

RESOLUTION NO. 21-08

**CITY OF SANIBEL
PLANNING COMMISSION**

A RESOLUTION RECOMMENDING CITY COUNCIL APPROVE AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 - RULES OF CONSTRUCTION AND DEFINITIONS

WHEREAS, a public hearing on a proposed ordinance to amend the definition of "formula retail" found in LDC Section 78-1, was legally and properly advertised and held on April 13, 2021, before the Sanibel Planning Commission; and

WHEREAS, the Planning Commission has heard and considered comments and recommendations from the Planning Department Staff and public; and

WHEREAS, the Planning Commission finds the proposed LDC amendment, detailed in the draft Ordinance attached hereto as Exhibit A, to be consistent with the Sanibel Plan; and

WHEREAS, the Planning Commission may recommend to the City Council amendments to regulations of the Land Development Code, in accordance with the following standards, as set forth in LDC Section 82-241:

- (1) The Planning Commission shall make reference to the Sanibel Plan to determine if the proposed amendment to the land development regulations is consistent with the intent and purpose of the Sanibel Plan.
- (2) The Planning Commission shall determine whether the proposed amendment:
 - a. Will encourage the most appropriate use of land and City resources, consistent with the public interest;
 - b. Will prevent the overcrowding of land and avoid the undue concentration of population;
 - c. Will adversely affect the development of adequate and efficient provisions for transportation, water, sewage, schools, parks, recreation facilities, and the environmental, social and economic resources of the city;
 - d. Will adversely affect the character and stability of the present and future land use and development of the community;
 - e. Will adversely affect orderly growth and development;

- f. Will preserve, promote, protect and improve the public health, safety and general welfare of the community; and
- g. Is consistent with the City Charter.

(3) If the Planning Commission determines that a proposed amendment is inconsistent with the Sanibel Plan or its intent and purpose, the Planning Commission may, nevertheless, recommend approval of the proposed amendment, along with a corresponding amendment to the Sanibel Plan, if the Planning Commission determines that the proposed amendment should be approved based upon a consideration of all of the factors specified in subsection (2) of this section.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission finds the proposed ordinance attached hereto as Exhibit A is consistent with the Sanibel Plan, meets the above referenced requirements, and recommends that the City Council adopt said ordinance, the title of which is provided in this resolution.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commissioner Storjohann and seconded by Vice Chair Pfeifer, and the vote was as follows:

Chair Grogman	<u>Yes</u>	Vice Chair Pfeifer	<u>Yes</u>
Commissioner DeBruce	<u>Yes</u>	Commissioner Kirchner	<u>Excused</u>
Commissioner Nichols	<u>Yes</u>	Commissioner Storjohann	<u>Yes</u>
Commissioner Symroski	<u>Yes</u>		

DULY PASSED AND ADOPTED this 13th day of April 2021.

SANIBEL PLANNING COMMISSION

Signed:  04/30/21
 Roger Grogman, Planning Commission Chair Date Signed

Approved As To Form:  4/29/21
 John Agnew, City Attorney Date Signed

Date Filed With City Manager: 4/30/21

CITY OF SANIBEL

(DRAFT ORDINANCE - FOR DISCUSSION ONLY)

AN ORDINANCE AMENDING THE SANIBEL CODE OF ORDINANCES, SUBPART B. LAND DEVELOPMENT CODE, CHAPTER 78 – GENERAL PROVISIONS; AMENDING SECTION 78-1 – RULES OF CONSTRUCTION AND DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Council desires to amend Section 78-1 of the Sanibel Code of Ordinances to ensure the definition of “formula retail store” is consistent with City Council’s intent;

WHEREAS, City Council, at its February 2, 2021 regularly scheduled meeting, directed Staff to prepare a draft Ordinance for discussion and review by the Land Development Code Review Subcommittee of the Planning Commission, then for submittal to the Planning Commission for review and recommendation to City Council; and

WHEREAS, the Land Development Code Review Subcommittee of the Planning Commission, at its March 9, 2021 meeting, analyzed the recommendation of Staff and approved proposed amendments to the definition of “formula retail store” for further consideration by the full Planning Commission; and

WHEREAS, the Planning Commission, at its April 13, 2021 regularly scheduled meeting, concurred with the Land Development Code Review Subcommittee recommendation and recommended City Council amend the definition of “formula retail store” as provided below;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Sanibel, Florida:

SECTION 1. The "Whereas" clauses above are true and correct and made a part hereof.

SECTION 2. Sanibel Code of Ordinances Subpart B. Land Development Code, Chapter 78 – General Provisions, Section 78-1 Rules of construction and definitions is hereby amended with ~~striketrough~~ language indicating deletions and underlined language indicating additions as follows:

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

- (a) For the purpose of the administration and enforcement of this Land Development Code, and unless otherwise stated in this Land Development Code, the following rules of construction shall apply to the text hereof:

- (1) In case of any difference of meaning or implication between the text of this Land Development Code and any other ordinance or any caption, illustration, map, chart, summary table or illustrative table, the text of this Land Development Code shall control, unless the context clearly indicates the contrary.
 - (2) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
 - (3) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected items, conditions, provisions or events shall apply;
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singularly or in any combination;
 - c. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.
 - (4) The word "includes" or "including" shall not limit a term to the specified examples, but is intended to extend the meaning of a term to all instances or circumstances of like kind or character.
- (b) Any word or phrase used in this Land Development Code which is not defined in this Land Development Code shall have the common dictionary meaning most appropriate to the context in which such word or phrase is used, except as follows:
- (1) Where any such word or phrase has an ascertainable meaning in comparable general state or federal law or regulations, it shall have the same meaning in this Land Development Code as it has in such comparable law or regulations;
 - (2) Where any such word or phrase is clearly used in a technical sense and has an ascertainable meaning in the field or profession in which it is used, it shall have the same meaning in this Land Development Code as it has in such field or profession.
- (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:

Accessory structure means a subordinate structure on the same lot with a principal structure. Where an accessory structure is attached to a principal structure in a substantial manner, by a wall or roof, such accessory structure shall be considered part of the principal structure. Subordinate structures shall also be considered as accessory structures if located in a public or private open body of water or public or private right-of-way immediately abutting the lot on which the principal structure is located, or if located in recreational open space, common open space, or areas of an approved subdivision designated for shared or common facilities.

Accessory use means a use naturally and normally incident and subordinate to the principal use of a structure or lot and located on the same lot as the principal use to which it relates, or located in a public or private open body of water or public or private right-of-way immediately abutting the lot upon which the principal use is located, or in common open space or recreational open space, or in an area of an approved subdivision designated for common or shared facilities.

Addition means an extension or increase in floor area, roof area or height of a building or structure.

Agriculture means the cultivation of the soil and the raising and harvesting of the products of the soil, including but not limited to: nursery, horticulture, forestry and beekeeping, whether for profit, private or personal use.

Alongshore means a directional reference meaning along or approximately parallel to the shoreline; alternatively, shoreparallel, or longshore.

Alteration means a change or rearrangement in the structural parts, the means of egress, or an enlargement, whether by extending on a side or by increasing in height, of a building or structure, or the change of use of a structure or land, or the movement of a structure from one location or position to another.

Angle of light obstruction means the angle establishing an inclined plane above which no part of a structure on a lot, regulated by such restriction, may extend. The angle shall be measured at the intersection of such inclined plane with a horizontal plane, at natural ground level along lot lines.

Aquaculture means the cultivation of the water-based ecosystem for the primary production and yield of food or other biotic products and the harvesting of such products.

Assisted living facility means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing, food service, and one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal services for fewer than four adults is within the meaning of this definition if it formally or informally advertises to or solicits the public for residents or referrals and holds itself out to the public to be an establishment which regularly provides such services.

Average occupancy rate means the average number of persons expected to inhabit a particular type and size of dwelling unit, when occupied, as determined pursuant to section 82-205.

Bar/lounge means the part of a restaurant devoted primarily to the retailing and on-premises drinking of alcoholic beverages. The selling of food and snacks may also be permitted.

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).

Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. Beach is alternatively termed the "shore".

Beach club means a membership establishment, that provides for private recreational and social activities on a beach in the City of Sanibel or in close proximity to Sanibel beaches to individuals that are not residing overnight at the beachfront property on the day of or the day

after the overnight stay. Memberships of any time period, including a day membership or fee for daily use, are included within this definition. The use of lawfully existing and specifically approved common areas of residential developments, which extend into the Gulf Beach Zone, by the residents of that residential development is not a beach club. The use of lawfully existing private beach access easements by the residents of properties with existing rights to use that easement is not a beach club.

Beach equipment means any manmade, nonmechanized or nonmotorized furniture, apparatus or paraphernalia designed, manufactured, intended for use or actually used on the beach or in the adjacent tidal waters, and which when put to its intended use is compatible with the natural functions of the beach and dune system. Examples include: Lightweight chairs and lounges, umbrellas, sailing vessels up to 16 feet in length, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables and bicycles.

Buffer means a strip of land containing natural woodlands, earth mounds, or other planted screening material, and separating one kind of land use from another or separating an existing or proposed development or portion thereof from any other use or development or portion thereof.

Buildback means the construction that replaces or restores a building, which has been destroyed or substantially damaged by a natural disaster, in the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building and in the "footprint" of the pre-disaster building. For the purpose of applying buildback regulations, when the footprint of a substantially damaged nonconforming structure is moved, pursuant to section 126-293, in a manner that reduces the pre-disaster building's encroachment into the gulf beach zone, the reconstruction of that substantially damaged building is also considered buildback.

Building means a structure which is designed, built or occupied as a shelter or roofed enclosure for persons, animals, property; or a shelter, located on a foundation or other support and used for residential, business, mercantile, storage, commercial, professional, industrial, institutional, assembly, educational or recreational purposes.

Coastal construction control line means the line landward of the mean high water along the Gulf of Mexico identified by monuments placed by the state department of environmental protection (and generally depicted on a series of aerial photographs on file at city hall); in addition, a line 50 feet landward of mean high water for those coastal locations on San Carlos Bay, Pine Island Sound, and Blind Pass between Lighthouse Point (Punta Ybel) west to Blind Pass, as shown on the ecological zones maps adopted as part of the Sanibel Plan.

Commercial unit means any commercial use under separate ownership or lease.

Common open space means a parcel or parcels of land or an area of water, or a combination of land and water, within a site designed and intended for the use or enjoyment of residents and owners of the development or community on the site. Common open space may contain such complimentary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents and owners of the development, as permitted.

Common or party wall means a vertical wall or horizontal separation forming a structural part of two buildings or of two separately owned or rented units in the same building.

Common ownership means ownership of two or more contiguous parcels of real property by the same person or persons.

Completely enclosed building means a building having a complete, permanent roof and continuous walls on all sides, either party walls or exterior walls, including any customary windows and doors.

Conditional use means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use, as contained in the zoning ordinance, and only upon the issuance of an authorization therefor by the planning commission.

Convenience store means a business that is engaged primarily in the retail sale of groceries or motor fuels or special fuels and which offers food services to the public. Businesses providing motor fuel or special fuel to the public which also offer groceries or food service are included in the definition of a convenience store.

Corner lot means a lot at the junction of, and having frontage on, two or more intersecting streets.

Davits (or boat lifts) means structures used for raising and lowering boats or other watercraft out of and into the water.

Delicatessen store: See food market.

Developed area means the area of any lot on which is located any structure, driveway, parking area, loading area, impermeable surface, any surface covered or surfaced with gravel, stone, marble chips, broken or pulverized rock, shells, or other similar material (except border material up to 200 square feet), walkway, recreational facility or utility installation (except for wastewater absorption fields), or which is used to conduct the principal use to which such lot is put, or which is enclosed by any structure.

Developer means any person, including a governmental agency, undertaking any development.

Development means the carrying out of any building or mining operation or the making of any material change in the use or appearance of any structure or land and the dividing of land into two or more parcels and as further described in section 78-9.

Dock means a pier, wharf, or landing place for watercraft; any similar structure built out over the water. "Dock" includes supporting structures such as pillars, pilings or mooring pilings.

Drug store or pharmacy means an establishment engaged in the retail sale of prescription drugs and nonprescription medicines, cosmetics and related supplies, where the majority of retail sales are prescription drugs and nonprescription medicines.

Dune means a mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location. It encompasses those ecological zones characterized by the presence of dune vegetation, or suitable for dune vegetation. As to areas restored or renourished pursuant to a permit issued by the city or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation. In the absence of a discernible dune structure, the seaward boundary of a dune will be deemed to be the line of permanent vegetation.

Dune vegetation, or common native dune vegetation means vegetation which, if left undisturbed by manmade forces, is typically to be found on a dune. A list containing examples of common native dune vegetation is part of the city vegetation standards, adopted pursuant to chapter 122, article III and kept on file with the city manager.

Duplex means any structure which contains only two dwelling units.

Dwelling unit means any structure or portion thereof which is designed for or used for residential purposes as a self-sufficient or individual unit by one family or other social association of persons.

Eating place means any business engaged in the on-site preparation and sale of food and beverages for consumption either on or off the premises. Vending machines are not classified as eating places. Convenience stores and grocery stores are not classified as eating places, except that the component of the convenience store or grocery store that is engaged in the on-site preparation and sale of food and beverages for consumption either on or off the premises is an eating place if it operates under a trade name that is different than that of the convenience store or grocery store.

Emergency beach shoreline erosion control development means the following development activities, warranted to provide temporary relief in the event of a shoreline emergency arising from the impact of a storm or other phenomena which results in the need for immediate protection of damaged or threatened structures or to address critical coastal erosion problems, are emergency beach shoreline erosion control development:

- (1) Construction of temporary sandbag structures;
- (2) Placement of sand fill material for repair of dunes or the shoreline, including the filling of blowouts and other low areas of the beach system.

Erosion control structure means a structure placed on the bank in such a way as to absorb the energy of incoming waves.

Exotic species of plant means any species of plant which is not a native plant.

Family means one natural person, or a group of two or more natural persons, living together and interrelated by bonds of blood, marriage, or legal adoption, plus no more than three additional, unrelated, natural persons, occupying the whole or part of a dwelling unit as a separate housekeeping unit. A family also includes any foster children placed in a lawful foster family home. For each foster child, except the first one, who is a member of a family, the number of unrelated natural persons who may be members of such family shall be reduced by one. The persons constituting a family may also include domestic servants and temporary gratuitous guests. "Temporary gratuitous guests," as used in this definition, shall refer to natural persons occasionally visiting such housekeeping unit for a short period of time not to exceed 30 days within a 90-day period.

Fast-food restaurant means an eating place primarily engaged in the sale of preprepared or quickly prepared food and beverages usually in disposable containers and wrappers, selected by patrons from a limited line of specialized items such as hamburgers, chicken, pizza, tacos, hot dogs, ice cream or yogurt, for example, for consumption either on or off premises, in a facility in which a major portion of the sales to patrons is at a stand-up type counter.

Fill means any natural or artificial material intentionally placed on real property or in open bodies of water, the placement of which results in altering the existing draining pattern, ground contours, or grade elevations of the real property or the bottom elevation of the open body or water. Fill includes, but is not limited to, dirt, sand, shell, stone, mulch, concrete, rubble, plastics, wood chips, vegetation debris, or similar materials, except that normal and incidental amounts of mulch, compost, or similar organic materials utilized strictly in association with existing landscaping or the installation of individual plants shall not be considered fill, provided that the existing grade elevations and stormwater drainage improvements are not otherwise altered, and provided that these organic materials do not violate any other standards or requirements of this Land Development Code. The foregoing exception shall not apply to soil or other materials placed within planter structures or used to create raised landscape bed areas, which may be considered both fill and developed area as defined herein. See also the definition for "filling" in chapter 126, article IX for the Interior Wetlands Conservation District.

Five-year storm means a rainfall of 2.8 inches of rain occurring within a one-hour period.

Floor area means for commercial structures all the area of the floor surfaces in a structure, under roof, exclusive of overhangs and walkways, measured to the inside of the exterior walls, plus any area within a screened enclosure utilized for commercial activity, excluding the area contained below the lowest floor, as defined in section 94-1, and any screened area used solely as an entryway or corridor; plus any area devoted to a use which need not be conducted within a completely enclosed building, as enumerated in section 126-1022.

Floor area ratio (FAR) means for commercial structures the ratio of total permitted floor area on the parcel to the total area of the commercially designated portion of the parcel.

Food market means a business establishment containing less than 5,000 square feet of commercial floor area, primarily engaged in retailing a limited line of goods, household products, foods and beverages that generally includes milk, bread, sodas and snacks and may include a delicatessen-type component. This use does not include the retail sale of motor fuels at fuel pumps.

Footprint means the land area covered by the foundation and any appurtenances of any building or structure, excluding roof overhangs.

Formula restaurant means an eating place, whether a principal use or accessory use, that is one of a chain or group of three or more establishments and which satisfies at least two of the following three descriptions:

- (1) It has the same or similar name, tradename, or trademark as others in the chain or group;
- (2) It offers either of the following characteristics in a style which is distinctive to and standardized among the chain or group:
 - a. Exterior design or architecture;
 - b. Uniforms, except that a personal identification or simple logo will not render the clothing a uniform;
- (3) It is a fast-food restaurant.

Formula retail store means a type of retail sales activity or retail sales establishment, with three or more store locations, that is ~~required by contractual or other arrangement to~~ maintains any of the following, which are distinctive to, or standardized among, some or all other locations:

~~Standardized a~~ Name of business;

~~Standardized b~~ Business signage;

~~Standardized c~~ Exterior design or architecture;

~~Standardized (formula) a~~ Array of merchandise;

Trademark; or Logo;

Uniforms.

For the purposes of the city's commercial land use regulations, formula retail stores do not include establishments providing professional services, including, but not limited to, real estate offices, medical offices, dental offices, offices of health practitioners, banks, savings and loan associations, mortgage and securities brokers, accounting services, appraisers, cable television services, insurance agents, and interior decorators.

Formula retail stores do not include grocery stores, hardware stores, gasoline service stations and restaurants; however, see the definition of formula restaurant.

Furthermore, retail stores that have more than one location, but that had their original location in the city, are not defined as formula retail stores. The second location of a retail store, that had its original location in the city, is not defined as a formula retail store.

Foster child means any dependent child placed in a home by a state agency or by a state-licensed private child-placing agency.

Foster family home means a dwelling owned or rented by, and occupied by, parents licensed by the state to care for a maximum of three foster children in such dwelling; provided, however, that up to five foster children are permitted in one foster family home when such foster children are all related to each other by blood.

Fractional fee means a tenancy in common interest in a dwelling unit created or held by two or more persons, partnerships, corporations, or joint ventures (and similar entities) wherein the joint tenants have formally arranged (by written agreement) for the preferred or exclusive use by one or more of the tenants in common during specific periods of time. A form of timeshare estate.

Front lot line means the property line of a lot coinciding with the right-of-way line of a street or other way, public or private, giving access to such lot.

Frontal dune means the first natural or manmade mound or bluff of sand which is located landward of the beach.

Grocery store means a business establishment, containing more than 5,000 square feet of commercial floor area, primarily engaged in retailing a general line of food and household products, including canned, packaged and frozen foods, fresh fruits and vegetables, and fresh and prepared meats, fish and poultry.

Habitable area means the floor area and overall volume of a building that is on or above the lowest floor of the building, as defined in LDC section 94-1. For the purposes of the city's "buildback policy", habitable area includes all appurtenances to the building, such as decks, stairs, elevators and chimneys that are located above the lowest floor.

Home occupation means any business or other nonresidential activity conducted and pursued within a dwelling unit, which is clearly and absolutely incidental and subordinate to the use of the dwelling unit for residential purposes and which is conducted or pursued by the occupants thereof.

Impermeable surface means any surface which does not allow, or only minimally allows, the penetration of water.

Institutional use means a use by a public or nonprofit, quasipublic or private institution for educational, religious, charitable, medical, scientific research or civic purposes.

Land means the earth, water, and air above, below or on the surface, including any improvements or structures customarily regarded as land or real property.

Line of permanent vegetation means the location closest to the shore containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

Loading space means an off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of commercial vehicles while loading or unloading merchandise or material.

Local drainage areas means low areas of less than two acres occurring in the mid-island ridge, altered land, or gulf beach ridge ecological zones which temporarily pond stormwater runoff and as are designated on the ecological zones maps adopted as part of the Sanibel Plan.

Lot means a parcel of land designated in a recorded deed or in an approved subdivision, which meets the minimum requirements for development as specified in this Land Development Code; or a parcel of land approved for separate and individual development under a development permit issued by the city; or a parcel or contiguous parcels of land occupied by an individual use or coordinated combination of uses, including principal structures and associated accessory structures, yards, open spaces, buffer areas, accessways, parking areas and loading areas.

Lot area means the total area included within the lot lines, excluding roads, rights-of-way, and open bodies of water. Where the property line extends to the center of a street and the street right-of-way width has not been determined, the area of a lot shall exclude any planned or proposed right-of-way as shown on either a subdivision map, or official map of the state, the county or the city, or 25 feet from the centerline of the street, whichever is greater.

Mobile home means a structure transportable in one or more sections, which structure is eight body feet (2.4 meters) or more in width and over 35 feet in length, and which structure is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

Mobile home park means an area specifically designated as mobile home park on the zoning map of the city and any lawfully existing mobile home park.

Multifamily dwelling means a structure which contains three or more dwelling units.

Native plants means any species of plant identified on a list of "native plants" adopted the city council by resolution.

Natural disaster means a storm, hurricane, tsunami, flood, fire or other cataclysmic event resulting in damage to property. For the purpose of applying buildback regulations, human-caused cataclysmic events, such as bombing or arson, are considered natural disasters. However, bombing or arson perpetrated by the property owner or an agent for the property owner is not considered a natural disaster. Beach erosion is not a natural disaster.

Neighborhood means a discernible geographical land area or location with an established permitted and surrounding land use pattern in which the development scheme has resulted in the erection of structures which are similar in size, exterior design and placement on the parcel whether such development took place in stages or all at one time. A neighborhood is also a development where some of the land area is in common ownership, which also has a discernible scheme or where the structures are of similar size and similar setbacks from the road, or there is an evident unity of development. A neighborhood is often a platted area, but does not have to be. (A map of "Established Neighborhoods" is provided with the city's application forms for a single-family or duplex dwelling unit.)

Noncompeting exotic species of plant means any species of plant which is not a native plant, other than Australian pine (*Casuarina*), Brazilian pepper (*Schinus terebinthifolius*), melaleuca (*Melaleuca quinquenervia*), kudzu (*Pueraria lobata*), and air yam (*Dioscorea bulbifera*).

Nonconforming lot means a parcel of land which does not conform to the minimum requirements for a lot in the zone district in which it is located or for the use to which it is put, including required width, depth, lot area, etc.

Nonconforming structure means a lawfully-constructed building or structure which does not conform to the minimum or maximum requirements for such structure in the zone district in which it is located, including any structure located within a required setback or on a lot or parcel which is developed in excess of permitted impermeable surface coverage, developed area, residential density, or commercial floor area.

Nonconforming use means a lawfully-established use located in a zone district restricted against such use.

Off-site means located outside the property lines of the lot in question but within the property (of which the lot is a part) which is the subject of the subdivision or development application, or a contiguous portion of a road or right-of-way.

Off-tract means not located on the property which is the subject of the subdivision or development application nor on a contiguous portion of a road or right-of-way.

On-site means located on the lot in question.

On-tract means located on the property which is the subject of the subdivision or development application or a contiguous portion of a road or right-of-way.

Open body of water means any natural or 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, cuts, gulfs and retention ponds.

Open space means any parcel or area of land or water, essentially unimproved and set aside, dedicated, designated or received for public or private use.

Outdoor storage means the storage or display, outside of a completely enclosed building, of merchandise offered for sale or rent as a permitted use or of equipment, machinery, and materials used in the ordinary course of a permitted use.

Owner means any individual, firm, association, syndicate, copartnership or corporation having sufficient proprietary interest in the land to commence and maintain proceedings under the Land Development Code.

Parcel of land means any quantity of land capable of being described with such definiteness that its location and boundaries have been established.

Parking area means an open area, other than a street or other public way, used for the parking of motor vehicles and available for use as a service or privilege to guests, licensees, clients, customers, suppliers or residents. It shall include driveways, turn around areas, and access drives located within the lot area.

Parking space means an off-street space for the parking of one motor vehicle.

Plan means the Comprehensive Land Use Plan, City of Sanibel known as the Sanibel Plan.

Plat means a map of a subdivision.

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.

Premises means a lot or parcel of ground including any buildings or structures thereon.

Primary dune means a significant dune which has sufficient alongshore continuity to offer protective value to upland property. It may be separated from the frontal dune by an interdunal trough; however, the primary dune may be considered the frontal dune if located immediately landward of the beach.

Principal structure means a structure on a lot or parcel which is arranged, adapted or designed for the predominant or primary use for which the lot or parcel is or may be used.

Principal use means the primary or predominant use of the premises.

Professional studio means a commercial use involving only the teaching, study or practice of fine arts, including drawing, photography, painting, sculpture, ceramics, literature, music, drama, dance, and the like, including any accessory retail sales.

Public facility means any structure, site alteration, or other development undertaken or maintained by the city or other governmental agency on a publicly owned right-of-way, easement, beach, or other publicly owned land.

Recreational open space means the area which remains after the space devoted to parking areas, drives, buildings, and utility, service and maintenance areas and structures, has been subtracted from the gross land area of the parcel being developed.

Recreational vehicle means the same as provided in F.S. § 320.01. However, the terms "temporary living quarters" and "seasonal or temporary living quarters" as used in F.S. § 320.01 shall, in reference to recreational vehicles placed in recreational vehicle parks, relate to the period of time the recreational vehicle is occupied as a living quarter during each year and not to the period of time it is located in the recreational vehicle park.

Rehabilitation center means a facility providing professional care, nonresident only, for those requiring therapy, counseling, or other rehabilitative services related to drug abuse, alcohol abuse, social disorders, physical disabilities, mental retardation or similar problems.

Rental, rent, rented or renting includes the arranging of, contracting or advertising for, or the making available of, the use of a dwelling unit for a finite period of time for any legal consideration. The existence of a financial, business, barter, or employee/employer relationship between the legal or equitable owner of a dwelling unit and temporary occupant(s) constitutes prima facie evidence of a rental regardless of the legal consideration. Rental does not include the making available of the use of a dwelling unit to family members, friends or house-sitters unless any sort of legal consideration is provided to the owner or usual occupant.

Residential child care facility means any state-licensed facility providing full-time care for dependent children under 18 years of age away from the homes of their parents or relatives. Buildings are owned or operated by the person, agency or organization holding the state license. The house parents may change periodically.

Resort housing means structures containing dwelling units or portions thereof rented to persons for periods of less than four consecutive weeks.

Restaurant, general means an eating place which prepares food which is ordered from a menu, and served by a waiter or waitress, or selected in a cafeteria or from a buffet with food, and primarily consumed on the premises, and which contains permanent seating facilities and counters and tables, adequate to accommodate the customers served. Not a fast-food restaurant, which is separately defined.

Resubdivision means the further subdivision or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or the alteration of any road or the establishment of any new road within any subdivision previously made and approved or recorded according to law; but not including a conveyance to combine existing lots by deed or other instrument.

Revetment means a gradually sloping structure built of stone, interlocking blocks or other materials, that is designed to dissipate wave energy and stabilize the shoreline.

Rip-rap means a layer, facing or protective mound or wall of rubble randomly placed to absorb wave energy and to break the force of waves in order to protect the shore or embankment from erosion, scour or sloughing; the material used for this purpose.

Road frontage means the distance along the property line, as shown on a recent survey, at the right-of-way of the street providing primary access and exposure to the existing or proposed development.

Rubble means rough, irregular fragments of rocks, boulders or stones, or fragments of clean concrete with no exposed reinforcing rods or similar protrusions.

Sanibel Plan means the comprehensive plan of the city adopted pursuant to F.S. Ch. 163, pt. II, originally adopted July 19, 1976, pursuant to Ordinance No. 76-21, extensively revised November 27, 1985, Ordinance No. GA-85-04, extensively revised February 8, 1989, Ordinance No. 89-04, and also amended September 3, 1996, Ordinance No. 96-06, as such comprehensive plan may be amended from time to time. Wherever the terms "comprehensive land use plan", "comprehensive plan", "land use plan", or similar combinations are used in this Land Development Code, those terms shall have the same meaning as the "Sanibel Plan".

Seawall means a vertical wall built of concrete, timber or steel, which acts as a retaining wall, holding the material behind it in place, while resisting wave forces and erosion.

Setback or (*setback line*) means an area defined by a lot line, street centerline, mean high water line of an open body of water, or right-of-way line and a line on a lot parallel to, and a specified distance from, such lot line, street centerline, mean high water line, or right-of-way line, in which area no structure may be located and into which no part of any structure shall project, unless specifically permitted in this Land Development Code. When an accessory structure, such as a dock or boat davit, is permitted to be located adjacent to the lot on which the principal structure exists, setbacks shall be measured from the applicable lot line, street line, mean high water line or right-of way line, as extended.

Single-family dwelling means a structure containing only one dwelling unit, except that for the purposes of the permitted uses sections of this Code, a structure containing only one dwelling unit is not a single-family dwelling, when that unit is divided into timeshare estates.

Single-family timeshare dwelling means a structure containing only one dwelling unit and that unit is divided into time share estates.

Site alteration means any material change in the use or appearance of land including clearing, the removal or destruction of vegetation, digging, dredging, filling, grading or other unnatural disturbance of the topography of any land.

Site plan means a plan of a lot or subdivision on which is shown topography, location of all structures, roads, rights-of-way, boundaries, all essential dimensions and bearings, and any other information deemed necessary by the planning commission in unusual or special cases.

Social service home or (*halfway house*) means a facility providing professional care, resident or nonresident, for those requiring therapy, counseling, or other rehabilitative services related to drug abuse, alcohol abuse, social disorders, physical disabilities, mental retardation or similar problems.

Story means that portion of a structure included between the surface of a floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

Street or (*road*) means any public or private right-of-way commonly used, or intended for use, by the public for motor vehicle movement and which is approved for purposes of issuing building permits. For the purpose of this Land Development Code, streets shall be classified as follows:

(1) *(Rural) minor arterial roads:*

- a. Periwinkle Way.
- b. Sanibel-Captiva Road.
- c. Palm Ridge Road.
- d. Causeway Road.
- e. Tarpon Bay Road.

(2) *(Rural) collector roads:*

- a. Lindgren Boulevard.
- b. Bailey Road.
- c. Donax Street.
- d. Dixie Beach Boulevard.
- e. Casa Ybel Road.
- f. Gulf Drive (East, Middle and West).
- g. Rabbit Road.
- h. Wulfert Road.
- i. Bowmans Beach Road.

(3) *(Rural) local roads:* All other streets not listed in this definition.

Structure means anything constructed, installed or portable, the use of which requires a location on land. It includes a moveable structure while on land which can be used for housing, business, commercial, agricultural, or office purposes, whether temporarily or permanently. Structure also includes, but is not limited to, fences, tiki or chickee huts and the like, swimming pools, poles, pipelines, transmission lines, game courts and tracks.

Subdivision means the division of land into two or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land, including establishment of new streets and alleys, resubdivisions, and, when appropriate to the context, the process of subdividing or the lands or areas subdivided. The division of a building into condominium, cooperative or timeshare units shall constitute a subdivision.

Temporary use means a use intended for a limited duration of time to enable the temporary occupancy of an existing or temporary structure to conduct a use not prohibited by the Land Development Code and consistent with chapter 126 Zoning, article III, Temporary Use Permits.

Timeshare estate means any interest in a dwelling unit, including fractional fee ownership, under which the exclusive right of use, ownership, possession or occupancy of a unit circulates among the various owners of timeshare estates in such unit in accordance with a fixed time schedule on a periodically reoccurring basis for a period of timer established by such schedule.

Timeshare period means that period of time when a purchaser of a timesharing plan is entitled to the possession and use of the accommodations or facilities, or both, of a timesharing plan.

Timeshare unit means a dwelling unit in which timeshare estates have been created or any accommodation or facility (as defined in the state Timeshare Act, F.S. § 721.01 et seq.) of a timesharing plan which is divided into timeshare periods.

Use means the specific purpose for which land or building is designed, arranged, intended, or for which it is or may be occupied or maintained.

Vacation timesharing plan means any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, use agreement, security, or by any other means, whereby a purchaser in exchange for advanced consideration receives a right to use a timeshare estate. Additionally and alternatively to the foregoing, vacation timesharing plan includes "timesharing plan" which is any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser in exchange for consideration, receives a right to use accommodations or facilities, or both, for a specific period of time of a full year or less during any given year, but not necessarily for consecutive years, and which, as pertains to accommodations, extends for a period of more than three years.

Variety or department store means a retail establishment that carries a general line of merchandise arranged by separate sections or departments. The departments and functions are integrated under single management and unified ownership.

Wrack means natural organic marine material cast on the shore, including seaweed and other vegetative and animal debris, but excluding manmade material.

Yards means:

- (1) *Front yard* means an area, unoccupied, except by structures specifically permitted, extending across the full width of a lot and lying between the abutting street line and the nearest part of the principal structure on the lot.
- (2) *Side yard* means an area, unoccupied except by structures specifically permitted, extending from the front yard to the rear yard of a lot and lying between the side lot line and the nearest part of the principal structure on the lot.
- (3) *Rear yard* means an area, unoccupied except by structures specifically permitted, extending across the full width of a lot and lying between the rear lot line and the nearest part of the principal structure on the lot.

Zone or (district) or (zone district) means any area of the city designated by this Land Development Code or on the maps adopted pursuant to section 126-242, in which the development or use of land is controlled by a specified list of permitted uses or set of use and development regulations.

SECTION 3. 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 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, the latter shall be severed, and the remainder shall have full force and effect and be liberally construed.

SECTION 5. 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 6. Effective Date. This ordinance shall become effective
