

**CITY OF SANIBEL  
PLANNING COMMISSION RESOLUTION 24-11**

**A RESOLUTION RECOMMENDING THAT CITY COUNCIL ADOPT AN ORDINANCE AMENDING THE CODE OF ORDINANCES TO EXTEND THE PERIOD TO REESTABLISH NONCONFORMING USES FROM 24 MONTHS TO 36 MONTHS WHERE A STATE OF LOCAL EMERGENCY EXISTS BEYOND SIX MONTHS; AND EXTEND THE PERIOD TO REESTABLISH NONCONFORMING STRUCTURES FROM 24 MONTHS TO 36 MONTHS BY AMENDING CHAPTER 82, ADMINISTRATION, ARTICLE II, CITY COUNCIL, DIVISION 2, NONCONFORMING USES AND STRUCTURES, SECTION 82-57, DISCONTINUANCE, VACATION OR ABANDONMENT OF USE; CHAPTER 126, ZONING, ARTICLE V, NONCONFORMANCES, DIVISION 5, STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER, SECTION 126-212, NONCONFORMING STRUCTURES, AND SECTION 126-218, RE-ESTABLISHMENT OF DISCONTINUED OR ABANDONED USE PROHIBITED, FOR THE PURPOSE OF UPDATING THE LAND DEVELOPMENT CODE REGULATIONS.**

**WHEREAS**, on September 26, 2022, the City Council of the City of Sanibel passed Resolution 22-054, declaring a State of Local Emergency, based upon the severe threat to the health, safety, and welfare of the City posed by Hurricane Ian, and

**WHEREAS**, the City's declaration followed similar declarations of emergency by Governor Ron DeSantis, President Joseph Biden, Jr., and the Board of County Commissioners of Lee County, and

**WHEREAS**, on the morning of September 27, 2022, Lee County issued a mandatory evacuation order, which included the entirety of the territory within the municipal limits of the City of Sanibel; and

**WHEREAS**, on September 28, 2022, Hurricane Ian made landfall in Lee County as a Category 4 hurricane, causing catastrophic property damage and loss of life; and

**WHEREAS**, damages directly impacting the City of Sanibel included widespread damage and destruction of infrastructure, public property, and private property; and

**WHEREAS**, the City allows certain nonconformances to be reestablished following substantial damage from a natural disaster; and

**WHEREAS**, the extent of damage throughout southwest Florida following Hurricane Ian has resulted in delays for property owners who may wish to reestablish nonconforming uses following substantial damage from a disaster; and

**WHEREAS**, the Sanibel Plan calls for continued evaluation of how redevelopment of existing nonconforming properties can balance property rights with environmental, public safety, and community welfare considerations, while prohibiting the expansion of nonconforming uses; and

**WHEREAS**, City Council wishes to extend the period to reestablish nonconforming uses from 24 months to 36 months where a local state of emergency exists beyond six months; and extend the period to reestablish nonconforming structures from 24 months to 36 months; and

**WHEREAS**, the Planning Commission may recommend to the City Council amendments

to regulations of the Land Development Code, in accordance with the standards set forth in Land Development Code Section 82-241.

**NOW, THEREFORE, BE IT RESOLVED**, the Planning Commission finds the proposed amendments to the Land Development Code attached hereto as Exhibit A, are consistent with the Sanibel Plan, meet the above-referenced requirements, and recommends that the City Council adopt said amendments in the form of an ordinance.

**PASSED IN OPEN AND REGULAR SESSION OF THE PLANNING COMMISSION OF THE CITY OF SANIBEL, FLORIDA, THIS 23RD DAY OF JULY 2024.**

Attest:

\_\_\_\_\_  
Scotty Lynn Kelly, City Clerk

\_\_\_\_\_  
Roger Grogman, Chair

Approved as to form and legality:

\_\_\_\_\_  
John D. Agnew, City Attorney

Date filed with City Clerk: \_\_\_\_\_

Vote of Commission Members:

Grogman	_____
Pfeifer	_____
Sergeant	_____
Colter	_____
Nichols	_____
Welch	_____
Steiner	_____

EXHIBIT A OF RESOLUTION

Agenda Item  
Meeting of

CITY OF SANIBEL  
ORDINANCE 24-

AN ORDINANCE AMENDING THE CODE OF ORDINANCES TO EXTEND THE PERIOD TO REESTABLISH NONCONFORMING USES FROM 24 MONTHS TO 36 MONTHS WHERE A STATE OF LOCAL EMERGENCY EXISTS BEYOND SIX MONTHS; AND EXTEND THE PERIOD TO REESTABLISH NONCONFORMING STRUCTURES FROM 24 MONTHS TO 36 MONTHS BY AMENDING CHAPTER 82, ADMINISTRATION, ARTICLE II, CITY COUNCIL, DIVISION 2, NONCONFORMING USES AND STRUCTURES, SECTION 82-57, DISCONTINUANCE, VACATION OR ABANDONMENT OF USE; CHAPTER 126, ZONING, ARTICLE V, NONCONFORMANCES, DIVISION 5, STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER, SECTION 126-212, NONCONFORMING STRUCTURES, AND SECTION 126-218, RE-ESTABLISHMENT OF DISCONTINUED OR ABANDONED USE PROHIBITED, FOR THE PURPOSE OF UPDATING LAND DEVELOPMENT CODE REGULATIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Planning Commission held a legally and properly advertised public hearing on July 23, 2024, on specific proposed amendments to the Land Development Code; and

**WHEREAS**, the Planning Commission may recommend to the City Council amendments to regulations of the Land Development Code (LDC), in accordance with the standards set forth in LDC Section 82-241; and

**WHEREAS**, the Planning Commission found the proposed amendments to the LDC as referenced above to be consistent with the Sanibel Plan and meet the requirements of LDC Section 82-241, and recommended by a vote of \_ to \_ that the City Council adopt said amendments in the form of an ordinance.

**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.** Sanibel Code of Ordinances, Subpart B. Land Development Code, Chapter 126, is hereby amended with ~~striketrough~~ language indicating deletions and underlined language indicating additions as follows:

**Chapter 82 – ADMINISTRATION**

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**ARTICLE II. – CITY COUNCIL**

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**DIVISION 2. – NONCONFORMING USES AND STRUCTURES**

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**Sec. 52-57. – Discontinuance, vacation, or abandonment of use.**

This division shall not permit re-establishment of a use which has been discontinued, vacant, abandoned or not used, within the meaning of chapter 126, article V, division 2. This division shall not be used to permit reconstruction of a nonconforming structure, unless application for reconstruction has been made within the timeframes established by section 126-218 ~~one year after the disaster.~~

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**Chapter 126 – ZONING**

**ARTICLE XV. – NONCONFORMANCES**

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**DIVISION 5. – STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER**

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**Sec. 126-212. -Nonconforming structures.**

- (a) When a nonconforming structure is destroyed or substantially damaged by accidental fire or other natural and disastrous force, such structure may be built back (reconstructed):
  - (1) Within its pre-disaster footprint;
  - (2) Within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building;
  - (3) Up to its pre-disaster gross square footage; and
  - (4) Up to its lawfully existing number of dwelling units, but elevated above the base flood elevations required by federal flood regulations, chapter 94 of this Land Development Code, and the Florida Building Code, and conforming in all other respects to the Land Development Code requirements, in effect at the time the substantially damage building is built back (reconstructed).
- (b) Applications to buildback a nonconforming structure that was destroyed or substantially damaged by accidental fire or other natural and disastrous force must be filed within 24 months of the date of the destruction or substantial damage to the building that is to be built back. If the declared state of local emergency extends beyond six months, the deadline to make application shall be extended to 36 months.
- (c) Replacement of a nonconforming use seawall that was destroyed or substantially damaged by a natural disaster (defined in chapter 78) must follow the standards established for revetments (sections 126-911 and 126-912), or alternative shoreline

stabilization project (section 126-99), or section 126-152. An expedited permitting process, which waives the requirement for planning commission approval, may be authorized by the city manager or their designee once confirmation of the destruction or substantial damage is determined to be caused by a natural disaster.

- (d) In the case of a historic structure, as defined in chapter 94 or described in chapter 98, reconstruction is permitted as provided in this section, and in addition, in any manner which preserves the integrity of the structure as a historical structure.

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**Sec. 126-218. Re-establishment of discontinued or abandoned use prohibited.**

This division shall not permit re-establishment of a use which has been discontinued, vacant, abandoned or not used, within the meaning of division 2 of this article and this division shall not be used to permit reconstruction of a nonconforming structure, unless application for reconstruction has been made within one year after the disaster. If the ~~local~~ declared state of local emergency extends beyond six months, the deadline to make application shall be extended to three ~~two~~ years after the disaster. A permit must be obtained within six months of an application being made. A development permit to build-back (reconstruct) a structure devoted to a nonconforming use shall be valid pursuant to section 82-361.

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