

CITY OF SANIBEL  
PLANNING COMMISSION RESOLUTION 24-18

A RESOLUTION RECOMMENDING THAT CITY COUNCIL ADOPT AN ORDINANCE AMENDING THE CODE OF ORDINANCES IN RELATION TO OPEN BODY OF WATER; AMENDING SUBPART B, LAND DEVELOPMENT CODE, CHAPTER 78, GENERAL PROVISIONS, SECTION 78-1, RULES OF CONSTRUCTION AND DEFINITIONS; CHAPTER 82, ADMINISTRATION, ARTICLE IV, DEVELOPMENT PERMITS, DIVISION 1, GENERALLY, SECTION 82-363, ENVIRONMENTAL ASSESSMENT REPORT; DIVISION 2, PROCEDURE, SUBDIVISION I, GENERALLY, SECTION 82-382, FILING PROCEDURE; CHAPTER 86, DEVELOPMENT STANDARDS, ARTICLE II, SITE PREPARATION, CREATING A NEW SECTION, SECTION 86-45, DETERMINATION AND DELINEATION OF OPEN BODY OF WATER; CHAPTER 118, UTILITIES, ARTICLE II, WATER, SECTION 118-59, DEFINITIONS; CHAPTER 126, ZONING, ARTICLE VI, DISTRICTS GENERALLY, CREATING A NEW SECTION, SECTION 126-250, ADMINISTRATIVE WAIVER FROM OPEN BODY OF WATER SETBACK; ARTICLE XIV, SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 2, ACCESSORY STRUCTURES, SECTION 126-852, REQUIREMENTS; AND DIVISION 3, BUILDING AND AREA REQUIREMENTS, SUBDIVISION III, LOTS, SECTION 126-977, LOTS WITH OPEN BODIES OF WATER, FOR THE PURPOSE OF UPDATING LAND DEVELOPMENT CODE REGULATIONS.

**WHEREAS**, the Planning Commission, held a legally and properly advertised public hearing on September 10, 2024, at which the Planning Commission heard and considered comments and recommendations from the Planning Staff and the public pertaining to a draft amendment related to open bodies of water; and

**WHEREAS**, the Planning Commission finds the proposed amendment to be consistent with the Sanibel Plan, as it relates to the Plan for Enhancement and Restoration of Natural Resources contained within Section 3.2.2. Conservation Element; 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.

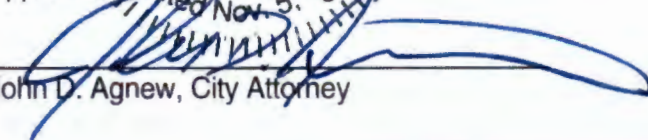
**PASSED IN OPEN AND REGULAR SESSION OF THE PLANNING COMMISSION OF THE CITY OF SANIBEL, FLORIDA, THIS 10TH DAY OF SEPTEMBER 2024.**

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: 9/11/24

Vote of Commission Members:

Grogman	<u>Aye</u>
Pfeifer	<u>Excused</u>
Sergeant	<u>Aye</u>
Colter	<u>Nay</u>
Nichols	<u>Aye</u>
Welch	<u>Aye</u>
Steiner	<u>Aye</u>

EXHIBIT A OF RESOLUTION

Agenda Item  
Meeting of

CITY OF SANIBEL  
ORDINANCE 24-

AN ORDINANCE OF THE CITY COUNCIL OF SANIBEL, FLORIDA, AMENDING THE CODE OF ORDINANCES IN RELATION TO OPEN BODY OF WATER; AMENDING SUBPART B, LAND DEVELOPMENT CODE, CHAPTER 78, GENERAL PROVISIONS, SECTION 78-1, RULES OF CONSTRUCTION AND DEFINITIONS; CHAPTER 82, ADMINISTRATION, ARTICLE IV, DEVELOPMENT PERMITS, DIVISION 1, GENERALLY, SECTION 82-363, ENVIRONMENTAL ASSESSMENT REPORT; DIVISION 2, PROCEDURE, SUBDIVISION I, GENERALLY, SECTION 82-382, FILING PROCEDURE; CHAPTER 86, DEVELOPMENT STANDARDS, ARTICLE II, SITE PREPARATION, CREATING A NEW SECTION, SECTION 86-45, DETERMINATION AND DELINEATION OF OPEN BODY OF WATER; CHAPTER 118, UTILITIES, ARTICLE II, WATER, SECTION 118-59, DEFINITIONS; CHAPTER 126, ZONING, ARTICLE VI, DISTRICTS GENERALLY, CREATING A NEW SECTION, SECTION 126-250, ADMINISTRATIVE WAIVER FROM OPEN BODY OF WATER SETBACK; ARTICLE XIV, SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 2, ACCESSORY STRUCTURES, SECTION 126-852, REQUIREMENTS; AND DIVISION 3, BUILDING AND AREA REQUIREMENTS, SUBDIVISION III, LOTS, SECTION 126-977, LOTS WITH OPEN BODIES OF WATER, 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 September 10, 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 5 to 1 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, is hereby amended with ~~striketrough~~ language indicating deletions and underlined language indicating additions as follows:

**Chapter 78. – GENERAL PROVISIONS**

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

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- (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:

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Ditch means a linear human-made land feature that has been excavated to a depth below the groundwater table for the purpose of storing and conveying stormwater.

...

Mean high water means the average height of the high waters over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

Mean high-water line means the intersection of the tidal plane of mean high water with the shore.

Mean low water means the average height of the low waters over a 19-year period. For shorter periods of observation, "mean low water" means the average height of low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of mean 19-year value.

...

Open body of water means any natural or human-made artificial area that is inundated with water at least three months of an average calendar year. Such bodies include, but are not limited to, lakes, ponds, rivers, creeks, marshes, sloughs, ditches, canals, bays, inlets, lagoons, swamps, bayous, passes, cuts, gulfs, and retention ponds. A swale is not an open body of water.

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Swale means a linear human-made land feature that has been excavated to a depth below existing grade but above the groundwater table for the main purpose of conveying stormwater and may also serve to temporarily store stormwater following a rainfall event or during the wet season.

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Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Some wetlands may also be classified as open bodies of water.

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**Chapter 82 – ADMINISTRATION**

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**ARTICLE IV. – DEVELOPMENT PERMITS  
DIVISION 1. – GENERALLY**

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**Sec. 82-363. Environmental assessment report.**

When a proposed development involves areas of land which may contain rare, threatened, or endangered species of wildlife and their habitats; or on which there are rare, threatened, or endangered species of plants; or on which there are significant or exceptional examples of native vegetation; or which are exceptionally low or wet with potential open bodies of water (typically D1 or D2 wetland zones), the city manager, or the manager's designee~~planning commission~~ may, in their~~its~~ discretion, require the filing by the applicant of an environmental assessment report prepared by a professional wetland scientist certified by the Society of Wetland Scientists; a certified environmental professional certified by the Academy of Bond Certified Environmental Professionals; or an ecologist certified by the Ecological Society of America to ensure any adverse impacts are minimized through revisions to site design, on-site mitigation, or off-site mitigation (if available within city limits). This report shall contain the information identified by the city manager, or the manager's designee, from the following subsections~~information~~, or such other or additional information as may be required,~~in order to address particular environmental problems, or potential problems on the site:~~ to evaluate the site-specific environmental conditions in relation to the development design (e.g., wildlife information may not be pertinent to a site where additional information is needed to verify open bodies of water):

- (1) An analysis of the present environmental conditions:
  - a. Physical conditions of the site:
    1. Topography, with reference to an applicable portion of the city's topographical map.
    2. Drainage of the site, with reference to the drainage plan.
    3. Identification of the soils located on-site.
  - b. Vegetation on the site:
    1. Identification of the plant community, with reference to the vegetation plan.
    2. Identification of rare, threatened, and endangered species present.
    3. Identification of any critical areas.
  - c. Wildlife habitat on the site and its immediate environs:
    1. Identification of wildlife.
    2. Identification of rare, threatened, or endangered species.
    3. Identification of critical areas.
  - d. Wetlands and open bodies of water on the site:
    1. Identification of wetlands by boundary and square footage.
    2. Identification of open bodies of water by boundary and square footage.
- (2) A proposed plan to mitigate or compensate for impacts to wetlands or open bodies of water must, at a minimum, include all of the following:
  - a. Any proposed impact to wetlands must meet the mitigation standards as required by the Plan for Wetland Protection, Sanibel Plan Section 3.2.2.
  - b. Ditches that cross property boundaries must be maintained or reconfigured to provide the same amount of water storage and water conveyance as the existing ditch. Reconfigured ditches must be designed to incorporate environmental enhancements to the shoreline and wildlife habitat when the following standards are met:
    1. A side slope that is no steeper than 3:1;
    2. Maximum depth not to exceed the bottom elevation of the existing ditch;
    3. Side slopes planted with native herbaceous species (minimum 1-gallon

- container installed 3-foot on center); and
4. Varying depths within the ditch to create planting shelves for native herbaceous wetland species (plugs or 2-inch liners may be used planted 1-foot on center).
  - c. Any proposed filling of an open body of water shall not decrease the water storage capacity of the subject property, as verified through a stormwater management plan prepared by a State of Florida licensed professional engineer.
  - d. Any proposed filling of an open body of water must include onsite enhancements to wildlife habitat that either replaces habitat lost due to the filling of the open body of water or provides an overall wildlife habitat improvement based upon the entire development site design. Habitat replacement shall involve the creation of new habitat on-site equivalent to or greater than the square footage of the filled open body of water or the enhancement of existing on-site habitat that is two times or greater than the square footage of the filled open body of water. Habitat enhancement shall include the installation of native vegetation and removal of invasive exotic vegetation. The size, variety, and spacing of vegetation shall be appropriate to the location being revegetated and the type of habitat being created, as determined by the city manager, or the manager's designee.
- (2)(3) A discussion of the changes to the conditions that the proposed project will cause on the site, in terms of subsections (1)a, b, ~~and c,~~ and d of this section, including the following:
- a. A discussion of what actions have been taken in the design and layout of the proposed project in order to eliminate, or mitigate, adverse effects that will result from the development.
  - b. A discussion of what other alternate developments were considered for the site and an indication of whether their adverse impacts were greater or lesser than the present plan for development.
  - c. An analysis of why the project proposed is the best choice for utilization of the parcel, when considering the information set forth in this report.
- (3)(4) This environmental assessment report is not intended to be a document which merely catalogs conditions, plant life, and animal life, and then concludes that the project will not adversely affect it. It is intended to be an analysis of specific conditions prior to development and a detailed statement of various environmental factors after development to identify a site plan that minimizes adverse impacts and provides for mitigation of those impacts. The report should be brief, concise, and to the point. ~~It should not exceed 15 pages in length, plus maps, tables, and other documents necessary to illustrate the report and to support its conclusions. Where possible,~~ reference should be made to other documents required by this article.
- (4) (5) In reviewing this report, the city manager or manager's designee ~~planning commission~~ shall consider the conclusions reached therein and determine whether other mitigation techniques are available and could reasonably be employed to further lessen any adverse impacts that have been identified.
- (6) In cases where an agreement between staff and applicant on a site plan and mitigation plan cannot be made, the proposed site plan and mitigation plan may be brought forward to the planning commission as a long-form development permit.

**DIVISION 2. – PROCEDURE**  
**Subdivision I. – Generally**

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**Sec. 82-382. – Filing procedure.**

The developer shall file with the city manager, or his/her designated representative, a complete application for development permit, made upon forms supplied by the city and containing or accompanied by the following:

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- (7) An up-to-date (meaning accurately reflecting present conditions) certified survey of the subject property bearing the signature and raised seal of a state registered land surveyor or professional engineer, If the borders or contains an open body of water, the survey must be dated within six months prior to the date the application is filed. The survey must indicate or comply with the following:

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- m. If the parcel contains open bodies of water, roads, or road rights-of-way or easements, the area (in square feet) of each, indicated separately. The surface area boundary of an open body of water shall be delineated following the standards established in section 86-45. calculated to the contour of the average of the groundwater of the water table aquifer. The edge of an open body of water shall be represented by the mean high water line.

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**Chapter 86 – DEVELOPMENT STANDARDS**

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**ARTICLE II. – SITE PREPARATION**

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**Sec. 86-45. – Determination and delineation of open body of water.**

The following rules shall apply in determining whether an open body of water is present and how to delineate the boundary of an open body water:

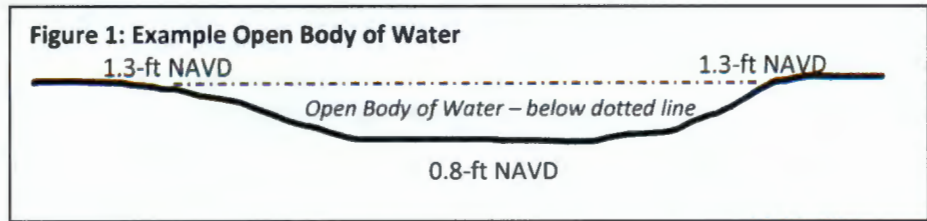
(a) Coastal Waterways

- (1) Coastal waterways are those open bodies of water where the water level is primarily determined by tides including:
  - a. Gulf of Mexico, Pine Island Sound, Tarpon Bay, San Carlos Bay, Blind Pass, Dinkins Bayou, and Clam Bayou;
  - b. Mangrove forest; and
  - c. Human-made canals connected to Dinkins Bayou, San Carlos Bay, and Pine Island Sound.
- (2) The boundary of a coastal body of water is the mean high water line.

(b) Inland Water Bodies

(1) Inland water bodies are those open bodies of water where the water level is primarily determined by the groundwater level including:

- a. Human-made canals that do not have direct access to coastal waterways;
- b. Lakes and ponds, both natural and human-made;
- c. Ditches; and
- d. Deep wetlands including marshes, sloughs, and swamps which have one or more of the following characteristics:
  - 1. Concave land area with an edge elevation of 1.3-feet NAVD and a center elevation of 0.8-feet NAVD or lower (Refer to Fig. 1); and



- 2. Land area with an elevation of 1.3 feet NAVD, or lower, and one or more of the following:
  - i. Presence of adventitious rooting on buttonwood trees (*Conocarpus erectus*);
  - ii. Presence of high water line or elevated lichen line on trees; and
  - iii. Presence of pond apple (*Annona glabra*) or red mangrove (*Rhizophora mangle*).

(2) The top of bank may be used as the boundary of a human-made pond or lake.

(c) De minimis Impacts. An open body of water area delineated entirely within a subject property which is 100 square feet or less in total surface area is considered *de minimis*, unless determined to be a jurisdictional wetland. Therefore, no setback from the open body of water is required for principal or accessory structures, and it may be filled through a short-form development permit.

**Secs. 86-4644 – 86-70. – Reserved.**

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**Chapter 118 – UTILITIES**

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**ARTICLE III. – WASTEWATER DISPOSAL  
DIVISION 1. – GENERALLY**

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**Sec. 118-59. – Definitions.**

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



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Groundwater level (or water table elevation) means the elevation of the mean high water level as shown on the "Water Table Elevations Map" prepared by the planning department (30 July 2024) available from the city, recorded by U.S. Geological Survey and depicted on the map titled "Maximum Water Table Configuration for Sanibel Island, Lee County, 1977," by Richard K. Krulik, 1988, available at City Hall in the office of the city manager. The water table elevation for any location of interest not on a contour line or at a well shown on the map shall be determined by the city manager by extrapolation.

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**Chapter 126 - ZONING**

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**ARTICLE VI. – DISTRICTS GENERALLY**

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**Sec. 126-250. – Administrative waiver from open body of water setback.**

The city manager, or the manager's designee, is authorized to approve a waiver from the open body of water setback requirements to facilitate the issuance of a development permit for parcels containing an open body of water and parcels abutting an off-site open body of water. Such waiver may be issued only upon a finding by the city manager, or the manager's designee, that the following criteria have been met:

- (a) An environmental assessment report following the standards of section 82-363 is provided;
- (b) No reduction in the open body of water setback to the Sanibel River is proposed;
- (c) There are no wading bird nests within 330 feet of the open body of water where there is a proposed setback reduction;
- (d) The project design provides protection to the open body of water through means such as:
  - (1) Incorporating an enhanced native plant buffer around the open body of water; or
  - (2) A combination of a physical barrier (e.g., retaining wall) with an enhanced native plant buffer between the physical barrier and open body of water.

The size, variety, and spacing of vegetation shall be appropriate to the location being revegetated and the type of habitat being created, as determined by the city manager, or manager's designee; and
- (e) The reduction in the open body of water setback is not detrimental to public safety.

**Secs. 126-251~~250~~ – 126-270. – Reserved.**

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**ARTICLE XIV. – SUPPLEMENTARY DISTRICT REGULATIONS**

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**DIVISION 2. – ACCESSORY STRUCTURES**

**Subdivision I. – In General**

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**Sec. 126-852. – Requirements**

All accessory buildings and structures shall comply with the following requirements:

- (~~a~~) *Height.* Accessory structures shall comply with the height limitations for principal structures, but in no event shall an accessory structure exceed the height of a principal structure located on the same lot.
- (~~b~~) *Separation.* Accessory buildings or structures shall be at least ten feet from any principal building located on the same lot, unless attached to and an integral part of such principal building, and shall be at least six feet from any other accessory building or structure located on the same lot.
- (~~c~~) *Side and rear yard setbacks.* Accessory buildings and structures shall comply with the side and rear yard setback requirements for a principal structure, except as follows:
  - (1)~~e~~ Side and rear yard setback requirements shall not apply to accessory revetments, seawalls, or erosion control structures.
  - (2)~~e~~ Side yard setback requirements shall not apply to docks, boat davits, or boat lifts located along a side lot line.
  - (3)~~e~~ Rear yard setback requirements shall not apply to docks, boat davits, or boat lifts located along a rear lot line.
  - (4)~~e~~ Side and rear yard setback requirements shall not apply to docks, boat davits, or boat lifts located on lots A through Q of Sanibel Harbors Subdivision.
- (d) *Open body of water setback.* Accessory buildings and structures shall comply with the open body of water setback requirements for a principal structure, except as the open body of water setback shall not apply to the following:
  - (1) Docks, boat davits, or boat lifts, and access walkways or paths to docks.
  - (2) Accessory revetments, seawalls, or alternative shoreline stabilization projects.
  - (3) Within conservation lands, boardwalks, trails, or observation platforms/towers.
  - (4) Driveways proposed to cross an open body of water where the crossing is the minimum necessary to provide access to the principal use of the lot and where the hydrological connection will not be disrupted.
  - (5) De minimis impacts pursuant to section 86-45(c).

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**DIVISION 3. – BUILDING AND AREA REQUIREMENTS**

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**Subdivision III. – Lots**

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**Sec. 126-977. - Lots with open bodies of water.**

For lots or parcels containing, or being developed with, an open body of water, the following regulations shall apply in determining the maximum permitted coverage with impermeable surfaces, developed area, and vegetation removal:

- (a) If a parcel is being developed with an open body of water which is to be excavated to, or below, the average elevation of the groundwater of the water table aquifer groundwater level, the surface area of that open body of water which is represented by the contour of the average elevation of the groundwater of the water table aquifer groundwater level shall be considered as being cleared of vegetation and as part of the developed area.
- (b) If a parcel is being developed that contains an open body of water which has been excavated to, or below, the average elevation of the groundwater of the water table aquifer groundwater level, the surface area of that open body of water which is represented by the contour of the average elevation of the groundwater of the water table aquifer groundwater level shall be excluded from the land area against which is applied the percentage limitations on coverage with impermeable surfaces, vegetation removal and developed areas.