

7. First Reading

- b. **ORDINANCE 08-003 AMENDING THE SANIBEL CODE, PART II LAND DEVELOPMENT CODE: CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5, COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1032 OUTDOOR SEATING FOR CARRYOUT RESTAURANTS, TO ESTABLISH PROCEDURES AND STANDARDS FOR PROVIDING OUTDOOR SEATING FOR CARRYOUT RESTAURANTS; CHAPTER 90 FEES, ARTICLE II. DEVELOPMENT PERMITS, DIVISION 3. NONRESIDENTIAL DEVELOPMENT, TO ADD A NEW SECTION 90-86. OUTDOOR SEATING; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE**



**CITY OF SANIBEL**

**ORDINANCE 08-003**

**AN ORDINANCE AMENDING THE SANIBEL CODE, PART II LAND DEVELOPMENT CODE: CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5, COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1032 OUTDOOR SEATING FOR CARRYOUT RESTAURANTS, TO ESTABLISH PROCEDURES AND STANDARDS FOR PROVIDING OUTDOOR SEATING FOR CARRYOUT RESTAURANTS; CHAPTER 90 FEES, ARTICLE II. DEVELOPMENT PERMITS, DIVISION 3. NONRESIDENTIAL DEVELOPMENT, TO ADD A NEW SECTION 90-86. OUTDOOR SEATING; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, supporting local, island-serving businesses is an important goal of the City of Sanibel and the Sanibel Plan; and

**WHEREAS**, carryout restaurants have historically been part of the Sanibel business community; and

**WHEREAS**, carryout restaurants serve both year-round and seasonal residents; and

**WHEREAS**, City Council has previously approved amendments to the Land Development Code to provide opportunities for bonus outdoor seating for general restaurants; 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**, such revisions have been referred to the Planning Commission for a recommendation as to the consistency with the *Sanibel Plan*; and

**WHEREAS**, 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 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, is hereby amended by adding a new Section 126-1032 Outdoor Seating for Carryout Restaurants, with underlining indicating additions as follows.

Section 126-1032 Outdoor Seating for Carryout Restaurants.

(1) Purpose: The purpose of this section is to establish procedures and regulations that will enable carryout restaurants, as defined by the Land Development Code, Sec. 126-1032 (2) and regulated by the Land Development Code, Chapter 126 Zoning, Article IV, Conditional Uses, Sec. 126-91. Eating places, restaurants, grocery stores, etc. not listed as a permitted use, to provide limited and incidental portable outdoor seating for patrons.

(2) Definition: This section is only applicable to a carryout restaurant which is defined as an eating place solely engaged in the over the counter sale of food, beverages, ice cream and deserts prepared or pre-prepared on-premises for consumption off-site or directly outside the establishment with limited and incidental portable seating serving patrons.

(3) Procedures:

- a. Exemption: Development permits will only be required for outdoor seating serving more than six patrons. However, all outdoor seating shall be in compliance with the standards defined by Sec. 126-1032 (3) g.
- b. Short Form Permit Application: A Short Form development permit is required for outdoor seating for carryout restaurants when the proposed seating will accommodate between seven and twelve patrons.
- c. Long Form Permit Application: A Long Form development permit is required for outdoor seating for carryout restaurants when the number of proposed seats will accommodate more than twelve patrons.
- d. Initial Development Permit Period: An initial development permit required for outdoor seating associated with carryout restaurants will expire after twenty-four months. To continue outdoor seating, the applicant must apply for a renewal of the development permit. The renewal will be based on a determination of compliance with Sec. 126-1032 (3) g.
- e. Applications: 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:
  1. A survey of the subject property and/or a site, building or commercial center plan delineating, at a minimum, the proposed location, type and number of outdoor seats in relation to the carryout restaurant and all relevant property lines, buildings, adjoining businesses and uses, sidewalks, parking, landscaping and other site and structural features;
  2. Authorization of the real property owner to make such application;
  3. A description and/or illustration of how the location and functional operation of the outdoor seating will complement the carryout restaurant and be compatible with the associated commercial center, pedestrian and

vehicular access and circulation, site environment and adjoining businesses and land uses, as applicable.

- f. Associated Conditions for Approval: Applicants for outdoor seating, for more than six patrons associated with carryout restaurants, shall also obtain or complete the following prior to approval of the necessary development permit:
1. The applicant shall obtain an amended Business Tax Receipt that defines the number of permitted outdoor seats; and
  2. The applicant shall obtain approval of the outdoor seating plan from the Sanibel Fire and Rescue District; and
  3. If warranted, the applicant shall purchase additional sewer connection charges.

The City Manager, or the Manager's designee, shall annually review Business Tax Receipts involving carryout restaurants with approved outdoor seating to insure compliance with this section and other City regulations prior to renewal.

g. Standards:

1. Outdoor seating is permitted at carryout restaurants located within a Commercial Zoning District where a restaurant use is permitted as a conditional use. Outdoor seating, pursuant to this section, is not permitted where a carryout restaurant is located outside a Commercial Zoning District.
2. The area used for outdoor seating shall not count as commercial floor area.
3. Off-street parking requirements shall not be applied to the outdoor seating permitted by this section.
4. No food preparation or service shall occur within the designated outdoor seating area or anywhere outside the carryout restaurant.
5. 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. The location of all existing and proposed waste receptacles shall be defined in relation to the outdoor seating. The number of waste receptacles shall be adequate to accommodate the volume of waste product associated with the establishment. Signs shall be displayed on or near each waste receptacle directing patrons to properly dispose of all waste products.
6. 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.

7. The outdoor seating shall be under a roof, awning, or portable umbrellas.
8. Seating shall not be dispersed and shall be grouped in a defined area immediately accessible to the permitted carryout restaurant operation and located on the site of the permitted carryout restaurant use.
9. Outdoor seating shall:
  - i. not encroach on public right 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 interfere with the operation of adjoining businesses or land uses; and
  - v. not block or restrict doors or other means of required egress for emergency purposes.
10. Additional signage or outdoor advertising shall not be permitted.
11. 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.
12. Producing odors at a level which unreasonably disturbs the peaceful and healthful enjoyment of any adjoining businesses or land uses is prohibited, pursuant to Section 125-652 of the Land Development Code.
13. Outdoor entertainment shall not be permitted, except as otherwise licensed by the City.
14. All outdoor lighting shall be consistent with Chapter 126 Zoning, Article XIV Supplementary District Regulations, Division 4 Outdoor Lighting.
15. All outdoor seating shall be portable and must be brought inside for storage whenever the City is under a Hurricane Warning.
16. This section does not authorize the construction, renovation or expansion of structures, unless authorized by City permits.
17. 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.** The Code of Ordinances of the City of Sanibel, Chapter 90 Fees, Article II. Development Permits, Division 3. Nonresidential Development is hereby amended by adding a new Sec. 90-86. Outdoor Seating with underlining indicating additions as follows:

Section 90-86 Outdoor Seating

The fees for outdoor seating associated with Regular Restaurants and Carryout Restaurants are as follows:

- (1) Restaurants, regular: \$38.00 for each bonus seat for outdoor dining with a maximum fee of \$600.00.
- (2) Restaurant, carryout: No fee for seating serving the first six patrons. \$267.00 for seating serving from seven to twelve patrons. \$28.00 for each additional seat.

**SECTION 3. Codification.**

This ordinance shall be an amendment to the Code of Ordinances of the City of Sanibel. New Sections 126-1032 and 90-86 are added to the Sanibel Code of Ordinances.

**SECTION 4. 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 5. 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 6. 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 \_\_\_\_\_, 2008.


**AUTHENTICATION:**

\_\_\_\_\_  
Mick Denham, Mayor

\_\_\_\_\_  
Pamela Smith, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kenneth B. Cuyler, City Attorney

  
\_\_\_\_\_  
Date

**Publication and Hearing Dates**

Date of 1<sup>st</sup> Reading: \_\_\_\_\_

Ordinance Publication Date: \_\_\_\_\_

Date of 2<sup>nd</sup> Reading: \_\_\_\_\_

**Vote of Council Members:**

Denham \_\_\_\_\_

Johnston \_\_\_\_\_

Jennings \_\_\_\_\_

Pappas \_\_\_\_\_

Ruane \_\_\_\_\_

Date filed with the City Clerk: \_\_\_\_\_