

**CITY OF SANIBEL  
ORDINANCE 22-004**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES RELATED TO EMERGENCY POWER GENERATORS AND HVAC STANDARDS; AMENDING SUBPART B LAND DEVELOPMENT CODE, CHAPTER 78 – GENERAL PROVISIONS, SECTION 78-1 – RULES OF CONSTRUCTION AND DEFINITIONS; AMENDING CHAPTER 126 – ZONING, ARTICLE XIV – SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 16 – EMERGENCY ELECTRICAL POWER GENERATORS, SECTION 126-1305 – GENERALLY; AMENDING SECTION 126-1306 – STANDARDS; AND AMENDING SECTION 126-1307 – ADMINISTRATION AND ENFORCEMENT; AND ADDING SECTION 126-1308; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, reducing the exposure of human life and public private property to the threat of natural disasters is a stated goal of the Sanibel Plan; and

**WHEREAS**, providing recovery response to post-hurricane situations is a stated goal of the Sanibel Plan; and

**WHEREAS**, the City recognizes that emergency power generators can improve the resiliency of homeowners to stay in their homes during periods of electrical power outages; and

**WHEREAS**, the City understands the challenge of homeowners whose properties have been developed to the maximum lot coverage and developed area standards as permitted by the Sanibel Land Development Code, potentially prohibiting the placement of emergency generators or HVAC; and

**WHEREAS**, the City deems it necessary to establish an administrative waiver process whereby the City can consider individual requests to waive these requirements of the Land Development Code; and

**WHEREAS**, City Council directed Staff to review the appropriateness of amendments to the Land Development Code related to emergency electrical power generators and HVAC with the consideration of public safety needs and to bring any proposed amendments to the Planning Commission for consideration; and

**WHEREAS**, on April 26, 2022, the Planning Commission held a legally and properly advertised public hearing at which the Planning Commission considered comments and recommendations from the Planning 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 Land Development Code 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 Land Development Code Section 82-241, and recommended via City of Sanibel Planning Commission Resolution 22-11 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 ~~strike through~~ language indicating deletions and underlined language indicating additions as follows:

**Chapter 78. – General Provisions**

**Section 78-1. – Rules of Construction and Definitions**

...

Generator, electrical power means a machine or equipment that changes mechanical energy into electrical energy, either portable or permanently installed, used as a secondary source to generate electrical power.

Generator, emergency electrical power means an electrical power generator that is intended to be operated during emergencies when there is an electrical power interruption, malfunction, or failure of the primary electric service, particularly when such primary service is disrupted for any extended length of time following a tropical storm, hurricane or other catastrophic event. However, any generator operating as a secondary energy or power source in circumstances other than an electrical power outage or during its performance testing cycle shall not be considered an emergency electrical power generator.

Generator, unrestricted use means that there are no restrictions on the operation of an electrical power generator which limit its use to times when the primary electrical service is out or for the performance testing cycle of the generator.

Generator, permanently installed means an electrical power generator that is permanently installed on a fixed foundation, and is permanently wired into the building's electrical system, and is equipped with an automatic or manual transfer switch that will automatically or manually turn off the generator when power is restored.

Generator, portable means an electrical power generator that does not meet the definition of a permanently installed electrical power generator.

Generator, sound attenuation means the application of any design or construction methods, such as increased setbacks, noise dampening structures and enclosures, sound barriers, vibration absorbers, exhaust mufflers, and landscape barriers, used to mitigate the noise produced by an electrical power generator, as measured in dB(A).

...

**Chapter 126. – Zoning.**

**Article XIV. – Supplementary District Regulations.**

**Division 16. ~~Emergency~~ Electrical Power Generators and HVAC.**

**Section 126-1305. – ~~Generally.~~ Purpose.**

The purpose of this ~~section~~ division is to ~~provide definitions and to~~ establish application requirements and procedures for the installation of heating, ventilation, and air conditioning.

(HVAC) units and emergency electrical power generators.

In the interest of public safety and the general welfare, providing air conditioning and emergency electrical power is encouraged and shall be accommodated. To that end, the city manager or the manager's designee is authorized to approve waivers from limits on (1) impermeable coverage and (2) developed area and vegetation removal to facilitate the issuance of a development permit for such air conditioning or emergency electrical power service. Such waivers may be issued only upon a finding by the city manager, or the manager's designee, that the standards of Section 126-1307 have been met.

In considering applications that include an administrative waiver under this section, no waiver shall be approved that frustrates the underlying purpose and intent or policies of the city, including the Sanibel Code and Sanibel Plan. The city manager or the manager's designee is authorized to attach conditions to the approval, as necessary, to verify compliance with required setbacks via as-built survey and to address unlawful noncompliance to limitations on (impermeable) coverage and vegetation removal and developed area.

This division establishes standards for the operation, placement, screening and sound attenuation of emergency electric power generators to minimize their visual and noise impact upon abutting properties.

#### **Section 126-1306. – Standards: Application and procedure**

~~Emergency electrical power generators that are operating only when the primary electric service is disrupted, or during their performance testing cycle, are exempt from the maximum permissible sound pressure levels established in chapter 30, article III, section 30-64 of the City's Code of Ordinances, but are subject to the new maximum permissible sound pressure levels established in section 126-1306.~~

~~However, electrical power generators for general, unrestricted use are also subject to the definitions, procedures and standards of this division; however, generators not intended solely for emergency use are not exempt from the maximum permissible sound levels established in chapter 30, article III, section 30-64 of the City's Code of Ordinances. Unrestricted use means that there are no restrictions on the operation of an electrical power generator which limit its use to times when the primary electrical service is out or for the performance testing cycle of the generator.~~

~~Furthermore, this section establishes standards for the operation, placement, screening and sound attenuation of emergency electric power generators to minimize their visual and noise impact upon abutting properties.~~

~~(1) Definitions. (See also sections 78-1 and 30-61 for additional definitions.)~~

~~Electrical power generator means a machine or equipment that changes mechanical energy into electrical energy, either portable or permanently installed, used as a secondary source to generate electrical power.~~

~~Emergency electrical power generator means an electrical power generator that is intended to be operated during emergencies when there is an electrical power interruption, malfunction, or failure of the primary electric service, particularly when such primary service is disrupted for any extended length of time following a tropical storm, hurricane or other catastrophic event. However, any generator operating as a secondary energy or power source in circumstances other than an electrical power outage or during its performance testing cycle shall not be considered an emergency electrical power generator.~~

~~Permanently installed electrical power generator means an electrical power generator that is permanently installed on a fixed foundation, and is permanently wired into the building's electrical system, and is equipped with an automatic or manual transfer switch that will automatically or manually turn off the generator when power is restored.~~

~~Portable electrical power generator means an electrical power generator that does not meet the definition of a permanently installed electrical power generator.~~

~~Sound attenuation means the application of any design or construction methods, such as increased setbacks, noise dampening structures and enclosures, sound barriers, vibration absorbers, exhaust mufflers, and landscape barriers, used to mitigate the noise produced by an electrical power generator, as measured in dB(A).~~

~~(21) Procedures.~~

~~(a) No development permit is required for the operation of a portable electrical power generator.~~

~~(b) A development permit and building/electrical permits are required for the installation of a permanently installed electrical power generator.~~

~~(c) Application. A short form development permit application may be available for a permanently installed emergency electrical power generator that complies with the standards set out in section 126-13076 standards.~~

~~(d) A long form development permit application is required for an electrical power generator intended for general, unrestricted use. Unrestricted use means that there are no restrictions on the operation of an electrical power generator which limit its use to times when the primary electrical service is out or for the performance testing cycle of the generator.~~

~~(2) Application. In addition to the requirements found in sections 82-381 and 82-382, an application for a permanently installed electrical power generator shall include the following:~~

~~1. Completed application form for an emergency electrical power generator.~~

~~2. Property owner's authorization form.~~

~~3. Survey of the subject parcel.~~

~~4(1) Site development plan, that may be included as part of the survey. Site development plan shall include:~~

~~(a) a plan to visually buffer the equipment from view off-site.~~

~~(b) the sound barrier wall, if needed to meet the allowable maximum permissible sound pressure levels established in section 126-13076, and is to~~

~~(c) demonstrate compliance with all required setbacks from property lines and indicate the relationship of the generator's location to any dwelling unit or structure within 20 feet of the generator.~~

~~5(2) Identification of the generator's manufacturer, model name and number, and load capacity or running watts.~~

~~6(3) The manufacturer's certification of sound pressure (noise) level expressed in dB(A) at seven meters (23 feet), with the generator operating under normal or average load.~~

~~7. A plan for screening the generator from view from off the subject property.~~

~~8. A certified sound attenuation plan. Certification shall be by an individual qualified as required by (9) below.~~

~~9. Certification of sound pressure (noise) levels anticipated at the subject's property lines expressed in dB(A). Such certification shall be by-~~

~~(1) a board certified member of the Institute of Noise Control Engineering; or~~

~~(2) by an individual who has been qualified as an expert witness in the field of acoustics or noise control engineering by a court of competent jurisdiction; or~~

~~(3) by an individual who has demonstrated competence in the field of acoustics or noise control engineering through a combination of education, training, and experience.~~

~~10. The applicant can elect to forgo requirements (8) and (9), above, for applications where the calculated sound pressure level at the applicant's property line is 78 dBA or less, according to the equation and procedures provided in subsection (d). The applicant needs to note that the completion certificate for the electrical power generator will not be issued until the city has measured the actual sound pressure level of the installed generator and determined that it complies with the standards found in section 126-1306, regardless of the results of the equation for calculating the "Generator's Sound Pressure Level [dB(A)] at the Property Line."~~

(4) Generator or HVAC stand type. Including, but not limited to, aluminum stand, wooden platform, hurricane/concrete pad.

(5) Documentation of compliance with Florida Building Code (F.B.C.) and National Electric Code (N.E.C.)

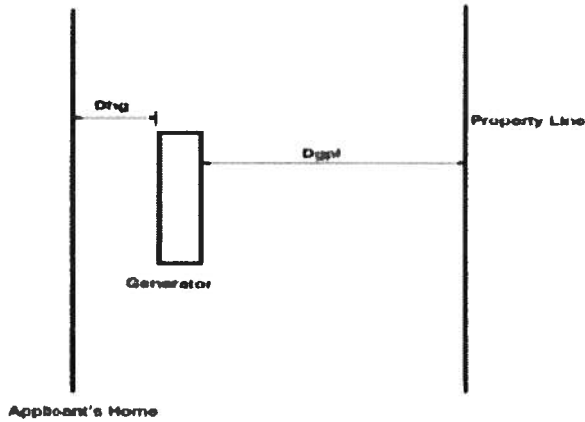
(d) (6) Equation for calculation of sound pressure levels for electrical power generators.

The sound pressure level shall be computed using the following equation for calculating the "Generator's Sound Pressure Level [dB(A)] at the Property Line":

$$\text{Generator's corrected dB(A)} = \text{Gen} + \text{A} + \text{B} + \text{C}$$

~~The calculations shall be based on the generator manufacturer's sound pressure level data ("Gen"), the distance the generator unit is placed from the closest point of the nearest property line ("A"), its' proximity to applicant's existing structures, such as a wall of the applicant's home, ("B"), and whether a sound wall, located adjacent to the generator unit, is used for noise abatement ("C"). The distances from the applicant's home (or other structure) to the generator ("B" or Dhg) and distance from the generator to the closest point of the nearest property line ("A" or Dgpl) are defined in figure 1, which follows.~~

**Figure 1. Reference Distances Necessary for Generator Noise Calculation**



Four major components are necessary for estimating the generator's sound level at the applicant's property line:

"Gen" = The generator Manufacturer's sound level data. These data must be in the form of A-weighted sound level, or dB(A), at 7 meters (23 feet) from the generator in a free-field environment.

"A" = A correction for the closest actual distance from the generator's surface to the applicant's property line

"B" = A correction for reflective sound based on the distance the generator is located relative to the wall of a structure or the applicant's home

"C" = A correction for a sound barrier constructed such that it fully blocks the line of sight to the generator when viewed from the applicant's property line (if applicable).

The input for the terms "A", "B" and "C" in the Generator Sound Pressure Level [dB(A)] at the Property Line Equation are provided in Tables 1 through 3, respectively.

**Table 1. Correction ("A") for Distance from Generator to Property Line**

Actual Distance from Generator to closest point of nearest Property Line in feet*	Distance Correction (A)
5**	+11 dB(A)
6**	+10 dB(A)
7**	+9 dB(A)
8**	+8 dB(A)
9**	+7 dB(A)
10	+6 dB(A)

12	+5 dB(A)
14	+4 dB(A)
16	+3 dB(A)
17	+2 dB(A)
20	+1 dB(A)
23	0 dB(A)
27	-1 dB(A)
30	-2 dB(A)
33	-3 dB(A)
37	-4 dB(A)
43	-5 dB(A)
46	-6 dB(A)
53	-7 dB(A)
60	-8 dB(A)
66	-9 dB(A)
73	-10 dB(A)
83	-11 dB(A)
92	-12 dB(A)

\*Select distance equal to or just less than the actual distance the generator is located from the closest point to the nearest property line. For example, if the generator's closest surface is located at an actual distance of 45 feet from the property line, a value corresponding to the 43 feet correction [minus -5dB(A)] from Table 1 must be used.

~~\*\*The minimum setback from a property line is 10 feet.~~

Table 2. Correction (“B”) for Reflected Sound from Applicant’s Home

Distance from Generator to Home or closest structure in feet*	Reflection Correction (B)
Closer than or equal to 5 feet	+3 dB(A)
Further than 5 feet and closer than or equal to 10 feet	+2 dB(A)
Further than 10 feet and closer than or equal to 20 feet	+1 dB(A)
Further than 20 feet	+0 dB(A)

Table 3. Correction (“C”) for Presence of a Sound Barrier Wall

Will a Sound Barrier Wall be Used?	Sound Barrier Correction ("C")
Yes	-5 dB(A)
No	0 dB(A)

\*\* A sound barrier wall can only be used for input in the calculation of the "Generator's Sound Pressure Level [dB(A)] at the Property Line Equation" for an emergency electrical power generator that is located so that the bottom of the generator is no higher than four feet above the finished grade of the ground. The sound barrier wall must extend from the ground to a minimum of two feet higher than the top of the generator and extend a minimum of two feet past the sides of the generator. A sound barrier wall must have no gaps, holes or penetrations. Walls of masonry, concrete block or wood construction meeting the above requirements are considered adequate. Foliage is not an adequate sound barrier.

**Section 126-13067. – Standards.**

(a) Noise.

(1) An emergency electrical power generator operating when the primary electric service (Lee County Electric Cooperative) is disrupted, or during the generator's performance testing cycle, shall not exceed a maximum sound pressure level of 78 dB(A), when measured at any point of any property line.

(2) Electrical power generators for general, unrestricted use are subject to the maximum permissible sound levels established in chapter 30, article III, section 30-64 of the city's Code of Ordinances. Unrestricted use means that there are no restrictions on the operation of an electrical power generator which limit its use to times when the primary electrical service is out or for the performance testing cycle of the generator.

(b) Use. The exercise cycle of the generator shall occur only between the hours of 10:00 a.m. and 5:00 p.m., Monday through Saturday.

~~(c) To prevent their unnecessary start during non-emergency events, all emergency power generators shall be equipped with a programmable time delay engine switch which delays the start of the generator for at least 30 minutes. The purpose of the time delay is to postpone the initiation of the generator's engine start circuit in order to override brief power outages or voltage fluctuation in the primary electric service for durations of 30 minutes or less. Until April 15, 2009, development permits may be issued for emergency power generators that do not have a programmable time delay engine switch; however, these development permits are to contain a condition requiring that a programmable time delay engine switch be installed or retrofitted for the generator by October 15, 2009.~~

(c) Required setbacks.

(1) Front yard. There shall be a front yard setback for generator and air conditioning machinery and associated structure of no less than 75 feet from the centerline of minor arterial or collector roads and 50 feet from the centerline of any other street, except where a special setback is imposed, as set forth in article XIV, division 3, subdivision II, of this chapter.



- (2) Side and rear yard. There shall be side and rear yard setbacks for generator and air conditioning machinery and associated structure of no less than 10 feet from any such property line.
- (3) Open body of water. The accessory structure shall not be located within 20 feet of any open body of water.

(d) Coverage; Vegetation removal and developed area.

- (1) Administrative waiver of applicable limitations of (impermeable) Coverage, Vegetation removal and developed area may be issued specifically for HVAC and emergency electrical power generators up to 30 square feet for each respective improvement.

Such waiver is applicable to proposed emergency electrical power generator improvements at developed properties, subject to the following criteria:

- (A) Properties developed after the effective date of this section are not eligible for an administrative waiver but may request approval of a variance subject to the process and criteria pursuant to chapter 82, article III, division 3, subdivision II, and approval by the Planning Commission.
- (B) The applicant's request must be able to identify the specific hardship or practical reason for not being able to meet the regulation as a result of the particular shape, size, location or topography of a lot or parcel, or of a structure thereon, which would cause practical difficulties that would deprive the owner of reasonable use and enjoyment of such lot or parcel in the same manner as other properties similarly situated;
- (C) The applicant's request must be able to identify any special conditions related to unusual constraints peculiar to the specific lot or parcel or relate to special conditions of the structure involved, and that are not generally applicable to other lands or structures similarly situated;
- (D) The proposed waiver shall not be adverse to the developed neighborhood scheme and will not adversely affect the plan and scheme set forth in this Land Development Code, and will not cause the proposed development to be inconsistent with the Sanibel Plan nor adverse to the health, safety and general welfare of the community; and
- (E) The waiver granted must be the minimum necessary to mitigate the hardship demonstrated.

(~~e~~) Visual Buffer. The generator shall be effectively screened from views from off the subject property by a sound barrier wall, a fence, vegetation or other means.

- (1) Sound barrier walls that are higher than six feet above the ground shall comply with the setbacks required for the principal structure.
- (2) Sound barrier walls shall be architecturally compatible with the principal building and effectively screened from the adjacent property by use of native vegetation.

**Section 126-13078. – Administration and enforcement.**

The city manager, or the city manager's designee, is expressly authorized and directed to make use of Code of Ordinances, section 14-91 outside professional review of licenses and permits, to assure the procedures and standards of this division 16 emergency electrical power generators are

properly applied.

No completion certificate or other final city approval shall be issued by the city manager, or city manager's designee, for a permanently installed electrical power generator until the city has measured the sound pressure level of the permitted generator and determined that it complies with the permit and the standards in section 126-13076. A permanently installed electrical power generator must remain in compliance with the permit and the standards in section 126-13076.

The measurement of sound pressure levels shall be performed in conformance with Code of Ordinances, section 30-67 measurement of sound pressure levels.

**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 upon approval by the City Council.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this 7th day of June, 2022.

  
Holly D. Smith, Mayor

AUTHENTICATION:

  
Scotty Lynn Kelly, City Clerk

APPROVED AS TO FORM:

  
John D. Agnew, City Attorney

6/7/22

Date

First Reading: May 3, 2022  
Publication Notice: May 18, 2022  
Second Reading: June 7, 2022

Vote of Council Members:

Smith	<u>Yea</u>
Johnson	<u>Yea</u>
Crater	<u>Yea</u>
Henshaw	<u>Yea</u>
Miller	<u>Yea</u>

Date filed with City Clerk: June 7, 2022