

**CITY OF SANIBEL
ORDINANCE NO. 06-021**

AN ORDINANCE ESTABLISHING AND CONFIRMING THE RIGHTS OF PRIVATE PROPERTY OWNERS TO RETAIN AUSTRALIAN PINES THAT CURRENTLY EXIST ON THEIR PRIVATE PROPERTY; PROVIDING FOR DEFINITIONS; PROVIDING FOR INTENT; PROVIDING FOR THE ESTABLISHMENT OF THE RIGHTS OF PRIVATE PROPERTY OWNERS TO RETAIN AUSTRALIAN PINES THAT CURRENTLY EXIST ON THEIR PRIVATE PROPERTY; PROVIDING A FINDING THAT AUSTRALIAN PINES OR OTHER TREES THAT COULD DAMAGE OR DESTROY CITY PUBLIC INFRASTRUCTURE ARE A DANGER TO HEALTH, SAFETY AND WELFARE; PROVIDING FOR REMOVAL OR “TOPPING” OF AUSTRALIAN PINES AND OTHER TREES DETERMINED TO BE A DANGER TO CITY PUBLIC INFRASTRUCTURE; PROVIDING A PROCEDURE FOR DETERMINATION THAT AN AUSTRALIAN PINE OR OTHER TREE IS A DANGER TO CITY PUBLIC INFRASTRUCTURE; PROVIDING PROCEDURES FOR REMOVAL OR “TOPPING” OF SUCH TREES; PROVIDING FOR APPEAL; PROVIDING THAT CERTAIN EXISTING ORDINANCES RELATING TO AUSTRALIAN PINES ON PRIVATE PROPERTY REMAIN UNAFFECTED; PROVIDING THAT ORDINANCE RIGHTS GRANTED DO NOT AFFECT PRIOR CONDITIONS OF SUBDIVISION APPROVALS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Council has heard from numerous citizens regarding their wishes to retain Australian Pines on their private property and who do not support island-wide eradication of Australian Pines located on private property; and

WHEREAS, the Council wishes to establish and confirm the rights of private property owners to retain Australian Pines that currently exist on their private property through the provisions of this Ordinance; and

WHEREAS, the City Council finds it necessary to proactively protect and safeguard City Public Infrastructure within the City of Sanibel from damage that may be caused by falling Australian Pines and other trees during a severe windstorm event, such as a hurricane; and

WHEREAS, the City has actual experience with significant damage to City Public Infrastructure, including significant damage to utility infrastructure and blockage of roadways, as a result of falling trees during Hurricanes Charley and Frances in 2004; and

WHEREAS, the Council finds it appropriate to establish a mechanism by which the City can evaluate such potential dangers to infrastructure and require the removal of Australian Pines and other trees deemed to be a danger to such infrastructure in the event of a hurricane or other windstorm; and

WHEREAS, the City notes that existing State law prohibits the sale and planting of Australian Pines and the City will continue to prohibit the sale and planting of Australian Pines, the Council finds that it is appropriate to allow private property owners to retain existing Australian Pines on their private property if they so desire (however, not affecting certain current City ordinances relating to vegetation referenced in this Ordinance), provided that such Australian Pines do not pose a threat to City Public Infrastructure in the event of a hurricane or other wind storm; and

WHEREAS, the City retains the right to remove Australian Pines from City parks, City right-of-ways and other City property at the sole discretion of the City Council; and

WHEREAS, the City Council finds it proper to provide education to the public as deemed appropriate by City Council in order to explain the benefits of “topping” Australian Pines and providing other tree maintenance;

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

SECTION 1. DEFINITIONS.

“Top”, “Topped” or “Topping” shall mean a maintenance activity or program involving the trimming of the tops of trees to reduce wind resistance and increase stability.

“Australian Pine” shall mean *Casuarina sp.*

“City Public Infrastructure” shall mean facilities, improvements, equipment and similar City owned or regulated items including, but not limited to, roads and road right-of-ways, sewer lift stations, buildings, bridges and weirs.

SECTION 2. INTENT.

The intent of this Ordinance is to provide for the establishment and confirmation of the right of private property owners to retain Australian Pines that currently exist on their private property while at the same time recognizing the need for the City to proactively protect City Public Infrastructure from damage that may be caused by falling Australian Pines and other trees in the event of a severe windstorm such as a hurricane. The further intent of this Ordinance is to provide a procedure for the evaluation by the City Manager of Australian Pines and other trees that may pose a danger to City Public Infrastructure and to provide a method for the removal, or where applicable “topping”, of such trees by a property owner.

SECTION 3. ESTABLISHMENT OF THE RIGHTS OF PRIVATE PROPERTY OWNERS TO RETAIN AUSTRALIAN PINES THAT CURRENTLY EXIST ON THEIR PRIVATE PROPERTY

The City Council hereby establishes and confirms that private property owners within the City of Sanibel shall have the right to retain Australian Pines that currently exist on their private property, subject only to the provisions of this Ordinance. The establishment and confirmation of rights as set forth herein pertain only to Australian Pines that currently exist on private property as of the effective date of this Ordinance and does not permit, and shall not be

construed to encourage, the planting, cultivation or sale of Australian Pines, which is and shall remain a violation of State and City law.

SECTION 4. COUNCIL FINDING THAT AUSTRALIAN PINES OR OTHER TREES THAT COULD DAMAGE OR DESTROY CITY PUBLIC INFRASTRUCTURE ARE A DANGER TO HEALTH, SAFETY AND WELFARE; REMOVAL OR "TOPPING" OF AUSTRALIAN PINES AND OTHER TREES DETERMINED TO BE A DANGER TO CITY PUBLIC INFRASTRUCTURE.

- (a) The City Council hereby finds and determines that any Australian Pine or other tree, or portion of such tree, determined by the City Manager, in accordance with the provisions of this Ordinance, to be located such that it could potentially damage or destroy City Public Infrastructure in the event that such tree falls or topples, or a branch or portion of such tree falls, is hereby determined to be a danger to City Public Infrastructure and to the health, safety and welfare of the citizens and visitors to Sanibel. Under such circumstances, such tree is hereby declared to be a danger and nuisance tree.
- (b) Any Australian Pine or other tree determined to be a danger to City Public Infrastructure in accordance with the provisions of this Ordinance shall be removed, or "topped" at a height directed by the City Manager, by the owner of the property upon which such tree(s) is located within sixty (60) calendar days of written notice of such determination from the City Manager, or designee. In the event that such property owner fails to remove, or "top" as directed, the tree(s) determined to be a danger to City Public Infrastructure, the City may, in addition to other remedies set forth herein, remove or "top" such Australian Pine or other tree. All costs incurred by the City in

performing such activities, including labor, material and administrative costs, shall be immediately due and payable by the property owner and such costs may be assessed and liened against the subject property by the City in accordance with the terms of this Ordinance and the provisions of general law.

- (c) It is hereby acknowledged and recognized by the City Council that the City of Sanibel has placed considerable efforts and the expenditure of both public and private funds to vegetate Periwinkle Way and adjacent locations, which includes the planting and future maintenance of trees within the Periwinkle Way right-of-way. It is expected that such trees will mature and provide all or part of a canopy for Periwinkle Way. In order to assure that such trees do not become nuisance trees and a danger to the Periwinkle Way City Public Infrastructure, the City shall engage in such future maintenance measures to assure a healthy vegetative canopy and to reduce the likelihood that such trees, or portions of such trees, will fall onto the public roadway or damage any other City Public Infrastructure. Nothing in this Ordinance shall be construed to mandate the automatic removal of such trees.

SECTION 5. PROCEDURE FOR DETERMINATION THAT AN AUSTRALIAN PINE OR OTHER TREE IS A DANGER TO CITY PUBLIC INFRASTRUCTURE; PROVIDING PROCEDURES FOR REMOVAL OR "TOPPING" OF SUCH TREES.

- (a) The City Manager shall, from time to time as deemed appropriate or necessary, survey and evaluate the City's Public Infrastructure and adjacent areas to determine whether any trees located adjacent to such infrastructure pose a threat of destruction or damage to such infrastructure if the tree, or a branch or part thereof, were to fall onto or be blown onto

the City Public Infrastructure. An Australian Pine or other tree shall only be considered as posing a danger to the City's Public Infrastructure if such tree could land upon or against such infrastructure in the event that the tree were to topple directly over, or a branch or portion of such tree could fall upon City Public Infrastructure. In other words, although infrastructure can always be damaged by windblown limbs, trees and other debris, a tree shall only be determined to be a dangerous tree which poses a threat to City Public Infrastructure if the distance from the trunk of the tree to the City Public Infrastructure is equal to or less than the height of the tree.

- (b) In the event that a tree is determined to be a danger to City Public Infrastructure, the City Manager shall provide such determination, in writing, to the property owner at the owner's last address as shown on the Property Appraiser's records. Such written notice shall be sent by U.S. mail, overnight delivery or hand delivery. If the subject property is a commercial parcel, a copy of such determination may be provided to the lessee or business manager, if different than the owner. The written determination by the City Manager shall:

1. Advise the property owner, in writing, that a tree or trees located upon the property have been determined to be a danger to City Public Infrastructure, specifically describing the tree(s) and the City Public Infrastructure threatened.

2. Advise the property owner that the subject tree or trees, or portions thereof, shall be removed or, if applicable, “topped” within sixty (60) calendar days of the notice to the property owner provided, however, such time period may be extended by the City Manager in the event the City Manager determines that good cause is shown, in writing, by the property owner for an extension of the time to remove or, if applicable “top”, the subject tree(s). In the event that the City Manager determines that the “topping” of an Australian Pine or other tree is sufficient to protect against the immediate danger posed to the applicable City Public Infrastructure, the Manager shall include in the written notification to the property owner the height at which the Australian Pine or other tree shall be “topped.”
3. Advise the property owner that failure to remove, or “top” as directed, the tree or trees, or identified branches or portions thereof, determined to be a danger to City Public Infrastructure constitutes a violation of City ordinance and may subject the property owner to Code Enforcement proceedings, removal or “topping” of the tree(s) by the City at a cost to be assessed against the property owner, and/or any other legal remedy available to the City to

remove or cause the removal or “topping” of such tree or trees.

4. Advise the property owner that if the property owner contests the City Manager’s determination, an appeal of such decision may be taken to the City Council in accordance with the provisions of this Ordinance.

(c) As an alternative to directing the removal of any tree or trees determined to be a danger to City Public Infrastructure, the City Manager shall, in all cases possible, provide a property owner with the alternative of “topping” such tree(s) at a height determined by the City Manager to remove the immediate danger posed to the City Public Infrastructure by such tree(s).

SECTION 6. APPEAL.

(a) A property owner may appeal the determination of the City Manager that a tree or trees located upon the property of the property owner constitute a danger to City Public Infrastructure. Any appeal shall be filed, in writing, within fifteen (15) days of the property owner’s receipt of the City Manager’s determination by filing a letter with the office of the City Manager, such letter identifying the property owner, the subject property and a brief description of the basis upon which the City Manager’s determination is contested. There is hereby established an appeal fee in the amount of \$200 which must be paid by the appealing party, contemporaneously with the filing of the appeal, in order to defray City costs and expenses in processing the property owner’s appeal. Such appeal fee may be amended by Resolution of the City Council, from time

to time, as deemed necessary or appropriate by Council. In the event that an appellant is successful in the appeal and the Council determines that the property owner's tree(s) does not constitute a danger to City Public Infrastructure, the appeal fee shall be returned to the appellant.

- (b) The City Manager's direction that the property owner's tree(s) be removed or "topped" shall be stayed until the property owner's appeal is heard by the Sanibel City Council at a regularly scheduled Council meeting.
- (c) The City Council shall review the City Manager's determination that such tree(s) constitute a danger to City Public Infrastructure as set forth in this Ordinance, the facts and circumstances set forth in the property owner's appeal, together with any facts or evidence presented by the City Manager, or designee, the property owner, and any other party at the appeal hearing. Based upon the evidence presented, the City Council may uphold the determination of the City Manager, overturn the determination of the City Manager or uphold the determination of the City Manager with such conditions as deemed necessary or appropriate by City Council.
- (d) The City Council's appeal hearing shall commence at a regularly scheduled meeting no later than sixty (60) days from the date the property owner's appeal is filed with the office of the City Manager.

SECTION 7. CERTAIN EXISTING ORDINANCES RELATING TO REMOVAL OF AUSTRALIAN PINES FROM PRIVATE PROPERTY REMAIN UNAFFECTED

The procedures set forth in this Ordinance shall be the exclusive procedure by which an Australian Pine is required, by the City, to be removed from private property provided, however, notwithstanding any provision of this Ordinance, certain existing Ordinances of the City shall

remain in full force and effect and shall be unaffected by the terms of this Ordinance. Such existing Ordinances and provisions which are unaffected are hereby delineated as follows:

- (a) 1. Section 122-169, "Landscaping requirements", Sanibel Land Development Code.
- 2. Sections 126- 675, 126-699, 126-724, 126-449 and 126-775, Sanibel Land Development Code, all related to and entitled "Vegetation-protection; planting of native species; use of sod or grass".
- (b) Nothing herein shall preclude the City from requiring the removal of any tree, shrubbery or other vegetation which is deemed by the City to be a threat and nuisance to the health, safety and welfare of the citizens of Sanibel from actual physical injury including, but not limited to, trees or vegetation which interfere with line of sight at vehicular intersections.

SECTION 8. ORDINANCE RIGHTS NOT TO AFFECT PRIOR CONDITIONS OF SUBDIVISION APPROVALS

The rights established and confirmed by this Ordinance do not affect, and shall not be construed to affect, any preexisting contract, agreement, condition, permit or similar item which required or requires the removal of Australian Pines in conjunction with a subdivision approval by the City of Sanibel. Further, the rights established and confirmed through this Ordinance shall not preclude the City in the future from imposing a condition for the removal of Australian Pines from undeveloped property as part of any major subdivision approval.

SECTION 9. CODIFICATION.

This ordinance shall be deemed an amendment to the Code of Ordinances of the City of Sanibel and the Sanibel Code of Ordinances is hereby amended.

SECTION 10. SEVERABILITY.

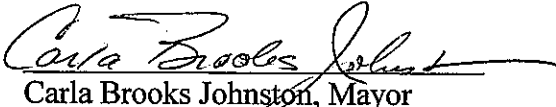
If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding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

SECTION 11. EFFECTIVE DATE.

This Ordinance shall be effective immediately upon adoption.

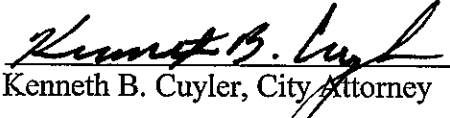
DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this 6th day of February, 2007.

AUTHENTICATION:


Carla Brooks Johnston, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM:

 2/9/07
Kenneth B. Cuyler, City Attorney Date

First Reading: December 19, 2006
Publication Date: December 22, 2006
Second Reading: January 2, 2007 - continued
Publication Date: January 25, 2007
Second Reading: February 6, 2007

Vote of Council members:

Johnston: yea
Denham: yea
Brown: yea
Jennings: yea

Date filed with City Clerk: February 6, 2007