

9. **OLD BUSINESS**

- c. Staff Report Regarding resident Hazel Schuler's Comments on Gulf Beach Zone Carrying Capacity and Resort Housing District Regulations



City of Sanibel

Planning Department

MEMORANDUM

DATE: November 23, 2008

TO: Judi Zimomra, City Manager

FROM: Robert J. Duffy, AICP, Planning Director

SUBJECT: **Gulf Beach Carrying Capacity
and Resort Housing District Regulations**

On Tuesday, November 18, 2008, Sanibel resident Hazel Schuller appeared before City Council to express concerns regarding the effectiveness of the City of Sanibel's current Resort Housing District Regulations in protecting the fragile carrying capacity of the Gulf beach and dune system and related wildlife habitats. City Council directed City staff to prepare a report on the issues raised by Ms. Schuller for consideration at the December 2, 2008 City Council meeting.

Effective management and measurement of carrying capacity is one of the important goals of City Council and the Sanibel Plan. The Planning Commission's Land Development Code Review Committee has also defined the issue of beach and dune habitat protection as an issue to be addressed by the Committee during 2009. The Committee's recently submitted 2008 Annual Report to City Council identifies the examination of the current sections of the Resort Housing District regulations that address beach equipment deployment and storage as a priority.

The following report provides the following information for City Council's consideration.

1. Gulf Beach Ecological Zone delineation and description.
2. Resort Housing District delineation, description and summary of the current land use characteristics.
3. Sanibel Plan elements, goals, objectives and policies that pertain to the Gulf beach zone.
4. Summary of Land Development Code and Sanibel Code regulations that pertain to beach zone utilization and accessory equipment management and deployment.
5. Issues raised for potential further review.

1. Gulf Beach Ecological Zone

The Gulf Beach Ecological Zone is defined by both the Sanibel Plan and Land Development Code. The Gulf Beach Zone includes all land seaward of the 1974 Coastal Construction Control Line. Attachment 1 provides the description of the Gulf Beach Zone from the Sanibel Plan. The Gulf Beach Zone is “designated for passive recreation and conservation uses”.

2. Resort Housing District

The Resort Housing District is defined by both the Sanibel Plan and the Land Development Code. Attachment 2 from the Official Maps, Volume 2 of the Sanibel Plan delineates the boundary of the Resort Housing District which extends approximately seaward of East, Middle and West Gulf Drives for approximately six miles between Lighthouse Park to just east of Rabbit Road. Today, there are approximately 600 hotel/inn/cottage resort units and over 2000 condominium and time share units that have direct Gulf frontage within the Resort Housing District.

The Resort Housing District is essentially an overlay zone that was established by the Sanibel Plan and Land Development Code to recognize the distinct factors that differentiate short term resort and long term residential housing and accessory uses and activities including: occupancy; demand for supporting recreational and commercial uses; potable water consumption; wastewater generation; traffic volumes; and intensity of demand for beach access and utilization. Both the Sanibel Plan’s goals, objectives and policies and the Resort Housing District’s regulations insure that a balance is maintained between resort and residential housing that is essential to Sanibel’s unique environment and economy. Attachment 3 provides Article XII. Resort Housing District from Chapter 126 Zoning of the Land Development which includes Sec. 126 – 633 which defines the purpose, intent and objectives of the District.

3. Sanibel Plan

Part 3.2. Protection of Natural, Environmental, Economic and Scenic Resources of the Sanibel Plan establishes the goals, objectives and policies for coastal zone protection. Section 3.2.1. Coastal Zone Protection Element and Section 3.2.2. Conservation Element are particularly relevant to the management of human activity within the Gulf beach and dune system.

These sections of the Sanibel Plan also reference the 1995 City of Sanibel Island Wide Beach Management Plan prepared by the Department of Natural Resources which focused primarily on coastal processes including erosion control and beach nourishment.

The following Objective 7 and Policy 7.1 (Page 39) of the Sanibel Plan specifically address the issue of beach carrying capacity.

“Objective 7

Ensure that preservation of the natural beaches and beach carrying capacity for wildlife is maintained for environmental, social, economic and historic reasons, all of which are essential to the community’s quality of life and economy of the City.

Policy 7.1. Undertake a study to evaluate the carrying capacity of the beach for use by wildlife, in order to determine the point where human activity significantly precludes the use of beach habitat by indigenous and migratory species of wildlife.”

4. Land Development Code and Sanibel Code Regulations

Land Development Code Chapter 126. Zoning, Article XII. Resort Housing District, Sec. 126-636. Resort Housing Accessory Beach Equipment Requirements regulates how both conforming and non-conforming resort housing owners, tenants and guests utilize accessory equipment within the natural Gulf beach and dune system. Attachment 3 provides the specific regulations defined by Sec. 126 – 636.

In addition, Chapter 74 Waterways, Article VII. Beach and Dune System defines specific activities that are prohibited within the Gulf beach and dune system. Attachment 4 provides the specific regulations.

The City’s Code Enforcement Office, in conjunction with the Department of Natural Resources and Police Department, work cooperatively to enforce the above regulations. Code Enforcement has produced a series of guides to the City’s regulations that are distributed periodically through on-site meetings with managers and employees of Gulf resort properties. Attachment 5 provides examples of these guides. Code Enforcement also conducts periodic inspections of resort properties to insure ongoing compliance. Business Tax Receipts filed by resort properties are also reviewed to insure compliance with City regulations.

5. Potential Issues

The importance of beach and dune system management and the establishment of carrying capacity thresholds to define when and where specific management strategies should be addressed is recognized by the Sanibel Plan. The goals of City Council also support the following:

- Complete research defining best practices associated with measuring and managing carrying capacity that may be transferable to Sanibel.
- Define existing baseline conditions and key impact and mitigation thresholds associated with sustaining the carrying capacity of Sanibel’s natural and human systems.
- Identify, evaluate and prioritize carrying capacity policies and management strategies consistent with the Sanibel Plan.

Issues associated with beach and dune system carrying capacity have been raised by Sanibel residents at both City Council and Planning Commission meetings. The Planning Commission’s 2008 Land Development Code Review Committee has defined the issue of beach and dune habitat protection and accessory beach equipment regulations associated with resort housing as a 2009 work program priority (See October 28, 2008 Annual Report to City Council).

The range of potential issues to be considered by the Planning Commission will include:

- Current resort related activities permitted and occurring within the Resort Housing District.
- The performance of current applicable Land Development Code and Sanibel Code regulations.
- The effectiveness of City and resort housing management coordination, interaction and outreach.
- Research on potential best practices.
- As warranted, definition and evaluation of alternative communication, management and regulatory alternatives.

The Planning Department is prepared to review the above report and attachments with City Council at the December 2, 2008 meeting. Please contact me if further information is required prior to City Council's meeting.

CC: City Council
Planning Commission

Gulf Beach Zone

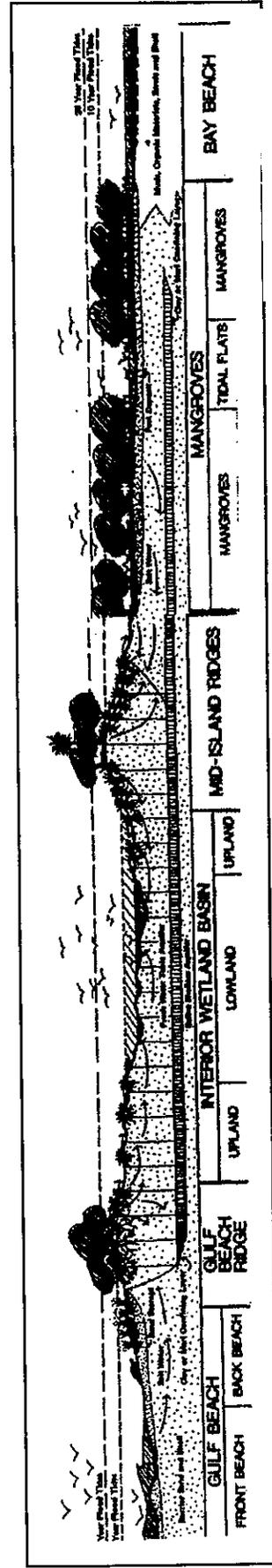
The Gulf Beach Zone includes all land seaward of the 1974 Coastal Construction Control Line. This line was revised landward by the State in 1991; however, the City continues to use the 1974 Coastal Construction Control Line to define the landward extent of this Preservation District: the Gulf Beach Zone.

The Gulf Front Beach is the most active beach zone and includes the area between mean high water and the City's boundary one-half mile offshore. Sand in this zone is in constant motion. Sand migrates between the primary dune and offshore bars and is transported up and down the coast by longshore currents. Examination of historical surveys and aerial photographs shows that erosion and accretion of sand along the beaches is an ongoing dynamic process. This zone maintains several functions critical to public health, safety and welfare. It is the Island's first defense in the event of storm and flood, when the impact of waves erodes the sand reservoir in the berm. The natural form of the Gulf Beach Zone is a response to the natural processes of wind, currents and waves. Undisturbed, it is in a state of balance with natural forces, thus maintaining the shoreline. This area also supports much of the marine life for which Sanibel is famous, and is an important feeding area for Island wildlife.

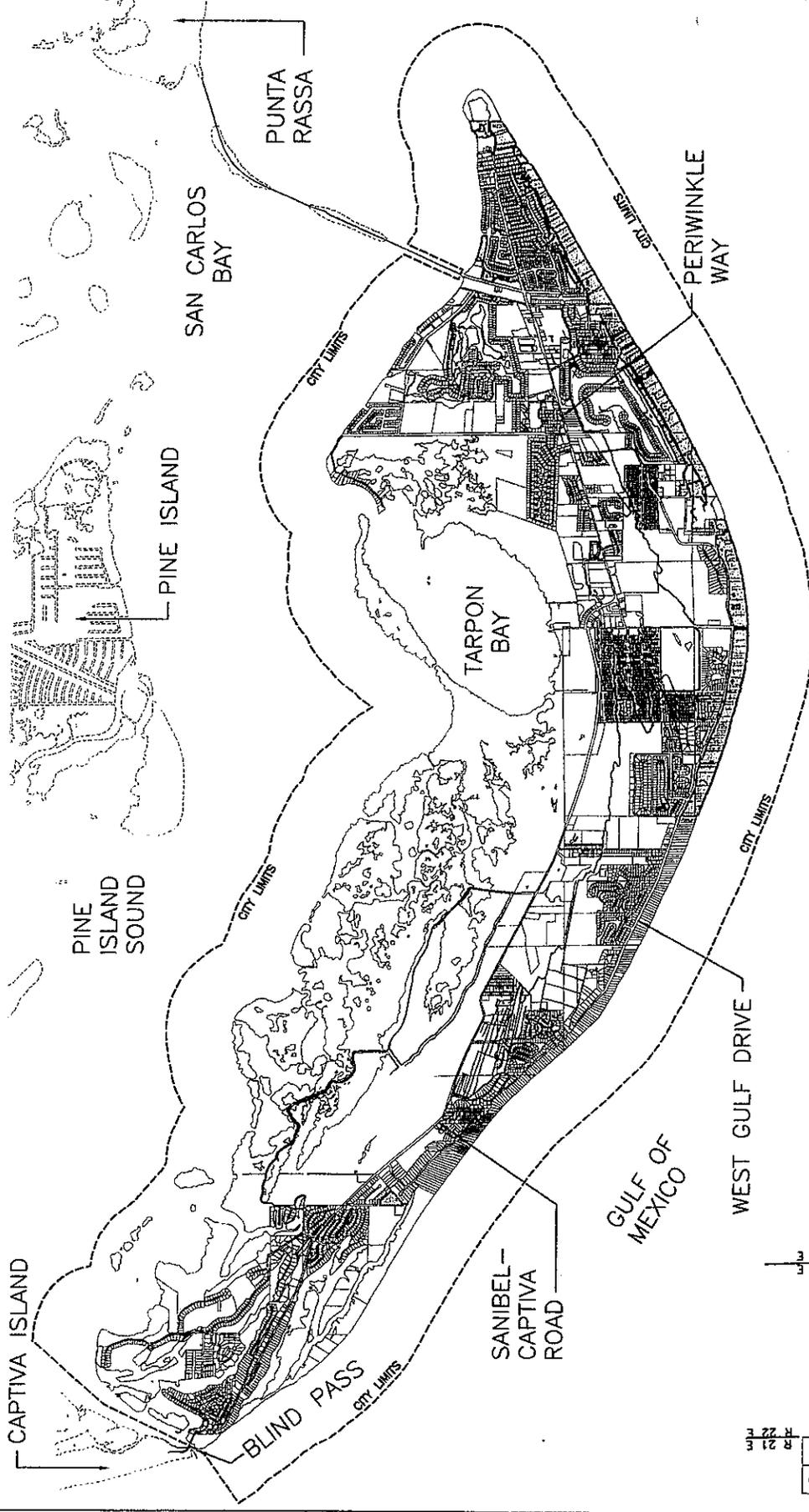
The Gulf Back Beach, though less volatile than the front beach, also absorbs considerable impact from storm-

generated wind and waves. This is the area between mean high water and the 1974 Coastal Construction Control Line. It is a reservoir of sand that may be eroded after the primary dune in a severe storm, thus protecting property further inland on the Beach Ridge. The dunes are an important nesting area for wildlife, the loggerhead turtle being a prime example. The vegetation of the Back Beach is particularly important, as it stabilizes and holds the sand.

Both components of the Gulf Beach Zone have a very low tolerance to man's activities. Removal of sand, disposal of stormwater runoff, excessive foot traffic or any vehicular traffic can quickly induce major erosion and other impacts on the beach. Strict regulations are, therefore, required to maintain this zone. Removal of sediments from the beach should be avoided and construction of any sort that would change the configuration of the beach or inhibit sand movement should be undertaken only as a last resort in efforts to preserve the beach or protect vital infrastructure. Wildlife access to the beach should be maintained and public access to the beach should be confined to narrow paths and elevated walkways in heavily used areas such as resorts and public parks. Because of their shallow root system and propensity to form monocultures, Australian pines (*Casuarina Sp.*) are not suitable plants in this zone and should be selectively thinned and replaced with hardy dune vegetation.



From the Sanibel Report by John Clark: Conservation Foundation - 1976



GULF OF MEXICO

GULF OF MEXICO

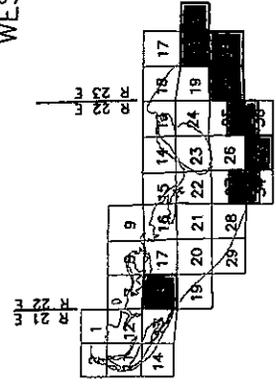
RESORT HOUSING DISTRICT

ATTACHMENT 2

RESORT HOUSING DISTRICT

RESORT HOUSING DISTRICT

RESORT HOUSING DISTRICT



SECTION DETAIL

SECTIONS INCLUDED IN THIS MAP SERIES

COMPILED BY:
Brem, Whicker, Lutz & Korsh, Inc.
1001 WATERBURY DRIVE, TAMPA, FL 33604
TEL: 813-289-1100

zoning to the special use district be a matter of right. The city council may approve such zoning, in its legislative discretion, when the zoning will not contravene the goals and policies of the Sanibel Plan, will not be detrimental to the public health or safety, will not adversely affect any property or the peaceful and beneficial use and enjoyment thereof, and will not be inharmonious with the natural ambiance and quiet residential character and appearance of the city as a whole. (Ord. No. 85-26, § 1(I.D.5(a)), 11-27-1985)

Sec. 126-612. Procedure.

A parcel of land may be zoned to the special use district, upon an application for change of zoning district boundaries, by ordinance amending the zoning map of the city so as to reflect the delineation of the district thereby created, with reference made on the map to the amendatory ordinance. Such ordinance shall specify the uses permitted on the parcel zoned, and any use not specified in such ordinance shall be prohibited. The rezoning ordinance shall also specify such additional conditions and limitations as are necessary to:

- (1) Coordinate development of the parcel, to the greatest extent possible with the zoning, use, and development of adjacent parcels;
- (2) Promote the best possible vehicular and pedestrian access and circulation, both internal and external to the site;
- (3) Minimize the need for, or compensate the city for, off-tract transportation improvements or other public facilities necessitated by the proposed development;
- (4) Minimize or mitigate adverse environmental impacts;
- (5) Prevent adverse effects from the proposed development on adjacent or nearby residents, lands, or business;
- (6) Ensure that the proposed development is harmonious and compatible with nearby lands and uses and with the ambiance, character, and appearance of the city as a whole; and

- (7) Otherwise prevent adverse effects on the public health, welfare, or safety. (Ord. No. 85-26, § 1(I.D.5(b)), 11-27-1985)

Sec. 126-613. Other regulations conditions and limitations.

The ordinance rezoning any parcel to special use district shall specify the uses permitted on the parcel. The ordinance may establish specific development regulations or provide that the permitted uses on the parcel shall conform to and comply with all regulations, conditions, and limitations of this land development code as apply to uses permitted in a particular commercial district, to the extent not inconsistent with the specific terms of the rezoning ordinance. When no such district is specified, the regulations, conditions, and limitations for uses in the GC general commercial district shall apply, to the extent not inconsistent with the rezoning ordinance. Any use not specifically permitted in the rezoning ordinance shall be prohibited.

(Ord. No. 85-26, § 1(I.D.5(c)), 11-27-1985)

Sec. 126-614. Expiration.

An ordinance rezoning any land to special use district shall be automatically repeated and revoked, and of no further force and effect, if a development permit for the approved use is not issued within one year from the effective date of the ordinance or if the development permit for the approved use expires, unless the effective period of such rezoning is extended by the city council by resolution prior to the expiration of the one-year period or of the development permit.

(Ord. No. 85-26, § 1(I.D.5(d)), 11-27-1985)

Secs. 126-615—126-630. Reserved.

ARTICLE XII. RESORT HOUSING DISTRICT*

Sec. 126-631. Created.

There is hereby created a resort housing district, as designated on the map entitled Resort Housing District, dated February, 1989, adopted

*Cross reference—Housing, ch. 102.

as part of the amended, revised and restated Sanibel Plan adopted February 8, 1989, which map is hereby approved and adopted as part of this article. The regulations and restrictions for the resort housing district contained in this article are, where applicable, supplementary and cumulative to all other provisions of sections 78-1 through 78-11; chapter 86; chapter 94; chapter 98; chapter 106; chapter 110; chapter 118; chapter 122; and articles II through XV of this chapter. To the extent of any conflict, the provisions of this article shall control.

(Ord. No. 85-26, § 1(I.D.6), 11-27-1985; Ord. No. 87-02, § 7, 1-6-1987; Ord. No. 89-23, § 10, 8-15-1989)

Sec. 126-632. Findings.

In relation to the establishment of a resort housing district, the city council makes the following findings:

- (1) Resort housing and longer term residential uses are generally incompatible. The rapid turnover in occupancy associated with resort use can be a disruptive influence on the peaceful use and enjoyment of residential areas. For purposes of this discussion, nonresort housing shall be referred to as residential housing or use.
- (2) Resort housing has a greater intensity of use than residential housing. This is evidenced by the following factors:
 - a. The average occupancy per dwelling unit is higher for resort uses than residential.
 - b. Resort housing brings with it a greater demand for recreational facilities, restaurants and specialty retail stores with their associated traffic, than do residential uses.
 - c. Potable water consumption and wastewater generation associated with the seasonal resort uses require the community to have large standby capacities for water supply and wastewater treatment available to support these resort uses.
- (3) Historically, the city developed as a residential community catering to a wide income range with small commercial and service establishments serving residents and tourists. As southwest Florida has developed there has been increasing pressure to expand the resort segment of the community. Unless limits are placed on the amount and location of resort housing units, resort uses could overwhelm the residential community, making the city less and less attractive a place to live. This would have a negative effect on the city's economy, which is dependent upon maintaining a balance between resort and residential housing. The Sanibel Plan, Section 2.6.3, Housing, points out that the city has had success since 1975 in minimizing the instability in the economy associated with high rates of occupancy and turnover in resort housing by increasing the percentage of residential units in its total housing stock. Long-term, it is an objective of the city to achieve a balance between resort and nonresort housing, as is reflected on the development intensity map and uses permitted in the several ecological zones.
- (4) The Sanibel Plan, Section 2.5.1, Permitted Uses, states that permitted uses should take into account existing patterns of development and the need to maintain a balance between these two uses to achieve community objectives, it is necessary to establish zoning districts to separate the two, and to delimit the area where resort housing is a permitted use.
- (5) While it would be preferable to create a compact, contiguous resort housing district, treating established resort housing units outside the district as nonconforming uses, this approach has two drawbacks:
 - a. Since the difference in use relates only to the term of rental, and since only one short-term rental prior to adoption of the Sanibel Plan establishes a nonconforming use, it is ex-

tremely difficult to prove or disprove the lawful establishment of the use, particularly as the years pass.

- b. Many developments, indeed, many structures, may contain both residential uses and nonconforming resort housing uses in an incompatible mixture which devalues and damages the residential units.

- (6) The better approach is to recognize existing and historical patterns of development and use; to include even isolated parcels developed for resort housing use in the resort housing district when they are located, oriented, and buffered so as to sufficiently protect nearby residential uses; and to require termination of resort housing uses then left nonconforming as soon as is reasonable.

(Ord. No. 85-26, § 1(I.D.6(a)), 11-27-1985; Ord. No. 87-02, § 7, 1-6-1987; Ord. No. 89-23, § 10, 8-15-1989; Ord. No. 92-18, § 8, 10-6-1992)

Sec. 126-633. Purposes, intent and objectives.

The creation of the resort housing district is meant to accomplish the following purposes, intent, and objectives:

- (1) Separation of resort housing developments from nonresort residential uses, so as to minimize the detrimental effect of resort uses on residential housing and to enhance the resort character and function of resort housing areas.
- (2) Clear and definite delineation of boundaries, so that property owners, realtors, and tourist visitors can easily determine which residential units may be rented for resort use.
- (3) Creation of a reasonably compact and contiguous resort housing district, plus the inclusion of only those separated parcels as have been developed for resort housing use and are located, oriented, and buffered so as to sufficiently protect nearby residential uses.

- (4) Termination of nonconforming resort housing uses outside the resort housing district as soon as reasonably possible, so as to eliminate the confusion caused by their proliferation and continuance and so as to terminate their deleterious effects on existing residential uses.

(Ord. No. 85-26, § 1(I.D.6(b)), 11-27-1985; Ord. No. 87-02, § 7, 1-6-1987; Ord. No. 89-23, § 10, 8-15-1989)

Sec. 126-634. Permitted uses.

Within the resort housing district, the permitted uses of lands are controlled by the regulations applicable to the zone district in which such lands are otherwise located. However, in addition, such lands and building on those lands in the resort housing district may be used for resort housing, including fractional fee and timeshare estates, in accordance with the limitations of LDC chapter 126, zoning, article XII, resort housing district.

Certain properties located in the resort housing district were developed or subdivided pursuant to city permits which required rental restrictions prohibiting resort housing use of the development. Such restrictions against resort housing use were required because the developments did not comply with recreation open space requirements for resort housing use or exceeded the average occupancy rate permitted for resort housing use. A listing of residential developments, (including single family dwellings identified by address) located in the resort housing district, that are prohibited from resort housing use follows:

<i>Address</i>	<i>Name of Development</i>
401—445 Bella Vista Way	Colony Beach Estates
457 East Gulf Drive	Single Family Dwelling
497 East Gulf Drive	St. Croix Condominium
501-503 East Gulf Drive	Kinzie Island Beach Club Condominium
635 East Gulf Drive	Beachcomber Condominium
651 East Gulf Drive	White Pelican Condominium
830 East Gulf Drive	Seawind II Condominium
999 East Gulf Drive	Plantation Village of Sanibel
1390—1398 Middle Gulf Drive	Sea Pines Condominium
1470 Middle Gulf Drive	Single Family Dwelling
1480 Middle Gulf Drive	Single Family Dwelling
1490 Middle Gulf Drive	Single Family Dwelling

<i>Address</i>	<i>Name of Development</i>
1500 Middle Gulf Drive	Single Family Dwelling
1508 Middle Gulf Drive	Single Family Dwelling
2665 West Gulf Drive	Bougainvillea Condominium
2877 West Gulf Drive	White Caps South Condominium Restriction allows rentals for 7 days or more
2915 West Gulf Drive	Villas of Sanibel Condominium
1508 Middle Gulf Drive	Single Family Dwelling
1510 Middle Gulf Drive	Single Family Dwelling
1544 Middle Gulf Drive	Single Family Dwelling
1564 Middle Gulf Drive	Single Family Dwelling
1715 Middle Gulf Drive	Chelsea Place Condominium
303 Periwinkle Way	Snug Harbor Condominium
2297 West Gulf Drive	Poinciana Condominium
2549 West Gulf Drive	Sedgemoor Condominium
2611 West Gulf Drive	By the Sea Condominium
2629 West Gulf Drive	LaPlaya Condominium
2639 West Gulf Drive	Angler's Key Condominium
2659 West Gulf Drive	High Tide Condominium
2665 West Gulf Drive	Bougainvillea Condominium
2877 West Gulf Drive	White Caps South Condominium
2915 West Gulf Drive	Villas of Sanibel Condominium
2959 West Gulf Drive	Sanibel Sunset Condominium
2965 West Gulf Drive	Royale Tern Condominium
3001 West Gulf Drive	West Shore Condominium
3015 West Gulf Drive	Sunward of Sanibel Condominium
3049 West Gulf Drive	Tantara Condominium
3127/3131/3135 West Gulf Drive	Wedgewood of Sanibel Condominium
3145 West Gulf Drive	Seascape of Sanibel Condominium
3215 West Gulf Drive	Somerset at the Reef Condominium
3225 West Gulf Drive	Tamarind at the Reef Condominium
3313 West Gulf Drive	Lantana on the Gulf Condominium
3397 West Gulf Drive	Sandals Condominium

Properties in the resort housing district, that are developed or redeveloped for residential use, but are prohibited against use as resort housing, will be added to the preceding list as a ministerial function and not as an amendment.

For lands in the resort housing district which are also located in the gulf beach ridge zone, resort housing accessory commercial uses are allowed as conditional uses, subject to approval in accordance with the requirements of articles II and IV of this chapter.

Resort housing accessory beach equipment is allowed as a permitted accessory use at resort housing developments, subject to compliance with the requirements of section 126-636.

(Ord. No. 85-26, § 1(I.D.6(c)), 11-27-1985; Ord. No. 87-02, § 7, 1-6-1987; Ord. No. 89-23, § 10, 8-15-1989; Ord. No. 02-04, § 1, 2-19-2002; Ord. No. 03-014, § 4, 9-16-2003; Ord. No. 03-013, § 1, 11-18-2003; Ord. No. 06-001, § 2, 3-21-2006)

Sec. 126-635. Development regulations.

Lands in the resort housing district shall be subject to all of the regulations for the zone district in which they are otherwise located. Use of such lands in the resort housing district shall be subject to all conditions, limitations, and regulations contained in this Land Development Code, the same as if such lands were not included in the resort housing district. In addition, the following requirements shall apply to all lands within the resort housing district:

- (1) Because of the additional demands for recreational facilities created by short term tenants, any development which is to be used as resort housing must have, upon the same parcel on which such use is located, at least 7,500 square feet of recreational open space for each dwelling unit. Such recreational open space shall be set aside for, and be used by, the occupants of such units. Such recreational open space shall be utilized in accordance with a plan approved in connection with the issuance of a development permit or as a condition of a development permit. Such plan shall detail the manner in which the recreational open space is to be utilized and may include both active and passive recreation, but may not include motorized sports.
- (2) If a new residential development in the resort housing district does not contain the recreational open space required pursuant to subsection (1) of this section, no certificate of occupancy shall be issued until there is recorded on the public records of the county, effective condominium documents, cooperative documents, restrict-

tive covenants, or other form of covenant running with the land, containing substantially the following provision:

No dwelling unit or part thereof, located on land subject to these restrictions, may be rented for a term of less than four consecutive weeks or converted to timeshare estates or periods of less than four consecutive weeks. This limitation may be enforced by the city and shall not be amended, revoked, or otherwise terminated without the express written consent of the city, any other provision of this land development code notwithstanding.

- (3) The open space requirements of subsection (1) of this section shall not apply to Sand Pointe Condominium (Tax Parcel No. 35-46-22-MI-00000.0000), because of court order, or to any structure which on April 10, 1979, had been lawfully constructed or permitted with no limitation prohibiting resort housing use.
- (4) Principal residential buildings shall be permitted to exceed 45 feet above mean sea level only where both of the following circumstances exist:
 - a. The buildings are located, in whole or in part, seaward of the coastal construction control line as established by the state department of environmental protection in 1991; and
 - b. The flood elevation required by the Florida Building Code is higher than the base flood elevation required by the city.

In such case, the buildings shall be permitted to exceed 45 feet mean sea level by no more than the amount by which the flood elevation required by the Florida Building Code exceeds the base flood elevation required by the city's adopted Flood Insurance Rate Map.

(Ord. No. 85-26, § 1(I.D.6(d)), 11-27-1985; Ord. No. 87-02, § 7, 1-6-1987; Ord. No. 89-23, § 10, 8-15-1989; Ord. No. 03-014, § 5, 9-16-2003)

Sec. 126-636. Resort housing accessory beach equipment requirements.

A resort housing development, whether a permitted or a legal nonconforming use, may make available to its owners, tenants and guests beach equipment accessory to the resort housing use provided, however, that the requirements of this section apply to all resort housing developments.

A development permit is required when the overnight and not in use holding areas for accessory beach equipment are outdoors and not in or under a legal building or structure; however, a development permit for outdoor holding areas for accessory beach equipment will not require removal of prohibited invasive exotic species of plants.

All resort housing developments, whether or not a development permit is required, shall operate in compliance with the requirements of this section.

- (1) Access to use of the beach equipment shall be only from within the parcel and not from any abutting street or public way, or from the public beach.
- (2) All of the dwelling units in the parcel must either be under common ownership or be approved under one development permit which unites the lands upon which the dwelling units and accessory use are located as a single parcel and as to which effective restrictive covenants are recorded on the public records of the county which perpetuate the right of dwelling unit owners, tenants, and guests to use such accessory use.
- (3) Use of the beach equipment shall be limited to the owners, tenants and guests of the resort housing dwelling units.
- (4) The application of, and exceptions to, developed area standards shall be as follows:
 - For the outdoor holding areas for accessory beach equipment, not including bicycles, up to 150 sf, plus 50 sf per acre in the resort housing development, shall not con-

stitute developed area, provided that the beach equipment in the outdoor holding area is substantially screened from view.

• For the outdoor holding areas for bicycles, up to 100 sf, plus 30 sf/acre in the resort housing development, shall not constitute developed area, provided that the bicycles in the outdoor holding areas are substantially screened from view.

Required screening for the outdoor holding areas for accessory beach equipment and for bicycles shall be from the public beach, from road rights-of-way, from adjoining properties and from public beach access ways. This screening shall be provided in a manner that is effective from off-site perspectives at ground level to six inches above the ground. Lawfully existing structures may be used provided the required screening and appropriate vegetation can be added. Fencing may also be used to provide this screening; however a development permit for the fence, that meets the requirements of chapter 126, zoning, article XIV supplemental district regulations, division 6, fences and walls, must be obtained.

The foregoing exceptions to the limitations on the maximum amount of developed area permitted at a resort housing development applies only to accessory beach equipment, including bicycles, and cannot be used for any other structures that constitute developed area. All outdoor holding areas for beach equipment, including bicycles, on the parcel, not excluded by the exceptions provided by this section, shall be considered developed area.

- (5) The outdoor holding areas for beach equipment shall not be located in the Gulf Beach Ecological Zone, unless:

Such areas are inside or under a legal building or structure, or

Such areas are located no further seaward than the most seaward building in the resort housing development and such areas are not on the beach, upon a dune, or in an area containing dune vegetation.

In addition, outdoor holding areas for beach equipment shall be at an approved location that meets the minimum required front and side yard setbacks.

- (6) The beach equipment shall not be placed or positioned on the beach prior to being provided for use.
- (7) The beach equipment shall not be used, placed, located or stored on the dune.
- (8) The beach equipment shall not be placed, located, used or transported in any manner which:
- Destroys or materially diminishes the beach or dune system, dune vegetation, or wildlife habitat;
 - Destroys or disturbs any wildlife nesting activities or nesting sites including marine turtle nesting activities and nesting sites,
 - Is such that it interferes with the use of the beach by the general public, or
 - is inconsistent with the requirements of the Code of Ordinances, chapter 74, waterways, article VII, beach and dune system. Sections 74-182 destruction or diminishment of beach or dune system and 74-183 exceptions, permits.
- (9) When not in use between the hours of 9:00 p.m. and 7:00 a.m., the beach equipment shall not remain on the beach, upon the dune, in an area containing dune vegetation or in the waters adjacent to the beach.
- (10) The beach equipment shall not be hawked, sold, vended or rented, or any business activity conducted, from any location on the beach or dune.
- (11) Development permit approval pursuant to the requirements of this subsection shall be valid for as long as the property remains in compliance with the requirements of this section.
- (12) The city manager, or the manager's designee, shall make periodic inspections to

determine continued compliance with the requirements of this section and the conditions of approval when a development permit is required.

(Ord. No. 03-013, § 4, 11-18-2003)

Note—Formerly, § 126-102.

Secs. 126-637—126-650. Reserved.

ARTICLE XIII. ENVIRONMENTAL PERFORMANCE STANDARDS*

DIVISION 1. GENERALLY

Sec. 126-651. Preservation and enhancement of resources.

All development shall be undertaken and maintained in such a fashion as to protect, conserve or enhance wetlands, wildlife habitat and living marine resources and to minimize any adverse impact upon these resources. On lands, or a portion thereof, where development cannot take place because of an adverse impact on wetlands or wildlife habitat, the developer, through the means of a conservation easement or through dedication of such land areas to the city or to a nonprofit conservation entity, or other means, shall provide for the continued maintenance of the area which is unable to be developed because of such adverse impacts.

(Ord. No. 85-26, § 1(I.E.40), 11-27-1985; Ord. No. 89-23, § 25, 8-15-1989)

Sec. 126-652. General performance standards.

All uses and activities permitted in any zoning district shall conform to the standards of performance described in this section and the failure to conform to any of such standards is hereby declared to be a public nuisance:

- (1) *Fire and explosion hazards.* All activities and all storage of flammable and explosive materials or products at any place shall be provided with adequate safety devices against the hazards of fire and explosion, including adequate firefighting

and fire suppression equipment, as prescribed by all applicable fire prevention laws, ordinances and regulations.

- (2) *Radiation.* Any operation involving radiation, (e.g., the use of neutrons, protons and other atomic or nuclear particles) shall be conducted in accordance with the codes, rules and regulations of the state department of health and the state department of environmental protection.
- (3) *Electromagnetic radiation.* Any operation of any source of electromagnetic radiation shall be in compliance with all rules and regulations of the Federal Communications Commission.
- (4) *Smoke and other particulate matter.* Any activity emitting or discharging any smoke or other particulate matter shall comply with all state, federal and local laws and all regulations of any federal, state or local agency, concerning pollution control.
- (5) *Toxic or noxious matter.* Any activity involving the use or storage of toxic or noxious matter shall comply with all state, federal and local laws and all regulations of any federal, state or local agency concerning pollution control or toxic substances.
- (6) *Waste disposal.* No activity shall be conducted which results in the discharge of any liquid or solid waste, including industrial wastes, into any public or private sewage system, the ground, or any lake, stream, or other body of water, in violation of any provision of state, federal or local law or any regulation of any state, federal or local agency.
- (7) *Vibration.* No use of any property shall cause perceptible earth vibrations beyond any property line, except when pilings are driven for structure foundations. All stamping machines, punch presses, press brakes, hot forgings, steam board hammers or similar devices shall be placed on shock absorption mountings and on suitable re-

*Cross reference—Environment, ch. 30.

inforced concrete footings. No machine shall be loaded beyond the capacity as described by the manufacturers.

(8) *Heat, cold, dampness or movement of air.* Activities on any property which produce any adverse effect on the temperature, motion or humidity of the atmosphere beyond the lot lines are not permitted.

(9) *Noise, odor, etc.* No use of any lands shall be conducted in any fashion which produces noise, odor, or other irritant at a level which unreasonably disturbs the peaceful and healthful enjoyment of any adjoining lands.

(Ord. No. 85-26, § 1(I.E.28), 11-27-1985; Ord. No. 00-10, § 7, 6-6-2000)

Sec. 126-653. Environmental performance standards.

All development shall be in conformance with the applicable environmental performance standards in this article.

(Ord. No. 85-26, § 1(I.D.2(b)), 11-27-1985; Ord. No. 90-08, § 2, 5-15-1990)

Secs. 126-654—126-670. Reserved.

DIVISION 2. GULF BEACH, GULF BEACH RIDGE AND BLIND PASS AREA ZONES

Sec. 126-671. Development permit.

In the Gulf Beach, Gulf Beach Ridge and Blind Pass area zones a development permit shall be granted for development or site alteration only if the applicant has demonstrated that the proposed development or site alteration conforms with the standards and regulations in this division.

(Ord. No. 85-26, § 1(I.D.2(b)(1)), 11-27-1985; Ord. No. 90-08, § 2, 5-15-1990)

Sec. 126-672. Public access and use of beach.

The development or site alteration in the Gulf Beach, Gulf Beach Ridge and Blind Pass area

zones will not interfere with the customary rights of the public to access to and use of the active beach.

(Ord. No. 85-26, § 1(I.D.2(b)(1)(e)), 11-27-1985; Ord. No. 90-08, § 2, 5-15-1990)

Sec. 126-673. Geology.

(a) The development or site alteration in the Gulf Beach, Gulf Beach Ridge and Blind Pass area zones will not result in diminution in the amount of sand, silt, shell, sediment, or other geologic component which makes up the beach, or interfere with natural patterns of wind and water movement of sand, silt, shell, sediment or other geologic components of the beach.

(b) The development or site alteration in the Gulf Beach, Gulf Beach Ridge and Blind Pass area zones will not result in the removal of sand, silt, shell, sediment or other geological component of the Gulf Beach Ridge, reduce the elevation of any portion of the ridge, or otherwise alter the natural configuration of the ridge in a manner that diminishes the effectiveness of the ridge as a protective barrier against storm surge.

(Ord. No. 85-26, § 1(I.D.2(b)(1)(a)), 11-27-1985; Ord. No. 90-08, § 2, 5-15-1990)

Sec. 126-674. Hydrology.

(a) In the Gulf Beach, Gulf Beach Ridge and Blind Pass area zones the development or site alteration provides for the gradual and dispersed drainage of surface runoff such that runoff within the boundaries of the parcel proposed for development will approximate natural rates, volumes and direction of flow. Included is a requirement for containment on-site of the runoff from a five-year storm unless it is provided in common with another site.

(b) The development or site alteration in the Gulf Beach, Gulf Beach Ridge and Blind Pass area zones will not disturb, break or penetrate the aquiclude or clay layer at the bottom of the freshwater lens, permit saltwater intrusion or otherwise endanger the integrity of the freshwater lens. If, in order to comply with the floodproofing regulations of sections 78-1 through 78-11; chapter 86; chapter 94; chapter 98; chapter 106; chapter 110; chapter 118; chapter 122; and arti-

to do so promptly any costs accruing to the city by reason of his failure may be recovered by civil court action.

(Code 1981, § 6-18)

Secs. 74-140—74-160. Reserved.

ARTICLE VI. INLAND WATER BODIES

Sec. 74-161. Swimming and boating.

It is unlawful and prohibited for any person to do any of the following in or upon any interior lakes, interior ponds, or interior natural bodies of water located in the city:

- (1) Wade, swim, bathe, float or dive.
- (2) Operate a vessel with a motor, except a battery-powered electric motor designed for and operated at a slow speed; that is, not greater than eight miles per hour, minimum wake, and not on plane.

(Code 1981, § 6-51)

Sec. 74-162. Diving for golf balls.

(a) It is unlawful and prohibited for any person to dive for golf balls in any interior lake, pond or natural body of water located in the city without a valid and current permit to do so issued by the city manager.

(b) The city manager is authorized to issue a permit to dive for golf balls upon application by the owner of the property, or by another qualified person with written authorization of the owner, showing, at a minimum:

- (1) The name, address, telephone number, legal form of the business, federal tax identification number of the business, name, address and telephone number of the principal owner or manager;
- (2) The name and address of the agent or person upon whom service of process may be served; the person to be contacted in case of emergency; and
- (3) The state certification or registration number of the business, the county competency card number and the city occupational license.

(c) The application must be accompanied by the following:

- (1) Proof of insurance in the amount of at least \$500,000.00 insuring against loss for the proposed diving activity and proof of worker's compensation insurance.
 - (2) A fee in the amount which is on file in the city manager's office, as an annual fee, covering the period from October 1 through September 30 in any year.
 - (3) An agreement to indemnify or hold the city harmless for loss or injury occasioned by the activity, or to place the city on the policy as a named insured.
 - (4) A plan indicating the methods to be used for the golf ball retrieval and exhibiting competency to perform the work.
- (d) Diving for golf balls under authority granted by a city permit shall be limited as follows:

- (1) Diving shall occur only between 10:00 a.m. and 3:00 p.m.
- (2) Diving shall not occur more than one time per month in the months of April through November.
- (3) All divers must be properly certified.
- (4) Golf ball retrieval shall be done in such a manner as to minimize disturbance of wildlife, including alligators. Where feasible, mechanical retrieval shall be used.

(Code 1981, § 6-52)

Secs. 74-163—74-180. Reserved.

ARTICLE VII. BEACH AND DUNE SYSTEM*

Sec. 74-181. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*State law reference—Coastal zone protection, F.S. § 161.52 et seq.

Artificial light or artificial lighting means the light emanating from any humanmade device.

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

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

Cumulatively illuminated means illuminated by numerous artificial light sources that as a group illuminate any portion of the beach.

Directly illuminated means illuminated as a result of glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer on the beach.

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

- (1) *Frontal dune* means the first natural or manmade mound or bluff of sand which is located landward of the beach.

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

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

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

Point source of light means manmade bulb, lamp or other device that directly radiates visible light.

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

(Ord. No. 97-07, § 1(7.6-1), 5-6-1997)

Cross reference—Definitions generally, § 1-2.

Sec. 74-182. Destruction or diminishment of beach or dune system.

It is unlawful and prohibited for any person to do, conduct or permit any of the following on a beach, upon a dune, in an area containing dune vegetation or in the waters adjacent to a beach:

- (1) Place, locate, store, use or transport equipment, or conduct any act in any manner which:
- a. Destroys or materially diminishes the beach or dune system, dune vegetation, or wildlife habitat; or

- b. Destroys or disturbs any wildlife nesting activities or nesting sites including marine turtle nesting activities and nesting sites.
- (2) Harass, molest or disturb wildlife.
- (3) Allow beach equipment, when not in use, to remain between the hours of 9:00 p.m. and 7:00 a.m.
- (4) Place, use, store, locate or transport any of the following:
 - a. Equipment other than beach equipment;
 - b. Trailers or transporting equipment;
 - c. All power vessels, including personal watercraft.

However, this does not prohibit the temporary landing or anchoring of a vessel on a beach as long as it is incidental to the immediate use of the vessel.
- (5) Plant vegetation other than dune vegetation.
- (6) Destroy or remove dune vegetation.
- (7) Maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings or debris.
- (8) Deposit or leave human or animal waste.
- (9) Consume an alcoholic beverage or have in possession an open container of an alcoholic beverage in a public beach area between one hour after sunset and one hour before sunrise from December 15 through May 15.
- (10) Allow dogs or other domesticated animals to roam at large as defined in section 10-1.
- (11) Destroy or grossly interfere with the natural wrack line, as by grooming or nonselective raking.
- (12) Operate any engine powered vehicle, machine or implement, including any battery or electrical powered vehicle, machine or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability.

- (13) Produce or maintain any artificial light or lighting in which the point source of light or any reflective surface of the light fixture is directly visible from the beach; or in which areas seaward of a frontal or primary dune are directly, indirectly or cumulatively illuminated.
- (14) Excavate, mine or haul sand or soil from the beach or dune.
- (15) Hawk, sell, dispense free of charge, vend or rent equipment, goods or services; or conduct any business activity.
- (16) Detonate any explosive devices, including fireworks.
- (17) Discharge any firearms.
- (18) Light or maintain any open fire except as permitted in chapter 34, article IV.
- (19) Temporarily reside, camp or sleep overnight except as permitted in section 42-2. (Ord. No. 97-07, § 1(7.6-2), 5-6-1997).

Sec. 74-183. Exceptions; permits.

(a) The prohibitions contained in subsections 74-182(1) and (2) do not apply to persons who have authorization or a permit to engage in marine turtle nesting research issued by the United States Fish and Wildlife Service, the state department of environmental protection, or the city, and who are acting in conformance with such authorization or permit.

(b) The prohibitions contained in subsections 74-182(1) and (2) do not apply to fishing, except for chumming as prohibited by Laws of Fla. ch. 90-427, or to the collection of shells and specimens, except as prohibited by the state live shelling prohibition (F.A.C. 46-26.001—46-26.003); or for selective picking up of dead fish, flotsam, jetsam, litter, garbage, trash or refuse.

(c) The prohibitions contained in section 74-182 do not apply to persons acting under authority of or with permission of a governmental agency.

(d) Permits may be issued by the city manager for activities otherwise prohibited by this article, which are found to be necessary for reasonable accommodation of persons with disabilities; ad-

junct to a lawfully existing activity; for the conduct of a civic or educational activity; for the conduct of scientific research; or for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is issuable under the land development code for any of the activities set out in this subsection, the standards and procedures for issuance shall be governed by the land development code.

(Ord. No. 97-07, § 1, 5-6-1997)

WELCOME TO SANIBEL

City of Sanibel Planning Director
Robert J. Duffy, AICP

DO ENJOY
DON'T DESTROY

Please feel free to contact us
If you have any questions
(239) 472-4136

Code Enforcement Officers
Raymond Hendzel
Terri Cummins

QUICK GUIDE FOR BEACH AND BEACH DUNE REGULATIONS



City of Sanibel
Planning Department

ATTACHMENT 5



City of Sanibel Beach and Dune Regulations

DO ENJOY

DON'T DESTROY

Sanibel Code-Sec. 74-182. Destruction or diminishment of beach or dune system.

It is unlawful and prohibited for any person to do, conduct or permit any of the following on a beach, upon a dune, in an area containing dune vegetation or in the waters adjacent to a beach:

- (1) Place, locate, store, use or transport equipment, or conduct any act in any manner which:
 - a. Destroys or materially diminishes the beach or dune system, dune vegetation, or wildlife habitat; or
 - b. Destroys or disturbs any wildlife nesting activities or nesting sites including marine turtle nesting activities and nesting sites.
- (2) Harass, molest or disturb wildlife.
- (3) Allow beach equipment, when not in use, to remain between the hours of 9:00 p.m. and 7:00 a.m.
- (4) Place, use, store, locate or transport any of the following:
 - a. Equipment other than beach equipment;
 - b. Trailers or transporting equipment;
 - c. All power vessels, including personal watercraft.

However, this does not prohibit the temporary landing or anchoring of a vessel on a beach as long as it is incidental to the immediate use of the vessel.

- (5) Plant vegetation other than dune vegetation.
- (6) Destroy or remove dune vegetation.
- (7) Maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings or debris.
- (8) Deposit or leave human or animal waste.
- (9) Consume an alcoholic beverage or have in possession an open container of an alcoholic beverage in a public beach area between one hour after sunset and one hour before sunrise from December 15 through May 15.
- (10) Allow dogs or other domesticated animals to roam at large as defined in section 10-1.
- (11) Destroy or grossly interfere with the natural wrack line, as by grooming or nonselective raking.
- (12) Operate any engine powered vehicle, machine or implement, including any battery or electrical powered vehicle, machine or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability.

- (13) Produce or maintain any artificial light or lighting in which the point source of light or any reflective surface of the light fixture is directly visible from the beach; or in which areas seaward of a frontal or primary dune are directly, indirectly or cumulatively illuminated.
 - (14) Excavate, mine or haul sand or soil from the beach or dune.
 - (15) Hawk, sell, dispense free of charge, vend or rent equipment, goods or services; or conduct any business activity.
 - (16) Detonate any explosive devices, including fireworks and sparklers.
 - (17) Discharge any firearms.
 - (18) Light or maintain any open fire except as permitted in chapter 34, article IV.
 - (19) Temporarily reside, camp or sleep overnight except as permitted in section 42-2.
- It is unlawful and prohibited for any person to operate a personal watercraft within 300 feet of any shore of Sanibel Island except for the purpose of leaving the shore by the most direct route, or coming ashore by the most direct route. When leaving the shore or coming ashore, the personal watercraft shall be operated at a speed no greater than slow speed.

City of Sanibel
Planning Department
800 Dunlop Road
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City of Sanibel Planning Director
Robert J. Duffy, AICP

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Code Enforcement Officers

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Guide to
Requirements for
Making

Accessory Beach Equipment

Available at
Resort Housing
Developments



City of Sanibel
Planning Department



City of Sanibel
Planning Department

**REQUIREMENTS FOR
MAKING ACCESSORY BEACH
EQUIPMENT AVAILABLE AT RESORT
HOUSING DEVELOPMENTS**

**WHEN OUTDOOR HOLDING (STORAGE)
AREAS ARE NOT REQUIRED**

Sanibel Code – Sec. 126-636

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

A resort housing development, whether a permitted or a legal nonconforming use, may make available to its owners, tenants and guests beach equipment accessory to the resort housing use provided, however, that the requirements of this section apply to all resort housing developments.

A development permit is required when the overnight and not in use holding areas for accessory beach equipment are outdoors and not in or under a legal building or structure.

All resort housing developments, whether or not a development permit is required, shall operate in compliance with the following requirements.

1. Access to use of the beach equipment shall be only from within the parcel and not from any abutting street or public way, or from the public beach.
2. All of the dwelling units in the parcel must either be under common ownership or be approved under one development permit which unites the lands upon which the dwelling units and accessory use are located as a single parcel and as to which effective restrictive covenants are recorded on the public records of the county which perpetuate the right of dwelling unit owners, tenants, and guests to use such accessory use.
3. Use of the beach equipment shall be limited to the owners, tenants and guests of the resort housing dwelling units.
6. The beach equipment shall not be placed or positioned on the beach prior to being provided for use.
7. The beach equipment shall not be used, placed, located or stored on the dune.
8. The beach equipment shall not be placed, located, used or transported in any manner which:

- a. Destroys or materially diminishes the beach or dune system, dune vegetation, or wildlife habitat,
 - b. Destroys or disturbs any wildlife nesting activities or nesting sites including marine turtle nesting activities and nesting sites,
 - c. Is such that it interferes with the use of the beach by the general public, or
 - d. Is inconsistent with the requirements of the Code of Ordinances, Chapter 74. Waterways, Article VII. Beach and Dune System. Sections 74-182 Destruction or diminishment of beach or dune system and 74-183 Exceptions, permits.
9. When not in use between the hours of 9:00 p.m. and 7:00 a.m., the beach equipment shall not remain on the beach, upon the dune, in an area containing dune vegetation or in the waters adjacent to the beach.
 10. The beach equipment shall not be hawked, sold, vended or rented, or any business activity conducted, from any location on the beach or dune.
 12. The City Manager, or the Manager's designee, shall make periodic inspections to determine continued compliance with these requirements.