

ORDINANCE 99-36

AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA RELATING TO ON-SITE SEWAGE DISPOSAL SYSTEMS (OSTDS); AMENDING ORDINANCE 99-24, SECTION 4, WHICH AMENDED SECTION 1-29.180 (5) TO PROVIDE FOR INSPECTION OF EXISTING SEPTIC TANKS IN BOTH THE INCORPORATED AND UNINCORPORATED AREAS OF ESCAMBIA COUNTY SOUTH OF WELL LINE ROAD AND BECKS LAKE ROAD UPON TRANSFER OR SALE EXEMPTING CERTAIN SPECIFIED TRANSFERS; AMENDING ORDINANCE 99-24, SECTION 3 TO INCLUDE DEFINITIONS OF SALE, SELLER, TRANSFER; REQUIRING PROOF OF INSPECTION TO BE PROVIDED BY THE SELLER AT CLOSING OR BY THE TRANSFEROR UPON TRANSFER ON A FORM PREPARED AND EXECUTED BY THE HEALTH DEPARTMENT; REQUIRING SUCH EXECUTED FORM TO BE ATTACHED TO THE DEED OR OTHER METHOD OF CONVEYANCE REQUIRED TO BE RECORDED IN THE PUBLIC RECORDS; AMENDING ORDINANCE 99-24, SECTION 5 WHICH AMENDED SECTION 1-29.181 TO CREATE A PROCEDURE FOR OBTAINING A VARIANCE; ESTABLISHING A COMMITTEE AND SETTING FORTH CRITERIA; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:

Section 1. Chapter 1-29, Article V, Division 3, Section 1-29.178 of the Code of Ordinances of Escambia County, Florida, as amended by Ordinance 99-24, is hereby amended further as follows:

Section 1-29.178: Applicability

Except as otherwise specified herein, this division, shall apply to and be enforced in all incorporated and unincorporated areas of Escambia County. Escambia County recognizes the Florida Statute provision for the Florida Department of Health to adopt rules and regulations relating to public health; and of the ability of Escambia County to enact health regulations and ordinances which are not consistent with the provisions adopted by the Florida Department of Health. This division incorporates by reference the State of Florida "Standards for On-site Sewage Treatment and Disposal Systems" as set out in Chapter 64E-6, Florida Administrative Code, and Escambia County Ordinance 81-10 relating to permits for on-site sewage disposal systems, unless otherwise provided herein. In the event there is a conflict between any standards provided in this division and Chapter 64E-6, Florida Administrative Code, the more restrictive requirements shall apply.

Section 2. Chapter 1-29, Article V, Division 3, Section 1-29.179 of the Code of Ordinances of Escambia County, Florida, as amended by Ordinance 99-24, is hereby amended further as follows:

Section 1-29.179: Definitions

The following words, phrases, or terms used in this division, unless the context indicates otherwise, shall have the following meanings:

Aerobic Treatment Unit – A sewage treatment unit which introduces air into sewage to provide aerobic biochemical stabilization within a treatment receptacle.

Available - As applied to an Escambia County Utilities Authority (ECUA) wastewater collection main, means that the wastewater collection main exists in a public easement of right-of-way abutting the property line of the establishment or residence to be served; is not under a Department of Environmental Protection moratorium; has adequate permitted capacity to accept the sewage to be generated by the establishment or residence; and the plumbing system of the establishment or residence can be connected to the collection main.

ECUA Retrofit Prioritized Areas - Those areas scheduled for gravity or low pressure wastewater system installation in the ECUA service area whose priority is identified and updated periodically by the ECUA Board and incorporated by reference into this Ordinance.

Enforcement Agency - The Florida Health Department shall enforce all provisions of this division.

Lot – That portion of a parcel of land that is within the boundaries of said parcel whether said parcel is described by recorded plat, metes and bounds or any other legal method.

Mean High Water Line - Means the intersection of the tidal or nontidal plane of mean high water with the shore.

On-Site Sewage Treatment and Disposal System (OSTDS) – Any domestic sewage treatment and disposal facility, including standard subsurface systems, graywater systems, laundry wastewater systems, alternative systems or experimental systems, installed on land of the owner or on other land to which the owner or owners have the legal right to install a system.

Person – Includes the words owner, agent or an owner, firm, association, partnership, trust, company, corporation, as well as individual.

Plat – A map or drawing depicting the division of lands and blocks, parcels, tracts or sites being a complete exact representation of the subdivision; and other information in compliance with all applicable sections of the Florida Plat Act and this division.

Seller – Owner or title holder of real property or person or entity who has the authority to enter into a contract for sale of the property.

Sale or Transfer – Transmission of real property from one person to another by voluntary act and agreement between the seller and buyer on a valuable consideration. The following transfers shall be exempt from this definition:

1. Transfers pursuant to court order, including but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree for specified performance.
2. Transfers to a mortgagee by a mortgagor or successor in interest who is in default; transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by any foreclosure sale after default, in an obligation secured by a mortgage; transfers by a sale under a power of sale or any foreclosure sale under a

decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale; or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

3. Transfer by a bank, savings and loan association, mortgage banker, the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or other institutional lender who has acquired the property through foreclosure or deed in lieu of foreclosure.
4. Transfers of condominiums, as defined in Chapter 718 Florida Statutes (1993) or as subsequently amended; cooperatives, as defined in Chapter 719, Florida Statutes (1993) or as subsequently amended; and time share plans, as defined in Chapter 21, Florida Statutes (1993) or as subsequently amended.
5. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
6. Transfers from one co-owner to one or more other co-owners.
7. Transfers made to a spouse or to a person or persons related by consanguinity to one or more of the transferors.
8. Transfers made between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree.
9. Transfers under Chapter 197, Florida Statutes (1993) or as subsequently amended, as a result of failure to pay property taxes.
10. Transfers or exchanges to or from any governmental entity.

Section 3. Chapter 1-29, Article V, Division 3, Section 1-29.180 of the Code of Ordinances of Escambia County, Florida, as amended by Ordinance 99-24, is hereby amended further as follows:

Section 1-29.180: Standards for On-site Sewage Treatment and Disposal Systems

No septic tank or other on-site sewage treatment and disposal system may be installed until a permit is obtained as provided in Escambia County Ordinance 81-10, from the Florida Department of Health. Issuance of the permit is subject to the rules of the Florida Department of Health and the following provisions:

1. All on-site sewage treatment and disposal systems in the unincorporated areas of Escambia County shall be located laterally no less than one hundred (100) feet from the mean high water line (MHW) of lakes, streams, canals or any other tidal or nontidal surface waters.
2. The maximum allowable density where an on-site sewage treatment and disposal system is utilized shall be calculated on a basis of lot size alone.

3. The Florida Department of Health will not approve the usage of on-site sewage treatment systems in an area that appears to be a wetland as defined by Sec. 403.817, Florida Statutes, or where the estimated wet season high water table is determined by soil conditions (such as mottling) to be at the ground surface. The applicant will be directed to contact the Florida Department of Environmental Protection and the United States Army Corps of Engineers for wetland jurisdiction determination.
4. Persons using Aerobic Treatment Units, regardless of installation date, shall obtain an annual operating permit from the Florida Department of Health. The fee collected for this permit shall be used to perform periodic monitoring and effluent sampling of the unit. Persons operating an Aerobic Treatment Unit shall permit department personnel right of entry to the property during normal working hours for monitoring and sampling.
5.
 - A) Existing septic tanks or other on-site sewage treatment disposal systems in both the incorporated and unincorporated areas of Escambia County, Florida south of Well Line Road and Becks Lake Road shall be inspected upon transfer or sale in compliance with an environmental analysis program, to be administered by the Florida Department of Health.
 - B) Proof of compliance with the inspection requirement set forth herein shall be furnished by the seller or the transferor to the buyer or transferee prior to the closing or transfer of the property on a form prepared and executed by the Florida Department of Health. Failure to provide such proof as required herein constitutes a violation of this Ordinance by the seller or transferror. The completed form shall be attached to the deed or other instrument of conveyance and shall be recorded in the Public Records of Escambia County, Florida. Failure to comply with the requirements set forth in this Section shall not affect the validity of any transferor's deed nor the date of filing of the deed or other instrument of conveyance, nor shall acceptance for filing of any deed or instrument be deemed an acknowledgement of compliance with the requirements of this Section.
 - C) Fees for this program shall include a surcharge on permits for on-site sewage treatment disposal system installation and an inspection fee for inspections made upon transfer or sale of property with an on-site sewage treatment disposal system, set annually by resolution of the Board of County Commissioners.
 - D) Fees collected under this program and other allocated program resources shall be exclusively for an environmental analysis program and a citizen's financial assistance program as defined annually by the Board of County Commissioners in the County's Annual Budget.
 - E) The results of the environmental analysis program will be used to define new ECUA retrofit prioritized area and refine the prioritized areas annually.

Section 5. Chapter 1-29, Article V, Division 3, Section 1-29.181 of the Code of Ordinances of Escambia County, Florida, as amended by Ordinance 99-24, is hereby amended further as follows:

Section 1-29.181: Variances

The Director of Environmental Health of the Florida Department of Health may grant variances in hardship cases which may be less restrictive than the provisions specified by this Ordinance in accordance with the following:

1. Requests for variances may be made and shall be submitted to the Director of Environmental Health of the Florida Department of Health. A variance may not be granted under this Ordinance until the Director of Environmental Health is satisfied that the following criteria has been met:
 - A) The hardship was not caused intentionally by the action of the applicant;
 - B) No reasonable alternative exists for the treatment of the sewage;
 - C) The discharge from the on-site sewage treatment system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters;
 - D) Consideration will be given where soil conditions, water table elevation, and setback provisions are determined to be satisfactory.
2. The Director of Environmental Health shall appoint a variance review and advisory committee, which shall meet as often as needed to recommend action on variance requests to the Director of Environmental Health, who will make the final decision. The Committee will be appointed by the Director of Environmental Health and will consist of three members. Two of the members will be technical experts from Environmental Health and one member will represent Escambia County Utilities Authority (ECUA). Members will serve without remuneration.
3. If the applicant is not satisfied with the decision of the Director of Environmental Health, a hearing before the Committee and Director may be requested.
4. Any applicant denied a variance by the Florida Department of Health may seek judicial review in the Circuit Court by filing a petition of writ of certiorari within thirty (30) days of such denial.

Section 6: Severability

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 7: Inclusion In The Code

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Escambia County Code; and that the sections of this Ordinance may be renumbered and relettered and the word "ordinance" may be changed to "section," "article" or such other appropriate word or phrase in order to accomplish such intentions.

Section 8: Effective Date

The effective date of this Ordinance shall be August 1, 1999.

DONE AND ENACTED this 15th day of July, 1999.

ENACTED: July 15, 1999
FILED WITH DEPARTMENT OF STATE: July 19, 1999
EFFECTIVE: August 1, 1999