



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE  
Community Development/Public Works Center  
1500 Monroe Street, First Floor Conf. Rm. 1B**

**WEDNESDAY, MAY 8, 2019  
2:00 P.M.**

**AGENDA**

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – March 13, 2019
3. Gas Skimmer Ordinance – Joe Adams
4. Adjournment – Next Meeting Date: July 10, 2019

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# Draft

## MINUTES REPORT EXECUTIVE REGULATORY OVERSIGHT COMMITTEE WEDNESDAY, MARCH 13, 2019

### **Committee Members Present:**

Randy Mercer, Chair	Tracy Hayden	Michael Reitmann
Bill DeDeugd	Jim Ink	Buck Ward
Sam Hagan	Bob Knight	

### **Committee Members Absent:**

Carl Barraco, Jr.	Bill Ennen	Darin Larson
Victor Dupont	Tim Keene	Michael Roeder

### **Lee County Government & Representatives Present:**

Audra Ennis, Zoning Manager	Anthony Rodriguez, Princ. Planner, DCD
Jessica Sulzer, Dev. Services Mgr.	Joe Adams, Asst. County Attorney
Dave Paschall, Code Enforcement Chief	Amanda Swindle, Asst. County Attorney
Pam Hendry, DCD Admin.	

### **Public Participants:**

Amy Thibaut, Pavese Law Firm  
Kaylee Tuck, Henderson, Franklin  
Ed Gwiazda, Lehigh Acres Citizen  
Emily Underhill, Lee Co. Port Authority

### **Introduction**

Mr. Randy Mercer called the meeting to order at 2:00 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 – January 9, 2019**

**Ms. Tracy Hayden made a motion to approve the September 12, 2018 meeting minutes with her name added to the list of committee members present. Mr. Buck Ward seconded. The motion carried unanimously.**

### **Commercial Truck Parking Ordinance**

Assistant County Attorney, Joe Adams said this is a Board directed ordinance to deal with semi trucks and other large commercial vehicles parking in residential neighborhoods, mostly occurring in Lehigh Acres and North Fort Myers. The current Lee County Land Development Codes (LDC) regulations that already prohibit this are inefficient at stopping the behavior. This ordinance allows the County and the Sheriff's office to tow the vehicles for repeat violations.

Ms. Hayden said she understands the reasons for the ordinance and can envision the areas having issues, but her concern is with including the agricultural (AG) zoning and the way that it's written. She said she's lived in an AG zoned area for 24 years where a lot of small landscaping and tree cutting companies have their vehicles that don't have agricultural activities on their property. The way it's written they wouldn't be allowed to have their vehicles there and she doesn't think the intent of the County is to prohibit the small operations to be able to park their vehicles on their property. The bigger landscape companies have the business and have the areas, but the smaller guys don't, so she wants to find out about that. Mr. Adams said this is already in the LDC. Ms. Hayden said are they allowed to screen or something so you can't see it from the road? Mr. Adams said if the equipment is for an AG use on the property that's the case but, you can't run a business with large equipment on AG property if there's no bona fide agricultural use on the property. Ms. Hayden said where are those people supposed to park those vehicles? Mr. Adams said commercial property zoned for open storage, inside enclosed buildings and garages. Mr. Adams said this is specifically designed to deal with semi trucks and dump trucks.

Mr. Ward said he shares Ms. Hayden's concerns about the wording. Someone could be parking his truck out behind his house for 10 years and that's how he earns his living, and suddenly he's got a code violation. There are provisions in here for him to be arrested and go to jail. There may be some discretion but you can't count on it, especially with a new County employee using discretion in these cases. Mr. Adams said this is already in the LDC. This ordinance is to address loopholes that truck drivers have been using to get around the County requirements and park semi trucks and dump trucks in residential neighborhoods. Mr. Ward said in the LDC part that's being changed it used to say it could be parked in a building, now it says garage, why can't it be parked in a garage or any building, like a barn. Mr. Adams said the intent there was to make it less strict. We're saying if you park it inside a garage, that's fine. Mr. Ward said but it cannot be a building, it has to be a garage. Ms. Ennis said that wasn't the intent so we'll take a look at that. Mr. Adams said we can look at changing it to add "a garage or completely enclosed building". Mr. Ward said why does it have to be completely enclosed? In areas with industrial zoning you can use visual screening from rights-of-way and from residential areas. Why can't that apply in these cases as well?

Ms. Hayden said was screening or buffering considered? It would work in an AG area. Mr. Paschall said in Tice on 5 acres someone was parking 8 semi-tractor trailers and a dump truck. The old code said if you lived there and drove the truck to work and home you could park it there. We cited they guy and he moved the trucks but the trucks came back and we cited them again. Then everyone that lived at the house changed their drivers' licenses to show that they lived there. There's always a way around it. Now, the house is burned down and they still have 8 semi-tractor trailers and a dump truck parked there, he's running a commercial storage lot on AG property. If you lived next door to that I don't think you'd want screening. They bang the tailgates at 6:00 in the morning and wake the kids up, and that's why we're trying to keep the semis off the AG property. If a guy has a legitimate AG property, he can park his truck there. We've never gone after them. It's the people that are circumventing what the intent of the code was. No one wants to live next to a storage yard.

Mr. Mercer said if someone has 2 contiguous AG properties, separate STRAP numbers with a house on one and a vacant one next door, would that be allowed? Mr. Paschall said only if you had a legitimate AG use on that vacant property. Mr. Adams said we aren't changing that, it's already in the LDC. Mr. Ward said what about a farmer with a truck for his bona fide AG use who's parking it on land that he owns without a structure? So, he builds a shed on the property and he's good?

Mr. Paschall said the existing truck ordinance came in March 1, 2001 when we were just swamped with complaints from the public. From 2017-18 through today there were 927 truck complaints, 81% were in Lehigh. Lehigh triggered the truck ordinance in 2001. The trucks were blocking the roads, they were changing the oil and filters and the neighbors are fed up with it. Mr. Adams said the commissioners are knocking down our doors to do something about it.

Mr. Mercer said in 3.a. would substituting the word 'or' for 'and' do anything? Mr. Ward said he would say to eliminate it altogether, and in 2. 'A truck parked in a completely enclosed "building" instead of "garage"'. Ms. Sulzer said Chapter 34 defines garage as a building or structure for the parking or storage of motor vehicles. And, there's a differentiation between parking garage and garage private which means a garage that is provided for the parking of motor vehicles owned by the occupants of the principal building. Mr. Ward said so if there's not a principal building, it is not a garage. If it's a barn primarily used for storage of cows and he puts his truck in it, does it then become a garage? Why do you object to calling it a building rather than a garage? Mr. Paschall said a garage is a building and you have to have a building permit for it, unless it's on a bona fide AG use. Mr. Ward said but not all buildings are garages. Ms. Hayden said the definition said it had to be connected to another building. Ms. Ennis said we'll be happy to look at the terminology to ensure that we are providing for the buildings that may house agricultural equipment. Mr. Knight said we don't disagree with the residential zone.

Mr. Ward said what if it was limited to AG in an urban land use category only? Mr. Hagan said the language in the ordinance is the same as the LDC. Is the only loophole the guy that drives his truck home from work and lives there? Ms. Swindle said the reason for the ordinance is to actually be able to tow the vehicle because if you cite a code violation you have to go through the process of going to hearing and by moving the vehicle they've remediated the violation. Mr. Mercer said would changing the word garage to building be helpful to solve our concerns? Mr. Ward said yes, or say garage or building. Ms. Ennis said it's important to recognize that the exemption to allow you to have it within a completely enclosed garage applies to the residential district at large. The AG exemption doesn't preclude the open storage of that vehicle if it's used in conjunction with an AG use on that property. There is a little bit of a distinction to be made in the reference to the garage. We'll take a look at a better way to articulate that, but that is in reference to this is an ordinance proposed to preclude the parking of those vehicles in residential areas. Those are two separate exceptions in the reference to the garage because it's a customary residential accessory use. We'll take a look at it. Mr. Ward said exception number one which makes sense at first reading, it's for daytime deliveries or daytime service calls meaning that a big truck in my driveway that stays after dark is technically in violation. Why not get rid of daytime deliveries and daytime service calls and just say deliveries and service calls? Most deliveries or service calls are going to happen during the day. Ms.

Sulzer said unless the guy gives a receipt that says the delivery was at 11:30 at night, and that's a loophole. Ms. Swindle said if a truck is found at 3:00 in the morning you could claim it was a delivery. It might not be ok with the neighbors and that's what initiated all of this.

Ms. Hayden said the state has specific statutes regarding towing, and I'm sure you looked at that and are ok with it. Mr. Adams said that's the only major change, giving the Sheriff's office and Code Enforcement the ability to tow after repeated violations. Mr. Mercer said it's safe to say that this committee is in theory in sync with the reasons you're doing this. We would like to have the word garage changed to building or have it say "building or garage" whatever would be a little more inclusive, not to skirt around anything you're trying to do but to accommodate those people that may get carved out of this for no good reason. Are there any other suggestions that we may take? Ms. Hayden said I'm just uncomfortable about the AG part of it but I understand the concern. Mr. Ward said I see this impacting a lot of people that make a living with trucks and I understand the problem. But, if you cite a guy for parking his truck on his AG zoned one acre lot out in the country in Lehigh Acres somewhere, then he's got to find another place to put it which may keep him from making a living. Mr. Ink said you can park a big truck for \$150.00 a month.

Mr. Ed Gwiazda, a resident of Lehigh, passed around pictures showing many trucks parked on the rights-of-way within a half mile of his house. He said he read the codes that say you can't park trucks where they were parked so he called Code Enforcement. He and they said actually if they park it in front of their house, they're legal. But it's not their property, it's county property. So they are making a lot of money and they're saving money driving their trucks on very narrow residential streets with kids playing. The first time some kid gets run over by a truck everybody in this room is going to have to answer questions from the media as to how you could allow that. They know they shouldn't be doing it and they're doing it anyway. The real estate people are really pushing it now, going after truckers. He said he sees new trucks almost every week in Lehigh, mostly east of Bell, so it's a big problem. The problem with the current code is it seems like the basic mechanism switched from Code Enforcement to the Sheriff's department to issue tickets and things like that. Since the crash he rarely sees Sheriff's deputies coming around and he's going to go to the Sheriff's department and ask them how many deputies they actually have in Lehigh. If they're the ones that are going to be doing code enforcement, they're not going to be finding these guys. It says "may" issue a towing ordinance and it should say "shall". You should ban semi trucks, or anything bigger than a delivery truck from all of the residential areas. Some roads like Bell and Alabama that go from State Road 80 up to Lee make sense, but there's no reason for a guy who owns a truck to have it on a residential street. It's hitting my property values because if I try to sell my house tomorrow and two trucks are parked at the end of the street and the people have kids, they'll look someplace else. It's important that you close every possible loophole. Having the Sheriff's department as the major person in this is wrong. He said if this isn't handled pretty quickly he'll go to the media. He said he's been at this for two years and he is happy this is finally moving forward. This has got to be addressed.

Mr. Reitmann asked if Code Enforcement ever goes out and checks for trucks parking in residential. Mr. Paschall said the state law says if Code Enforcement cites someone, we have to cite the property owner which requires a STRAP number in case we have to levy a

fine. So, when they park them out on the street that's county property and their hands are tied. That's why we've asked the Sheriff's department in, and the Sheriff's department's been swamped with this. Unless it's posted no parking, the county doesn't restrict parking. The Sheriff is more than happy to come on board with this. Mr. Reitmann said the Sheriff should just go out and enforce it without a county ordinance. Mr. Paschall said the law says it has to be posted no parking.

Mr. Hagan said he feels bad for the guy that's driving his truck home from work and maybe it should be considered to limit it to one truck per parcel or something. But, it's a good ordinance and well drafted. Mr. Paschall said if you have 30 houses on the street and 30 trucks where do you stop?

Mr. Knight said in SECTION THREE, D. 2. a. and b. the word "may" could mean it really doesn't have to be issued, so maybe it should be "shall". Mr. Adams said none of our code enforcement actions require us to cite something. It's discretionary. Mr. Ward said would this ordinance be complaint driven? Mr. Adams said absolutely. Mr. Paschall said the public expects Code Enforcement to find the violations rather than the public having to put up with it until they call, and we hold the code officers to a standard of finding at least 70% of their cases every month. The public shouldn't have to put up with something and finally call us and complain because then the person wants to know who complained on them and we start these back and forths in the neighborhood. So, we do expect the code enforcement officers to find these trucks.

**Ms. Hayden made a motion to accept the ordinance with the deletion of agricultural lands. Mr. Ink seconded.**

Mr. Knight said he's not sure he can support that deletion only because of the building or garage issue. Mr. Hagan said that's already prohibited by the code so it's not changing anything except for the guy driving his truck home from work to his AG property, then it adds enforcement.

Mr. Ward said the change also is parking in public rights-of-way without them being posted so that nobody can park there. Mr. Hagan said this addresses that. Mr. Ward said but these areas in Lehigh are not AG zoned. Mr. Ink said but there are AG zoned areas like the Slater Road area and the Nalle Grade area. Ms. Hayden said this would change the right-of-way issue, but it doesn't answer the Tice issue that he was speaking of and I am sensitive to that as well. If we just say that they have to park in a building is it better than that they can't park? Mr. Knight said in a building is taking it out of sight. Ms. Hayden said someone wouldn't build a building for 8 trucks, maybe for 1 or 2. Mr. Ink said Ms. Ennis would deem that as a warehouse, a different zoning category and it wouldn't be compliant anyway.

Mr. Ink said the only thing that got to him was SECTION THREE B. 2. where it should read, "A truck parked in a fully enclosed building". A garage is a building. Mr. Ward asked Ms. Hayden if she'd modify her motion to include that an exception is a truck enclosed garage or building. Ms. Hayden said her motion was to delete AG from the list. Mr. Ward said but that exception is for all categories. Ms. Ennis said if you're going to contemplate striking AG, keep in mind that there are some subdivisions on small lots that are zoned AG,

like Florimond Manor. So, they would be unable to enforce this. Mr. Mercer said and where he lives, Rainbow Farms, all AG. Ms. Ennis said it's important that those two exceptions are interrelated but they are two separate exceptions.

**Ms. Hayden said she would like to amend her motion to add back agricultural zoning, but on the exceptions to add a truck parked in a completely enclosed garage or building.**

Mr. Mercer said would you be willing to add in SECTION THREE D. 2. Citation: a. "...shall issue a citation to the owner of the vehicle...", instead of 'may'? Ms. Hayden said no.

Mr. Ward said would you be willing to include AG in an urban land use category? Mr. Ink said he didn't think that was a good way to go either. Ms. Hayden said no. Mr. Ink said there's some suburban stuff out there that you don't want trucks parked in it.

**Ms. Hayden said the motion is to approve the ordinance as it is written with the exception of in SECTION THREE: B. 2. saying, "A truck parked in a completely enclosed garage or building." Mr. Ink seconded. The motion carried with one objection by Mr. Ward.**

### **Commercial Truck Parking LDC Amendments**

**Ms. Hayden made a motion to approve the Section 34-1181 with the change of (b)(2) Trucks parked in a completely enclosed garage or building. Mr. deDeugd seconded. The motion passed unanimously.**

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### **Mining LDC Amendments**

Mr. Rodriguez said these amendments are intended to implement the pending amendments to the resource extraction limestone mining provisions in the Lee Plan as proposed in CPA2018-10014. The amendments establish a requirement for a mandatory public information meeting to provide an additional public input opportunity. They propose an increase in the setback for mining activities from residential property lines, they also clarify the deviation and variance approval process as it applies to Chapter 12 of the LDC. The LPA and LDCAC have both heard this amendment and provided some recommendations. He said the LPA voiced a concern regarding the ability to ensure compatibility of mining operations with airport facilities. So, in Sec. 12-107 (6) had been added to address the compatibility concerns related to airport facilities as it relates to mining operations. In Sec. 12-108, which includes the revision regarding the mandatory public information meeting, the LPA recommended that the language be revised to require a courtesy mailing to properties within 750 feet of a property subject to an MEPD approval. Staff did not revise this language since this notice would basically direct inquiries to staff for an application for planned development rezoning that did not yet exist. The requirement is that this public information session has to be held prior to the filing of the MEPD application. Mr. Ink said we felt like we needed a distance to inform the general public vs. it just being buried somewhere in the News-Press and nobody understands what it is. And, when you're out in the far rural areas you're not always up to current news. Mr. Rodriguez said Section 12-113 is relative to site design requirements. In subsection (c)(1)c. the established setback for excavation from an adjacent residential property line is

150 feet. Staff made a recommendation to increase that setback to 2,000 feet based on two recent cases, and based on the expert testimony of the county's mining expert. The LPA felt like the basis for recommending that increased setback was based on very limited analysis. Staff has made a further revision to decrease that setback recommendation from 2,000 feet to 660 feet, and it's consistent with subsection (d)(2) which references crushers, mixing plants, bins, tanks or structures directly involved in the production process are required to be located a minimum of 660 feet from any residentially zoned property or use under separate ownership. It's also consistent with other uses that are regulated elsewhere throughout Chapter 34 of the code. Specifically, asphalt batch plants, dumps, refuse and trash facilities, or heavier duty essential service facilities, junkyards, landfills, those types of heavy industrial uses where you need that increased setback for compatibility purposes.

Mr. Ink said we've discussed that at quite a robust public discussion and the reason we stayed with the 150 was more of that is what's law today and we may not have stated it correctly in the motion but the intent was for staff to go back and look at it and come up with something that was better because we didn't believe the scientific backup to make it 2,000 feet was sufficient, but it should be more than 150 feet. And, having it the 660 feet that they came back with, when you do a mining PD you can always ask for a deviation for less if you have appropriate justification. Mr. Mercer said the 660 was not the consensus, it's a staff reconciliation? Mr. Ink said yes, we looked at it as it was not for us to pick a number because we didn't have the backup either. The LPA didn't hear from the expert, but heard that they had an expert. The LPA did hear from a blaster that I would consider an expert that talked about various charges and how to reduce charging when moving closer to structures to not cause damage, and that's when they realized it was over their heads technically.

Mr. Rodriguez said in Sec. 12-113 subsection (b)(1) thru (3) additional language was added relative to compatibility with public facilities and airport facilities based on the LPA direction.

Ms. Amy Thibaut of Pavese Law Firm said she's there on behalf of Cemex who they represent, and Cemex objects to the subjective language in Section 12-107(6) regarding no adverse impacts. It's extremely difficult to prove a negative, and it's not based or rooted in a set of objective and measurable standards. We ask sincerely that this be amended accordingly. The regulations around vibrations are an indirect de facto regulation of blasting. And, blasting is under the state's jurisdiction and not the local government's so we ask that that language be removed as well. Regarding Section 12-113(c)(1) regarding setbacks, Cemex objects to the language as this encompasses all excavation activity including that which is related to lakes. Essentially what this does is it treats the lakes in mining areas disparately from how lakes in other land use categories are treated, so we ask that this be revised. There was some discussion that this provision is somewhat analogous to subsection (d) and also to 34-2443, this is actually a bit distinct for two reasons. The first is that 34-2443 applies to buildings and structures, and areas used for parking, it doesn't apply to all activities. It also doesn't just say a residential property line as it does in this amendment. It states that the setback is from residentially zoned property under separate ownership. There's similar distinctive language in subsection (d), so we ask that you clarify the setback from the specific residential use property line and



not just any residential property.

Ms. Kaylee Tuck of Henderson, Franklin said she is there on behalf of several of the firm's mining clients with active and approved limerock mines. Several of the existing mines in Lee County would not be able to adhere to the increased 660 setback. And, while we assume that the existing mines would not have this increased setback applied to them retroactively, we assume that this increased setback would be applied in the event that an existing mine ever needs to amend or modify their mining plan. And, if they were forced to adhere to this increased setback, the loss of minable material would be tremendous. Therefore, we ask that the increased setback would not be recommended for approval, but if you are inclined to recommend an increase for approval, we ask that existing mines are exempt or excluded in the event that they do need to amend or modify their mining plan.

Mr. deDeugd said he read that every 10 years you have to have a renewal for a mining permit, so can they enforce it at that point or are they grandfathered in? Ms. Sulzer said Chapter 10 requires a mining operation permit (MOP) every 10 years based on the original development order. As soon as you change your development order, you need to come up to compliance with all the new requirements. They can keep pulling their mine operating permits, if they change their plan that's when it trips on the new requirements. Ms. Hayden said is it every 10 years they're issuing a new development order? Ms. Sulzer said they keep their MDO. Mr. Ward said if they increase their mining operation in an area that didn't violate the 660 feet, but they had previously gotten a permit to mine areas that were within the 150 feet setback, would it retroactively affect that? Ms. Sulzer said if they have an approved development order to impact property between the 150 feet and 660 feet it would be fine because it's approved already, and they would just pull a mine operating permit for those improvements. But, again, it's an approved development order meeting the requirement of Chapter 12 already. Mr. Ward said if they wanted to change the development order? Ms. Sulzer said then, if these changes go into effect, they would be required to have a 660 feet setback. Ms. Ennis said, or to justify a deviation.

Mr. deDeugd said treat a mine very carefully because they're like gold out here. Without the mines we're not paving very much of the streets.

Mr. Mercer asked what the LPA was thinking. Mr. Ink said his opinion is the LDC has 50 or 60 pages of what you have to go through for a mining PD, very aggressive and comprehensive. So, we understand the value of mines, we understand the value of people. We recommended taking Map 14 out of the Comprehensive Plan which was kind of a location map that says mines can go here, kind of, sort of, but not really. That was part of our task of streamlining at the LPA. As far as this goes, his comment is the public speaker was kind of correct on Section 12-107(6). This is the kind of language you would expect to see in the Comp Plan which is kind of a visionary, not regulatory, and this language of adverse vibration, noise, air quality, there's lots of state and federal standards that you have to adhere to, so not sure how that would be implemented. That would be something that he doesn't want to support because you can't look at it and say what's adverse vibration? Is it blasting, is it not blasting, is it covered, is it not covered. There're no measurements. The Section 12-108 750 feet courtesy notice he still thinks is a good idea, unless it's illegal for the public information meeting. The LPA put that in for a specific reason of public information meetings, zoning, all those kinds of things. You need that

notification and we have other places where we do public information meetings, community meetings. Does it say I can't have one until after I apply for zoning, Audra? Ms. Ennis said it's required in order for a finding of sufficiency. Mr. Ink said but you can have it before or after? Ms. Ennis said yes. Mr. Ink said he could be in favor of the 660 feet setback. It's at least tied to something that makes sense. And, there are provisions in the LDC that you can ask for deviations. I don't know how you'd write an ordinance that says you can dig something closer, but not something else. With excavation, could you go within 150 feet and dig a 10 feet deep lake if it's all sand and recover that material? If you leave it at 150 feet you can but then you could also go drill and blast. If you make it the 660 feet, it has to be 660, but you can ask for a deviation saying you just want to go get the sand. And, a far more receptive way to do it is through the public hearing process. He said regarding the grandfathering, he doesn't buy into it. It could extremely affect our mining operation. They have a planned development that says this is our mining operation, I don't know of a scenario where you would come back and go oops, we lost a lot of material somewhere that we didn't take care of before. So, that's to me going back as we do in all planned developments, if you go back and modify it and it's something outside of what's approved you've got to meet the current code. If you narrow it down, it really comes down to the blasting and the impact of blasting on homes around the neighborhood. From what were told at the LPA, we can't govern, legislate how much blasting, where to blast, not to blast, that's all Fire Marshal. So, the only thing we can look at is setbacks which is in our governmental control from a county level. Mr. deDeugd said the state overrides the county? Mr. Ink said yes when it comes to blasting. Mr. Ink said the setback is currently 150 feet and we're going to have more and more pressure on people living out around the mining area with more development.

Ms. Hayden said she understands the LPA note on the courtesy mailing but if you were going to do something like that why didn't you just have the same language as the regular zoning language, the 500 feet unless that catches fewer than 10 property owners and then you have to go to 750 feet. Mr. Ink said we were concerned about how there are large tracts of land and if you have 5 acres that's 660 feet, so you don't get the guy across the street.

Ms. Hayden said what I'm hearing from staff is those public meetings can be before they apply or after. Ms. Ennis said the current regulations requiring public informational meetings for other application types, that meeting must take place and the summary documents submitted to us prior to a finding of sufficiency. This particular situation we are going to require that that be provided as part of the initial application but none of those other public informational meetings require mailings. The notification is made solely through the newspaper requirement. Mr. Mercer said he hasn't found public notices in the online version of the News-Press. Mr. Ink said he doesn't know where to find them online either.

Mr. Ward said the remarks of those from the law firms speaking for the mining companies had merit and should be taken into account and not ignored. Mr. Mercer said that would be that existing mines are exempted from the setbacks, leave it at 150 feet. Mr. Knight said I agree to leave it the setback at 150 feet, grandfather them in. It's a renewal every 10 years, but just to renew the permit and make no changes in what you're digging up. Mr. Mercer said if they modify the development order they'd have to go to 660 feet. Ms.

Hayden said but the development order could be that they decide to go to another part of the property and want to move their scales over there, then they'd have to get a new development order which changes everything. Mr. Knight said I could see them being grandfathered in through the life of that property because that was the intended investment they're making, and in the end, they're there first. Then you have these subdivisions moving in complaining about it and they knew exactly what they were moving next to.

Mr. Ink said he wants to revise his position based on what Mr. Knight said. He said changing some of the internal structures of the mine may trigger the planned development part, so he would be ok with grandfathering as long as the property boundaries don't change. Mr. Hagan said I agree with Mr. Ink and Mr. Knight about the grandfathering.

Mr. Reitmann asked why is it of special interest to the airport? Mr. Ink said they have electronics and land instrumentation systems that they're worried about being affected by the mining operation. Mr. Mercer said the future parallel runway probably would get it closer than it is now. Ms. Ennis said the Port Authority is here if you have questions for them. Ms. Emily Underhill of the Lee Co. Port Authority said our concerns are several things. A new air traffic control tower that is getting ready to be constructed is in the near vicinity of active and close mines, as well as the parallel runway.

Ms. Hayden asked how everyone is leaning on the 12-107(6) for the Port Authority. Mr. Reitmann said why is the location of the tower in a specific area and how is the airport affected by the mining facility in a significant way. Ms. Underhill said the air traffic control tower that's getting ready to be constructed is sited to serve both the existing runway and the future parallel runway, so it's located by function. Ms. Hayden asked what the Port Authority concerns are. Ms. Underhill said the concern is vibrations that we experience during blasting operations that have been ongoing for many years. We've been monitoring the impacts of them and we're concerned that future mining activities will continue to have those blasting operations that will result in vibrations. Ms. Hayden asked how close the facility is to the existing mines. Ms. Underhill said it's about 5,000 feet to the closest excavations right now as far as the terminal building and the future tower. Some of our detention facilities are only several hundred feet away.

Ms. Hayden said is the intent to build the tower and if this mining operation's blasting has an adverse affect we're going to shut them down? Mr. Knight said the question is the definition of adverse vibration and I think back of San Francisco airport through earthquakes continues to operate. Blasting is over with very quickly and there's plenty of warning. What is adverse vibration to airport equipment when San Francisco doesn't seem to have a problem through earthquakes, which happens quite a bit. Mr. Rodriguez said the intent of including this section is to recognize the newly proposed Lee Plan policy 47.2.7 which is relative to impacts of mining operations on airport operations. The real intent is just to ensure that there's other compatibility impact other than just the straight forward compatibility impacts we think of when it comes to mines. Airports are by nature a very distinct use that requires the use of somewhat sensitive equipment and for those reasons we need to recognize that there needs to be an extra layer of compatibility between those two uses.

Mr. Mercer said our buildings are not built to the same standards that they are in San

Francisco because of the earthquakes so we're not comparing apples to apples on the structure part. Ms. Underhill said due to the fact that we've been experiencing vibrations as we've been designing the new tower facility, we've taken extra measures to modify the design at the cost of hundreds of thousands of dollars to beef up the design in order to try to mitigate any vibrations that could be experienced. Mr. Knight said the vibrations are more on the equipment than it is the building. Ms. Underhill said our terminal building shakes right now. We're concerned with the operational duties in the control tower. Mr. Ward said are there standards for adverse impacts? Ms. Underhill yes. Mr. Ink said all the standards are by the state and feds which is why I have difficulty with that language. Air is covered by DEP, water is covered under the water management district DEP, odor is covered under DEP. There are standards for every one of these things. Vibrations is covered under the state fire marshal. Isn't there language in the LDC now when you do a mining PD that you have to address? Mr. Mercer said it's the electronics that I'd be very concerned about recalibrating. Mr. Ink said the Port Authority is valid in some of that. An instrument landing system is very intuitive and if it's off by a degree it could be multiple feet. Ms. Hayden said at what point do you say ok they're building and expanding their facilities closer to the mining areas and at what point do they say maybe we need to look at moving these facilities away from them? Mr. Mercer said Ms. Underhill said the Port Authority has tried to factor in with their studies where everything's going and tried to anticipate those needs and spent extra dollars doing that. Mr. Ink said with zoning in general you have neighborhood compatibility, you've got a multitude of reasons that if you're doing an application for a use change, you have to explain it all, and the Port Authority and the public can come and bring their stuff and say why it doesn't work. If I was on the Port Authority's side I would be coming to the meetings and saying here's the expert on the instrument landing system and we have problems. That's pretty heavy competent evidence. You can't move the airport.

**Ms. Hayden made a motion to approve the mining Land Development Code amendments with 12-107 as written, with 12-108 as written by staff originally, without the provision written in red (courtesy mailing to properties within 750 feet of property subject to MEPD approval), and with 12-113(c)(1)(c) placed back to 150 feet, so maintaining the 150 feet residential property line setback, and, everything else as written. Mr. Reitmann seconded.**

Mr. deDeugd said if you leave the 660 feet in there, the 150 feet is already covered because they're grandfathered in. So, if you don't look at the future and you don't know what kind of roads are going to be built there, make it a little bit wider. There's plenty of land there and you don't want a 10 acre mine. Ms. Hayden said her concern is in the example we said, if they're in a whole different section of land and decide to move the scales then they will go back for a development order and be subjected to the new setback. Mr. Ink asked what would trigger a new development order. Ms. Sulzer said any improvement to land so if you're going to revise your access point that will require a PD amendment. Mines have their access points where they have their truck wash station and scales. To move it all would require electrical and/or fire protection, not sure. Mr. Ink said let's say we connected to the new Hanson Street extension. Ms. Sulzer said that would require an amendment if you're not changing your cut lines. Everything stays the same, but if you're modifying your cross section for your road you must come into compliance with today's new roadway cross sections. If you're modifying your cut lines

you must come into compliance with today's new cut lines. Mr. Ink said I like the 660 feet because I don't think it really affects existing active development orders. Mr. Knight said active and just a renewal with no changes to the development order it would stay at 150 feet? Ms. Sulzer said yes. Mr. Ink said I'm not in favor of the adverse language being in there because it is vague. I would rely more on the existing ordinance the way it's written to have to meet that neighborhood compatibility and address it because if you just say adverse vibration it really comes down to right now 3 out of 5 guys deciding the case for you. Mr. Ward said do you think references to these state rules and regulations would be worthwhile? Mr. Ink said that's a given, already in the code. Ms. Ennis said it is a given. Mr. Rodriguez said it's 12-107(2) in fact.

Mr. Mercer said would you be willing to delete the words, "vibrations, noise, air, water quality or hydrology" and just say, "shall not result in adverse impacts on..."? Mr. Ward said that's even more vague. Mr. Ink said in the Lee Plan it says you won't adversely affect these things. I just don't like this vague language in the LDC because it's supposed to be implementing language.

Mr. Mercer said would you be willing to make an adjustment to your motion to build a consensus? Mr. Ink said the LDCAC couldn't come to any consensus and did nothing.

Mr. Mercer said we've had a motion and a second, so please vote for Ms. Hayden's motion.

**Ms. Hayden voted yes and all others voted no.**

**Mr. deDeugd made a motion that the amendments stand as presented to us today. Mr. Reitmann seconded.**

Mr. Ink said he'd like to see 12-107(6) and the additions to 12-113(b) deleted. That's the arbitrary language about adverse affects.

**Mr. deDeugd amended his motion to delete the added language to 12-107(6) and the added language in 12-113(b)(3), keeping the 660 feet and keeping the 750 feet courtesy notification. Mr. Ink seconded. The motion carried unanimously.**

## **ADJOURNMENT**

**The meeting adjourned at 3:48 PM.**

The next meeting was tentatively scheduled for May 9, 2019.

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# Skimmer Ordinance

Joe Adams

## EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: The Lee County Fuel Pump Security Ordinance

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

To prevent the illegal capture and theft of customers' credit card information by skimmers that are installed by thieves on retail fuel stations in Lee County.

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

No.

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

To some extent, the requirements of the Ordinance are already required by Florida Statute and under the authority of the Florida Department of Agriculture and Consumer Services (FDACS). A lack of enforcement by FDACS is suspected as to why the state law is not deterring the conduct.

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

No.

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

N/A

**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?**

N/A

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

Yes, the theft of consumer credit card information at fuel stations is of growing concern.

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

Yes. Substantially similar ordinances have already been adopted by several surrounding jurisdictions including but not limited to Collier County, the City of Cape Coral, and the Village of Estero. The results are unclear as they have been recently adopted. The City of Cape Coral has recently stated that their ordinance has alleviated the skimmer situation.

**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?**

If enacted, Lee County Code Enforcement and the Lee County Sherriff's Office will share enforcement authority to share costs and resources. If not enacted, the public will be left more vulnerable to credit card theft.




**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: March 21, 2019

TO: Board of County Commissioners

FROM:   
Joseph A. Adams  
Assistant County Attorney

RE: Gas Skimmer Ordinance Update

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On February 5, 2019, the Board gave direction for the County Attorney's Office to draft an Ordinance requiring safety mechanisms on gas pumps to prevent credit card fraud.

Due to the number of gas pumps in Lee County, the Department of Community Development requested that enforcement of the Ordinance be shared between Lee County Code Enforcement and the Lee County Sheriff's Office.

Our Office has prepared a Draft similar to an Ordinance that was recently adopted in Collier County.

On April 10, 2019, our Office and Community Development Staff will be meeting with the Sheriff's Office to discuss any revisions to the Draft and enforcement of the Ordinance. The Ordinance will go to the next scheduled Executive Regulatory Oversight Committee meeting on May 8, 2019. The Ordinance has an anticipated public hearing date of May 21, 2019 to go before the Board for consideration.

Please let me know if you have any questions.

JAA/les

CC via email only: Richard Wm. Wesch, County Attorney  
Michael D. Jacob, Deputy County Attorney  
Roger Desjarlais, County Manager  
David Loveland, Director, Community Development

**LEE COUNTY ORDINANCE NO. 19-\_\_**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, ESTABLISHING FUEL PUMP SECURITY MEASURE REQUIREMENTS FOR OWNERS AND OPERATORS OF RETAIL FUEL PUMPS; PROVIDING FOR PENALTIES WHEN THE TERMS OF THIS ORDINANCE ARE VIOLATED; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, pursuant to Chapter 125, Florida Statutes, the Board of County Commissioners may adopt ordinances necessary to preserve the health, safety and welfare of the residents of Lee County; and

WHEREAS, the use of credit card skimmers at fuel stations in Lee County is a growing concern; and

WHEREAS, credit card skimmers are devices that thieves install on fuel pumps, which accept payment via a credit or debit card, to illegally capture and steal the customer's credit or debit card information; and

WHEREAS, the Board finds that the security measures required by this Ordinance will help protect consumers purchasing fuel in Lee County by restricting the unauthorized access of customer payment card information at fuel pumps; and

WHEREAS, the Board hereby finds that this Ordinance is in the best interest of the public health, safety, and welfare of consumers and residents of Lee County.

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

**SECTION ONE: TITLE**

This Ordinance shall be known and cited as "The Lee County Fuel Pump Security Ordinance."

**SECTION TWO: DEFINITIONS**

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings set forth herein:

- A. "Fuel Pump" shall mean a machine or device used to dispense petroleum fuel for sale to the public at retail.
- B. "Payment Card" shall have the same meaning as defined in §817.625, Florida Statutes, as may hereafter be amended.
- C. "Owner" shall mean the record title owner of the property on which a Fuel Pump is located.

- D. "Operator" shall mean the person or legal entity which leases, manages, or operates a Fuel Pump.
- E. "Scanning Device" shall have the same meaning as defined in §817.625, Florida Statutes, as may hereafter be amended.

**SECTION THREE: FUEL PUMP SECURITY REQUIREMENTS**

- A. Each Fuel Pump which contains a Scanning Device in Lee County shall have affixed to or installed on the exterior of any Fuel Pump a visible Fuel Pump lock, which requires an access key unique to each facilities' location, to restrict the unauthorized access of consumer Payment Card information. The access key shall be maintained at the facility at all times.
- B. As an alternative to the foregoing security measure, one or more of the following security measures may be implemented:
  - 1. A device or anti- breach system that will render the Fuel Pump, or the Scanning Device in the Fuel Pump, inoperable if the Fuel Pump is accessed without proper security code entry; or
  - 2. A device or system that encrypts the customer Payment Card information in the Scanning Device.

The Owner or Operator of any Fuel Pump that chooses to install an alternative security measure pursuant to this section shall demonstrate compliance with this section of the Code to a Code Enforcement Specialist or Law Enforcement Officer upon request.

- C. Fuel Pumps that have been found in compliance with this section may be appropriately marked by the appropriate enforcing entity for identification purposes.
- D. A security measure affixed or installed on a Fuel Pump pursuant to subsections (A) or (B) shall be maintained by the Owner or Operator in good working condition at all times.
- E. The requirements provided by this Ordinance shall apply in unincorporated Lee County and are to be enforced by Lee County Code Enforcement and the Office of the Lee County Sheriff.

**SECTION FOUR: PENALTY FOR VIOLATIONS**

- A. When discovered by a Law Enforcement Officer, a violation of any portion of this Ordinance by an owner or operator may be punishable by a fine not exceeding \$250.00 per fuel pump. Each day that a violation exists shall constitute a separate and distinct violation.
- B. When discovered by a Code Enforcement Specialist, a violation of any portion of this Ordinance shall subject the owner or operator to the code enforcement provisions and procedures provided in Lee County Ordinances and Chapter 162,

Florida Statutes, as may be amended. Violations of this Ordinance may be punishable by a fine of up to \$250.00 per fuel pump. Each day that a violation exists shall constitute a separate and distinct violation.

**SECTION FIVE: CONFLICT AND SEVERABILITY**

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

**SECTION SIX: SCRIVENER'S ERRORS**

The Board of County Commissioners intends that this 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 SEVEN: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING**

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 EIGHT: EFFECTIVE DATE**

This Ordinance shall become effective as of July 1, 2019.

Commissioner \_\_\_\_ made a motion to adopt the foregoing ordinance, seconded by Commissioner \_\_\_\_\_. The vote was as follows:

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

DULY PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

BY: \_\_\_\_\_  
Larry Kiker, Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

\_\_\_\_\_  
Office of the County Attorney

CAO Draft 4/23/2019 9:30:46 AM