

ORDINANCE NO. 10-____

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2
3 AN ORDINANCE OF THE BOARD OF COUNTY
4 COMMISSIONERS OF LEON COUNTY, FLORIDA,
5 AMENDING CHAPTER 15 "SUSTAINABILITY AND
6 ENERGY IMPROVEMENT," AND BY AMENDING
7 CERTAIN PROVISIONS IN ARTICLE I ENTITLED
8 "LEON COUNTY ENERGY IMPROVEMENT DISTRICT"
9 OF THE LEON COUNTY CODE OF LAWS OF LEON
10 COUNTY, FLORIDA, TO REFLECT MINOR CHANGES
11 MADE BY THE FLORIDA LEGISLATURE IN HOUSE
12 BILL 7179; PROVIDING FOR CONFLICTS; PROVIDING
13 FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE
14 DATE.

15
16 WHEREAS, Leon County, Florida (the "County") enacted an ordinance creating the
17 Leon County Energy Improvement District for the purpose of accomplishing the energy
18 efficiency and renewable energy improvements, including paying the costs necessary and
19 incidental thereto through non-ad valorem assessments under its home rule powers; and,

20 WHEREAS, the Florida Legislature enacted House Bill 7179 during the 2010 Florida
21 Legislative session and Leon County desires to make minor modifications so that certain
22 provisions of the Bill be incorporated into the County's existing ordinance.

23 BE IT ORDAINED by the Board of County Commissioners of the County of Leon,
24 Florida, as follows, that:

25 **Section 1.** That Chapter 15, Article I entitled "Leon County Energy Improvement District"
26 of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

27 1. **Declaration of District.** Pursuant to and in accordance with the Florida
28 Constitution and Florida Statutes, §125.01, the County hereby forms the "Leon County Energy
29 Improvement District" (the "District") as a "dependent special district" within the meaning of
30 Chapter 189, Florida Statutes.

1 2. **Description of District.** The Districts will consist of, and shall include property
2 within the geographical boundaries of the County; in accordance with Section 7.37 of the Florida
3 Statutes, if any such property is located within any municipality in the County, such property
4 may be so included in the District unless such municipality shall have enacted an ordinance
5 setting forth the exclusion of property within its boundaries from the District.

6 3. **District Board.** The membership of the District's Board shall be identical to the
7 Board of County Commissioners of Leon County.

8 4. **Purpose of the District.** The purpose of the Leon County Energy Improvement
9 District (the "District") is to accomplish energy efficiency and renewable energy improvements
10 on residential and commercial properties by financing such improvements to be repaid through
11 non-ad valorem assessments on the property owner's property taxes.

12 5. **Authority of the District.** The District shall have, and the board may exercise by
13 majority vote, the following powers:

14 A. To sue and be sued in the name of the District, to adopt and use a seal and
15 authorize the use of a facsimile thereof, and to make and execute contracts
16 and other instruments necessary or convenient to the exercise of its
17 powers.

18 B. To contract for the services of consultants to perform planning,
19 engineering, legal, or other professional services.

20 C. To borrow money and accept gifts, to apply for and use grants or loans of
21 money or other property from the United States, the state, a unit of local
22 government, or any person for any District purpose and enter into
23 agreements required in connection therewith, and to hold, use, sell, and

1 dispose of such moneys or property for any District purpose in accordance
2 with the terms of the gift, grant, loan, or agreement relating thereto.

3 D. To adopt resolutions and procedures prescribing the powers, duties, and
4 functions of the officers of the District; the conduct of the business of the
5 District; the maintenance of records; and the form of other documents and
6 records of the District. The board may also adopt ordinances and
7 resolutions that are necessary to conduct District business, if such
8 ordinances do not conflict with any ordinances of a local general purpose
9 government within whose jurisdiction the District is located. Any
10 resolution or ordinance adopted by the board and approved by referendum
11 vote of District electors may only be repealed by referendum vote of
12 District electors.

13 E. To maintain an office at places it designates within a county or
14 municipality in which the District is located and appoint an agent of
15 record.

16 F. To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real
17 and personal property or any estate therein for any purpose authorized by
18 this act and to trade, sell, or otherwise dispose of surplus real or personal
19 property. The board may purchase equipment by an installment sales
20 contract if funds are available to pay the current year's installments on the
21 equipment and to pay the amounts due that year on all other installments
22 and indebtedness.

- 1 G. To hold, control, and acquire by donation or purchase any public
2 easement, dedication to public use, platted reservation for public purposes,
3 or reservation for those purposes authorized by this act and to use such
4 easement, dedication, or reservation for any purpose authorized by this act
5 consistent with applicable adopted local government comprehensive plans
6 and land development regulations.

- 7 H. To lease as lessor or lessee to or from any person, firm, corporation,
8 association, or body, public or private, any facility or property of any
9 nature for the use of the District when necessary to carry out the District's
10 duties and authority under this act.

- 11 I. To borrow money and issue bonds, revenue anticipation notes, or
12 certificates payable from and secured by a pledge of funds, revenues,
13 assessments, warrants, notes, or other evidence of indebtedness, and
14 mortgage real and personal property when necessary to carry out the
15 District's duties and authority under this act.

- 16 J. To charge user fees and assessments authorized by resolution of the board,
17 in amounts necessary to conduct District activities and services, and to
18 enforce their receipt and collection in the manner prescribed by resolution
19 and authorized by law.

- 20 K. To cooperate or contract with other persons or entities, including other
21 governmental agencies, as necessary, convenient, incidental, or proper in
22 connection with providing effective mutual aid and furthering any power,
23 duty, or purpose authorized by this act.

- 1 L. To assess and impose upon real property in the District non-ad valorem
2 assessments as authorized by this act.
- 3 M. To impose and foreclose non-ad valorem assessment liens as provided by
4 this act or to impose, collect, and enforce non-ad valorem assessments
5 pursuant to Chapter 197.
- 6 N. To select as a depository for its funds any qualified public depository as
7 defined in S. 280.02 which meets all the requirements of Chapter 280 and
8 has been designated by the Chief Financial Officer as a qualified public
9 depository, upon such terms and conditions as to the payment of interest
10 upon the funds deposited as the board deems just and reasonable.
- 11 O. To provide financing to owners of residential and commercial property
12 within the Energy Improvement District authorized for the purposes of this
13 Chapter.

14 6. **Description of Improvements.** The improvements to be financed by the County
15 for properties within the District shall consist of, and shall be limited to, any improvements
16 constituting “energy efficiency” or “renewable energy improvements” as defined herein. The
17 improvements to be constructed on each property shall be set forth in a written agreement
18 executed between the property owner and the District.

19 7. **Financing.** The cost of the improvements undertaken by the property owner and
20 financed by the District shall be assessed on the related property in the amount or amounts set
21 forth in the written agreement for such property and shall be financed by federal or state grant
22 funds, private loans from a financial institution, state or federal loan or bond guarantee programs

1 or other private or not-for-profit sources of funds which shall be payable through non-ad valorem
2 assessments by the property owner.

3 8. **Non-ad valorem assessments.** Pursuant to Chapter 197, F.S., non ad-valorem
4 assessments levied pursuant to this Ordinance shall remain liens, coequal with the lien of all
5 state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims,
6 until paid.

7 9. **Definitions.**

8 A. Energy efficiency improvement. A material improvement made, and
9 affixed. —to an existing residential or commercial property that reduces energy
10 consumption, including but not limited to:

- 11 i. Caulking, weatherstripping (cost of weatherstripping shall not
12 exceed fifteen hundred dollars) and air duct sealing;
- 13 ii. Insulation in walls, roofs, floors, foundations and in heating and
14 cooling distribution systems radiant barriers
- 15 iii. Heating and cooling system upgrades, combined heat and power
16 systems, automatic energy control systems, heating, ventilating or
17 air conditioning and distribution system modifications or
18 replacements in homes, buildings or central plants including
19 microturbines and fuel cells
- 20 iv. Storm or weathertight windows and doors, multiglazed windows
21 and doors, heat-absorbing or heat-reflective glazed and coated
22 windows and door systems, additional glazing, reductions in glass

1 area, and other window and door system modifications that reduce
2 energy consumption

3 v. Replacement or modification of lighting fixtures to increase the
4 energy efficiency of the system without increasing the overall
5 illumination of a residential or commercial building unless such
6 increase in illumination is necessary to conform to the applicable
7 building code for the proposed lighting system;

8 vi. High efficiency water or pool heating systems.

9 vii. Permanent rainwater harvesting systems reducing energy demands
10 such as cisterns or rain barrels for capture, storage and reuse of
11 water.

12 viii. Reflective roof or other cool roof systems that increase solar
13 reflectance and thermal emittance.

14 ix. Commercial refrigeration system upgrades and systems for heat
15 recovery from compressors and condensers.

16 x. An energy efficiency improvement does not include a household
17 appliance such as a washing machine or refrigerator that is not
18 permanently fixed to real property.

19 B. Renewable energy improvement. Any fixture, product, system, device or
20 interacting group of devices affixed to a property and installed behind the
21 meter on any residential or commercial building that produces energy
22 from renewable resources including but not limited to photovoltaic

1 systems, small wind systems, biomass systems, or biogas or methane
2 recovery systems, as may be authorized.

3 10. **Eligible property owners.** An eligible property owner (or property) must meet
4 the following criteria:

- 5 A. Be the legal owner and provide proof of ownership in the application for
6 the program.
- 7 B. Property must be located within Leon County.
- 8 C. Property owner must be current on property taxes, and show no
9 delinquency in the last ~~five~~ years on the property subject of the application
10 for improvements.
- 11 D. Property owner must be current on any mortgage.
- 12 E. Property owner cannot be in bankruptcy nor can the property be an asset
13 in any bankruptcy proceeding.
- 14 F. Property cannot be in foreclosure.
- 15 G. Property cannot have any federal income tax lien, judgment lien or similar
16 involuntary lien encumbering the property.
- 17 H. Improvements must be reasonable for the scope of the property project
18 and to the property value as approved by the District.

19 11. **Energy Savings Audit.** An energy savings audit shall be conducted by a
20 qualified energy auditor or a certified building energy rater. The District shall provide a list of,
21 and set forth the *minimum standards* for, qualified or certified auditors and raters. At a
22 minimum, the energy savings audit shall include the following information:

- 23 A. Recommendations for energy savings measures;

- 1 B. Estimated energy savings and a priority ranking for each measure;
- 2 C. Estimated renewable energy to be produced;
- 3 D. Estimated greenhouse gas reductions; and
- 4 E. Estimated cost savings resulting from the implementation of the
- 5 recommendations and use of funds made available by the District.

6 The Board may establish an alternative process to meet this requirement, but that process must
7 be based upon professionally accepted methodologies for documenting the information required
8 herein.

9 12. **Application.** An eligible property owner must submit a complete application to
10 the District for its approval. A complete application shall include the following information:

- 11 A. Proof of ownership and location of the property. Organizational
12 documents if the property owner is not on the title as an individual.
- 13 B. Documentation showing the structure or building, subject of the
14 application, is an existing structure or building on the date of application.
- 15 C. A cost estimate for the installation of the energy savings measures
16 completed by a Florida licensed contractor (including the name and
17 license number of the contractor). This estimate shall include all
18 construction costs, equipment, permitting fees, recording fees for the
19 assessment of liens, energy audit costs, and contingency fees. Estimated
20 costs shall be reasonable for the scope of the proposed project and in
21 relation to the property value.
- 22 D. Written documentation indicating that the property owner is current in the
23 mortgage, if one exists on the property, and that there are no federal or

1 state tax liens, no property based debt delinquencies, judgment liens or
2 similar involuntary liens against the property subject of the application.

3 E. Disclosure regarding non-ad valorem assessments.

4 F. State of Florida Fair Lending Notice as required.

5 G. Proof of notice to any lender of any adjustment to monthly payments must
6 be provided 30 days prior to entering into a written agreement.

7 H. A verified copy, or other proof of notice, to any holder or loan servicer of
8 a mortgage shall be provided to the county at least 30 days prior to
9 entering into the written agreement. This notice shall include the owner's
10 intent to enter into the written agreement with the maximum principal
11 amount to be financed and the maximum annual assessment necessary to
12 repay that amount.

13 13. **Written agreement.** Upon submittal of a complete application to enter into the
14 program as approved by the District at a public hearing, the property owner shall enter into a
15 voluntary written agreement with the District that shall constitute the property owner's consent
16 to be subject to a non-ad valorem assessment as set forth in Section 7 of this Ordinance. The
17 written agreement shall provide for the following:

18 A. The maximum limit of the financing for the program shall be \$7,000 per
19 property unless:

20 i. A higher financing amount is consented to by the mortgage holder
21 on the property, if one exists, and

22 ii. The energy audit, or information on energy savings measures
23 provided in the application, shows a demonstrated high level of

1 energy savings or renewable energy produced over the duration of
2 the financing.

3 B. Express voluntary consent to accept the non-ad valorem assessment has
4 been given.

5 C. The length of time permitted for the property owner to repay the non-ad
6 valorem assessment shall not exceed 20 years including the term, interest
7 rate and administrative fees.

8 D. The property owner shall be responsible for assuring the improvements are
9 completed as reflected in the approved application documents. The
10 property owner also consents to providing access to property to the county
11 to verify that the improvements have been completed as proposed in the
12 application.

13 E. At the time of a transfer of property ownership excepting foreclosure, the
14 past due balances of any non-ad valorem assessment under this Subsection
15 shall be due for payment, but future payments shall continue as a lien on
16 the property. At or before the execution of a contract for the sale and
17 purchase of any property for which a non-ad valorem assessment has been
18 levied and has an unpaid balance due, the seller shall give the prospective
19 purchaser a written disclosure statement in the following form, which shall
20 be set forth in the contract or in a separate writing:

21 "The property being purchased is located within the
22 jurisdiction of a local government that has placed an
23 assessment on the property pursuant to s. 163.08, Florida

1 Statutes. The assessment is for a qualifying improvement to
2 the property relating to energy efficiency, renewable
3 energy, or wind resistance, and is not based on the value of
4 property. You are encouraged to contact the county
5 property appraiser's office to learn more about this and
6 other assessments that may be provided by law."

- 7 F. The risks associated with participating in the program shall be disclosed in
8 the written agreement, including risks related to the failure of the
9 participating property owners to make payments and the risk of issuance
10 of a tax certificate and loss of the property pursuant to Chapter 197, F.S.
- 11 G. The cost of an energy savings audit or the cost to complete an estimate of
12 information on energy savings measures, estimated energy savings for
13 each measure, estimated greenhouse gas reductions and estimated cost
14 savings from the projects will be subject to reimbursement upon execution
15 of the written agreement to accept the non-ad valorem assessment.
- 16 H. The property owner shall agree to apply any rebates provided by an entity
17 other than the District, received for the projects approved by the District,
18 towards the repayment of the non-ad valorem assessment.
- 19 I. ~~If property taxes are paid through an escrow account.~~ [the property owner
20 is responsible for notifying the lender of any adjustment to monthly
21 payments at least 30 days prior to entering into the written agreement.
- 22 J. The property owner shall provide all copies of final permits and
23 inspections to the District upon completion of the projects.

1 K. The property owner shall agree to provide the District 5 years of utility
2 statements showing the energy usage for the property following the year in
3 which the improvements are made. The statements shall be due on the
4 final day of the month when the improvements were completed.

5 L. The property owner shall agree to record either the written agreement or a
6 summary memorandum of the written agreement in the County's public
7 records within 5 days after execution of the agreement.

8 14. **Notice.** On April 2, 2010, in accordance with Chapters 125, 189, and 286 F.S.,
9 the County published notice of the public hearing to adopt and approve to form of the Energy
10 Improvement District.

11 15. **Authorization of County Officers and Employees.** The Board and all other
12 County offices and employees are hereby authorized and directed to take all action necessary and
13 appropriate to effectuate the provisions of this Ordinance.

14 **Section 2. Conflicts.**

15 All ordinances or parts of ordinances in conflict with the provisions of this ordinance are
16 hereby repealed to the extent of such conflict, except to the extent of any conflicts with the
17 Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail
18 over any parts of this ordinance which are inconsistent, either in whole or in part, with the said
19 Comprehensive Plan. Pursuant to Section 189.4041, F.S. the County finds that the formation of
20 the District is consistent with the Comprehensive Plan.

1 **Section 3. Severability.**

2 If any provisions or portion of this Ordinance is declared by any court of competent
3 jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and
4 portions of this Ordinance shall remain in full force and effect.

5 **Section 4. Effective Date.**

6 This ordinance shall have effect upon becoming law.

7 DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon
8 County, Florida this ____ day of ____, 2010.

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10 LEON COUNTY, FLORIDA

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By: _____
Bob Rackleff, Chairman
Board of County Commissioners

17 ATTESTED BY:
18 BOB INZER, CLERK OF THE COURT
19 LEON COUNTY, FLORIDA

20

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22 By: _____
23 Bob Inzer, Clerk of Court
24 Leon County, Florida

25

26 APPROVED AS TO FORM:
27 COUNTY ATTORNEY'S OFFICE
28 LEON COUNTY, FLORIDA

29

30 By: _____
31 Herbert W. A. Thiele, Esq.
32 County Attorney