



City of Sanibel

Planning Commission

PLANNING DEPARTMENT STAFF REPORT

Planning Commission Meeting: May 22, 2018
Planning Commission Agenda Item: No. 7c
Application Number: 17-10390 LDC
Applicant: City of Sanibel

RE: AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 – RULES OF CONSTRUCTION AND DEFINITIONS BY ADDING LANGUAGE TO DEFINE THE TERM “FILL” FOR PURPOSES OF THE LAND DEVELOPMENT CODE REGULATIONS; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

ISSUE

A code enforcement case held in 2017 revealed the need for a definition for “fill” to be added to the Land Development Code. The deposition of fill on land — including in non-wetland areas — is listed as an activity that constitutes development pursuant to Chapter 78 of the Code, but fill is not separately or specifically defined there. In such instances, the code defers to common dictionary definitions. In the relevant code enforcement case, these proved insufficient for the City to appropriately regulate the placement of fill.

One of the primary factors in determining the ecological zones identified in the *Sanibel Plan* and the Land Development Code was the land’s elevation at the time these zones were established. Fill is generally limited as a development standard pursuant to Chapter 86, and the environmental performance standards in Chapter 126 generally require existing drainage patterns to be maintained. Filling of areas within the Interior Wetlands Conservation district are specifically limited, and “filling” is defined under Chapter 126, Article IX for this district.

No new regulations are proposed to accompany the addition of a definition for fill. The proposed definition will allow staff to continue to review and authorize the placement of fill as development to:

- ensure that existing vegetation is not unnecessarily destroyed,
- prevent stormwater from being directed or displaced to produce nuisance effects on adjacent properties,
- regulate the placement of large amounts of fill and allow it where the location and amount is appropriate, and
- preserve the integrity and function of the City's ecological zones under existing standards.

On November 14, 2017, the Land Development Code Review Subcommittee considered the matter and approved a draft ordinance to be forwarded to the Planning Commission. Subsequent to the LDC approval, Staff has revised the proposed definition based on additional input and for further clarity. Attachment A contains the language originally approved by the Subcommittee as well as the proposed language with modification noted. Attachment B is Planning Commission Resolution 18-007, including the draft Ordinance, for approval and forwarding to City Council.

The proposed draft ordinance is intended to provide a definition that can be used to effectively administer existing L.D.C. standards and requirements associated with the use and placement of fill on real property. Language has also been included to prevent normal landscaping activities from being considered fill as an unintended consequence of the proposed legislation.

Upon finding that the proposed ordinance is consistent with the requirements of Sanibel Code Section 82-241 for amendments to the Land Development Code and with the intent and purpose of the Sanibel Plan, the Planning Department recommends that the Planning Commission adopts a resolution recommending the City Council approve the subject ordinance as drafted.

INDEX TO STAFF REPORT ATTACHMENTS

Attachment	A	-	Summary of Ordinance Language Changes
Attachment	B	-	Resolution 18-007 and Draft Ordinance 18-0XX

Language of DRAFT Ordinance Approved by LDC 11/14/17

Fill means any natural or artificial material including, but not limited to, dirt, sand, shell, stone, mulch, concrete, rubble, plastics, wood chips, vegetation debris, or similar materials placed on real property or in open bodies of water which the placement of said materials results in altering the existing draining pattern, ground contours, or grade elevations of the real property or the bottom elevation of the open body or water.

Fill does not include normal and incidental amounts of mulch, compost, or similar organic materials utilized strictly for the installation and maintenance associated with landscaping or the planting of vegetation, provided that the existing grade elevations and stormwater drainage improvements are not altered, and provided that said materials do not violate any other standards or requirements of this Land Development Code.

PROPOSED Language of DRAFT Ordinance To Forward to City Council

Fill means any natural or artificial material placed on real property or in open bodies of water, the placement of which results in altering the existing draining pattern, ground contours, or grade elevations of the real property or the bottom elevation of the open body of water. Fill includes, including, but is not limited to, dirt, sand, shell, stone, mulch, concrete, rubble, plastics, wood chips, vegetation debris, or similar materials, except that normal and incidental amounts of mulch, compost, or similar organic materials utilized strictly in association with existing landscaping or the installation of individual plants shall not be considered fill, placed on real property or in open bodies of water which the placement of said materials results in altering the existing draining pattern, ground contours, or grade elevations of the real property or the bottom elevation of the open body or water.

~~Fill does not include normal and incidental amounts of mulch, compost, or similar organic materials utilized strictly for the installation and maintenance associated with landscaping or the planting of vegetation,~~ provided that the existing grade elevations and stormwater drainage improvements are not altered, and provided that said materials do not violate any other standards or requirements of this Land Development Code. The foregoing exception shall not apply to soil or other materials placed within planter structures or used to create raised landscape bed areas, which may be considered both fill and developed area as defined herein. See also the definition for "filling" in Chapter 126, Article IX for the Interior Wetlands Conservation District.

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RESOLUTION NO. 18-007

**CITY OF SANIBEL
PLANNING COMMISSION**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 – RULES OF CONSTRUCTION AND DEFINITIONS BY ADDING LANGUAGE TO DEFINE THE TERM “FILL” FOR PURPOSES OF THE LAND DEVELOPMENT CODE REGULATIONS; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a public hearing on the proposed ordinance, referenced in the above title, was legally and properly advertised and held on May 22, 2018, 2018 before the Sanibel Planning Commission; and

WHEREAS, the Planning Commission has heard and considered comments and recommendations from the Planning Department staff and public; and

WHEREAS, the Planning Commission finds the proposed amendment to be consistent with the Sanibel Plan; and

WHEREAS, the Planning Commission may recommend to the City Council amendments to regulations of the Land Development Code, in accordance with the following standards, as set forth in LDC Section 82-241:

- (1) The Planning Commission shall make reference to the Sanibel Plan to determine if the proposed amendment to the land development regulations is consistent with the intent and purpose of the Sanibel Plan.*
- (2) The Planning Commission shall determine whether the proposed amendment:*
 - a. Will encourage the most appropriate use of land and City resources, consistent with the public interest;*
 - b. Will prevent the overcrowding of land and avoid the undue concentration of population;*
 - c. Will adversely affect the development of adequate and efficient provisions for transportation, water, sewage, schools, parks, recreation facilities, and the environmental, social and economic resources of the city;*
 - d. Will adversely affect the character and stability of the present and future land use and development of the community;*
 - e. Will adversely affect orderly growth and development;*
 - f. Will preserve, promote, protect and improve the public health, safety and general welfare of the community; and*

g. *Is consistent with the City Charter.*

(3) If the Planning Commission determines that a proposed amendment is inconsistent with the Sanibel Plan or its intent and purpose, the Planning Commission may, nevertheless, recommend approval of the proposed amendment, along with a corresponding amendment to the Sanibel Plan, if the Planning Commission determines that the proposed amendment should be approved based upon a consideration of all of the factors specified in subsection (2) of this section.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission finds that proposed Ordinance No. 18-___ is consistent with the Sanibel Plan and meets the above referenced requirements and recommends that the City Council adopt said ordinance, the title of which is provided in this Resolution.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commissioner _____ and seconded by Commissioner _____ and the vote was as follows:

Richard Johnson _____
Chuck Kettelman _____
Roger Grogman _____

Karen Storjohann _____
Dirk deWerff _____
Phillip Marks _____

DULY PASSED AND ADOPTED this 22nd day of May, 2018

SANIBEL PLANNING COMMISSION

Signed: _____
Phillip Marks, Planning Commission Chair

Date Signed

Approved As To Form: _____
Kenneth B. Cuyler, City Attorney

Date Signed

Date Filed With City Manager: _____

CITY OF SANIBEL
ORDINANCE 18-00_

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 – RULES OF CONSTRUCTION AND DEFINITIONS BY ADDING LANGUAGE TO DEFINE THE TERM “FILL” FOR PURPOSES OF THE LAND DEVELOPMENT CODE REGULATIONS; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has adopted a Land Development Code to implement the goals, objectives and limitations of the Comprehensive Land Use Plan; and

WHEREAS, grade elevations and vegetation types were key criteria used in defining, mapping, and refining the Ecological Zones Map adopted as part of the Comprehensive Land Use Plan in 1979; and

WHEREAS, the City’s adopted regulations seek to balance the rights of property owners to develop their properties with the community’s need and desire to preserve the integrity and functions of Sanibel’s natural systems; and

WHEREAS, a procedure has been established to revise and amend regulations contained in the Land Development Code in a manner consistent with the Comprehensive Land Use Plan; and

WHEREAS, the City Council deems it necessary to make such revisions, as contained in this ordinance; and

WHEREAS, all required public notices and public hearings for such revisions have been properly given and held; and

WHEREAS, such revisions have been referred to the Planning Commission for a recommendation as to the consistency of such revisions with the Comprehensive Land Use Plan;

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

SECTION ONE. The Code of Ordinances, Subpart B Land Development Code, Chapter 78 General Provisions, Section 78-1 – Rules of Construction and Definitions, is hereby amended with underlining indicating added language and ~~strikethroughs~~ indicating deletions, as follows:

Sec. 78-1. Rules of construction and definitions.

...

(c) Throughout this Land Development Code, the following words and phrases shall have the meanings indicated unless the text of the article or section in which used clearly indicates otherwise:

...

Fast food restaurant means

Fill means any natural or artificial material placed on real property or in open bodies of water, the placement of which results in altering the existing draining pattern, ground contours, or grade elevations of the real property or the bottom elevation of the open body or water. Fill includes, but is not limited to, dirt, sand, shell, stone, mulch, concrete, rubble, plastics, wood chips, vegetation debris, or similar materials, except that normal and incidental amounts of mulch, compost, or similar organic materials utilized strictly in association with existing landscaping or the installation of individual plants shall not be considered fill, provided that the existing grade elevations and stormwater drainage improvements are not otherwise altered, and provided that these organic materials do not violate any other standards or requirements of this Land Development Code. The foregoing exception shall not apply to soil or other materials placed within planter structures or used to create raised landscape bed areas, which may be considered both fill and developed area as defined herein. See also the definition for "filling" in Chapter 126, Article IX for the Interior Wetlands Conservation District.

Five-year storm means

SECTION TWO. Codification.

The city manager is hereby authorized and directed to cause the amendment approved herein to be incorporated into the adopted Land Development Code.

SECTION THREE. Severance.

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 FOUR. Effective date.

This Ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this
_____ day of _____, 2018.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: _____
Kenneth B. Cuyler, City Attorney _____
Date

Publication and Hearing Dates:

First Reading: _____, 201X

Publication Notice: _____, 201X

Second Reading: _____, 2018

Vote of Council Members:

Ruane _____

Denham _____

Goss _____

Maughan _____

Date filed with the City Clerk: _____