

# Board of County Commissioners

## Agenda Request

Date of Meeting: May 27, 2008  
Date Submitted: May 21, 2008 *JW*  
To: Honorable Chairman and Members of the Board  
From: Herbert W. A. Thiele, Esq.  
County Attorney  
Subject: Request to Schedule a First and Only Public Hearing to Consider Adoption and Enactment of an Ordinance Regulating Sand Mines

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### **Statement of Issue:**

This item seeks Board authorization to schedule a public hearing for the consideration of an ordinance regulating sand mines (Attachment # 1). Should the Board vote to go forward with the proposed ordinance, the County Attorney's Office will schedule a first and only public hearing for June 10, 2008 at 6:00 p.m.

### **Background:**

In response to the death of 8-year old Kyle Jones in an unfenced sand mine in the County, the Board, at its May 13, 2008 general meeting, directed the County Attorney's Office to draft an ordinance regulating sand mines. If adopted, the proposed ordinance will require that all areas of a site that has been, or is being used for sand mining activities be fenced and secured with a locked gate.

### **Analysis:**

The proposed ordinance will require that all sand mines permitted, or sought to be permitted in the County be enclosed in a fence with a locked gate. The fence will be required to be six feet high, with a maximum opening of four inches in any direction. This criteria is based on the Florida Building Code's standards for fences surrounding pools

This regulation has been placed in the development standards for the Industrial and Light Industrial Zoning districts. During the site plan review process, Growth and Environmental Management will ensure that all future proposed sand mine sites are fenced. To ensure that all presently permitted sand mines are fenced, the ordinance requires that all currently permitted sand mines be fenced. This regulation becomes effective ninety (90) days from the date of the adoption of the ordinance in order for the owners/operators of sand mines have adequate time to comply. After the ninety (90) day grace period, unfenced sand mines will be regulated as a public nuisance through the County's Code Enforcement Process.

Frequently, old sand mines will be used for the disposal of construction and demolition materials (“C&D”). The proposed ordinance will also regulate C & D sites, as they also retain water and pose a hazard to people on the site who may be unaware of the pit.

**Options:**

1. Direct the County Attorney’s Office to finalize the proposed ordinance regulating sand mine operations and to schedule same for a first and only public hearing to be held on June 10, 2008 at 6:00 p.m.
2. Direct the County Attorney’s Office to not finalize the proposed ordinance regulating sand mines and not schedule a public hearing.
4. Board Direction.

**Recommendation:**

Board Direction.

**Attachments:**

1. Proposed Sand Mine Regulation Ordinance.

HWAT/LMY:eal

ORDINANCE NO. 2008-\_\_\_\_\_

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING THE CODE OF LAWS OF LEON COUNTY, FLORIDA; AMENDING CHAPTER 10, THE LAND DEVELOPMENT CODE; AMENDING SECTION 10-1, DEFINITIONS; AMENDING SECTION 10-6.633, INDUSTRIAL DISTRICT, TO PROVIDE FOR FENCING; AMENDING SECTION 10-6.652, M-1 LIGHT INDUSTRIAL DISTRICT, TO PROVIDE FOR FENCES; AMENDING CHAPTER 14 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, PUBLIC NUISANCES; AMENDING ARTICLE I, SECTION 14-1, DEFINITIONS; CREATING SUBSECTION 14-2.2 ENTITLED "REGULATION OF OPEN-PIT MINING AND CONSTRUCTION AND DEMOLITION DEBRIS DISPOSAL OPERATIONS"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Leon County allows open-pit mining in many areas of the County;

WHEREAS, open-pit mining results in borrow pits, quarries, strip mines, or places which are typically poor-draining and may result in significant bodies of standing water;

WHEREAS, the owners of the land upon which borrow pits lie are ultimately responsible for any damages that may result, and be raised in a private nuisance action;

WHEREAS, nevertheless, Leon County, finds that such borrow pit may pose a danger to individuals, particularly children, on a property containing borrow pits; and

WHEREAS, Leon County finds it to be in the interest of the safety and well being of the citizens of Leon County that the dangers of accidental drowning or falls be minimized for all of Leon County citizens;

BE IT ORDAINED by the Board of County Commissioners of the County of Leon, Florida, as follows, that:

**Section 1.** Chapter 10, Article I, Section 10-1 of the Code of Laws of Leon County, Florida, "Definitions," is hereby amended to read as follows:

1 **Sec. 10-1. Definitions.**

2 The following words, terms and phrases, when used in this article, shall have the  
3 meanings ascribed to them in this section, except where the context clearly indicates a different  
4 meaning:

5 \* \* \*

6 Construction and Demolition Debris Disposal shall mean the practice of using a site for the  
7 permanent disposal of materials from construction and/or demolition activities. The materials  
8 may be from on-site or off-site activities.

9 \* \* \*

10 Open-pit Mining shall mean the method of removing rock, sand, or other minerals by removal  
11 from an open pit, borrow pit, actual pit, or other man-made depression from which material has  
12 been extracted in the course of an open-pit mining operation.

13 \* \* \*

14 **Section 2.** Chapter 10, Article VI, Division 6, Subdivision 3, Section 10-6.633 of the  
15 Code of Laws of Leon County, Florida, entitled "Industrial District," is hereby amended by  
16 adding a new subsection (c)(9) to read as follows:

17 (c) *Development Standards.*

18 \* \* \*

19 (9) Fencing Requirement: All sites being used for Open-pit Mining operations and/or  
20 Construction and Demolition Debris Disposal must be secured by a fence, whether or not the site  
21 is actively being used in such operations. The fence must be a least six feet in height with  
22 openings no greater than four inches in any direction. The fence must be equipped with a gate

1 which shall remain locked when workers or employees of the land owner or mining company are  
2 not present at the site.

3 \* \* \*

4 **Section 3.** Chapter 10, Article VI, Division 6, Subdivision 3, Section 10-6.652 of the  
5 Code of Laws of Leon County, Florida, entitled "M-1 Light Industrial District," is hereby  
6 amended by adding a new subsection 9 to read as follows:

7 9. **Fences Required:** All sites being used for Open-pit Mining operations and/or  
8 Construction and Demolition Debris Disposal must be secured by a fence, whether or not the site  
9 is actively being used in such operations. The fence must be a least six feet in height with  
10 openings no greater than four inches in any direction. The fence must be equipped with a gate  
11 which shall remain locked when workers or employees of the land owner or mining company are  
12 not present at the site.

13 **Section 4.** Chapter 14, Article I, Section 14-1 of the Code of Laws of Leon County,  
14 Florida, "Definitions," is hereby amended to read as follows:

15 **Sec. 14-1. Definitions.**

16 The following words, terms and phrases, when used in this article, shall have the  
17 meanings ascribed to them in this section, except where the context clearly indicates a different  
18 meaning:

19 \* \* \*

20 Construction and Demolition Debris Disposal shall mean the practice of using a site for the  
21 permanent disposal of materials from construction and/or demolition activities. The materials  
22 may be from on-site or off-site activities.

23 \* \* \*

1 Open-pit Mining shall mean the method of removing rock, sand, or other minerals by removal  
2 from an open pit, borrow pit, actual pit, or other man-made depression from which material has  
3 been extracted in the course of an open-pit mining operation.

4 \* \* \*

5 **Section 5.** Chapter 14, Article I of the Code of Laws of Leon County, Florida, is  
6 hereby amended by adding a new subsection 14-2.2, "Regulation of Open-Pit Mining," which  
7 shall read as follows:

8 **Sec. 14-2.2 Regulation of Open-Pit Mining and Construction and Demolition Debris**  
9 **Disposal Operations.**

10 Within 90 days of the effective date of this ordinance, all sites being used for Open-pit  
11 Mining operations and/or Construction and Demolition Debris Disposal must be secured by a  
12 fence, whether or not the site is presently being used in such operations. The fence must be a  
13 least six feet in height with openings no greater than four inches in any direction. The fence  
14 must be equipped with a gate which shall remain locked when workers or employees of the land  
15 owner or mining company are not present at the site.

16 **Section 6. Conflicts.** All ordinances or parts of ordinances in conflict with the  
17 provisions of this Ordinance are hereby repealed to the extent of such conflict, except to the  
18 extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended,  
19 which provisions shall prevail over any parts of this Ordinance which are inconsistent, either in  
20 whole or in part, with the said Comprehensive Plan, and, further, that this Ordinance shall not  
21 repeal, amended, or replace the provisions found in Section 4-36 of the Leon County Code of  
22 Laws.

1           **Section 7. Severability.** If any provisions or portion of this Ordinance is declared by  
2 any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all  
3 remaining provisions and portions of this Ordinance shall remain in full force and effect.

4           **Section 8. Savings Clause.** An enforcement action which is pending on the effective  
5 date of this Ordinance and which arose from a violation of an ordinance repealed by this  
6 Ordinance, or an enforcement action which is started within one (1) year after the effective date  
7 of this Ordinance arising from a violation of an ordinance repealed by this Ordinance, shall be  
8 tried and determined exactly as if the ordinance had not been repealed.

9           **Section 9. Effective Date.** This Ordinance shall have effect upon becoming law.

10           DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon  
11 County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

LEON COUNTY, FLORIDA

By: \_\_\_\_\_  
Jane G. Sauls, Chairman  
Board of County Commissioners

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19 ATTESTED BY:  
20 BOB INZER, CLERK OF THE COURT  
21 LEON COUNTY, FLORIDA

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24 By: \_\_\_\_\_  
25 Bob Inzer, Clerk of Court  
26 Leon County, Florida

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28 APPROVED AS TO FORM:  
29 COUNTY ATTORNEY'S OFFICE  
30 LEON COUNTY, FLORIDA

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32  
33 By: \_\_\_\_\_  
34 Herbert W. A. Thiele, Esq.  
35 County Attorney