

ORDINANCE NO. 18-10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 34, RELATING TO LEE COUNTY'S REGULATION OF CONSTRUCTION IN COASTAL AREAS SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND AN 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 4 of the Lee County Comprehensive Land Use Plan (Lee Plan) states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, on January 16, 2018, Staff received direction from the Board of County Commissioners to draft amendments to LDC Chapter 34 to revise and clarify the County's regulation of construction in coastal areas; 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 February 9, 2018, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on February 26, 2018, and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on February 26, 2018, 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 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 – ZONING

ARTICLE I. – IN GENERAL

Sec. 34-2. – Definitions.

Coastal Construction Setback Line means the line depicted in PB. 31 PG. 1-21, previously referred to as the 1978 Coastal Construction Control Line.

ARTICLE VII. – SUPPLEMENTARY DISTRICT REGULATIONS **DIVISION 13. – ENVIRONMENTALLY SENSITIVE AREAS**

Sec. 34-1575. - Coastal zones.

(a) Development seaward of the 1991 Coastal Construction Control Line, as defined in Sec. 6-333, will only be permitted where such development is authorized pursuant to Chapter 161, Florida Statutes and FDEP regulations.

~~(ab) 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 Coastal Construction Setback Line, as defined in Sec. 34-2, with the exception of the following: 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.~~

(1) Improvements that provide for public beach access and enjoyment, limited to the following: Pile supported elevated dune and beach walk-over structures, beach access ramps and walkways, stairways, fences along access ways, boardwalks, pile-supported viewing platforms and lifeguard support stands;

(2) Public restroom facilities accessory to park facilities, as defined in Sec. 34-622(c)(32);

(3) Installation of an advanced aerobic (or similar) septic system provided that that have received an FDEP Beaches and Coastal Permit has been issued prior to ~~(ADOPTION DATE)~~ March 20, 2018; and

(4) Construction activities for which a Local Letter of Zoning Compliance was issued for the FDEP Coastal Permit Process prior to ~~(ADOPTION DATE)~~ March 20, 2018.

(5) Improvements that are granted a variance for construction seaward of the Coastal Construction Setback Line.

(bc) Development within the coastal zone must be compatible with protection of natural systems and in accordance with applicable coastal construction codes.

(ed) 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.

(de) 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.

Sec. 34-1576. - Islands.

Development on islands shall be subject to the following:

(1) New or expanded mobile home or recreational vehicle developments shall not be permitted on barrier islands or in coastal high-hazard areas which include V zones as designated in the adopted flood insurance rate maps (FIRM) for the County and areas seaward of the coastal construction control line as it existed in ~~1988~~1991.

Remainder of Section Remains Unchanged

SECTION TWO: 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 THREE: 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 FOUR: 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 FIVE: 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 SIX: 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

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

DULY PASSED AND ADOPTED this 20th day of March, 2018.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Cecil Pendergrass, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney