



## AGENDA MEMORANDUM

*Planning Department*

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**City Council: November 20, 2023**

**To:** City Council

**From:** Paula N. C. McMichael, AICP, Planning Director

**Date:** November 15, 2023

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### **SUBJECT**

Discussion of a draft ordinance amending the Code of Ordinances to adjust maximum building heights within ecological zones and amending a definition, amending Subpart B – Land Development Code, Chapter 126 – Zoning, Article VII. – Residential Districts; Division 4. – E-1 Blind Pass Area Zone, Sec. 126-334. – Required Conditions; Division 5. – E-2 Gulf Beach Ridge Zone, Sec. 126-354. – Required conditions; Division 6. – D-1 Lowland Wetlands Zone, Sec. 126-374. – Required conditions; Division 7. – D-2 Upland Wetlands Zone, Sec. 126-394. – Required conditions; Division 8. – F Mid-Island Ridge Zone, Sec. 126-414. – Required conditions; Division 9. – C Mangrove Forest Zone, Sec. 126-434. – Required conditions; Division 10. – G Altered Land Zone, Sec. 126-454. – Required conditions.

### **BACKGROUND**

City Council directed a review of height regulations at their regular meeting of September 11, 2023, directing Planning Commission to make the review their top priority and to schedule special meetings as necessary. Concern was expressed over height potentially affecting the ability of residents to rebuild. City Council further requested an opinion as to whether any change to the Sanibel Plan is needed to accomplish the desired result.

Staff proposes a solution that does not require an amendment to the Sanibel Plan. The city's charter states that increases to building heights above those limits set by the Plan require approval by voter referendum. The proposal as presented by staff does not increase heights above 45 feet and does not increase height above 3 stories over required flood elevation. The proposal does provide for a modest (on average five feet) increase in height for residential (not resort housing) or institutional uses and a corresponding relief for measuring angle of light.

The Planning Commission held a workshop to discuss the proposed amendments to height regulations on Thursday, October 19, 2023, at 5:30 PM. Approximately 45 members of the public attended, with 13 citizens speaking. The amendments received support from representatives of SCCF and COTI who were in attendance and spoke on the record. There was some discussion regarding angle of light requirements; however, while the proposed amendments would elevate the "box" of buildable area, the angle of light requirements are maintained, as well as the ratio between the maximum height of a building at setbacks and the overall maximum height permitted.

The Planning Commission voted on the proposed amendments at their meeting of October 24, 2023, voting unanimously to recommend approval to City Council. The only public speaker was a representative of COTI, who again voiced support for the amendments.

City Council held a public workshop on November 1, 2023 to discuss the proposed amendments and receive public input. A representative of COTI spoke to again voice support of the amendments. Three speakers from the public spoke to required elevations seaward of the coastal construction control line being high.

City Council held a properly advertised first reading on November 7, 2023, and moved the proposed amendments to second reading on November 20, 2023.

## **EXISTING REGULATIONS**

Height is regulated by three documents – the city charter, the city’s comprehensive plan (the Sanibel Plan), and the city’s land development code (the Sanibel Code).

### **CHARTER**

The city charter was amended in 2005 to include the following section:

Section 3.10.4. Ordinances increasing permitted height of building(s).

Actions to increase the permitted height of a building or buildings as established in the Sanibel Plan, as constituted on May 4, 2004, may be taken by the city only by ordinance approved by a majority of qualified city electors at the next general election or a special election called for such purpose; provided, however, that where a condominium building, which is a nonconforming structure, is destroyed or substantially damaged in a natural disaster, reconstruction of which is in all other respects permitted by the Land Development Code, such reconstructed building may exceed the height of the building immediately prior to the disaster by up to one story (1) if, and to the extent, the building must be elevated above ground level to comply with applicable flood abatement laws or regulations and (2) reconstruction without allowing for such additional height would result in the loss of a dwelling unit by its owner. Any law or regulation which is in conflict with this Section 3.10.4 is hereby repealed.

As stated in the Charter, any actions to increase the permitted height of buildings as established in the Sanibel Plan must be approved by city electors.

### **THE SANIBEL PLAN**

The Sanibel Plan constitutes the city’s duly adopted, state-mandated comprehensive plan. The plan includes two references to height in the Scenic Preservation Element.

Section 3.2.5. Scenic Preservation Element

Background Discussion ...

A limitation on building heights of approximately 45 feet above mean sea level is also important with respect to scenic preservation of the beach zones. Other regulations designed to conserve the coastal environment are also important to scenic preservation. A lower building height limitation is appropriate for single-family residential areas in order to retain the character of the community.

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The height of all new buildings is not to exceed three stories above the base flood elevation. However, Section 3.10.4 of the City Charter, as amended on March 1, 2005, addresses building back condominium buildings that are substantially damaged by a natural disaster. Where a condominium building, which is a nonconforming structure, is destroyed or substantially damaged in a natural disaster, reconstruction of which is in all other respects permitted by the Land Development Code, such reconstructed building may exceed the height of the building immediately prior to the disaster by up to one story (1) if, and to the extent, the building must be elevated above the ground level to comply with applicable flood abatement laws or regulations and (2) reconstruction without allowing for such additional height would result in the loss of a dwelling unit by its owner.

Plan for Scenic Preservation ...

Policy 1.1. The height of buildings will not exceed three stories above the base flood elevation. However, that where a condominium building, which is a nonconforming [sic] structure, is destroyed or substantially damaged in a natural disaster, reconstruction of which is in all other respects permitted by the Land Development Code, such reconstructed building may exceed the height of the building immediately prior to the disaster by up to one story (1) if, and to the extent, the building must be elevated above the ground level to comply with applicable flood abatement laws or regulations and (2) reconstruction without allowing for such additional height would result in the loss of a dwelling unit by its owner.

The first reference is to a maximum height of “approximately 45 feet” above sea level, and the second is that buildings will not exceed three stories above base flood elevation.

The City Attorney provided his opinion at the October 24, 2023, meeting of the Planning Commission that the only restriction which is enforceable from the Plan is three stories above flood elevation. The proposed amendments do not change this restriction; therefore, neither a Plan amendment nor a voter referendum is required.

### **SANIBEL CODE**

Comprehensive plans are implemented through land development regulations, in the city by the Sanibel Code. Height restrictions are established by ecological zone (for residential and institutional uses), by commercial district, and for the resort housing district. A summary of the relevant sections of code is provided below.

Residential height limitations (single-family, duplex, multifamily not resort housing):

- 35’ above predevelopment grade (PDG) or 45’ NAVD
  - Predevelopment grade is a defined term in the Sanibel Code established as either the average grade of the lot or the average grade of the adjacent road, whichever is higher.
  - NAVD is a standardized measurement above mean sea level.
- Single-family homes, duplexes, multifamily (not resort housing) and institutional uses are subject to a secondary limitation on height referred to as the “angle of light:”

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- ... structures ... shall not be of such height or size that they penetrate the planes established by a primary angle of light, which is an angle of 45 degrees measured above horizontal from front, side, and rear yard setback lines, open bodies of water setback lines and other applicable setback lines, all measured at 20 feet above the predevelopment grade of the parcel, such plane projecting upward toward the center of the parcel. ...
- There are limited exceptions for architectural features that can penetrate the primary angle of light (such as chimneys and dormers); however, these are subject to a secondary angle of light measured at 25 feet above the predevelopment grade of the parcel.
- See Sections 126-334, 126-354, 126-374, 126-394, 126-414, 126-434, 126-454

Institutional height limitation:

- 35' above PDG or 45' NAVD
- Subject to primary and secondary angle of light considerations
- Same LDC sections as residential, above

Commercial districts (General Commercial, Town Center General, Town Center Limited):

- 45' NAVD
- See Sections 126-494, 126-514, 126-534

Resort housing district:

*Not all existing resorts are in the resort housing district*

- 33' above required flood elevation, not to exceed 49.8' NAVD (51' NGVD)
- Additional 8.3' permitted to accommodate sloped roof – up to 58.1' NAVD
- See Sec. 126-637 (3)

Predevelopment grade is a defined term in the code:

Predevelopment grade means the elevation of the average crown of the adjacent road or roads, or average natural grade at base of structure, whichever is higher.

Based on required minimum road elevations, predevelopment grade would not be established below 3.3 feet NAVD. Average grades are around 5 feet NAVD. Staff is not aware of any grades established above 10 feet NAVD.

Likewise, base flood elevation is a defined term:

Base flood elevation means the elevation of the flood water in a particular location during a base flood, as defined in chapter 94, as shown in the flood insurance study and accompanying flood insurance rate maps adopted pursuant to subsection 94-4(a).

Base flood elevations set by FEMA range from 6 feet NAVD to 12 feet NAVD. The Florida Building Code requires one additional foot of “freeboard” above the base flood elevation set by FEMA. In addition, for buildings seaward of the state’s coastal construction control line (CCCL), the Florida Department of Environmental Protections establishes the minimum required building elevation, which ranges from 16.2 – 18.8 ft NAVD. Therefore, minimum flood elevations on Sanibel range from 7 feet to 18.8 feet NAVD. Only

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heights in the Resort Housing District are dependent on flood elevation, and are subject to heights not to exceed.

### **PROPOSED AMENDMENT**

Staff's proposal is to amend the height as measured by ecological zone, for residential (not resort housing) uses and institutional uses, by removing the limitation of 35 feet above predevelopment grade and establishing the maximum height as 45 feet NAVD.

Based on a minimum predevelopment grade of 3.3 feet NAVD, the maximum increase in height would be 6.7 feet.

Min. predevelopment grade – 3.3 ft. NAVD.  
Current regulations:  $3.3' + 35' = 38.3'$  NAVD  
 $45' - 38.3' = 6.7'$  additional height permitted

Average predevelopment grade – 5.0 feet NAVD  
Current regulations:  $5' + 35' = 40'$  NAVD  
 $45' - 40' = 5'$  additional height permitted

As stated previously, required base flood elevations range from 7 ft. to 18.8 ft, so actual building heights under these scenarios would differ (that is, maximum height of 45 feet NAVD – required base flood elevation = actual building height).

The proposed amendment would also change primary angle of light measurements from 20 ft. above predevelopment to 30 ft. NAVD so that the measurements have the same point of reference and the 15 ft. difference between max. overall height and max. height at setbacks is maintained. The secondary angle of light measurement would increase to 35 feet NAVD (from 25 feet above predevelopment grade).

### **WHAT ARE THE BENEFITS OF THIS APPROACH?**

Maintaining a maximum height of 45 ft. NAVD clearly does not require an amendment to the Sanibel Plan or voter referendum approval. No change to the limitation of three stories above flood has been proposed.

The amendment is simple to execute, requiring no new sections of code and no new exceptions.

As far as staff is aware, the amendment addresses all issues currently limiting homeowners from building back in compliance with flood regulations and height limitations.

The modest increase in height (on average five feet) still allows homeowners to accommodate potential increases to required base flood elevations and allows homeowners to voluntarily elevate above required base flood elevations while maintaining community character.

Nothing precludes the city from further investigating increases to building height above 45 feet if new issues or concerns arise in the future.

### **RECOMMENDED ACTION**

Staff recommends that City Council adopt Ordinance 23-025 as proposed to adjust maximum building heights.

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