

CITY OF SANIBEL
ORDINANCE 26-009 WITH REVISIONS

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, AMENDING THE CODE OF ORDINANCES SUBPART B LAND DEVELOPMENT CODE, CHAPTER 126, ZONING, ARTICLE V, NONCONFORMANCES DIVISION 3, STRUCTURES, SECTION 126-172, (NONCONFORMING STRUCTURES) IMPROVEMENT, RECONSTRUCTION, OR RELOCATION PROHIBITED; EXCEPTIONS; AND DIVISION 5, STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER, SECTION 126-212, NONCONFORMING STRUCTURES, TO ALLOW A LIMITED EXCEPTION TO HEIGHT LIMITATIONS FOR ELEVATION OF EXISTING STRUCTURES; FOR THE PURPOSE OF UPDATING THE 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 March 24, 2026, on specific proposed amendments to the Land Development Code; and

WHEREAS, the Planning Commission heard and considered comments and recommendations from the Planning Staff and the public pertaining to a draft amendment to allow a limited exception to height limitations for elevation of existing structures; 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 7 to 0 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 126 - ZONING

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ARTICLE V. - NONCONFORMANCES

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DIVISION 3 - STRUCTURES

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Sec. 126-172. – (Nonconforming structures) improvements, reconstruction, or relocation

- (a) Except as otherwise provided in this article and in article XII Resort Housing District in this chapter, no nonconforming structure may be reconstructed, moved, removed, 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. Nonconforming seawalls outside of the areas where seawalls are a permitted use [subsection 126-101(1)] are nonconforming uses and must meet section 126-152 standards. The following shall, however, be permitted:
- (1) Repairs or rehabilitations to a nonconforming structure which, in conjunction with prior repairs, do not amount to a material structural alteration or a substantial improvement as defined in chapter 94;
 - (2) The expansion of a structure which is nonconforming because of height, percentage of land coverage, residential density, commercial floor area, vegetation removal, or setback area or yard requirements, as long as such requirements are not further violated and as long as the expansion, considered by itself, would not violate such requirements;
 - (3) A structure nonconforming with the minimum design flood elevation required by the Floodplain Management Ordinance (Chapter 94), applicable federal flood regulations, or the Florida Building Code may be elevated up to ten (10) feet above predevelopment grade or highest adjacent grade, whichever is higher, and exceed applicable height limitations proportionately, including any angle of light restrictions, for the purpose of resiliency from floods.
~~A structure nonconforming with the minimum elevation requirements of the Floodplain Management Ordinance (chapter 94), applicable federal flood regulations, or the Florida Building Code may be elevated up to ten (10) feet above predevelopment grade, even if such elevation increases the degree of nonconformity with applicable height standards, including angle of light.~~
 - ~~(43)~~ Minor, cosmetic, nonstructural alterations to the side or front of a structure which encroaches on a required side or front yard setback, such as awnings or decorative architectural features, provided that such alterations do not extend further into the setback than that part of the structure closest to the property line; provided that no usable floor area is added; and provided that no other regulation contained in this Land Development Code, and to which the structure does not conform, is further violated;
 - ~~(54)~~ Repairs or reconstruction of existing nonconforming seawalls where seawalls are a permitted use [subsection 126-101(1)] in human made waterbodies in accordance with the requirements found in subsections 126-101(2) through (20);
 - ~~(65)~~ In the interest of safety, or to meet federal or state requirements for that use, consistent with section 78-3, development and construction to provide building access for persons with disabilities provided the development cannot practicably be accomplished within the existing perimeter, i.e., three-dimensional outline, of the structure and is the minimum necessary to provide such access, regardless of whether said development and construction increases or creates nonconformities pertaining to height, percentage of land coverage, commercial floor area, percentage of vegetation removal and developed area or setbacks and regardless of whether the structure is located within the Bay Beach Zone or Gulf Beach Zone;
 - ~~(76)~~ In the Resort Housing District, reconstruction of existing nonconforming swimming pools and other accessory structures, including all related support components and equipment, which in conjunction with prior repairs or rehabilitation amount to

a substantial improvement.

- (87) The fencing in or screening of the structure for purposes of security, safety, or reduced liability, as long as such fencing or screening is the minimum reasonably necessary for such purpose, both as to height and location, and as long as any such fencing complies with the requirements of subsections 126-1057(2) - (4) and section 126-1059;
- (98) In the interest of safety, security, and reduced liability, the addition of safety railings on roof decks, provided such railings do not extend beyond the footprint of the existing structure;
 - a. In the interest of general public safety, the reconstruction of existing nonconforming walkways in the same configuration as the existing failed structure and up to a width of 44 inches when part of a required means of egress; and
- (109) Building back (reconstruction) of a structure substantially damaged by a natural disaster in accordance with division 5 of this article.

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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;
 - (4) Up to its lawfully existing number of dwelling units, but, and
 - (5) In compliance with the design 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 damaged building is built back (reconstructed), ~~except for height, under the following conditions:~~
 - a. A substantially damaged structure that is nonconforming may be built back to current design flood elevations and exceed height limitations.
 - b. A substantially damaged structure that is nonconforming may be built back and elevated up to ten (10) feet above predevelopment grade or highest adjacent grade, whichever is higher, and exceed applicable height limitations proportionately, including any angle of light restrictions, for the purpose of resiliency from floods.
- ~~A substantially damaged structure that is nonconforming may be elevated up to ten (10) feet above predevelopment grade, even if such elevation increases the degree of nonconformity with applicable height standards, including angle of light, provided the structure complies with the minimum elevation requirements of the Floodplain Management Ordinance, applicable federal flood regulations, and the Florida Building Code.~~

~~When reconstruction or elevation of a nonconforming structure to comply with minimum flood elevation requirements does not conform or increases the degree of nonconformity with applicable height standards; or~~

~~b. For the purpose of resiliency from potential future storm surge, the height of the lowest habitable floor of a nonconforming structure may be elevated up to ten feet above existing grade and exceed applicable height limitations proportionally, including any angle of light restrictions.~~

- (b) Applications to build-back a nonconforming structure that was destroyed or substantially damaged by accidental fire or other natural and disastrous force must be filed within two years 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 three years. If the declared state of local emergency extends beyond one year, the deadline to make application shall be extended to four years.
- (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 living 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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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.

SCHEDULED FOR SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, ON THE 2ND DAY OF JUNE 2026.

Attest:

Scotty Lynn Kelly, City Clerk

Mike Miller, Mayor

Approved as to form and legality:

John D. Agnew, City Attorney

Date filed with City Clerk: _____

Vote of Council Members:

Miller _____
Henshaw _____
DeBruce _____
Johnson _____
Smith _____

First Reading: May 5, 2026
Publication Date: _____
Second Reading: _____