

sion explain in detail the proposed use and distribution of the seal and submit an affidavit indicating the scope of the use intended.
(Code 1981, § 2-34)

Sec. 2-89. Violations.

Any person who shall use or reproduce the official ceremonial seal for other than governmental purposes as prescribed in this division, without the prior express written authority of the city council, or who shall violate any one or more of the provisions of this division shall be guilty of a violation punishable as provided in section 1-15.
(Code 1981, § 2-35)

Secs. 2-90—2-105. Reserved.

**ARTICLE III. BOARDS, COMMITTEES,
COMMISSIONS***

DIVISION 1. GENERALLY

Secs. 2-106—2-120. Reserved.

DIVISION 2. PLANNING COMMISSION†

Sec. 2-121. Purpose and scope.

The broad objectives of city planning and the creation of the planning commission are to further the welfare of the citizens of the city by helping to promote a better, more helpful, convenient, efficient, safe and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

(Code 1981, § 14-4)

***Charter reference**—Planning commission, § 3.16.

Cross references—Board of adjustment and appeals, § 14-51 et seq.; construction industry regulation board, § 14-71 et seq.; board of trustees for police officers retirement, § 50-71 et seq.; planning commission, § 82-81 et seq.

†**Charter reference**—Planning commission, § 3.16.

Cross reference—Planning commission, § 82-81 et seq.

State law reference—Authority to provide for local planning agency, F.S. § 163.3174.

Sec. 2-122. Established.

A planning commission to be known henceforth as the "Sanibel Planning Commission" is hereby established.

(Code 1981, § 14-1)

Sec. 2-123. Composition; appointment.

(a) The planning commission shall consist of not less than five nor more than seven members as determined by resolution of the city council.

(b) Appointments to the commission shall be made by the city council by resolution.

(Code 1981, § 14-2; Ord. No. 98-01, § 1, 1-20-1998)

Sec. 2-124. Qualifications of members.

All members of the planning commission shall be residents of the city, and shall not be salaried officials of the city.

(Code 1981, § 14-3)

Sec. 2-125. Terms; vacancies.

(a) The term of office of a member of the planning commission shall be three years beginning on the second Tuesday in January and ending on the Monday before the second Tuesday in January.

(b) Terms shall be staggered as follows:

(1) If the planning commission consists of five members; terms of two members shall expire at the end of the first year, two at the end of the second year and one at the end of the third year.

(2) If the planning commission consists of six members; terms of two members shall expire at the end of the first year, two at the end of the second year, and two at the end of the third year.

(3) If the planning commission consists of seven members; terms of three members shall expire at the end of the first year, two at the end of the second year and two at the end of the third year.

For purposes of this section, the end of the first year shall mean January 11, 1999; the end of the

second year shall mean January 10, 2000; and the end of the third year shall mean January 8, 2001.

(c) Subsequent terms shall commence at the end of the first, second or third years respectively, and expire every three years thereafter.

(d) The city council may, by resolution, extend the terms of planning commission members serving at the time of adoption of this section, to coincide with the schedule set forth in this section.

(e) Appointments shall be made annually in December or at the first meeting of the council in January. Vacancies in the planning commission shall be filled by the council for the remainder of the term created by a vacancy within 30 days.
(Code 1981, § 14-5; Ord. No. 98-01, § 2, 1-20-1998)

Sec. 2-126. Forfeiture of office.

A planning commission member shall forfeit office if he:

- (1) Lacks at any time during the term of office any qualification for the office prescribed by this article or by law;
- (2) Violates any standard of conduct or code of ethics established by law for public officials; or
- (3) Is absent from three consecutive regular planning commission meetings without being excused by the chairman.

(Code 1981, § 14-6)

Sec. 2-127. Compensation.

The members of the planning commission shall serve without compensation.

(Code 1981, § 14-7)

Sec. 2-128. Election of officers.

The planning commission shall annually elect one of its members as chair and one as vice-chair.
(Code 1981, § 14-8)

Sec. 2-129. Duties of officers.

It shall be the duty of the chair to preside over all meetings of the planning commission. In his absence, the vice-chair may preside.

(Code 1981, § 14-9)

Sec. 2-130. Appointment, duties of secretary.

The city manager shall appoint a nonmember of the planning commission as secretary, who shall be an employee of the city. It shall be the duty of the secretary to keep a record of all proceedings of the planning commission, transmit its recommendations when directed by the chairman to the city manager and city council, maintain an updated complete file of all its proceedings in the city hall, and perform such other duties as are usually performed by the secretary of a deliberative body.

(Code 1981, § 14-10)

Sec. 2-131. Rules and procedures.

The planning commission shall meet at least once each month or more frequently at regular intervals to be determined by it, and at such other times as the chair or planning commission may determine. It shall adopt rules for the transaction of its business. The rules may be amended from time to time, but only upon notice to all members that such proposed amendments shall be acted upon at a specified meeting. A majority vote of the planning commission shall be required for the approval of the proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings and determinations, which record shall be a public record. All meetings of the planning commission shall be public.

(Code 1981, § 14-11)

Sec. 2-132. Employment of staff and experts.

The planning commission may, subject to the approval of the city council and within the financial limitations set by appropriations made or other funds available, recommend that the city manager employ such experts, consultants, tech-

nicians and staff as may be deemed necessary to carry out the functions of the planning commission.

(Code 1981, § 14-12)

Sec. 2-133. Reimbursement for expenses.

Planning commission members may be reimbursed for expenses as are necessary to conduct the work of the commission from funds appropriated by the council or otherwise available for such purpose.

(Code 1981, § 14-13)

Sec. 2-134. Supervision of staff.

Staff personnel of the planning commission shall be under the day-to-day supervision of the city manager.

(Code 1981, § 14-14)

Sec. 2-135. Functions, powers and duties.

The functions, powers and duties of the planning commission shall be, in general and in addition to any functions, powers and duties provided by law, to:

- (1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in these conditions, and provide data for estimates of future conditions. Such information and material may include maps and photographs of manmade and natural physical features of the area concerned, statistics on trends and present and future estimated conditions with respect to population, property values, economic base, land uses, municipal services, various parameters of environmental quality, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts and the necessary regulation thereof to insure that the unique and natural characteristics of the island be preserved.
- (2) Prepare principles and policies for guiding land uses and development of the area in order to preserve the unique and natural characteristics of the island, to overcome the island's present handicaps and to prevent or minimize future problems.
- (3) Prepare or cause to be prepared a comprehensive land use plan for meeting present requirements and such future requirements as may be foreseen, with a view toward insuring that orderly growth and development proceeds as may be consistent with the preservation of the natural and unique characteristics of the island.
- (4) Conduct such public hearings as may be required to gather information necessary for the drafting and maintenance of the comprehensive land use plan and such additional public hearings as are specified by law.
- (5) Make or cause to be made any necessary special studies on the location, condition and adequacy of specific facilities in the area. These may include, but are not limited to, studies on housing, commercial and industrial conditions and facilities, public and private utilities, traffic, transportation, parking and emergency evacuation.
- (6) Refer and recommend the comprehensive land use plan to the city council for its review and possible adoption. Such a plan, after its adoption by the city council, will be known as the official comprehensive land use plan.
- (7) Prepare and recommend to the city council from time to time, such changes in the plan or any part thereof as may be deemed necessary by the city council or by the planning commission.
- (8) Prepare and recommend to the city council from time to time plans and/or recommendations for specific capital improvements in pursuance of such official comprehensive land use plan.
- (9) Give aid to the city officials charged with the direction of projects of improvements embraced within the official comprehensive land use plan.

sive land use plan, and generally to promote the realization of the official comprehensive land use plan.

- (10) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.
- (11) Perform any other duties which lawfully may be assigned to the planning commission by resolution of the city council, such as, but not limited to, the review, holding of public hearings, and making recommendations to the city, on regulations, codes and other documents, as may be necessary to implement the official comprehensive land use plan such as a zoning code, zoning map, subdivision regulations and codes for building construction and equipment.

(Code 1981, § 14-15)

State law reference—Functions, powers, duties of planning commissions generally, F.S. § 163.3161 et seq.

Sec. 2-136. Cooperation with city officers and departments.

Each officer and department of the city is hereby directed to give all reasonable aid, cooperation and information to the planning commission, or to the authorized assistants of the planning commission when so requested.

(Code 1981, § 14-16)

Secs. 2-137—2-155. Reserved.

DIVISION 3. VEGETATION COMMITTEE

Sec. 2-156. Created; membership.

There is hereby created a vegetation committee composed of five or more individuals, who are residents of Sanibel; who have assisted with vegetation inspections conducted to obtain a development permit and inspections conducted to obtain a certificate of occupancy under the supervision of a vegetation committee member; who have certified in writing to the chairman of the vegetation committee that they consider themselves quali-

fied to conduct vegetation inspections; who have taken and passed the city's vegetation exam, and who shall be appointed for one-year terms by the city council. The council may appoint as many adjunct members as it deems advisable.

(Code 1981, § 2-46; Ord. No. 00-04, § 1(1), 4-4-2000; Ord. No. 00-16, § 1, 8-1-2000; Ord. No. 02-24, § 1, 11-19-2002)

Sec. 2-157. Advisory body; availability for consultation.

The vegetation committee shall be an advisory body to the city council and available for consultation with any public or private person.

(Code 1981, § 2-47; Ord. No. 00-04, § 1(2), 4-4-2000)

Sec. 2-158. Duties.

The vegetation committee shall advise the city council and planning commission, about sound ecological management of vegetative resources in the city and may review and comment about proposed development. The vegetation committee should collect, analyze and disseminate information on basic ecological principles as they relate to island vegetation. The vegetation committee should, in addition, make available to the best of its ability expert technical assistance for any person on the island who desires advice concerning clearing or landscaping for a development activity. Such assistance shall include, but not be limited to, the identification of individual specimens of vegetation that should be preserved, advice on arrangements for the transplanting of individual specimens to other parcels on the island, and the location of appropriate native species for landscaping.

(Code 1981, § 2-48; Ord. No. 00-04, § 1(3), 4-4-2000)

Secs. 2-159—2-175. Reserved.

requirements and limitations of this land development code to the maximum extent possible and practicable.

(Ord. No. 85-26, § 1(III.1.2(d)), 11-27-1985; Ord. No. 86-26, §§ 1, 2, 6-17-1986; Ord. No. 87-16, § 2, 7-7-1987; Ord. No. 91-31, § 6, 7-2-1991)

Sec. 82-55. Decision by resolution; permits from other agencies.

(a) The city council shall render its decision, by resolution, without further public hearing, within no more than 30 days following the conclusion of the hearing. A copy of such resolution shall be forwarded to the applicant or his attorney, if represented by an attorney, within ten days following the adoption of such resolution.

(b) Any relief granted under this division shall be conditioned upon the applicant's receiving permits from all other agencies with jurisdiction.

(Ord. No. 85-26, § 1(III.1.2(e), (f)), 11-27-1985; Ord. No. 86-26, §§ 1, 2, 6-17-1986; Ord. No. 87-16, § 2, 7-7-1987; Ord. No. 91-31, § 6, 7-2-1991)

Sec. 82-56. Delegation of authority.

The city council may, by resolution, delegate the authority contained in this division to the planning commission or to a hearing officer for some or all applications filed under this division. In the event of such a delegation, the planning commission or hearing officer shall apply the criteria, and shall adhere to the time schedules, as provided in this division. In the event of such a delegation to the planning commission or hearing officer, an appeal may be taken by an aggrieved person to city council in accordance with section 82-98.

(Ord. No. 85-26, § 1(III.1.2(g)), 11-27-1985; Ord. No. 86-26, §§ 1, 2, 6-17-1986; Ord. No. 87-16, § 2, 7-7-1987; Ord. No. 91-31, § 6, 7-2-1991)

Sec. 82-57. Discontinuance, vacation or abandonment of use.

This division shall not permit re-establishment of a use which has been discontinued, vacant, abandoned or not used, within the meaning of chapter 126, article V, division 2. This division shall not be used to permit reconstruction of a

nonconforming structure, unless application for reconstruction has been made within one year after the disaster.

(Ord. No. 85-26, § 1(III.1.2(h)), 11-27-1985; Ord. No. 86-26, §§ 1, 2, 6-17-1986; Ord. No. 87-16, § 2, 7-7-1987; Ord. No. 91-31, § 6, 7-2-1991)

Secs. 82-58—82-80. Reserved.

ARTICLE III. PLANNING COMMISSION*

DIVISION 1. GENERALLY

Secs. 82-81—82-95. Reserved.

DIVISION 2. CREATION, PROCEDURE AND GENERAL AUTHORITY

Sec. 82-96. Created; designation as local planning agency and land development regulation commission.

The city planning commission, created pursuant to city Charter and Ordinance No. 75-13, along with the city manager, shall administer this land development code as specified in this chapter and as otherwise authorized throughout this land development code. The planning commission is also hereby designated and appointed to serve:

- (1) As the "local planning agency" for the city pursuant to F.S. § 163.3174(1), with all the authority and responsibilities of a local planning agency as specified in F.S. §§ 163.3161—163.3215; and
- (2) As the "land development regulation commission" for the city pursuant to F.S. § 163.3194(2) with all the authority and responsibilities of a land development regulation commission as specified in F.S. §§ 163.3161—163.3215.

(Ord. No. 85-26, § 1(III.A.1), 11-27-1985)

*Cross references—Boards, committees and commissions, § 2-106 et seq.; planning commission, § 2-121 et seq.

Sec. 82-97. Conduct of hearings; action.

(a) *Generally.* The planning commission shall adopt by resolution rules of procedure for its review of applications and conduct of hearings. The rules of procedure shall be approved by city council prior to implementation.

(b) *Quasi-judicial hearings.* For hearings of a quasi-judicial nature, the rules of procedure shall provide for and shall be implemented in a manner as to ensure that due process is afforded, that the correct law is applied and that the decision is based upon competent, substantial evidence.

(c) *Legislative hearings.* For hearings of a legislative nature, the rules of procedure shall provide for and shall be implemented in a manner as to ensure that there is a full public airing of the legislative proposal and that the duties of the planning commission as the land development regulation commission are discharged.

(d) *Continuances; additional information.* The planning commission may continue or adjourn a hearing, or portion of a hearing, to a date certain or uncertain as it deems reasonable and necessary; and may request that the applicant, staff or any other person provide additional information or testimony as it deems necessary for proper consideration of the application.

(e) *Recordings.* The planning commission shall make a full record of the hearing by sound recording, and upon request, shall provide a transcription, or copy of such recording, at the sole cost and expense of the person so requesting a copy of the proceedings. Fees for recordings, transcripts or copies shall be as established in chapter 90. Any person who wishes that a verbatim record be provided is responsible to so provide, at that person's sole expense. It shall not generally be grounds for challenge that portions of the record are missing.

(f) *Actions by the planning commission.*

- (1) Official actions of the planning commission shall be taken by majority vote of the quorum present, except that the planning commission rules may provide a method for resolving tie votes.

- (2) All official actions, decisions and recommendations of the planning commission shall be in writing and shall be adopted by resolution.

(g) *Contents of resolutions.*

- (1) *Generally.* Each resolution shall contain a resolution number; a heading identifying the nature of the action; an application number; a narrative reasonably describing the action taken and the basis for the action; a signature of the chair, vice-chair or other authorized planning commissioner; the date of the action, and the date the resolution is filed with the city manager.

- (2) *Quasi-judicial matters.* In any action taken with regard to a quasi-judicial matter, each resolution shall, in addition to the requirements set forth in subsection (g)(1) of this section, contain an identification of the property which is the subject of the application; an identification of the applicant and of the owner of the property; findings of fact based upon the application, the staff report and other relevant evidence; conclusions of law; and the action or decision, which may include conditions.

- (3) *Subsection directory.* This subsection is directory, not mandatory. It shall not be grounds for challenge that a resolution does not meet the technical requirements of this subsection unless substantial prejudice is shown.

(h) *Filing with city manager.* All official actions of the planning commission, including those which constitute final decisions, shall be filed with the city manager as soon as practical after they are signed. A final decision of the planning commission shall be deemed rendered when a signed resolution or decision is filed with the city manager.

(i) *Copy to applicant.* A copy of the resolution shall be sent to the applicant, or the applicant's attorney if represented by counsel, within ten days after it has been filed with the city manager.

(j) *Issuance of permits.* Permits authorized by final decisions of the planning commission shall not be issued until one of the following has occurred:

- (1) The time for filing an appeal to city council has elapsed;
- (2) The applicant and all other persons having appeal rights have filed a written waiver of appeal rights;
- (3) If an appeal has been timely filed, the city council has finally disposed of the matter. (Ord. No. 85-26, § 1(III.A.2), 11-27-1985; Ord. No. 97-17, § 1, 11-4-1997)

Sec. 82-98. Appeals.

(a) The following persons shall have the right to appeal a final decision of the planning commission adverse to their interests:

- (1) The applicant.
- (2) The owner of the property proposed for development.
- (3) The developer of the property proposed for development.
- (4) Any other person residing upon, or owning property within the city, or owning or operating a business within the city, who participated by written comment before or at the planning commission hearing or who participated in person or through an authorized agent at the planning commission hearing.

(b) The appeal shall be filed within 15 days after the date that the planning commission decision was filed. The appeal shall be filed with the city manager, and the filing fee shall be paid as a prerequisite to filing.

(c) The city manager shall schedule the appeal on the agenda of a city council meeting occurring within 30 days after the appeal has been filed, unless this time limit is waived by the applicant, and the appellant. The city council, in its discretion, may continue or reschedule the hearing until such later date as is reasonable under the circumstances.

(d) The city council's consideration on appeal shall be limited to whether the planning commission has properly interpreted and applied the provisions of this land development code, based upon the application and evidence presented to the planning commission.

(e) On any appeal, the city council shall have authority to uphold, reverse or modify the planning commission's decision; or to remand the application to the planning commission for rehearing, a new hearing, or for the consideration of additional evidence. In reversing or modifying the decision of the planning commission and approving an application, the city council shall have the same authority as the planning commission to place conditions on such approval.

(f) In the case of an appeal of a planning commission decision approving an application with conditions unacceptable to the applicant, the city council's authority to review the decision of the planning commission extends to the entire application, not just to the condition unacceptable to the applicant.

(g) If, in considering an appeal, any claim is made that the action taken by the planning commission is or would be in violation of a vested right, is prohibited due to an estoppel, constitutes a taking or is otherwise unlawful, and evidence has not been presented on the subject at the planning commission hearing, the city council may conduct an evidentiary hearing on that claim or may remand the application to the planning commission for an evidentiary hearing on that claim.

(Ord. No. 85-26, § 1(III.A.3), 11-27-1985; Ord. No. 92-14, § 2, 9-1-1992; Ord. No. 97-17, § 1, 11-4-1997)

Secs. 82-99—82-115. Reserved.

DIVISION 3. SPECIFIC AUTHORITY

Subdivision I. In General

Sec. 82-116. Variances, temporary uses, conditional uses.

Approvals of variances, temporary uses, and conditional uses shall expire if any necessary

development permit to implement such approval is not obtained with a period of 12 months after approval, or, if a development permit is obtained within 12 months, upon expiration of the development permit.

(Ord. No. 85-26, § 1(III.K.4), 11-27-1985; Ord. No. 91-48, § 3, 10-15-1991)

Sec. 82-117. Authorization.

The planning commission, in addition to hearing requests for development permits, conditional uses, temporary uses, variances, interpretation of zone boundaries, and interpretation of the language of the Sanibel Plan and this land development code, shall hear requests for the re-establishment of nonconforming uses that have been abandoned. The planning commission shall also review applications for amendments to the Sanibel Plan, amendments to zone district boundaries, and amendments to the regulations contained in this land development code, and shall, after hearing, make a recommendation, for council action, in accordance with the standards set forth in this division. In addition, the planning commission shall conduct an annual review of the capital improvements element of the Sanibel Plan. The planning commission shall also review, annually, the future land use element, the permitting process and the effectiveness of below market rate housing provisions.

(Ord. No. 85-26, § 1(III.H.1), 11-27-1985; Ord. No. 89-23, § 42, 8-15-1989)

Secs. 82-118—82-135. Reserved.

Subdivision II. Variances

Sec. 82-136. Authorization.

The planning commission, after hearing, may grant a variance from the requirements of applicable provisions of this land development code, in accordance with the standards in set forth in this division, except that the planning commission shall not grant variances which will, directly or indirectly, permit a use in a zone restricted against such use or permit an increase in residential density, except that variances may be granted for accessory structures landward of mean high water in the bay beach zone, for principal residential

uses in a contiguous zone, and except that variances may be granted for existing principal residential structures located primarily or entirely in the bay beach zone and for principal residential structures located primarily in another zone contiguous to the bay beach zone to extend into that portion of the lot in the bay beach zone. The planning commission may also not grant variances from the requirements of section 86-92 from the requirements of any ordinance zoning lands to a special use district or any increase in height exceeding the limitations set forth in subsection 126-635(4).

(Ord. No. 85-26, § 1(III.C.1), 11-27-1985; Ord. No. 86-31, § 1, 8-19-1986; Ord. No. 90-01, § 1, 2-6-1990; Ord. No. 91-38, § 1, 8-20-1991; Ord. No. 92-03, § 1, 3-3-1992; Ord. No. 92-18, § 10, 10-6-1992; Ord. No. 93-15, § 3, 8-3-1993)

Sec. 82-137. Conditions.

In approving any requested variance, the planning commission may attach to the approval such conditions and limitations as are necessary to ensure that any development deviating from the requirements of this land development code pursuant to such variance is in compliance with the standards specified in sections 82-140 through 82-144 and is not detrimental to the public health, welfare, or safety, or to the quiet and peaceful use and enjoyment of adjoining lands and uses. Any development which deviates from the standards of this land development code, pursuant to an approved variance, but which is not in compliance with the conditions attached to the approved variance, shall be a violation of this land development code.

(Ord. No. 85-26, § 1(III.C.3), 11-27-1985)

Sec. 82-138. Application and hearing.

Application for a variance shall be made on such form as is provided by the city and shall include such information, as identified in section 82-382, as the city manager determines to be necessary to a complete determination of the issue. The hearing on the application shall be conducted by the planning commission as for the

consideration of an application for long-form development permit as provided in sections 82-97, 82-422 and 82-423.

(Ord. No. 85-26, § 1(III.C.4), 11-27-1985; Ord. No. 86-19, § 1, 5-6-1986; Ord. No. 98-10, § 1, 5-19-1998)

Sec. 82-139. Action upon application.

The planning commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.

(Ord. No. 85-26, § 1(III.C.5), 11-27-1985; Ord. No. 98-10, § 2, 5-19-1998)

Sec. 82-140. Standards—Generally.

The planning commission may grant variances upon finding all of the following:

- (1) A literal enforcement of the particular regulation would result in undue and unnecessary hardship to a property owner because the particular shape, size, location or topography of a lot or parcel, or of a structure thereon, would cause practical difficulties that would deprive the owner of reasonable use and enjoyment of such lot or parcel in the same manner as other properties similarly situated.
- (2) That the special conditions relate to unusual conditions peculiar to the specific lot or parcel or relate to special conditions of the structure involved, and are not generally applicable to other lands or structures similarly situated.
- (3) That the special conditions and circumstances do not result from actions taken by the applicant or proposed by the applicant, and are not otherwise self-imposed.
- (4) That the applicant has taken all reasonable steps to mitigate or eliminate the requested variance by the acquisition of adjacent lands or the relocation or redesign of the structure involved.

- (5) That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible.

- (6) That the requested variance will not be adverse to the developed neighborhood scheme and will not adversely affect the plan and scheme set forth in this land development code, and will not cause the proposed development to be inconsistent with the Sanibel Plan nor adverse to the health, safety and general welfare of the community.

- (7) That the variance granted is the minimum necessary to mitigate the hardship demonstrated.

(Ord. No. 85-26, § 1(III.C.2(a)), 11-27-1985)

Sec. 82-141. Same—Variances from the requirements of floodproofing and stormproofing.

(a) When considering a variance from the requirements of chapter 94, the planning commission shall consider the following:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to the flooding or erosion damage.
- (3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the service provided by the proposed facility to the community.
- (5) The necessity to the facility of a waterfront location, where applicable.
- (6) The availability of alternative locations for the proposed use which are less subject to flooding or erosion damage.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the Sanibel Plan and flood management program of that area.

- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (11) The public cost of providing services during and after flood conditions, including maintenance and repair of public utilities and facilities such as: sewer, gas, electrical, water systems, and streets and bridges.

(b) The planning commission may grant variances from the requirements of chapter 94 upon finding that:

- (1) The variance sought is the minimum necessary to afford relief, considering the flood hazard.
- (2) That the failure to permit the variance would result in an exceptional hardship.
- (3) That the granting of the variance will not result in an increased flood height, additional threats to the public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
- (4) That the applicant has taken all reasonable steps to mitigate or eliminate the requested variance by the acquisition of adjacent lands or the relocation or redesign of the structure involved.
- (5) That the exceptional hardship which would result if the variance were denied does not result from actions taken by or proposed by the applicant and are not otherwise self-imposed.
- (6) That the applicant has demonstrated good and sufficient cause for the grant of the variance.
- (7) If the parcel is within any area designated as a floodway by the Federal Insurance Administration, that no increase in flood levels during the base flood discharge would result.

(Ord. No. 85-26, § 1(III.C.2(b)), 11-27-1985)

Sec. 82-142. Same—Historic structures.

The planning commission may grant variances for the repair, rehabilitation, or restoration of structures listed in the National Register of Historic Places, listed on the state inventory of historic places, listed on the local register of historic landmarks or identified as such in the Sanibel Plan, including variances from floodproofing and stormproofing requirements provided the proposed repair, rehabilitation, or restoration will not result in the structure losing its historical designation, and the variance is the minimum necessary to preserve the historic character and design of the structure.

(Ord. No. 85-26, § 1(III.C.2(c)), 11-27-1985; Ord. No. 88-03, § 2, 2-16-1988; Ord. No. 90-18, § 2, 9-18-1990)

Sec. 82-143. Accessory structures.

Variances to permit accessory structures in the bay beach zone may only be granted by the planning commission upon finding that:

- (1) The structure is clearly accessory to a principal residential use of contiguous lands, not in the bay beach zone, which are under common ownership with the bay beach parcel in question;
- (2) The structure is for a use which could not reasonably be located on that portion of the lot not in the bay beach zone; and
- (3) The structure will be located entirely landward of the mean high water line.

(Ord. No. 85-26, § 1(III.C.2(d)), 11-27-1985)

Sec. 82-144. Below market rate housing.

The planning commission may grant variances necessary to accommodate below market rate housing developments which are in compliance with all other requirements of this land development code.

(Ord. No. 85-26, § 1(III.C.2(e)), 11-27-1985; Ord. No. 88-03, § 2, 2-16-1988; Ord. No. 90-18, § 2, 9-18-1990)

Sec. 82-145. Variances from the standards for telecommunications devices.

For a variance from the standards for telecommunications devices to be granted, the planning

commission or city manager, where authorized, shall find, as appropriate to the type of devices, that:

- (1) The application meets the standards set out in section 82-140.
 - (2) The requested variance will not adversely affect adjacent and adjoining properties.
 - (3) The proposed telecommunications device will be compatible with the existing contiguous uses or zoning and compatible with the general character and aesthetics of the neighborhood or surrounding area, considering the design and height of the telecommunications device, the mitigating effect of any existing or proposed landscaping, fencing or other structures in the area, and the proximity of the telecommunications device to existing or proposed buildings or structures.
 - (4) The requested variance is necessary to permit the accessory device to transmit or receive an acceptable quality signal within the meaning and intent of the Telecommunications Act of 1996 and any rules, regulations or orders promulgated pursuant to the act.
 - (5) The requested variance is necessary to secure improvements in the communications systems used by public safety organizations during emergencies.
 - (6) The requested variance is necessary to the development of an advanced wireless telecommunication infrastructure.
- (Ord. No. 99-07, § 5, 11-2-1999)

Secs. 82-146—82-160. Reserved.

Subdivision III. Interpretations

Sec. 82-161. Authorization.

The planning commission shall determine the precise meaning of any of the language contained in the Sanibel Plan or this land development code when the precise meaning of any of the language or terms used in the Sanibel Plan or this land development code is unclear or where competing interpretations are made which would vary the

results of an application pending before the planning commission if one meaning were used as opposed to another. Any decision of the planning commission making such an interpretation shall be specifically directed to the city attorney, for review, in order to determine whether the language which has been in dispute requires clarification.

(Ord. No. 85-26, § 1(III.D.1), 11-27-1985)

Sec. 82-162. Standards.

Interpretations of language shall be made in accordance with the following standards:

- (1) The planning commission shall make reference to the Sanibel Plan and, where possible, ascertain the intent and purpose of the language in dispute based on the intent and purpose expressed in the plan with respect to such subject matter.
 - (2) Interpretation of the language in dispute shall be based on a reading of the full sentence or paragraph in which the language is contained, and such language shall be read in *pari materia* with other portions of the development regulations so that the interpretation of the disputed language is consistent in meaning and purpose.
 - (3) The planning commission shall reject an interpretation of the disputed language which isolates the language from its subject matter and places undue strain on the language syntax in which the terminology is present.
- (Ord. No. 85-26, § 1(III.D.2), 11-27-1985)

Sec. 82-163. Application and hearing.

An application for interpretation of language shall be made on such form as is provided by the city. The planning commission hearing on the application shall be conducted as for the consideration of an application for long-form development permit pursuant of sections 82-97, 82-422 and 82-423, except for the requirement of mailed notice.

(Ord. No. 85-26, § 1(III.D.3), 11-27-1985; Ord. No. 86-19, § 2, 5-6-1986; Ord. No. 98-10, § 3, 5-19-1998)

Sec. 82-164. Action upon application.

The planning commission, immediately or within 60 days after closing of the hearing, shall by resolution, take action on the application. A copy of the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.
(Ord. No. 85-26, § 1(III.D.4), 11-27-1985; Ord. No. 98-10, § 4, 5-19-1998)

Secs. 82-165—82-180. Reserved.

Subdivision IV. Zone Boundaries

Sec. 82-181. Authorization.

The planning commission shall determine the exact location of a zone line where the zone line is the subject of dispute. If the planning commission determines that the actual location of a zone line is at variance with the zone line as depicted on an adopted map, the planning commission shall recommend to the city council that such adopted map be amended to reflect the exact location of such zone line as determined by the planning commission. The city council shall then determine whether it shall accept or reject findings made by the planning commission and its recommendation for an amendment of the adopted map. In the event of favorable action on the part of the city council, the city manager shall clearly indicate on the adopted map the findings and decision of the city council.
(Ord. No. 85-26, § 1(III.E.1), 11-27-1985; Ord. No. 90-07, § 3, 5-15-1990)

Sec. 82-182. Standards.

The planning commission shall decide the exact location of a zone boundary where such location is in dispute, only after it has reviewed the following:

- (1) Any standards specified in the Sanibel Plan for the determination and location of the boundary;
- (2) The report of the city planning department as to the basis upon which it determined the location of the zone boundary; and

- (3) The basis upon which the applicant contends that the zone boundary is in a different location.
(Ord. No. 85-26, § 1(III.E.2), 11-27-1985)

Sec. 82-183. Application and hearing.

An application for determination of zone boundary shall be made on such form as is provided by the city. The planning commission hearing on the application shall be conducted as for the consideration of an application for long-form development permit pursuant to sections 82-97, 82-422 and 82-423.
(Ord. No. 85-26, § 1(III.E.3), 11-27-1985; Ord. No. 86-19, § 3, 5-6-1986; Ord. No. 98-10, § 5, 5-19-1998)

Sec. 82-184. Action upon application.

The planning commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.
(Ord. No. 85-26, § 1(III.E.4), 11-27-1985; Ord. No. 98-10, § 6, 5-19-1998)

Secs. 82-185—82-200. Reserved.

Subdivision V. Conditional Uses

Sec. 82-201. Authorization.

The planning commission is hereby authorized to consider applications for approval of conditional uses and to approve such conditional uses when the applicant demonstrates compliance with all requirements and conditions of this land development code.
(Ord. No. 85-26, § 1(III.F.1), 11-27-1985)

Sec. 82-202. Requirements.

- The planning commission shall approve a conditional use only upon finding that:
- (1) The proposed use is a conditional use permitted in the zone in which the parcel is located; and

- (2) The proposed use complies with all the general requirements and specific requirements for the conditional use, as set forth in chapter 126, articles II and IV, as well as all other requirements of this Land Development Code and the Sanibel Plan. (Ord. No. 85-26, § 1(III.F.2), 11-27-1985)

Sec. 82-203. Conditions.

In approving a conditional use, the planning commission may attach to the approval such conditions as it deems necessary to ensure that development and use of the property pursuant to such approval shall occur only in compliance with all of the requirements of this Land Development Code for such conditional use and shall not be detrimental to the public health, welfare, or safety, or to the peaceful and quiet use and enjoyment of adjacent lands or uses.

(Ord. No. 85-26, § 1(III.F.3), 11-27-1985; Ord. No. 86-10, § 1, 4-1-1986)

Sec. 82-204. Application and hearing.

An application for conditional use approval shall be made on such form as is provided by the city and shall include such information, as identified in section 82-382 as the city manager determines to be necessary to a complete determination of the issue. The planning commission hearing on the application shall be conducted as for the consideration of an application for long-form development permit pursuant to sections 82-97, 82-422 and 82-423.

(Ord. No. 85-26, § 1(III.F.4), 11-27-1985; Ord. No. 86-19, § 4, 5-6-1986; Ord. No. 98-10, § 7, 5-19-1998)

Sec. 82-205. Action upon application.

The planning commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of such the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.

(Ord. No. 85-26, § 1(III.F.5), 11-27-1985; Ord. No. 86-26, §§ 1, 2, 6-17-1986; Ord. No. 98-10, § 8, 5-19-1998)

Secs. 82-206—82-220. Reserved.

Subdivision VI. Temporary Use Permits

Sec. 82-221. Authorization.

The planning commission is hereby authorized to consider applications for temporary use permits and to approve issuance of such permits when the applicant demonstrates compliance with all requirements and conditions of this Land Development Code.

(Ord. No. 85-26, § 1(III.G.1), 11-27-1985)

Sec. 82-222. Standards.

The planning commission shall approve a temporary use only upon finding that the proposed temporary use complies with all the general requirements and special conditions for temporary uses as set forth in the Land Development Code, chapter 126 zoning, article III, temporary use permits.

(Ord. No. 85-26, § 1(III.G.2), 11-27-1985; Ord. No. 09-003, § 1B., 4-7-2009)

Sec. 82-223. Conditions.

In approving a temporary use permit, the planning commission may attach to the approval such conditions as it deems necessary to ensure that development and use of the property pursuant to such approval shall occur only in compliance with all of the requirements of this Land Development Code for such temporary use and shall not be detrimental to the public health, welfare, or safety, or to the peaceful and quiet use and enjoyment of adjacent lands or uses.

(Ord. No. 85-26, § 1(III.G.3), 11-27-1985)

Sec. 82-224. Application and hearing.

An application for temporary use permit shall be made on such form as is provided by the city and shall include such information, as identified in section 82-382, as the city manager determines to be necessary to a complete determination of the issue. The planning commission hearing on the application shall be conducted as for the consid-

eration of an application for long-form development permit pursuant to sections 82-97, 82-422 and 82-423.

(Ord. No. 85-26, § 1(III.G.4), 11-27-1985; Ord. No. 86-19, § 5, 5-6-1986; Ord. No. 98-10, § 9, 5-19-1998)

Sec. 82-225. Action on application.

The planning commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.

(Ord. No. 85-26, § 1(III.G.5), 11-27-1985; Ord. No. 86-26, §§ 1, 2, 6-17-1986; Ord. No. 98-10, § 10, 5-19-1998)

Secs. 82-226—82-240. Reserved.

Subdivision VII. Amendments

Sec. 82-241. Amendments to land development code or zoning district boundaries.

The planning commission may recommend to the city council amendments to zoning district boundaries or to permitted uses or other regulations of this Land Development Code, in accordance with the following standards:

- (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, sew-

age, 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.

(Ord. No. 85-26, § 1(III.H.2), 11-27-1985)

Sec. 82-242. Amendments to Sanibel Plan.

The planning commission may recommend to the city council an amendment to any provision of the Sanibel Plan, in accordance with the following standards:

- (1) The planning commission shall make reference to the Sanibel Plan to determine if the proposed amendment is consistent with the intent and purpose of the plan and all other specific provisions of the plan.
- (2) The planning commission shall determine whether the proposed amendment:
 - a. Will encourage the most appropriate use of the 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 public safety, 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) When the planning commission determines that a proposed amendment is inconsistent with the intent and purpose of the Sanibel Plan or with other specific provisions of the Sanibel Plan, the planning commission may, nevertheless, recommend approval of the proposed amendment, along with any other corresponding amendments to the plan necessary to elim-

inate the inconsistency, if it finds that the proposed amendment should be approved based upon a consideration of all of the factors specified in subsection (2) of this section.

(Ord. No. 85-26, § 1(III.H.3), 11-27-1985)

Sec. 82-243. Action upon application.

The planning commission, immediately or within 60 days after closing the hearing, shall, by resolution, take action upon the application. A copy of such the resolution shall be forwarded to the owner and the applicant within ten days following the adoption of the resolution.

(Ord. No. 85-26, § 1(III.H.4), 11-27-1985; Ord. No. 98-10, § 11, 5-19-1998)

Secs. 82-244—82-260. Reserved.*Subdivision VIII. Nonconforming Uses***Sec. 82-261. Re-establishment of abandoned nonconforming use.**

(a) The planning commission is hereby authorized to consider requests for the re-establishment of nonconforming uses that have been abandoned pursuant to subsection 126-152(d). Application and hearing for such a request shall be as for a variance, and shall be approved by the planning commission upon a finding that all of the following conditions exist:

- (1) That loss of the nonconforming use has resulted in unreasonable hardship to the applicant;
- (2) That the nonconforming use was not knowingly abandoned and that there was no intent to abandon such use;
- (3) That for nonconforming uses other than resort housing the applicant did not acquire the property after abandonment of the nonconforming use;
- (4) That re-establishment of the nonconforming use would be compatible with and would not be detrimental to the quiet and peaceful use and enjoyment of surrounding properties and uses; and

(5) That any of the following conditions exists:

- a. The structure in which the nonconforming use was conducted is not reasonably adaptable to and has not been used for any permitted use;
- b. For nonconforming resort housing uses, that adjacent residential uses are primarily permitted or nonconforming resort housing uses; or
- c. That the abandoned nonconforming use was originally established pursuant to conditional use approval, specific amendment to the Sanibel Plan, or other legislative or quasi-judicial action of the city specifically approving such use, upon which the applicant relied to his detriment.

(b) Pursuant to this section, only the specific abandoned nonconforming use may be re-established. No other use of the property may be authorized except a use permitted in the district.

(c) In authorizing re-establishment of an abandoned nonconforming use pursuant to this section, the planning commission may attach conditions thereto as provided in section 82-137. (Ord. No. 85-26, § 1(III.H.5), 11-27-1985)

Sec. 82-262. Change of nonconforming use to less intense use.

(a) The planning commission is hereby authorized to consider applications for changes of nonconforming uses to other uses not permitted in the particular zoning districts in which they are located. Application and hearing for such a request shall be as for a variance.

(b) No change of use shall be authorized pursuant to this section unless the planning commission finds that the applicant has demonstrated the proposed new use to be one of less intensity and impact on surrounding permitted uses and lands than the existing nonconforming use, in consideration of the following factors:

- (1) The amount of vehicular and pedestrian traffic likely to be generated by a successful

operation of the new use, as compared to that of the nonconforming use when successfully operated;

- (2) The number of parking and loading spaces required by this land development code for the new use as compared to the nonconforming use;
- (3) The sewage disposal requirements set forth in this land development code for the new use as compared to the nonconforming use;
- (4) The number of persons likely to be employed in the new use as compared to the nonconforming use;
- (5) Any potential adverse effects of the new use on surrounding lands and permitted uses, such as noise, litter, odors, outdoor activities, and the like, as compared to the nonconforming use;
- (6) The proposed residential density, floor area ratio, and developed area of the new use, as compared to those of the nonconforming use;
- (7) Any other similar factor deemed by the planning commission to be relevant to the intensity of the two uses; and
- (8) The extent to which the applicant proposes to add parking spaces, provide vegetative buffering, eliminate structural nonconformities, limit size or number of street graphics, and the like, in order to reduce the intensity of the new use in relation to that of the nonconforming use.

(c) If a change of use is authorized pursuant to this section, the planning commission shall specifically designate the principal and accessory uses which may be conducted on the land in question; only such uses as are specifically designated shall be conducted on such land, unless the use is changed to a permitted use; any use authorized hereunder shall be deemed to be, and shall comply with all regulations of this land development code pertaining to, a nonconforming use; and the original nonconforming use shall be deemed to have been abandoned.

(d) In authorizing a change of use pursuant to this section, the planning commission attach conditions thereto as provided in section 82-137. (Ord. No. 85-26, § 1(III.H.6), 11-27-1985; Ord. No. 87-19, § 2, 7-7-1987)

Secs. 82-263—82-280. Reserved.

Subdivision IX. Capital Improvement Element Review

Sec. 82-281. Annual review.

(a) *Generally.* The planning commission shall conduct an annual review of the capital improvements element of the Sanibel Plan. The purpose of the review of this element is to ensure that the required fiscal resources are available to provide the public facilities needed to maintain the level of service standards established in the capital improvements element of the Sanibel Plan. In conducting its annual review, the planning commission may request any relevant information it deems appropriate from other city departments, with particular emphasis on the input and recommendation of the planning department as to current and future needs for public facilities in terms of current and immediately anticipated development taking place or that might take place within the next year. The planning commission shall then present its findings and recommendations to the city council for appropriate action with respect to any necessary amendments to the annual capital budget. The annual review of the capital improvements element shall include the following:

- (1) A review of current costs and revenue and possible corrections and modifications to the capital budget suggested or required as a result of such review.
- (2) The capital improvements element's consistency with other elements of the Sanibel Plan.
- (3) A determination, based on the forecast of costs and revenues, of the economic feasibility of the Sanibel Plan.
- (4) The city's progress in reducing any existing deficiencies of the established levels of service for such public facilities.

(5) A recommendation as to assignment of priorities with respect to scheduled capital improvements.

(6) A review to determine the effectiveness of the city's ability to maintain adopted level or service standards.

(b) *Human support systems (public facilities).* The planning commission shall review the present level of service of all human support systems to determine whether or not the level of service standards established have been achieved, and if not achieved, whether mechanisms are in place to achieve such established levels of service standards. Upon a finding that any human support system is below the established level of service standard, it shall make recommendations to the city council as to recommendations in terms of the capital improvements element to alleviate the deficiency.

(c) *Below market rate housing program.* The planning commission shall review the effectiveness of the below market rate housing program, and to make recommendations to implement warranted revisions in terms of the capital improvements element; and in addition thereto, review the housing needs of the present and future residents of the city, particularly those with special housing needs and to make suitable recommendations as determined by those findings. (Ord. No. 85-26, § 1(III.H.7), 11-27-1985; Ord. No. 89-23, § 43, 8-15-1989)

Secs. 82-282—82-300. Reserved.

Subdivision X. Land Development Code Permitting Process Review

Sec. 82-301. Annual review.

The planning commission shall review annually the permitting process and make such recommendations as it deems appropriate for the amendment of the land development code to improve the permitting process generally and specifically to achieve the goals of the Sanibel Plan. (Ord. No. 85-26, § 1(III.H.8), 11-27-1985; Ord. No. 89-23, § 44, 8-15-1989)

Secs. 82-302—82-320. Reserved.

Subdivision XI. Below Market Rate Housing Program Review

Sec. 82-321. Effectiveness of program.

The planning commission shall review the effectiveness of the below market rate housing program in terms of its stated goals and the level of present achievement and shall recommend such changes to chapter 102, article II, as in the judgment of the planning commission, would aid in the effectiveness of the achievement of the goals of such article.
(Ord. No. 85-26, § 1(III.H.9), 11-27-1985; Ord. No. 89-23, § 45, 8-15-1989)

Secs. 82-322—82-340. Reserved.

Subdivision XII. Land Development Code Review

Sec. 82-341. Future land use.

The planning commission shall annually review the provisions of the land development code and make any recommendations for changes, deletions or additions to such land development code in terms of the following:

- (1) Adequate regulation of the use of land and water;
- (2) Adequate regulation of the subdivision of land;
- (3) Determination of whether the land development code ensures compatibility of adjacent land uses;
- (4) Adequacy of provisions for open space;
- (5) Adequacy of provisions to ensure safe on-site traffic flow; and
- (6) The adequacy of on-site parking.
(Ord. No. 85-26, § 1(III.H.10), 11-27-1985; Ord. No. 89-23, § 46, 8-15-1989)

Secs. 82-342—82-360. Reserved.

ARTICLE IV. DEVELOPMENT PERMITS

DIVISION 1. GENERALLY

Sec. 82-361. Validity.

Development permits, once issued, shall remain valid and the projects thereby authorized shall be completed and used in accordance with the requirements set forth in this land development code. Such development permits which have resulted from specific amendments heretofore granted, prior to the adoption of these land development standards, shall remain valid only in accordance with the following standards:

- (1) *Commencement.* A development permit shall remain valid only upon the following terms and conditions:
 - a. Upon the issuance of a development order by the planning commission, a development permit shall be issued by the city manager, or his designated representative, and shall expire after a period of 60 days unless development is commenced within this time period.
 - b. Upon application of the development, if it appears that additional time is needed for the commencement of development, because of the nature of the development or other circumstances, a longer period of time may be expressly granted by the city manager. Such longer time period shall be clearly indicated on the face of the development permits.
 - c. If development is not commenced within 60 days after the issuance of the development permit, or such longer time as may have been granted and noted on the face of the permit, such development permit shall expire.
- (2) *Completion.* When development is commenced in accordance with the require-