

CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 13 - REASONABLE ACCOMMODATION & DISPUTE RESOLUTION

Section 13.1.1 Reasonable Accommodations

A. Purpose, Intent, and Applicability

It is the purpose of this chapter to allow for the development of facilities and residences that accommodate persons with disabilities. This Section implements the policy of the City regarding requests for reasonable accommodation to its zoning and land use regulations, rules, ordinances, policies, and procedures for persons with disabilities to use and enjoy housing. as provided by the Federal Fair Housing Act (42 U.S.C. 3601 et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) C'ADA").

Any person who is disabled (or qualifying entities) may request reasonable accommodation with respect to the City 's zoning and land use regulations, rules, ordinances, policies, and procedures as provided by the FHA and the ADA pursuant to the procedures set out in this Section. For purposes of this Section, a "qualifying entity" shall mean, a licensed service provider of the state of Florida as defined by Section 397.311, Florida Statutes. All qualifying entities shall submit as part of an application for a reasonable accommodation proof of the licensable service component the qualifying entity holds pursuant to Chapter 397, Florida Statutes.

B. Application Procedures. The following general provisions shall be applicable:

1. The City shall display a notice on the City's webpage (and shall maintain copies available for review in the City Clerk's Office) advising the public that disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.
2. A disabled person may apply for a reasonable accommodation on his or her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated, in writing, by the disabled person.
3. The City shall provide assistance and accommodation as is required pursuant to the FHA and ADA in connection with a disabled person's request for reasonable accommodation, including without limitation, assistance with reading application questions, responding to questions, completing the necessary forms, filing an appeal, and appearing at a hearing to ensure the process is accessible.
4. Reasonable accommodation request form. A request by an applicant for a reasonable accommodation under this Section shall be made in writing by completion of a reasonable accommodation request form and submitted to the Department of Community Development. The reasonable accommodation request form is maintained by the Department of Community Development and shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. The reasonable accommodation request form shall, at a minimum. require the following information:
 - a. Name and contact information for applicant;
 - b. Address of housing or other location at which accommodation is requested;

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- 47
- 48 c. Name and mailing address of subject property owner;
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- 50 d. Description of reasonable accommodation requested;
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- 52 e. Description of the specific regulation(s) or procedure(s) from which accommodation is
- 53 sought;
- 54
- 55 f. Reasons the reasonable accommodation may be necessary for the individual(s) with
- 56 disabilities to use and enjoy the housing or other service;
- 57
- 58 g. Name and contact information for applicant's authorized representative, if applicable; and
- 59
- 60 h. Signature of applicant, or authorized representative.
- 61
- 62 5. Fees. There shall be no fee imposed by the City in connection with a request for reasonable
- 63 accommodation under this Section or an appeal of a determination on such request to the City
- 64 Council, and the City shall have no obligation to pay a requesting party's (or an appealing party,
- 65 as applicable) attorneys' fees or costs in connection with the request, or an appeal
- 66
- 67 C. Medical information confidentiality. Should the information provided by the disabled person to the
- 68 City include medical information or records including records indicating the medical condition,
- 69 diagnosis or medical history of the disabled person, such individual may at the time of submitting such
- 70 medical information, request that the City, to the extent allowed by law, treat such medical
- 71 information as confidential information of the disabled person. The City shall thereafter endeavor to
- 72 provide written notice to the disabled person, or their representative, of any request received by the
- 73 City for disclosure of the medical information or documentation which the disabled person has
- 74 previously requested be treated as confidential by the City. The City will cooperate with the disabled
- 75 person, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure
- 76 of such medical information or documentation, but the City shall have no obligation to initiate,
- 77 prosecute, or pursue any such action, or to incur any legal or other expense (whether by retention of
- 78 outside counsel or allocation of internal resources) in connection therewith, and may comply with any
- 79 judicial order without prior notice to the disabled person.
- 80
- 81 D. Determination process. The City Manager shall have the authority to consider and act on requests for
- 82 reasonable accommodation. When a reasonable accommodation request form has been completed
- 83 and submitted to the Department of Community Development, it shall be referred to the City
- 84 Manager for review and consideration.
- 85
- 86 1. The City Manager shall issue a written determination within 45 days of the date of receipt of a
- 87 completed application, except as provided in paragraph C. below, and may, in accordance with
- 88 federal law; (1) grant the accommodation request, (2) grant a portion of the request and deny a
- 89 portion of the request or impose conditions upon the grant of the request, or (3) deny the request
- 90 in accordance with federal law. If the request is denied, the determination shall state the grounds
- 91 therefore. All written determinations shall give notice of the right to appeal.
- 92

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- 93 2. The notice of determination shall be sent to the requesting party (i.e., the disabled individual or
94 authorized representative) by certified mail, return receipt requested.
95
- 96 3. If reasonably necessary to reach a determination on the request for reasonable accommodation,
97 the City Manager, may, prior to the end of said 45-day period, request additional information
98 from the requesting party, specifying in detail what information is required. Such additional
99 information may include, additional medical information from the requesting party. The
100 requesting party shall have 15 days after the date of the request for additional information to
101 provide the requested information. In the event a request for additional information is made, the
102 45-day period to issue a written determination shall no longer be applicable, and the City
103 Manager, shall issue a written determination within 30 days after receipt of the additional
104 information. If the requesting party fails to provide the requested additional information within
105 said 15-day period, the City Manager shall issue a written notice advising that the requesting party
106 had failed to timely submit the additional information and therefore the request for reasonable
107 accommodation shall be deemed abandoned or withdrawn and no further action by the City with
108 regard to said reasonable accommodation request shall be required.
109
- 110 E. Criteria for determination. In determining whether the reasonable accommodation request shall be
111 granted or denied, the requesting party shall be required to establish that they are protected under
112 the FHA or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA or
113 ADA. For purposes of this Section, the disabled individual must demonstrate to the City:
114
- 115 1. (i) A physical or mental impairment which (i) substantially limits one or more major life activities; (ii)
116 a record of having such impairment; or (iii) that they are regarded as having such impairment; and
117
- 118 2. That the proposed accommodation being sought is reasonable and necessary to afford
119 handicapped or disabled persons equal opportunity to use and enjoy housing.
120
- 121 F. Required findings. A request for reasonable accommodation pursuant to this Section shall be
122 approved, with or without conditions, if the City Manager finds based upon all of the evidence
123 presented, that all of the following findings are made:
124
- 125 1. The property or dwelling that is the subject of the request for reasonable accommodation will be
126 occupied by a disabled person;
127
- 128 2. The requested accommodation is necessary to provide a disabled person with an equal
129 opportunity to use and enjoy a dwelling;
130
- 131 3. The requested accommodation will not impose an undue financial or administrative burden on
132 the City; and
133
- 134 4. The requested modification will not require a fundamental alteration in the nature of a City
135 program or law.
136
- 137 G. Conditions of approval. In granting a request for reasonable accommodation. the City Manager may
138 impose conditions of approval deemed reasonable and necessary to ensure that the reasonable

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139 accommodation would comply with the findings of this Section including, but not limited to the
140 following:

- 141
- 142 1. Inspection of the property periodically as specified, to verify compliance with this Section and any
143 conditions of approval.
 - 144
 - 145 2. Recordation of a deed restriction requiring removal of the improvements when the need for
146 which the accommodation was granted no longer exists, except where the City Manager finds
147 that removal would constitute an unreasonable financial burden or is physically integrated with
148 the structure and cannot feasibly be removed. If applicable, the restrictive covenant shall provide
149 that the reasonable accommodation does not run with the land and shall terminate upon any sale
150 transfer, lease, or other conveyance of the property.
 - 151
 - 152 3. Time limits or expiration of the approval, if the need for which the accommodation was granted
153 no longer exists.
 - 154
 - 155 4. Measures to reduce the impact on surrounding uses.
 - 156
 - 157 5. Measures in consideration of the physical attributes of the property and structures.
 - 158
 - 159 6. Other conditions necessary to protect the public health, safety, and welfare.
 - 160
- 161 H. Appeal of determination. Within 30 days from the date of the City determination on a reasonable
162 accommodation request, or revocation, or modification of a reasonable accommodation, the
163 applicant may appeal the decision. All appeals shall contain a written statement containing sufficient
164 detail of the grounds for the appeal. Appeals pursuant to this Section shall be to the City Council who
165 shall, after public notice and a public hearing, render a written determination as soon as reasonably
166 practicable, but in no event later than 60 days after an appeal has been filed. Notice of any public
167 hearing hereunder shall be provided to the applicant at least 10 days in advance of the public hearing.
168
- 169 I. Stay of enforcement. While an application for reasonable accommodation, or appeal or a
170 determination of same, is pending before the City, the City will not enforce the subject zoning
171 ordinance, rules, policies, or procedures against the applicant. However, should the applicant
172 proceed with any property purchase, building, construction, or other work associated with
173 establishing a project or residence housing individuals covered by the FHA or the ADA while an
174 application or appeal for reasonable accommodation is pending, the applicant understands that any
175 of these actions are done at the applicant's own risk because the application or appeal may be denied.
176
- 177 J. Revocation of reasonable accommodation. Any reasonable accommodation received shall be subject
178 to revocation or modification if the holder of the reasonable accommodation or the property upon
179 which the accommodation is granted is found in violation of any provision of the written
180 determination granting the reasonable accommodation by a court of law or by the special magistrate
181 hearing code enforcement cases, and the holder of the reasonable accommodation has failed to
182 correct such violation. The City shall send a notice of hearing on a proposed revocation or modification
183 of a reasonable accommodation by certified mail, return receipt requested, to the holder of the
184 reasonable accommodation at least 30 days prior to the date of the hearing. The City Manager shall

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185 have the authority to consider and act on a revocation or modification of a reasonable
186 accommodation, after notice and hearing during which the reasonable accommodation holder shall
187 have the opportunity to present evidence and be heard.
188

189 **Section 13.2 Dispute Resolution**
190

191 A. Purpose and intent. The purpose of this ordinance is to establish procedures for the initiation,
192 conduct, and conclusion of a Special Magistrate proceeding under the Florida Land Use and
193 Environmental Dispute Resolution Act (the "Act) involving a development approval (order) or
194 enforcement action by the City of Cape Coral. It is the intent of the City of Cape Coral that the
195 Special Magistrate process be a speedy, inexpensive, and simple method for owners and regulators
196 to settle land use and environmental permitting and enforcement disputes. To that end, owners and
197 regulators should meet face-to-face, in a non-adversarial atmosphere, to resolve disputes without
198 the need for formal representation. Negotiations assisted by a Special Magistrate will enable an
199 owner and regulators to exert more control over their dispute, allowing the parties to shape a
200 resolution rather than having one imposed on them. The Special Magistrate and the parties should
201 exercise maximum flexibility to adapt these procedures to the exigencies of each particular case,
202 consistent with the requirements of state law and due process.
203

204 B. Definitions. For the purpose of this ordinance, the following definitions shall apply; words used in
205 the singular shall include the plural, and the plural, the singular; words used in the present tense
206 shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may"
207 is permissive. Words not defined herein shall be construed to have the meaning given by common
208 and ordinary use as defined in the latest editions of Webster's Dictionary.
209

210 1. CITY. The City of Cape Coral, Florida.
211

212 2. DEVELOPMENT. The meaning given it in F.S. § 380.04, as same may hereafter be amended.
213

214 3. DEVELOPMENT ORDER. Any order which has or will have the effect of granting, denying, or
215 granting with conditions an application for a development permit. This term shall include orders
216 rezoning a specific parcel of land, but shall not include actions on an amendment to the local
217 Comprehensive Plan.
218

219 4. DEVELOPMENT PERMIT.
220

221 a. Any building permit, zoning permit, subdivision approval, certification, special exception,
222 variance, or any other similar action of the city; or
223

224 b. Any other permit authorized to be issued by the city under state law which has the effect of
225 authorizing the development of land, including programs implementing F.S. Chapters 125,
226 161, 163, 166, 187, 258, 372, 373, 378, and 403.
227

228 5. OWNER. A person with a legal or equitable interest in real property who filed an application for
229 a development permit for the real property with the city and who received a development
230 order, or who holds title to real property that is subject to an enforcement action by the city.

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- 6. PARTICIPANT.
 - a. A person with a legal or equitable interest in land contiguous to the owner's property and who has been accepted by the Special Magistrate as a participant in the proceeding; or
 - b. A substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantial nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding, including a public hearing, and who has been accepted by the Special Magistrate as a participant in the proceeding.
 - 7. PARTY or PARTIES. The owner, the city, and any other governmental entity made a party to the proceeding by the Special Magistrate.
 - 8. PERSON. Individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
 - 9. RIPENESS DECISION. A written decision that describes the use or uses available on the subject real property.
 - 10. SPECIAL MAGISTRATE PROCEEDING. Any combination of facilitation sessions, formal or informal hearings, of a public nature authorized under the Florida Land Use and Environmental Dispute Resolution Act.
- C. Pre-hearing procedures.
- 1. Unless the parties agree in writing to extend the time for performing any act under these guidelines, including the overall 165-day time period, a Special Magistrate proceeding may not continue longer than 165 days from the date the owner files the request for relief.
 - 2. Any copy which must be furnished to the Special Magistrate, a party or a participant may be sent by regular mail, postage prepaid, or by hand delivery to the recipient's last known address. The burden of proving a copy has been furnished is on the person responsible for furnishing it.
 - 3. Except for, an owner's request for relief, any document which must be submitted or any copy which must be furnished, may be submitted or furnished by facsimile transmission. Facsimile documents shall be deemed submitted or furnished on the date transmitted as shown on the recipient's copy, if the copy is complete.
 - 4. Filing means that the signed original must be received by the office that is to receive the document by the date specified. Any document received after 5:00 p.m. shall be deemed filed as of 8:00 a.m. the next regular business day.
- D. Standards of conduct.

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- 276 1. The Special Magistrate holds a position of trust and should adhere to the highest standards of
277 personal integrity, impartiality, and competence. The Special Magistrate should be honest and
278 unbiased, act in good faith, be diligent, and avoid any conflict of interest or the appearance of a
279 conflict of interest. The Special Magistrate should disclose any facts or circumstances that may
280 give rise to justifiable doubts as to impartiality or independence.
281
- 282 2. The standards of conduct for parties and participants may be adopted by the City Council by
283 resolution and shall govern the proceedings unless waived or altered in the Special Magistrate
284 contract.
285
- 286 E. Administrative appeals and judicial review.
287
- 288 1. A petition by the owner for judicial review of the development order or enforcement action or a
289 formal administrative hearing pursuant to F.S. §§ 120.569 and 120.57, if applicable, shall waive
290 all rights to a Special Magistrate proceeding.
291
- 292 2. A request for relief through a Special Magistrate proceeding shall toll the time for filing a
293 petition for judicial review of the development order or enforcement action, or a formal
294 administrative hearing pursuant to F.S. §§ 120.569 and 120.57, if applicable.
295
- 296 3. Invoking the procedures for a Special Magistrate proceeding is not a pre-condition for judicial
297 review of the development order or enforcement action or a formal administrative hearing
298 pursuant to F.S. §§ 120.569 and 120.57.
299
- 300 F. Pre-initiation meeting. Prior to filing a formal request for relief under this ordinance, the owner may
301 request by letter an informal meeting with the City Manager to discuss alternatives to the filing of
302 the Special Magistrate proceeding. The City Manager shall conduct such a meeting as expeditiously
303 as possible and shall include technical staff familiar with the regulations at issue.
304
- 305 G. Request for relief. Any owner who believes a development order or an enforcement action by the
306 city is unreasonable or unfairly burdens the use of the owner's real property may file a request for
307 relief in accordance with the requirements of this ordinance. Request for relief forms shall be
308 maintained by the City Department of Community Development and shall be available during
309 business hours to members of the public.
310
- 311 H. Time for filing. A request for relief must be filed within 30 days after:
312
- 313 1. Receipt of the development order or enforcement action; or
314
- 315 2. If a city administrative appeal is available in the case of a particular development order or
316 enforcement action, the later of the conclusion of such administrative appeal or the expiration
317 of four months after the initiation of such appeal. Before initiating a Special Magistrate
318 proceeding to review a city development order or enforcement action, the owner must exhaust
319 all nonjudicial city administrative appeals so long as such appeals take no longer than four
320 months. Once nonjudicial local administrative appeals have been exhausted and the
321 development order or enforcement action is final, or, if the owner has pursued administrative

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322 appeals, within four months after issuance of the development order or notice of the
323 enforcement action by the city (even if the appeals have not been concluded), the owner may
324 file a request for relief pursuant to this section.
325

326 I. Requirements. The request for relief must contain the following:

- 327 1. A brief statement of the owner's proposed use of the property;
- 328 2. A summary of the development order or description of the enforcement action. In addition, a
329 copy of the development order or documentation of the enforcement action must be attached;
- 330 3. A brief statement of the impact of the development order or enforcement action on the ability
331 of the owner to achieve the proposed use of the property;
332
- 333 4. The signature of the owner or, if the owner is a corporation, partnership, or other organization,
334 the signature of a responsible official, and the mailing address and telephone number at which
335 the owner may be reached;
- 336 5. A statement regarding whether any local administrative appeal is available and, if so, whether
337 and when it was commenced by the owner and, if completed, the date of completion; and
338
- 339 6. A certificate of service identifying the persons, if any, who have been furnished with copies of
340 the request for relief.
341

342 J. Filing of request for relief.

- 343 1. To initiate a Special Magistrate proceeding, an owner must file a signed original and one copy of
344 a request for relief with the Community Development Department. No fee shall be charged by
345 the city for the filing of a request for relief. However, the owner shall be solely responsible for
346 the cost of preparing the original and one copy of the request for relief.
347
- 348 2. Within ten days of receipt by the city of the request for relief filed as provided herein, the City
349 shall forward the original request for relief to a Special Magistrate selected in accordance with
350 this ordinance. This time period may be extended only by agreement of the parties.
351
352

353 K. Notice of filing.

- 354 1. Concurrently with the forwarding of the request for relief to the Special Magistrate, the city
355 shall serve, by U.S. Mail or hand delivery, a notice of the filing of the request for relief to the
356 following:
357
- 358 a. Owners of real property contiguous to the applicant's property at the address shown on the
359 latest Lee County tax roll; and
360
- 361 b. Any substantially affected person who submitted oral or written testimony of a substantive
362 nature which stated with particularity an objection to or support for any development order
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368 or enforcement action at issue. However, notice under this paragraph is required to be
369 provided to such a substantially affected person only if that person requested in writing or
370 at a public hearing expressed a desire to be placed on a mailing list to receive notice of any
371 subsequent proceeding on the development order or enforcement action at issue. The city
372 shall maintain in its files relating to particular development orders a mailing list of persons
373 who have presented oral or written testimony and who have requested notice.
374

- 375 2. The notice of the filing of the request for relief need not contain any attachments or supporting
376 documentation which may have accompanied the request for relief. However, in lieu of
377 providing a complete copy of the request for relief, the notice of filing shall contain any
378 information necessary for the recipient to secure a complete copy of the request for relief. The
379 cost of preparing and serving copies of the request for relief on qualifying participants shall be
380 borne equally by the parties.
381
- 382 3. Any failure to notice potential participants shall be cured by posting of notice of the Special
383 Magistrate proceeding in a location established by the City Council for that purpose.
384

385 L. Special Magistrate.
386

- 387 1. Qualifications and restrictions. A Special Magistrate need not be a lawyer or a mediator certified
388 by the Florida Supreme Court. However, in order to serve as a Special Magistrate in a
389 proceeding pursuant to this ordinance, a person must:
390
- 391 a. Be a resident of the State of Florida;
 - 392 b. Possess experience and expertise in mediation; and
 - 393 c. Possess experience and expertise in at least one of the following disciplines and a working
394 familiarity with the others:
 - 395 i. Land use and environmental permitting;
 - 396 ii. Land planning;
 - 397 iii. Land economics; and
 - 398 iv. Local and state government organization and powers, and the law governing the same.

400 2. Special Magistrate selection.
401

- 402 a. The City Council shall at least annually recruit qualified persons to serve as Special
403 Magistrates and shall, on an annual basis, appoint at least three qualified persons to serve
404 as "pre-approved" Special Magistrates.
405
- 406 b. The city shall include in the request for relief form provided to the owner a pre-approved list
407 of Special Magistrates and instructions for objecting to any person named on the list.
408
- 409 c. The parties may mutually agree on a Special Magistrate. In instances in which the city has
410 been joined by a Special Magistrate pursuant to subsection (11) of the Act, the city shall not
411 unreasonably refuse to abide by the choice of a Special Magistrate by the original parties.
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3. Selection from pre-approved list.

- a. The Special Magistrate may be selected from the list(s) of approved Special Magistrates provided with the request for relief form. If an owner objects to any of the Special Magistrates on the list(s), the owner shall state such objection in the owner's request for relief. If an owner does not object to a Special Magistrate in the owner's request for relief, then those Special Magistrates to whom no objection was raised by the owner shall be deemed to be acceptable to the owner. The city shall then select one of the pre-approved Special Magistrates, at random, to be the Special Magistrate to consider the requests for relief.
- b. In the event an owner objects to all of the persons on the approved Special Magistrate list, the city shall be allowed additional time to secure a mutually acceptable Special Magistrate.
- c. If the parties are unable to agree on the selection of a Special Magistrate, then the following procedure shall apply:
 - i. Each party may select one person qualified as a Special Magistrate who, together, shall then select a candidate. If the parties cannot agree on that candidate, the Special Magistrate shall be randomly selected by the Florida Growth Management Conflict Resolution Consortium from a list of qualified candidates maintained by them for that purpose; or
 - ii. If the parties prefer not to follow the procedure delineated in subsection (f)(3)c.1. above, then the Special Magistrate shall be randomly selected by the Florida Growth Management Conflict Resolution Consortium from a list of qualified candidates maintained by them for that purpose.

M. Special Magistrate agreement.

- 1. Following the selection of a Special Magistrate, the parties shall enter into an agreement with the Special Magistrate which provides for the following:
 - a. Agreement by the Special Magistrate that he or she would not be called as an expert witness in any related subsequent or concurrent judicial proceeding;
 - b. Agreement by the parties that the Special Magistrate's recommendation and related materials are inadmissible in any related subsequent or concurrent judicial proceeding except to the extent that a certificate of completion of the process will be available to certify that the Special Magistrate process has been completed;
 - c. The Special Magistrate may not be called to appear before the City Council or any administrative or judicial tribunal with respect to the written recommendation or any aspect of the proceeding, nor may the Special Magistrate voluntarily furnish notes or other related material;

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- 459 d. The Special Magistrate may require in any agreement that the parties, where not otherwise
460 prohibited by law, provide a deposit of funds to secure payment of the Special Magistrate's
461 fees and expenses;
462
- 463 e. Payment of costs, including, but not limited to the costs of providing notice and effecting
464 service, and payment of fees and expenses for the Special Magistrate;
465
- 466 f. Establish rules for the conduct of the proceeding, including but not limited to standards of
467 conduct for the Special Magistrate, parties, and participants, and the enforceability of
468 subpoenas in circuit court;
469
- 470 g. Identify factual issues to be addressed in the proceeding or specify procedures for resolving
471 factual issues, including, but not limited to, stipulation;
472
- 473 h. Provide for the exchange of information by the parties prior to the mediation or hearing;
474
- 475 i. Identify participants known to the parties who should be notified of the proceeding;
476
- 477 j. Provide whether the time for performance of any act is varied; and
478
- 479 k. Address such other issues as the parties may decide will assist in settlement of the dispute.
480
- 481 N. Conduct of the Special Magistrate proceeding.
482
- 483 1. Request to participate in proceedings. Within 21 days after receipt of the request for relief, any
484 owner of land contiguous to the owner's property and any substantially affected person who
485 submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated
486 with particularity objections to or support for the development order or enforcement action at
487 issue may request from the Special Magistrate permission to participate in the proceeding. Such
488 persons may be permitted to participate in the hearing to the extent allowed under the Act.
489
- 490 2. Filing of response.
491
- 492 a. No more than 15 days after the filing of a request for relief, the City shall file a response to
493 the request for relief on behalf of the city. A copy shall be furnished to the owner and any
494 person who has requested to participate in the proceeding. The cost of preparing and filing
495 the response to the request for relief shall be borne by the city.
496
- 497 b. The response to the request for relief shall set forth in reasonable detail the position of the
498 city regarding the matters raised by the owner. The response shall include a brief statement
499 explaining the public purpose of the regulations on which the development order or
500 enforcement action is based.
501
- 502 3. Sufficiency hearing; request to be dropped as a party.
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- 504 a. The response to the request for relief may include a request that the Special Magistrate
505 dismiss the owner's request for relief for any failure to include the information required in
506 subsection .7 above. The Special Magistrate may conduct a hearing on the issue of such
507 dismissal of the request for relief. If the Special Magistrate dismisses the owner's request for
508 relief, the Special Magistrate shall allow the owner a reasonable time within which to file an
509 amended request for relief. Failure to file an adequate amended request for relief within the
510 time specified by the Special Magistrate shall result in a dismissal with prejudice as to this
511 proceeding.
512
- 513 b. Any party may request, in its response or otherwise, to be dropped from the proceeding.
514 The request must set forth facts and circumstances to aid the Special Magistrate in deciding
515 the request. The Special Magistrate may conduct a hearing at any time on any request to be
516 dropped as a party. All such requests must be disposed of prior to a hearing on the
517 substance of the owner's request for relief. If the Special Magistrate denies a party's request
518 to be dropped, that party shall participate in the proceeding.
519
- 520 O. Notice and timing of Special Magistrate proceeding.
521
- 522 1. As required under the Act, the Special Magistrate shall timely convene a Special Magistrate
523 proceeding on the request for relief.
524
- 525 2. The Special Magistrate's expenses in providing notice shall be borne equally by the parties
526 unless otherwise established in the Special Magistrate agreement.
527
- 528 3. Notice to all parties and other persons who have requested such notice shall contain a reference
529 number and date of filing of the request for relief and instructions for obtaining further
530 information regarding the request for relief.
531
- 532 P. Subpoena powers of the Special Magistrate.
533
- 534 1. A subpoena issued by a Special Magistrate may require the witness to bring a document or
535 thing.
536
- 537 2. A party requesting the subpoena of a nonparty witness shall make such request in writing to the
538 Special Magistrate.
539
- 540 3. The Special Magistrate shall only subpoena a witness that the Special Magistrate believes will
541 aid in the disposition of the matter.
542
- 543 4. Parties subpoenaing witnesses shall be responsible for paying fees and mileage in the amount as
544 provided under Florida law for witnesses in civil cases.
545
- 546 5. The Special Magistrate shall provide notice of any witnesses subpoenaed to any party
547 requesting such notice.
548

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- 549 6. Service of subpoenas shall be made in the manner provided by the Florida Rules of Civil
550 Procedure.
551
- 552 7. The witnesses of either party that are present for the hearing or are on standby or available on
553 call are not to be excused by either party without the concurrence of the other party or of the
554 Special Magistrate.
555
- 556 Q. Special Magistrate proceedings.
557
- 558 1. Consolidation.
559
- 560 a. Separate matters which involve similar issues or identical parties may be consolidated if the
561 parties agree and it appears that consolidation would promote the speedy, efficient, and
562 inexpensive resolution of the matters.
563
- 564 b. If such separate matters are pending before different Special Magistrates, the parties may
565 decide which Special Magistrate will conduct the consolidated proceeding. If the parties
566 cannot agree on one or more Special Magistrates to conduct the proceeding, the
567 proceedings shall not be consolidated.
568
- 569 2. Conduct of the proceeding.
570
- 571 a. A party or participant may be represented by an attorney or other person at any phase of
572 the proceeding, but such representation is not required.
573
- 574 b. At the mediation, each party shall be represented by a person with authority to bind that
575 party to a settlement, or to recommend a settlement directly to the persons with authority
576 to bind the party. The Special Magistrate may ask a representative to provide assurances of
577 such authority.
578
- 579 3. Order of the proceeding.
580
- 581 a. In keeping with the overriding intent of the Legislature that the Special Magistrate
582 proceeding be a flexible, problem-solving procedure which results in a voluntary settlement,
583 the Special Magistrate may conduct the phases of the proceeding in any sequence and on
584 separate days.
585
- 586 b. The proceeding shall be open to the public and shall be held in a location accessible to the
587 public, including the physically handicapped.
588
- 589 c. The proceeding shall be conducted under the direction and supervision of the Special
590 Magistrate. The Special Magistrate shall determine the order of presentation of issues and
591 information unless otherwise set forth in the Special Magistrate agreement. The Special
592 Magistrate shall decide questions of procedure in a manner which provides reasonable due
593 process.
594

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- 595 d. Prior to any other portion of the proceeding, the Special Magistrate shall conduct a hearing
596 on any request to dismiss the request for relief.
597
- 598 e. At any time after commencement of the information-gathering hearing, the Special
599 Magistrate may recess the hearing to recommence mediation and facilitation.
600
- 601 f. After the hearing, the Special Magistrate may re-convene the parties to present a written
602 recommendation, in draft or final form, and seek to re-commence negotiations.
603
- 604 4. Mediation phase.
605
- 606 a. The Special Magistrate's first responsibility is to facilitate a resolution of the dispute and
607 arrive at a settlement acceptable to the parties. It may involve a modification of the owner's
608 proposed use of the property or adjustment in the development order or enforcement
609 action or regulatory efforts by one or more of the governmental parties.
610
- 611 b. The Special Magistrate shall, among other things, suggest alternatives, analyze issues,
612 question perceptions, use logic, stimulate and facilitate negotiations between the parties,
613 and keep order. The Special Magistrate at all times shall promote conciliation, cooperation,
614 compromise, and settlement of the dispute within the bounds established by law.
615
- 616 c. As alternatives, if variances, and other types of adjustments to the development order or
617 enforcement action are presented, the Special Magistrate shall afford participants an
618 opportunity to address the impacts of such alternatives on their substantial interests.
619
- 620 d. At any time after commencement of the presentation of evidence in the hearing, the Special
621 Magistrate may recess the hearing and presentation of evidence to recommence a
622 facilitation session.
623
- 624 5. Information-gathering hearing.
625
- 626 a. Within five days of receipt of the request for relief, the Special Magistrate shall provide
627 written notice of the place, date, and time of the hearing to all parties, and to all person
628 who have requested such notice. The hearing must be held within 45 days of the Special
629 Magistrate's receipt of the request for relief. The parties may agree to extend the date for
630 the hearing.
631
- 632 b. The hearing must be held in the City of Cape Coral. The Special Magistrate's decision on the
633 specific place of the mediation and hearing shall be final.
634
- 635 c. The Special Magistrate shall hear from anyone with information necessary to understand
636 the matter. The Special Magistrate may question anyone presenting information at the
637 hearing, but will give all parties an opportunity for follow-up questions.
638
- 639 d. The Special Magistrate shall weigh all information offered at the hearing. Information shall
640 not be subject to the rules of evidence, but the criteria for determining and the

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- 641 determination of verification and authentication are within the Special Magistrate's
642 discretion.
- 643
- 644 e. At any time, the Special Magistrate may require any party to provide additional information
645 in the interest of gaining a complete understanding of the request for relief.
- 646
- 647 f. Each party may record the hearing at its own expense. The Special Magistrate may record
648 the hearing to assist in preparing a recommendation as required by § 8.13.11. If the Special
649 Magistrate makes such a recording, it will be forwarded to the city with the
650 recommendation, but will be subject to the restrictions on information contained in §
651 8.13.10H.
- 652
- 653 g. Any documents or tangible materials presented to the Special Magistrate at hearing shall be
654 submitted to the Mayor of the Cape Coral City Council with the Special Magistrate's
655 recommendation. Any notes or drafts produced by the Special Magistrate and not intended
656 to record information in a permanent form shall remain the property of the Special
657 Magistrate.
- 658
- 659 h. If a party fails to appear at the hearing after notice, the Special Magistrate may proceed
660 without that party or may adjourn the hearing to another day, giving notice to the absent
661 party.
- 662
- 663 i. Information may be given and parties, participants, or their representatives may participate
664 by telephone, videotape, or other communications medium unless otherwise agreed in a
665 Special Magistrate agreement.
- 666
- 667 6. Witnesses and materials.
- 668
- 669 a. Each party must assure attendance at the hearing by those persons qualified by training or
670 experience to address issues raised by the request for relief, by the response, or by the
671 Special Magistrate, or to address alternatives, variances, and other types of modifications to
672 the development order or enforcement action.
- 673
- 674 b. The Special Magistrate may issue a subpoena for any nonparty witness in the state who will
675 aid in the disposition of the matter. A subpoena issued by a Special Magistrate may require
676 the witness to bring a specified document or thing.
- 677
- 678 c. The Special Magistrate may require and receive documents and other tangible materials
679 from any party or participant. All parties and participants shall have the opportunity to
680 examine and respond to such submissions.
- 681
- 682 d. The Special Magistrate may weight the credibility of witnesses.
- 683
- 684 e. Although an attorney is not required, any person compelled to appear or furnish documents
685 or tangible materials, or who appears voluntarily, may be represented and advised by legal
686 counsel at his or her own expense.

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- 687 7. Access to the property.
688
689 a. A request for relief constitutes a consent by the owner for the Special Magistrate and
690 parties or representatives to have reasonable access to the owner's land.
691
692 b. The owner may grant access to the land to participants.
693
- 694 8. Offer to compromise.
695
696 a. As provided by law:
697
698 i. All actions or statements of the Special Magistrate, the parties, and all participants are
699 evidence of an offer to compromise and are inadmissible in any judicial or
700 administrative proceeding.
701 ii. The proceeding may not be made known by a party or participant to any judicial or
702 administrative tribunal, or be construed for any purpose as an admission against
703 interest.
704
705 b. A party or participant is not bound by anything said or done during the proceeding unless a
706 written settlement is reached, in which case only the terms of the written settlement shall
707 be binding.
708
709 c. The Special Magistrate may not be called to appear before the City Council with respect to
710 any aspect of the proceeding, nor may the Special Magistrate be compelled to furnish notes
711 or drafts.
712
- 713 R. Settlement.
714
715 1. The owner and the city may enter into a settlement agreement or other agreement as to the
716 permissible use of the owner's land prior to the Special Magistrate filing a recommendation
717 under § 8.13.11.
718
719 2. A settlement agreement or other agreement as to the permissible use of the owner's land may
720 be executed subject to approval by the City Council. Any such agreement will not bind any party
721 until duly approved and executed by all parties to the agreement.
722
- 723 S. Post-hearing procedures.
724
725 1. Special Magistrate's recommendation.
726
727 a. The Special Magistrate shall file a recommendation with the Mayor within 14 days after the
728 conclusion of the hearing. The Special Magistrate shall also furnish a copy of the
729 recommendation to all parties and participants.
730

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- 731 b. If a settlement agreement or other agreement as to the permissible use of the owner's land
732 is executed prior to the Special Magistrate's recommendation, the recommendation shall
733 only:
- 734 i. Set forth the date and location of the hearing;
- 735 ii. Identify the parties and other participants in attendance at the hearing;
- 736 iii. Record, without comment, the fact that a settlement agreement or other agreement as
737 to the permissible use of the owner's land has been executed; and
- 738 iv. Include as an attachment an executed copy of the settlement agreement or other
739 agreement as to the permissible use of the owner's property.
- 740
- 741
- 742 c. If a settlement agreement or other agreement as to the permissible use of the owner's land
743 is not executed prior to the filing of the Special Magistrate's recommendation, the Special
744 Magistrate will consider the facts and circumstances set forth in the request for relief, any
745 responses, and any other information produced at the hearing to determine whether the
746 development order or enforcement action, by itself or in conjunction with an action of the
747 city or another governmental entity, is unreasonable or unfairly burdens the owner's land.
748
- 749 d. In making a determination, factors the Special Magistrate may consider include the
750 following:
- 751 i. The history of the land, including when it was purchased, how much was purchased,
752 where it is located, the nature of the title, the composition of the property, and how it
753 was previously used;
- 754 ii. The history of development and use of the land, including what was developed and by
755 whom, if it was subdivided and how and to whom it was sold, whether plats were filed
756 or recorded, and whether infrastructure and other public services or improvements may
757 have been dedicated to the public;
- 758 iii. The history of relevant environmental protection and land use controls and other
759 regulations, including how and whether the land was classified, any uses that may have
760 been proscribed, and what changes in classifications have occurred;
- 761 iv. The present nature and extent of the land, including natural and altered characteristics;
- 762 v. The reasonable expectations of the owner at the time of acquisition or immediately
763 prior to the implementation of the regulation at issue, whichever is later, under the
764 regulations then in effect and under common law;
- 765 vi. The public purpose sought to be achieved by the development order or enforcement
766 action, including the nature and magnitude of the problem addressed by the underlying
767 regulations on which the development order or enforcement action is based; whether
768 the development order or enforcement action is necessary to the achievement of the
769 public purpose; and whether alternative development order or enforcement action
770 conditions would achieve the public purpose and allow for reduced restrictions on the
771 use of the owner's land;
- 772 vii. Uses authorized for and restrictions placed on similar property, including adjacent lands;
773 and
774 and
775

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- 776 viii. Any other information determined to be relevant by the Special Magistrate or agreed by
777 the parties to be addressed by the Special Magistrate.
778
- 779 e. The Special Magistrate shall utilize his or her expertise in formulating a recommendation
780 and, in applying this expertise, shall rely upon the sort of information. that a reasonable,
781 prudent person would rely on in the conduct of his or her affairs.
782
- 783 f. If the Special Magistrate determines the development order or enforcement action, by itself
784 or in conjunction with another action of the city or another governmental entity; is
785 reasonable and does not unfairly burden the owner's land, the Special Magistrate shall
786 recommend that the development order or enforcement action remain undisturbed.
787
- 788 g. If the Special Magistrate determines the development order or enforcement action, by itself
789 or in conjunction with another action of the city or another governmental entity, is
790 unreasonable or unfairly burdens the owner's property; the Special Magistrate shall
791 recommend one or more alternative actions that protect the public interest served by the
792 regulations at issue but allow for reduced restraints on the use of the owner's real property.
793 The alternatives may include the following:
794
- 795 i. An adjustment of land development or permit standards or conditions controlling the
796 development or use of the owner's land;
797 ii. Increases or modifications in the density, intensity, or use of areas of development;
798 iii. The transfer of development rights;
799 iv. Land swaps or exchanges;
800 v. Mitigation, including payments in lieu of on-site mitigation;
801 vi. Location of the development or use at issue on the least sensitive portion of the
802 property;
803 vii. Conditioning the amount of development or use permitted on the owner's land;
804 viii. A requirement that issues be addressed on a more comprehensive basis than a single
805 proposed use or development;
806 ix. Issuance of the development order, a variance, special exception, or other extraordinary
807 relief, including withdrawal of the enforcement action;
808 x. Purchase of the owner's land, or an interest in it, by the city or another governmental
809 entity; and
810 xi. If an apportionment of responsibility among governmental entities is necessary, the
811 Special Magistrate shall make such apportionment.
812
- 813 h. The Special Magistrate shall furnish a copy of the written recommendation to the Florida
814 Department of Legal Affairs.
815
- 816 i. The Special Magistrate's recommendation is a public record. A copy shall be available for
817 public inspection and copying at the City Clerk's office.
818
- 819 T. Effect of Special Magistrate's recommendation.
820

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- 821 1. The Special Magistrate's recommendation is advisory and not binding on the owner or the City
822 Council.
- 823
- 824 2. A Special Magistrate's recommendation constitutes data which shall be considered with respect
825 to any pertinent amendment to the Comprehensive Plan.
- 826
- 827 3. A Special Magistrate's determination that the development order or enforcement action, by
828 itself or in conjunction with actions of the city or another governmental entity, is unreasonable
829 or unfairly burdens the owner's land may serve as an indication of sufficient hardship to support
830 modifications, variances, or special exception to the application of statutes, rules, regulations, or
831 ordinances to the subject property as otherwise authorized by applicable rules and regulations.
- 832
- 833 U. Disposition of Special Magistrate's recommendation.
- 834
- 835 1. Within 45 days of receipt of the Special Magistrate's recommendation, the City Council shall:
- 836
- 837 a. Accept the recommendation as submitted and implement it in the ordinary course and
838 consistent with all other rules and regulations;
- 839
- 840 b. Modify the recommendation as submitted and implement it in the ordinary course and
841 consistent with all other rules and regulations; and
- 842
- 843 c. Reject the recommendation as submitted. Failure to act within 45 days of receipt of the
844 recommendation shall be deemed a rejection, unless the owner and the city agree to an
845 extension of time.
- 846
- 847 2. If the City Council adopts a recommendation to grant a modification, variance, or special
848 exception to the application of ordinances or regulations as they otherwise would apply to the
849 land, the owner shall not be required to duplicate processes in which the owner previously has
850 participated in order to effectuate the modification, variance, or special exception.
- 851
- 852 3. If the Special Magistrate recommends relief or other action in conjunction with another
853 governmental entity, the City Manager and/or his or her designee shall confer with appropriate
854 staff from the other entities to review the recommendation and determine whether a joint staff
855 recommendation can be made to the heads of the respective governmental entities.
- 856
- 857 4. Within 15 days after final action on the Special Magistrate's recommendation by the City
858 Council, the City Clerk shall send a copy of the order or other document memorializing final
859 action to the Florida Department of Legal Affairs.
- 860
- 861 5. Within ten days of final action on the recommendation, the owner shall notify the City Manager
862 in writing whether the owner accepts the decision on the recommendation.
- 863
- 864 6. If the City Council accepts the recommendation or modifies it and the owner rejects the
865 acceptance or modification, or if the City Council rejects the recommendation, the City Council
866 shall issue a written decision that describes as specifically as possible the use or uses available

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- 867 on the owner's land. The decision shall be issued within 30 days of final action on the
868 recommendation.
- 869
- 870 7. After the City Council has acted on the Special Magistrate's recommendation and a written
871 decision has been issued describing the use or uses available on the owner's land, or if the City
872 Council has not acted within 45 days, the owner may seek a formal adjudication on the
873 development order or enforcement action as otherwise authorized by law.
874