



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
Community Development/Public Works Center
1500 Monroe Street, Fort Myers
First Floor Conference Room**

**WEDNESDAY, NOVEMBER 8, 2017
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – October 11, 2017
3. LDC Amendments to Ch. 30, 33 & 34 to address HB 1021 and Septic
4. Adjournment – Next Meeting Date: December 13, 2017

Persons with disabilities who need an accommodation to participate in the Land Development Code Advisory Committee meeting should contact Pam Hendry, 1500 Monroe Street, Fort Myers FL 33901 (239-533-8348 or Phendry@leegov.com). To ensure availability of services, please request accommodation as soon as possible but preferably five or more business days prior to the event. Persons using a TDD may contact Pam Hendry through the Florida Relay Service, 711.

Draft

MINUTES REPORT EXECUTIVE REGULATORY OVERSIGHT COMMITTEE WEDNESDAY, OCTOBER 11, 2017

Committee Members Present:

Randy Mercer, Vice Chair
Carl Barraco, Jr.
Bill DeDeugd

Sam Hagan
Tracy Hayden
Jim Ink

Bob Knight
Michael Reitmann
Buck Ward

Committee Members Absent:

Victor Dupont
Bill Ennen

Mike Roeder
Darin Larson

Matthew Petra

Lee County Government & Representatives Present:

Dave Loveland, Director, DCD
Audra Ennis, Zoning Manager

Amanda Swindle, Asst. Co. Attorney
Pam Hendry, DCD Admin., Recording

Public Participants: None

Introduction

Mr. Mercer called the meeting to order at 2:03 PM in the first floor conference room of the Lee County Community Development/Public Works Center, 1500 Monroe Street, Ft. Myers, Florida.

Ms. Amanda Swindle, Assistant County Attorney, reviewed the Affidavit of Posting of Meeting and found it legally sufficient as to form and content.

Approve Meeting Minutes – July 12, 2017

Mr. Jim Ink made a motion to approve the July 12, 2017 meeting minutes. Ms. Tracy Hayden seconded. The motion carried unanimously.

Wireless Facility Ordinance

Ms. Amanda Swindle said earlier this year the board of County Commissioners passed a moratorium on applications for placing wireless facilities in the public rights-of-way because the legislature in Tallahassee was crafting legislation that would essentially preempt the County's ability to regulate these types of facilities. She said House Bill 687 did pass which amended the Florida statutes and essentially prescribed the ways in which local governments are allowed to manage and enforce regulations against wireless providers when they either construct poles in the right-of-way or co-locate their small cell facilities on existing utility poles. The County is required by January 2018 to pass regulations pursuant to those requirements. She said much of what you see before you is prescribed in the statutes, we have very little leeway to change it.

Ms. Swindle went through the proposed ordinance and proposed amendments to LDC Chapters 6 and 34. She said the new process would be that if a wireless provider is doing

such work that would qualify as substantially similar replacement, they would submit an affidavit to the building department attesting that the equipment they're changing out is substantially similar to the existing equipment and if we agree, no permit would be required. Mr. Loveland said they would still have to get a right-of-way permit from DOT. Ms. Swindle said the new Article VII to Chapter 6 is going to be the bulk of the amendment, addressing the small wireless facilities being put in public rights-of-way. The intent and purpose and definitions all come from the Florida statutes, but basically Section 6-603 provides for a registration process for wireless providers that will have to register with the County and renew that registration every other year, in even numbered years. The County would then have 30 days to either deem it sufficient or not, and failure to respond within 30 days means it would be deemed sufficient. Once a provider is registered, there's a permit application process for actually installing the equipment in the right-of-way and one permit could cover 30 different co-location devices, and standards would have to be met for the placement and maintenance of these facilities. There are conditions in which the County could deny a permit that are mandated by the Florida statutes, for instance if it interferes with safe operation of traffic control equipment, sidelines or clear zones for transportation, pedestrians or public safety, ADA compliance, or if it fails to comply with the Florida Department of Transportation utility accommodation manual, or other applicable codes and regulations. Once a permit application is submitted, the County has only 14 days to let the applicant know whether or not the application is considered complete, and if we don't let them know within 14 days it will be deemed to be complete. Once we have a complete application, we have 60 days to either approve or deny it, and the denial would need to be within one of the specific criteria that are outlined for us. She said there are provisions for appealing decisions, suspending permits when requirements have been violated and for what happens when a provider abandons facilities. They need to let the County know and the County will tell them whether or not we would like them to remove the equipment at their own cost, if not it'll be deemed abandoned and the County can do with it what it wishes. If a provider fails to remove the equipment within a reasonable time, not to exceed 30 days, the County has the option of removing the equipment and charging the provider for the removal. There's indemnification language that protects the County, and insurance and bonding requirements as outlined in the Florida statutes. For co-locating, the maximum fee the County can charge is \$150.00 per pole, and utility pole is defined more broadly than just an electric pole. Also, there's a provision where existing facilities that are already in the public right-of-way before the effective date of the Bill, have 60 days to come into compliance with these regulations, meaning, they need to come in, get their registration and get their permits for their different locations. Ms. Swindle said it's also important to know that the FCC also regulates the existing big wireless towers and there's some preemption from the Federal level on our ability to deny and accept things.

Many questions were asked and answered about definitions and requirements, and a few typos were pointed out.

Mr. DeDeugd said Section 6-117 states a) The following individual improvements or repairs performed within a 12-month period to a single individual dwelling unit do not require a permit. This exemption does not apply to any combination of items that exceed \$500.00 or improvements undertaken as part of a larger project or work being performed

on multiple dwelling units:...” He said that \$500.00 should be more like \$5,000.00 or something. Ms. Swindle said we’re not proposing any changes to that language. Mr. Loveland said that’s existing language and a separate issue from communication towers and we’re only approving amendments. Ms. Swindle said you can recommend a change to that but it may not be appropriate to add it into these amendments since these are concerned with wireless facilities addressing the changes that were mandated by the Florida statutes. Mr. Loveland said if the committee is interested in discussing that in the future, we can make note of that and bring the issue back for consideration. That would allow us to do some research as to where that number came from and what makes sense in terms of what’s considered minor improvements.

Mr. Hagan asked about the words co-location and collocation appearing in the amendments. Ms. Swindle said they’re intended to be the same word and she’ll make sure they’re consistent.

Ms. Hayden said in subsection (e) it mentions subsection (d) and it should be subsection (e) instead. Ms. Swindle said yes it should. Mr. Hagan said it does it again further down in the subsection. Ms. Swindle said yes, thanks.

Mr. Michael Reitmann made a motion to approve the ordinance. Mr. Carl Barraco seconded. The motion carried unanimously.

ADJOURNMENT

Mr. Sam Hagan made a motion to adjourn and Mr. Bill DeDeugd seconded. The meeting adjourned at 2:47 PM.

The next meeting was tentatively scheduled for November 8, 2017.

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**LDC Amendments
to Ch. 30, 33 & 34
to address
HB 1021 and Septic
Draft Ordinance**

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Amendment to Land Development Code 30, 33, 34

1. What is the public interest that the Ordinance is designed to protect?

To create consistency with Florida Statutes

2. Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?

No.

3. a) Is the regulation required by State or Federal law? b) If so, to what extent does the county have the authority to solve the problem in a different manner?

a) Required by state law

b) LDC amendments necessary

4. Does the regulation duplicate State or Federal program? If so, why?

No.

5. Does the regulation contain market-based incentives? If not, could that be used effectively?

N/A

6. Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?

Yes.

7. Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?

No.

8. Does the regulation impact vested rights?

No.

9. Does the regulation provide prompt and efficient relief mechanism for exceptional cases?

No.

10. Even though there is an interest to be protected, is it really worth another regulation?

Yes; required by state law.

11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?

Yes, similar changes will be required for many local governments.

12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?

N/A

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: October 27, 2017

To:

Pam Hendry

Dept. of Community Development

FROM:

*AMANDA L.
SWINDLE*

Amanda L. Swindle
Assistant County Attorney

**RE: ORDINANCE SCHEDULING FOR EROC – November 8, 2017
Ordinance Amending LDC Chapters 30, 33 & 34**

Attached are the EROC Ordinance Evaluation Form and a proposed ordinance amending LDC Chapters 30, 33, and 34. Proposed amendments will provide consistency with Florida Statutes Section 553.79 (which preempts local regulation of specified development, construction or improvements on property associated with a franchise or the sale of liquid fuel, and preempts local regulation of signage relating to the retail price of gasoline) and Florida Statutes Section 381.0065 (which provides for regulation of septic systems by the Florida Department of Health). Please schedule review of this proposed ordinance by the Executive Regulatory Oversight Committee at its November 8, 2017, meeting.

Should you have any questions concerning the above, please do not hesitate to contact me.

ALS:III
Attachments

Via Email Only:

Andrea R. Fraser, Deputy County Attorney
Michael D. Jacob, Deputy County Attorney
David Loveland, Director, DCD
Shawn McNulty, Building Official, DCD

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTERS 30, 33 and 34, TO PROVIDE CONSISTENCY WITH FLORIDA STATUTES SECTIONS 553.79 AND 381.0065; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND 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 which contains regulations applicable to the development of land in Lee County; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, Florida Statutes Section 553.79, as amended by House Bill 1021 (2017), preempts local regulation of specified development, construction or improvements on property associated with a franchise or the sale of liquid fuel, and preempts local regulation of signage relating to the retail price of gasoline; and

WHEREAS, Florida Statutes Section 381.0065 provides for regulation of septic systems by the Florida Department of Health; 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 **NOVEMBER 3, 2017**, and recommended approval of the proposed amendments as modified; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on **NOVEMBER 8, 2017**, and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on **NOVEMBER 27, 2017**, 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 30

Lee County Land Development Code Chapter 30 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 30
ARTICLE I. - IN GENERAL

Sec. 30-4. - Applicability of chapter.

(a) *Generally.* Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign in the county, or cause such work to be done, without first obtaining a sign permit for each such sign from the building official as required by this chapter. In the event of conflict between the provisions of this Chapter and the requirements of F.S. § 553.79, the requirements of F.S. § 553.79 shall prevail.

Remainder of section is unchanged.

SECTION THREE: AMENDMENT TO LDC CHAPTER 33

Lee County Land Development Code Chapter 33 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 33
ARTICLE I. - IN GENERAL

Sec. 33-2. - Applicability.

The following articles apply to the planning communities in unincorporated Lee County that are specifically identified in the Lee Plan. Each article covers an individual planning community, or specifically identified portion of a planning community, that has chosen to pursue adoption of standards for the particular community. In the event of conflict between the provisions of this Chapter and the requirements of F.S. § 553.79, the requirements of F.S. § 553.79 shall prevail.

Remainder of section is unchanged.

SECTION FOUR: 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
ARTICLE VII. – SUPPLEMENTARY DISTRICT REGULATIONS

Subdivision II. - Convenience Food and Beverage Stores, Automotive Service Stations, Fast Food Restaurants, and Car Washes

Sec. 34-1353. - Convenience food and beverage stores, automobile service stations, fast food restaurants, and car washes.

- (a) *Purpose and intent.* The purpose and intent of this section is to ensure that establishments such as convenience food and beverage stores with or without gas pumps, automobile service stations with or without gas pumps, fast food restaurants, and car washes, accessory or stand alone, do not adversely impact adjacent land uses. The hours of operation, high levels of traffic, noise, glare and intensity associated with these uses may be incompatible with surrounding uses, specifically residential uses. In the interest of protecting the health, safety and welfare of the public, the following regulations apply to the location, design, operation, landscaping and related activities.
- (b) *Applicability.* This section applies to all stand alone or accessory convenience food and beverage stores, automobile service stations, fast food restaurants and car washes. In the event of conflict between the provisions of this Section and the requirements of F.S. § 553.79, the requirements of F.S. § 553.79 shall prevail.

Remainder of section is unchanged.

DIVISION 13. - ENVIRONMENTALLY SENSITIVE AREAS

Sec. 34-1575. - Coastal zones.

- (a) Development, other than minor structures, is prohibited seaward of the three-dimensional coastal construction control line as established by the State Department of Environmental Protection, and defined in section 6-333. For purposes of this section, minor structures mean pile supported elevated dune and beach walk-over structures; beach access ramps and walkways; stairways; fences and pile-supported viewing platforms, boardwalks and lifeguard support stands. Minor structures do not include ~~septic tanks or other~~ structures appurtenant to, cantilevered, supported by, or overhanging, or extending the principal structure. The minor structures identified herein are considered expendable under design wind, wave and storm forces.
- (b) Development within the coastal zone must be compatible with protection of natural systems and in accordance with applicable coastal construction codes.
- (c) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers.
- (d) No development will be permitted which:
 - (1) Could restrict, impede, impound or otherwise interfere with tidal flow or drainage in coastal zone waters; or
 - (2) Alters or removes protection vegetation from the frontal or primary dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the State Department of Environmental Protection.

SECTION FIVE: 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 SIX: 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 SEVEN: CODIFICATION AND SCRIVENER’S ERRORS

The Board of County Commissioners intend 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 EIGHT: 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 NINE: 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 _____ made a motion to adopt the foregoing ordinance, seconded by Commissioner _____. The vote was as follows:

John Manning _____
Cecil L Pendergrass _____
Larry Kiker _____
Brian Hamman _____
Frank Mann _____

DULY PASSED AND ADOPTED this ____ day of _____, 20__.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
John Manning, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney