CITY OF SANIBEL
LEGAL DEPARTMENT

MEMORANDUM

TO: **Members of City Council**

FROM: **Kenneth B. Cuyler** KBC
City Attorney

DATE: **January 24, 2014**

RE: **Draft Alternative Language for Council Consideration**

It has been proposed that the City Council consider some alternative provisions and language with respect to proposed Ordinance No. 13-009. In your agenda package you will find proposed Ordinance No. 13-009 exactly as it was presented for first reading on January 7, 2014. Following proposed Ordinance No. 13-009, you will find several sections of the Ordinance with alternative provisions (the title of the Ordinance, Whereas clauses, etc. are not repeated).

The alternative language could be briefly summarized as follows:

1) The penalty provisions set forth in proposed Sections 66-37(b) and 66-101(b)(2) have been revised to provide that the penalty for a first violation is a written warning with no civil penalty assessed.

2) Proposed Section 66-101(a)(11) has been revised to add a subsection (b) which requires the City to provide a full-sized bus parking space at the City's Tarpon Bay Road beach parking lot and another such parking space at the Bowman's Beach parking lot.

The alternative language has been bolded to assist you in identifying and reviewing and the alternative language. If you have any questions, please let me know. I will be at the February 4, 2014 City Council meeting in the event that any questions arise at that time.

KBC/jg

cc: Judie A. Zimomra, City Manager
Pamela Smith, City Clerk

(Attachment as noted in Memo)

CITY OF SANIBEL

ORDINANCE NO. 13-009

AN ORDINANCE AMENDING CHAPTER 66 OF THE SANIBEL CODE OF ORDINANCES ENTITLED "TRAFFIC", ARTICLE II, "PARKING, STOPPING AND STANDING", DIVISION 1 – "GENERALLY" IN ORDER TO PROVIDE A PROHIBITION OF THE PARKING, STOPPING OR STANDING OF ANY BUS (OTHER THAN A SCHOOL BUS), VAN OR OTHER MOTOR VEHICLE ON ANY PUBLIC STREET OR ROAD OR WITHIN ANY PUBLIC STREET OR ROAD RIGHT-OF-WAY FOR PURPOSES OF ALLOWING OR PERMITTING PASSENGERS TO EXIT OR ENTER THE VEHICLE; AMENDING DIVISION 2 – "BEACH AREA PARKING RESTRICTIONS", SECTION 66-101 "PROHIBITION AND PENALTIES", BY ADDING A NEW SUBSECTION (a)(11) TO PROVIDE THAT IT IS PROHIBITED TO PARK, STOP OR STAND ANY BUS, VAN OR OTHER PASSENGER VEHICLE WITH A SEATING CAPACITY OF 10 OR MORE PASSENGERS IN ANY CITY OF SANIBEL OWNED OR MANAGED BEACH PARKING LOT FOR THE PURPOSE OF DISCHARGING OR PICKING UP PASSENGERS UNLESS THERE EXISTS A LAWFUL AND AUTHORIZED PARKING SPACE IN SUCH BEACH PARKING LOT AND THE BUS, VAN OR OTHER PASSENGER VEHICLE IS PARKED IN SUCH SPACE AND THE APPLICABLE PARKING FEE IS PAID; PROVIDING EXCEPTIONS; AMENDING THE PENALTY PROVISIONS IN SECTION 66-37 AND SECTION 66-101; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the parking, stopping or standing of any bus (other than a school bus), van or any other motor vehicle on a public street or road, or within the right-of-way of any public street or road, for purposes of allowing passengers to enter or exit from such vehicle poses a serious safety concern to both such passengers and the traveling public in general; and

WHEREAS, protection of the health, safety and welfare of the citizens and visitors of the City of Sanibel and the traveling public in general requires that such parking, stopping or standing of a bus (other than a school bus), van or other motor vehicle for purposes of allowing passengers to enter or exit from such vehicle be prohibited, except in those instances where such activity is authorized through a City-issued special events permit or a legal exemption as provided in the Ordinance; and

WHEREAS, the primary purpose of the City's public beach parking lots is to provide vehicle parking spaces for privately owned and operated motor vehicles so that the drivers and passengers of such vehicles have access to the Sanibel beaches and parking lot amenities; and

WHEREAS, the parking fees charged for the use of the City's public beach parking lot spaces are used for City beach and parking lot costs including, but not limited to, maintenance, grading and improvement of the parking lot surfaces, signage, picnic tables, restrooms, police protection and enforcement, and beach habitat protection and restoration costs; and

WHEREAS, the City Council finds that any bus, van or any other type of passenger carrying vehicle, with a seating capacity of 10 or more passengers, which does not park in a permitted and designated parking space, and which enters the public parking lot for the primary purpose of discharging passengers and then exiting the lot or stopping and standing in a non-permitted area:

1. Does not contribute its required fair share toward the costs and expenses described above which can only be recouped through parking fees;

2. Causes damage through the normal wear and tear of the vehicles and passengers on parking lot and beach access facilities which cannot be recovered in any way through parking fees;

3. Causes an undue disruption in the access and movement of other driver's vehicles who do wish to park in designated spaces when large numbers of passengers in buses, vans or other large passenger vehicles are discharged or picked up; and

4. Causes un-recouped financial impacts which are ultimately borne by those who do pay the parking fee or by the taxpayers of the City;

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

SECTION ONE. The Sanibel Code of Ordinances CHAPTER 66, "TRAFFIC", ARTICLE II, "Parking, stopping and standing", Division 1 "Generally" be amended by adding a new Section 66-39 and renumbering Sections as necessary, with additions indicated by underlining and deletions indicated by strike-through, to read as follows:

Sec. 66-39. – <u>Parking, stopping or standing on a road or within road right-of-way for passengers to enter or exit the vehicle is prohibited</u>.

<u>(a)</u> <u>No person shall park, stop or stand a bus, van or other motor vehicle on any public street or road or within any public street or road right-of-way for the purpose of allowing or permitting passengers on such bus, van or other motor vehicle to enter or exit such vehicle. Without limitation, this prohibition extends to any individually owned or leased bus, van or other motor vehicle, any chartered bus, van or other motor vehicle, and any tour bus, van or other motor vehicle. It does not apply to a school bus.</u>

<u>(b)</u> <u>Exceptions</u>.

<u>The following shall constitute lawful exceptions to the prohibitions set forth above:</u>

<u>(1)</u> <u>In the event that a bus, van or other motor vehicle is involved in an emergency situation including, but not limited to, a vehicle breakdown or accident, the prohibition set forth above shall not be applicable.</u>

(2) In the event that the operator of the bus, van or other motor vehicle is operating under the authority of a special events permit issued by the City of Sanibel, the operator of the bus, van or other motor vehicle may operate such vehicle in accordance with the special events permit, or under the authority of such permit, and in accordance with all conditions thereof.

(3) Where the bus, van or other motor vehicle is an emergency vehicle, a governmental vehicle or public utility vehicle on official business.

(c) Penalty.

Violation of the provisions of this section shall subject the offender to the penalties and procedures set forth in Section 66-37.

SECTION TWO. The Sanibel Code of Ordinances CHAPTER 66, "TRAFFIC", ARTICLE II, "Parking, stopping and standing", Division 1 "Generally" be amended by revising Section 66-37 entitled "Penalty; payment of fines; referral to county court", with additions indicated by underlining and deletions indicated by strike-through, to read as follows:

Sec. 66-37. – Penalty; payment of fines; referral to county court.

(a) Unless otherwise provide in this article, violation of the provisions of this article shall subject the offender to a civil penalty of $35.00, plus a filing fee of $10.00, provided the penalty is paid within five days after issuance of the ticket. In the event the penalty is paid after five days, the payment required shall be a civil penalty of $50.00, plus a filing fee of $10.00.

(b) Violation of Section 66-39 of this article shall subject the offender to a civil penalty as follows:

1. Upon a first offense, a civil penalty of $100.00, plus a filing fee of $10.00, provided the penalty is paid within five days after issuance of the ticket. In the event the penalty is paid after five days, the payment required shall be a civil penalty of $150.00, plus a filing fee of $10.00.
2. Upon a second offense, a civil penalty of $350.00, plus a filing fee of $10.00.
3. Upon a third or subsequent offense, a civil penalty of $500.00, plus a filing fee of $10.00.

~~(b)~~(c) Upon failure to pay the civil penalty in a timely manner and in the prescribed amount, or upon a court hearing request, the ticket may be referred to county court for further action pursuant to, and in accordance with, penalties provided in F.S. § 316.1967.

SECTION THREE. The Sanibel Code of Ordinances CHAPTER 66, "TRAFFIC", ARTICLE II, "Parking, stopping and standing", Division 2 "Beach Area Parking Restrictions" be amended by adding new Subsection (a)(11) to Section 66-101 and amending Section 66-101(b)(1)(b) and 101(b)(2), with additions indicated by underlining and deletions indicated by strike-through, to read as follows:

Sec. 66-101. - Prohibitions and penalties.

(a) It shall be unlawful and prohibited for any person to:

(1) Park a vehicle in a parking zone designated residential or restricted without first having obtained the appropriate permit for the particular zone as set forth in subdivision II of this division.

(2) Park a vehicle in a parking zone designated residential or restricted without displaying the appropriate permit in the manner set forth in section 66-80.

(3) Give false information in the application for permit.

(4) Display a permit on a vehicle other than the vehicle permitted.

(5) Park a bicycle or moped in either a residential or restricted zone in any place other than the rack designated for bicycles and mopeds.

(6) Park a vehicle in a parking zone designated residential or restricted with an expired or otherwise invalid permit.

(7) Park a vehicle outside of the designated area or space as provided for in section 66-58 or in a prohibited parking area regardless of whether the vehicle is permitted.

(8) Park an oversize vehicle (within the meaning of section 66-83) in any parking zone.

(9) Park a vehicle, including bicycles and mopeds, in any residential or restricted parking zone at any time other than the hours of 7:00 a.m. to 8:00 p.m. during Eastern Standard Time and 6:00 a.m. to 9:00 p.m. during Daylight Saving Time.

(10) Park a vehicle in a parking zone designated general parking—Paid or designated general parking—Paid at Gulfside City Park, the city public boat ramp facility parking lot or causeway parking lot without displaying a current and valid permit issued by the city; or, in the case of general parking—Paid at Bowman's Beach Park, without either displaying a

current and valid permit issued by the city or a current and valid county regional parks pass.

(11) Park, stop or stand any bus, van or other passenger vehicle with a capacity of 10 or more passengers in any City owned or managed beach parking lot for the purpose of discharging or picking up passengers unless there exists a lawful and authorized parking space in such beach parking lot and the bus, van or other passenger vehicle with a seating capacity of 10 or more passengers is parked in such space and the applicable parking fee is paid.

a. A lawful exception to the prohibition set forth above is hereby made for such vehicles when the bus, van or other vehicle is included as part of the activity or function authorized by a City-issued special events permit.

(b) Violation of the prohibitions in subsection (a) of this section shall subject the violator to the following:

(1) Any person violating the provisions of subsections (a)(1), (2), (4), (5), (6), (7), (8), (9) or (10) of this section shall be subject to:

a. The impoundment procedures set forth in articles VI and VII of this chapter.

b. A civil penalty of $35.00, provided the penalty is paid within ~~five working~~ fifteen calendar days after issuance of the ticket. Upon failure to pay the civil penalty in a timely manner and in the prescribed amount, or upon a court hearing request, the ticket may be referred to county court for further action pursuant to, and in accordance with, penalties provided in F.S. § 316.1967.

(2) Any person violating the provisions of subsection (a)(11) of this section shall be subject to a penalty as follows:

a. Upon a first offense, a civil penalty of $100.00, plus a filing fee of $10.00, provided the penalty is paid within five days after issuance of the ticket. In the event the penalty is paid after five days, the payment required shall be a civil penalty of $150.00, plus a filing fee of $10.00.
b. Upon a second offense, a civil penalty of $350.00, plus a filing fee of $10.00.
c. Upon a third or subsequent offense, a civil penalty of $500.00, plus a filing fee of $10.00.
d. Additionally, the City may pursue any fine or means of enforcement available to it under Section 1-15 of this Code of Ordinances entitled "Violations; general penalty".

~~(2)~~(3) Any person violating the provisions of subsection (a)(3) of this section shall be, upon conviction, punished by a fine not exceeding $100.00 in the discretion of the judge, for each offense. If the violation involves a false statement under oath, then the penalties for perjury under the laws of the state shall apply.

(c) *Liability for violations.* The permit holder or, if the vehicle is not permitted, the vehicle registrant, is responsible and liable for payment of any parking ticket, fine, civil penalty or impoundment fee or enforcement procedure under this division unless the permit holder or vehicle registrant as the case may be furnishes evidence that the vehicle was, at the time of violation, in the care, custody or control of another person. In such instances, the permit holder or vehicle registrant as the case may be is required, within a reasonable time after notification of the violation, to furnish to the city police the name and address of the person who had care, custody or control of the vehicle. The permit holder or vehicle registrant as the case may be is not responsible for any violation if the vehicle involved was, at the time, stolen or in the care, custody or control of some persons who did not have permission of the permit holder to use the vehicle.

SECTION FOUR. Former Section 66-39 entitled "Parking in designated handicapped parking spaces" is hereby renumbered to Section 66-40.

SECTION FIVE. Codification. This ordinance shall be deemed an amendment to Sanibel Code of Ordinances and shall be codified in the Sanibel Code of Ordinances as such an amendment.

SECTION SIX. 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 SEVEN. 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 EIGHT. Effective Date.

This Ordinance shall be effective immediately upon adoption, however the parking provisions, fines and enforcement, as amended in this Ordinance, shall become effective March 15, 2014.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this _____ day of _____, 2013.

AUTHENTICATION:

_____ _____

Kevin Ruane, Mayor Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler 1/24/14

Kenneth B. Cuyler, City Attorney Date

Vote of Council Members:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

First Reading _____
Publication Date _____
Second Reading _____

Date Filed with City Clerk: _____

DRAFT ALTERNATIVE LANGUAGE

FOR

COUNCIL CONSIDERATION

Sec. 66-37. – Penalty; payment of fines; referral to county court.

(a) Unless otherwise provide in this article, violation of the provisions of this article shall subject the offender to a civil penalty of $35.00, plus a filing fee of $10.00, provided the penalty is paid within five days after issuance of the ticket. In the event the penalty is paid after five days, the payment required shall be a civil penalty of $50.00, plus a filing fee of $10.00.

(b) Violation of Section 66-39 of this article shall subject the offender to a civil penalty as follows:

1. **Upon a first offense, the person liable for the violation shall be issued a written warning advising such person of the violation provided, however, no civil penalty shall be assessed for a first offense.**
2. Upon a second offense, a civil penalty of $100.00, plus a filing fee of $10.00, provided the penalty is paid within five days after issuance of the ticket. In the event the penalty is paid after five days, the payment required shall be a civil penalty of $150.00, plus a filing fee of $10.00.
3. Upon a third offense, a civil penalty of $350.00, plus a filing fee of $10.00.
4. Upon a fourth or subsequent offense, a civil penalty of $500.00, plus a filing fee of $10.00.

Sec. 66-101. - Prohibitions and penalties.

(a) It shall be unlawful and prohibited for any person to:

(1) Park a vehicle in a parking zone designated residential or restricted without first having obtained the appropriate permit for the particular zone as set forth in subdivision II of this division.

(2) Park a vehicle in a parking zone designated residential or restricted without displaying the appropriate permit in the manner set forth in section 66-80.

(3) Give false information in the application for permit.

(4) Display a permit on a vehicle other than the vehicle permitted.

(5) Park a bicycle or moped in either a residential or restricted zone in any place other than the rack designated for bicycles and mopeds.

(6) Park a vehicle in a parking zone designated residential or restricted with an expired or otherwise invalid permit.

(7) Park a vehicle outside of the designated area or space as provided for in section 66-58 or in a prohibited parking area regardless of whether the vehicle is permitted.

(8) Park an oversize vehicle (within the meaning of section 66-83) in any parking zone.

(9) Park a vehicle, including bicycles and mopeds, in any residential or restricted parking zone at any time other than the hours of 7:00 a.m. to 8:00 p.m. during Eastern Standard Time and 6:00 a.m. to 9:00 p.m. during Daylight Saving Time.

(10) Park a vehicle in a parking zone designated general parking—Paid or designated general parking—Paid at Gulfside City Park, the city public boat ramp facility parking lot or causeway parking lot without displaying a current and valid permit issued by the city; or, in the case of general parking—Paid at Bowman's Beach Park, without either displaying a current and valid permit issued by the city or a current and valid county regional parks pass.

(11) Park, stop or stand any bus, van or other passenger vehicle with a capacity of 10 or more passengers in any City owned or managed beach parking lot for the purpose of discharging or picking up passengers unless there exists a lawful and authorized parking space in such beach parking lot and the bus, van or other passenger vehicle with a seating capacity of 10 or more passengers is parked in such space and the applicable parking fee is paid.

a. A lawful exception to the prohibition set forth above is hereby made for such vehicles when the bus, van or other vehicle is included as part of the activity or function authorized by a City-issued special events permit.

b. The City of Sanibel shall provide one lawful and authorized parking space of sufficient size to accommodate a full-sized bus at the City's Tarpon Bay Road beach parking lot and one such parking space at the Bowman's Beach parking lot.

(b) Violation of the prohibitions in subsection (a) of this section shall subject the violator to the following:

(1) Any person violating the provisions of subsections (a)(1), (2), (4), (5), (6), (7), (8), (9) or (10) of this section shall be subject to:

a. The impoundment procedures set forth in articles VI and VII of this chapter.

b. A civil penalty of $35.00, provided the penalty is paid within ~~five working~~ fifteen calendar days after issuance of the ticket. Upon failure to pay the civil penalty in a timely manner and in the prescribed amount, or upon a court hearing request, the ticket may be referred to county court for further action pursuant to, and in accordance with, penalties provided in F.S. § 316.1967.

(2) Any person violating the provisions of subsection (a)(11) of this section shall be subject to a penalty as follows:

a. Upon a first offense, the person liable for the violation shall be issued a written warning advising such person of the violation provided, however, no civil penalty shall be assessed for a first offense.

b. Upon a second offense, a civil penalty of $100.00, plus a filing fee of $10.00, provided the penalty is paid within five days after issuance of the ticket. In the event the penalty is paid after five days, the payment required shall be a civil penalty of $150.00, plus a filing fee of $10.00.

c. Upon a third offense, a civil penalty of $350.00, plus a filing fee of $10.00.

d. Upon a fourth or subsequent offense, a civil penalty of $500.00, plus a filing fee of $10.00.

e. Additionally, the City may pursue any fine or means of enforcement available to it under Section 1-15 of this Code of Ordinances entitled "Violations; general penalty".