

SECTION SEVEN: **REPEAL OF CONFLICTING PROVISIONS OF EXISTING ORDINANCES AND RESOLUTIONS**

All other Lee County Utilities Rates Resolutions, sections or parts of Rates Resolutions or sections of the Code of Ordinances of Lee County relating to the Lee County Water and Sewer System rates, charges and fees that are in conflict with the provisions of this Ordinance, are hereby repealed and superseded by the adoption of this Ordinance. Lee County Ordinance No. 87-3, Lee County Ordinance No. 88-28 and Lee County Ordinance No. 89-19 are hereby repealed in their entirety and superseded by the adoption of this Ordinance.

SECTION EIGHT: SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and it is the intention to confer upon the whole or any part of the powers herein provided for by this Ordinance. If any of the provisions of this Ordinance shall be held to be unconstitutional or illegal by a court of competent jurisdiction of this state, the decision of such court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional or illegal provisions not been included herein.

SECTION NINE: EFFECTIVE DATE

This Ordinance shall become effective upon notification from the Secretary of State that the Ordinance has been duly filed with that office.

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

BOB JANES	<u>AYE</u>
DOUGLAS ST. CERNY	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
ANDREW COY	<u>AYE</u>
JOHN ALBION	<u>AYE</u>

DULY PASSED AND ADOPTED this 12th day of November, 2002.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

By: Michelle S. Cooper
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Ray Judah
Chairman

APPROVED AS TO FORM:

By: [Signature]
Office of the County Attorney

