CITY OF SANIBEL

ORDINANCE 22-001

AN ORDINANCE AMENDING THE SANIBEL CODE OF ORDINANCES RELATED TO SEAWALLS AND OTHER METHODS OF SHORELINE STABILIZATION; CHAPTER 78 – GENERAL PROVISIONS, AMENDING SECTION 78-1. – RULES OF CONSTRUCTION AND DEFINITIONS; CHAPTER 126 – ZONING, ARTICLE IV. – CONDITIONAL USE, AMENDING SECTION 126-99 – EROSION CONTROL STRUCTURES; CHAPTER 126 – ZONING, ARTICLE IV. – CONDITIONAL USE, AMENDING SECTION 126-101. – SEAWALLS AS ACCESSORY STRUCTURES; CHAPTER 126 – ZONING, ARTICLE IV. – CONDITIONAL USE, AMENGING TO ADD SECTION 126-106. – SEAWALL AS ACCESSORY STRUCTURE PLACED WATERWARD OF EXISTING SEAWALL; CHAPTER 126 – ZONING, ARTICLE V. – NONCONFORMANCES, DIVISION 2. – USES, AMENDING SECTION 126-152. – (NONCONFORMING USES) EXCEPTIONS AND PROHIBITIONS; CHAPTER 126 – ZONING, ARTICLE V. – NONCONFORMANCES, DIVISION 3. – STRUCTURES, AMENDING SECTION 126-172. – (NONCONFORMING STRUCTURES) IMPROVEMENT, RECONSTRUCTION OR RELOCATION PROHIBITED, EXCEPTIONS; CHAPTER 126 – ZONING, ARTICLE V. – NONCONFORMANCES, DIVISION 5. – STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER, AMENDING SECTION 126-212. – NONCONFORMING STRUCTURES; CHAPTER 126 – ZONING, ARTICLE XIV. – SUPPLEMENTARY STRUCTURES, SUBDIVISION II. – ACCESSORY MARINE STRUCTURES, AMENDING SECTION 126-875. – WATERWARD EXTENSION; CHAPTER 126 – ZONING, ARTICLE XIV. – SUPPLEMENTARY STRUCTURES, SUBDIVISION II. – ACCESSORY MARINE STRUCTURES, AMENDING SECTION 126-885. – MATERIALS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the majority of existing seawalls within the City of Sanibel were constructed over fifty years ago, prior to the City's incorporation, and the condition of these seawalls is deteriorating; and

WHEREAS, the City has limited the locations where seawalls are an allowed use; and

WHEREAS, there have been advancements in the materials used, repair methods, and replacement design for seawalls; and

WHEREAS, City Council directed the Planning Commission review the appropriateness of amendments to the Land Development Code related to Seawalls; and

WHEREAS, the Land Development Code Subcommittee of the Planning Commission held several public hearings on the matter, and the Planning Commission held a legally and

properly advertised public hearing on June 27, 2021, on specific proposed Amendments to the Land Development Code; and

WHEREAS, the Planning Commission heard and considered comments and recommendations from the Planning Department Staff and public; and

WHEREAS, the Planning Commission may recommend to the City Council amendments to regulations of the Land Development Code, in accordance with the standards set forth in LDC Section 82-241; and

WHEREAS, the Planning Commission found the proposed amendments to the Land Development Code as indicated below are consistent with the Sanibel Plan, meet the requirements of LDC Section 82-241, and recommended via City of Sanibel Planning Commission Resolution 21-13 that the City Council adopt said amendments in the form of an ordinance; and

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

SECTION 1. The recitals above are true and correct and made a part hereof.

SECTION 2. Sanibel Code of Ordinances, Subpart B. Land Development Code, Chapters 78 and 126, are hereby amended with ~~strikethrough~~ language indicating deletions and underlined language indicating additions as follows:

Chapter 78. – General Provisions
Section 78-1. – Rules of construction and definitions

...

Seawall means a vertical wall ~~built of concrete, timber or steel~~, which acts as a retaining wall, holding the material behind it in place, while resisting wave forces and erosion.

Seawall material alteration means a change in type of construction material used for repair or reconstruction of an existing seawall and/or a change in the location of any portion of an existing seawall outside its existing footprint.

Seawall as nonconforming structure means an existing seawall located within a human made canal in areas specified in Section 126-101(1) which were installed prior to the incorporation of the City and establishment of Section 126-101 standards.

Seawall as nonconforming use means an existing seawall located along any natural or human made body of water not listed in Section 126-101(1).

Seawall reconstruction means structural improvements to a seawall which include the replacement of any or all seawall panels with associated seawall cap, tie backs, helical anchors, deadman anchors and/or similar structural components within the same footprint as the existing seawall.

Seawall repair means structural improvements that do not include replacement of any seawall panels but do include one or more of the following: replacing the seawall cap; replacing the seawall tie backs; installing helical anchors; sealing of cracks; replacing deadman anchors; or other similar structural improvements.

...

Chapter 126. – Zoning.
Article IV. – Conditional Use.
Sec. 126-99. - ~~Erosion control structures.~~ Alternative shoreline stabilization project.

~~Erosion control structures~~ The continuing advancements in shoreline restoration and stabilization techniques offer more sustainable and ecologically based enhancement alternatives to seawalls, revetments and erosion control structures, therefore alternative shoreline stabilization projects (referenced in this section as "project" or "projects") shall be permitted as conditional uses on the banks of human made water bodies (e.g., canals and artificial lakes) and natural water bodies~~,~~ (e.g., San Carlos Bay, Dinkins Bayou, Clam Bayou, and Blind Pass), subject to the general requirements of section 126-82 and the following conditions set forth in this section:

(1) Projects are prohibited on shorelines along the Gulf of Mexico except for projects to protect public infrastructure.

(2) The application for conditional use approval under this section shall be prepared by a professional engineer registered in the state having experience in coastal engineering, with assistance from an Ecological Society of America certified ecologist with knowledge of southwest Florida coastal systems ~~marine biologist~~, and shall include:

a. An inventory and map of existing grass beds, shell beds and other living components of the marine environment that may be affected by the installation of the proposed ~~structure~~ project and an assessment of the impact of the proposed ~~structure~~ project on these identified natural resources;

b. A technical report examining alternatives to the proposed ~~structure~~ project, including, ~~along with others~~ but not limited to, doing nothing, public or private (e.g., Sanibel Captiva Conservation Foundation) ~~purchase~~ acquisition, beach renourishment where more than 200 lineal feet of structure are proposed, relocation or removal of existing structures, and transfer of development rights~~, and other structural designs;~~

c. An assessment of the potential for harm to existing structures, both public and private, including roads, both on and off the subject parcel, if the proposed ~~structure~~ project is not installed;

d. ~~A report investigating the cause of the erosion, including a study with substantiating evidence that erosion is occurring at the location of the proposed structure and a projection of anticipated erosion with and without the proposed structure;~~ Evidence of active, ongoing, and/or progressive shoreline erosion is present on the subject lot which is not caused by runoff from the uplands. Within the bay beach zone the evidence of erosion must be documented to be other than the typical seasonal fluctuations in shoreline profile; and

~~e. An assessment of the cumulative effect of existing revetments, groins, seawalls, bulkheads, docks, erosion control structures, and other structures, including the proposed structure, on the subject ecological zone in terms of the zone's functions as contained in the Sanibel Plan, Section 2.3.1, Preservation of Ecological Functions Relating to Health, Safety and Welfare; and~~

~~f.~~ e. Such other information as may be necessary for a complete determination on the application.

2. ~~Seawalls, bulkheads and~~ New rigid, nonflexible structures which resist or redirect wave action or impede sediment accumulation (accretion) are expressly prohibited.

3. ~~Structures~~ Projects may not be approved within the bay beach zone under this section unless ~~one of the adjoining lots contains an existing erosion control structure, seawall or revetment~~ the project design encourages sediment accretion along the shoreline.

4. ~~Structures~~ Projects approved under this section shall be the minimum necessary to accomplish the intended purpose as determined by the planning commission.

5. The ~~structure~~ project shall be designed, installed, and maintained ~~so as~~ to preserve and protect existing vegetation which stabilizes the bank or shoreline, filters surface water runoff, or provides terrestrial or aquatic habitat.

6. The ~~structure~~ project shall meet the following minimum requirements:

a. The slope of ~~the structure shall approximate as closely as possible~~ the natural beach profile shall be maintained or restored to the extent feasible (if previously altered by human made structures), but in no case shall the slope be steeper than ~~two~~ three feet horizontal to one foot vertical. Within the bay beach zone, the preferred slope shall be no steeper than ten feet horizontal to one foot vertical.

b. The project shall provide a connection or transition zone between the adjacent uplands and water bodies for the benefit of wildlife to the extent feasible.

~~b.~~ c. ~~Polyfilter "X" fabric or equivalent, which extends a minimum of five feet landward from the crest and five feet waterward of the toe of the stabilized slope, shall be installed prior to placement of properly sized rip-rap or other approved materials.~~ Limerock rip-rap, clean cement rip-rap, and/or clean cement grids or pipes may be integrated into the design in a size and manner where they will not be dislodged, resist or redirect wave action, or impede sediment accumulation provided only the minimum necessary size and quantity is incorporated to create planting areas and stabilize the shoreline through encouraging natural sediment accretion.

~~c.~~ d. ~~The elevation of the crest and the toe of the revetment shall be such that waves will not erode the area above and below the revetment under "normal" conditions i.e., except for severe storms.~~ Plans must include the locations with elevations of mean low tide and mean high tide in relation to the proposed project. There shall be no filling or dredging at or below the mean high water line associated with the installation of the project when located along natural bodies of water.

~~d.~~ e. ~~Red mangroves (one year old, one-foot minimum heigh, nursery grown seedlings, or equivalent) shall be planted within the toe of the structure on three-foot (minimum) centers in areas where no native vegetation exists. Additional vegetation suitable for~~

~~erosion control, provision of wildlife habitat and water quality improvement shall be planted on the slope within the structure in sufficient density to contribute to bank stability and to create a natural appearing bank at maturity.~~ Native plants suitable for shoreline stabilization, provision of wildlife habitat, water quality enhancement or protection, and enhancement of onsite environmental conditions shall be planted within the project in sufficient density with minimum three-foot centers in areas where no native vegetation exists, to create a natural appearing shoreline at maturity.

~~e.~~ f. The ends of the ~~structure~~ project shall be tied into the existing structures on adjoining lots in a manner which contributes to the stability of each structure or project; where an existing structure adjoins the proposed ~~structure~~ project at only one end, the other end of the proposed ~~structure~~ project shall be tied into the subject parcel in a manner which minimizes the potential for flank erosion.

~~f.~~ g. ~~If there is an existing revetment, seawall or bulkhead on the subject parcel, that existing structure shall be removed and replaced with a structure in conformance with the standards of this section except for any contiguous portion of the structure which extends for more than 50 percent of the bank on the lot, is structurally sound, was lawfully installed and permitted, is not causing erosion on other lots, and is properly functioning. Any portion of an existing structure which is not required to be replaced by this subsection shall be protected against undermining by installation of rip-rap or other acceptable materials at the toe of the structure.~~ Designs may include the removal of all or part of an existing seawall, revetment or erosion control structure. If an existing seawall is removed, a drainage plan must be submitted to ensure runoff is directed away from the waterbody to an appropriate onsite location.

7. The planning commission ~~may~~ shall place conditions on the timing and sequence of construction ~~in order~~ to protect existing habitats or nesting, feeding or reproductive areas based upon recommendations from the City's Natural Resources Department.

8. For projects within the ~~The~~ bay beach zone, the waterward and landward limits of the bay beach zone shall be established (i.e., field located, corners staked, and coordinates recorded for mapping) by a State of Florida licensed professional surveyor prior to installation of the ~~erosion control structure~~ project. The line 50-feet landward of the mean high water line established by this survey, which is the boundary of the bay beach zone, shall not be moved waterward because of the installation of the ~~erosion control structure~~ project.

9. The mean high water line shall be established (i.e., field located, staked, and coordinates recorded for mapping) by a State of Florida licensed professional surveyor prior to the installation of the ~~erosion control structure~~ project and the mean high water line shall not be moved waterward because of the installation of the ~~erosion control structure~~ project.

Chapter 126. – Zoning.
Article IV. – Conditional Use.
Section 126-101. – Seawalls as accessory structures.

Seawalls as accessory structures shall be permitted as a conditional use in the F-mid-island ridge zone and the G-altered land zone, subject to the general requirements of section 126-82 and the following conditions set forth in this section:

(1)The seawall shall be in a humanmade canal at the following locations only:
Shell Harbor Subdivision;
Sanibel Harbors Subdivision;
Sanibel Isles Subdivision;
Water Shadows Subdivision;
Sanibel Estates Subdivision, Unit No. 4 only; or
Between Periwinkle Way and San Carlos Bay adjoining Mariner Point, Yacht Haven, Tennis Place and Harbor Cottages.

(2) Repairs to a lawfully existing seawalls must meet design standards 5, 9, 11, 13, 15, 17, 18, 19 and 20 of this section through a development permit (refer to *seawall repair* definition in section 78-1). A Conditional Use Permit is not required.

(3) Reconstruction of a lawfully existing seawall must meet design standards 5 and 9 through 20 of this section and may be allowed through a development permit (refer to *seawall reconstruction* definition in section 78-1). A Conditional Use Permit is not required.

~~(2)~~ (4) There shall be no more than 150 continuous lineal feet of unseawalled shoreline between existing seawalls where the seawall is proposed.

(5) Repairs or reconstruction of lawfully existing seawalls located where seawalls are not a permitted use (i.e., nonconforming use) shall be limited to concrete and/or rock and must meet the standards of section 126-152(a)(9) through (11).

(6) Metal sheets may only be used as a temporary (i.e., 2 years maximum) structure for emergency shoreline stabilization, while a more long-term shoreline stabilization plan is designed and permitted.

~~(9)~~ (7) Where native vegetation is present which filters surface water runoff, provides terrestrial or aquatic habitat, or stabilizes the shoreline, such vegetation shall be preserved by installing the seawall landward of such vegetation.

~~(12)~~ (8) The seawall shall extend no farther into the waterway or canal than the banks, seawalls or revetments adjoining the property~~, except under limiting conditions addressed under Section 126-106 CUP for installing a new seawall waterward of an existing seawall~~ except under the limiting conditions where replacement seawalls are allowed waterward of the existing seawall per Section 126-106.

~~(3)~~ (9) ~~The top of the~~ A seawall ~~must be high enough~~ shall be constructed in a manner to prevent its from being overtopped and the land behind the structure being eroded under seasonal tidal fluctuations. The top of the seawall cap for properties where no seawall currently exists is limited to a height no more than ~~18 inches above the existing seawall cap of the~~

~~adjacent property provided it does not exceed 3~~ 4.5-feet NAVD. On properties where there is an existing seawall and a seawall cap repair, seawall replacement, or new seawall waterward of an existing seawall is proposed the new seawall cap ~~may be installed up to 18 12 inches above the existing seawall cap, provided it does not exceed~~ is limited to a height no more than 4.5-feet NAVD.

~~(4)~~ (10) Weep holes must be regularly spaced ~~near the bottom~~ above the mean high water line of the seawall to relieve the buildup of pressure on the wall from groundwater and rain percolating through the soil.

~~(5)~~ (11) The seawall must be made of materials strong enough to withstand anticipated battering by waves and wave-carried debris. Seawalls in the limited areas where seawalls are a permitted use shall be made of concrete, fiber reinforced polymer composite, rock, or polyvinyl chloride (PVC). Color of composite or polyvinyl chloride panels is limited to light grey to be substantially similar in coloration to concrete. The only rock which may be used is Florida limerock.

~~(6) An apron of rip-rap shall be piled at the toe of the wall to absorb the wave energy and protect the underlying soft earth or sand from being carried away, thus permitting the toe to be undermined causing the seawall to tip over. This rip-rap shall be placed so as to protect the base of the seawall through the mean tide range and shall not constitute a hazard to navigation.~~

~~(7)~~ (12) Polyfilter "X" cloth, or equivalent, shall be installed along the back of the seawall between the wall and the uplands when a void is present between seawall panels, to prevent soil from seeping into the adjacent waterway. ~~This filter cloth shall also be installed under the rip-rap placed at the toe of the wall.~~

~~(8)~~ (13) The seawall shall be installed with ~~a~~ sufficient ~~number of~~ tiebacks and anchors to help prevent it from tipping over. Tieback rods shall be protected against corrosion.

~~(10)~~ (14) The toe of the seawall shall have adequate penetration into the ground (a minimum of 40 percent of the height of the seawall) to develop the resistance necessary to keep the outward-acting forces of the fill behind the wall from forcing the bottom of the wall outward into the canal.

~~11.~~ 15. There shall be adequate embedment of the wall into the cap (a minimum of one-half the thickness of the cap) to prevent the wall and cap from rotating in different directions.

~~(12) The seawall shall extend no farther into the waterway or canal than the banks, seawalls or revetments adjoining the property.~~

~~(13)~~ (16) The seawall shall be tied into the adjoining seawall or well anchored to the shore with wingwalls or returns to resist flank erosion.

~~(14)~~ (17) ~~There shall be adequate concrete over all reinforcing steel in the wall and cap~~ When reinforcing steel is utilized in the wall and/or cap, current industry standards must be incorporated into the design to prevent corrosion and spalling which would reduce the strength of the wall.

(18) A turbidity and erosion control plan must be included in the design documents. Turbidity screening shall be employed prior to construction and remain in place a minimum of 24 hours after completion of construction to ensure protection of water quality in the area. Erosion control measures must be installed landward of the seawall upon completion of construction and remain in place until the upland area disturbed during construction is stabilized with vegetation.

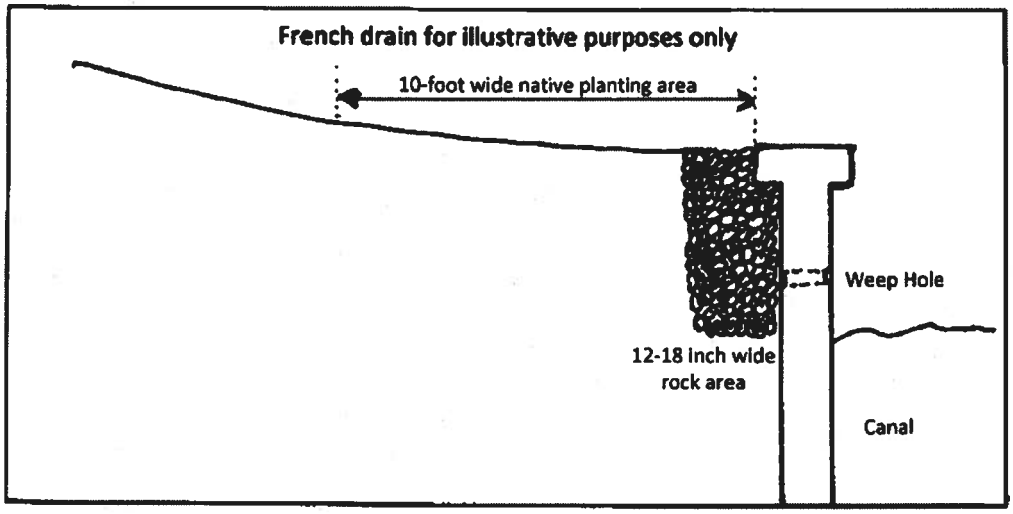
~~(15)~~ (19) ~~The city manager may require~~ Structural plans must be prepared by a professional engineer with experience in designing marine structures and licensed in the State of Florida to certify the seawall has been designed ~~and installed~~ in conformance with these standards and site specific conditions prior to issuance of a development permit. An as-built certification by the designing engineer that the seawall was built in conformance with the approved structural plans must be submitted prior to issuance of a Certificate of Completion.

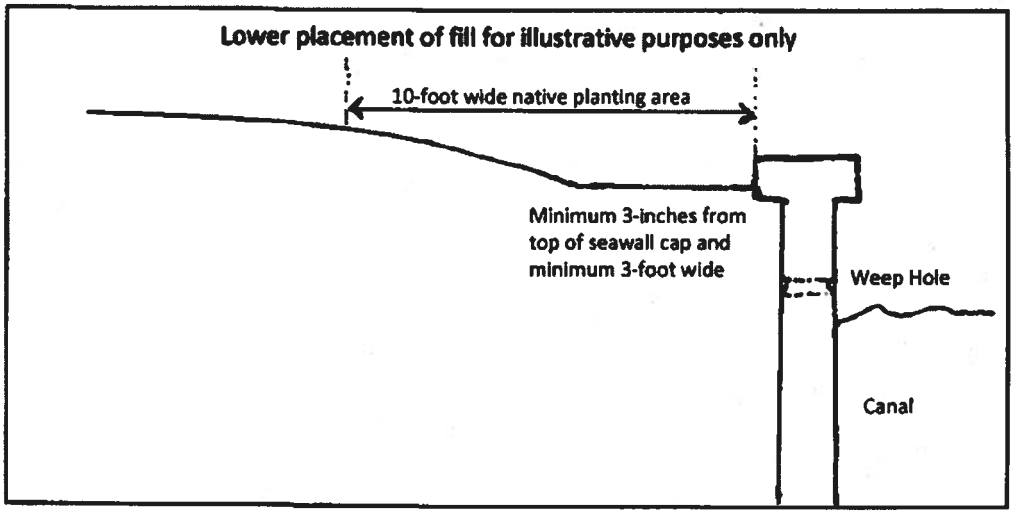
(20) Environmental enhancement:

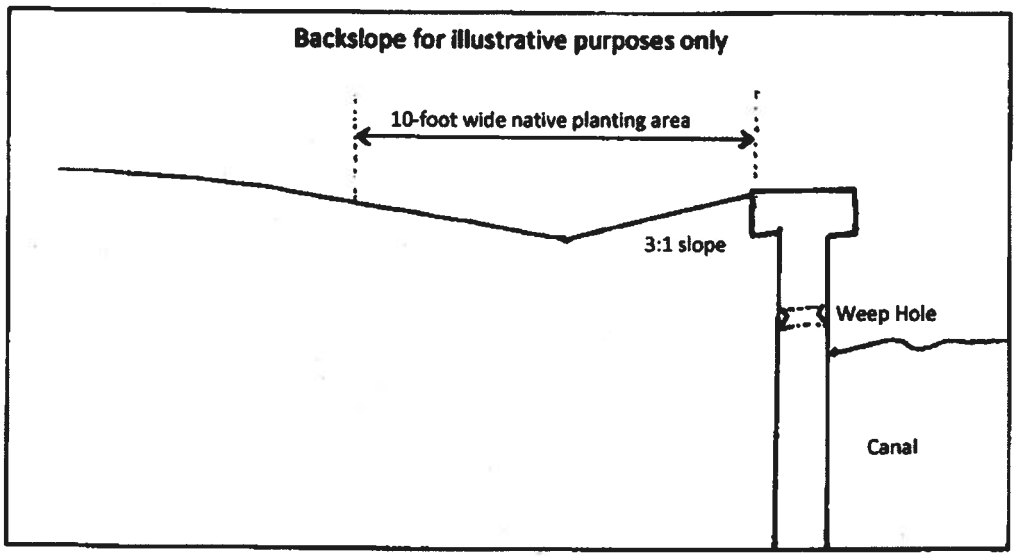
a. When the design of a replacement seawall or replacement seawall cap is at an elevation greater than the elevation of the existing structure, and when a new seawall is proposed, then the design must include a stormwater detention area landward and adjacent to the seawall to prevent runoff from rainfall and irrigation systems to directly enter the waterway. Examples of methods to detain runoff from direct discharge into the canal include, but are not limited to: (1) installation of a French drain adjacent to the seawall which is composed of crushed rock to encourage infiltration; (2) back sloping the fill; and (3) reducing the fill behind the new seawall cap, new seawall or replacement seawall to be three or more inches below the height of the seawall cap with a level surface for three or more feet in width (Refer to Illustrations below); and

b. A 10-foot wide native groundcover planting area directly adjacent to and along the length of the seawall except for a maximum 5-foot wide accessway to a dock. Native groundcover plants to be a minimum 1-gallon container size planted on 3-foot center; soil must be stabilized with a natural fiber filter cloth or native seashore paspalum sod at time of planting.

c. The stormwater detention area and 10-foot wide native groundcover planting area will not be counted toward the developed area limit.


French drain for illustrative purposes only
10-foot wide native planting area
Weep Hole
12-18 inch wide
rock area
Canal


Lower placement of fill for illustrative purposes only
10-foot wide native planting area
Minimum 3-inches from
top of seawall cap and
minimum 3-foot wide
Weep Hole
Canal


Backslope for illustrative purposes only
10-foot wide native planting area
3:1 slope
Weep Hole
Canal

Chapter 126. – Zoning.
Article IV. – Conditional Use.
Section 126-106. - Seawall as accessory structure waterward of existing seawall

A new seawall shall only be permitted waterward of an existing seawall on a particular property as a conditional use subject to the general requirements of section 126-82 and the following conditions:

(1) The seawall shall be in a human made canal, only within the following locations:
a. Shell Harbor Subdivision;
b. Sanibel Harbors Subdivision;
c. Sanibel Isles Subdivision;
d. Water Shadows Subdivision; or
e. Between Periwinkle Way and San Carlos Bay adjoining Mariner Point, Yacht Haven, Tennis Place and Harbor Cottages.

(2) There is not an old seawall landward of the existing seawall.

(3) The property line of the parcel shall not be moved waterward.

(4) The design of the seawall shall not adversely impact adjacent properties

(5) The design of the seawall shall not adversely impact native vegetation

(6) The design of the seawall shall not adversely impact native wildlife

(7) The design of the seawall shall not adversely impact marine resources

(8) The ~~width~~ waterward extension of the seawall shall not create a nonconforming marine accessory structure on the property or properties across the canal from the subject property. To ensure the waterward extension standard as detailed in Section 126-875 for docks, boat davits and boat lifts that are existing or proposed in the future by a property across the canal from the subject property is not reduced due to the placement of a seawall waterward of an existing seawall, a survey documenting the width of the canal from the waterward face of the seawall on the subject property to the waterward face of an existing seawall across the canal must be provided as part of the permit application to establish the canal width to be utilized for current or future marine accessory structure(s). If the canal width varies, then multiple measurements must be recorded on the survey. If the property across the canal does not have a seawall then the measurement will be to the mean high water level. If the property across the canal has previously installed a seawall in front of a seawall, then a copy of the survey documenting the width of the canal before the replacement seawall was installed across the canal must be submitted to verify the canal width.

(9) The waterward extension of the seawall shall not adversely impact the adjacent property owners' access to the canal or their marine accessory structures.

(10) The new seawall shall not extend any further than 12-inches as measured from the existing seawall face to the waterward most face of the proposed seawall. Any void between the existing seawall and new seawall must be filled with appropriate material to allow for relief of hydrostatic pressure.

(11) Seawall standards (9) through (20) in Section 126-101 shall be met.

(12) Existing docks, boatlifts, and mooring pilings must not be relocated further waterward, except when those accessory marine structures can be relocated in full compliance with Chapter 126, Article XIV, Division 2, Subdivision II, with the maximum waterward extension measured from the face of the original seawall.

(13) If the new seawall extends further than the property owner's existing property line, the owner must procure from the owner(s) on whose land the new seawall extends an easement in a form acceptable to the City, identifying the limits of the new seawall, existing seawall, and subject property boundary, and such easement must be recorded in the public record of the Lee County Clerk of Courts.

(14) As-built survey including the location of the existing seawall, new seawall, property boundary, any marine accessory structures, delineation of the maximum waterward extension based upon measurement from the original seawall, and elevation of seawall cap must be submitted to the City upon completion of the seawall construction.

Chapter 126. – Zoning.
Article V. – Nonconformances. Division 2. – Uses.
Section 126-152 – (Nonconforming uses) exceptions and prohibitions.

(a) No existing structure devoted to a use not permitted in the district in which it is located shall be improved, enlarged, extended, moved, or structurally altered, except in changing the use of the structure to a use permitted in the district in which it is located. The following exceptions, however, shall be permitted:

(1) Repairs ~~or rehabilitations~~ to the structure which, in conjunction with prior repairs, do not amount to a material structural alteration or a substantial improvement, as defined in chapter 94, ~~less and~~ except seawalls located outside of the areas permitted in section 126-101(1), which must meet the pertaining requirements listed below in subsections (9) through (12) of this section;

...

(9) Repairs ~~or rehabilitations~~ of existing nonconforming use seawalls in human made or natural waterbodies, ~~which in conjunction with prior repairs or rehabilitations do not amount to a substantial improvement~~ when such repairs ~~or rehabilitations~~ are done in accordance with requirements found in subsections 126-101~~(3)~~(2) through~~(15)~~(20); and

(10) ~~Repairs, rehabilitations or~~ Reconstruction of existing nonconforming use seawalls in human made waterbodies, ~~which in conjunction with prior repairs, rehabilitations or~~

~~reconstruction amount to a substantial improvement~~ where such ~~repairs, rehabilitations or~~ reconstruction ~~are~~ is approved by the planning commission at a hearing as for a development permit after consideration of the following requirements:

a. The applicant has demonstrated through a technical report by a State of Florida licensed professional engineer that alternatives to a seawall have been examined and found to be unsatisfactory because development of an alternate bank stabilization method would result in one or more of the following conditions:

1. Excessive loss of uplands property;
2. Net loss of existing native vegetation or habitat for native wildlife;
3. Degradation of water quality;
4. Creation of a potentially hazardous condition on the upland property; or
5. Creation of a potential public nuisance or eyesore.

The applicant's examination of alternatives shall, at a minimum, include removal of all or part of the seawall and restoration of the natural bank; installation of rip-rap; regrading of the uplands to direct runoff away from the waterbody; relocation of upland structures away from the waterbody; installation of a revetment; installation of alternative shoreline stabilization project; and a combination of two or more of the items listed in this subsection.

b. In making its decision, the planning commission shall be guided by the principle that the banks of human made waterbodies should be as natural appearing as possible and should provide habitat for native ~~animals~~ wildlife and water quality protection, in addition to being stabilized to protect structures on the upland property. ~~In addition, the planning commission shall consider the extent to which the banks of the water body are already seawalled.~~

c. As an alternative to the ~~repair or~~ reconstruction of the seawall, the planning commission may authorize an alternate method of bank stabilization, such as one or a combination of those methods listed in subsection ~~(8)~~(10)a. of this section.

d. Planning commission approval of the ~~repair or~~ reconstruction of a seawall under this division shall be in accordance with the requirements found in subsections 126-101~~(3)~~(2) through ~~(15)~~(20).

e. If a seawall is determined to be necessary based upon (a) of this subsection, then the design must incorporate at a minimum one of the following environmental enhancements:

1. Planting shelf waterward of the seawall planted with two staggered rows, minimum 1-gallon container size mangrove or other appropriate native vegetation 3-foot on center.

2. Minimum 10-foot wide native groundcover planting area directly adjacent to and along the length of the seawall except for a maximum 5-foot wide accessway to a dock. Native groundcover plants to be minimum 1-gallon container size installed 3-foot on center; soil must be stabilized with

a natural fiber filter cloth or native seashore paspalum sod at time of planting.

3. Textured seawall panels or other design that creates pockets and crevices for the establishment of marine flora and fauna.

4. Other innovative, site specific means to enhance the adjacent human made waterbody or upland area.

(11) Reconstruction of existing nonconforming use seawalls in natural waterbodies is only allowed when reconstruction is found to be the only means to protect existing primary use building or swimming pool as evaluated by a State of Florida licensed engineer with expertise in structural engineering and approved by the planning commission at a hearing for a development permit after consideration of the following requirements:

a. A signed and sealed technical report from a State of Florida licensed engineer with expertise in structural engineering explaining why an alternative to a seawall would endanger the structural integrity of a primary use building or swimming pool.

b. In making its decision, the planning commission shall be guided by the principle that the banks of natural waterbodies should be restored or enhanced where possible to provide an upland connection to the shoreline for native wildlife, include native vegetation, and provide water quality protection in addition to stabilizing the shoreline to protect structures on the upland property.

c. If reconstruction of an existing nonconforming use seawall is determined to be necessary based upon this subsection, then the reconstructed seawall must be installed in the same 3-dimensional footprint of the existing seawall, and the design must incorporate a minimum of two of the following:

1. Planting shelf waterward of the seawall planted with two staggered rows, minimum 1-gallon container size mangrove or other appropriate native vegetation 3-foot on center.

2. Minimum 10-foot wide native groundcover planting area directly adjacent to and along the length of the seawall except for a maximum 5-foot wide accessway to a dock or shoreline. Native groundcover plants to be minimum 1-gallon container size installed 3-foot on center with natural fiber cloth such as jute cloth or native seashore paspalum sod.

3. Textured seawall panels or other design that creates pockets and crevices for the establishment of marine flora and fauna.

4. Other innovative, site specific means to enhance the adjacent natural waterbody or upland area.

c. Planning commission approval of the reconstruction of a seawall under this division shall be in accordance with the requirements found in subsections 126-101(2) through (20).

~~(11)~~ (12) The reestablishment of a nonconforming use of a building that is been built-back following substantial damage to the building by a natural disaster, in conformance with the provisions contained in this article.

Chapter 126. – Zoning.

Article V. – Nonconformances. Division 3. – Structures.

Section 126-172 – (Nonconforming structures) improvement, reconstruction or relocation prohibited; exceptions.

(a) Except as otherwise provided in this article and in article XII resort housing district in this chapter, no nonconforming structure may be reconstructed, moved, removed, relocated, or structurally altered, except in such fashion as to eliminate the nonconformance or as to reduce the degree of nonconformance as much as possible. Nonconforming seawalls outside of the areas where seawalls are a permitted use [Sec. 126-101~~(a)~~(1)] are nonconforming uses and must meet Sec. 126-152 standards. The following shall, however, be permitted:

(1) Repairs or rehabilitations to a nonconforming structure which, in conjunction with prior repairs, do not amount to a material structural alteration or a substantial improvement as defined in chapter 94;

...

(4) Repairs~~, rehabilitations~~ or reconstruction of existing nonconforming seawalls where seawalls are a permitted use [Sec. 126-101~~(a)~~(1)] in human made waterbodies in accordance with the requirements found in subsections 126-101~~(3)~~ (2) through ~~(15)~~ (20);

...

(10) Building back (reconstruction) of a structure substantially damaged by a natural disaster in accordance with division 5 of this article.

Chapter 126. – Zoning.

Article V. – Nonconformances. Division 5. – Standards for Building Back (Reconstruction) of Structures Substantially Damaged by a Natural Disaster

Section 126-212. – Nonconforming structures.

(a) When a nonconforming structure is destroyed or substantially damaged by accidental fire or other natural and disastrous force, such structure may be built back (reconstructed):

- Within its pre-disaster footprint;
- Within the three-dimensional outline of the lawfully existing habitable area of the pre-disaster building;
- Up to its pre-disaster gross square footage; and
- Up to its lawfully existing number of dwelling units, but elevated above the base flood elevations required by federal flood regulations, chapter 94 of this Land Development Code, and the Florida Building Code and conforming in all other respects to the Land Development Code requirements, in effect at the time the substantially damage building is built back (reconstructed).

(b) Applications to buildback a nonconforming structure that was destroyed or substantially damaged by accidental fire or other natural and disastrous force must be filed

within 24 months of the date of the destruction or substantial damage to the building that is to be built back.

(c) Replacement of a nonconforming use seawall that was destroyed or substantially damaged by a natural disaster (defined in Chapter 78) must follow the standards established for revetments (Sec. 126-911 through 126-912) or alternative shoreline stabilization project (Sec. 126-99) or Sec. 126-152. An expedited permitting process which waives the requirement for planning commission approval may be authorized by the City Manager or their designee once confirmation of the destruction or substantial damage is determined to be caused by a natural disaster.

~~(c)~~ (d) In the case of a historic structure, as defined in chapter 94 or described in chapter 98, reconstruction is permitted as provided in this section, and in addition, in any manner which preserves the integrity of the structure as a historical structure.

Chapter 126. – Zoning
Article XIV. – Supplementary District Regulations, Subdivision II. – Accessory Marine Structures, Section 126-875. – Waterward extension.

Docks, boat davits and boat lifts shall not be extended waterward (from the approximate mean high water line) to a distance greater than is necessary to provide reasonable use of the facility.

(1) No such structure (including mooring pilings) on land having navigable access to state waters (including Clam Bayou and Old Blind Pass) shall be extended waterward more than 30 feet or 20 percent of the width of the waterway, whichever is less, except along shorelines with extensive mangrove vegetation, in which case such structures may extend up to 15 feet waterward past the roots of the mangroves from which the structure projects; provided such structures can be located where the water depth is greater than three feet above the bottom surface at mean low water where such minimum water depth is required, but in no event more than 20 percent of the width of the waterway.

(2) Docks (including their mooring pilings) located on land adjacent to open bodies of water (including the Sanibel River) not having navigable access to state waters shall in no event be extended waterward more than 15 feet or 20 percent of the width of the waterway, whichever is less.

(3) On properties where a seawall has been permitted waterward of the existing seawall per section 126-106, the distance of the waterward extension must be measured from the original seawall as depicted in the as-built survey for the replacement seawall.

Chapter 126. – Zoning.
Article XIV. – Supplementary District Regulations.
Division 2. – Accessory Structures.
Subdivision II. – Accessory Marine Structures.
Section 126-885. – Materials

Materials utilized in marine construction shall not be treated with chemicals which may have a detrimental effect on water quality, including but not limited to creosote, tri-butyl tin and all asbestos treatments. Wood treated with copper chromium arsenate (CCA) ~~shall not be used at locations where bottom sediments are metal enriched in excess of state department of environmental protection~~ standards may only be used for pilings and/or framing in marine accessory structures when the following are included in the project design and construction specifications:

1. CCA treated wood shall be labeled as American Wood Preservers Association (AWPA) category UC5C or equivalent (i.e., 2.5 pounds per cubic foot CCA); and
2. A description of best management practices to be employed to reduce the amount of CCA treated wood sawdust and scraps from entering the waterbody; and
3. Any saw dust and unused CCA treated wood shall be removed from the site and properly disposed of following FDEP requirements.

SECTION 3. Codification. This ordinance shall be deemed an amendment to the Sanibel Code of Ordinances and shall be codified in the Sanibel Code of Ordinances as such an amendment. The City Clerk is hereby authorized and directed to instruct as part of the codification that all section numbers amended by this Ordinance are updated and corrected throughout the Code of Ordinances in the event such section numbers are referenced.

SECTION 4. 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 5. Severability. 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 6. Effective Date. This ordinance shall become effective immediately upon adoption.

DULY PASSED AND ORDAINED by the Council of the City of Sanibel, Florida, this 5th day of April, 2022.

AUTHENTICATION:

Holly D. Smith, Mayor

Scotty Lynn Kelly, mmc
Scotty Lynn Kelly, City Clerk

APPROVED AS TO FORM: 4/5/22
John D. Agnew, City Attorney Date

First Reading: March 1, 2022
Publication Notice: March 21, 2022
Second Reading: April 5, 2022
Vote of Council Members:

Smith	Yea
Johnson	Nay
Crater	Yea
Henshaw	Yea
Miller	Yea

Date filed with City Clerk: April 5, 2022