

PROPOSED

ORDINANCE NO. 2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO SANITARY SEWERS; AMENDING VARIOUS SECTIONS OF CHAPTER 34 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); AMENDING THE EXEMPTION FOR RURAL ESTATES AND RURAL RANCHES; PROVIDING FOR AN IMPROVED REGULATORY PROCESS FOR SANITARY SEWER CONNECTION COMPLIANCE; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Vice-Mayor Steve Geller)

WHEREAS, the Biscayne Aquifer is the principal potable water source for all of Broward County;

WHEREAS, the soil mantle, sandy overburden, and various rock strata that accommodate septic tank drainfields in Broward County constitute upper formations of the Biscayne Aquifer;

WHEREAS, many areas in Broward County have low land elevations and high groundwater tables, conditions that are expected to be exacerbated by the effect of sea level rise further reducing the availability of suitable soil mantle or sandy overburden that can accommodate septic tank drainfield function while protecting the aquifer;

WHEREAS, many homeowners in Broward County who utilize private potable wells use treatment units that are relatively effective in improving the aesthetic quality of the water but are relatively ineffective in removing pathogenic bacteria and viruses that can cause waterborne disease outbreaks; and

WHEREAS, the Broward County Board of County Commissioners recognizes the need to provide for water, sanitary sewer, and septic tank regulations in order to protect

1 and preserve the quality of the water as a natural resource of Broward County, and to
2 ensure the continued public health and safety of the residents of Broward County by
3 preventing significant damage to the environment and drinking water resources,
4

5 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
6 BROWARD COUNTY, FLORIDA:
7

8 Section 1. Sections 34-36 and 34-37 of the Broward County Code of
9 Ordinances are hereby repealed in their entirety.

10 Section 2. Section 34-38 of the Broward County Code of Ordinances is hereby
11 amended to read as follows:

12 **Sec. 34-38. Exemptions and exceptions.**

13 Notwithstanding the requirement to connect to ~~an abutting water main owned by a~~
14 ~~public or private utility system~~ a water or sanitary sewer main pursuant to Section 34-35,
15 premises located in the Rural Ranches and Rural Estates land use categories on
16 [INSERT DATE JUST AFTER EFFECTIVE DATE OF AMENDMENT] shall be exempt
17 from this requirement. ~~However, this exemption shall only continue for premises abutting~~
18 ~~a water main if the owner of the premises submits an affidavit certifying that the potable~~
19 ~~water source utilized by the premises has been tested by the owner for bacteria (non-~~
20 ~~specific), lead, nitrates, nitrites, pH, total alkalinity, hardness, copper, total chlorine, iron,~~
21 ~~hydrogen sulfide, and iron bacteria. The original of the affidavit must be submitted to the~~
22 ~~Florida Department of Health by January 1 of each year. Failure to submit the annual~~
23 ~~affidavit within sixty (60) days of the January 1 filing date shall automatically terminate the~~
24 ~~exemption for the premises. However, such premises shall no longer be exempt from the~~

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1 connection requirements of Section 34-35 upon the earlier of (i) "development" of the
2 premises as defined in Section 380.04, Florida Statutes, or (ii) "substantial improvement"
3 of the premises as defined in the Florida Building Code. In addition to the foregoing
4 exemption, any owner of property who receives a notice to connect to a water main or
5 sanitary sewer main and who would be required to pay a connection charge to a public
6 or private utility system, may petition the ~~b~~Board of ~~e~~County ~~e~~Commissioners of Broward
7 County ("Board"), the governing body of the municipality, or other entity having jurisdiction
8 of the utility service area, as applicable, for an exception from the connection requirement
9 of this article and any associated connection charge. If ~~the~~ said ~~b~~Board, governing body,
10 or other entity shall find that the ~~said~~ connection requirement and charge ~~is~~ are not just
11 and reasonable, it shall grant an exception ~~of~~ to the ~~said~~ connection requirements and
12 charge; provided, however, that the exception shall not conflict with any findings or orders
13 of the Florida Department of Health, the Florida Department of ~~Air and Water Pollution~~
14 ~~Control~~ Environmental Protection, or any other state or local agency having jurisdiction ~~in~~
15 over the premises. Prior to granting an exception to the ~~requirement for~~ connection
16 requirement to a sanitary sewer main and any associated connection charge, said
17 ~~b~~Board, governing body, or other entity shall determine that such connection is not
18 required in the public interest due to public health considerations, and the exception must
19 be approved by the Florida Department of Health.

20 Section 3. Section 34-39 of the Broward County Code of Ordinances is hereby
21 amended to read as follows:

22 **Sec. 34-39. Penalties and remedies.**

23 ~~Any property owner or owners willfully refusing to make a connection ordered by~~
24 ~~the director pursuant to section 34-36 of this article shall be deemed guilty of a~~

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1 ~~misdemeanor and punished as provided by law. Each day such failure to connect~~
2 ~~continues shall constitute a separate offense. The violation of any of the provisions of~~
3 ~~this article may also be enforced by injunction, including a mandatory injunction and such~~
4 ~~suit or action may be instituted and maintained in the name of Broward County or the~~
5 ~~municipality, as the case may be.~~

6 (a) Any owner of property or premises determined to be in violation of
7 Section 34-35 shall be required to pay a civil penalty of two hundred fifty dollars (\$250)
8 for the first violation and five hundred dollars (\$500) for each repeat violation. Each day
9 such violation continues shall constitute a separate offense.

10 (b) These penalties shall not preclude any other remedies, including injunctive
11 relief, otherwise available at law or in equity.

12 Section 4. Section 34-40 of the Broward County Code of Ordinances is hereby
13 created to read as follows:

14 **Sec. 34-40. Enforcement.**

15 (a) This article shall be applicable in the incorporated and unincorporated areas
16 of Broward County, with enforcement in the unincorporated areas being the responsibility
17 of Broward County and enforcement in the incorporated areas being the responsibility of
18 the respective municipalities.

19 (b) Every code enforcement officer having jurisdiction in an area governed by
20 this article shall, in addition to all other duties imposed by law, enforce the provisions of
21 this article.

22 (c) Violations of this article are civil infractions and, as such, may be enforced
23 pursuant to the provisions of Chapter 8½, Article II, "Alternate Code Enforcement
24 Procedure," Broward County Code of Ordinances ("Code," except if the context indicates

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1 otherwise), with penalties assessed pursuant to Section 34-39 of the Code, Chapter 162,
2 Florida Statutes, or any applicable municipal code enforcement provision.

3 Section 5. Section 34-42 of the Broward County Code of Ordinances is hereby
4 amended to read as follows:

5 **Sec. 34-42. Declaration of legislative findings.**

6 (a) In order to protect and preserve the quality of the water as a natural
7 resource of Broward County, and in order to ensure the continued public health and safety
8 of the residents of Broward County by preventing ~~the destruction of~~ significant damage to
9 the environment and drinking water resources, the Board recognizes the need to amend
10 ~~Broward County's current~~ enact appropriate water, sanitary sewer, and septic tank
11 regulations. ~~It is, therefore, the intent of the Board to maintain and enforce county-wide,~~
12 ~~the stricter regulations set forth by Broward County Code of Ordinances and by the laws~~
13 ~~of the State of Florida, prior to recent State legislative changes pertaining to §~~
14 ~~381.0065(2)(a)3, F.S. now defines a sanitary sewer system as being "available" for~~
15 ~~connection to proposed residential subdivisions with more than fifty (50) lots, if located~~
16 ~~within one-quarter (¼) mile of the development as measured via existing easements or~~
17 ~~rights-of-way. Prior to the legislative change, residential subdivisions of five (5) or more~~
18 ~~lots required sewer hookup if service was available.~~

19 (b) ~~Present samples of water taken from the Biscayne Aquifer frequently~~
20 ~~contain organic color of 100—200 units and iron of up to 2.0 mg/l (milligrams/liter), and~~
21 ~~the federal and state drinking water standards set limits of fifteen (15) units for color and~~
22 ~~0.3 mg/l for iron.~~

23 (c) ~~(b)~~ Many homeowners in Broward County who utilize private potable wells use
24 treatment units ~~which~~ that are relatively effective in improving the aesthetic quality of the

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1 water, but are ineffective in removal of pathogenic bacteria and viruses ~~which could~~ that
2 can cause ~~water-borne~~ waterborne disease outbreaks. Furthermore, potential chemical
3 contamination of the groundwater offers an added health risk to users of private potable
4 wells.

5 (d) Pursuant to Chapter 64E-6, Florida Administrative Code (F.A.C.), as
6 amended, the Broward County Health Department is precluded from requiring the
7 installation of public water distribution and/or sanitary sewer facilities when a proposed
8 subdivision is to consist of fifty (50) building lots or less with lot sizes of one-half (½) acre
9 or larger with a minimum dimension of one hundred (100) feet.

10 (e) (c) The remaining undeveloped areas in Broward County have low land
11 elevations and high groundwater tables, ~~and~~ are in generally overlain with deposits of
12 organic material (muck), with a depth ranging from a few inches to as much as five (5)
13 feet, ~~and beneath this~~ which are rock pinnacles, a dense "cap" rock, ~~and in other areas~~
14 or a less dense oolite rock formation exists, ~~and~~ †These various rock strata constitute
15 upper formations of the Biscayne Aquifer, which is the principal potable water source for
16 all of Broward County. Thus, there does not exist a suitable soil mantle or sandy
17 overburden in the remaining undeveloped areas of Broward County ~~which~~ that could
18 accommodate septic tank drainfields and protect the aquifer.

19 (f) Prior to the 1999 legislative session, the Broward County Health
20 Department ~~permitted the construction of on-site sewage treatment and disposal systems~~
21 ~~in which the daily sewage flow was less than 10,000 gallons. The construction regulations~~
22 ~~required that a sand bed be placed in an excavation and the drainfield be constructed~~
23 ~~upon it so that the absorption surface of the drainfield would not be subject to flooding~~
24 ~~based on ten (10) year flood elevations, and there existed a minimum twenty-four (24)~~

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1 inch separation from the seasonal high water table and the bottom surface of the septic
2 system drainfield as required by Rule 64E-6, F.A.C. In 1999, the state legislature
3 amended state law and removed the requirement that the absorption surface of the
4 drainfield be located above the ten (10) year flood elevations. Broward County finds that
5 it is in the best interest of the county to maintain this requirement to protect the Biscayne
6 Aquifer and prevent public health impacts during flooding events.

7 (g) The Broward County Health Department has found it increasingly difficult to
8 obtain strict compliance with this health regulation.

9 (h) This nonconformance is deemed by the Board of County Commissioners of
10 Broward County to create an immediate danger to the Biscayne Aquifer and therefore
11 threatens the potability of the single major source of drinking water for Broward County
12 residents.

13 (i) (d) The remaining undeveloped areas of Broward County constitute an urban
14 area, as defined by § Sections 171.031(8), and (10), F.S., as amended Florida Statutes,
15 and, as such, these areas are entitled to vital urban facilities, including public water supply
16 and sewerage facilities, whenever and wherever possible.

17 (e) The Board of County Commissioners of Broward County ("Board") finds that
18 violations of Sections 34-33 through 34-50 of this chapter constitute a public nuisance,
19 the abatement of which is necessary to protect the health, safety, and welfare of Broward
20 County's residents and its environment.

21 Section 6. Section 34-43 of the Broward County Code of Ordinances is hereby
22 amended to read as follows:

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1 **Sec. 34-43. Applicable area.**

2 The Board of County Commissioners of Broward County declares that this article
3 is an environmental regulation ~~which~~ that shall apply countywide, pursuant to
4 ~~s~~Section 8-04 11.01 of the Charter of Broward County.

5 Section 7. Section 34-48 of the Broward County Code of Ordinances is hereby
6 repealed in its entirety.

7 Section 8. Section 34-49 of the Broward County Code of Ordinances is hereby
8 amended to read as follows:

9 **Sec. 34-49. Penalties and remedies.**

10 (a) Any developer or ~~homeowner~~ property owner ~~who willfully refuses to make~~
11 ~~a connection ordered by~~ determined to be in violation of ~~s~~Section 34-45 of this article, or
12 ~~who installs~~ is determined to have installed or be operating a septic tank in violation of
13 either ~~s~~Section 34-46(a) or 34-46(b) of this article, shall be ~~punished as provided by law~~
14 required to pay a civil penalty of two hundred fifty dollars (\$250) for the first violation and
15 five hundred dollars (\$500) for each repeat violation. Each day such ~~failure to connect~~
16 violation continues, ~~or such illegal septic tank continues to operate,~~ shall constitute a
17 separate offense.

18 (b) ~~The violation of any of the provisions of this article may be enforced by~~
19 ~~injunction, including a mandatory injunction, and such suit or action may be instituted and~~
20 ~~maintained in the name of Broward County, or the Broward County Health Department,~~
21 ~~or the municipality as the case may be. Such injunction shall issue without bond~~ These
22 penalties shall not preclude any other remedies, including injunctive relief, otherwise
23 available at law or in equity.

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1 (c) ~~The Broward County Health and Sanitary Control Board shall have the~~
2 ~~power and authority to assess and levy civil penalties, as provided by Chapter 15 of the~~
3 ~~Broward County Code of Ordinances, against those persons and their respective~~
4 ~~properties found to be in violation of this article.~~

5 Section 9. Section 34-50 of the Broward County Code of Ordinances is hereby
6 repealed in its entirety, and a new Section 34-50 is hereby created to read as follows:

7 **Sec. 34-50. Enforcement.**

8 (a) This article shall be applicable in the incorporated and unincorporated areas
9 of Broward County, with enforcement in the unincorporated areas being the responsibility
10 of Broward County and enforcement in the incorporated areas being the responsibility of
11 the respective municipalities.

12 (b) Every code enforcement officer having jurisdiction in the area governed by
13 this article shall, in addition to all other duties imposed by law, enforce the provisions of
14 this article.

15 (c) Violations of this article are civil infractions and, as such, may be enforced
16 pursuant to the provisions of Chapter 8½, Article II, "Alternate Code Enforcement
17 Procedure," Broward County Code of Ordinances ("Code"), with penalties assessed
18 pursuant to Section 34-49 of the Code, Chapter 162, Florida Statutes, or any applicable
19 municipal code enforcement provision.

20 Section 10. Severability.

21 If any portion of this Ordinance is determined by any court to be invalid, the invalid
22 portion will be stricken, and such striking will not affect the validity of the remainder of this
23 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
24 legally applied to any individual, group, entity, property, or circumstance, such

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1 determination will not affect the applicability of this Ordinance to any other individual,
2 group, entity, property, or circumstance.

3 Section 11. Inclusion in the Broward County Code of Ordinances.

4 It is the intention of the Board of County Commissioners that the provisions of this
5 Ordinance become part of the Broward County Code of Ordinances as of the effective
6 date. The sections of this Ordinance may be renumbered or relettered and the word
7 "ordinance" may be changed to "section," "article," or such other appropriate word or
8 phrase to the extent necessary in order to accomplish such intention.

9 Section 12. Effective Date.

10 This Ordinance is effective as of the date provided by law.

11

12 ENACTED

PROPOSED

13 FILED WITH THE DEPARTMENT OF STATE

14 EFFECTIVE

15

16 Approved as to form and legal sufficiency:
17 Andrew J. Meyers, County Attorney

18 By /s/ Michael C. Owens 02/24/2020
19 Michael C. Owens (date)
Senior Assistant County Attorney

20

21 By /s/ Rene Harrod 02/24/2020
22 Rene Harrod (date)
Deputy County Attorney

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