

**CITY OF SANIBEL
ORDINANCE 22-003**

AN ORDINANCE AMENDING THE *SANIBEL PLAN*, COMPREHENSIVE LAND USE PLAN OF THE CITY OF SANIBEL, TO IMPLEMENT RECOMMENDATIONS OF THE 2021 EVALUATION AND APPRAISAL REPORT OF THE *SANIBEL PLAN* FOR CONCURRENCY WITH STATE STATUTES, PURSUANT TO SECTION 163.3177, FLORIDA STATUTES, PRIVATE PROPERTY RIGHTS REQUIREMENTS; AMENDING ARTICLE 3 - GOALS, OBJECTIVES AND POLICIES, ADDING PART 3.7 – PROPERTY RIGHTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERENCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Sanibel is required to complete an Evaluation and Appraisal Report (EAR) of the *Sanibel Plan* (the City of Sanibel comprehensive land use plan) at least once every 7 years, pursuant to Section 163.3191, Florida Statutes.

WHEREAS, on July 30, 2021, the City submitted a notification letter to the State of Florida Department of Economic Opportunity, which identified private property rights planning requirements for proposed amendment and adoption, pursuant to the requirements of Section 163.3177, Florida Statutes; and

WHEREAS, on August 2, 2021, the State of Florida Department of Economic Opportunity accepted the City of Sanibel EAR notification letter and established a July 30, 2022 transmittal deadline to adopt any necessary amendment, pursuant to the State coordinated review process outlined in Section 163.3184(4); and

WHEREAS, on January 4, 2022, City Council directed Staff to prepare a draft plan amendment and proceed with the coordinated review process by vetting the draft amendment through the Planning Commission; and

WHEREAS, on March 22, 2022, the Planning Commission held a legally and properly advertised public hearing at which the Planning Commission heard and considered comments and recommendations from the Planning Staff and public; and

WHEREAS, the Planning Commission found the proposed amendments to the *Sanibel Plan*, as indicated below, meet the requirements of Land Development Code Section 82-241, and recommended via City of Sanibel Planning Commission Resolution 22-08 that the City Council adopt said amendments in the form of an ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Sanibel, Florida:

SECTION 1. The recitals above are true and correct and made a part hereof.

SECTION 2. The *Sanibel Plan* Article 3 – Goals, Objectives and Policies, is hereby amended to add Part 3.7 – Property Rights, with ~~striketrough~~ language indicating deletions and underlined language indicating additions as follows:

**Article 3.
Goals, Objectives and Policies**

...

Part 3.7 **Property Rights**

This part of the *Sanibel Plan* establishes goals, objectives, and policies for property rights.

Section 3.7.1. **Property Rights Element**

Pursuant to Section 163.3177, Florida Statutes.

Background Discussion

The purpose of the Property Rights Element is to comply with Section 163.3177, Florida Statutes, which requires every city and county to include a property rights element in their comprehensive plan.

Zoning has been established by legislation and case law as an acceptable use of the police power. The U.S. Supreme Court case of *Euclid v. Ambler*, 272 U.S. 365 (1926) was the seminal case in establishing this doctrine. The court found in that case that so long as zoning ordinances are not arbitrary or unreasonable and are related to protecting public health, safety, morals, or general welfare, they are constitutional under the police power of local governments. In essence, private rights can be modified in the protection of public rights.

The police power and the power to zone are granted to municipalities in Florida through the Florida Constitution (Article VIII) and the Municipal Home Rule Powers Act (Chapter 166, Florida Statutes). The Florida Constitution grants that municipalities “may exercise any power for municipal purposes except as otherwise provided by law.” (Article VIII, Sec. 2(b)). This is restated in Section 166.021(4), Florida Statutes, “The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution.”

Comprehensive planning is governed by the Community Planning Act (Chapter 163, Florida Statutes). The Community Planning Act recognizes the broad statutory and constitutional powers of municipal and county officials to plan for and regulate the use of land (Section 163.3161(9), Florida Statutes) and that no public and private development is permitted except in conformity with comprehensive plans, or elements or portions thereof (Section 163.3161(6), Florida Statutes). The Community Planning Act also requires that land development regulations (which includes zoning ordinances) must be consistent with the adopted comprehensive plan (Section 163.3194(1), Florida Statutes).

The adoption of the Property Rights Element does not alter the hierarchy of values established by the Sanibel Vision Statement, which is stated both in the City of Sanibel Charter and the *Sanibel Plan*. As stated in the Hierarchy of Values: “*This three-part statement of the community’s vision of its future is hierarchy; one in which the dominant principle is Sanibel’s sanctuary quality. Sanibel shall be developed as a community only to the extent to which it retains and embraces this quality of sanctuary.*”

Article II, Sec. 7 of the Florida Constitution provides that it is “the policy of the State to conserve and protect its natural resources and scenic beauty.” The Community Planning Act establishes as its intent that local governments have the ability to preserve and enhance present advantages and encourage the most appropriate use of land, water, and resources, consistent with the public interest (Section 163.3161(4), Florida Statutes). And as stated in the economic assumptions of the *Sanibel Plan*, “The most basic of all the economic assumptions for Sanibel’s planning is that Sanibel’s economic fortune is directly related to the viability of its natural systems.” (Section 1.3). Property owners within the City of Sanibel benefit from the City’s Vision and commitment to the natural beauty of remaining a barrier island sanctuary.

These policies within the *Sanibel Plan* will continue to guide future development of land within the City of Sanibel:

- All environmental precepts requiring protection of natural, environmental, economic, and scenic resources (Part 3.2).
- Wetland protection specific to the City of Sanibel, specifically as set forth by the establishment and regulation of Ecological Zones (Section 3.2.1, Objective 1 and its implementing policies).
- Protection and management of the coastal area, including public access to the beach (Section 3.2.1).
- Protection of historic resources to ensure their preservation (Section 3.2.4).
- Redevelopment in accordance with the Redevelopment Work Program and consistent with the Vision Statement, that all forms of development and redevelopment will preserve the community’s unique small-town identity.

Goals, Objectives, and Policies

Goal Statement:

The City of Sanibel will consider judicially acknowledged and constitutionally protected private property rights to guide future decisions in the overarching context of the Sanibel Vision Statement.

Objective 1:

The City of Sanibel will consider property rights during local decision-making processes.

Policy 1.1. The City of Sanibel will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 1.2. The City of Sanibel will consider in its decision-making the right of a property

owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 1.3. The City of Sanibel will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property, subject to state law and local ordinances.

Policy 1.4. The City of Sanibel will consider in its decision-making the right of a property owner to dispose of his or her property through sale or gift, subject to state law and local ordinances.

SECTION 3. Codification. This ordinance shall be deemed an amendment to the *Sanibel Plan* and shall be codified in the *Sanibel Plan* as such an amendment. The City Clerk is hereby authorized and directed to instruct as part of the codification that all section numbers amended by this Ordinance are updated and corrected throughout the *Sanibel Plan* in the event such section numbers are referenced.

SECTION 4. Conflict. All ordinances and parts of ordinances in conflict herewith shall be and the same hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed, and the remainder shall have full force and effect and be liberally construed.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

SECTION 6. Effective Date. This ordinance shall become effective upon approval by the City Council.

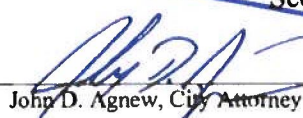
DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this 7th day of June, 2022.


Holly D. Smith, Mayor

AUTHENTICATION:


Scotty Lynn Kelly, City Clerk

APPROVED AS TO FORM:


John D. Agnew, City Attorney

6/7/22
Date

First Reading: May 3, 2022
Publication Notice: May 18, 2022
Second Reading: June 7, 2022

Vote of Council Members:

Smith	<u>Yea</u>
Johnson	<u>Yea</u>
Crater	<u>Yea</u>
Henshaw	<u>Yea</u>
Miller	<u>Yea</u>

Date filed with City Clerk: June 7, 2022