

ORDINANCE NO. 10-24

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE CHAPTER 34 TO PROVIDE FOR COMMUNITY GARDENS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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

WHEREAS, pursuant to Article VIII, Section 1 of the Florida Constitution and Chapter 125 of the Florida Statutes, Lee County is authorized and required to protect the public health, safety, and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and,

WHEREAS, the Board adopted the Lee County Land Development Code, which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Land Development Code does not currently provide for community gardens, therefore necessitating the proposed amendment; and,

WHEREAS, Lee County Human Services, which works with communities within Lee County providing social, educational, and recreational activities for communities, was requested by community residents to assist in requesting an Amendment to allow community gardening; and,

WHEREAS, on November 24, 2009, the Board directed Lee County Staff to investigate and propose appropriate regulations to provide for community garden sites in Lee County; and,

WHEREAS, a community garden will provide a safe environment for social, educational, and recreational activities as well as provide opportunities for the community to grow and harvest food crops and non-food, ornamental crops, such as flowers; and,

WHEREAS, the Lee County Land Development Code Advisory Committee reviewed the proposed amendments on April 9, 2010 and recommended adoption; and,

WHEREAS, the Lee County Executive Regulatory Oversight Committee reviewed the proposed amendments on May 12, 2010 and recommended adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on May 24, 2010 and recommended adoption; and,

WHEREAS, the Board finds adoption of these Amendments to Land Development Code Chapter 34 pertaining to Community Gardens is reasonable, appropriate and in the best interest of the public health, safety and welfare of Lee County.

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

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 34

Chapter 34 ZONING

ARTICLE I. IN GENERAL

Community Gardens

Sec. 34-2. Definitions.

Community Garden means an area of land managed and maintained by a community or subdivision to grow and harvest food crops and non-food, ornamental crops, such as flowers. Community gardens may be divided into separate plots for cultivation by one or more individuals, or may be farmed collectively by members of a group, and may include common areas maintained and used by group members.

Greenhouse means a building made of glass, plastic, or fiberglass, etc., where plants are cultivated.

Hoophouse means a structure made of PVC piping or other material covered with translucent plastic, constructed in a "half-round" or "hoop" shape.

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 16. FARM PRODUCE STANDS, U-PICK OPERATIONS, ROADSIDE STANDS, AND COMMUNITY GARDENS

Sec. 34-1716. Standards for Community Gardens.

Community gardens may be permitted by right in certain zoning districts subject to the following regulations. Community gardens are not subject to review under Chapter 10.

- (1) Size limitation. A community garden may not be greater than two acres in size.
- (2) Noise. The use or operation of power tools or portable mechanical equipment used outdoors in residential areas zoned RS, TFC, RM, MHC,

MH, RV, RPD, MHPD, RVPD, and MPD is prohibited before 8:00 a.m and after 7:00 p.m. so as to avoid noise disturbance in the community. The use of hand tools and domestic gardening tools is encouraged.

- (3) *Chemical application.* Organic gardening is strongly encouraged. The use of fertilizer, pesticide, insecticide, herbicide or agricultural use chemicals must be consistent with label instructions and must be in compliance with Lee County Fertilizer Ordinance 08-08.
- (4) *Sale of Produce and Plants.* The sale of flowers, vegetables or other crops grown on the property may be sold only as approved by a temporary use permit issued prior to the sale within residential zoning districts RS, TFC, RM, MHC, MH, RV, RPD, MHPD, RVPD, and MPD.
- (5) *Temporary Use Permit.* A maximum of eight events may be scheduled each year via the temporary use permit process for a single property allowing the sale of flowers, vegetables or other crops grown on the property each year. Each event may not exceed two days. The property owner may obtain a single temporary use permit covering all events scheduled for the year.

Proof of sanitary facilities must be provided to the County with a temporary use permit.

- (6) *Permitted Structures.* Only the following structures will be permitted in a community garden:

a. Greenhouses, hoopouses, storage sheds, shade pavilions, and planting preparation houses.

1. *Location.* Buildings must be set back from property lines consistent with the minimum principal building setback of the underlying zoning district.

2. *Height.* No building or other structure may be greater than 15 feet in height.

3. *Building coverage.* The combined area of all buildings, excluding greenhouses and hoopouses, may not exceed 5,000 square feet.

4. *Floor.* Each building must provide an impervious floor to catch chemical runoff.

b. *Fences.* Fencing will be subject to the regulations in section 34-1742.

- c. Benches, picnic tables and garden art.
 - d. Planting beds raised 3 feet or more above grade, compost bins and rain barrel systems must set back from property lines consistent with the minimum principal building setback of the underlying zoning district.
 - e. Walkways. Walkways must be unpaved and covered with mulch, shell or gravel except as necessary to meet the needs of individuals with disabilities.
 - f. Signage. Each community garden must have one sign indicating the name of the community garden and the contact information of the principal operator, including the name and current telephone number. The sign may not exceed 6 square feet in area per side and may not exceed 4 feet in height.
 - g. Trash receptacles must be provided on site.
- (7) Parking. Off-street parking is not required for gardens on property less than 20,000 square feet in lot area. A low turn over parking area must be provided for gardens over 20,000 square feet in lot area. Notwithstanding Sec. 34-2017(c). Parking areas must be maintained as a grass area or in a dustfree manner. Handicapped parking is not required.
- (8) Prohibited activities. The following activities are prohibited within the community garden:
- a. Littering, dumping, and illegal activities.
 - b. Amplified sound.
 - c. Recreational sports.
- (9) Application. An application for administrative approval must be submitted to the Department of Community Development along with the following documentation:
- a. Notarized letter signed by the property owner giving permission for use of property.
 - b. Letters of no objection from adjoining property owners when the proposed community garden abuts property zoned or used for residential purposes.

- c. A site plan, drawn to scale, showing the property size with dimensions.
- d. The site plan must show the location of all existing structures on the property as well as on adjacent properties within 100 feet of the perimeter boundary of the site.
- e. The site plan must reflect existing streets, easements or land reservations within the site.
- f. The site plan must include proposed fencing and screening, if any.
- g. The site plan must identify the source of water that will be used for irrigation purposes.

DIVISION 17. FENCES, WALLS, GATES AND GATEHOUSES

Sec. 34-1744. Location and height of fences and walls other than residential project fences.

(1) through (2) a. - d. remains unchanged.

- e. Community garden fences. Fences for community gardens located in Residential zoning districts RS, TFC, RM, MHC, MH, RV, RPD, MHPD, RVPD, and MPD may be a maximum height of six feet high along any property line provided the fence does not interfere with vehicle visibility requirements at traffic access points (see section 34-3131). The design of the fence must be in compliance with section 34-1742. Barbed wire, spire tips, sharp objects or electrically charged fences are prohibited.

DIVISION 26. PARKING

Sec. 34-2020. Required spaces.

(1) through (4) a through t remains unchanged.

- u. Community gardens. Off-street parking is not required for gardens on property less than 20,000 square feet in lot area. A low turn over parking area must be provided for gardens over 20,000 square feet in lot area. Parking areas must be maintained as a grass area or in a dustfree manner.

DIVISION 37. SUBORDINATE AND TEMPORARY USES

Subdivision II. Temporary Uses

Sec. 34-3041. Generally

(a) thru (d)(1) remains unchanged.

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use for a period of six months from the date of expiration of the previous temporary use permit, except for community gardens as described in Section 34-1716.

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Sec. 34-694. Use regulations table

Use regulations for one- and two-family residential districts are as follows:

TABLE 34-694. USE REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1	RS-2	RS-3	RS-4	RS-5	TFC-1	TFC-2	TF-1
Community Gardens Sec. 34-1716	AA	AA	AA	AA	AA	AA	AA	AA	AA	AA	AA

Sec. 34-714. Use regulations table.

Use regulations for multiple-family districts are as follows:

TABLE 34-714. USE REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

Special Notes or Regulations	RM-2	RM-3, RM-6, RM-8, RM-10
Community Gardens Sec. 34-1716	AA	AA

Sec. 34-735. Use regulations table.

Use regulations for mobile home districts are as follows:

TABLE 34-735. USE REGULATIONS FOR MOBILE HOME DISTRICTS

Special Notes or Regulations	MHC-1, MHC-2	MH-1	MH-2	MH-3	MH-4
Community Gardens Sec. 34-1716	AA	AA	AA	AA	AA

Sec. 34-791. Use regulations table.

Use regulations for recreational vehicle districts are as follows:

TABLE 34-791. USE REGULATIONS FOR RECREATIONAL VEHICLE DISTRICTS

	Special Notes or Regulations	RV-1	RV-2	RV-3	RV-4
Community Gardens	34-1716	AA	AA	AA	AA

Sec. 34-934. Use regulations table.

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHP D	RVPD	CFPD	CPD	IPD Not e (37)	AOPD	MPD
Community Gardens	Sec. 34-1716	AA	AA	AA	=	=	=	=	AA

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION THREE : SEVERABILITY

It is the Board of County Commissioner’s intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER’S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word “ordinance” can be changed to “section”, “article” or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

The ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Judah made a motion to adopt the foregoing ordinance, seconded by Commissioners Mann. The vote was as follows:

Vacant	_____
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DONE AND ADOPTED this 8th day of June, 2010

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: Marcia Wilson
Deputy Clerk

BY: Tammara Hall
Tammara Hall, Chairwoman

DATE: 6/8/2010



Approved as to form by:

Michael D. Jacob
Michael D. Jacob
County Attorney's Office



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

DAWN K. ROBERTS
Interim Secretary of State

June 18, 2010

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated June 16, 2010 and certified copies of Lee County Ordinance Nos. 10-24 and 10-26, which were filed in this office on June 17, 2010.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

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