

7. First Reading

- a. **ORDINANCE 08-002 AMENDING SECTION 10-8 OF THE CODE OF ORDINANCES OF THE CITY OF SANIBEL RELATING TO THE INTENTIONAL FEEDING OF WILD RACCOONS; REQUIRING THAT ALL COMMERCIAL CUSTOMERS (WHICH INCLUDES RESIDENTIAL CONDOMINIUMS AND SIMILAR MULTI-UNIT BUILDING CUSTOMERS) HAVE AND MAINTAIN LOCK BARS TO BE INSTALLED BY THE CITY'S SOLID WASTE FRANCHISE HAULER; SPECIFYING ENFORCEMENT THROUGH THE CITY CODE ENFORCEMENT HEARING PROCEDURES WHICH PROVIDE A PENALTY OF UP TO \$250/DAY UPON A FINDING OF VIOLATION AND UP TO \$500/DAY UPON A FINDING OF A REPEAT VIOLATION, AND MAY INCLUDE COSTS OF CITY ENFORCEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE**

ORDINANCE NO. 08-002

AN ORDINANCE AMENDING SECTION 10-8 OF THE CODE OF ORDINANCES OF THE CITY OF SANIBEL RELATING TO THE INTENTIONAL FEEDING OF WILD RACCOONS; REQUIRING THAT ALL COMMERCIAL CUSTOMERS (WHICH INCLUDES RESIDENTIAL CONDOMINIUMS AND SIMILAR MULTI-UNIT BUILDING CUSTOMERS) HAVE AND MAINTAIN LOCK BARS TO BE INSTALLED BY THE CITY'S SOLID WASTE FRANCHISE HAULER; SPECIFYING ENFORCEMENT THROUGH THE CITY CODE ENFORCEMENT HEARING PROCEDURES WHICH PROVIDE A PENALTY OF UP TO \$250/DAY UPON A FINDING OF VIOLATION AND UP TO \$500/DAY UPON A FINDING OF A REPEAT VIOLATION, AND MAY INCLUDE COSTS OF CITY ENFORCEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the intentional feeding of wild raccoons in the City has been prohibited for over 25 years due to the fact that such feeding (1) disrupts the natural cycle of raccoon foraging in their natural habitat, (2) promotes unsanitary conditions through the scavenging and scattering of food remnants and debris and (3) promotes aggressive behavior in animals looking for food from and near humans and promotes close contact between raccoons foraging for human food and other wild and domesticated animals and human beings; and

WHEREAS, the creation or maintenance of any condition which causes or encourages raccoons to feed upon garbage is and has been expressly prohibited by City ordinance, which includes any commercial premise maintaining an open dumpster on the property; and

WHEREAS, the Council has determined it to be necessary and in the best interests of the public's health, safety and welfare to require lock bars on solid waste dumpsters and to require that such lock bar be used by the owner in order to prevent wild raccoons from feeding upon the garbage in the dumpster; and

WHEREAS, the City Council has determined it appropriate and necessary that the enforcement of this ordinance be conducted through municipal code enforcement as set forth in Chapter 162, Florida Statutes, and adopted by the Sanibel Code, which enforcement may be by any City of Sanibel Police Officer or Code Enforcement Officer, as well as through any alternative enforcement procedures available to the City;

NOW, THEREFORE, BE IT ORDAINED by the Council for the City of Sanibel, that Section 10-8 of the Code of Ordinances is hereby amended as follows (with underlining indicating new language and strike through indicating deleted language):

SECTION 1. Sec. 10-8. Feeding of raccoons prohibited; penalties.

- (a) The intentional feeding of wild raccoons in the city is expressly prohibited.
- (b) The creation or maintenance of any condition upon the premises, which causes or encourages raccoons to feed upon garbage is expressly prohibited.
- (c) ~~The penalty for a violation of this section is a noncriminal infraction subject to a fine of \$500.00., provided that a written warning has been issued to the violator for the same violation within the year immediately preceding the date of the infraction.~~

All City of Sanibel commercial solid waste franchise customers (which includes both commercial customers and residential condominium and other similar multi-unit building customers) which maintain a dumpster for the collection of food waste, as well as other solid waste, shall have on such dumpster a Lock Bar of a type issued by or approved by the City's solid waste franchise hauler for such dumpster. The cost of such Lock Bar system shall be paid as additional charge billed directly to each commercial customer by the franchise hauler.

Exemptions: Roll off type construction and debris dumpsters and "chute drop" dumpsters, or dumpsters located and maintained within a fully enclosed room with a closed door, are exempted from this provision.

"Lock Bar" is a device which is installed by the City's solid waste franchise hauler, or its designee, which is designed to secure the top of a solid waste dumpster and enclose such dumpster contents from access by raccoons and other wild animals. Such Lock Bar when used properly keeps such solid waste dumpster closed and secure except when the bar is released for the deposit of solid waste or garbage into the dumpster.

Such Lock Bar shall be locked and secure at all times except when the property owner or the agents, employees or personnel thereof are placing or depositing solid waste or garbage into the dumpster (or when the solid waste franchise hauler is removing solid waste or garbage). It is a violation of this ordinance for any such commercial dumpster to be unlocked or to be open or remain open at any other time.

- (d) A violation of this ordinance shall be a non-criminal infraction enforceable through the City's code enforcement procedures which provide for hearing by a Hearing Examiner and further provides that a fine imposed shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation and, in addition, may include all of the City's costs of enforcement.
- (e) Alternatively, the City may use any means of enforcement legally available to the City for purposes of enforcement of municipal codes.

SECTION 2. Codification.

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 of application.

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 of 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 5th day of February, 2008.

AUTHENTICATION:

Mick Denham, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler 1/30/08
Kenneth B. Cuyler, City Attorney Date

Publication and Hearing Dates:

Date of First Public Hearing: _____
Ordinance Publication Date: _____
Date of Second Public Hearing: _____

Vote of Council Members:

Denham _____
Johnston _____
Jennings _____
Pappas _____
Ruane _____

Date filed with the City Clerk: _____