

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

DATE CRITICAL
Blue Sheet No. 20020587

1. REQUESTED MOTION:

ACTION REQUESTED: Direct extension of Communication Tower Interim Ordinance (Lee County Ordinance No. 01-20).
Recommended hearing dates are as follows: LDC Advisory Committee (LDCAC): June 10, 2002
Management & Planning (M&P): June 3, 2002
Executive Regulatory Oversight Committee (EROC): June 5, 2002
Local Planning Agency: June 10, 2002
First Public Hearing: June 25, 2002
Second Public Hearing: July 9, 2002

WHY ACTION IS NECESSARY: Public Hearings are necessary to adopt amendments to the LDC.

WHAT ACTION ACCOMPLISHES: Set hearing dates before the LDCAC, M&P, EROC, LPA and Board of County Commissioners.

2. DEPARTMENTAL CATEGORY: 04 COMMISSION DISTRICT #CW A12A		3. MEETING DATE: 06-11-2002
4. AGENDA:	5. REQUIREMENT/PURPOSE: <i>(Specify)</i>	6. REQUESTOR OF INFORMATION:
<input type="checkbox"/> CONSENT	<input type="checkbox"/> STATUTE	A. COMMISSIONER
<input checked="" type="checkbox"/> ADMINISTRATIVE	<input checked="" type="checkbox"/> ORDINANCE (LDC)	B. DEPARTMENT County Attorney
<input type="checkbox"/> APPEALS	<input type="checkbox"/> ADMIN. CODE	C. DIVISION Land Use
<input type="checkbox"/> PUBLIC	<input type="checkbox"/> OTHER	BY: <i>John J. Fredyma</i>
<input type="checkbox"/> WALK ON		John J. Fredyma Assistant County Attorney
TIME REQUIRED: 15 Minutes		

7. BACKGROUND:
Extends the temporary (interim) regulations enacted in November of 2001 covering the construction of communication towers in unincorporated Lee County. The interim ordinance was adopted for a period of 8 months and is due to expire on July 30, 2002. Planned public hearings in July before the Board of County Commissioners have been cancelled by the Board. An extension of the existing (interim) ordinance will prevent a lapse in regulations and will facilitate the opportunity for a full Board review of the requested Communication Tower Master Plan and ordinance.

Attachment: Draft of Extension of Communication Tower Interim Ordinance, labeled "Draft One" in the footer.

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>Dmc 5/21/02</i>	<i>CA 5/22/02</i>	<i>QM 5/22/02</i>	<i>RISK 5/23</i>	<i>GC 5/22</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

CO. ATTY.
FORWARDED
TO, CO. ADMIN.
5/22/02 9AM

RECEIVED BY
COUNTY ADMIN. *PMC*
5/22/02
9:20am
BY ADMIN.
FORWARDED TO: *BL*
5/23 8:00

LEE COUNTY ORDINANCE NO. 02- ____

AN ORDINANCE TO EXTEND THE COMMUNICATION TOWER INTERIM ORDINANCE (LEE COUNTY ORDINANCE NO. 01-20) ESTABLISH AN INTERIM ORDINANCE TO REGULATE COMMUNICATION TOWERS AND PERSONAL WIRELESS SERVICE FACILITIES (PWSF'S); PROVIDING FOR A PURPOSE, INTENT AND SCOPE; EXTENSION OF COMMUNICATION TOWER INTERIM ORDINANCE (LEE COUNTY ORDINANCE NO. 01-20); TERMS AND PROVISIONS OF EXTENSION; CONSISTENCY WITH LEE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida is authorized, directed and empowered to guide and regulate growth and development of the County pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act; and

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, communication towers and personal wireless service facilities comprise a rapidly growing segment of the utilities and communications sector and have merit and value for the community as a whole; and

WHEREAS, the U.S. Congress adopted Section 704 as part of the Telecommunications Act that the President of the U.S. signed into law on February 8, 1996, such section defining personal wireless services and personal wireless service facilities and preserving local zoning authority over decisions regarding the placement, construction, and modification of personal wireless service facilities; and

WHEREAS, the County desires to study the proliferation and effect of communication towers so as to promote the overall good of the County; and

WHEREAS, the County seeks to maintain the "status quo" insofar as it would be undesirable and inconsistent with sound planning principles to allow the proliferation of tall communication towers to occur during the intended period of study and development of a County-wide communication tower Master Plan; and

WHEREAS, the County seeks to act in good faith, and not in a manner that is arbitrary, capricious or unreasonable; and

WHEREAS, the purpose and intent of this ordinance are to extend and utilize an existing interim regulation during which the County will complete its study and establish standards for the location, siting and design of communication towers and personal wireless service facilities.; and

WHEREAS, the Land Development Code Advisory Committee has reviewed the proposed extension to the Communication Tower Interim Ordinance on June 10, 2002, and recommended _____ of the extension; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed extension to the Communication Tower Interim Ordinance on June 5, 2002, and recommended _____ of the extension; and

WHEREAS, the Communication Tower Interim Ordinance was reviewed by the Local Planning Agency (LPA) only on October 22, 2001 and found to be consistent with the County's comprehensive plan (the Lee Plan); and

WHEREAS, the LPA reviewed the proposed extension of the Communication Tower Interim Ordinance on June 5, 2002, and found it _____ with the Lee Plan, as indicated.

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

Section One: Purpose, Intent and Scope.

The purpose of this ordinance is to extend the Communication Tower Interim Ordinance (Lee County Ordinance No. 01-20) containing interim or temporary regulations relating to the siting, placement and erection of all types of communication towers and personal wireless service facilities. The provisions of Lee County Ordinance No. 01-20 regulate communication towers for the purpose of attaching personal wireless communication facilities as defined herein within the limits of unincorporated Lee County, Florida. Extension of these temporary interim regulations will allow Lee County to complete its study of the presence of communication towers within its unincorporated limits and to develop and implement a personal wireless communication facility master plan.

Section Two: Extension of Communication Tower Interim Ordinance (Lee County Ordinance No. 01-20)

This ordinance will extend the Communication Tower Interim Ordinance (Lee County Ordinance No. 01-20) for an additional period of time not to exceed three (3) months from the effective date of the adoption of this ordinance, unless extended by formal action of the Lee County Board of County Commissioners.

Section Three: Terms and provisions of extension.

The terms and provision of the Communication Tower Interim Ordinance (Lee County Ordinance No. 01-20) are incorporated herein by reference and continue in full force and effect except where modified herein.

Section Four: Consistency with Lee County Land Development Code.

The terms and provisions of this interim ordinance are to be read in conjunction with those regulations set forth in the Lee County Land Development Code (LDC), as amended. To the extent that any existing regulation set forth in the LDC is in conflict with this ordinance, the more restrictive regulation will supersede and control.

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 be considered 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 invalid or unconstitutional provision was not included.

Section Seven: Codification and Scrivener's Errors.

The Board of County Commissioners intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section," "article" or some 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 Manager, or his designee, without the need for a public hearing.

Section Eight: Effective Date.

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

THE FOREGOING ORDINANCE was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ Cerny and, being put to a vote, the vote was as follows:

Robert P. Janes	_____
Douglas St. Cerny	_____
Ray Judah	_____
Andrew W. Coy	_____
John E. Albion	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2002.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney