

## ORDINANCE NO. 15-11

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 34 TO DEFINE AGRITOURISM; INCLUDE AGRITOURISM AS AN AGRICULTURAL ACCESSORY USE; PROVIDE FOR LIMITED FOOD AND BEVERAGE SERVICE IN CONJUNCTION WITH AGRITOURISM ACTIVITIES; DESCRIBE AGRITOURISM ACTIVITIES; PROVIDE FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS, MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code (LDC) containing regulations applicable to the use and development of land in Lee County, Florida; and,

WHEREAS, changes to legislation concerning agritourism in Chapter 570, F.S. were recently enacted in an effort to further promote and perpetuate agriculture in the State of Florida though engaging in agritourism; and

WHEREAS, Goal 158 of the Lee Plan provides that Lee County ("County") will encourage agriculture to maintain or improve its economic viability, provide necessary support and promote County produce; and

WHEREAS, Section 570.87, F.S. requires that local governments and agricultural representative meet for the purpose of discussing the benefits of agritourism to local economies and opportunities for cooperation, conflict resolution, regulatory streamlining, and incentives; and,

WHEREAS, County staff held meetings with agricultural representatives to discuss agritourism and potential regulatory streamlining and incentives; and

WHEREAS, Section 570.85, F.S. provides that a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida Statutes Section 193.461; and,

WHEREAS, the County seeks to adopt an ordinance to permit and promote agritourism activities within the County while ensuring that the public health, safety and welfare is protected; and

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on December 12, 2014, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on January 14, 2015, recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on January 26, 2015, and found them consistent with the Lee Plan, as indicated.

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

## **SECTION ONE: AMENDMENT TO LDC CHAPTER 34**

Lee County Land Development Code Chapter 34 is amended as follows with strike through identifying deleted text and underline identifying new text.

### **Chapter 34 ZONING**

#### **ARTICLE I. IN GENERAL**

##### **Sec. 34-2. Definitions.**

*Agritourism activity* means any agricultural related activity on land classified as agricultural under F.S. § 193.461 that is consistent with and accessory to a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

*Agricultural uses* includes but is not limited to farming, horticulture, pasturage, forestry, citrus and other fruit groves, greenhouses and nurseries, truck farms and dairy farms, commercial fish, frog or poultry hatcheries, and raising of hogs and other farm animals. Lumbering or harvesting of cypress (*Taxodium* spp.) is not permitted except by special exception.

Farm means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products, including land used to display plants, animals, farm products, or farm equipment to the public.

Food and beverage service, limited means the provision of food or beverages for members and guests of a private club or recreational center but not available to the general public; or, members of the general public when accessory to an agritourism activity permitted in accordance with LDC § 34-1711. This term will not be interpreted to include Restaurants, Groups I, II, III and IV. See the provisions of article VII, division 5, of this chapter relating to on-premises consumption of alcoholic beverages.

## **DIVISION 2. AGRICULTURAL DISTRICTS**

### **Sec. 34-653. Use regulation table.**

Use regulations for agricultural districts are as follows:

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Agricultural uses (df)	Note (2), 34-2441 et seq.	P	P	P
Agricultural accessory uses and buildings	Note (3), 34-1171 et seq., 34-2441 et seq.	P	P	P
<u>Agritourism activity (df)</u>	<u>34-1711</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Food and beverage service, limited (df)</u>	<u>Note (18), 34-1711</u>	<u>P</u>	<u>P</u>	<u>P</u>

Notes:

(1) through (17) remain unchanged.

(18) Only when accessory to an agritourism activity permitted in accordance with LDC § 34-1711. Reserved.

## **ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS**

### **DIVISION 5. ALCOHOLIC BEVERAGES**

#### **Sec. 34-1264. Sale or service for on-premises consumption.**

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on the premises is not permitted until the location has been approved by the County as follows:

(1) *Administrative approval.* The Director of the Department of Community Development may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the

following uses, if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the Director may determine administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial by the Director or by a hearing board of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the Director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the Director may not approve another request for consumption on the premises within one year's time, which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the Director may approve the second location subject to all other requirements contained in this division.

*a. through i. remain unchanged.*

j. Limited food and beverage services when accessory to an agritourism activity permitted in accordance with LDC § 34-1711 provided that the activity is not within 500 feet of a religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.

*(b) through (c) remain unchanged.*

*(d) Temporary one-day permit.*

(1) *Intent; applicability.* It is the intent of this subsection to require nonprofit and for-profit organizations and establishments in the unincorporated area of the County obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection pertains to but is not necessarily limited to the following uses:

*a. through b. remains unchanged.*

c. Weddings and other special occasions at clubhouses or farms classified as agricultural under F.S. § 193.461;

*d. through f. remains unchanged.*

*(2) through (3) remain unchanged.*

**DIVISION 16. AGRITOURISM ACTIVITIES, FARM PRODUCE STANDS, U-PICK OPERATIONS, AND COMMUNITY GARDENS**

**~~Sec. 34-1711. Applicability of division.~~**

~~The requirements of this division shall apply to all produce stands, U-pick operations and community gardens.~~

**Sec. 34-1711. Agritourism Activities.**

- (a) Agritourism activities are permitted on land classified as agricultural under F.S. § 193.461.
- (b) Agritourism activities are those activities defined in § 34-2 that are directly related to agriculture and that promote the intent of F.S. §§ 570.85 – 570.89. Activities permitted by right include:
  - (1) Passive and active recreational activities.
  - (2) Educational activities and classes.
  - (3) Demonstrations, events and tours.
  - (4) Produce stands and sales of unprocessed and processed agricultural products, agriculture-related crafts, cottage food products, as defined by Florida Statutes, and limited food and beverage services (df).
  - (5) Other activities determined by the Zoning Director to be substantially similar to the above activities.
- (c) The construction of new or additional structures intended primarily to accommodate the members of the general public require a building permit and must be built in compliance with all applicable building codes and be located in accordance with all setback requirements for the district in which located.
- (d) A permit in accordance with Lee County Special Events Permitting Ordinance No. 14-15 is required for gatherings or events with an expected attendance of 1,000 or more.

**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 intends that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or 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: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

#### SECTION SIX: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

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

John Manning	Aye
Cecil L Pendergrass	Absent
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 16th day of June, 2015.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: 

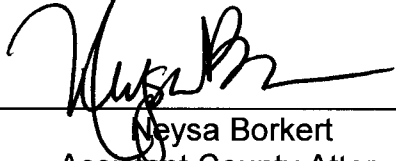
Deputy Clerk

BY: 

Brian Hamman, Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By:   
\_\_\_\_\_  
Neysa Borkert  
Assistant County Attorney  
Office of the County Attorney



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

June 17, 2015

Honorable Linda Doggett  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Shayne Brown

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy for Lee County Ordinance No. 15-11, which was filed in this office on June 17, 2015.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb