

**CITY OF SANIBEL  
ORDINANCE 22-012**

**AN EMERGENCY ORDINANCE PERTAINING TO CHAPTER 126 – ZONING, ARTICLE III, TEMPORARY USE PERMITS; RELATING TO EXPANDING AUTHORIZED ISSUANCE OF TEMPORARY USE PERMITS TO FACILITATE USE OF TEMPORARY COMMERCIAL STRUCTURES IN CONNECTION WITH A STATE OR FEDERALLY-DECLARED DISASTER; AMENDING SECTION 126-61 - PURPOSE AND SCOPE; AMENDING SECTION 126-62 – APPLICABILITY; AMENDING 126-64 – SPECIAL CONDITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERANCE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, on September 28, 2022, Hurricane Ian made landfall on the City of Sanibel as a strong Category 4 hurricane, causing catastrophic property damage; and

**WHEREAS**, damages directly impacting the City of Sanibel include widespread destruction and major damage to private property that previously served as locations for Sanibel businesses; and

**WHEREAS**, the City of Sanibel remains under a federally-declared, state-declared, and locally-declared state of emergency related to Hurricane Ian's destruction; and

**WHEREAS**, the City Council desires to amend the Code of Ordinances related to the use of temporary commercial structures to facilitate the recovery of Sanibel businesses whose commercial structures are destroyed or otherwise rendered damaged beyond practical use by a hurricane or other state or federally-declared disaster; and

**WHEREAS**, Section 166.041(3)(b), Florida Statutes, provides that the governing body of a municipality may, by a two-thirds vote, enact an emergency ordinance without complying with the typical requirements for two readings and newspaper publication of hearing; and

**WHEREAS**, the City Council finds this ordinance to be necessary and appropriate for emergency consideration, based upon the unprecedented damage from Hurricane Ian and the lack of viable alternative commercial structures on Sanibel for Sanibel businesses trying to repair or rebuild their commercial business.

**NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SANIBEL, FLORIDA:**

**SECTION 1.** That Chapter 126, Article III, Division 5 is hereby amended to read as follows, with additions indicated by underlining and deletions indicated by ~~strikethrough~~:

**Chapter 126 – ZONING**

...

**ARTICLE III. – TEMPORARY USE PERMITS**

**Sec. 126-61. Purpose and scope.**

- (a) Recognizing, in certain instances, the necessity of certain temporary uses, the planning commission, after application and hearing as for long-form development permit pursuant to the terms of chapter 82, may authorize temporary use permits in accordance with the requirements set forth in this Land Development Code.
- (b) In considering the issuance of a temporary use permit, the planning commission may impose reasonable standards and conditions as necessary to minimize the impact of the use authorized by such permit on

surrounding lands and uses and to implement the goals and objectives of the Sanibel Plan and this Land Development Code.

(c) Recognizing, during a state or federally-declared disaster or within 30 days thereafter, the necessity of expedited approval of certain temporary uses, temporary use permits to conduct a permitted or conditional use within a temporary structure may be authorized by the City Manager in accordance with requirements of this Article.

### **Sec. 126-62. Applicability.**

It is the intent of this article to enable ~~the planning commission to consider~~ the planning commission to consider applications for temporary use permits for the following:

- (1) Temporary use and occupancy of an approved dwelling unit or temporary structure as a sales or construction office for an approved residential development subject to the special conditions defined by subsection 126-64(1).
- (2) Temporary use and occupancy of a temporary structure necessary to conduct a permitted or conditional use interrupted by a natural disaster and subject to the special conditions defined by subsection 126-64(2). Following a natural disaster, the City Manager or designee may authorize such temporary use permits during a state or federally-declared State of Emergency or within 30 days thereafter.
- (3) Temporary use for the storage of heavy equipment which provide a service to city residents and businesses subject to the special conditions defined by subsection 126-64(3). Following a natural disaster, the City Manager or designee may authorize such temporary use permits during a state or federally declared State of Emergency or within 30 days thereafter.
- (4) Temporary use and occupancy of a temporary structure necessary to conduct an approved permitted or conditional use enabled by a commercial zoning district and consistent with site and related plans approved for the construction of permanent principal or accessory structures, whether the permanent structures are proposed on the same site as the proposed temporary structure or on another site.

In the event that the application for a temporary structure is not associated with a permanent structure, site and related plans for a permanent structures are not required.

Temporary use and occupancy of a temporary structure necessary to conduct an approved permitted or conditional use enabled by a commercial zoning district are subject to the special conditions defined by subsection 126-64(4).

### **Sec. 126-63. General requirements.**

Temporary use permits may only be issued on the following conditions:

- (1) There is a demonstrated need for establishment of the proposed temporary use within the city.
- (2) The proposed temporary use is authorized by section 126-62, applicability, and will be in compliance with section 126-64, special conditions.
- (3) If the proposed temporary use is within the class of conditional uses identified in chapter 126, articles II and IV, the proposed use complies with all standards and requirements for such conditional use.
- (4) Any temporary structures to be used in conjunction with the temporary use comply in all respects with the city building code.
- (5) Temporary use permits may be issued for a period not to exceed one year and, on further application to the planning commission for review, such permits may be extended, with or without additional standards and conditions required, for additional one-year periods, for good cause shown.
- (6) The creation of a land use by temporary use permit is hereby declared to be a limited and temporary permit vesting no rights in the owner of land or operator of the temporary use to conduct the use in any manner other than specifically authorized by such permit, and all rights incident to such use shall terminate upon the expiration of the temporary use permit.

- (7) Upon expiration of a temporary use permit, the use shall abate, any structure erected in connection therewith shall be removed, and, as far as practicable, the site shall be returned to its original condition or converted to a permitted use in compliance with all of the requirements of this Land Development Code and the Sanibel Plan.
- (8) Where deemed appropriate, the planning commission may require such guarantees as it deems sufficient to cause the abatement or removal of the use and restoration of the site.

**Sec. 126-64. Special conditions.**

In addition to compliance with the general requirements set forth in section 126-62, each of the following temporary uses may only be permitted in compliance with the special conditions set forth in this Land Development Code:

- (1) By temporary use permit, the planning commission may authorize the use and occupancy of a dwelling unit, upon a temporary certificate of occupancy, as a sales office, to be staffed on either a full- or part-time basis by persons engaged exclusively in the promotion and original sale of condominium units, dwelling units, lots, or vacation timesharing plans within an approved residential development, provided all of the following requirements are met:
  - a. The sales office may only be used for the original sale of condominium units, dwelling units, vacation timesharing plans, and undeveloped lots which were approved under the same development permit as the unit or lot for which the temporary use permit is approved.
  - b. The dwelling unit used for the sales office must be of substantially the same quality of construction as all other dwelling units to be sold or developed within the project.
  - c. A sales office in a model home shall provide a minimum of one parking space for each employee and a minimum of four additional spaces, with a maximum of ten and a minimum of six total spaces, on the same lot or parcel as the sales office. The sales office use may exceed the limitations of this Land Development Code with regard to vegetation clearance and may have less than any minimum required recreational open space in order to provide the parking spaces required in this Land Development Code, as long as provision of the required parking spaces will not require the clearing of native vegetation.
  - d. A sales office in a model home shall be used as such only during the hours of 12:00 noon to 6:00 p.m. on Sundays and 9:00 a.m. to 6:00 p.m. on all other days.
  - e. A sales office in a model home may not be used for any activity which interferes with the normal, quiet, and comfortable use and enjoyment of adjacent dwelling units. All activities shall be conducted inside the model home so as not to be noticeable from the outside, except for permitted street graphics.
  - f. A sales office in a model home shall not be used for:
    1. Rentals;
    2. Promoting resales of condominium units, timeshare estates, dwelling units, or lots, other than those sold to other developers for the purpose of constructing and selling dwelling units;
    3. The promotion or sale of any condominium unit, dwelling unit, vacation timesharing plan which was not approved under the same development permit as the lot or unit used for the sales office; or
    4. Any other commercial activity not specifically authorized by this subsection.
  - g. A model home used as a sales office shall be designed and constructed as a dwelling unit, with no structural or site alterations except as required in this section, other than for the incidental convenience and safety of visitors, such as railings or walkways, to accommodate the use as a sales office.

- h. No sales office in a model home shall be permitted within unreasonable proximity to an existing or potential single-family dwelling unless the lot on which such existing or potential single-family dwelling is or will be located is under common ownership with the site of the model home at the time the original permit is issued and at the time a certificate of occupancy is issued.
- i. No temporary use permit for a sales office in a model home may be issued or renewed so as to extend past six years from the date the development permit was issued for the development in which such model home is located.
- j. No sales office in a model home may be permitted within a straight-line distance of 2,500 feet of any lot or parcel for which a temporary use permit for another sales office in a model home in the same development has been approved and remains valid.

(2) A temporary use permit may be granted for the erection and maintenance of a temporary structure for the conduct of a permitted or conditional use when such permitted use has been interrupted by reason of storm, fire or other casualty. Such temporary use permit shall expire at the time the necessary repair or reconstruction of the permitted use has been accomplished or within one year, whichever occurs first. Such a temporary use permit may be issued only in compliance with the following requirements:

- a. The location of the temporary structure must be in an area of least visual impact, as approved by the planning commission, taking into consideration its size and type of construction, so as not to encroach within ten feet of any shared property line, unless otherwise waived by the approving authority due to site specific constraints.
- b. The structure, and its location on the site, shall be sufficiently designed and constructed to provide adequate shelter and safety for members of the public who may come upon the premises, adequate parking, and safe and efficient ingress and egress.
- c. All building code requirements must be met for any permitted temporary structure.
- d. If a mobile home or similar portable structure is authorized for the temporary use, such mobile home or portable structure must:
  1. Be tied down in the manner prescribed under state law for residential uses of mobile homes; and
  2. Be placed on the site in conformance with the requirements of chapter 94, except for the requirement to elevate at or above the base flood elevation; and
  3. Have all areas under the mobile home or portable structure screened from view on all sides by means of vegetation or another method approved by the planning commission.
- e. If a temporary commercial structure is authorized for temporary use, such structure must:
  1. Be located on a property within the Commercial District, Special Use District, or where nonconforming commercial use is recognized as lawfully-existing by City of Sanibel prior to the disaster;
  2. Be associated with a business with an existing Business Tax Receipt issued by the city prior to the disaster to legally operate a commercial use within the City of Sanibel or provide State of Florida license when local licensing is pre-empted by Florida Statutes;
  3. Be no greater than the pre-disaster commercial floor area;
  4. Be placed on the site in conformance with the requirements of chapter 94, except for the requirement to elevate at or above the base flood elevation; and
  5. Be located within an existing approved developed area; and
  6. Demonstrate its operation will not result in adverse impacts to adjacent residential uses.
  7. Temporary commercial uses may operate outside of a fully enclosed structure. However, upon any documented grievance from the public or the city's own observation of

inappropriate use, the city manager or their designee may revoke authorization for temporary use.

- (3) A temporary use permit may be issued for the storage of heavy equipment such as, but not limited to, dump trucks, grading machines, bulldozers, backhoes, construction trailers, brush chippers, boom trucks and the like, which are not permitted to be parked in any zoning district of the city in connection with permitted uses, provided all of the following requirements are met:
  - a. The location of the temporary use shall be in an area that, because of its particular characteristics, will cause no or limited impact on the use and enjoyment of adjoining properties.
  - b. The equipment so stored must be of a type which provides a service to city residents and businesses.
  - c. The usual means of access to the parcel must be such that the movement of the heavy equipment to and from the site will not adversely affect residential uses through the generation of traffic, noise, light or other nuisance.
  - d. The lot or parcel for which the permit is approved may not be used for manufacturing, storage, or processing of any materials, and no explosive, poisonous, flammable or other dangerous materials may be stored on the site.
- (4) By temporary use permit, the planning commission may authorize the use and occupancy of a temporary structure necessary to conduct a permitted or conditional use authorized in a commercial zoning district and consistent with site and related plans approved for the construction of permanent principal or accessory structures, provided all of the following requirements are met:
  - a. Temporary commercial buildings shall have architectural features and patterns that; provide visual interest from the perspective of the pedestrian, bicyclist and motorist; appear to reduce building mass; and recognize and respect local character and site conditions.
  - b. Facades of temporary buildings shall be designed to reduce the mass/scale and uniform monolithic appearance of large unadorned walls.
  - c. Articulation of facades and roofing shall be used to vary the temporary building's mass, in height and width, so that it appears to be divided into distinct elements and details.
  - d. Temporary building entryways and windows shall be located so as not to permit noise, light and other impacts on the quiet and private enjoyment of adjacent residential uses.
  - e. All rooftop mechanical equipment protruding from the roof must be screened from public view by integrating it into a temporary building's roof design.
  - f. Off-street parking spaces shall be primarily at the front or side of temporary commercial buildings. The location and design of off-street parking shall not impact adjoining residential uses, conservation land or wildlife habitat.
  - g. Off-street loading and service areas shall be appropriately designed, located, landscaped and screened to ensure that adjoining residential areas and environmentally sensitive land uses will not be negatively impacted.
  - h. Functional and integrated access and internal circulation for people with disabilities shall be provided.
  - i. Safe and efficient internal pedestrian circulation to and from on-site parking spaces shall be provided.
  - j. All above ground utilities, equipment and related service facilities and operations shall be designed, located and maintained to ensure visual and physical compatibility with adjoining residential areas and other environmentally sensitive land.
  - k. Specific and detailed landscape plans shall be required for buffering and screening adjacent residential uses from negative visual and physical impacts of the commercial land uses.

- I. The temporary use shall be located in an area that will have the least visual impact as viewed from public and private roads, shared use paths and adjoining properties.
- m. The temporary structure shall be supported by off-street parking and loading consistent with chapter, 126, article XV of the Land Development Code.
- n. All building code requirements must be met for any permitted temporary structure, including all health, safety and/or other governmental agency requirement that would be required for a permanent structure.
- o. The temporary structure shall be appropriately located and designed to ensure safe and functional operations and accessibility during construction of the permanent principal and/or accessory structure.

**Secs. 126-65—126-80. Reserved.**

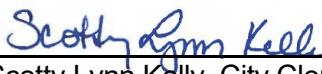
**SECTION 2.** Codification. The City Manager is hereby authorized and directed to indicate these amendments in future City Code publications.

**SECTION 3.** 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 4.** 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.

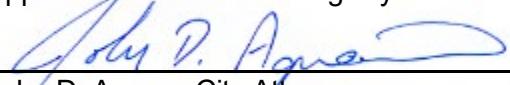
**SECTION 5.** Effective date. This Ordinance shall be effective immediately upon adoption.

Attest:

  
\_\_\_\_\_  
Scotty Lynn Kelly, City Clerk

  
\_\_\_\_\_  
Holly D. Smith, Mayor

Approved as to form and legality:

  
\_\_\_\_\_  
John D. Agnew, City Attorney

Date filed with City Clerk: November 1, 2022

Vote of Council Members:

Smith	<u>Yea</u>
Johnson	<u>Yea</u>
Crater	<u>Yea</u>
Henshaw	<u>Yea</u>
Miller	<u>Yea</u>

Public Hearing: November 1, 2022