

ORDINANCE NO. 10- 12

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 15 "SUSTAINABILITY AND ENERGY IMPROVEMENT," AND BY ENACTING ARTICLE I ENTITLED "LEON COUNTY ENERGY IMPROVEMENT DISTRICT" OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, PROVIDING FOR CREATION OF THE SPECIAL DISTRICT, ITS PURPOSE AND AUTHORITY; IMPROVEMENTS; USES OF, NON-AD VALOREM ASSESSMENTS; DEFINITIONS; ENERGY AUDITSL AND AGREEMENTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Leon County, Florida (the "County") is a charter county and political subdivision of the State of Florida ("State"), duly organized and operating under the Constitution and the laws of the State;

WHEREAS, pursuant to Article VII, Section 10 of the Florida Constitution and Chapter 125, F.S., Chapter 166, F.S. and Chapter 189, F.S. the County is authorized to form an Energy Improvement District for the purpose of encouraging, accommodating, and financing energy efficiency and renewable energy improvements (both as defined in this Ordinance) on residential and commercial properties in the County; and

WHEREAS, the County desires to form the Leon County Energy Improvement District (the "District") pursuant to the Florida Constitution for the purpose of accomplishing the energy efficiency and renewable energy improvements, including paying the costs necessary and incidental thereto through non-ad valorem assessments; and

WHEREAS, the State of Florida has declared it the public policy of the State to develop energy management programs aimed at promoting energy conservation; and

WHEREAS, home and business energy consumption accounts for approximately 70% of the overall usage of electric energy; and

WHEREAS, the State of Florida has adopted a schedule for increasing the energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction Chapter 553, F.S.; and

WHEREAS, there is a vast quantity of existing structures with many years of remaining life before replacement, and these structures are not as energy efficient as today's standards, nor do many existing buildings have renewable energy systems installed to provide some or all of their electric energy needs; and

WHEREAS, a major contributor to statewide and County greenhouse gas emissions is the inefficient use of energy by existing occupied building stock; and

WHEREAS, installing energy efficiency and renewable energy improvements on existing structures can provide significant progress towards greenhouse gas reductions and increased energy conservation in the County and statewide; and

WHEREAS, the County has adopted its own Climate Action Plan for Leon county Government Operations that recognizes the need for, and priority placed upon, completing energy efficiency and renewable energy improvements on its existing buildings and facilities; and

WHEREAS, the County has adopted greenhouse gas reduction targets for County facilities and operations recognizing that the 76% of its emissions are from its existing buildings and facilities; and

WHEREAS, such reductions in greenhouse gas emissions will improve air quality, lower fossil fuels use, create energy independence and security, promote the creation of jobs and

economic development by stimulating "green industries" and save its citizens money by reducing energy consumption; and

WHEREAS, existing homeowners, and business property owners, may be highly leveraged on their properties and the current housing market may prevent property owners from financing these types of projects with traditional equity financing options; and

WHEREAS, the expected life of energy efficiency and renewable energy projects may require a longer term payback period than offered by traditional equity financing may afford necessitating an alternative financing option to install the improvements; and

WHEREAS, the formation of an Energy Improvement District, and the voluntary participation in the program by property owners, will provide an alternative financing option to install the improvements; and

WHEREAS, the District will provide financing to a property owner who participates in the program through non-ad valorem assessments levied on the property, pursuant to Chapter 197, F.S., where the improvements occur to minimize risk of failure for non-payment of the District's funds; and

WHEREAS, the District will have options to raise capital to fund the program through federal or state grant funds, private loans from a financial institution, state or federal loan or bond guarantee programs or other private or not-for-profit sources of funds; and

WHEREAS, local governments within Florida and nationally have either formed, or are contemplating the formation of, special districts to provide alternative financing options allowing a property owner to finance energy efficiency and renewable energy improvements through non-ad valorem assessments repaid through their property taxes; and

WHEREAS, the County finds that local needs and conditions warrant the formation of the District as an economical means to implement its energy efficiency and renewable energy goals and the Board of County Commissioners desires to enact an ordinance creating a new Chapter 15 entitled "Sustainability and Energy Improvement," Leon County Code of Laws, relating to an Energy Improvement District;

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

Section 1. That the Code of Laws of Leon County, Florida, is hereby amended by adding a new Chapter 15, including Article I thereof "Leon County Energy Improvement District" to read as follows:

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

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

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

4. **Purpose of the District.** The purpose of the Leon County Energy Improvement District (the "District") is to accomplish energy efficiency and renewable energy improvements

on residential and commercial properties by financing such improvements to be repaid through non-ad valorem assessments on the property owner's property taxes.

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

- A. To sue and be sued in the name of the District, to adopt and use a seal and authorize the use of a facsimile thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- B. To contract for the services of consultants to perform planning, engineering, legal, or other professional services.
- C. To borrow money and accept gifts, to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any District purpose and enter into agreements required in connection therewith, and to hold, use, sell, and dispose of such moneys or property for any District purpose in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- D. To adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the District; the conduct of the business of the District; the maintenance of records; and the form of other documents and records of the District. The board may also adopt ordinances and resolutions that are necessary to conduct District business, if such ordinances do not conflict with any ordinances of a local general purpose government within whose jurisdiction the District is located. Any

resolution or ordinance adopted by the board and approved by referendum vote of District electors may only be repealed by referendum vote of District electors.

- E. To maintain an office at places it designates within a county or municipality in which the District is located and appoint an agent of record.
- F. To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate therein for any purpose authorized by this act and to trade, sell, or otherwise dispose of surplus real or personal property. The board may purchase equipment by an installment sales contract if funds are available to pay the current year's installments on the equipment and to pay the amounts due that year on all other installments and indebtedness.
- G. To hold, control, and acquire by donation or purchase any public easement, dedication to public use, platted reservation for public purposes, or reservation for those purposes authorized by this act and to use such easement, dedication, or reservation for any purpose authorized by this act consistent with applicable adopted local government comprehensive plans and land development regulations.
- H. To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any facility or property of any nature for the use of the District when necessary to carry out the District's duties and authority under this act.

- I. To borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, assessments, warrants, notes, or other evidence of indebtedness, and mortgage real and personal property when necessary to carry out the District's duties and authority under this act.
- J. To charge user fees and assessments authorized by resolution of the board, in amounts necessary to conduct District activities and services, and to enforce their receipt and collection in the manner prescribed by resolution and authorized by law.
- K. To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act.
- L. To assess and impose upon real property in the District non-ad valorem assessments as authorized by this act.
- M. To impose and foreclose non-ad valorem assessment liens as provided by this act or to impose, collect, and enforce non-ad valorem assessments pursuant to Chapter 197.
- N. To select as a depository for its funds any qualified public depository as defined in S. 280.02 which meets all the requirements of Chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.

O. To provide financing to owners of residential and commercial property within the Energy Improvement District authorized for the purposes of this Chapter.

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

7. **Financing.** The cost of the improvements undertaken by the property owner and financed by the District shall be assessed on the related property in the amount or amounts set forth in the written agreement for such property and shall be financed by federal or state grant funds, private loans from a financial institution, state or federal loan or bond guarantee programs or other private or not-for-profit sources of funds which shall be payable through non-ad valorem assessments by the property owner.

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

9. **Definitions.**

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

- i. Caulking, weatherstripping (cost of weatherstripping shall not exceed fifteen hundred dollars) and air duct sealing;
- ii. Insulation in walls, roofs, floors, foundations and in heating and cooling distribution systems radiant barriers
- iii. Heating and cooling system upgrades, combined heat and power systems, automatic energy control systems, heating, ventilating or air conditioning and distribution system modifications or replacements in homes, buildings or central plants including microturbines and fuel cells
- iv. Storm or weathertight windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption
- v. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a residential or commercial building unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;
- vi. High efficiency water or pool heating systems.
- vii. Permanent rainwater harvesting systems reducing energy demands such as cisterns or rain barrels for capture, storage and reuse of water.

- viii. Reflective roof or other cool roof systems that increase solar reflectance and thermal emittance.
- ix. Commercial refrigeration system upgrades and systems for heat recovery from compressors and condensers.
- x. An energy efficiency improvement does not include a household appliance such as a washing machine or refrigerator that is not permanently fixed to real property.

B. Renewable energy improvement. Any fixture, product, system, device or interacting group of devices installed behind the meter on any residential or commercial building that produces energy from renewable resources including but not limited to photovoltaic systems, small wind systems, biomass systems, or biogas or methane recovery systems, as may be authorized.

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

- A. Be the legal owner and provide proof of ownership in the application for the program.
- B. Property must be located within Leon County.
- C. Property owner must be current on property taxes, and show no delinquency in the last five years on the property subject of the application for improvements.
- D. Property owner must be current on any mortgage.

- E. Property owner cannot be in bankruptcy nor can the property be an asset in any bankruptcy proceeding.
- F. Property cannot be in foreclosure.
- G. Property cannot have any federal income tax lien, judgment lien or similar involuntary lien encumbering the property.
- H. Improvements must be reasonable for the scope of the property project and to the property value as approved by the District.

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

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

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

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

- A. Proof of ownership and location of the property. Organizational documents if the property owner is not on the title as an individual.
- B. Documentation showing the structure or building, subject of the application, is an existing structure or building on the date of application.
- C. A cost estimate for the installation of the energy savings measures completed by a Florida licensed contractor (including the name and license number of the contractor). This estimate shall include all construction costs, equipment, permitting fees, recording fees for the assessment of liens, energy audit costs, and contingency fees. Estimated costs shall be reasonable for the scope of the proposed project and in relation to the property value.
- D. Written documentation indicating that the property owner is current in the mortgage, if one exists on the property, and that there are no federal or state tax liens, judgment liens or similar involuntary liens against the property subject of the application.
- E. Disclosure regarding non-ad valorem assessments.
- F. State of Florida Fair Lending Notice as required.

13. **Written agreement.** Upon submittal of a complete application to enter into the program as approved by the District at a public hearing, the property owner shall enter into a voluntary written agreement with the District that shall constitute the property owner's consent

to be subject to a non-ad valorem assessment as set forth in Section 7 of this Ordinance. The written agreement shall provide for the following:

- A. The maximum limit of the financing for the program shall be \$7,000 per property unless:
 - i. A higher financing amount is consented to by the mortgage holder on the property, if one exists, and
 - ii. The energy audit, or information on energy savings measures provided in the application, shows a demonstrated high level of energy savings or renewable energy produced over the duration of the financing.
- B. Express voluntary consent to accept the non-ad valorem assessment has been given.
- C. The length of time permitted for the property owner to repay the non-ad valorem assessment shall not exceed 20 years including the term, interest rate and administrative fees.
- D. The property owner shall be responsible for assuring the improvements are completed as reflected in the approved application documents. The property owner also consents to providing access to property to the county to verify that the improvements have been completed as proposed in the application.
- E. At the time of a transfer of property ownership excepting foreclosure, the past due balances of any non-ad valorem assessment under this Subsection

shall be due for payment, but future payments shall continue as a lien on the property.

- F. The risks associated with participating in the program shall be disclosed in the written agreement, including risks related to the failure of the participating property owners to make payments and the risk of issuance of a tax certificate and loss of the property pursuant to Chapter 197, F.S.
- G. The cost of an energy savings audit or the cost to complete an estimate of information on energy savings measures, estimated energy savings for each measure, estimated greenhouse gas reductions and estimated cost savings from the projects will be subject to reimbursement upon execution of the written agreement to accept the non-ad valorem assessment.
- H. The property owner shall agree to apply any rebates provided by an entity other than the District, received for the projects approved by the District, towards the repayment of the non-ad valorem assessment.
- I. If property taxes are paid through an escrow account, the property owner is responsible for notifying the lender of any adjustment to monthly payments.
- J. The property owner shall provide all copies of final permits and inspections to the District upon completion of the projects.
- K. The property owner shall agree to provide the District 5 years of utility statements showing the energy usage for the property following the year in which the improvements are made. The statements shall be due on the final day of the month when the improvements were completed.

14. **Notice.** Pursuant to and in accordance with Chapter 189, Florida Statutes, the County published the notice of the public hearing to adopt and approve to form the Energy Improvement District. The County has determined that it is not possible to mail notice of such public hearing to each address within the District because the properties to be included in the District have not yet been identified.

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

Section 2. Conflicts.

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

Section 3. Severability.

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

Section 4. Effective Date.

This ordinance shall have effect upon becoming law.

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon
County, Florida this 13th day of April, 2010.

LEON COUNTY, FLORIDA



By: Bob Rackleff
Bob Rackleff, Chairman
Board of County Commissioners

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

By: Bob Inzer
Bob Inzer, Clerk of Court
Leon County, Florida

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

By: Herbert W. A. Thiele
Herbert W. A. Thiele, Esq.
County Attorney