

LEE COUNTY ORDINANCE NO. 22-07

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, §12-121, LDC, CHAPTER 12 (EXISTING MINE OPERATIONS); PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, 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, Currently, §12-121(j), LDC, permits Existing Mines to amend their current zoning approvals to allow for dewatering and/or an extension of the mine duration; and,

WHEREAS, the proposed limited procedures for processing a zoning amendment for Existing Mines under §12-121(j) would permit Existing Mines to amend their current zoning approvals to allow for increased depth within the previously approved boundaries of the mine; and,

WHEREAS, an amendment to increase the depth of an Existing Mine under the proposed changes would go through the same public hearing process required for an Mine Excavation Planned Development (MEPD); and,

WHEREAS, the proposed amendments will reduce unnecessary permitting delays and would permit a greater use of existing mines in those areas that are already impacted by mining operations; 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 11, 2022 and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on January 12, 2022 and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on January 24, 2022, 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 12

Lee County Land Development Code Chapter 12 is amended as follows with strike through identifying deleted text and underline identifying new text.

Chapter 12 – RESOURCE EXTRACTION

ARTICLE II – MINING AND EXCAVATION

Section. 12-121. – Existing mine operations.

(a) *through (i) remain unchanged.*

(j) *Limited amendments to existing mine zoning approvals.* ~~Amendment to an existing mine zoning approval constituting a substantial change must be approved through the public hearing MEPD process; provided however, a~~ An existing mine, meeting the criteria set forth in section 21-121(a), may obtain a limited amendment to the underlying zoning approval for dewatering, or an extension of the mine duration, and/or a depth increase within the previously approved mining footprint, as follows:

- (1) The mine operator must file an application on the form prescribed by the county along with the appropriate fee. Review of the application will be limited to ~~The contents of the application which must include; at minimum, those items set forth in section 12-121(g); and~~
 - a. For dewatering: those items set forth in section 12-121(g) and submittals addressing the issues set forth in section 12-117(c).
 - b. For an extension of mine duration: those items set forth in section 12-121(g) and
 1. A narrative substantiating the need for the extension and its proposed duration.
 2. Submittal substantiating compliance with the following additional criteria:
 - i. Continued consistency with the Lee Plan.
 - ii. Compatibility with existing and approved development in the surrounding area.
 - iii. Whether the extension will place an unreasonable burden on essential public facilities and infrastructure.

3. Documents establishing that the extension request was filed at least six months prior, but not more than one year before, the expiration date set forth in the underlying zoning approval; and, that the mine was in active physical operation at the time of the request.

c. For a depth increase within the approved mine footprint only:

1. An updated traffic impact statement that addresses traffic associated with the increased production of mining that is projected to result from the proposed depth increase. The updated traffic impact statement will include an updated level of service analysis and evaluation of site-related improvements, if any, necessitated by the increased production.
2. Integrated surface and groundwater modeling must be provided that analyzes the impacts of the additional depth of the mine on groundwater and surface water resources and natural systems. The analysis must also include the following:
 - i. Delineation of all lithologies underlying the site down to and including the first regional confining beds;
 - ii. Documentation establishing that the proposed depth of excavation will not breach an aquaclude or confining layer;
 - iii. Evaluation of historic water level data for the mine including identification of any trends or impacts from mining operations; and
 - iv. Description of the monitoring system for surface and groundwater levels and quality to assess any degradation of surface and groundwater resources resulting from the depth increase. The monitoring system must address the travel times to wellfields and residential wells. The application for a depth increase must include all available monitoring data for three years prior to the date of application, and will assess the change in flow, timing of travel, and direction of surface and groundwater on-site and in the impacted area resulting from the increased depth.
3. Soil boring analysis that demonstrates the depth of limerock materials and the depth of the confining layer.
4. A list of surrounding property owners and map in accordance with section 34-202(a)(8) and (9).

5. A narrative describing any impacts the proposed depth increase will have on:

- i. mine operations and equipment used at the mine, to include updated quantity of material to be excavated, changes in approved hours of operation (if any), and an updated hazardous materials emergency plan;
- ii. existing neighboring uses;
- iii. hydrogeologic conditions on-site and within the impact area, as reflected in the modeling required by section 12-121(j)(1)c.2. above;
- iv. wetlands and watershed protection;
- v. wildlife conservation; and
- vi. transportation routes including anticipated traffic to and from the mine, based upon the updated traffic impact statement required by section 12-121(j)(1)c.1. above.

6. A complete copy of existing permits, pending permit applications, and correspondence with federal and state permitting agencies in accordance with section 12-114.

(2) The request for a limited amendment under this section may only be filed if the underlying zoning is valid at the time the request is filed.

(3) The request for a limited amendment must be processed in accord with the procedure set forth in sections 34-83 and 34-145, including the review criteria, regarding Hearing Examiner and Board review and action on the request.

~~(4) This subsection may not be expanded to include other amendments to the underlying zoning approval, even if filed in conjunction with the request to dewater or extend the mine duration.~~
Amendments to bring the existing mine into greater compliance with current mining regulations, including Chapter 12, may be requested by the applicant in conjunction with one or more of the amendments authorized above.

(5) A mine development order amendment must be approved prior to commencing activities authorized by the zoning amendment. Review of the mine development order amendment will be limited to incorporating the specific changes approved by the zoning amendment.

(k) 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.

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

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 1st day of March 2022.

ATTEST:
CLERK OF THE CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Cecil L Pendergrass, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney