

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES**

CHAPTER 1. PLANNING AND ZONING COMMISSION

- Section 2.1.1.** Powers and duties
- Section 2.1.2.** Membership; vacancy; compensation
- Section 2.1.3.** Meetings, Quorum; Required vote
- Section 2.1.4.** Staff; Attorney
- Section 2.1.5.** Rules and records

CHAPTER 2. HEARING EXAMINER

- Section 2.2.1.** Establishment
- Section 2.2.2.** Appointment of Hearing Examiner(s); Vacancy; Recusal
- Section 2.2.3.** Exercise of power; powers and duties
- Section 2.2.4.** City Attorney; City Clerk
- Section 2.2.5.** Decisions; Recommendations

CHAPTER 3. ADMINISTRATIVE DECISION MAKERS AND ENFORCEMENT OFFICERS

- Section 2.3.1.** City Manager
- Section 2.3.2.** Department of Community Development
- Section 2.3.3.** Community Development Director
- Section 2.3.4.** Building Official
- Section 2.3.5.** Planning Manager
- Section 2.3.6.** Public Works Director
- Section 2.3.7.** Development Services Manager
- Section 2.3.8.** Code Enforcement Manager

CHAPTER 1. PLANNING AND ZONING COMMISSION

Section 2.1.1. Powers and duties.

- A. Pursuant to and in accordance with F.S. § 163.3174 of the Local Government Comprehensive Planning and Land Development Regulation Act, as amended, the City Council finds that planning of land use and continuing growth management evaluation within the City is a public purpose benefiting the safety, economic well-being, and cultural welfare of the citizens of the City. The City Council further finds that this public purpose can best be achieved by establishing the Planning and Zoning Commission, which is established and designated as the local planning agency (LPA) for the City.
- B. Pursuant to and in accordance with F.S. § 163.3175(5) and F.S. § 163.3177(1) of the Local Government Comprehensive Planning and Land Development Regulation Act, the City Council finds that there is a public purpose in coordinating the planning of the City with the Lee County School Board.
- C. The Planning and Zoning Commission/Local Planning Agency (hereinafter Commission) shall have the authority and responsibility to review land use in the City and evaluate planning and regulatory techniques for resolving physical, economic, social, environmental and fiscal issues. The City Council directs the Commission to carry out functions and powers identified in the Land Development Code.

CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES

47 The Commission shall use the power and authority conferred upon it by the Land Development Code
48 to further its stated public purpose.

- 49
50 D. Any power or duty delegated by the City Council.

51
52 **Section 2.1.2. Membership; vacancy; compensation.**

53
54 A. Membership. The Commission shall consist of seven members. All members shall be residents of the
55 City and will be appointed by a majority vote of the City Council. The term of office for each member
56 shall be three years, or until a successor is appointed. Terms of office shall commence on the first day
57 of March of the year in which appointed. In addition to the seven members, two alternate members
58 shall be appointed by a majority vote of the City Council to serve as alternates for the term of one
59 year, or until a successor is appointed. Alternate members shall be residents of the City. Alternate
60 members shall substitute for absent members on a rotating basis. When substituting for an absent
61 member, an alternate member may vote and participate in all discussions of the Commission in the
62 same manner and to the same extent as the other members of the Commission. When not
63 substituting for an absent member(s), alternate members shall not vote on any matter, but may
64 participate in all discussions in the same manner and to the same extent as the other members.
65 Alternate members shall have the same attendance requirements as the other members of the
66 Commission. Board members and alternate members shall be subject to the forfeiture of office
67 provisions of Section 2.58 of the Cape Coral Code of Ordinances. Whenever a vacancy occurs on the
68 Commission, the city shall fill the vacancy for the remainder of the term as soon as practicable after
69 the vacancy occurs.

- 70
71 B. Vacancies.

72
73 1. If a vacancy occurs on the Commission as the result of the resignation, death, or removal of a
74 member, the senior alternate member shall temporarily fill such vacancy without action by the
75 City Council, until the City Council appoints a successor regular member. In the event both
76 alternates have served for the same continuous period of time then the alternate who is next
77 scheduled to substitute for an absent regular member according to the rotation schedule shall
78 temporarily fill the vacancy until the City Council appoints a successor regular member. In the
79 event that the alternate member dies, resigns, is removed, or becomes a member, the City Council
80 shall promptly appoint a qualified person to the unexpired term of the alternate.

81
82 2. In the event a vacancy occurs on the Commission; an alternate member may apply to be a regular
83 member in the same manner as other applicants. In the event an alternate member is appointed
84 to be regular member, then such appointment shall simultaneously terminate such person's
85 position as an alternate member. In that event, the City Council may then appoint another person
86 to fill the resulting alternate member vacancy.

- 87
88 C. Compensation. Members of the Commission shall receive no salary for their services, but may receive
89 such travel and other expenses while on official business for the City as are made available by the City
90 Council for these purposes.

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES**

94 **Section 2.1.3. Meetings; Quorum; Required vote.**

95

96 A. Meetings. The Commission shall schedule and hold at least one public hearing each month unless
97 there is no business to transact for the regular meeting date. The Commission shall also meet at the
98 call of the chairperson and other times as may be determined by a majority of the Commission.

99

100 B. Quorum. Four voting members of the Commission shall constitute a quorum for the transaction of
101 business, but a smaller number may act only to adjourn meetings for lack of a quorum. The affirmative
102 vote of a majority of the quorum shall be required to pass any action of the Commission.

103

104 C. Officers. The Commission shall annually elect a chairperson and a vice-chairperson from among its
105 members. All officers shall be elected for one-year terms and shall be eligible for re-election.

106

107 **Section 2.1.4. Staff; Attorney.**

108

109 A. Staff. The City Manager shall provide staff support necessary to the planning functions of the
110 Commission and provide secretarial support for the Commission in the execution of its duties and to
111 record and transcribe in summary form the minutes of all Commission meetings.

112

113 B. Attorney. The City Attorney shall serve as legal counsel to the Commission.

114

115 **Section 2.1.5. Rules and records.**

116

117 A. The Commission shall adopt its own rules of procedure as may be deemed necessary; provided such
118 rules shall not be contrary to the spirit and intent of the Land Development Code or to the policies of
119 the City. The Commission shall keep minutes of its meetings and records of all transactions and
120 deliberations. Such minutes and records shall be filed in the appropriate offices of the City and shall
121 be public records.

122

123 B. All meetings of the Commission shall be open to the public.

124

125 C. The Commission shall set up rules of procedure to monitor and oversee the effectiveness and status
126 of the Comprehensive Plan in order to make any recommendation to the City Council for changes in
127 the Comprehensive Plan as may from time to time be required consistent with the intent and purposes
128 of the Cape Coral Land Development Code relating to the Comprehensive Plan.

129

130 **CHAPTER 2. HEARING EXAMINER**

131

132 **Section 2.2.1. Establishment.**

133

134 There is hereby created a Hearing Examiner with authority to conduct quasi-judicial and other hearings in
135 accordance with provisions of this code in an equitable, expeditious, and effective manner. Nothing in this
136 section shall prohibit the City Council from enforcing any code by other means.

137

138 **Section 2.2.2. Appointment of Hearing Examiner(s); Vacancy; Recusal.**

139

140 A. The city shall utilize the services of one or more Hearing Examiner(s) to conduct quasi-judicial hearings

CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES

141 in accordance with provisions of this code.

142

143 B. The City Council shall appoint at least one qualified person to serve as the Hearing Examiner, and may
144 appoint at least one qualified person to serve as an alternate Hearing Examiner.

145

146 C. The appointment(s) shall be in the sole discretion of the City Council. However, any person appointed
147 to the position of Hearing Examiner must be an attorney duly licensed by the Florida Bar Association
148 to practice law in the State of Florida. Appointment(s) shall be made by written contract approved by
149 the City Council. The contract shall set out the terms and conditions, including compensation, travel,
150 mileage, and any additional powers and duties delegated or assigned to the Hearing Examiner.
151 Although appointed by contract, Hearing Examiners shall be subject to removal, with or without
152 cause, at any time during their term by the City Council in its sole discretion.

153

154 D. Hearing Examiners shall not be considered to be city employees.

155

156 E. If a Hearing Examiner vacancy occurs as a result of resignation, death, removal, or the Hearing
157 Examiner recuses, disqualifies himself or herself, or does not otherwise hear a particular case, and an
158 alternate Hearing Examiner is unavailable or otherwise unable to hear a case, these cases shall be
159 heard by the Planning and Zoning Commission in an advisory capacity and then heard by the City
160 Council for the final decision.

161

162 **Section 2.2.3 Exercise of power; powers and duties.**

163

164 A. Exercise of power. In exercising its powers, a Hearing Examiner may, upon appeal and in conformity
165 with the provisions of this code, reverse or affirm, wholly or partly, or may modify the order,
166 recommendation, requirement, decision, or determination made by the Director or an administrative
167 official in the application, interpretation, or enforcement of this code and may make any necessary
168 order, recommendation, requirement, decision, or determination, and to that end shall have all the
169 powers of the administrative official from whom the appeal is taken.

170

171 B. Powers and duties. A Hearing Examiner shall hear and decide or, when applicable, make
172 recommendations, on the following:

173

174 1. Applications for special exceptions;

175

176 2. Applications for variances. The Hearing Examiner may impose any reasonable conditions or
177 restrictions on a variance it decides to grant;

178

179 3. Applications for deviations;

180

181 4. Applications for vacations;

182

183 5. Applications for rezoning property;

184

185 6. Applications for PUD master control plans; and

186

187 7. Appeals of administrative decisions under the Land Development Code.

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES**

188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234

Section 2.2.4. City Attorney; City Clerk.

- A. City Attorney. The City Attorney is the legal officer for the city. Because only attorneys may hold the position of Hearing Examiner, the city shall not be required to provide legal representation to the Hearing Examiner(s).
- B. City Clerk. The City Clerk, shall attend all hearings and record (audio, video, or both) all hearings. The city shall retain the original recording(s) in accordance with the laws of the State of Florida, and, if requested, provide a duplicate of the recording(s) to the Hearing Examiner.

Section 2.2.5. Decisions; Recommendations.

The Hearing Examiner shall provide the City Clerk with all original decisions or recommendations for transmission to the applicant or if the applicant is the city, to the Director of Community Development and City Attorney.

CHAPTER 3. ADMINISTRATIVE DECISION MAKERS AND ENFORCEMENT OFFICERS

Section 2.3.1. City Manager.

The City Manager is the chief executive officer for the City of Cape Coral with ultimate authority over the implementation of these regulations. The City Manager has the authority to delegate his authority to City staff as necessary for the effective administration and enforcement of the regulations.

Section 2.3.2. Department of Community Development.

The Department of Community Development is the City department charged with administration and enforcement of the Land Development Code.

Section 2.3.3. Community Development Director.

The Community Development Director is responsible for the administration of these regulations. Specifically, the Community Development Director is responsible for receiving applications for development approval, determining whether they are complete, and coordinating review of the applications. The Community Development Director shall have administrative responsibility to interpret the Land Development Code.

Section 2.3.4. Building Official.

The Building Official is responsible for the implementation of the various building codes adopted pursuant to the Florida Building Code and other applicable state statutes. The Building Official issues building permits and certificates of occupancy, upon a determination by the City of compliance of permit applications with the City regulations and any prior approvals by the City.

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES**

235 **Section 2.3.5. Planning Manager.**

236

237 The Planning Manager is responsible for duties under this Code or as assigned by the Community
238 Development Director. The Planning Manager is responsible for the implementation and interpretation
239 of the Land Development Code.

240

241 **Section 2.3.6. Public Works Director.**

242

243 The Public Works Director is charged with the development and maintenance of the City's Engineering
244 Design Standards and implementation related to City maintained facilities.

245

246 **Section 2.3.7. Development Services Manager.**

247

248 The Development Services Manager is responsible for the review and approval of applications for land
249 development permits. The Development Services Manager reviews and approves Site Development Plans,
250 Preliminary Subdivisions, Construction Plan approvals, Development Permits, and Certificates of
251 Completion.

252

253 **Section 2.3.8. Code Enforcement Manager.**

254 The Code Enforcement Officer is charged with the initiation of and prosecution of enforcement actions
255 pursuant to Chapter 2, Article 5, Divisions 3 and 4 of the City of Cape Coral Code of Ordinances.