



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING
FIRST FLOOR CONFERENCE ROOM 1B
1500 MONROE STREET, FORT MYERS**

**WEDNESDAY, May 14, 2025
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – March 12, 2025
3. Ordinance Amending Chapter 20, Parks and Recreation, Article II, Pertaining to Smoking and Vaping at Public Parks & Public Beaches
4. Adjournment – Next Meeting Date: July 9, 2025

To view a copy of the agenda, go to www.leegov.com/dcd/calendar

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**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)**

**Wednesday, March 12, 2025
2:00 p.m.**

Committee Members Present:

Annette Carrasquillo
Bill deDeugd
Scott Edwards
David Gallaher
Sam Hagan

Tracy Hayden, Vice-Chair
Bob Knight
Randal Mercer, Chairman
Ian Moore

Excused / Absent:

Carl Barraco, Jr.
Victor Dupont

Michael Roeder

Lee County Staff Present:

Joe Adams, Assistant County Attorney
Katie Burgess, Planning
Sandy David, DCD Administration

Billie Jacoby, Floodplain Administrator
Anthony Rodriguez, Zoning Manager
Tatum Walker, Economic Development

AGENDA ITEM 1 - CALL TO ORDER/REVIEW OF AFFIDAVIT OF POSTING:

Mr. Randal Mercer, Chairman, called the meeting to order at 2:00 p.m. The meeting was held in the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida, Conference Room 1B. Mr. Mercer stated we have a quorum and asked Mr. Joe Adams, Assistant County Attorney, if we had a legal meeting.

Mr. Joe Adams, County Attorney's Office, confirmed the Affidavit of Posting was legally sufficient as to form and content and the meeting could proceed.

AGENDA ITEM 2 – ELECTION OF OFFICERS

Chair

Mr. deDeugd made a motion to nominate Mr. Mercer as Chair. The motion was seconded by Mr. Hagen. The Chair called the motion, and it passed 9-0.

Vice Chair

Mr. Ian made a motion to nominate Ms. Hayden as Vice Chair. The motion was seconded by Mr. Knight. The Chair called the motion, and it passed 9-0.

AGENDA ITEM 3 - APPROVAL OF MINUTES – December 11, 2024

Mr. Mercer asked if anyone had any comments or changes to the Minutes from the December 11, 2024, meeting. There were none. He asked if there was a motion to approve.

Ms. Hayden made a motion to approve the December 11, 2024, minutes as written. The motion was seconded by Mr. Knight. The Chair called the motion, and it passed 9-0.

AGENDA ITEM 4 – LAND DEVELOPMENT CODE AMENDMENTS

Mr. Rodriguez stated there were two separate Land Development Code amendments being presented today. Katie Burgess will address Item A. Historic District Parking Requirements. Billie Jacoby will address Item B. Amendments to County Flood Ordinance Definitions. He also noted that a member of the public, Ben Smith from Morris-Depew Associates, wanted to provide public comment on Item A.

A. Historic District Parking Requirements

Ms. Burgess, Principal Planner, Planning, provided an overview of the revisions for this item.

Mr. Knight asked for an overview of what is happening in Matlacha.

Ms. Burgess stated that FDOT is handling all of the road improvements in Matlacha. She believed that most of their cross sections have on-street parking as an option; however, she was not certain if that was finalized because this issue does not go through the County.

Mr. Rodriguez stated that after a series of hurricanes, staff recognizes that our parking requirements, which apply county-wide, do not necessarily apply neatly to Matlacha and Boca Grande and can be burdensome. One of the main reasons is because they typically have small properties that do not have a lot of opportunities to provide off-street parking. Therefore, the County is trying to recognize the unique character of those two historic districts in particular in order to give some relief to allow for redevelopment and reconstruction without having to go through the parking variance process for each business that comes through the door. The goal is to facilitate redevelopment and reconstruction and to make business in the commercial areas in particular viable for redevelopment.

Mr. Moore asked if staff had discussed these amendments with the shareholders such as the Gasparilla Inn and other businesses on Boca Grande and the Matlacha Civic Association.

Mr. Rodriguez confirmed that staff had collaborated with the shareholders.

Mr. Moore asked if the shareholders were supportive of these amendments.

Mr. Rodriguez confirmed that the shareholders were in favor of the amendments.

Mr. Moore asked what their issues and concerns were.

Mr. Rodriguez stated their issues and concerns related to the difficulty they are having with rebuilding and reconstruction, so they are in favor of the County alleviating some of the code requirements where possible and where it makes sense.

Mr. Moore asked if it was possible to completely absolve them of code as it relates to those areas since it would be incredibly difficult and cumbersome for any of them to obtain additional parking. Therefore, he asked if they could be removed from a restrictive parking ordinance.

Mr. Rodriguez stated that the proposal today was a halfway point rather than completely absolving them. He explained that the goal is to try and acquire some off-street parking. He noted there is the ability to deviate further beyond the mixed-use overlay standards when the property is within a historic district. They can get another 20% reduction where you have the multimodal access. He felt that in Boca Grande and Matlacha, based on what staff is seeing from FDOT, there will be some opportunities to reduce further without completely eliminating. Mr. Rodriguez stated staff wants to encourage parking where feasible.

Mr. Moore stated his concerns: 1) Everyone in those areas share all of their parking amongst each other; 2) It is difficult for the people in those areas when they are restricted with parking because there is no way to obtain additional parking; 3) Many businesses will struggle to get back on their feet for some time; 4) It would be preferable if the historic areas could be removed completely from the parking restrictions or at least reviewed on a different basis because when you apply them to any code, these areas are so specific, there is almost nothing that is applicable; 5) He felt the parking was restrictive enough just by nature of the land and the developed land; 6) Without that, it might be more cumbersome for staff due to all of the deviation requests they will receive. It will also cost the end user extensive funds due to land use attorneys and engineers; and 7) This may not be necessary if the end users could have an open discussion with staff instead of just incurring dollars at their cost. In closing, Mr. Moore asked staff to keep all of this in mind as these amendments move forward.

Ms. Hayden referred to the “1/4 mile” verbiage and asked how staff derived at that figure.

Ms. Burgess stated the 1/4 mile is what is used now for the mixed-use overlay for offsite parking. The historic districts share many similar characteristics with the mixed-use overlay so adding them to this overlay seemed to be the easiest way to address reduced parking.

Ms. Hayden asked if there was a commercial parking lot located within a 1/4 mile of these areas in the historic district of Matlacha.

Ms. Burgess stated she did not know if one exists, but it is an allowable use.

Mr. Rodriguez stated there was street parking only in Matlacha. The ¼ mile distance comes from the acceptable pedestrian shed, which is typically a 5 mile walk for someone. He stated that staff could look at expanding that in historic districts understanding that there is a lot of shared parking that happens, whether formalized or informalized. Staff can also evaluate Mr. Moore's suggestion of absolving the historic districts from parking requirements completely. Staff is bringing forth these amendments today in an effort to implement something in the short term. It also gives staff a "*pilot program*" to see how it works in practice. If greater steps are needed going forward, staff can address it in a future round.

Ms. Hayden stated she agreed that something needs to be done. She understands Mr. Moore's concerns, but was in favor of having something that will help in the interim. She also noted that if there are not a lot of commercial parking lots within these areas within the ¼ mile, then it will not help them at all.

Mr. Moore asked for clarification that the vehicle to obtain parking is either a site development permit or a limited site development permit. It will be in Plan Review at some point for review. If it is going to go through Plan Review and some type of administrative vehicle, does it need to be part of the code? Does enacting code make it more cumbersome for staff? To him, it seemed to be easier if staff removed the historic districts from the parking regulations completely. They can be reviewed on a case-by-case basis.

Ms. Hayden felt that having it in the code gives the landowner an idea of what they can expect.

Mr. Rodriguez concurred with Ms. Hayden's comment and noted that if commercial properties in historic districts did not require any parking and staff is reviewing them on a case-by-case basis, it is hard to establish what the standards would be. Therefore, staff is handling this as an incremental improvement in the short term. If it does not end up working in practice the way it should be, staff can take additional steps to address it in another round of amendments.

Mr. Knight asked how we were formulating this because if staff moves forward with these amendments and they become problematic to where staff has to reevaluate it, this process might continue on for some time and just keep going.

Mr. Adams stated it would be a standalone ordinance. It can have a sunset provision, but not in the Land Development Code.

Mr. Moore asked if the Local Planning Agency had reviewed these amendments yet.

Mr. Rodriguez stated they had not. The Executive Regulatory Oversight Committee is the first to review them.

Mr. Mercer asked if the ¼ mile number was written in stone or if it could be adjusted.

Mr. Rodriguez stated that as mentioned by Ms. Burgess earlier, the ¼ mile standard is already in the code for mixed use development and the mixed-use overlay in particular. However, staff can look at broadening that.

The Board had no further questions of staff, so Mr. Mercer opened this item to the public.

Mr. Ben Smith from Morris-Depew and Associates stated he represented the Boca Grande Health Clinic. He noted the following: 1) He appreciated all the work conducted by staff on this item, which entailed a lot of work to get to this point; 2) The Boca Grande Health Clinic is the only health care provider on Gasparilla Island and they have been working on a redevelopment project for a long time; 3) His firm has been assisting them with the parking issue; 4) The area where the Boca Grande Health Clinic is located is a very walkable environment and as such it is not preferable to provide a sea of parking because it ruins the entire aesthetic of the area; 5) So far, the Boca Grande Historic Preservation Board has approved and supported the Boca Grande Health Clinic's proposal including the site plan and renderings; 6) His client is amenable to meeting the demands of parking for that facility, but part of that plan is to utilize golf cart parking. He noted that in Boca Grande and Matlacha, golf carts are a primary mode of transportation; 7) not as much space is needed for golf cart parking and golf carts are generally a safe, low speed transportation option; 8) The amendments before this Committee today will allow his client to complete the redevelopment project that they have been working on for a long time. The amendments are written in a way that will allow them to submit the final plans for the development order and get them approved; 9) After being approved by the Board of County Commissioners, their hope is to have the development order approved very shortly thereafter; and 10) He did not disagree that there might be another opportunity to revisit this and potentially implement greater reductions, but the amendments today will allow the Boca Grande Health Clinic to get their development order approved, so he asked that the Executive Regulatory Oversight Committee recommend approval so it can move forward to the other committees.

Mr. Mercer asked if it would help the Boca Grande Health Clinic even more if they were completely removed from the parking restrictions.

Mr. Smith stated that if they were removed completely from the parking requirements it would result in less asphalt which means more landscaping, or it could mean another room for additional diagnostic equipment because the current requirements are based on square footage. Applicants need a certain amount of parking spaces for their square footage. However, at this point his clients are in a time crunch. They want to begin construction as soon as possible so that they can fill the healthcare need on the island. His clients do not want to lose another year of construction, and they do not want to begin construction during high season.

Mr. Moore asked for confirmation that the current regulations are actively inhibiting development orders.

Mr. Rodriguez stated there is a zoning case.

Mr. Moore asked if it had been heard by the Hearing Examiner.

Mr. Rodriguez stated the zoning case has been continued because Mr. Smith's clients are awaiting the outcome of this particular item.

Mr. Adams clarified that this is a variance request. The applicant felt it would be more prudent to see if these amendments go through before having to meet the variance criteria.

Mr. Rodriguez clarified that what staff is proposing to do through these amendments will reduce the parking requirements by about half. The reductions that commercial businesses can take for parking in the mixed-use overlay amount to a 40% reduction. If they are in a historic district, they can reduce it by another 20%. This means staff is already discounting parking requirements by half.

Mr. Moore reiterated that his concerns are that Matlacha is going to be very restrictive in terms of how people are going to be able to build back just to meet floodplain compliance. Businesses on Matlacha do not have room for a building and parking. Matlacha needs to be revitalized, and the County needs them to make a comeback as well. Although he is not necessarily recommending lifting all restrictions, he felt staff should tread lightly on restrictions. However, he was in favor of having these amendments move forward to the other committees and get businesses back in operation on the island.

Mr. Mercer believed all of the advisory committees prefer less restrictions on government rules.

Ms. Hayden stated she did not have an issue with Chapter 34 of the zoning portion of these amendments. She asked if Mr. Moore had an issue with Chapter 34.

Mr. Moore stated he also did not have an issue with Chapter 34. However, he wanted to make sure that a 50% reduction is adequate. He asked Mr. Smith if a 50% reduction is enough or if it should be 75%.

Mr. Smith referred to an earlier comment by Mr. Rodriguez that we are combining that reduction with the 20% reduction. He is submitting an administrative request for an administrative deviation that utilizes the 50% as well as the 20% in order to get the parking ratio work for his client's project. He and his clients are content with what is being proposed today. The changes being proposed today are adequate for his client's needs. He could not speak to other projects that might have a more constrained site.

Mr. Moore gave a scenario where someone proposed a project that would be a value to Boca Grande or Matlacha. If it is reviewed by staff on a case-by-case basis and they require more parking, would that currently require a deviation or variance?

Mr. Rodriguez stated that might not be the case. If someone is taking the standard mixed use overlay parking reduction, there is no zoning action required. If they are taking the standard mixed use overlay reduction and also seeking the extra 20% reduction in a historic district, then it would require an administrative zoning action to accomplish that.

Mr. Rodriguez also reminded the Committee that approximately two years ago, as part of a larger ordinance related to post Ian redevelopment, verbiage was added to the code that said something similar to if someone had nonconforming parking on a site and they were trying to put the site back to its pre-disaster condition, they would not be held to current parking standards. However, if they are expanding the building as part of a larger redevelopment effort, the expansion portion would have to be parked to current code. He explained that we now have a situation where if someone is in a historic district and plan to reconstruct and expand, they can take up to a 15% to 16% discount on the balance of what their nonconforming parking was versus what the code would require. With these amendments today, the County is saying that someone can take the current code requirement and cut it in half. Staff is trying to incorporate reductions without getting rid of every parking regulation.

Mr. Moore asked if staff felt a 75% reduction is too much.

Mr. Rodriguez stated that a 75% reduction is not in the code currently, so staff would have to evaluate that.

Ms. Hayden noted that if the County allowed a maximum of 75% and staff is adding another 20% to that, it would bring it to 95%.

Mr. Moore stated he could make a motion to approve the language as written with the contingency that staff will bring this before the other advisory committees and pursue further reductions as it relates to historic districts and that they keep an eye on these on a case-by-case basis because he felt the County needed to support these areas. Mr. Moore noted that not everyone on Matlacha has unlimited resources. There are many people in Matlacha that need help. He hoped staff would continue to evaluate this issue so they can help these people as much as possible.

Mr. Moore made a motion to approve the language as written with the contingency that staff bring this before the other advisory committees and pursue further reductions as it relates to historic districts, specifically these areas, and that they keep an eye on these on a case-by-case basis because these areas need the county's support and that it should be a maximum of a 75% reduction.

Mr. Hagan stated these amendments are a step in the right direction. He felt it would be a natural process as written. If they do not work overtime, staff will be bringing it back to the committees at some point in the future.

Mr. Knight referred to Mr. Moore's motion and did not feel he should use the word "*contingent*."

Mr. Moore made a motion to approve the language as written and that staff bring these amendments before the other advisory committees and pursue further reductions as it relates to historic districts, specifically these areas, and that they keep an eye on these on a case-by-case basis because these areas need the county's support. He was also in favor of having a maximum of a 75% reduction. The motion was seconded by Mr. Hagan. The Chair called the motion, and it passed 9-0.

B. Amendments to County Flood Ordinance Definitions

Ms. Jacoby, Floodplain Administrator for Unincorporated Lee County, gave an overview of this section.

Mr. Moore asked if the verbiage was directly as stated per FEMA.

Ms. Jacoby stated it was not the exact verbiage, but close to it. She noted that FEMA's language does not have any type of cumulative look back in their standard language. It is a community based elective option but is not required. Five years is the threshold for obtaining CRS credit. At the moment, the County receives 0 credit points, so removing it would not be detrimental to the County's CRS or NFIP standing.

Ms. Hayden made a motion to approve these amendments as written. The motion was seconded by Mr. Knight. The Chair called the motion, and it passed 9-0.

AGENDA ITEM 4 - Adjournment

The next meeting is scheduled for Wednesday, May 14, 2025.

There was no further business.

The meeting adjourned at 2:35 p.m.

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Amending Chapter 20 – Parks & Recreation, Article II, Pertaining to Smoking and Vaping at Public Parks and Public Beaches

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

Public health, safety, and welfare.

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?

Discretionary for counties.

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

Authority granted to county under FL Stat 386.209, as amended.

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

N/A

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

Yes.

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?

Applies uniformly to all public parks and beaches.

8. Does the regulation impact vested rights?

Smoking already prohibited at indoor park facilities.

9. Does the regulation provide prompt and efficient relief mechanism for exceptional cases?

Parks ordinance has an appeal process.

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

Protects park patrons, including children, from second-hand smoke. Helps deter littering.

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

FL Stat 386.209 amended in 2022 to provide local authority, and the City of Fort Myers enacted such an ordinance in October 2023 with public support.

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?

No additional operational costs to enforce.

LEE COUNTY ORDINANCE NO. ____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF LEE COUNTY, CHAPTER 20 (PARKS AND RECREATION), ARTICLE II (PUBLIC CONDUCT IN COUNTY PARKS); PERTAINING TO SMOKING AND VAPING AT PUBLIC PARKS AND PUBLIC BEACHES; PROVIDING FOR 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, Board of County Commissioners of Lee County, Florida (the "Board") is the governing body in and for Lee County, Florida; and

WHEREAS, the Board is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, the Board has adopted Ordinance 18-12, which was amended by Ordinance 18-27 and Ordinance 20-11, pertaining to public conduct in county parks (the "Lee County Parks and Recreation Ordinance"); and

WHEREAS, on August 1, 2023, the Board adopted the "Code of Ordinances of Lee County, Florida," as the official codification of all ordinances of a general and permanent nature; and

WHEREAS, the Lee County Parks and Recreation Ordinance has been codified in the Lee County Code of Ordinances at Chapter 20, Article II; and

WHEREAS, the Board has determined that it is in the interest of the public health, safety and welfare that the Lee County Parks and Recreation Ordinance be amended to prohibit smoking and vaping at all public parks and public beaches, in accordance with Florida Statutes Section 386.209, as amended.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida that in order to promote the public health, safety and welfare of the citizens of Lee County, Florida the following Ordinance is hereby enacted:

SECTION ONE: AMENDMENT TO CODE OF ORDINANCES, CHAPTER 20

The Code of Ordinances of Lee County, Chapter 25 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 20 – PARKS AND RECREATION

ARTICLE II. – PUBLIC CONDUCT IN COUNTY PARKS

Sec. 20-28. Conduct.

[Subsection (a) remains unchanged.]

(b) *Smoking.* Pursuant to F.S. Ch. 386, Florida Clean Indoor Air Act, as amended from time to time, no person shall smoke or vape within the confines of any school property or within the boundaries of any public indoor park facility or public beach. ~~No e-cigarette or vaping use is permitted on school property or indoor park facility.~~

- 1) The term “smoke” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, with the exception of unfiltered cigars.
- 2) The term “vape” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

[Remainder of subsection is 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 of Ordinances. 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 Attorney, or the 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Commissioner ____made a motion to adopt the foregoing ordinance, seconded by Commissioner _____. The vote was as follows:

Kevin Ruane	_____
Cecil L Pendergrass	_____
Raymond Sandelli	_____
Brian Hamman	_____
Mike Greenwell	_____

DULY PASSED AND ADOPTED this ____ day of _____, 2023.

ATTEST:
KEVIN KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Mike Greenwell, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney

CAO DRAFT April 7, 2025