

CITY OF SANIBEL
ORDINANCE 22-017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, TO AMEND THE CODE OF ORDINANCE TO UPDATE RESORT HOUSING DEVELOPMENT REGULATIONS, AMENDING SUBPART B LAND DEVELOPMENT CODE, CHAPTER 126 – ZONING, ARTICLE XII, RESORT HOUSING DISTRICT, SECTION 126-637, RESORT HOUSING DEVELOPMENT REGULATIONS, FOR THE PURPOSE OF UPDATING LAND DEVELOPMENT CODE REGULATIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, many properties within the Resort Housing District sustained substantial damage or were destroyed by Hurricane Ian; and

WHEREAS, property owners need to determine whether they will build-back under the standards for nonconforming uses and structures destroyed or substantially damaged by a natural disaster or rebuild following the redevelopment standards for the Resort Housing District; and

WHEREAS, City Council directed staff to review the existing Resort Housing District development standards to ensure these standards are understandable and achievable to foster the recovery from Hurricane Ian; and

WHEREAS, the Planning Commission held a legally and properly advertised public hearing on December 13, 2022, on specific proposed amendments to the Land Development Code; and

WHEREAS, the Planning Commission heard and considered comments and recommendations from the Planning Department Staff and public; 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 LDC Section 82-241; and

WHEREAS, the Planning Commission found the proposed amendments to the Land Development Code as indicated below are consistent with the Sanibel Plan and meet the requirements of LDC Section 82-241, and recommended by a vote of 7 to 0 that the City Council adopt said amendments in the form of an ordinance, the substance of which follows below.

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, are hereby amended with ~~strikethrough~~ language indicating deletions and underlined language indicating additions as follows:

Chapter 126 – ZONING

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ARTICLE XII. – RESORT HOUSING DISTRICT

. . .

Sec. 126-637. Development and redevelopment regulations.

- (a) Lands in the Resort Housing District shall be subject to all of the regulations for the zone district in which they are otherwise located. Use of such lands in the Resort Housing District shall be subject to all conditions, limitations, and regulations contained in this Land Development Code, the same as if such lands were not included in the Resort Housing District.
- (b) This ~~subsection of the Land Development Code also~~ implements a redevelopment strategy that ~~balances property rights with environmental, public safety and community welfare considerations and encourages~~ requires the protection and restoration of the beach and dune system while providing standards for the retention of resort housing units (hotel, motel, and resort condominium units) as part of the city's housing stock. ~~In addition, t~~ The following requirements shall apply to all lands within the Resort Housing District:
- (1) *Generally.*
- a. ~~Reconstruction~~ Redevelopment of existing residential units in the Resort Housing District may be phased provided that a master plan is submitted and approved by the city that includes:
 1. Building plans and a site plan for all the units and accessory structures intended for reconstruction, including the removal of all development in the Gulf Beach Zone.
 - b. The master plan must demonstrate ~~compliance with all requirements of the Land Development Code and be approved by planning commission resolution~~ that nonconformances are not expanded and are eliminated to the extent feasible.
 - c. The master plan can include both ~~reconstruction~~ redevelopment and rehabilitation activities.
 - d. Neither ~~reconstruction~~ redevelopment, nor rehabilitation, including the addition of accessory uses, is permitted to have a deleterious effect on the carrying capacity of the beach for use by wildlife.
 - e. Except for beach dune accessways, all existing development, including accessory structures, located in the Gulf Beach Zone, must be removed from the Gulf Beach Zone when a resort redevelops its residential units.
 - f. Parking spaces shall not exceed 2 parking spaces per resort unit plus parking spaces for employees and shall first be provided under elevated buildings.
- (2) *Recreation open space requirements.*
- a. ~~Because of the additional demands for recreational facilities created by short-term tenants, any development which is to be used as resort housing must have, upon the same parcel on which such use is located, at least 7,500 square feet of recreational open space for each dwelling unit. Such recreational open space shall be set aside for, and be used by, the occupants of such units. Such recreational open space shall be utilized in accordance with a plan approved in connection with the issuance of a development permit or as a condition of a development permit. Such plan shall detail the manner in which the recreational open space is to be utilized and may include both active and passive recreation, but may not include motorized sports.~~
 - b. ~~If a new residential development in the Resort Housing District does not contain the recreational open space required pursuant to subsection (2)a. of this section, no certificate of occupancy shall be issued until there is recorded on the public records of the county, effective condominium documents, cooperative documents, restrictive covenants, or other form of covenant running with the land, containing substantially the following provision:~~

1. ~~No dwelling unit or part thereof, located on land subject to these restrictions, may be rented for a term of less than four consecutive weeks or converted to timeshare estates or periods of less than four consecutive weeks. This limitation may be enforced by the city and shall not be amended, revoked, or otherwise terminated without the express written consent of the city, any other provision of this Land Development Code notwithstanding.~~
- ~~e. The open space requirements of subsection (2)a. of this section shall not apply to Sand Pointe Condominium, because of court order, or to any structure which on April 10, 1979, had been lawfully constructed or permitted with no limitation prohibiting resort housing use.~~
- ~~d.a. When short-term rental units are reconstructed redeveloped in the Resort Housing District at a density that is greater than five units per acre, that development shall provide a minimum of 28,000 square feet of recreational open space per acre outside of the Gulf Beach Zone to reduce the use of the gulf beach. Recreational open space may include swimming pools, decks, game courts, and outdoor seating areas either at ground level or on roof top. The recreational open space shall be equal to 10 percent of the parcel area landward of the 1974 CCCL; but if 10 percent is not feasible, then to the greatest extent feasible, with a minimum of two separate uses (e.g., pool area with deck and an outdoor seating area away from the pool) provided and equally available to all units. If planning staff and the applicant cannot agree on the amount of recreational open space that is feasible to provide, then the application will be processed as a long form development permit with a planning commission public hearing.~~
- ~~e. Land areas occupied solely by bona fide best ecological practices, i.e., "green technologies" are included as required recreation open space; however, these areas are included in the calculation of coverage with impermeable surfaces and developed area, unless specifically exempt.~~
- (3) *Height limits for buildings.*
- ~~a. Developments that exceed the limitations on height of buildings are nonconforming.~~
- ~~b.a. The height of new and substantially improved buildings will not exceed three stories above the base flood elevation, except that buildings replacing condominiums substantially damaged or destroyed by a natural disaster may exceed the height of the building immediately prior to the disaster by up to one story if the building must be elevated above the ground level to comply with the flood ordinance and prohibiting the additional height would result in the loss of a dwelling unit by its owner. This limitation is established by Policy 1.1 in the Scenic Preservation Element (Section 3.2.5) of the Sanibel Plan.~~
- ~~e.b. In the Resort Housing District, t The maximum height of buildings, other than the exception provided in subsection a., shall not exceed 33 feet above the base flood elevation of the FEMA Flood Insurance Rate Map (FIRM) or the Florida Building Code for buildings located seaward of the state's 1991 coastal construction control line (CCCL), whichever is higher. However, no building in the Resort Housing District can exceed a height greater than 49.8 feet NAVD (or 51 feet NGVD).~~
- A permitted exception to the maximum height limitation is provided solely for the mandatory pitched roof required on multifamily buildings designed with three habitable floors or stories above the base flood elevation.
- The maximum height of the required sloped roof shall not exceed a height greater than 58.1 feet NAVD or 8.3 feet above the established maximum building height of 49.8 feet NAVD.
- The interior areas of roofs exceeding the height limit for buildings in the Resort Housing District shall not be used for additional habitable space.:
- ~~1. Used for additional habitable space or ancillary storage area;~~
 - ~~2. Mechanically cooled or heated; and~~

~~3. Equipped with finished floors or partitioned walls.~~

(4) *Coverage with impermeable surfaces, developed areas, and vegetation removal.*

a. ~~Redevelopment plans shall evaluate the ability to meet the maximum allowed impermeable surface, developed area, and vegetation removal based upon the ecological zone(s) of the parcel. The Ecological Zones Map of the Future Land Use Map Series of the Sanibel Plan is used to determine the limitations on the amount of coverage with impermeable surfaces, developed areas and vegetation removal on lands within the city, including lands in the Resort Housing District. Section 126-242 incorporates both the ecological zones map and the Resort Housing District map into the Land Development Code. If these development standards cannot be met, then the redevelopment site plan shall not increase the nonconformity to impermeable surface, developed area, and vegetation removal, and shall decrease the nonconformity to the extent feasible.~~

~~b. Existing developments, including those in the Resort Housing District, that exceed the maximum amount of coverage with impermeable surfaces, developed areas and vegetation removal permitted by the underlying ecological zone, are nonconforming. Pursuant to LDC section 126-172, these structures cannot be reconstructed, moved, relocated or structurally altered, except in such fashion as to eliminate the nonconformance or as to reduce the degree of nonconformance as much as possible. An exception to this prohibition allows the expansion of a structure, which is nonconforming because of percentage of land coverage or vegetation removal, as long as such requirements are not further violated and as long as the expansion by itself would not further violate such requirements.~~

~~e.b.~~ To encourage maintenance of the stock of short-term occupancy units in the city, the interpretation of LDC section 126-172 for existing developments in the Resort Housing District shall be as follows:

Developments in the Resort Housing District that are nonconforming because they exceed the limits established for the maximum amount of coverage with impermeable surfaces, developed areas, and vegetation removal are permitted to add impermeable surfaces and developed area and remove vegetation, provided that these improvements include:

1. The removal of an equal amount of existing impermeable surfaces and developed area (one square foot removed for every one square foot added);
2. Restoration of these areas where impermeable surfaces and developed areas are removed by:
 - (i) Planting native vegetation; and
 - (ii) Supplementing on-site stormwater retention volume.

~~e.c.~~ Developments, that exceed limitations on the amount of coverage with impermeable surfaces, developed areas, and vegetation removal permitted by the ecological zones map, can rehabilitate and make improvements pursuant to this subsection; however, these developments remain nonconforming.

(5) *Minimum setbacks from roadways and property lines.*

a. ~~Developments that encroach beyond minimum setbacks are nonconforming. Redevelopment plans shall evaluate the ability to meet the minimum setbacks required. If the required setbacks cannot be met, then the proposed setbacks must not be less than the existing nonconforming setbacks and additional buffer plantings must be included in the vegetation plan based upon site-specific circumstances as a means of providing a barrier to both light and sound created by such uses.~~

~~b. The minimum setbacks for development in the Resort Housing District are established by the underlying ecological zones. These setbacks are in effect in the Resort Housing District for all development, including reconstruction and rehabilitation activities.~~

- e.b. Pursuant to Policy 3.1 in the Coastal Zone Protection Element (Section 3.2.1) of the Sanibel Plan, new development and redevelopment in the Gulf Beach Zone (i.e., seaward of the 1975 Coastal Construction Control Line) is prohibited.
- d.c. Reconstruction of buildings in existing developments in the Resort Housing District is not subject to the minimum distance between buildings standard in section 126-929.
- (6) *Vegetation and gulf beach restoration.* ~~For redevelopment in the Resort Housing District:~~
- a. Roadside buffers are required along collector and arterial roadways, pursuant to section 122-72, for reconstruction of residential units.
 - b. Restoration of the Gulf Beach Zone meeting the requirements of section 126-675 is required ~~for the reconstruction of residential units.~~
 - c. Removal of invasive exotic species of plants, except for minor improvements defined in chapter 122, is required for ~~reconstruction~~ redevelopment and rehabilitation activities.
 - d. To protect the beach dune system and beach vegetation that are essential for continued preservation of the shoreline, one accessway ~~(s)~~ to the beach ~~are~~ is required. A second accessway may be permitted if the property has more than 200 linear feet of shoreline for reconstruction of residential units.
 - e. The use of sod is discouraged. Sod limitations are established under the environmental performance standards (Chapter 126, Article XIII).
 - f. A vegetation plan that includes roadside buffers, Gulf Beach Zone restoration (100 percent native vegetation), and open space areas must be submitted with the redevelopment plan meeting the landscape standards (Chapter 122) and the environmental performance standards (Chapter 126, Article XIII).
- (7) *Community character.* ~~Reconstructed~~ Redeveloped buildings and structures shall comply with the requirements of section 86-43 appearance of structures, size, and mass of structures.
- (8) *Historically significant buildings.*
- a. Historically significant buildings identified on the local register of historic sites and structures shall be subject to the procedures and requirements of chapter 98, historic structures.
 - b. Pursuant to Policy 1.5 in the Historic Preservation Element (Section 3.2.4) of the Sanibel Plan, retain the natural character of the gulf beaches for their significant contribution to the historical character of the City of Sanibel.
- (9) *Best ecological practices.*
- a. The city is receptive to new technologies that can save resources and promote efficiencies; however, even "best ecological practices, i.e., "green technologies" have to be consistent with the Sanibel Plan, compliant with the Land Development Code, and designed in a manner that is compatible with the character of the community.
 - b. Land areas that are occupied by facilities that are bona fide "best ecological practices" ~~are to be included as required recreation open space; however, these areas are~~ included in the calculation of coverage with impermeable surfaces and developed area, unless specifically exempt.
- (10) *On-site surface water management.*
- a. ~~For the reconstruction of residential units in resort developments,~~ Redevelopment site plans must demonstrate compliance with surface water management standards ~~is required~~, pursuant to chapter 118.
 - b. For existing resort developments, ~~Mitigation is required for additional development that impacts the existing surface water management system to ensure that there is no loss in on-site stormwater storage and no decrease in the quality of water discharged from the site.~~

SECTION 3. Codification. The City Manager is hereby authorized and directed to indicate these amendments in future City Code publications.

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. 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 6. Effective date. This Ordinance shall be effective immediately upon adoption.

APPROVED AT FIRST READING THIS 20TH DAY OF DECEMBER 2022.

SCHEDULED FOR SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA THE 17TH DAY OF JANUARY 2023.

Attest:

Scotty Lynn Kelly, City Clerk

Holly Smith, Mayor

Approved as to form and legality:

John D. Agnew, City Attorney

Date filed with City Clerk: _____

Vote of Council Members:

Smith _____
Johnson _____
Crater _____
Henshaw _____
Miller _____

First Reading: December 20, 2022

Publication Date: _____

Second Reading: _____