

Dear Captiva Community Panel Members:

I am pleased to report that we continue to make progress – albeit slowly – on the proposed Captiva Land Development Code and Ordinances.

On May 20, after a year of negotiations with the County's Community Development staff and the County Attorney's office, and after recent assistance from the Assistant County Manager and Chairman Ruane, we received the County's support for almost all of our proposed amendments to the LDC.

At the same time that we received final language acceptable to the County, we were also advised that County staff will seek BOCC authorization on June 1 to bring the LDC amendments to the Land Development Code Advisory Committee, the Executive Regulatory Oversight Committee and the Local Planning Agency for review and action. After review by the committees, the amendments will be brought back to the BOCC for consideration at two public hearings and eventual adoption.

Except for the attached drafting changes, the County is recommending and supporting the substance of our amendments on Beach Furniture and Equipment, Outdoor Lighting, Tree and Landscaping Requirements, and Signage. The County saw no need for our littering proposal since the substance of that proposal already exists in the Lee County Land Development Code and applies to Captiva as an unincorporated part of Lee County. The County also rejected our dune vegetation proposal as redundant, but also thought it was unenforceable.

As you know, the County did not want Chapter 33 of the Lee County LDC (the Captiva chapter) to duplicate what was essentially in other parts of the County LDC, or to regulate conduct rather than land use. For that reason, Chairman Ruane is now moving our ordinance amendments which arguably regulate conduct (Septic Regulation, Fertilizer, Parking, Noise) through a similar staff process. We will also now propose the agreed-upon changes to the Captiva Golf Cart ordinance. And we will have to revisit the Plastic Straw ordinance at some time in the future since it seems that the straw proposal has found significant opposition in unincorporated Lee County. It is odd since the incorporated beach communities in Lee County have all banned plastic straws for environmental reasons.

In order for the Panel to fully review each and every one of the changes to the proposed LDC, we have attached to this email an amended and annotated version of the LDC that was last provided to the Panel for review at the October 13 Panel meeting, and which now shows all of the changes negotiated with the County since that date.

The document that the Panel received on October 13 is in black font. The language in black font that is underlined was underlined in the document the Panel received in October and represented our proposed amendments. The language in red font represents the County's additions and deletions incorporated in the final negotiated LDC. The language in blue font are my comments to the Panel to help navigate through this document. I hope to walk through the document with Panel members at the June Panel meeting.

Also attached to this email is the staff's Agenda Item for the June 1 BOCC meeting. By a second email, we are resending the draft ordinances that were sent to the Panel back in October just in case a Panel member cannot find the prior documents and wishes to see them again. County staff will likely have suggestions on the language of the ordinances as the review process commences.

Thank you.

David

**LAND DEVELOPMENT CODE**

**CHAPTER 33 – PLANNING COMMUNITY REGULATIONS**

**ARTICLE IX – CAPTIVA**

**SECTION ONE: AMENDMENT TO LDC CHAPTER 33, ARTICLE IX**

Lee County Land Development Code Chapter 33 is amended as follows with strikethrough identifying deleted text and underline identifying new text.

**Division 1. - In General**

**Sec. 33-1611 through Sec. 33-1613 remain unchanged.**

**Sec. 33-1614. - Definitions.**

The following definitions are in addition to those set forth in other chapters of this LDC and are applicable to the provisions set forth in this article only. If, when construing the specific provisions contained in this article, these definitions conflict with definitions found elsewhere in this LDC, then the definitions set forth below will take precedence.

Beach furniture or equipment: As defined by Section 14-170 of the Land Development Code. ~~Any manmade apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.~~

*Note to Panel. Section 14-170 provides the same definition: Beach furniture or equipment means any manmade apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.*

~~*Caretaker:* A person employed to look after a public building or a house in the owner's absence.~~

*Cupola:* A covered tower or vault, without a separate source of heating or air-conditioning, which may contain an underlying floor, which rises from a roof ridge, and is typically enclosed by opaque walls. (See "Lantern.")

*Domestic employee:* A person who works within the employer's household providing a variety of household services for an individual or a family.

*Dormer:* A projection from a sloping roof that includes a window.

*Dwelling unit, accessory:* A single-family dwelling unit, intended for use by guests or domestic employees, which is located on a lot or parcel containing one principal dwelling unit, and which is smaller than, and detached from, the principal dwelling unit. For purposes of this definition, guests shall mean persons staying on the property at the invitation of the property owner or lessee.

*Dwelling unit, principal:* The largest single-family dwelling unit, measured in square feet of enclosed living area, located on a lot or parcel containing more than one single-family dwelling unit. (See "Dwelling unit, accessory.")

*Façade articulation:* An extrusive architectural element or decorative feature which provides visual relief from an exterior wall, e.g. a buttress, pilaster, bay window, or oriel.

*Family:* One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, provided that a group of three or more adults who are not related by blood, marriage or adoption shall not be deemed to constitute a family, and further provided that domestic employees may be housed on the premises without being counted as a separate or additional family. The term "family" shall not be construed to mean a fraternity, sorority, club, monastery, convent or institutional group.

*Guest:* See "Dwelling unit, accessory."

*Lantern:* A covered tower or vault, without heating or air-conditioning, rising from a roof ridge, which may contain an underlying floor and is typically enclosed by windows to admit light in order to function as a solarium, observatory, viewing area, or similar use. (See "Cupola.")

*Lessee:* A person renting property under a written lease from an owner (lessor).

~~*Light trespass:* Light that shines or illuminates beyond the property on which the light is installed, where the point source of the light is unshielded and clearly visible from the adjoining or nearby property, and where the visible light unduly and unnecessarily intrudes into an area where it does not belong.~~

*Light trespass:* As defined by Section 34-2 of the Land Development Code.

*Note to Panel:* Section 34-2 of the Land Development Code provides the following definition: *Light trespass means light emitting from a point source of light that falls outside the boundaries of the property on which the point source of light is located and which constitutes a nuisance to a reasonable person of normal sensory perception.*

~~*Litter:* As defined by Ord. 99-04 (Code of Ordinances 17-186) and Florida Statute 403.413(f).~~

*Note to Panel:* "Litter" is defined by the County in Sec. 17-186 by reference to Florida Statutes Ch. 403, as it may be amended from time to time.

*F.S. Ch. 403 defines litter as “any garbage, rubbish, trash, refuse, can, bottle, box, container, paper, tobacco product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.”*

*County Ord. 99-04 incorporated as Sec. 17-187 of the LDC provides the following: “It is unlawful for any person to throw or deposit litter in any manner or amount upon any street, alley, sidewalk, lakes, canals, beaches, rivers and tributaries, or other public places within the county except in public receptacles, in authorized private receptacles for collection, or in official city or county landfills.” The County has advised that “beaches” includes all of the beaches on Captiva, not just the public beaches or county parks.*

*Lock-off accommodations:* A portion of a principal or accessory dwelling unit, typically without a kitchen, that is separated from the unit and made available for long-or short-term rental or other use. Where the floor area of a dwelling unit contains lock-off accommodations that can be occupied separately from the main living unit, the lock-off accommodations will be counted as a full dwelling unit when computing the allowable density as provided in section 34-1546. To be counted as a dwelling unit, the lock-off accommodations must contain at least one bedroom with a bathroom and be accessible from a separate door, entering from outside the dwelling unit or a common foyer.

*Renter:* One who pays rent for the use of another's property; a tenant.

*Roofline articulation:* An architectural element or decorative feature that provides visual relief from a horizontal roof ridge, e.g. a parapet, widow's walk, cupola, or lantern.

## **DIVISION 2. - ENVIRONMENTAL STANDARDS**

### **Sec. 33-1621 - Water quality.**

Prior to the issuance of a development order, zoning, or building permits for a new building or an addition or remodeling to convert existing space to living area, for properties that contain existing OSTDS, the applicant must provide written documentation indicating the approximate date the System was constructed and the last date the OSTDS was serviced or received a pumpout by a licensed septic contractor.

### **~~Section 33-1622. - Dune Vegetation Protection.-~~**

~~(a) No person shall walk upon, traverse, sit, stand or lie upon, over or across any beach dune area as dune is defined in Section 14-170 of the Lee County Land Development Code except over or across approved and permitted pile supported elevated dune and beach walk-over structures and access ramps, or upon currently or historically existing sparsely vegetated, on-grade private pedestrian walkthroughs.~~

~~(b) All duly authorized law enforcement officers may enforce this Section 33-1622 as well as Section 14-172 of the Lee County Land Development Code entitled “Destruction or Diminishment of Dune or Beach System” on Captiva.~~

*Note to Panel: County LDC Sec. 14-172 is entitled Destruction or diminishment of dune or beach system. It provides the following:*

*(a) No person may conduct or allow any of the following activities on the beach, upon a dune, or in the water adjacent to the beach, unless otherwise specifically permitted in accordance with Sec. 14-172(b).*

*(1) Harass, molest, or disturb wildlife;*

*(2) Plant vegetation other than native dune vegetation;*

*(3) Destroy or harm a dune or mow or remove native dune vegetation;*

*(4) Maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris;*

*(5) Deposit and leave human or animal waste;*

*(6) Destroy or grossly interfere with the natural wrack line by grooming or non-selective raking except as authorized in Section 14-174;*

*(7) Operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in section 14-175;*

*(8) Excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as permitted by DEP;*

*(9) Detonate any explosive devices, including fireworks;*

*(10) Light or maintain any open fire on the beach;*

*(11) Temporarily reside, camp, or sleep overnight;*

*(12) Deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the county;*

*(13) Deposit/add sand to the beach and dune system without a permit from DEP. All fill material will be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or*

*(14) Conduct any commercial activities not explicitly authorized by this Code or by other county ordinances.*

*(b) Permits may be issued by the county for activities prohibited under Section 14-172(a), which the director finds are:*

*(1) Necessary for reasonable accommodation of persons with disabilities;*

*(2) Adjunct to a lawfully existing activity*

*(3) For the conduct of a civic or educational activity; for the conduct of scientific research;  
or*

*(4) For any purpose otherwise necessary to protect or to promote the public welfare.*

*To the extent that a permit is issued for any of the above activities, the standards and procedures for issuance will be governed by this Code.*

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*In addition, to the above LDC provision regarding dune systems, the County also has Section 34-1575 - Coastal Zones which regulate land seaward of the Coastal Construction Setback Line. It provides that:*

*(b) Development is prohibited seaward of the coastal construction setback line, as defined in section 34-2, with the exception of the following:*

*(1) Improvements that provide for beach access, limited to the following: Pile supported elevated dune and beach walk-over structures, beach access ramps and walkways, stairways, fences along access-ways and lifeguard support stands;*

*(2) Public restroom facilities accessory to park facilities, as defined in section 34-622(c)(32);*

*(3) Installation of an advanced aerobic (or similar) septic system provided that they have received an FDEP beaches and coastal permit prior to March 20, 2018; and*

*(4) Construction activities for which a local letter of zoning compliance was issued for the FEDP coastal permit process prior to March 20, 2018.*

*(5) Improvements that are granted a variance for construction seaward of the coastal construction setback line.*

*(c) Development within the coastal zone must be compatible with protection of natural systems and in accordance with applicable coastal construction codes.*

*(d) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers.*

*(e) No development will be permitted which:*

*(1) Could restrict, impede, impound or otherwise interfere with tidal flow or drainage in coastal zone waters; or*

*(2) Alters or removes protection vegetation from the frontal or primary dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the State Department of Environmental Protection.*

**Section 33-~~1623~~ 1622. - Beach Furniture and Equipment Protection.**

(a) All beach furniture and equipment shall be removed from the beach to behind the foredune or vegetation line, whichever is most seaward, between the hours of 9:00 p.m. and 8:00 a.m. at all times of the year between Alison Hagerup Park and the south end of Wiles Drive when not in use and unoccupied. Beach furniture and equipment not removed pursuant to this provision shall be considered abandoned property and subject to removal. [The additional provisions of Sec. 14-173 of the Lee County Land Development Code also apply from May 1 through October 31].

(b) Enforcement of this section is authorized in accordance with Section 14-73(b) and Section 14-177 of the Land Development Code.

*Note to Panel: Section 14-73(b) provides that*

*“Violations of this division will be prosecuted in accordance with Chapter 2, Article VII. The county may take action against the property owner, occupant or person otherwise responsible for causing the violation. In addition to code enforcement action, the county may pursue other legal means of obtaining compliance, including civil and criminal penalties, that are available by law.” [Chapter 2, Article VII provides for code inspectors and hearing procedures.]*

*Section 14-177 provides the following:*

*(a) The director is authorized to pursue any one, or a combination of the enforcement mechanisms provided in this Code (for example, section 1-5, or Chapter 2, Article V) for any violations of this article.*

~~(b) It is unlawful for any person to throw or deposit litter in any manner or amount upon any and all beaches and beach accesses on Captiva.~~

*See prior Note to Panel regarding Litter.*

~~(c) A law enforcement officer, code enforcement officer or enforcement agency is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of this section.~~

~~(1) Any person who violates this section shall be cited as follows:~~

~~(i) Civil penalties.~~

~~Any person in violation of this section is guilty of a noncriminal infraction, punishable by a civil penalty of fifty dollars (\$50.00) for the first violation.~~

~~Any person in violation of this section is guilty of a noncriminal infraction, punishable by a civil penalty of two hundred fifty dollars (\$250.00) for the second violation.~~

~~Any person in violation of this section is guilty of a noncriminal infraction, punishable by a civil penalty no to exceed five hundred dollars (\$500.00) for the third violation.~~

~~All fines are encouraged to be converted to community service time.~~

**Sec. 33-~~1624~~ 1623. - Outdoor Lighting.**

~~(a) Statement of purpose and intent.~~

~~The purpose of this section is to reduce or prevent light trespass and to preserve the enjoyment of the night sky on Captiva.~~

(a) Outdoor lighting standards. The following standards to prevent light trespass apply to outdoor lighting on Captiva in addition to the sea turtle lighting standards found in Sections 14-71 through 79, and the outdoor lighting standards found in Section 34-625 of this Code. Enforcement shall be pursuant to Section 14-73(b) of this Code.

(1) All new outdoor lighting, including lighting on docks and bulkheads, shall be hooded or shielded so that the direct horizontal surface of the light source is masked, shall not shine directly beyond or above the structure or property to be illuminated, and shall not otherwise constitute light trespass.

(2) Spotlights on landscaping and foliage shall be hooded or shielded, shall not shine above the highest foliage to be lit, and shall not spill onto adjacent property.

(3) Fixtures affixed to poles, trees, and other structures shall be no more than 15 feet above grade, hooded or shielded, and directed downward.

(4) Outdoor lighting shall comply with the above standards at the time the existing lighting is replaced. This provision shall not apply to a repair or a partial replacement of a complete and uniform set of light or lighting fixtures.

(5) Lights shining directly onto adjacent property are not permitted at any time. Such existing lights shall be corrected immediately and are not subject to Sec. 33-1623(b)(4) above.

(b) Exemptions. The following sources of light are exempt from this section.

(1) Temporary emergency lighting needed by firefighters, police officers, or emergency work crews.



- (2) Lights on approved vehicles.
- (3) Lights required by government agencies near airstrips or heliports, or on communication towers.
- (4) Seasonal and special event decorations with individual lights in place up to 60 days per year.
- (5) Lights or lighting that is required by other sections of the Code.

Secs. 33-1623—33-1625. - Reserved. Sec. 33-1624 -Secs. 33-1625. - Reserved.

### **DIVISION 3. - PROPERTY DEVELOPMENT REGULATIONS**

**Sec. 33-1626 through Sec. 33-1627 remain unchanged.**

**Sec. 33-1628. - Rezoning and density.**

(a) through (b) remain unchanged.

(c) *Density limitations.* Except as may be specifically permitted by the Lee Plan, no building or development permits will be issued for development on Captiva Island at a density greater than the following:

- (1) Three units per acre for dwelling units, including condominiums and apartments; or
- (2) Three units per acre for motels or hotels;
- (3) Lock-off accommodations ~~units~~ will be counted as a full dwelling unit when computing the allowable density. To be counted as a dwelling unit, lock-off accommodations may contain at least one bedroom with a bathroom and be accessible from a separate door, entering from outside the dwelling unit.

(d) through (e) remain unchanged.

**Sec. 33-1629 remains unchanged.**

**Sec. 33-1630. - Tree requirements.**

- (a) *Trees adjacent to Captiva Drive.* For projects requiring a local development order with frontage on Captiva Drive, only trees that are indigenous to Captiva, ~~or~~ native to South Florida, or Florida Friendly non-invasive ~~and that are not prohibited invasive exotics;~~ may be planted within the minimum required right-of-way buffer setback.
- (b) *Heritage trees.* ~~For projects requiring a local development order, heritage trees, as defined in chapter 10, will be preserved or when possible, may be relocated on-site. If a heritage tree must be removed from the site, then a replacement tree with a minimum 20-foot height must be planted within an appropriate open space.~~

- (c) Landscaping adjacent to ~~Vegetation Buffer on Captiva Drive~~. No vegetation shall encroach into, onto or over Captiva Drive or its paved shoulder below the height of eight (8) feet, and a setback of at least two feet from the edge of the pavement ~~one (1) foot from the paved shoulder~~ shall be maintained at all times for all vegetation below the height of eight (8) feet.

**Sec. 33-1631. Heritage trees.**

For projects requiring a local development order, heritage trees, as defined in chapter 10, will be preserved or when possible, may be relocated on-site. If a heritage tree must be removed from the site, then a replacement tree with a minimum 20-foot height must be planted within an appropriate open space.

Secs. 33-1630~~2~~- 33-1634~~9~~. - Reserved.

**DIVISION 4. - DESIGN STANDARDS; SIGNS**

**Sec. 33-1640 through Sec. 33-1641 remain unchanged.**

**Sec. 33-1642. - Prohibited signs.**

The following types of signs are prohibited, except as exempted in section 33-1645(b), "Signs not requiring a permit":

- (1) Banner signs as defined in this section, pennants, or other flying paraphernalia.
- (2) Sandwich signs.
- (3) Billboards.
- (4) Animated signs as defined in this section.
- (5) Neon signs or signs of similar effect.
- (6) "Sold" signs.
- (7) Temporary signs for any of the prohibited signs identified in this section.

**Sec. 33-1643 remains unchanged.**

**Sec. 33-1644. Reserved Temporary signs.**

**Sec. 33-1645. - Signs not requiring a permit.**

- (a) *Residential identification sign.* Identification signs not exceeding 6 2.0 square feet in area on lots with total frontage of less than 100 feet and 4.0 square feet in area on lots with frontage of 100 feet or more. The height of identification signs may not exceed four feet above grade and may be placed in rights-of-way and subject to the following standards and restrictions:

- (1) through (4) remain unchanged.
- (b) remains unchanged,
- (c) Signs denoting the contractor, subcontractor, or design professional on the premises of work under construction and not exceeding 6 ~~four~~ square feet in area. ~~or more than two signs at any time;~~ There may be no more than 2 signs per property and provided, however, those signs may not remain on the premises must be removed within for more than 10 ~~30~~ days of ~~after~~ the issuance of the certificate of occupancy or certificate of compliance.
- (d) through (f) remain unchanged.
- (g) Temporary real estate signs, ~~which~~ for the purposes of advertising the property for sale or rent, including short term rentals, which this section include "for sale," "for rent," "VRBO," "Airbnb," "open house," "open for inspection," "by appointment only," "model home," and similar signs, must be located in a front yard and a minimum of two feet from the property line, parallel to the frontage and conforming to the following restrictions:
- (1) Signs ~~They~~ must be located only on the property advertised.
  - (2) In all districts not of residential character signs may not exceed four square feet in area, and may not exceed two square feet in areas zoned as RSC-2, RS-1, TFC-2 and RM-2. The bottom edge of the signs may not be greater than 12 inches above average grade of the sign's location. ~~The signs must be limited to one sign per parcel; if the parcel includes water access, a second temporary real estate sign not exceeding two square feet in area is allowed either on a permanent dock structure or a minimum of ten feet landward of the property boundary adjacent to the water access or away from the landward edge of the mangrove fringe.~~
  - (3) Temporary real estate signs must be sturdily constructed, neat in appearance, ground signs only, with prongs not exceeding one-half inch in diameter and designed to be inserted and, removed without tools.
  - (4) Temporary real estate signs must be removed no more than five days after the property is no longer for sale.
  - (5) Signs must be located in a front yard and a minimum of two feet from the property line, parallel to the frontage road.
  - (6) A property is limited to one temporary real estate sign at any given time. If the parcel includes water access, a second temporary real estate sign not exceeding two square feet in area is allowed either on a permanent dock structure or a minimum of ten feet landward of the property boundary adjacent to the water access or away from the landward edge of the mangrove fringe.
- (h) through (i) remain unchanged.

**Sec. 33-1646 through Sec. 33-1647 remain unchanged.**

**Sec. 33-1648. - Permanent signs in commercial areas.**

Ground-mounted or wall mounted signs located in the C-1, CS-1, CT or RM-2 zoning categories must comply with sections 14-76 and 34-625.

- (a) Ground-mounted identification signs are subject to the following limitations:
  - (1) No signs may be erected closer than 30 feet to the boundary line dividing the zoning district of the property on which the sign is erected from a zoning district in which they are prohibited.
  - (2) Sign area is limited to 32 square feet.
  - (3) Signs cannot exceed a maximum of ten feet in height or ten feet in width.
  - (4) The sign must display the street number/s of the property on the face of the sign. Each numeral must measure four to six inches in height. The copy area of the street number will not be counted toward the allowable sign copy area.
- (b) Wall-mounted signs: Wall signs are limited to ten percent of a tenant's wall area, with a maximum size of 32 square feet.
- (c) Illuminated, ground-mounted, and wall signs: Must comply with lighting requirements set forth in section 14-76 and 34-625. ~~Environmental Sciences (ES) staff must review the lighting proposed to ensure compliance with sea turtle regulations in section 14-76 and the outdoor lighting standards in section 34-625 prior to the issuance of the sign permit. The sign must be inspected after dark by ES staff, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this division prior to final inspection.~~

**Sec. 33-1649 remains unchanged.**

**DIVISION 5. remains unchanged.**