

ORDINANCE NO. 2021 - 24

AN ORDINANCE AMENDING COLLIER COUNTY ORDINANCE NO. 2004-31, AS AMENDED, KNOWN AS THE COLLIER COUNTY UTILITIES STANDARDS AND PROCEDURES ORDINANCE, AS CODIFIED IN SECTIONS 134-51 THROUGH 134-64 OF THE CODE OF LAWS AND ORDINANCES, TO UPDATE THE REGULATIONS GOVERNING THE INSTALLATION OF SUSTAINABLE AND SAFE UTILITIES INFRASTRUCTURE WITHIN THE COUNTY; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 11, 2004, the Board of County Commissioners of Collier County, Florida, as the Governing Body of Collier County, Florida, and as the Ex-Officio Governing Board of the Collier County Water-Sewer District, concurrently adopted Collier County Ordinance No. 2004-31, known as the Collier County Utilities Standards and Procedures Ordinance, together with the Utilities Standards Manual, including all of the Manual's exhibits (the "Ordinance"). These documents provide County procedures and guidelines for the design, construction and repair of both privately constructed and County constructed utility systems in Collier County; and

WHEREAS, Collier County Ordinance No. 2004-31 has been previously amended by Ordinance Nos. 2006-48, 2007-60, and 2018-36, and by numerous Resolutions amending the Collier County Water-Sewer District Utilities Standards Manual, which is incorporated by reference into the Ordinance; and

WHEREAS, a 2017 benchmarking study by Tetra Tech that was updated and expanded in 2019 and discussions amongst staff and the Development Services Advisory Committee (DSAC) Utilities Subcommittee prompted proposed amendments to the Ordinance; and

WHEREAS, the Board wishes to update the Collier County Utilities Standards and Procedures Ordinance to simplify and optimize the County's conveyance process in ways that are mutually beneficial to the County and the land development industry while preserving high-quality and best-value utility services to Collier County Public Utilities customers.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AS THE GOVERNING BODY OF COLLIER COUNTY, FLORIDA, AND AS THE EX-OFFICIO GOVERNING BOARD OF THE COLLIER COUNTY WATER-SEWER DISTRICT, that

SECTION ONE: The following Sections of Ordinance No. 2004-31, as amended, and codified in Chapter 134, Article III, of the Code of Laws and Ordinances are amended as follows:

Sec. 134-56. - Definitions and abbreviations.

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District service area: All geographic areas where the District is then authorized to provide potable water and/or wastewater service, and/or non-potable irrigation water, and/or bulk service, by general law or by Special Act(s) of the Florida Legislature, including all such geographic areas then being served with interim service by any other service provider. ~~The following areas are not included in the District's Service Area (1) All geographic areas within the geographic boundaries of each municipality as those municipal boundaries existed on the effective date of Chapter 2003-353, Laws of Florida; and (2) all areas within the City of Golden Gate (which is not a municipal corporation) as such area is now or hereafter defined in subsection 5(C) of Section 3 of Chapter 2003-353, Laws of Florida); and (3) all area within the geographic boundaries the Immokalee Water and Sewer District; and (4) all area within the geographic boundaries of each utility service area then actively certificated to the subject utility by the Collier County Water Wastewater (or hereafter by the Florida Public Service Commission in the event the County cedes such Chapter 367, Florida Statutes, jurisdiction back to the FPSC (for as long as such certificated area is viable). Except as to the geographic areas listed herein, this section applies to each person or entity, lessee, trustee and/or receiver, owning, operating, managing, or controlling such facilities of system, or proposing construction of such facilities and/or system, who or which is providing or proposes to provide any such service, or any combination thereof, within the unincorporated area of the county except:~~

~~(1) — Property used solely or principally in the business of bottling, selling, distributing or furnishing bottled water; and~~

~~(2) — Subject to Chapter 2003-353, Laws of Florida, such facilities or system(s) owned, operated, managed, or controlled by another government or governmental agency.~~

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Final acceptance: Acceptance by the board of potable water, non-potable irrigation water and/or wastewater systems ~~at least one year after preliminary acceptance, and after satisfactory completion of all final acceptance obligations.~~

Final acceptance obligations: These include reimbursed recording fees, ~~one-year sewer viewer report and video, final utility inspection, attorney's affidavit~~ and final attorney's affidavit.

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Inspection: Periodic construction site visits by a county representative, the purpose of which is to ascertain/ensure compliance with county-approved construction documents and applicable ordinances, codes and statutes. Such periodic visits shall occur, but not be limited to, during construction of the potable water, non-potable irrigation water and/or wastewater additions, extensions and/or improvements (including road/transportation utilities relocate projects), and after completion of construction ~~(for preliminary acceptance prior to conveyance of the required~~



~~potable water, non-potable irrigation water and/or wastewater system(s) or portion(s) thereof to the district), and after the one year contractual guarantee period (for final acceptance of the potable water, non-potable irrigation water and/or wastewater system(s) or portion(s) thereof by the county).~~

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~~*Preliminary acceptance:* Potable water, non-potable irrigation water and wastewater systems conveyance to the board after satisfactory completion of inspections, tests, and certifications but not including final inspections.~~

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~~*Transmission mains:* Potable water mains 16 inches in diameter and larger that distribute water over a regional or sub-regional area, wastewater force mains 12 inches in diameter and larger, and non-potable irrigation water mains six inches in diameter or greater and larger, and. Also includes water mains used to transport well raw water from a wells to a potable water treatment plant.~~

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~~*Utilities performance security (UPS):* A performance bond, cash bond, irrevocable letter of credit, or other authorized form of security furnished by the developer to the county or the district, prior to recording of plat or conveyance of utility facilities, (potable water and/or wastewater facilities) and/or non-utility facilities (reclaimed or supplemental water facilities) to guarantee the construction, workmanship and/or materials for the warranty period after the utility system(s) or portion(s) and the non-utility facilities and portions thereof have been conveyed to the county, district, or other appropriate water-sewer district, or upon completion of the utility system(s) or portion(s) and the non-utility systems and portions thereof when construction occurs on private property. (Refer to section 134-58(e): Utilities performance security.)~~

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~~*Warranty period:* A one-year timeframe following recording of the conveyance documents during which the County holds the developer's utilities performance security.~~

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Sec. 134-58. - Construction approval and document submissions.

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- (e) ~~*Utilities performance security and final acceptance obligations cash bond.*~~
 - (1) Notwithstanding any other provision(s) in this ordinance, the developer shall be required to furnish a ~~final acceptance obligations cash bond to staff in the amount of \$4,000.00 and a~~ utilities performance security ("UPS") in an amount equal to



110 percent of the engineer's estimated probable cost of construction for potable water, non-potable irrigation water (where applicable) and/or wastewater system(s) or portion(s) thereof that will be conveyed to the District or \$10,000.00, whichever is greater. The developer shall submit the ~~final acceptance obligations cash bond and UPS with~~ prior to final construction documents recording the plat. The UPS must be approved by the Collier County Attorney's Office prior to ~~commencement of utility construction~~ recording the plat. ~~The final acceptance obligations cash bond shall be required, but a~~ A UPS is not required for the construction phase of a project, provided development is occurring on private, non-subdivided property where the only water distribution, non-potable irrigation water, and/or wastewater infrastructure to be conveyed to the District are service extensions to the project boundary, provided the construction cost of said service extensions does not exceed \$100,000.00, or if the UPS has been previously provided to the County or District, pursuant to the LDC requirements. Upon conveyance of utility system(s) or portion(s) thereof to the District, the developer may request a reduction of the UPS for infrastructure installed and inspected to an amount equal to ten percent of the cost of utility construction but not less than \$10,000.00, or if the UPS has been previously provided to the county or district, pursuant to the LDC requirements. A UPS shall be required on all projects during the guarantee or warranty period as described in this ordinance. The final acceptance obligations cash bond is to reimburse the county or district for any and all late fees and all direct and indirect expenses incurred by the county or district that would not have been incurred if all duties and responsibilities had been promptly performed by the responsible party as required by this ordinance, including, and not limited to, final attorney's affidavit, all costs of final utility inspection(s), recording fees, one-year sewer viewer report, video, costs of mailing or otherwise providing all notices, and emergency repairs and/or maintenance to the respective utility system conducted by the county or district with regard to any such utility facilities. The minimum amount of this final acceptance obligations cash bond can be changed from time to time by summary agenda resolution(s) of the board of county commissioners. Staff may summarily waive the UPS requirement when the utility facilities/systems are being constructed by, or on behalf of, another governmental entity, such as, but not limited to, the Collier County School Board, a fire district, the State of Florida or any agency thereof, or the Government of the United States or any agency thereof.

- (2) ~~Upon preliminary conveyance of utility system(s) or portion(s) thereof to the county, the developer may request a reduction in the UPS in an amount equal to ten percent of the probable cost of utility construction for the required guarantee or warranty period. For completion of system(s) or portion(s) thereof constructed on private, non-subdivided property, a ten percent UPS shall be provided to, and accepted by, the county or district prior to preliminary final acceptance of the completed utility system(s) or portion(s) thereof. Whenever reasonably possible, the UPS amount shall be based on the actual bid price of the potable water, non-potable irrigation water (where applicable) and/or wastewater system(s) or portion(s) thereof that will be conveyed to the District. Whenever a bid price is utilized, a copy of the accepted bidder's proposal form shall be submitted with the~~

UPS. An opinion of probable construction cost signed and sealed by a Florida licensed professional engineer will suffice when the actual bid price is not available. The UPS shall be held by the county or district until the end of the warranty period and shall secure and cover the performance of the developer in constructing ~~on and maintaining~~ the ~~subject-permitted~~ potable water, non-potable irrigation water and/or wastewater additions, extensions and/or improvements in accordance with the Manual. Acceptable UPS forms shall be a performance bond, cash bond, irrevocable letter of credit, or escrow agreement. The UPS must specify that the security shall not cease ~~unless and until~~ a year after the board has finally accepted the utility system(s) that are covered by the UPS. No other form of security will be accepted unless a waiver of the requirements herein is granted by the board. All surety companies associated with a performance bond shall hold a current certificate of authority, as issued by the treasury department, as an acceptable surety on federal bonds under an Act of Congress approved July 30, 1947.

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- (4) The issuer of any letter of credit shall be a federally insured and regulated savings and loan association or commercial bank, authorized to do, and doing business, in the State of Florida. The place of expiry must be in Florida. Any letter of credit must be irrevocable for at least 24 months and must apply to both the construction ~~and maintenance~~ obligations of the developer and all final utility acceptance obligations, including late fees, and must be acceptable to the Collier County Attorney. The beneficiary of any letter of credit shall be the board. The beneficiary of a letter of credit provided as a UPS shall be entitled to draw on the letter of credit if:
 - a. The developer has failed to construct or maintain the subject potable water, non-potable irrigation water and/or wastewater improvements; or has failed to fully perform all final acceptance obligations. Final acceptance obligations must be submitted to community development and environmental services, engineering services division ~~within 14 months following preliminary acceptance.~~
 - b. The letter of credit is scheduled to expire prior to ~~final acceptance~~ the end of the warranty period, as described in subsection 134-60(c) herein, and alternative performance security has not been provided and accepted in accordance with this ordinance within three business days prior to the expiration date.
- (5) ~~A final utility inspection of the subject potable water, non-potable irrigation water and/or wastewater system(s) or portion(s) thereof shall be conducted prior to release of a UPS. All construction and maintenance obligations covered by a UPS shall be guaranteed and maintained by the developer until satisfactory completion of the final utility inspection. To schedule the final utility inspection, the county staff shall provide written notice to the engineer of record, if practicable, approximately 30 days prior to the completion of the one year period from acceptance by the county, the district or the board of the system(s) or portion(s) thereof. The representatives~~

~~of the county, engineer of record, contractor, and developer shall conduct final utility inspection.~~

- (65) ~~The final acceptance obligations cash bond and the UPS shall remain, at all times, in full force and effect until the board approves final acceptance for the duration of the warranty period. Upon such approval expiration of the warranty period, the county staff shall schedule an agenda item for the next available regular BCC meeting recommending return and release of the UPS to the project engineer or the developer's designated agent and shall return the then due payment balance, if any, of the final acceptance obligations cash bond, without interest, to the entity that supplied the final acceptance obligations cash bond. The provider of the cash bond shall be strictly responsible to promptly keep county staff advised of sufficient mailing return information to facilitate return of the then due cash bond balance. If the provider of the final acceptance obligations cash bond does not notify staff in writing to the contrary, the final acceptance obligations cash bond shall run with the land if the land is sold or otherwise transferred in the interim and in such event shall be returned to the then current landowner(s) or, if applicable, owner's of the common areas, such as the condominium association or developer's association. If due to default of the provider of the final acceptance obligations cash bond, it is not possible for staff to ascertain the refundable amount of the bond within four years of the date of delivery of that cash bond to the county and the district, the cash bond shall be forfeited to the public utilities department after deducting all then known obligations payable out of that bond.~~

(f) *Construction commencement.* Potable water, non-potable irrigation water and/or wastewater system construction shall commence only after receipt of the following:

- (1) a. ~~Final written approval of the construction documents,~~ or
b. ~~Preliminary work authorization (PWA) approval as outlined in the LDC.~~

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Sec. 134-59. Construction observation and inspection.

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- ~~(e) *Preliminary inspections.* A preliminary inspection of the completed system(s) or portion(s) thereof shall be required prior to any conveyance to and acceptance by the board. During this inspection, the utilities will be checked for compliance with the approved construction drawings and/or approved revised construction drawings. All systems must be found to be in full compliance with the county approved construction drawings, or county approved revised construction drawings, prior to conveyance to the board for acceptance. Refer to section 134-60: Utilities conveyance procedures.~~

(e) *Final utility inspections.*

(1) Final utility inspections procedures run with all land in, on or over which the respective utility facilities have been installed (constructed). The final utility inspection of the completed system(s) or portion(s) thereof shall be required prior to final acceptance by the Board. ~~shall be conducted no earlier than one year and no later than one year and 60 days after preliminary acceptance of the utility system(s) or portion(s) thereof by the board. Each final utility inspection shall be delinquent (overdue) if not completed and passed within 14 months after that acceptance date. During this inspection, the utility system(s) or portion(s) thereof shall be examined for any defect in materials and/or workmanship, and for physical and operational compliance with the county staff approved record construction drawings. The UPS shall remain in effect until all final utility acceptance obligations have been satisfactorily completed, passed and final acceptance has been granted by the board. Refer to section 134-60: Utilities conveyance policies and procedures.~~

~~(2) Delinquent final utility inspections. Staff shall provide written notice of overdue final utility inspections and other failures to comply with final utility inspection requirements, including all final utility acceptance obligations. The notice shall allow 60 days after receipt of the notice to comply fully with all final acceptance procedures. Any utility facilities that have not passed all final acceptance obligations not later than 60 days after receipt of the notice shall subject the service site and all units served by the utility facilities to all penalty provisions of this ordinance, including withholding of all additional county permits, permissions and authorizations regarding those sites and units, including, but not limited to, site development or site improvement plans, construction permits, and/or any amendments to any of the same. Subject to staff providing the notice, these provisions apply to final utility inspections that were delinquent prior to the effective date of this subsection.~~

Sec. 134-60. Utilities conveyance policies and procedures.

(a) *General.* All utility facilities to be conveyed to the county or district, at the time of conveyance to the county or the district must comply with this ordinance and with all then applicable standards and specifications. Nothing in this ordinance requires that the county or the district must accept title to or any responsibility for any utility facility, including each interim facility or interim system, until the facility or system has then received all proper permits/licenses from all applicable agencies prior to and during the construction, expansion, repair and/or maintenance or completion of each such utility facility or interim utility facility or interim system and the facility, interim facility and/or interim system, then complies with all applicable rules and regulations of all federal, Florida and/or local regulatory authorities or agencies, and of this ordinance, the utility standards manual and all of the documents then incorporated by reference in that manual, and each such facility, interim facility and/or interim system is not then under litigation, enforcement action, claims and/or liens prior to the transfer and/or entering into a facilities agreement associated with the district or other independent district utility. Subject to these

requirements, potable water, non-potable irrigation water and/or wastewater systems or portion(s) thereof, after public utilities department approval (if applicable), shall be offered to be conveyed to and accepted by the board. The board will accept title to the offered facilities unless in the specific instance there exists good reason not to accept title to such facilities. ~~Preliminary acceptance shall, after public utilities department approval (if applicable), be granted by the growth management department administrator or designee.~~ Upon approval from the public utilities division, final acceptance of such facilities and/or system may be approved by the board ~~(subsequent to the one year warranty period)~~ and after all final acceptance obligations and requirements have been complied with. All facilities and/or systems shall be located within a CUE (or public right-of-way) if they are to be owned, operated and/or maintained by the county or the district. Neither the county nor the district shall have no duty with regard to, or any responsibility for, any utility facilities until title to such utility facilities has been finally accepted by the board. Notwithstanding that neither the county nor the district has any duty with respect to such facilities or systems, in the event that county staff deems that due to necessity (emergency) the county or the district should expend money and/or perform labor to repair, replace, maintain, relocate, remove or have a contractor or other entity perform any other similar activity with regard to such utility facilities or system, the board is authorized to record a claim of lien against the property, site(s) or units(s) that were responsible for such utility facilities (or system) at the time the county staff deemed it necessary to act.

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- (b) *Conveyance documents.* Upon the county's (or district's) final approval of construction documents, engineering review services division director (county engineer) or designee shall provide the developer with the county's checklist (see standards manual appendix) of conveyance documents required for submission at the time the constructed system(s) or portion(s) thereof is considered for dedication to county or district.

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- (6) Exhibit B to the warranty deed, bill of sale or combined warranty deed/bill of sale shall be a sketch or other graphic representation showing the physical location of the utility facilities being conveyed to the county or district. It is preferable that the Exhibit B be to scale. Each Exhibit B must describe the facilities being conveyed by type (water line, wastewater line, lift station, etc.). ~~Staff shall stamp each such Exhibit B with a stamp that reads substantially as follows (with blank spaces completed with correct information):~~

~~"The Utility Facilities being conveyed are shown on plans prepared by _____, sheets thru _____, dated the _____ day of _____, 20____. These Drawings have been assigned AR number _____."~~

- (c) *Inspection.* County staff shall require ~~both preliminary and a~~ final utility inspection of all potable water, non-potable irrigation water and wastewater systems or portion(s) thereof constructed. The construction of all potable water, non-potable irrigation water and/or

wastewater systems or portion(s) thereof shall be observed and certified by the engineer of record and shall be inspected by the county. Refer to subsection 134-59(d): Construction observation and inspection.

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Sec. 134-61. Amendments.

County staff may recommend amendments to this article (including the manual and documents incorporated by reference into the manual) as may be deemed necessary or appropriate by the public utilities administrator and, in case of actual or possible conflict with the LDC, upon the additional prior review by the growth management administrator (it being understood that the LDC controls to the extent of such conflicts). Revisions to the standards manual should be made periodically by the public utilities administrator to reflect the best engineering practices, technology advances, compliance with other agencies, and public input, if any. Such revisions shall also be reviewed by the parties listed above. Revisions to the standards manual must be approved by an advertised Resolution of the board of county commissioners. Each such resolution must be placed on the BCC agenda under ~~scheduled~~ advertised public hearings or in the summary agenda section.

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Sec. 134-64. Appendix A—Standard legal documents.

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INSTRUCTIONS.

[Unless waived in writing by the reviewing Assistant County Attorney in the specific instance, the date of each document cannot be signed and dated more than sixty (60) days prior to ~~the meeting at which the Board of County Commissioners will consider its acceptance~~ submittal of the subject utility facility documents.]

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SECTION TWO: Conflict and Severability.

In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. The provisions of this Ordinance, including the Standards Manual, shall be liberally construed to effectively carry out its purposes in the interest of public health, safety, welfare, and convenience. If any court of competent jurisdiction holds any phrase or portion of the Ordinance invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.



SECTION THREE: Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and may be made a part of the Code of Laws and Ordinances of Collier County, Florida. The section of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "Section," "Article," or any other appropriate word.

SECTION FOUR: Effective Date.

This Ordinance shall take effect upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, as the Governing Body of Collier County, Florida, and as the Ex-Officio Governing Board of the Collier County Water-Sewer District, this 13th day of July, 2021.

BOARD OF COUNTY COMMISSIONERS,
COLLIER COUNTY, FLORIDA, AS THE
GOVERNING BODY OF COLLIER COUNTY,
FLORIDA, AND AS THE EX-OFFICIO
GOVERNING BOARD OF THE COLLIER
COUNTY WATER-SEWER DISTRICT

ATTEST:
CRYSTAL K. KINZEL, CLERK

By: *Crystal Kinzel*
Deputy Clerk

Attest as to Chairman's
Signature only.

By: *Penny Taylor*
Penny Taylor, Chairman

Approved as to Form and Legality:

Derek D. Perry
Derek D. Perry
Assistant County Attorney
DDP
6/11/21

This ordinance filed with the
Secretary of State's Office the
20th day of July, 2021
and acknowledgement of that
filing received this 20th day
of July, 2021
By: *Crystal Kinzel*
Deputy Clerk





FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

July 20, 2021

Ms. Martha Vergara, BMR & VAB Senior Deputy Clerk
Office of the Clerk of the Circuit Court
& Comptroller of Collier County
3329 Tamiami Trail E, Suite #401
Naples, Florida 34112

Dear Ms. Vergara:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Collier County Ordinance No. 2021-24, which was filed in this office on July 20, 2021.

Sincerely,

Anya Grosenbaugh
Program Administrator

AG/lb