9. First Reading of an ordinance and scheduling of public hearing. (Note: The First Reading is not a public hearing and no discussion or testimony will be taken unless the ordinance changes permitted conditional or prohibited uses as required by State Statute.)

   b. **ORDINANCE 10-005 AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, SECTION 12-1031 BONUS OUTDOOR SEATS FOR DINING, TO PERMIT BONUS OUTDOOR DINING AT RESTAURANTS LOCATED OUTSIDE A COMMERCIAL ZONING DISTRICT, PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE**

CITY OF SANIBEL

ORDINANCE 10-005

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, SECTION 12-1031 BONUS OUTDOOR SEATS FOR DINING, TO PERMIT BONUS OUTDOOR DINING AT RESTAURANTS LOCATED OUTSIDE A COMMERCIAL ZONING DISTRICT WHERE THE REQUIREMENTS AND STANDARDS OF SUCH SECTION ARE MET; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Code Review Committee of the Planning Commission held a public hearing on February 23, 2010 to consider permitting bonus outdoor dining at restaurants located outside Commercial Zoning Districts; and

WHEREAS, an application was made by the City of Sanibel to revise land use regulations to permit bonus outdoor dining at restaurants located outside Commercial Zoning Districts, and

WHEREAS, a procedure has been established to revise and amend the Land Development Code in a manner consistent with the *Sanibel Plan*; and

WHEREAS, an ordinance to amend the Land Development Code as directed by the Land Development Code Review Committee of the Planning Commission has been prepared; and

WHEREAS, such revision has been referred to the Planning Commission at a legally and properly advertised public hearing for a recommendation as to the consistency of this Amendment with the *Sanibel Plan*; and

WHEREAS, the City Council deems it necessary to make such revisions to the Land Development Code, as contained in this ordinance; and

WHEREAS, all required public notices and public hearings for such amendment have been properly given and held.

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 Zoning, Article XIV Supplementary District Regulations, Division 5 Commercial Uses Generally, Section 126-1031, Bonus outdoor seats for dining, is hereby amended with underlining indicating additions and ~~strikethroughs~~ indicating deletions, as follows:

Sec. 126-1031. Bonus outdoor seats for dining

The purpose of this section is to establish procedures and regulations that will enable restaurants to provide portable seating, tables and other accommodations for bonus outdoor seats for dining in addition to the number of permitted indoor seats. Procedures for bonus outdoor seats require that an initial development permit be obtained for the first two years and that a subsequent development permit be obtained to continue use of bonus outdoor seats after the first two years.

1) *Definition.* *Outdoor dining* means providing portable seating and tables, intended solely for the consumption of food and beverages presented by the standard menu of the restaurant, outside the exterior walls of a restaurant. Outdoor dining provided in accordance with the procedures and standards of this section shall be considered bonus outdoor seats for dining.

(2) *Procedures (for initial and continued use development permits).* The initial development permit required for bonus outdoor seats will expire after 24 months and the use shall be abated. To continue use of outdoor bonus seats, the applicant must apply for and obtain a subsequent development permit for bonus outdoor seats that renews, or approves with modified conditions, use of bonus outdoor seats.

Reapplication for continued use of bonus outdoor seats is required to ensure that the prior use of bonus outdoor seats complied with all requirements of this section for bonus outdoor dining and all applicable requirements of the Code of Ordinances, associated with the outdoor activity.

a. *Short form application.* Short form applications may be available for bonus outdoor seats for dining at commercial developments that provide, at least, the minimum number of on-site parking spaces required by this Code for the restaurant and the other uses on the site.

b. *Long form application.* Long form applications are required for bonus outdoor seats for dining at commercial developments where the minimum number of on-site parking spaces required by this Code, for the restaurant and the other uses on the site, is not available.

c. *Applications shall be made to the city manager, or the manager's designee, in a form prescribed by the city manager.* The application shall be accompanied by:

i. A survey of the subject property;

ii. Authorization of the real property owner to make such application; and

iii. A site plan delineating, at a minimum, the location, dimensions, access and number of seats and tables for outdoor dining and showing the location of landscaping for the outdoor dining area required for appropriate screening from adjoining properties.

iv. A description of how the design and functional operation of the outdoor dining area will complement the existing restaurant building and be compatible with the existing commercial center, if applicable.

d. Bonus outdoor seats for dining shall be associated with a permitted restaurant that holds a current and valid occupational license that authorizes seating for the on-premises consumption of food.

e. If the outdoor dining application is approved.

i. The applicant shall obtain an amended occupational license that includes the number of permitted outdoor seats.

ii. The applicant shall obtain approval of the seating plan for outdoor dining from the Sanibel Fire and Rescue District.

iii. The applicant shall purchase additional sewer connection charges for the number of permitted outdoor seats.

iv. The city manager shall annually review occupational licenses involving outdoor dining to ensure compliance with this section and other city regulations prior to renewal.

The amended occupational license must be obtained, sewer connection fees must be paid, and approval from the fire district must be obtained prior to operation of the outdoor dining use.

(3) *Standards.*

a. Bonus outdoor dining is permitted at restaurants located within a commercial zoning district where a restaurant use is permitted as a conditional use. Bonus outdoor dining, pursuant to this section, is **also** ~~**not**~~ permitted where a restaurant is located outside a commercial zoning district.

b. The maximum number of bonus outdoor seats permitted at a restaurant is 15 percent of the total permitted indoor seats associated with the restaurant, or 16 seats, whichever is greater. The maximum number of bonus outdoor seats at a restaurant is 32 seats.

c. The area used for bonus outdoor dining shall not count as commercial floor area.

d. Off-street parking requirements shall not be applied to the bonus outdoor dining seats permitted by this section.

e. No food preparation shall occur within the designated outdoor dining area or anywhere outside the restaurant. All food shall be served from the kitchen of the permitted restaurant. No separate bar service shall be provided as part of the outdoor dining area, except in conjunction with meal service. No disposable containers, plates, flatware, wrappers or other forms of disposable items shall be used, unless identical to the permitted indoor food and beverage service.

f. Waste products shall be properly collected, stored and disposed of in accordance with duties of the property owner identified in section 54-33 of the Code of Ordinances. Littering is prohibited, pursuant to section 30-34 of the Code of Ordinances.

g. No fixed or permanent heating or air conditioning systems shall be employed. No walls shall be constructed, including all forms of opaque or glass doors and panels.

h. The bonus outdoor seating and tables shall be under a roof, awning or portable umbrellas.

i. Seating and tables shall not be dispersed and shall be grouped in a defined area immediately accessible to the permitted restaurant operation and located on the site of the permitted restaurant use. To the extent possible bonus outdoor dining shall not be located in areas that coincide with patron waiting areas or where bar service occurs.

j. Bonus outdoor dining seats and tables shall not be moved indoors to increase the number of permitted indoor seats.

k. Bonus outdoor dining seats and tables shall:

i. Not encroach on public rights-of-ways including shared use paths;

ii. Comply with required setbacks;

iii. Not interfere with on-site vehicular and pedestrian circulation, parking and loading areas; and

iv. Not block or restrict doors or other means of required egress for emergency purposes;

l. Additional signage or outdoor advertising shall not be permitted.

m. Microphones, loudspeakers or amplifiers shall not be permitted. Noise disturbances are prohibited, pursuant to section 30-64 of the Code of Ordinances and section 126-652 of the Land Development Code.

n. Producing odors at a level which unreasonably disturbs the peaceful and healthful enjoyment of any adjoining lands is prohibited, pursuant to section 125-652 of the Land Development Code.

o. Outdoor entertainment shall not be permitted, except as otherwise licensed by the city.

p. All outdoor lighting shall be consistent with chapter 126 zoning, article XIV supplementary district regulations, division 4, outdoor lighting.

q. All tables and chairs used for outdoor dining must be brought inside for storage whenever the city is under a hurricane warning.

r. This section does not authorize the construction, renovation or expansion of structures, unless authorized by city permits.

s. The restaurant owner is encouraged to post a notice in a prominent location requesting that the patrons refrain from smoking within the defined area for outdoor dining.

SECTION 2. Codification.

This ordinance shall be an amendment to Subpart B of Part II of the Code of Ordinances of the City of Sanibel. Section 126-1031 in Chapter 126 Zoning, Article XIV Supplementary District Regulations, Division 5 Commercial Uses Generally is hereby amended.

SECTION 3. 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 4. Severance.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

SECTION 5. Effective date.

This ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this _____ day of _____, 2010.

AUTHENTICATION:

_____
, Mayor

_____
Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler 4/8/10
Kenneth B. Cuyler, City Attorney Date

First Reading: April 20, 2010
Publication Notice: April 22, 2010
Second Reading: May 4, 2010

Vote of Council Members:

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

Date filed with the City Clerk: _____

RESOLUTION NO. 10-03

CITY OF SANIBEL
PLANNING COMMISSION

A RESOLUTION APPROVING AND RECOMMENDING ENACTMENT BY THE CITY COUNCIL OF AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, SECTION 12-1031 BONUS OUTDOOR SEATS FOR DINING, TO PERMIT BONUS OUTDOOR DINING AT RESTAURANTS LOCATED OUTSIDE A COMMERCIAL ZONING DISTRICT; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Application No. 10-5607LDC was made by the City of Sanibel to amend Chapter 126 Zoning, Article XIV. Supplementary District Regulations, Division 5 Commercial Uses Generally, Section 12-1031 Bonus Outdoor Seats for Dining, to Permit Bonus Outdoor Dining at Restaurants Located Outside a Commercial Zoning District; and

WHEREAS, the Land Development Code Review Subcommittee of the Planning Commission held public hearings on February 23, 2010 and March 9, 2010 when Application No. 10-5607LDC was discussed and approved; and

WHEREAS, the Planning Commission made reference to the *Sanibel Plan* and determined that the proposed amendment to the land development regulations is consistent with the intent and purpose of the *Sanibel Plan*; and

WHEREAS, at the public hearing on March 23, 2010, the following Commissioners were present; Chris Heidrick, Chuck Ketteman, Tom Krekel, Paul Reynolds, Holly Smith and Michael Valiquette. Commissioner Phillip Marks was excused from the meeting.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission, that after full discussion and review of the proposed ordinance, the Planning Commission closes the public hearing and recommends that City Council enact the amendment to the Land Development Code as proposed in draft no. 1 of the ordinance (dated 3/01/10), the title of which is provided in this resolution.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Planning Commission Member Paul Reynolds and seconded by Planning Commission Member Holly Smith, and the vote was as follows:

Christopher Heidrick	Yes	Paul Reynolds	Yes
Chuck Ketteman	Yes	Holly Smith	Yes
Tom Krekel	No	Michael Valiquette	Yes
Phillip Marks	Excused		

DULY PASSED AND ADOPTED this 23rd day of March, 2010.

DULY PASSED AND ADOPTED this 23rd day of March, 2010.

SANIBEL PLANNING COMMISSION

Signed: _____ 3/23/10
Chair Person — Date Signed

Approved As To Form: _____ 3/22/10
City Attorney — Date Signed

Date Filed with City Manager: 3/23/2010

CITY OF SANIBEL

ORDINANCE NO. 10 - __

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, SUBPART B LAND DEVELOPMENT CODE, CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, SECTION 12-1031 BONUS OUTDOOR SEATS FOR DINING, TO PERMIT BONUS OUTDOOR DINING AT RESTAURANTS LOCATED OUTSIDE A COMMERCIAL ZONING DISTRICT; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Code Review Committee of the Planning Commission held a public hearing on February 23, 2010 to consider permitting bonus outdoor dining at restaurants located outside Commercial Zoning Districts; and

WHEREAS, an application was made by the City of Sanibel to revise land use regulations to permit bonus outdoor dining at restaurants located outside Commercial Zoning Districts, and

WHEREAS, a procedure has been established to revise and amend the Land Development Code in a manner consistent with the *Sanibel Plan*; and

WHEREAS, an ordinance to amend the Land Development Code as directed by the Land Development Code Review Committee of the Planning Commission has been prepared; and

WHEREAS, such revision has been referred to the Planning Commission at a legally and properly advertised public hearing for a recommendation as to the consistency of this Amendment with the *Sanibel Plan*; and

WHEREAS, the City Council deems it necessary to make such revisions to the Land Development Code, as contained in this ordinance; and

WHEREAS, all required public notices and public hearings for such amendment have been properly given and held.

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

SECTION 1. The Code of Ordinances of the City of Sanibel, Chapter 126 Zoning, Article XIV Supplementary District Regulations, Division 5 Commercial Uses Generally,

Section 126-1031, Bonus outdoor seats for dining, is hereby amended with underlining indicating additions and ~~strikethroughs~~ indicating deletions, as follows:

Section 126-1031, Bonus outdoor seats for dining

The purpose of this section is to establish procedures and regulations that will enable restaurants to provide portable seating, tables and other accommodations for bonus outdoor seats for dining in addition to the number of permitted indoor seats. . . .

(1) Definition. . . .

(2) Procedures (for initial and continued use development permits). . . .

(3) Standards.

a. Bonus outdoor dining is permitted at restaurants located within a commercial zoning district where a restaurant use is permitted as a conditional use. Bonus outdoor dining, pursuant to this section, is also ~~not~~ permitted where a restaurant is located outside a commercial zoning district.

b. . . .

SECTION 2. Codification.

This ordinance shall be an amendment to Subpart B of Part II of the Code of Ordinances of the City of Sanibel. Section 126-1031 in Chapter 126 Zoning, Article XIV Supplementary District Regulations, Division 5 Commercial Uses Generally is hereby amended.

SECTION 3. 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 4. Severance.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

SECTION 5. Effective date.

This ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida, this _____ day of _____, 2010.

AUTHENTICATION:

_____ _____

Mick Denham, Mayor Pamela Smith, City Clerk

APPROVED AS TO FORM: _____ 3/9/10

Kenneth B. Cuyler, City Attorney Date

Publication and Hearing Dates:

Date of First Public Hearing: _____ ___, 2010

Ordinance Publication Date: _____ ___, 2010

Date of Second Public Hearing: _____ ___, 2010

Vote of Council Members:

Denham _____

Ruane _____

Harrity _____

Jennings _____

Pappas _____

Date filed with the City Clerk: _____

K:planning:kep:memos: bonus outdoor seating - outside comm dist ord
3/4/2010