

CITY OF SANIBEL

ORDINANCE 21-007

AN ORDINANCE AMENDING THE SANIBEL CODE OF ORDINANCES, SUBPART B. LAND DEVELOPMENT CODE, CHAPTER 78 – GENERAL PROVISIONS; SECTION 78-1 – RULES OF CONSTRUCTION AND DEFINITIONS; AMENDING CHAPTER 126 – ZONING; ARTICLE XIV – SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 3. BUILDING AND AREA REQUIREMENTS, SUBDIVISION II, SPECIAL SETBACKS IS HEREBY AMENDED BY ADDING SECTION 126-961 - OUTDOOR DINING SETBACKS; AMENDING ARTICLE XIV – SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5. COMMERCIAL AND INSTITUTIONAL USES GENERALLY BY AMENDING SECTION 126-1031 – BONUS OUTDOOR SEATS FOR DINING; DELETING SECTION 126-1032 – OUTDOOR SEATING FOR CARRYOUT RESTAURANTS IN ITS ENTIRETY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Council directed the Planning Commission review the appropriateness of potential amendments to the Land Development Code to better facilitate outdoor dining at restaurants and carry-out food stores; and

WHEREAS, the Land Development Code Subcommittee of the Planning Commission held public hearings on the matter, and the Planning Commission held public hearings on specific proposed Amendments to the Land Development Code, which were legally and properly advertised and held on July 13, 2021 and July 27, 2021; 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 amendment to the Land Development Code as indicated below is consistent with the Sanibel Plan, meets the requirements of LDC Section 82-241, and recommended via City of Sanibel Planning Commission Resolution 21-17 that the City Council adopt said amendment in the form of an ordinance; and

WHEREAS, City Council further desires to amend the Sanibel Code of Ordinances, Subpart B. Chapter 78 by adding a definition for *Carry-out food store*, consistent with the recommendation of the Planning Commission; and

WHEREAS, City Council further desires to amend the Sanibel Code of Ordinances, Subpart B. by adding a new Section 126-961 entitled “Outdoor dining setbacks” to regulate approved outdoor dining by establishing specific setbacks for such dining spaces, consistent with the recommendation of the Planning Commission; and

WHEREAS, City Council further desires to amend Section 126-1031, “Bonus Outdoor seats for dining”, by adding definitions for Bonus outdoor seating and Applicability and amending procedures and standards of Bonus outdoor seating and deleting Section 126-1032 pertaining to Outdoor seating for carryout restaurants, consistent with the recommendation of the Planning Commission; and

WHEREAS, City Council finds these regulation amendments appropriate and in the best interests of Sanibel’s citizens and visitors alike;

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 Ordinance, Subpart B. Land Development Code, Chapter 78 – General Provisions, Section 78-1 – Rules of construction and definitions is hereby amended to include *carry-out food store* with ~~strikethrough~~ language indicating deletions and underlined language indicating additions as follows:

Carry-out food store means a limited or specialty retail food store that prepares food typically for off-site consumption, incidental to the primary retail use.

SECTION 3. Sanibel Code of Ordinances, Subpart B. Land Development Code, Chapter 126 – ZONING, Article XIV – Supplementary District Regulations, Division 3. Building and Area Requirements, Subdivision II, Special setbacks is hereby amended by adding Section 126 – 961 Outdoor seating setbacks with ~~strikethrough~~ language indicating deletions and underlined language indicating additions as follows:

Sec. 126-961. – Outdoor seating setbacks.

Outdoor dining approved by Conditional Use Permit and/or Bonus outdoor seating approved by Development Permit shall be located no less than:

- a. 15 feet from any side or rear property line
- b. 70 feet measured from the centerline of Periwinkle Way right-of-way; or
- c. 20 feet measured from the right-of-way line of any other street.

SECTION 4. Sanibel Code of Ordinances, Subpart B. Land Development Code, Chapter 126 – ZONING, Article XIV – Supplementary District Regulations, Subdivision II, Special Setbacks, Division 5. Commercial and Institutional Uses Generally, Section 126-1031, Bonus outdoor seats for dining, is hereby amended definitions, applicability and amending procedures and standards of Bonus outdoor seating with ~~strikethrough~~ language indicating deletions and underlined language indicating additions as follows:

Sec. 126-1031. – Bonus outdoor seats for dining.

The purpose of this section is to establish procedures and regulations that will enable restaurants and carry-out food stores to provide portable seating, tables, and other accommodations for bonus outdoor seats for dining in addition to the number of permitted indoor seats. ~~Procedures for bonus outdoor seats require that an initial development permit be obtained for the first two years and that a subsequent development permit be obtained to continue use of bonus outdoor seats after the first two years.~~

(1) Definitions.

Outdoor dining means providing portable seating and tables, intended solely for the consumption of food and beverages presented by the standard menu of the restaurant, outside the exterior walls of a restaurant. Outdoor dining provided in accordance with the procedures

and standards of this section shall be considered bonus outdoor seats for dining.

Bonus outdoor seating means outdoor dining areas which, for the purpose of compliance, are not considered commercial floor area and are not counted in conjunction with calculation of required off-street parking spaces.

Bonus outdoor seating, incidental dining means bonus outdoor seating at a restaurant or carry-out food store comprised of 16 seats or less.

- (2) Applicability. Bonus outdoor seating for dining is permitted at restaurants and carry-out food stores located within a commercial zoning district where a restaurant or carry-out food store use is permitted as a conditional use. Bonus outdoor seating for dining, pursuant to this section, is also permitted where a restaurant is located outside a commercial zoning district as an existing nonconforming use or permitted use in a special use district.

Bonus outdoor seats for dining shall be associated with a permitted restaurant or carry-out food store that holds a current and valid occupational license that authorizes seating for the on-premises consumption of food.

- (2)(3) Procedures (for initial and continued use development permits). The initial development permit required for bonus outdoor seats will expire after 24 months and the use shall be abated. To continue use of outdoor bonus seats, the applicant must apply for and obtain a subsequent development permit for bonus outdoor seats that renews, or approves with modified conditions, use of bonus outdoor seats as long as the restaurant or carry-out food service use remains active.

Reapplication for continued use of bonus outdoor seats is required to ensure that the prior use of bonus outdoor seats complied with all requirements of this section for bonus outdoor dining and all applicable requirements of the Code of Ordinances, associated with the outdoor activity.

- a. Short form application. Short form applications may be available ~~for to amend an approved floor plan to relocate indoor seats to outdoor dining areas; and for~~ bonus outdoor seats for dining at commercial developments that provide, at least, the minimum number of on-site parking spaces required by this Code for the restaurant or carry-out food store, and the other uses on the site.
- b. Long form application. Long form applications are required for bonus outdoor seats for dining at commercial developments where the minimum number of on-site parking spaces required by this Code, for the restaurant or carry-out food store, and the other uses on the site, is not available.

c. *Applications shall be made to the city manager, or the manager's designee, in a form prescribed by the city manager.* The application shall be accompanied by:

1. A survey of the subject property;
2. Authorization of the real property owner to make such application;
3. A site plan delineating, at a minimum, the location, dimensions, access and number of seats and tables for outdoor dining and showing the location of landscaping for the outdoor dining area required for appropriate screening from adjoining properties; and
4. A description of how the design and functional operation of the outdoor dining area will complement the existing restaurant or carry-out food store building and be compatible with the existing commercial center, if applicable.

~~d. Bonus outdoor seats for dining shall be associated with a permitted restaurant that holds a current and valid occupational license that authorizes seating for the on-premises consumption of food.~~

e. d. If the bonus outdoor seats for dining application is approved:

1. The applicant shall obtain an amended occupational license that includes the number of permitted outdoor seats.
2. The applicant shall obtain approval of the seating plan for outdoor dining from the Sanibel Fire and Rescue District.
3. The applicant shall purchase additional sewer connection charges for the number of permitted outdoor seats.
4. The city manager shall annually review occupational licenses involving outdoor dining to ensure compliance with this section and other city regulations prior to renewal.

The amended occupational license must be obtained, sewer connection fees must be paid, and approval from the fire district must be obtained prior to operation of the outdoor dining use.

(34) *Standards.*

~~a. Bonus outdoor dining is permitted at restaurants located within a commercial zoning district where a restaurant use is permitted as a conditional use. Bonus outdoor dining, pursuant to this section, is also permitted where a restaurant is located outside a commercial zoning district.~~

~~ba. The maximum number of bonus outdoor seats permitted at a restaurant carry-out food store is 15 percent of the total permitted indoor seats associated with the restaurant, or 16 seats, whichever is greater.~~

The maximum number of bonus outdoor seats at a restaurant is 15 percent of the total permitted seats associated with the restaurant, not to exceed 32 seats.

~~e. The area used for bonus outdoor dining shall not count as commercial floor area.~~

~~d. Off street parking requirements shall not be applied to the bonus outdoor dining seats permitted by this section.~~

eb. No food preparation shall occur within the designated outdoor dining area or anywhere outside the restaurant. All food shall be served from the kitchen of the permitted restaurant or carry-out food service. No separate bar service shall be provided as part of the outdoor dining area, except in conjunction with meal service. No disposable containers, plates, flatware, wrappers or other forms of disposable items shall be used, unless identical to the permitted indoor food and beverage service.

fc. ~~Artificial W~~waste products shall be properly collected, stored, and disposed of in accordance with duties of the property owner identified in section 54-33 of the Code of Ordinances. Littering is prohibited, pursuant to section 30-34 of the Code of Ordinances. Additionally, food waste shall be properly collected, stored, and disposed of to eliminate food attractants for native and nuisance wildlife.

~~g. No fixed or permanent heating or air conditioning systems shall be employed. No walls shall be constructed, including all forms of opaque or glass doors and panels.~~

hd. The bonus outdoor seating and tables shall be under a roof, awning or portable umbrellas.

ie. Seating and tables shall not be dispersed and shall be grouped in a defined area immediately accessible to the permitted restaurant or carry-out food service operation and located on the site of the permitted restaurant or carry-out food service use. ~~To the extent possible bonus~~ Bonus outdoor dining shall not be located in areas that coincide with patron waiting areas or where bar service occurs.

jf. Bonus outdoor dining seats and tables shall not be moved indoors to increase the number of permitted indoor seats.

g. Indoor seating, approved by valid Conditional Use Permit, may be moved outdoors, provided that the total dining seat count does not increase, pursuant to short-form application review.

kh. Bonus outdoor dining seats and tables shall:

~~1. Not encroach on public rights of ways including shared use paths;~~

~~2.1. Comply with required setbacks~~ special setback for outdoor dining (LDC Sec.126-961);

~~3.2. Not interfere with on-site vehicular and pedestrian circulation, parking and loading areas; and~~

~~4.3. Not block or restrict doors or other means of required egress for emergency purposes.~~

i. Accessory structures and hardscape devoted to outdoor dining, including decking, pavers, shell or stone, and screen or lattice walls, may be permitted subject to compliance with applicable developed area and vegetation removal, coverage standards, and special setback for outdoor dining (LDC Sec. 126-961).

Expansion of principal structures for the purpose of providing outdoor dining may be permitted subject to compliance with applicable developed area and vegetation removal, coverage, and setback standards.

j. Bonus outdoor seating shall be adequately buffered from off-street parking and traveled ways with use of landscaping, screen wall, fence, or other means.

k. Provision or expansion of bonus outdoor seating greater than 16 seats shall require compliance with chapter 122 vegetation, article II landscaping, division 2 commercial and institutional uses.

Incidental dining shall not require compliance with commercial landscape buffer standards.

l. Additional signage or outdoor advertising shall not be permitted, unless otherwise exempt (LDC Sec. 106-3), including, but not limited to, signs that are not visible from off-site.

m. Microphones, loudspeakers or amplifiers shall not be permitted. Noise disturbances are prohibited, pursuant to section 30-64 of the Code of Ordinances and section 126-652 of the Land Development Code.

n. Producing odors at a level which unreasonably disturbs the peaceful and healthful enjoyment of any adjoining lands is prohibited, pursuant to section 125-652 of the Land Development Code.

o. Outdoor entertainment shall not be permitted, except as otherwise licensed by the city.

p. All outdoor lighting shall be consistent with chapter 126 zoning, article XIV supplementary district regulations, division 4, outdoor lighting.

q. All tables, ~~and~~ chairs, ~~and~~ umbrellas used for outdoor dining must be brought inside for storage whenever the city is under a hurricane warning.

r. ~~This section does not authorize the construction, renovation or expansion of structures, unless authorized by city permits.~~

s. ~~The restaurant owner is encouraged to post a notice in a prominent location requesting that the patrons refrain from smoking within the defined area for outdoor dining.~~

SECTION 4. Sanibel Code of Ordinances, Subpart B. Land Development Code, Chapter 126 – ZONING, Article XIV – Supplementary District Regulations, Subdivision II, Special Setbacks, Division 5. Commercial and Institutional Uses Generally, Section 126-1032, Outdoor seating for carryout restaurants, is hereby amended by deleting Section 126-1032 in its entirety with strikethrough language indicating deletions and underlined language indicating additions as follows:

Sec. 126-1032. Outdoor seating for carryout restaurants.

- ~~(a) Purpose: The purpose of this section is to establish procedures and regulations that will enable carryout restaurants, as defined by the Land Development Code, subsection 126-1032(2) and regulated by the Land Development Code, chapter 126 Zoning, article IV. conditional uses, section 126-91. Eating places, restaurants, grocery stores, etc., not listed as a permitted use, to provide limited and incidental portable outdoor seating for patrons.~~
- ~~(b) Definition: This section is only applicable to a carryout restaurant which is defined as an eating place solely engaged in the over the counter sale of food, beverages, ice cream and deserts prepared or pre-prepared on premises for consumption off site or directly outside the establishment with limited and incidental portable seating serving patrons.~~
- ~~(c) Procedures:~~
 - ~~(1) Exemption: Development permits will only be required for outdoor seating serving more than six patrons. However, all outdoor seating shall be in compliance with the standards defined by subsection 126-1032(7).~~
 - ~~(2) Short form permit application: A short form development permit is required for outdoor seating for carryout restaurants when the proposed seating will accommodate between seven and 12 patrons.~~
 - ~~(3) Long form permit application: A long form development permit is required for outdoor seating for carryout restaurants when the number of proposed seats will accommodate more than 12 patrons.~~
 - ~~(4) Initial development permit period: An initial development permit required for outdoor seating associated with carryout restaurants will expire after 24 months. To continue outdoor seating, the applicant must apply for a renewal of the development permit. The renewal will be based on a determination of compliance with section 126-1032(7).~~
 - ~~(5) Applications: Applications shall be made to the city manager, or the manager's designee, in a form prescribed by the city manager. The application shall be accompanied by:~~
 - ~~a. A survey of the subject property and/or a site, building or commercial center plan delineating, at a minimum, the proposed location, type and number of outdoor seats in relation to the carryout restaurant and all relevant property lines, buildings, adjoining businesses and uses, sidewalks, parking,~~

~~landscaping and other site and structural features;~~

- ~~b. Authorization of the real property owner to make such application;~~
- ~~c. A description and/or illustration of how the location and functional operation of the outdoor seating will complement the carryout restaurant and be compatible with the associated commercial center, pedestrian and vehicular access and circulation, site environment and adjoining businesses and land uses, as applicable.~~

~~(6) Associated conditions for approval: Applicants for outdoor seating, for more than six patrons associated with carryout restaurants, shall also obtain or complete the following prior to approval of the necessary development permit:~~

- ~~a. The applicant shall obtain an amended business tax receipt that defines the number of permitted outdoor seats; and~~
- ~~b. The applicant shall obtain approval of the outdoor seating plan from the Sanibel Fire and Rescue District; and~~
- ~~c. If warranted, the applicant shall purchase additional sewer connection charges.~~

~~The city manager, or the manager's designee, shall annually review business tax receipts involving carryout restaurants with approved outdoor seating to insure compliance with this section and other city regulations prior to renewal.~~

~~(7) Standards:~~

- ~~a. Outdoor seating is permitted at carryout restaurants located within a commercial zoning district where a restaurant use is permitted as a conditional use. Outdoor seating, pursuant to this section, is not permitted where a carryout restaurant is located outside a commercial zoning district.~~
- ~~b. The area used for outdoor seating shall not count as commercial floor area.~~
- ~~c. Off street parking requirements shall not be applied to the outdoor seating permitted by this section.~~
- ~~d. No food preparation or service shall occur within the designated outdoor seating area or anywhere outside the carryout restaurant.~~
- ~~e. Waste products shall be properly collected, stored and disposed of in accordance with duties of the property owner identified in section 54-33 of the Code of Ordinances. Littering is prohibited, pursuant to section 30-34 of the Code of Ordinances. The location of all existing and proposed waste receptacles shall be defined in relation to the outdoor seating. The number of waste receptacles shall be adequate to accommodate the volume of waste product associated with the establishment. Signs shall be displayed on or near each waste receptacle directing patrons to properly dispose of all waste products.~~
- ~~f. No fixed or permanent heating or air conditioning systems shall be employed. No walls shall be constructed, including all forms of opaque or glass doors and panels.~~

- ~~g. The outdoor seating shall be under a roof, awning, or portable umbrellas.~~
- ~~h. Seating shall not be dispersed and shall be grouped in a defined area immediately accessible to the permitted carryout restaurant operation and located on the site of the permitted carryout restaurant use.~~
- i. Outdoor seating shall:
 - ~~i. Not encroach on public right of ways, including shared use paths;~~
 - ~~ii. Comply with required setbacks;~~
 - ~~iii. Not interfere with on-site vehicular and pedestrian circulation, parking and loading areas; and~~
 - ~~iv. Not interfere with the operation of adjoining businesses or land uses; and~~
 - ~~v. Not block or restrict doors or other means of required egress for emergency purposes.~~
- ~~j. Additional signage or outdoor advertising shall not be permitted.~~
- ~~k. Microphones, loudspeakers or amplifiers shall not be permitted. Noise disturbances are prohibited, pursuant to section 30-64 of the Code of Ordinances and section 126-652 of the Land Development Code.~~
- ~~l. Producing odors at a level which unreasonably disturbs the peaceful and healthful enjoyment of any adjoining businesses or land uses is prohibited, pursuant to section 125-652 of the Land Development Code.~~
- ~~m. Outdoor entertainment shall not be permitted, except as otherwise licensed by the City.~~
- ~~n. All outdoor lighting shall be consistent with chapter 126 zoning, Article XIV supplementary district regulations, division 4 outdoor lighting.~~
- ~~o. All outdoor seating shall be portable and must be brought inside for storage whenever the City is under a Hurricane Warning.~~
- ~~p. This section does not authorize the construction, renovation or expansion of structures, unless authorized by City permits.~~
- ~~q. The restaurant owner is encouraged to post a notice in a prominent location requesting that the patrons refrain from smoking within the defined area for outdoor dining.~~

SECTION 5. Codification. This ordinance shall be deemed an amendment to the Sanibel Code of Ordinances and shall be codified in the Sanibel Code of Ordinances as such an amendment. The City Clerk is hereby authorized and directed to instruct as part of the codification that all section numbers amended by this Ordinance are updated and corrected throughout the Code of Ordinances in the event such section numbers are referenced.

SECTION 6. 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, the latter shall be severed, and the remainder shall have full force and effect and be liberally construed.

SECTION 7. Severability. 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 8. Effective Date. This ordinance shall become effective immediately upon adoption.


DULY PASSED AND ORDAINED by the Council of the City of Sanibel, Florida, this _____ day of _____, 2021.

AUTHENTICATION:

Holly D. Smith, Mayor

Anna Hicks, Acting City Clerk

APPROVED AS TO FORM: _____


John D. Agnew, City Attorney


Date

First Reading: September 13, 2021

Publication Notice: _____

Second Reading: _____

Vote of Council Members:

Smith _____
Johnson _____
Crater _____
Henshaw _____
Miller _____

Date filed with City Clerk: _____