



City of Sanibel

Planning Department

MEMORANDUM

DATE: November 27, 2012
TO: Jim Jordan, Planning Director
FROM: Scott Fulton, Planner
SUBJECT: Neglected Property Ordinance

Following the November City Council meeting, Staff was given the directive to provide a draft Neglected Property Ordinance for the December meeting for review by City Council to determine if legislation addressing neglected properties was something that should be pursued. This draft is attached; however, at this point the proposed ordinance has not had the full review of Staff and the City Attorney. The attached draft is provided as a framework for further discussion.



City of Sanibel

Planning Department

STAFF REPORT

City Council Meeting
City Council Agenda Item
Application Number
Applicant Name:

December 4, 2012
11.c
12-7070 LDC
City of Sanibel

**RE: Draft Amendment to the Land Development Code Establishing Maintenance Standards for Neglected Properties. Submitted by the City of Sanibel
Application No. 12-7070 LDC**

ISSUES

1. Is the proposed amendment to address neglected property warranted?
2. Is the proposed amendment to the Land Development Code consistent with the intent and purpose of the *Sanibel Plan*?

BACKGROUND

Although the incidents of neglected properties within the City of Sanibel have been, and continue to be, isolated, the number of complaints from neighboring properties has increased over the last few years.

Currently the City's Code of Ordinances does not address neglected properties. As such, there are no enforcement tools that are available to bring neglected properties into compliance unless the properties have reached the level of being dangerous.

PROPOSAL

A draft ordinance to provide for a set of new regulations to address neglected properties has been prepared by the Planning Department's Staff but has not had the full complement of the City's Attorney input and final sign-off. A copy of the draft ordinance (no. **12-7070 LDC** – Draft) is provided with this staff report as **Attachment A**.

ANALYSIS

Without specific codified provisions to address property neglect, Code Enforcement has to wait until a building deteriorates to the point that it can be declared dangerous, then and only then does it make the property a direct violation of the Sanibel Code. Furthermore, it can sometimes take years before a neglected property declines to the point where the City can finally step in and declare a building or structure dangerous in an effort to correct the issues on the property. Furthermore, it could take just as long to actually get the property brought back into compliance, meaning neighbors adjacent to neglected properties could be forced to deal with them for years before they see any improvement. This situation presents a stopgap in the Sanibel Code whereby a property has to become so neglected that it falls in the category of dangerous before anything can often be done.

Once the property has become so dilapidated that it is a danger to the community, completely repairing the property can become an issue if the property is non-conforming with regards to FEMA's flood requirements. FEMA limits the amount of improvement of such non-conforming properties to no more than 50 percent of their value within a five (5) year time span. That means that if a property is so distressed that the repairs would exceed 50 percent, some repairs could not be completed for another five (5) years, letting the property languish as neglected for at least five years, if not more.

What the proposed ordinance does intended to address are the following property and building conditions:

- Exterior of structures kept in good repair without holes or excessive mold, mildew or chipping paint.
- Exterior structural elements such as roofs and siding must be secured so as to not become a projectile in high winds.
- Property must be free of litter.
- Pools, fountains, hot tubs and spas must be maintained with clear water and no noxious odors.
- Roof kept in good repair and gutters secured.
- Exterior walkways, decks and balconies must be kept in safe condition.
- Yards historically maintained as a manicured lawn becoming unkempt allowing tall grass, discoloration, or other undesirable conditions.
- Yards containing gravel, rock, shell or similar materials becoming overgrown with unsuited or unwanted vegetation.
- Provisions for securing neglected property will apply if the property is:

- Vacant
 - Unoccupied for at least 30 days.
- Abandoned
 - Vacant and in the process of foreclosure.
- Secured by:
 - Closing and locking of all windows, doors, gates and other openings.
 - Inaccessible to unauthorized persons or wildlife.
 - All water features, such as swimming pools, hot tubs and spas, must be secured to prevent unauthorized access.
- Establishing an “abatement plan” if the necessary repairs are extensive or excessive in cost.

SANIBEL PLAN

Section 3.6.1 of the Sanibel Plan outlines a number of goals, objectives and policies that the Plan aims to achieve in relation to housing. The proposed ordinance has taken this into consideration and has aligned itself with achieving these priorities which are as follows:

- *Housing Goals, Objectives and Policies – Provide safe and decent housing in adequately serviced neighborhoods to meet the needs of the present and future residents of the City of Sanibel.*
- *Objective 2 – Conserve and maintain the City’s sound and aesthetic housing stock by requiring permits for work done on existing structures and inspections for compliance with the Land Development Code and the Building Code.*
- *Policy 2.1 – Maintain standards in the Land Development Code that ensure quality housing that is safe and structurally sound and promotes stable neighborhoods.*
- *Objective 7- Require substandard housing conditions to be eliminated when work is done under a City permit.*
- *Policy 7.1 – For any substandard dwelling (i.e. structurally unsound and an immediate threat to health, safety and public welfare) in the City of Sanibel, the owner will be cited for the violations and ordered to comply with the appropriate requirements of the Sanibel Building Code.*

Based upon the criteria listed above, the proposed ordinance would be consistent with the intent and purpose of the Sanibel Plan.

RECOMMENDATION

If City Council finds that the proposed draft ordinance to address neglected properties is both warranted and consistent with the Sanibel Plan then the Planning Department supports its approval.

ATTACHMENT A

DRAFT

CITY OF SANIBEL

ORDINANCE NO. 12 - __

AN ORDINANCE AMENDING THE CODE OF ORDINANCES; SUBPART A GENERAL ORDINANCES; PART II SANIBEL CODE; CHAPTER 126 ZONING BY ADDING AN ARTICLE ESTABLISHING PROPERTIES THAT HAVE BEEN DECLARED TO BE A NUISANCE AND/OR NEGLECTED; INCLUDING A SECTION FOR DEFINITIONS; A SECTION FOR SERVICE OF VIOLATION; A SECTION FOR AN ABATEMENT PLAN; A SECTION FOR APPEAL; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, the Sanibel City Council has the power to adopt ordinances necessary for the exercise of power and prescribe fines and penalties for the violation of ordinances in accordance with law; and

WHEREAS, recent events in the housing market have led to a rise in the number of nuisance and neglected properties nationwide and within the City; and

WHEREAS, nuisance and neglected properties succumb to the forces of nature and the elements; swimming pools, spas, and fountains become stagnant creating public health hazards; windows break, and exteriors suffer damage from normal wear-and-tear and vandalism, all of which has a negative impact on neighboring properties; and

WHEREAS, nuisance and neglected properties often create both aesthetic and attractive public nuisances leading to neighborhood decline; and

WHEREAS, the Sanibel Code does not currently contain provisions to address nuisance and neglected properties; and

WHEREAS, the owners or mortgagor have an interest in the continued maintenance and security of nuisance and property subject to the terms of each mortgage; and

WHEREAS, the City desires to protect its neighborhoods from decline and devaluation; to protect the public health, safety, and welfare of its citizens; and to maintain a high quality of life for the community; and

WHEREAS, the presence of nuisance and neglected properties may discourage buyers from purchasing property adjacent to or in areas where these properties exist; and

WHEREAS, the City finds that the abatement of nuisance and neglected properties will protect against decay and devaluation of such properties, and surrounding properties, that is caused by the lack of adequate maintenance, neglect, and disrepair of those nuisance and neglected properties.

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

SECTION 1. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-941 Purpose with underlining indicating added language, as follows:

Section 129-941. Purpose

It is the intent of this ordinance to protect and preserve public safety and security while adhering to the goals, policies and objectives of the Sanibel Plan by creating guidelines by which all properties shall be maintained to prevent blighted and unsecured residences and preserve the integrity of City of Sanibel neighborhoods.

SECTION 2. The Code of Ordinances of the City of Sanibel, Chapter 126 Article XIV, is hereby amended to add a new Section 126-942 Applicability with underlining indicating added language, as follows:

Section 126-942. Applicability

1. A property shall be considered neglected if it meets one or more of the following criteria:
 - a. The property is declared a nuisance upon inspection by the Enforcing Official; or
 - b. The property shows evidence of neglect or is declared neglected upon inspection by the Enforcing Official.

SECTION 3. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-943 Definitions with underlining indicating added language, as follows:

Section 126-943. Definitions

The following terms, when used in this Section will have the following meanings, except where the context clearly indicates and requires a different meaning.

Abandoned means any property in the City of Sanibel that is vacant and under a current Notice of Default and is the subject of a foreclosure action or proceeding, is the subject of a foreclosure sale where the title was retained by the lender in the foreclosure, and/or has been transferred under a deed in lieu of foreclosure or sale to the lender.

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.

Enforcing Official means the City Manager or their designee.

Evidence of Neglect means any condition that on its own, or in combination with other conditions present, would lead a reasonable person to believe that the property is neglected.

Inspection means a close viewing of the property and the exterior of any buildings or structures located thereon and includes viewing of any interior portions of the building or structure which are visible from the outside of the building or structure; however, entry into any building or structure may not be required for the purpose of viewing the interior.

Landscaping means the elements of the property to include, but not be limited to, grass, ground covers, bushes, shrubs, hedges, trees or similar plantings, decorative rock, shells, mulch or bark. Landscaping does not include weeds, broken concrete, asphalt or similar material.

Neglected means the failure to exercise the care, either by action or inaction, that a reasonably prudent person would exercise in the maintenance of a property leading to a state of degradation or deterioration that could be a hazard to the public health, safety or general welfare.

Nuisance means any item, thing, manner, or condition whatsoever that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property or could otherwise be a hazard to the public health, safety or general welfare.

Owner means every person, entity, or service company, who alone or severally with others:

1. Has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, building, or structure; or
2. Has care, charge or control of any dwelling, dwelling unit, or building, in any capacity including but not limited to agent, executor, administrator, trustee or guardian of the estate of the holder of legal title; or
3. Is a borrower in possession of any such property; or
4. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property.

Property means any real property, or portion thereof located in the City of Sanibel, including buildings, structures and other improvements situated on the property.

Structure means anything constructed, installed or portable, the use of which requires a location on land. It includes a movable 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.

Vacant means any property that is not legally occupied for at least 30 days. This does not apply to undeveloped land or second homes.

SECTION 4. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-944 Maintenance Requirements with underlining indicating added language, as follows:

Section 126-944. Maintenance Requirements

1. Properties determined to be abandoned, neglected or vacant shall be maintained in accordance with the terms and conditions set forth herein, all applicable City codes and ordinances, State laws, relevant sanitary codes, and the Florida Building Code concerning external or visible maintenance.
2. Front, side and rear yards shall be maintained to the landscaping character of the neighborhood as defined in Section 86-43 unless the property is purposefully being converted to native landscaping. Front, side and rear yards shall be free of all Noxious Plants as defined in Section 14-245 and subject to the provisions of Section 122-191. Due to the varying degree of landscaping in yards within the City of Sanibel, the following shall apply:
 - a. Yards that have been historically maintained as a manicured lawn shall continue to be maintained in this manner showing no signs of excessive height, neglect, discoloring or dead vegetation.

- b. Yards containing gravel, rock, shell or similar materials shall remain in their current state and be kept reasonably free of undesirable vegetation growing from areas of the property not intended for vegetative growth.
 - c. Properties that employ native landscaping principles are exempt from the maintenance standards applicable for lawns outlined in Section 126-944(a) so long as the native landscaping does not impede the safe ingress and egress or pose a fire hazard to the building or structure.
- 3. Front, side, and rear yards shall remain free of litter as defined in Sections 30-31, 30-34 and 30-36 of the Sanibel Code.
- 4. Pools, fountains, hot tubs and spas shall be maintained so the water remains free and clear of hazards, pollutants, debris and fungal or plant growth and shall not produce noxious odors or provide a breeding ground for mosquitos. Pools, fountains, hot tubs and spas shall comply with the requirements of City codes and ordinances and the Florida Building Code.
- 5. The exterior of a building or structure shall be maintained in good repair, structurally sound and sanitary with no instances of excessive mold, mildew, or peeling and chipped paint to the degree that it detracts from the overall appearance of the property or could be a hazard to the public health, safety or general welfare. Walls, fences and other similar structures shall be free of holes, loose or rotten wood, be weatherproofed and properly coated to prevent deterioration.
- 6. The roof and flashing shall be sound, tight and not have defects that admit leaks. Roof drains, gutters and downspouts shall be maintained in good repair and properly affixed. Roof water shall not be discharged in a manner that creates a public nuisance.
- 7. Every exterior stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.
- 8. The roof, siding, awnings, chimneys, sheds, and all other exterior structural elements of the property shall be maintained in good repair and anchored in such a way as not to become a flying projectile in high winds.

SECTION 5. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-945 Security Requirements with underlining indicating added language, as follows:

Section 126-945. Security Requirements

1. Properties determined to be abandoned or vacant upon inspection shall be maintained in a secure manner so as to be inaccessible to wildlife or unauthorized persons. A secure manner will include, but not be limited to, the closure and locking of all windows, doors, gates and other openings of such size that may allow a small mammal to access the interior of the building or structure. Broken windows shall be secured by re-glazing or replacing the windows within 30 days of being damaged.
2. Any excavations, swimming pools, hot tubs, spas, at grade fountains or other attractive nuisances shall be properly secured and comply with the requirements of City codes and ordinances and the Florida Building Code.

SECTION 6. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-946 Notice of Violation with underlining indicating added language, as follows:

Section 126-946 Notice of Violation

A notice of violation for all provisions of this section shall be administered as defined in Section 2-352 of the Sanibel Code and in Chapter 162, F.S.

SECTION 7. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-947 Abatement Plan with underlining indicating added language, as follows:

Section 126-947. Abatement Plan

1. Should the items requested to be remedied be very costly or complex, the owner or their designee may apply for an abatement plan with the Planning Department. The application shall include the following:

- a. Justification for the need of an abatement plan such as excessive costs or complexity of remedy; and
 - b. A plan for each item to be remedied; and
 - c. A timeline for each item to be remedied.
2. The Planning Department shall review the application and either approve, deny, or modify the abatement plan within seven (7) days of receipt of the abatement plan. Written notice of the Planning Department's decision shall be provided to the owner or their designee.
3. The owner or their designee shall apply for any and all of the requisite building and development permits within seven (7) days of an approved abatement plan. Failure to do so shall render the approved abatement plan null and void.

SECTION 8. The Code of Ordinances of the City of Sanibel, Chapter 126, Article XIV, is hereby amended to add a new Section 126-948 Appeal with underlining indicating added language, as follows:

Section 126-948. Appeal

Any person aggrieved by the requirements of this ordinance may seek an appeal in accordance with process set forth in Section 14-270 of the Sanibel Code.

SECTION 9. Codification.

This ordinance shall be an amendment to the Code of Ordinances of the City of Sanibel, Article XIV of Chapter 126, Sections 126-941, 126-942, 126-943, 126-944, 126-945, 126-946, 126-947, 126-948 are added.

SECTION 10. Conflict.

All ordinances and parts of ordinances in conflict herewith shall be and the same are 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 11. 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 12. Effective date.

This Ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida, this _____ day of _____, 2012.

Neglected Property Ordinance Comparison: Municipalities from Sheridan Sun Article

Requirement	Sanibel, FL	Astoria, OR	Gilroy, CA	Sheridan, OR
Exterior of structures kept in good repair without holes or excessive mold, mildew or chipping paint.	X	X	X	X
Exterior structural elements such as roofs and siding must be secured so as to not become a projectile in high winds.	X	X	X	X
Property must be free of litter.	X	X	X	X
Pools, fountains, hot tubs and spas must be maintained with clear water and no noxious odors.	X		X	
Roof kept in good repair and gutters secured.	X	X	X	X
Exterior walkways, decks and balconies must be kept in safe condition.	X	X	X	X
Yards historically maintained as a manicured lawn becoming unkempt allowing tall grass, discoloration, or other undesirable conditions.	X	X	X	X
Yards containing gravel, rock, shell or similar materials becoming overgrown with unsuited or unwanted vegetation.	X			
Provisions for securing neglected abandoned or vacant properties.	X	X	X	X
Abatement plan for extensive repairs or excessively costly repairs.	X			
Right to enter onto property				X
Fences, walls, accessory structures and other similar structures must be kept in good repair.	X	X	X	X
Provisions for chronic or repeat nuisance properties		X		X
Provisions for repairing broken windows.	X	X		X
Abatement process administered by the city when compliance cannot be achieved.		X		X
Registration for all abandoned and neglected properties.				