

**Lee County Board of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20041586**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Conduct a Public Hearing and consider the adoption of a permanent Ordinance replacing the emergency "Lee County Price Gouging Ordinance", # 92-31, and the emergency "Price Gouging Ordinance # 04-12.

**WHY ACTION IS NECESSARY:** Board directed and the Board must formally adopt the permanent Ordinance at a scheduled, advertised Public Hearing.

**WHAT ACTION ACCOMPLISHES:** Provides additional local law for prosecution of persons found to be "Price Gouging" essential commodities during a County-Declared Emergency.

**2. DEPARTMENTAL CATEGORY:  
COMMISSION DISTRICT #**

**5:00 #5**

**3. MEETING DATE:** **12-14-2004**

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:**

**5. REQUIREMENT/PURPOSE:  
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER**
- B. DEPARTMENT** County Attorney
- C. DIVISION** General Services
- BY:**  
Andrea R. Fraser  
Assistant County Attorney

**7. BACKGROUND:**

On August 11, 2004, and subsequently, Lee County declared several State of Local Emergencies for Lee County due to the impact of Hurricane Charley. During the recovery period, the County received complaints of "Price Gouging". On August 24, 2004, the County adopted an emergency "Price Gouging" Ordinance for a period of 120 days. In order to more effectively deal with unconscionable business practices in the County following subsequent disasters, a permanent County Ordinance addressing such complaints and their punishment is necessary and desirable.

At its August 24, 2004, meeting when adopting Lee County Ordinance 04-12, the Board directed that a permanent Ordinance be adopted. Provisions are included at Section Two, Paragraph C.1. and 2. in the definition of "Unconscionable Price" to address additional costs as the result of a retail entity having to pass through the additional costs of obtaining goods.  
(Continued)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>Andrea Fraser</i>	OA <i>RK 11/23</i>	OM <i>11/23/04</i>	RISK <i>10/23/04</i>	GC <i>11/23/04</i>	<i>11-24-04</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY COUNTY ADMIN:	<i>[Signature]</i>
	<i>11/22/04</i>
	<i>4:29 pm 5/1</i>
COUNTY ADMIN FORWARDED TO:	<i>11/24/04</i>
	<i>1055001</i>

ATTACHMENTS: Proposed Price Gouging Ordinance  
Financial & Administrative Impact Statement  
Notice Of Intent To Enact A County Ordinance

LEE COUNTY ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF LEE COUNTY, FLORIDA, RELATING TO THE PROVISIONS OF A DECLARED STATE OF LOCAL EMERGENCY; PROVIDING THE PURPOSE AND INTENT OF THE ORDINANCE; PROVIDING FOR THE PROHIBITION OF PRICE GOUGING AND OVERCHARGING FOR ESSENTIAL COMMODITIES SOLD IN LEE COUNTY, FLORIDA DURING AN EMERGENCY; PROVIDING FOR OFFENSES AND PENALTIES INCLUDING BUT NOT LIMITED TO CRIMINAL PENALTIES PURSUANT TO LAW, AND SUSPENSION OR REVOCATION OF THE LEE COUNTY OCCUPATIONAL LICENSE; TERRITORY EMBRACED, PROVIDING FOR REPEAL OF PRIOR AND INCONSISTENT ORDINANCES; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Governor of the State has the authority to declare a State of Emergency in Florida to include Lee County pursuant to Executive Order; and

WHEREAS, the Board of County Commissioners of Lee County, as the governing Body thereof may also declare a State of Local Emergency, pursuant to Chapter 252, Florida Statutes; and

WHEREAS, under such a State of Local Emergency, Section 252.38(3)(a), 2 & 5, Florida Statutes, provides the authority for political subdivisions of the State (Counties) to waive the procedures and formalities otherwise required of a County in order to take whatever actions are necessary to ensure the health, safety, and welfare of the community; and

WHEREAS, the Board of County Commissioners of Lee County, Florida may find and declare that the implementation of this Ordinance is necessary to reduce further hardship and suffering to persons affected by a disaster with a Declared Emergency which is causing the disruption of the normal supply, distribution and marketing of essential commodities.

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

**SECTION ONE:**                    **PURPOSE AND INTENT OF THE ORDINANCE**

During a State of Local Emergency as the same may be declared by the State, the Board of Lee County Commissioners or the Lee County Manager, it shall be unlawful for any person or his or her agent(s) or employee(s) within the geographical area of Lee County for which the state of emergency is declared, to rent or sell, or offer to rent or sell, at an unconscionable price, any essential merchandise, goods, services or housing as defined herein, during a Declared Emergency.

**SECTION TWO:**                    **DEFINITIONS**

- A.     *Average Retail Price* - the price at which the same or similar commodity had been sold during the thirty (30) day period immediately preceding the declaration of the Local Emergency.
  
- B.     *Essential Merchandise* - that merchandise, goods, and services as defined to mean but not be limited to: food, water, ice, chemicals, petroleum

products, lumber, supplies, services, provisions, or equipment, or the rental or lease of any dwelling unit, (which includes the rental of hotel, motel or other transient lodging) or facilities or self-storage facility, that is necessary for consumption or use as the direct result of the Declared Emergency. The prohibition shall remain in effect until the declaration expires or is terminated as set out further herein.

C. *Unconscionable Price*

1. The amount charged for the goods or services exceeds the average price charged, or at which the same or similar commodity was readily obtainable in the effected area during the thirty (30) days immediately prior to a declaration of a State of Emergency by at least 100%, and the increase in the amount charged is not directly attributable to additional costs incurred in connection with the market availability or the obtaining of the commodity.
2. The amount charged represents a disparity of at least 100% between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction, and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty (30) days immediately

prior to a declaration of a State of Emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the market availability or the obtaining of the commodity.

**SECTION THREE:**            **ESSENTIAL COMMODITIES SURVEY**

Prior to the annual Hurricane Season (June 1 - November 30), Emergency Management of the Division of Public Safety, will conduct a countywide survey of the prices of Essential Commodities as defined herein, to create a baseline from which to investigate price-gouging complaints and to prosecute offenders, when a State of Local Emergency is declared.

An example of the items which average prices Emergency Management will document during a Price Commodities Survey, is attached hereto as Exhibit "A".

**SECTION FOUR:**            **OFFENSES AND PENALTIES**

- A. Any person, or his or her agent(s) or employee(s), or firm, company or corporation who offers for sale, sells or refuses to comply with or violates any section of this Ordinance with respect to the sale of goods and/or services as described herein, or the emergency measures which may be made effective pursuant to this Ordinance shall upon conviction, be found guilty of a misdemeanor of the second degree, shall be punished by a fine not to exceed five-hundred dollars (\$500.00) or by imprisonment not to exceed sixty

(60) days in the Lee County Jail, or both, at the discretion of the Court. Each day of continued non-compliance or violation shall constitute a separate offense. Any persons found guilty of violating any provision of this Ordinance or emergency measures which may be made effective according to this Ordinance, may have his/her Lee County Occupational License suspended or revoked by the Board of County Commissioners of Lee County, Florida for a period of time to be determined by the Board, after hearing at a Public Meeting.

- B. Nothing contained herein shall prevent the County from taking all other lawful actions in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this Ordinance or the emergency measures which may be made effective pursuant to this Ordinance. Such other lawful actions shall include but shall not be limited to, equitable actions for injunctive relief or other actions at law for actual and punitive damages.

**SECTION FOUR:            TERRITORY EMBRACED**

All of the unincorporated area of Lee County shall be regulated by the provisions of this Ordinance.

**SECTION FIVE:                  CONFLICT AND SEVERABILITY**

In the event this Ordinance conflicts with any other ordinance or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions.

**SECTION SIX:                  REPEAL**

Upon the adoption of this Ordinance, Lee County Ordinance No. 04-12 and any other ordinance addressing the issue of Price Gouging during a Declared Emergency will be deemed to be repealed and will be of no further force or effect.

**SECTION SEVEN:              EFFECTIVE DATE**

This Ordinance shall become effective upon its adoption by the Board of County Commissioners and acknowledgment of its filing with the Office of the Secretary of the State of Florida.



The foregoing Ordinance was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and, being put to vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
TAMMY HALL	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2004.

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Chair

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Office of the County Attorney

**EXHIBIT "A"**

**AVERAGE COST OF ESSENTIAL COMMODITIES**

**LEE COUNTY, FLORIDA**

**SURVEY DATE: \_\_\_\_\_**

<b>ITEM</b>	<b>CATEGORY</b>	<b>SIZE</b>	<b>AVERAGE PRICE</b>
Baby Food	Consumables	4 oz. jar	
Batteries	Household Supplies	6 volt - 1 PK	
Batteries	Household Supplies	9 volt - 1 PK	
Batteries	Household Supplies	9 volt - 2 PK	
Batteries	Household Supplies	9 volt - 4 PK	
Batteries	Household Supplies	AA - 2 PK	
Batteries	Household Supplies	AA - 4 PK	
Batteries	Household Supplies	AA - 8 PK	
Batteries	Household Supplies	AAA - 2 PK	
Batteries	Household Supplies	AAA - 4 PK	
Batteries	Household Supplies	AAA - 8 PK	
Batteries	Household Supplies	C - 2 PK	
Batteries	Household Supplies	C - 4 PK	
Batteries	Household Supplies	C - 8 PK	
Batteries	Household Supplies	D - 2 PK	
Batteries	Household Supplies	D - 4 PK	
Batteries	Household Supplies	D - 8 PK	
Bleach	Household Supplies	1 gal.	
Can Opener (manual)	Household Supplies	Each	
Charcoal	Consumables	10 lb. Bag	
Charcoal	Consumables	20 lb. Bag	
Coolers	Household Supplies	36 qt.	
Coolers	Household Supplies	16 qt.	

ITEM	CATEGORY	SIZE	AVERAGE PRICE
Diapers	Personal Hygiene	40 - PK	
Drinks (Gatorade, Power Aid, Hawaiian Punch)	Consumables	64 oz.	
Drinks (Gatorade, Power Aid, Hawaiian Punch)	Consumables	1 gal.	
First Aid Kits	Personal Hygiene	Kit	
Flashlights	Household Supplies	Each	
Gasoline	See current AAA prices at <a href="http://www.fuelguagereport.com/FImetro.asp">http://www.fuelguagereport.com/FImetro.asp</a>		
Generators	Household Supplies	1,850 Watts	
Generators	Household Supplies	3,000 Watts	
Generators	Household Supplies	5,500 Watts	
Generators	Household Supplies	7,000 Watts	
Ice	Consumables	Bag (7-20 lb.)	
Lanterns (Battery)	Household Supplies	Each	
Masking Tape	Home Shelter Supplies	1 inch	
Masking Tape	Home Shelter Supplies	2 inch	
Milk	Consumables	1 gal.	
Pain Relievers (adult) - 250 ct.	Medicines	Box	
(adult) - 165 ct.	Medicines	Box	
(adult) - 150 ct.	Medicines	Box	
(adult) - 100 ct.	Medicines	Box	
(adult) - 50 ct.	Medicines	Box	
(adult) - 20 ct.	Medicines	Box	

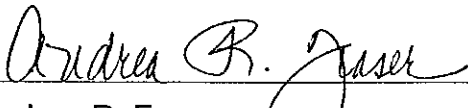
ITEM	CATEGORY	SIZE	AVERAGE PRICE
Pain Relievers (children) - 30 ct.	Medicines	Box	
(children) - 24 ct.	Medicines	Box	
(children) - 4 oz.	Medicines	Bottle	
(children) - 1 oz.	Medicines	Bottle	
Plastic Sheeting (various/lengths)	Household Supplies	4 mil	
Plastic Sheeting (various/lengths)	Household Supplies	6 mil	
Plastic Sheeting (various/lengths)	Household Supplies	3.5 mil	
Plywood	Home Shelter Supplies	1/2 inch	
Plywood	Home Shelter Supplies	3/4 inch	
Plywood	Home Shelter Supplies	5/8 inch	
Power Drills (cordless)	Household Supplies	Each	
Power Drills (with cord)	Household Supplies	Each	
Power Saws (with cord)	Household Supplies	Circular	
Soda	Consumables	Reg. - 2 ltr.	
Soda	Consumables	Diet - 2 ltr.	
Water	Consumables	1 gal.	
Wet/Dry Vacs (purchase)	Household Supplies	16 gal.	
Wet/Dry Vacs (purchase)	Household Supplies	12 gal.	
Wet/Dry Vacs (purchase)	Household Supplies	10 gal.	

The cost of the above commodities is based on an average price of a representation of all of the commodities surveyed within their own specific category.

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

DATE: November 22, 2004

To: Sue Gilpin  
Budget Services

FROM:   
Andrea R. Fraser  
Assistant County Attorney

RE: **FINANCIAL & ADMINISTRATIVE IMPACTS STATEMENT ("FAIS") -  
LEE COUNTY PRICE GOUGING ORDINANCE**

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Attached is the FAIS for the above-referenced proposed ordinance, together with a copy of the draft ordinance.

I am preparing Parts I.A., and B. and am forwarding to you for completion of Part I.C. and Part II and return it to me by 11/29/01 so that it may be included in the agenda materials for the Board of County Commissioners meeting on 12/14/04.

**LEE COUNTY, FLORIDA**

**FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT**

**PROPOSED COUNTY ORDINANCE:**

**NAME OF ORDINANCE:** Price Gouging

A. Statement of Purpose

To make unlawful during a declared State of Local Emergency charging unconscionable prices for any essential merchandise, goods, services or housing sold or rented.

B. Narrative Summary of Ordinance (Several Sentence Summary)

Same as A., above.

C. Principal Division(s) or Department(s) Affected (List)

Emergency Services

LEE COUNTY, FLORIDA  
 FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT  
 PROPOSED COUNTY ORDINANCE:

II. Fiscal impact on County Agencies/County Funds (This section to be completed by OBS).

- A. What is estimated Demand? (Develop Indicators)
- B. What is estimated Workload? (Develop Indicators)
- C. What are estimated costs?

	1st Year \$'s		2nd Year \$'s	
	Existing	New	Existing	New
Personnel				
Fringe				
Operating				
Capital Outlay				
Total				

- D. List the anticipated revenues to cover costs identified in II, C, above. If a fee is to be charged, answer the following;
  - 1. What is the basis (rationale) for the fee?
  - 2. Do the anticipated fees cover the full cost of operation? If not, what percentage of the costs are covered?
- E. Give a brief narrative analysis of the information contained in II, A-D, above.

**LEE COUNTY**  
**NOTICE OF INTENT TO ENACT A COUNTY ORDINANCE**

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that on Tuesday, the 14<sup>th</sup> day of **December 2004**, at **5:00 o'clock p.m.**, in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider the enactment of a County Ordinance pursuant to Article VIII, Section 1, of the Florida Constitution and Chapter 125, Florida Statutes. The title of the proposed County Ordinance is as follows:

**AN ORDINANCE OF LEE COUNTY, FLORIDA, RELATING TO THE PROVISIONS OF A DECLARED STATE OF LOCAL EMERGENCY; PROVIDING THE PURPOSE AND INTENT OF THE ORDINANCE; PROVIDING FOR THE PROHIBITION OF PRICE GOUGING AND OVERCHARGING FOR ESSENTIAL COMMODITIES SOLD IN LEE COUNTY, FLORIDA DURING AN EMERGENCY; PROVIDING FOR OFFENSES AND PENALTIES INCLUDING BUT NOT LIMITED TO CRIMINAL PENALTIES PURSUANT TO LAW, AND SUSPENSION OR REVOCATION OF THE LEE COUNTY OCCUPATIONAL LICENSE; TERRITORY EMBRACED; PROVIDING FOR CONFLICT AND SEVERABILITY, PROVIDING FOR REPEAL OF PRIOR AND INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.**

1. Copies of this Notice and the proposed Ordinance are on file in the Minutes Office of the Clerk of Courts of Lee County. The public may inspect or copy the proposed Ordinance during regular business hours at the Office of Public Resources. The Minutes Office and Public Resources are located in the Courthouse Administration Building, 2115 Second Street, Fort Myers, Florida. Public Resources is located on the first floor and the Minutes Office is located on the second floor of the Courthouse Administration Building.
2. Interested parties may appear at the meeting in person or through counsel,



and be heard with respect to the adoption of the proposed Ordinance.

3. Anyone wishing to appeal the decision(s) made by the Board with respect to any matter considered at this meeting, will need a record of the proceedings for such appeal, and may need a verbatim record, to include all testimony and evidence upon which the appeal is to be based.

4. The Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State, or as may be otherwise prescribed in the Ordinance.

5. If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

PLEASE GOVERN YOURSELF ACCORDINGLY.

The text of this Notice is in conformance with Section 125.66, Florida Statutes (2004), and other relevant sections of Florida law.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By: Andrea R. Jasser  
Office of the County Attorney

Ad Size: 2 x 5

**Publishing Dates:**        **December 1, 2004; and  
December 7, 2004**