

**City of Cape Coral, Florida  
Land Development Code  
Article 3 – Development Review**

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59

60 **CHAPTER 1. DEVELOPMENT REVIEW PROCEDURES**

61

62 **Section 3.1.1. Purpose.**

63

64 The purpose of this article is to establish the standards and procedures for review and approval of  
65 proposed development within the City of Cape Coral, and to provide a development review process that  
66 will be comprehensive, consistent, and efficient in the implementation of the goals, objectives, and  
67 policies of the City of Cape Coral Comprehensive Plan and this Code.

68

69 **Section 3.1.2. Classification of Development Review Procedures**

70

71 All development applications under this Article are subject to the procedural review requirements in this  
72 Chapter, unless otherwise exempted by the terms of this Article. Development applications are classified  
73 according to the decision-making authority for each type of application, as set forth below.

74

75 A. Administrative. The following shall be treated as administrative decisions:

76

77 1. Zoning and Flood Zone Verification Letters

78 2. Certificates of Zoning Compliance

79 3. Administrative Interpretations and Similar Use Determinations

80 4. Sign Permits (See Article 6)

81 5. Lot Splits and Lot Combines

82 6. Conditional Uses

83 7. Master Concept Plan (PUD) Amendments

84 8. Administrative Deviations

85 9. Site Development and Subdivision Construction Plans

86 10. Preliminary Subdivision Plans (See Article 10)

87 11. Site Improvement Permits

88 12. Temporary Use Permits:

89 a. Firework, pumpkin, and Christmas tree sales.

90 b. Outdoor display of merchandise.

91 c. Garage sales.

92 d. Temporary construction or field office.

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- 93 e. Construction staging areas for essential public facilities and post disaster debris staging
- 94 f. Temporary sales office.
- 95 g. Temporary Storage Containers.
- 96 h. Temporary Habitable Structures.
- 97 i. Temporary Off-Site Vehicle Sales.
- 98 j. Tents for other than Special Events.
- 99 k. Other events not named.
- 100 l. Temporary Seawall Staging Areas.

101  
102 13. Reasonable Accommodations (See Article 13)

103  
104 B. Quasi-judicial. The following shall be treated as quasi-judicial decisions:

- 105
- 106 1. Deviations (other than Administrative Deviations)
- 107 2. Variances
- 108 3. Special Exceptions
- 109 4. Vacations of Plats, Easements, and Rights-of-way
- 110 5. Rezones
- 111 6. Planned Unit Developments (PUDs) and Master Concept Plans
- 112 7. Appeals

113  
114 C. Legislative. The following shall be treated as legislative decisions:

- 115
- 116 1. Annexations
- 117 2. Future Land Use Map Amendments
- 118 3. Comprehensive Plan Text Amendments
- 119 4. Land Development Code Text Amendments
- 120 5. Plats

121  
122 D. Other Approvals.

- 123
- 124 1. Outdoor Display of Merchandise
- 125 2. Special Events

126  
127 E. Certain buildings, structures, improvements, and installations are exempted by the Florida Building Code  
128 from building permit issuance but must otherwise comply with the minimum requirements of this chapter.  
129 Therefore, such buildings, structures, improvements, and installations shall be subject to review under the  
130 Site Development Plan or Certificate of Zoning Compliance standards contained in this Article, as well as the  
131 regulations of the underlying zoning district.

132  
133 F. The Community Development Director shall have the authority to require a certificate of zoning compliance  
134 or site improvement permit review for other buildings, structures, improvements and installations that are  
135 newly created or come about by changes in the state or local building codes; or other improvements  
136 deemed necessary for approval.

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**Section 3.1.3. Development Approval Process; Table 3.1.3**

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139  
140 Table 3.1.3 shows the development review process, the decision-making authority for each type of  
141 development approval; and the appeal authority for each type of decision.  
142

<b>TABLE 3.1.3 DEVELOPMENT APPROVAL AND REQUIRED NOTICE</b>											
<b>Decision Maker</b>					<b>Notice</b>						
D	HEX	LPA	CC	CirC	Published	Mailed	Posted				
Director	Hearing Examiner	Planning and Zoning Commission / Local Planning Agency	City Council	Circuit Court							
<b>Application Type</b>					Recommendation	Decision Maker					
<b>Administrative</b>	Zoning or Flood Zone Verification Letters				D						
	Certificate of Zoning Compliance				D						
	Administrative Interpretations & Similar Use Determinations				D						
	Sign Permits				D						
	Lot Splits and Lot Combines				D						
	Conditional Uses				D						
	PUD Amendments - Minor				D						
	Administrative Deviations				D						
	Site Development and Subdivision Construction Plans				D						
	Preliminary Subdivision Plans				D						
	Site Improvements Permits				D						
	Site Development Permits and Construction Authorization				D						
	Temporary Use Permits				D						
	Outdoor Dining				D						
	Business Tax Receipts				D						
Reasonable Accommodations (see Article 13)				D							
Appeals of Administrative Decisions				D	HEX	CC	CirC	✓			
<b>Quasi-Judicial</b>	Deviations (Other than Administrative Deviations)				D	HEX			✓	✓	✓
	Variances				D	HEX			✓	✓	✓
	Special Exceptions				D	HEX			✓	✓	✓
	Vacations – Easement/Lot/Plat				HEX	CC			✓	✓	✓
	Rezones				HEX	CC			✓	✓	✓
	PUDs				HEX	CC			✓	✓	✓
	PUD Amendments - Major				D	HEX			✓	✓	✓
Appeals of Quasi-Judicial Decisions				D	HEX	CC	CirC	✓	✓		
<b>Legislative</b>	Annexations				D	CC			✓	✓	✓
	Future Land Use Map Amendments				LPA	CC			✓	✓	✓
	Comp Plan Text Amendments				LPA	CC			✓		
	LDC Text Amendments				LPA	CC			✓		
	Final Plats				D	CC			✓		
<b>Other</b>	Outdoor Display of Merchandise				D	CC				✓	
	Special Events (Parks and Recreation)										

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**Section 3.1.4. Application submittals.**

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- A. Unless otherwise indicated by a specific provision of this Article, the applicant for a permit or approval under this Code must be the owner of the property that is the subject of the application or a duly authorized agent of the owner. An applicant who is a contract purchaser must provide proof that the applicant is an authorized agent of the property owner.
  - 1. For rezone and comprehensive plan amendments involving multiple properties or ownerships, the owners of at least fifty-one percent of the number of parcels or the land area included in the application, whichever is greater, must join in the application.
  - 2. For applications to vacate public rights-of-way or alleys, the owners of all parcels abutting the street or alley or portion thereof to be vacated must join in the application.
  - 3. For applications to vacate easements, all owners of parcels abutting the easement and all owners entitled to use of the easement to be vacated must join in the application.
  - 4. For applications to vacate any portion of a platted subdivision, all owners in the subdivision must join in the application.
- B. Unless otherwise indicated by a specific provision of this Article or another City ordinance or regulation, applications for permits and approvals under this Chapter shall be submitted to the Community Development Department.
- C. Applications shall contain all information required for the type of application being filed and shall include all plans, data, studies, or supporting documents required under this code or specified in the application forms.
- D. The Community Development Department shall establish application forms and submittal requirements for all development applications referenced in this Article.
- E. Applications for various approvals and permits may be submitted for concurrent or simultaneous review at the option and sole risk of the applicant. This provision shall not apply to any comprehensive plan amendments, rezones, or permit approvals associated with a proposed annexation into the City.
- F. Applications for permits or development approvals which have been made available as on-line may be required to file an on-line application only, as determined by the Director.
- G. The Community Development Director shall have the authority to require a zoning or site improvement permit review for other buildings, structures, improvements, or installations that are newly created or come about by changes in the state or local building codes; or other improvements deemed necessary for approval.

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192 **Section 3.1.5. Pre-application and Neighborhood meetings.**

- 193
- 194 A. Upon request of an applicant, the director may schedule pre-application meetings with applicants and  
195 appropriate City staff, for the purpose of reviewing proposed development prior to the formal  
196 submission of an application. Applicants are encouraged, though not required, to request a pre-  
197 application meeting. A pre-application meeting is required for Planned Unit Development  
198 applications.
- 199
- 200 B. The pre-application meeting shall be informal, and its purpose shall be to discuss the proposals, views,  
201 and concepts of the applicant. The purpose is also to discuss whether any additional information will  
202 be required. Failure of staff to identify any required permits or procedures at a pre-application  
203 meeting shall not relieve the applicant of any such requirements in this code or constitute waiver of  
204 the requirement by the decision-making body.
- 205
- 206 C. At the pre-application meeting staff will:
- 207
- 208 1. Review the proposed project and any preliminary plans with the applicant.
- 209
- 210 2. Discuss and inform the applicant about the zoning requirements relevant to the proposal,  
211 information necessary for an application, and the approval process(es) for the project. This does  
212 not preclude the department from requesting additional information or waiving certain  
213 requirements for information later during the review process.
- 214
- 215 3. Advise the applicant whether the proposed project conforms to the Comprehensive Plan or the  
216 requirements of this title.
- 217
- 218 D. Any recommendations or determinations reached during pre-application meetings are purely  
219 advisory and shall not be binding either on the applicant or the City.
- 220
- 221 E. Applicants are encouraged, though not required, to conduct a neighborhood meeting to advise nearby  
222 residents of upcoming development applications. The City will provide a list of surrounding property  
223 owners for applicants to notify when a neighborhood meeting is scheduled.
- 224

225 **Section 3.1.6. Fees Required.**

226

227 Each applicant for a permit, approval, or appeal under this Article shall be required to pay any application  
228 fee(s) as established by the City Council.

229

230 **Section 3.1.7. Complete Applications Required.**

- 231
- 232 A. Incomplete Applications. No application for a permit, approval, or appeal under this Article shall be  
233 accepted or reviewed by staff that does include all required application materials and the required  
234 application fee(s). The burden of providing complete and accurate information required by the  
235 Community Development Department for each type of application shall be on the applicant.
- 236
- 237 B. Determination of Completeness.

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1. When an application for development approval is submitted, the director shall make a threshold determination as to whether the application is complete and in conformance with the land uses, density, and intensity allowed by the future land use designation and zoning district classification.
  2. All applications shall be reviewed for completeness within ten days of receipt. If the application does not meet the requirements of this Article, the director shall notify the applicant or agent in writing, stating the additional information required or the modification(s) necessary for conformance.
  3. No further action shall be taken on the application unless and until the additional information is submitted and determined to be complete by the director. If the incompleteness has not been remedied within sixty (60) calendar days of receipt of notice thereof, the application shall be automatically voided and the director shall return the application to the applicant.
- C. Review. When an application for development approval is determined to be complete, the department shall notify the applicant, and commence detailed review and processing of the application in accordance with this Code.

**Section 3.1.8. Review for Sufficiency and Code Requirements.**

Once an application is determined to be complete, the Department shall commence detailed review of the application, consult with other agencies, issue comments to the applicant, consult with the applicant as necessary, and determine whether the application and supporting materials are sufficient to proceed forward, as applicable for the type of application for review. For purposes of this section, "sufficiency" shall constitute an analysis of whether a proposed application:

- A. Meets the stated objective requirements of the comprehensive plan, this Code, and the City Code of Ordinances; and
- B. Includes the necessary analysis and information in sufficient detail to enable the decision-making body or official to make the necessary determinations under the comprehensive plan and this Code.
- C. The sufficiency and code requirements set forth herein shall be used by the City to evaluate the demands created on public services and facilities by a proposed development, as required by this code. The following public services and facilities shall be evaluated:
  1. Drainage facilities;
  2. Environmentally sensitive lands;
  3. Fire protection;
  4. Parks and open space;
  5. Police protection;

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- 284  
285 6. Potable water;  
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287 7. Wastewater;  
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289 8. Solid waste;  
290  
291 9. Storm water; and  
292  
293 10. Transportation facilities. A traffic impact study is required for any development anticipated to  
294 generate more than 300 p.m. peak hour average daily trips.  
295  
296 D. If an application is determined to be insufficient, the director shall notify the applicant or agent in  
297 writing, stating the additional information required or the modification(s) necessary for conformance.  
298  
299 E. No further action shall be taken on an application determined to be insufficient unless and until the  
300 insufficiency(ies) are resolved, as determined by the director. If the insufficiencies have not been  
301 remedied within sixty (60) calendar days, the director may void the application.  
302

**Section 3.1.9. Decision-making.**

- 303  
304  
305 A. Administrative approvals. Upon determining that an application and all supporting information are  
306 sufficient to render a decision, the Director shall take administrative action required by this code and  
307 approve the application, approve the application with conditions, or deny the application.  
308  
309 B. Quasi-judicial and legislative approvals. Upon determining that an application and all supporting  
310 information are sufficient to render a decision and any inadequacies have been resolved, the Director  
311 shall prepare a report and recommendation to the appropriate decision-making or recommending  
312 body.  
313

**Section 3.1.10. Public Hearing Scheduling and Notice Requirements.**

- 314  
315  
316 A. Scheduling for consideration. When an application is deemed sufficient pursuant to LDC Section 3.1.8,  
317 the Director shall schedule a public hearing for an appropriate date. No application shall be scheduled  
318 for consideration by the Hearing Examiner, Commission, or City Council until either:  
319  
320 1. All specified insufficiencies have been resolved; or  
321  
322 2. The applicant has elected in writing to proceed notwithstanding the unresolved insufficiencies.  
323  
324 B. Required notice of public hearings. Notice of public hearings shall be provided by publication of an  
325 advertisement in a newspaper of general circulation, mailed notice to surrounding property owners,  
326 and posting of the development site pursuant to the requirements of this section. Table 3.1.2 depicts  
327 the public hearing notice requirements for quasi-judicial and legislative applications under this Code:  
328



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- 329 C. Website posting. Notices of public hearings for development applications shall be posted on the City  
330 of Cape Coral website but failure to post a case on the City website shall not constitute a violation of  
331 City noticing requirements. In addition, information about public notice and public hearings may be  
332 posted by the City on social media outlets.  
333
- 334 D. Publication. Publication of advertisements for public hearings concerning comprehensive plan  
335 amendments shall meet the requirements of Chapter 163, Florida Statutes. Publications for public  
336 hearings concerning zoning amendments shall meet the requirements of Chapter 166 Florida  
337 Statutes.  
338
- 339 E. Posting. The application site shall be posted with a notice of the public hearing on a sign provided by  
340 the Community Development Department at least ten (10) calendar days in advance of any public  
341 hearing. The number and placement of public notice signs should be determined by the Department.  
342 The signs shall be removed by the City after a final decision. The failure to remove posted notice after  
343 a final decision shall not be deemed a failure to comply with this requirement or be grounds to  
344 challenge the validity of any final decision on the application(s).  
345
- 346 F. Mailed notice. Notice of a public hearing on a proposed development application(s) shall be mailed  
347 to all owners of real property within five hundred (500) feet of the periphery of the site in question,  
348 whose names and addresses are known by reference to the latest published ad valorem tax records  
349 of the Lee County Property Appraiser.  
350
- 351 1. Individually owned multi-family units. When real property consists of individually owned multi-  
352 family units, notice shall be given to the homeowner’s association, if applicable, all individual unit  
353 owners, and all real property owners within five hundred (500) feet. If any area adjacent to the  
354 development site is owned by the applicant or any partner listed on the application, the five  
355 hundred (500) foot notification boundary shall be extended from these parcels. All property  
356 owner associations in the notice area shall be notified.  
357
- 358 2. Notice to other jurisdictions. If there are unincorporated lands within 500 feet of the property,  
359 Lee County shall also be notified.  
360
- 361 3. Applicant responsibility for notice. When the notice radius specified in this section includes  
362 property outside of the City limits, the applicant is responsible for obtaining the list of property  
363 owners to be notified from the Lee or Charlotte County Property Appraisers and providing this list  
364 to the department in sufficient time to comply with noticing requirements. The applicant is  
365 responsible for any errors or omissions in the list provided.  
366
- 367 4. Content. Generally, all public hearing notices shall contain the following information:  
368
- 369 a. The scheduled date, time, and location of the hearing;  
370
- 371 b. A general description of the nature of the matter to be addressed, written in layman's terms;  
372
- 373 c. The address of the property;  
374

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- 375 d. That persons may appear and be heard;
- 376
- 377 e. That written comments filed with the department will be entered into the record;
- 378
- 379 f. That the hearing may be continued from time to time as necessary;
- 380
- 381 g. A telephone number and contact for more information;
- 382
- 383 h. The case number or title of the ordinance under consideration, if applicable; and
- 384
- 385 i. Such additional information as may be required pursuant to this code or applicable law for
- 386 specific types of development approval.
- 387
- 388 5. Timing of mailed notice. Notice shall be mailed a minimum ten (10) calendar days prior to the
- 389 date set for the public hearing by first class mail. A copy of the notice shall be available for public
- 390 inspection during regular business hours at the Community Development Department. If the
- 391 application includes a simultaneous future land use map amendment and a rezone, the notice for
- 392 the rezone may be included in the notice required for the land use amendment.
- 393
- 394 G. Electronic Notice. The Community Development Department may, as a courtesy, send electronic
- 395 notice to any persons or organizations in the City, or to any governmental, public, or quasi-public
- 396 organization regarding any matter that may affect the interests of that person or organization, or on
- 397 any matter on which any such person or organization has requested notice. The failure of the
- 398 Department to send such notice or the failure of any resident or property owner to receive such
- 399 courtesy notice shall not affect the validity of the public notice requirements.
- 400
- 401 H. Exceptions to Mailing and Posting. The mailing and posting notice requirements shall not apply to a
- 402 land use map amendment initiated by the Council, in response to a judicial order or compliance
- 403 agreement as described by Section 163.3184(6) and (7), Florida Statutes.
- 404
- 405 I. Continued or Rescheduled Meetings. Notice of subsequent hearings shall be mailed and published in
- 406 accordance with this section for:
- 407
- 408 1. Any hearing for which the Hearing Examiner, Community Development Director, or City Attorney
- 409 determines new notice should be provided, because of the time elapsed from the original notice,
- 410 to correct any defect, or apprise affected parties of significant changes to the application as
- 411 originally noticed;
- 412
- 413 2. Any hearing continued to an unspecified date, time, and place; or
- 414
- 415 3. Any hearing where such new notice is required pursuant to applicable law or this Code.
- 416

**Section 3.1.11 Public Hearing Procedures.**

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- 418
- 419 A. General. All public hearings shall be open to the public. Members of the public shall be permitted to
- 420 testify at all public hearings. A copy of the hearing procedures shall be made available at the hearing.

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421 The applicant may withdraw an application by requesting such withdrawal in writing prior to the  
422 commencement of the hearing.

423  
424 B. Record of hearings. The City Clerk shall attend all hearings, and the City shall record (audio, video, or  
425 both) all hearings. The City shall retain the original recording(s) in accordance with the laws of the  
426 State of Florida, and, if requested, provide a duplicate of the recording(s).

427  
428 C. Official file. All written communication received by the decision-making body, the Hearing Examiner,  
429 or staff concerning an application, the staff report on the application, any petitions or other  
430 submissions from the public, and all other documents pertaining to the application shall be filed in  
431 the official file for the application, which shall be maintained by staff. The Comprehensive Plan, the  
432 City Code of Ordinances, and the Land Development Code shall be deemed to be part of the official  
433 file. The official file shall be available for inspection during normal business hours.

434  
435 D. Order of public hearings. The hearing shall, to the extent possible, be conducted as follows:

436  
437 1. The Clerk shall read into the record the ordinance or resolution title and number, or the  
438 applicant's name, file number, and the subject matter to be decided if there is no ordinance or  
439 resolution.

440  
441 2. For quasi-judicial hearings, the applicant, staff, and all participants requesting to speak or present  
442 evidence or both at the hearing shall be collectively sworn by an oath or affirmation by the Clerk.

443  
444 3. The applicant may waive the applicant's right to an evidentiary hearing if applicant agrees with  
445 the staff recommendation and no one from the audience wishes to speak for or against the  
446 application. The decision-making body may then vote on the item or the Hearing Examiner shall  
447 rule on the matter or make a recommendation, based upon the staff report and any other  
448 materials contained within the official file. Regardless of a waiver by the applicant, a public  
449 hearing shall be held for all decisions requiring an ordinance or resolution.

450  
451 4. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the  
452 Hearing Examiner or Mayor determines to proceed in a different order, taking proper  
453 consideration of fairness and due process:

454  
455 a. The applicant shall make the applicant's presentation, including offering any documentary  
456 evidence, and introduce any witnesses as applicant desires. The applicant shall present the  
457 applicant's entire case in 30 minutes.

458  
459 b. Staff shall have the responsibility of presenting the case on behalf of the city. The staff  
460 report on the application shall be made available by staff to the applicant and the decision-  
461 making body or the Hearing Examiner no later than five business days prior to the quasi-  
462 judicial hearing on the application. Staff shall present a brief synopsis of the application;  
463 introduce any appropriate additional exhibits from the official file that have not already been  
464 transmitted to the Hearing Examiner or City Council with the agenda materials, summarize  
465 issues; and make a recommendation on the application. Staff shall also introduce any  
466 witnesses that it wishes to provide testimony at the hearing. Staff shall present its entire case

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- 467 in 30 minutes.  
468
- 469 c. Public comment. Participants in opposition to or support of the application shall make their  
470 presentation in any order as determined by the Chair, Hearing Examiner, or Mayor. Each  
471 participant shall present their argument in five minutes.  
472
- 473 d. For hearings on quasi-judicial matters only, the applicant may cross-examine any witness and  
474 respond to any testimony presented.  
475
- 476 e. For hearings on quasi-judicial matters only, staff may cross-examine any witness and respond  
477 to any testimony presented.  
478
- 479 f. The Chair, Hearing Examiner, or Mayor may choose to allow participants to respond to any  
480 testimony if the Chair, Hearing Examiner, or Mayor deems the response to be necessary to  
481 ensure fairness and due process.  
482
- 483 g. Members of the Planning and Zoning Commission, Hearing Examiner, or City Council may ask  
484 any questions of the staff, applicant, and participants.  
485
- 486 h. Final argument may be made by the applicant, related solely to the evidence in the record.  
487
- 488 i. Final argument may be made by the staff, related solely to the evidence in the record.  
489
- 490 j. For good cause shown, the Planning and Zoning Commission, Hearing Examiner, or City  
491 Council may grant additional time to any of the above time limitations.  
492
- 493 k. The Chair, Hearing Examiner, or Mayor shall keep order, and without requiring an objection,  
494 may direct a party conducting the direct examination or the cross-examination to stop a  
495 particular line of questioning that, in the sole judgment of the Chair, Hearing Examiner, or  
496 Mayor merely harasses, intimidates, or embarrasses the individual testifying or being cross-  
497 examined; is unduly repetitious or is not relevant; or is beyond the scope of the application  
498 or, in the case of cross-examination, is beyond the scope of the testimony by the individual  
499 being cross-examined. If the party conducting the direct examination or cross-examination  
500 continues to violate directions from the Chair, Hearing Examiner, or Mayor to end a line of  
501 questioning deemed improper as set forth herein, the Chair, Hearing Examiner, or Mayor may  
502 terminate the direct examination or the cross-examination.  
503
- 504 l. The Planning and Zoning Commission, Hearing Examiner, or City Council may, on its own  
505 motion or at the request of any person, continue the hearing to a fixed date, time, and place.  
506 The applicant shall have the right to one continuance; however, all subsequent continuances  
507 shall be granted at the sole discretion of the Commission, Hearing Examiner, or City Council.  
508
- 509 E. Decisions. For all quasi-judicial hearings in which a decision is made regarding an application for any  
510 development permit, the decision to approve or deny shall be based on whether the application  
511 meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the  
512 Land Development Code, based on the entirety of the record before the Hearing Examiner or City

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513 Council. The Hearing Examiner or Council decisions must be based upon competent substantial  
514 evidence in the record.

515

516 F. Rules of Evidence for quasi-judicial hearings.

517

518 1. The decision-making body or the Hearing Examiner shall not be bound by the strict rules of  
519 evidence and shall not be limited only to consideration of evidence which would be admissible in  
520 a court of law. The decision-making body or the Hearing Examiner shall have the ability, but not  
521 the duty, to conduct site visits in their sole discretion and to consider any evidence so adduced in  
522 their deliberations.

523

524 2. The Chair or Hearing Examiner may exclude evidence or testimony that is not relevant, material,  
525 or competent or testimony which is unduly repetitious or defamatory.

526

527 3. The Chair, with the advice of the City Attorney, will determine the relevancy of evidence. In  
528 matters decided by the Hearing Examiner, the Hearing Examiner, without the advice of the City  
529 Attorney, will determine the relevancy of evidence.

530

531 4. Matters relating to an application's consistency with the Comprehensive Plan, the City Code of  
532 Ordinances, or the Land Development Code will be presumed to be relevant and material.

533

534 5. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence,  
535 but it shall not be sufficient by itself to support a finding unless it would be admissible over  
536 objection in court.

537

538 6. Documentary evidence may be presented in the form of a copy of the original, if available. A copy  
539 shall be made available to the decision-making body or the Hearing Examiner and to the staff no  
540 later than three business days prior to the hearing on the application. Upon request, the applicant  
541 and staff shall be given an opportunity to compare the copy with the original. Oversized exhibits  
542 shall be copied and reduced for convenient record storage.

543

544 7. Only the applicant, an authorized representative of the applicant, staff, and the decision-making  
545 body or the Hearing Examiner shall be entitled to conduct cross-examination when testimony is  
546 given or documents are made part of the record.

547

548 8. The City Attorney shall represent the decision-making body and advise it as to procedures to be  
549 followed.

550

551 9. The Planning and Zoning Commission, Hearing Examiner, or City Council shall take judicial notice  
552 of all state and local laws, ordinances, and regulations and may take judicial notice of such other  
553 matters as are generally recognized by the courts of the State of Florida.

554

555 10. Supplementing the record after the quasi-judicial hearing is prohibited, unless specifically  
556 authorized by an affirmative vote of the decision-making body, or authorized by the Hearing  
557 Examiner, under the following conditions:

558

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- 559 a. The supplementation occurs after a quasi-judicial hearing is continued but prior to final action  
560 being taken on the application or appeal.  
561
- 562 b. If a question is raised by the Planning and Zoning Commission, Hearing Examiner, or City  
563 Council at the hearing which cannot be answered at the hearing, the party to whom the  
564 question is directed will submit the requested information in writing to the City Clerk and the  
565 decision-making body or Hearing Examiner after the quasi-judicial hearing, with copies to the  
566 other parties, provided the hearing has been continued or another hearing has been  
567 scheduled for a future date and no final action has been taken by the decision-making body  
568 or Hearing Examiner. The information requested will be presented to the decision-making  
569 body or the Hearing Examiner at least two business days prior to the time of the continued  
570 hearing.  
571
- 572 c. All parties and participants shall have the same right with respect to the additional  
573 information as they had for evidence presented at the hearing.  
574
- 575 G. Final decision. The City Council or the Hearing Examiner shall reach a written decision without  
576 unreasonable or unnecessary delay. The Hearing Examiner shall provide a copy of the decision to the  
577 City Clerk for transmission to the applicant, if the applicant is not the City, to the Director of the  
578 Department of Community Development, and the City Attorney.  
579
- 580 H. The Record. All evidence admitted into the record at the hearing, the official file, and the adopted  
581 development order, ordinance, or resolution of the City Council or the written decision of the Hearing  
582 Examiner shall be maintained by the City Clerk or the Department of Community Development.  
583
- 584 I. Adjournment. The Chairperson, upon a vote of the majority present, or Hearing Examiner, as  
585 applicable, may adjourn a hearing to a date certain without the necessity of additional notice.  
586 Adjournment to an uncertain date shall require notice as required for the original hearing and by the  
587 Land Development Code.  
588
- 589 J. Deferrals. If a hearing is concluded, but action is deferred until a future date, formal notice shall not  
590 be required prior to action being taken.  
591
- 592 K. Joint hearings. Where deemed necessary, joint hearings may be conducted after proper public notice.  
593 In such instances, public notice need only be given by one public body, which shall be the City Council  
594 in instances where it is one of the hearing bodies.  
595
- 596 L. Regularly scheduled public hearing dates. The Hearing Examiner or the City Council may establish  
597 regular dates for public hearings on zoning amendments. Such dates, if established by the Hearing  
598 Examiner, or the City Council, shall not prevent the Hearing Examiner or City Council from scheduling  
599 additional public hearings whenever such public hearings are deemed necessary.  
600
- 601 M. Reading of ordinances. Except for ordinances initiated by the City Council which rezone a parcel or  
602 parcels of land involving ten or more contiguous acres, or change permitted, special exception, or  
603 prohibited use categories in zoning districts, all ordinances shall be read, either by title or in full, on  
604 two separate days at a duly noticed public hearing of the City Council.

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605  
606 N. The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall  
607 identify the hearing as quasi-judicial and indicate where copies of the procedures that apply may be  
608 obtained.  
609

610 **Section 3.1.12. Decisions under this Article.**

611  
612 A. When this Article authorizes the Community Development Director, Hearing Examiner, or City Council  
613 to make decisions under this Chapter, that decision shall be made pursuant to the specific criteria  
614 applicable to the application in Chapter 2 (Specific Review Procedures). If Chapter 2 does not include  
615 specific criteria for that type of decision, the Community Development Director or Department,  
616 Hearing Examiner, Commission, or Council shall make the decision based on whether the application  
617 complies with this Article and any regulations authorized by this Code, and will protect the public  
618 health, safety, and welfare.  
619  
620 B. Unless otherwise indicated in a specific provision of this Article, the Community Development  
621 Director, Hearing Examiner, or City Council may approve the application, deny the application, or  
622 approve the application subject to conditions as stated in Section 3.1.13, below.  
623  
624 C. Unless otherwise stated in this Article, or unless a different condition is attached to a permit or  
625 approval, permits and approvals granted under this Article are not affected by changes in ownership  
626 or tenancy of the property.  
627

628 **Section 3.1.13. Conditions on Approvals.**

629  
630 A. The Community Development Director, Hearing Examiner, or City Council may attach conditions to  
631 any quasi-judicial permit or approval under this Chapter, provided the condition is required to bring  
632 the development proposed in the application into compliance with the requirements of the  
633 Comprehensive Plan or the LDC.  
634  
635 B. The Community Development Director, Hearing Examiner, or City Council may also attach conditions  
636 to any quasi-judicial development permit or approval under this Code, provided the condition is  
637 necessary to minimize or ameliorate potential adverse impacts of the development proposal. Such  
638 conditions shall be reasonably related to the actual or potential impact(s) of the specific use, activity,  
639 or structure in question.  
640

641 **Section 3.1.14. Appeals.**

642  
643 A. Review by the Director. Applicants for administrative permits and approvals may request a formal  
644 review by the Community Development Director of staff decisions, within thirty (30) calendar days of  
645 the date the administrative decision was made. The request for review shall be accompanied by any  
646 relevant documents related to the review as determined by the Planning Manager or Development  
647 Services Manager. The respective manager shall review the relevant standards and present a written  
648 finding to the Community Development Director. The request for review shall be considered by the  
649 Community Development Director within 10 days of submittal of a complete request. The Community  
650 Development Director may consult with the City Attorney's office on the matter.

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651  
652 The Community Development Director shall provide a written determination to affirm the staff  
653 decision, grant the relief requested in the review, with or without conditions, or respond to the  
654 applicant or respective manager for further information, documentation, or proceedings. The written  
655 determination by the Director shall be the final administrative decision.

656  
657 B. Appeals of Community Development Director decisions (Administrative Appeal). An applicant desiring  
658 to appeal a decision of the Community Development Director, shall, within ten (10) calendar days  
659 from the date of such decision, file a written Notice of Appeal with the Department of Community  
660 Development. The appeal shall then be heard by the Hearing Examiner at a regularly scheduled  
661 meeting, provided there is sufficient time to review the appeal and provide the required public notice.  
662 A staff or Director’s recommendation is not a decision and is not appealable.

663  
664 C. Appeals from decisions of the Hearing Examiner on Administrative Appeals. Any aggrieved party by a  
665 decision of the Hearing Examiner on a administrative appeal may file an appeal to the City Council  
666 within 30 days by filing a written Notice of Appeal with the City Clerk. All such appeals shall be based  
667 on the record.

668  
669 D. Appeals from decisions of the Hearing Examiner on Quasi-judicial matters. Any aggrieved party by a  
670 decision of the Hearing Examiner on a quasi-judicial matter may file an appeal to the City Council  
671 within 30 days by filing a written Notice of Appeal with the City Clerk. All such appeals shall be based  
672 on the record.

673  
674 E. Appeals from decisions of the City Council. An action to review any decision of the City Council under  
675 these regulations may be taken by any person or persons aggrieved by such decision by presenting to  
676 the Circuit Court a petition for issuance of a Writ of Certiorari, duly certified, setting forth that such  
677 decision is illegal, in whole or in part, certifying the grounds of the illegality, provided same is done in  
678 the manner and within the time provided by Florida Rules of Appellate Procedure.

679  
680 F. Stay of proceedings. An appeal shall stay all proceedings in the matter appealed from until the final  
681 disposition of the appeal by the City Council or Hearing Examiner. The pendency of an appeal shall toll  
682 all time periods applicable to the decision which is subject to appeal until final disposition of the  
683 appeal by the City Council or Hearing Examiner with regard to the appeal.

684  
685 G. Record. The record to be considered in the appeal shall include any application, exhibits, appeal  
686 papers, written objections, waivers, or consents considered by staff, the Hearing Examiner, or City  
687 Council, as well as transcripts and recordings taken at a public hearing, the Hearing Examiner or City  
688 Council minutes, and resolutions or ordinances showing the decision or action being appealed. The  
689 record shall also include the record made as a result of any prior applications for development  
690 approval on the same property. The City Clerk shall identify all exhibits used at the hearing. All exhibits  
691 so identified or introduced shall be a part of the City record.

**CHAPTER 2. GENERAL REVIEW PROCEDURES**

**Section 3.2.1. All Permits and Approvals.**



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- 697 A. General Requirements for all permit applications.  
698  
699 1. Applications for permits or approvals shall be submitted with forms supplied by the Department  
700 and any required supporting documentation, plans, or materials required by this Code or specified  
701 in the application form(s).  
702  
703 2. Applications shall include any required fee(s) as established by the City Council.  
704  
705 3. Incomplete applications will not be accepted.  
706  
707 4. Before any use of land, building, or structure is established or any established use of land, building,  
708 or structure is changed to a different use than that identified in the previously-issued certificate of  
709 use under the prior LUDR, a certificate of zoning compliance under this code, or a business tax receipt  
710 for the property, the person seeking to establish the use must obtain a certificate of zoning  
711 compliance. Failure to secure a certificate of zoning compliance before establishing a use of land,  
712 building, or structure or before changing the use of the property from the use recognized in a duly-  
713 issued certificate of use under the prior LUDR or a certificate of zoning compliance under this Code  
714 to another use, shall be a violation of this Code, and punishable as such.  
715  
716 B. Withdrawal of applications. An applicant may withdraw an application at any time by submitting a  
717 letter of request to DCD or providing testimony of the requested withdrawal in a public hearing.  
718  
719 C. Effective date. All permits shall take effect on the day the permit is issued or an approval granted.  
720  
721 D. Reliance on permits during pendency of appeals. Any action(s) taken by a permittee during the  
722 pendency of an administrative or quasi-judicial appeal shall be at the sole risk of the permittee.  
723
- 724 **CHAPTER 3. SPECIFIC REVIEW PROCEDURES - ADMINISTRATIVE PERMITS AND APPROVALS**
- 725
- 726 **Section 3.3.1. Zoning Verification Letter or Flood Verification Letter.**
- 727
- 728 A. Purpose and Intent.  
729  
730 1. Zoning Verification Letter. To provide an official determination of the zoning of specific property  
731  
732 2. Flood Zone Verification Letter. To provide an official determination of the FEMA Flood zone, as  
733 shown on the Flood Insurance Rate Map (FIRM) for specific property.  
734  
735 B. Review Criteria.  
736  
737 1. The Department will review the applicable City records, maps, and any supporting information  
738 and issue a Zoning or Flood Zone verification letter.  
739  
740 2. Verification letters are valid for the date upon which they are issued and may be subject to  
741 change.  
742

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743 **Section 3.3.2. Certificate of Zoning Compliance.**  
744

745 A. Purpose and Intent.  
746

- 747 1. To determine whether a proposed activity or use is permitted in the zoning district of the property  
748 in question, prior to application for a building or site development permit.  
749
- 750 2. To determine whether all structures and site development requirements (e.g., building setbacks,  
751 parking requirements, etc.) are in compliance with the requirements of this Code prior to  
752 application for or review of a building or site development permit.  
753
- 754 3. Miscellaneous certificates of zoning compliance. The Community Development Director is authorized  
755 to approve, approve with conditions, or deny a certificate of zoning compliance for the following  
756 buildings, structures, improvements and installations:  
757
- 758 a. Above ground pools that contain water over 24 inches deep;
  - 759 b. Agricultural or farm buildings and non-habitable structures on A, Agriculture zoned sites;
  - 760 c. Canopy carports, canopies, and other fabric covered framework on residential properties;
  - 761
  - 762 d. Chickee huts constructed by Miccosukee or Seminole Indians;
  - 763
  - 764 e. Chain-link fences, picket fences, ornamental iron fences, and other fences installed on residential  
765 property that are deemed non-wind resistant; provided, however, any pool safety barrier fence  
766 and any fence with concrete columns shall require a building permit;
  - 767
  - 768 f. Decorative reflective pools and fishponds that contain water less than 24 inches deep, that contain  
769 less than 250 square feet in area, and contain less than 2,250 gallons in volume;
  - 770
  - 771 g. Decorative garden-type water fountains and other similar hardscape features;
  - 772
  - 773 h. Portable mini-storage unit, subject to the conditions and limitations of contained in Article 5;
  - 774
  - 775 i. Donation bins, recycling bins, mobile medical, and professional units in accordance with Article 5;  
776 and
  - 777
  - 778 j. Anchoring, mooring, docking, or storage of a houseboat.  
779

780  
781  
782 C. Review Criteria.  
783

- 784 1. To determine whether the proposed use is a permitted use, a conditional use, or a special  
785 exception under this code.  
786
- 787 2. Submittals will be reviewed for compliance with applicable code requirements (e.g., parking,  
788 setbacks, conditional use criteria, conditions of approval, etc.)

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- D. Specific Requirements for Certificates of Zoning Compliance.
  - 1. Posting required. The original certificate of zoning compliance shall be posted in a conspicuous location accessible to the public on the business premises at all times.
  - 2. Revocation. The Community Development Director shall notify the holder of any certificate of zoning compliance, in writing, of the City’s intent to revoke a certificate of zoning compliance for any of the following reasons:
    - a. The City has reasonable grounds to believe that the premises are being used in a manner that is inconsistent with, or contrary to, the provisions of the City Code or any other applicable code or statute.
    - b. In the event of a conviction of any owner, operator, manager, supervisor, or any employee acting at the direction or with the knowledge of the owner, operator, manager, or supervisor, by a court of competent jurisdiction, for the violation of any criminal statute committed in conjunction with the business operation.
    - c. It has been ascertained that the holder of the certificate of zoning compliance falsified information on the application for the certificate of zoning compliance.
    - d. The holder of the certificate of zoning compliance, or the designated manager, operator, or supervisor, refuses to permit an authorized law enforcement officer or code enforcement officer to inspect the premises during normal business hours for the purpose of investigating a complaint which has been filed against the business operation.
- E. Notice of revocation. When a notice of revocation is issued it shall state the following:

THE HOLDER OF THE CERTIFICATE OF ZONING COMPLIANCE SHALL HAVE TEN (10) DAYS FROM THE DATE OF THIS NOTIFICATION TO EITHER BRING THE PREMISES INTO COMPLIANCE OR TO REQUEST A HEARING, IN WRITING, BEFORE THE SPECIAL MAGISTRATE.

IF THE VIOLATION IS NOT CURED OR IF NO WRITTEN REQUEST FOR A HEARING IS RECEIVED BY THE CITY OF CAPE CORAL WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTIFICATION BY THE CERTIFICATE HOLDER, THE CERTIFICATE OF ZONING COMPLIANCE SHALL BE CONSIDERED REVOKED.
- F. Stay pending hearing. If the holder of the certificate of zoning compliance requests a hearing before the City Council, the certificate of zoning compliance shall remain in effect during the pendency of the action before the City Council.

**Section 3.3.3. Administrative Interpretations and Similar Use Determinations.**

- A. Purpose and Intent.
  - 1. To determine whether a proposed use, activity, or site design complies with comprehensive plan.

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- 835
- 836 2. To interpret specific comprehensive plan policies.
- 837
- 838 3. To interpret whether a proposed use, activity, or site “design” complies with the LDC.
- 839
- 840 4. To determine how specific code requirements may apply to a site or a development proposal
- 841 when application of such requirements is not explicitly set forth in the LDC.
- 842
- 843 5. To interpret the application of conditions of approval.
- 844
- 845 6. To determine whether a proposed use that is not otherwise classified as a permitted, permitted
- 846 with special regulations, conditional, or special exception use in a zoning district or is not
- 847 currently defined in this code may classified as a similar use.
- 848
- 849 B. Review Criteria.
- 850
- 851 1. To determine whether a proposed use activity or site design complies with specific provisions of
- 852 the comprehensive plan and is in keeping with the spirit and intent of the comprehensive plan.
- 853
- 854 2. Consistency with LDC.
- 855
- 856 3. Whether the proposed use or activity complies with DCD policies and procedures.
- 857
- 858 C. Similar Use Determinations.
- 859
- 860 1. Interpretation of Similar Uses. Notwithstanding the requirements of Section 4.4.D., the Director
- 861 may determine that a specific proposed use may be allowed as a permitted, permitted with
- 862 specific regulations, conditional, or special exception use in a specific zoning district(s).
- 863
- 864 2. Similar Use Determination Process.
- 865
- 866 a. A similar use determination may be issued if all of the following findings can be made:
- 867
- 868 i. The characteristics and activities associated with the proposed use are similar to those
- 869 of one or more of the allowed uses listed in the zoning district and will not involve a
- 870 greater level of activity, population density, intensity, traffic generation, parking, dust,
- 871 odor, noise, or similar impacts than the uses listed in the zoning district;
- 872 ii. The proposed use will meet the purpose and intent of the zoning district that applies to
- 873 the location of the use;
- 874 iii. The proposed use is consistent with the goals, objectives, and policies of the
- 875 Comprehensive Plan; and
- 876 iv. The proposed use is not listed a permitted, permitted with specific regulations,
- 877 conditional, or special exception use in another zoning district.
- 878

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- 879           b. If a similar use determination is approved, the Director shall establish whether the use shall  
880           be a permitted use, permitted with specific regulations, a conditional use, or special  
881           exception use.  
882  
883           c. Upon approval of a similar use determination, the department shall prepare a text  
884           amendment to this ordinance to include the use in the appropriate district, along with any  
885           appropriate use regulations.  
886

**Section 3.3.4. Lots Splits and Lot Combines.**

- 887  
888  
889   A. Purpose and Intent.  
890  
891       1. To provide standards for the split and combination of lots and tax parcels along existing platted  
892       lot or parcel lines.  
893  
894       2. To provide standards for the split and combination of lots or tax parcels that do not require a  
895       replat.  
896  
897       3. To provide for a one time split of property when the lot split or combine does not require approval  
898       as a new subdivision plat or replat.  
899  
900       4. This section shall not apply to unrecorded subdivisions.  
901  
902   B. General Requirements  
903  
904       1. All divisions of land in the City shall occur only as a new subdivision plat, a replat, or a lot split.  
905       The requirements for subdivisions and replats are set forth in Article 10 of this Code. A lot split  
906       that does not meet the requirements of this chapter is deemed a subdivision or a replat and shall  
907       be defined and processed as set forth in Article 10.  
908  
909       2. No lot split shall be recognized by the City, no lot that is part of a lot split shall be sold, and no  
910       building permit shall be issued unless the lot split has been approved by the City prior to recording  
911       in accordance with the requirements of this Article.  
912  
913       3. Lot combinations do not vacate platted property lines or public utility easements. See Section  
914       3.4.5 for Vacations.  
915  
916   C. Review Criteria and Standards  
917  
918       1. Whether the lot split or combine creates nonconforming lots and structures.  
919  
920       2. The lot split or combine shall not cause marine improvements to become nonconforming for  
921       setbacks or any other standards regarding such structures.  
922  
923       3. Ensure that the lot split or combine does not create split zoning on a parcel.  
924

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- 925 4. The newly configured lots parcels must have at least twenty-five feet (25') of frontage on an  
926 existing right-of-way, private road, canal, lake, basin, or river. The minimum lot width of the  
927 zoning district must be met when measured at the front or rear setback, where applicable.  
928
- 929 5. The newly created parcels shall not result in private utility lines crossing property lines.  
930
- 931 6. A survey sketch prepared by a professional surveyor and mapper (PSM) indicating the legal  
932 description of the parent parcel, boundaries, dimensions, easements, restrictions or agreements  
933 affecting the property, rights-of-way, utilities, location of existing buildings, and other pertinent  
934 information including wetland boundaries and location of specimen and historic trees. The survey  
935 shall be required to be signed, sealed, dated, and certified to the City.  
936
- 937 7. Approval and recording. The Community Development Department shall review the proposed lot  
938 split for compliance with the criteria listed in this subsection and Article 10, Subdivisions. Once  
939 approved the applicant may proceed with the lot split and record the lot split with the Lee County  
940 Property Appraiser. Approval shall expire within one (1) year of issuance if not recorded.  
941

**Section 3.3.5. Conditional Uses.**

- 942
- 943 A. Purpose and Intent.
- 944
- 945 1. To provide standards and criteria for review and approval of specified conditional uses for a  
946 specific site.  
947
- 948 2. To provide reasonable limitations or special conditions for conditional uses, in order to address,  
949 minimize, or ameliorate potential impacts of the use on surrounding property and for the  
950 protection of the public health, safety, and welfare.  
951
- 952
- 953 B. General Requirements. Proposed conditional uses must meet the following requirements:  
954
- 955 1. The conditional use standards identified in Article 5 for the specific zoning district use and  
956 conditional use in question.  
957
- 958 C. Review Criteria. A Conditional Use may be approved by the Director based on criteria identified in  
959 Article 5. These criteria are specific to each conditional use.  
960

**Section 3.3.6. Administrative Deviations.**

- 961
- 962
- 963 A. Purpose and Intent. To grant relief from strict application of LDC requirements to allow minor  
964 deviations.  
965
- 966 B. Scope. Administrative Deviations may be granted for the following:  
967
- 968 1. Setback requirements where the setback is not decreased by more than 10% in the applicable  
969 zoning district and the encroachment does not extend into an easement, right-of-way, or is an  
970 encroachment over the property line for a zero-lot line site.

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- 971  
972 2. Reduction in the overall required parking by 5%.  
973  
974 3. Landscaping or buffers. Up to a 10 % reduction in the width of required buffers or the required  
975 number of trees and shrubs.  
976  
977 4. Preservation of Vegetation. A deviation from the following regulations to accommodate the  
978 preservation of existing native specimen tree(s):  
979  
980 a. Up to five (5) percent of a required setback; or  
981  
982 b. Up to five (5) percent of the required parking spaces.  
983  
984 5. Minor sign deviations as set forth in Article 6 of this code.  
985  
986 6. Maximum lot coverage of impervious surfaces. Up to a 10% increase in the maximum  
987 percentage of lot coverage by impervious surfaces, provided the applicant submits calculations  
988 by a Florida Registered Professional Engineer showing that the conveyance system for the  
989 contributing drainage basin can accommodate the additional stormwater run-off from greater  
990 than 60% impervious. A property owner may also add retention storage on-site to compensate  
991 for the additional runoff in situations where they propose to exceed 60% impervious surfaces.  
992 All such calculations and drainage plans must be approved by the City Public Works Department  
993 prior to issuance of any building permits.  
994  
995 7. Non-residential design standards in all non-residential and mixed use zoning districts, except for  
996 the Neighborhood Commercial district.  
997  
998 C. Review Criteria. An Administrative Deviation may be approved based on the following criteria:  
999  
1000 1. The proposed deviation will not result in development that is inconsistent with the intended  
1001 character of the applicable zoning district.  
1002  
1003 2. The normally required code standard(s) is determined to significantly inhibit development of the  
1004 site.  
1005  
1006 3. The deviation will not impede the ability of the project or site to adequately provide for service  
1007 areas and other development features for the project.  
1008  
1009 4. Access for service and emergency vehicles will not be impeded.  
1010  
1011 5. The proposed deviations will result in a building and site design of equal or superior quality.  
1012  
1013 D. Effective date of approval. A deviation shall take effect upon approval.  
1014  
1015 E. If an Administrative Deviation is not approved, the applicant may subsequently apply for a Variance.  
1016

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**Section 3.3.7. Site Development and Subdivision Construction Plans.**

- 1017  
1018  
1019 A. Applicability. The procedures contained in this Section are applicable to all projects involving land  
1020 development, including Site Development Plans (SDP) for individual sites, Subdivision Construction  
1021 Plans (SCP), and sites without structures such as parking lots. Also included are projects which involve  
1022 the construction of any facility, the expansion of a site through acquisition or lease, alteration or  
1023 conversion of an existing site or structures, or the change of use of a site or structure where the site or  
1024 structure does not meet the current standards or criteria of these regulations. The provisions of this  
1025 Section, where appropriate, are to be applied to on-site and off-site development activity. No land  
1026 development activity (including land clearing, excavation, or placement of fill) shall commence without  
1027 obtaining the appropriate approvals and permits required by this code.  
1028  
1029 B. Exceptions. The requirements of this section do not apply to:  
1030  
1031 1. Single-family dwellings; or  
1032  
1033 2. Duplex dwellings on existing platted lots or parcels.  
1034  
1035 C. Plan Preparation. A professional engineer registered in the state of Florida shall design all required  
1036 improvements such as streets, drainage systems, water and sewage facilities, etc. All plans, drawings,  
1037 reports, and calculations shall be prepared, signed, and sealed by the appropriate licensed  
1038 professional, such as engineers, architects, landscape architects, professional surveyors and mappers,  
1039 or attorneys, registered in the state of Florida. Other specialized consultants, such as environmental  
1040 consultants, structural engineers, archaeologists, etc., may be required to assist in the preparation of  
1041 the plans, drawings, reports, or other documents required for application submittals.  
1042  
1043 D. Review Process. The application review and approval process follows the administrative review  
1044 procedure as established in Sections 3.1.4 through 3.1.8 of this Article.  
1045  
1046 E. Criteria. The Development Services Manager may approve, approve with conditions, or deny the  
1047 application, after consideration and review of the following:  
1048  
1049 1. The development, as proposed, conforms to the comprehensive plan and is consistent with the  
1050 recommendations of any applicable PUD Master Concept Plan, Preliminary Subdivision Plan, or  
1051 master plans which have been approved or accepted by the City Council;  
1052  
1053 2. The proposed development plans, landscape plans, engineering plans, lighting plans, and other  
1054 required plans conform or will conform with all applicable City codes, the Engineering Design  
1055 Standards, and design standards as set forth in this code;  
1056  
1057 3. The development will efficiently use or not unduly burden drainage, water, sewer, solid waste  
1058 disposal, education, recreation, or other necessary public facilities which have been constructed  
1059 or planned and budgeted for construction in the area;  
1060  
1061 4. The development provides sufficient on-site storm water management improvements to meet  
1062 state water quality and flood protection standards;



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5. The development will efficiently use or not unduly burden or affect public transportation facilities, including mass transit, public streets, roads, and highways which have been planned and budgeted for construction in the area, and if the development is or will be accessible by private or public roads, streets, or highways; and
  6. The development provides necessary and adequate vehicular circulation, pedestrian access, ingress and egress, and is configured in a manner to minimize hazards and impacts on adjacent properties and adjacent rights-of-way.
  7. Projects subject to SDP review comprised of 2 or more parcels with unique strap numbers must be combined into a single parcel with one strap number prior to approval of the Site Development Plan.
  8. Projects subject to SDP review required to provide easements shall provide executed copies of staff approved easements to the City prior to approval of the Site Development Plan. The City may require such easements be accepted by City Council and recorded in the public records prior to approval of the Site Development Plan.
  9. Projects that involve a vacation of plat or release of easement may have review or approval withheld until such vacation or release of easement has been approved or recorded, as determined by the Director.
  10. The City may attach any reasonable conditions, safeguards, limitations, or requirements to the approval of a plan which are found necessary and consistent with the review to effectuate the purpose of this section and to carry out the purpose of this Code and the Comprehensive Plan.
- F. Plats. If the development is a subdivision, a plat meeting the requirements of F.S. Ch. 177, Part 1 and the City of Cape Coral Technical Requirements for Plat Approval, which are hereby incorporated by reference, must be submitted prior to approval of Subdivision Construction Plans. The preliminary plat submittal is not required until after the first round of SCP sufficiency comments, though it may be submitted earlier. Refer to Article 10 Subdivisions.
- G. Plan Approval. Upon successfully addressing departmental comments, the Development Services Manger shall approve the application provided all departmental reviewers have accepted the plans or accepted the plans with conditions. Upon receiving plan approval and meeting any applicable conditions, written consruction authorization shall be provided for the applicant to begin those construction activities specifically covered by the plan approval.
- H. Effect of Plan Approval. Site Development Plans and Subdivision Construction Plans are valid for two years from the date of approval. If written construction authorization to construct the improvements has not been obtained prior to the expiration date, the approval expires and becomes null and void. An applicant may apply for a one-year extension for good cause. Such an extension may be granted for any plan approved after the effective date of this ordinance and two years prior to adoption. The extension request must be filed prior to the expiration date of plan approval. If the project is within a PDP, a PUD, or a phased development, the expiration of plan approvals may differ, as established in

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- 1109 the original approval. See Phased Projects Section 3.3.7.T for addition information regarding expiration  
1110 of permits and plan approvals in phased projects.  
1111
- 1112 I. Engineer’s Opinions of Probable Construction Costs. The City shall review and approve all cost  
1113 opinions prior to acceptance of same.  
1114
- 1115 1. Inspection fees applied to development permits are based on a percentage of the estimated  
1116 construction cost, of Developer installed improvement, to be turned over to the City for ownership  
1117 and maintenance.  
1118
- 1119 2. Opinions of Probable Construction Costs shall be prepared, signed, and sealed by the professional  
1120 engineer of record.  
1121
- 1122 3. Cost opinions shall be a unit quantity itemized estimate of the required improvements including:  
1123 mobilization, material and other testing, survey stake out, and a 10% contingency. Lump sums are  
1124 only to be used for items typically not contracted as unit price items.  
1125
- 1126 4. Subdivisions. Cost opinions for subdivision improvements are to be provided as required in Article  
1127 10 of this code. The cost of improvements required to support a subdivision that will be turned  
1128 over to the City for ownership and maintenance will be utilized in determining inspection fees for  
1129 the subdivision infrastructure permit. Cost opinions for assuring the completion of subdivision  
1130 improvements shall include, in addition to the items listed above, the cost of providing electrical  
1131 service for lift stations, pump stations, or other components that may require electric service to  
1132 function and setting PCP’s. upon completion of construction.  
1133
- 1134 J. Amendments. Plan amendments include changes to projects which impact multiple aspects of the  
1135 development, may affect multiple plans, and will require multiple departmental reviews to evaluate  
1136 the proposed amendment to the plan(s).  
1137
- 1138 1. The amendment process may not be used to substantively modify the scheme of development as  
1139 originally approved under an approved SDP or SCP.  
1140
- 1141 2. Proposed amendments that impact a PDP or PUD approval criteria or conditions must receive  
1142 approval of an amendment to the PDP or PUD prior to receiving SDP or SCP approval.  
1143
- 1144 3. Amendments may apply to projects that are currently under review, projects under construction  
1145 or phased projects that have yet to be completed.  
1146
- 1147 4. The applicant shall submit a letter of intent, the applicable fee, the amended plan(s) and any other  
1148 documentation required to review the proposed amendment.  
1149
- 1150 5. The Development Services Manger shall determine if the proposed changes to the plan can be  
1151 processed as an amendment, qualify for a lesser review process or requires a greater review  
1152 process.  
1153

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- 1154 K. Revisions. Revisions to an approved plan while under construction which do not increase the gross  
1155 square footage of a building or adversely impact compliance with the approved plan, and would not  
1156 alter the required infrastructure and improvements necessary to serve the project, may be approved  
1157 in writing by the Development Services Manager provided such revisions fully conform to all existing  
1158 City regulations. The Development Services Manager will determine if the revision requires an  
1159 approved plan revision or if the revision can be shown on the Record Drawings.  
1160
- 1161 L. Limited Review. A Limited SDP Review for a new improvement or alteration of existing improvements  
1162 to an approved project may be requested. Limited Reviews are for proposed improvements which do  
1163 not substantially affect projects minimum technical requirements of this Code or do not require a  
1164 review by three or more of the following review disciplines: zoning, planning transportation, drainage,  
1165 fire, utilities, and landscaping. Changes that exceed the criteria for the scope of a Limited SDP review  
1166 as specified in this subsection or, as determined by the Development Services Manager, may be  
1167 processed as an amendment or a full SDP review in accordance with this section. Applications  
1168 reviewed under this process will be reviewed for compliance with the following general criteria:  
1169
- 1170 1. The development must have no significant adverse effect upon surrounding land uses;
  - 1171
  - 1172 2. The development must have no significant adverse effect upon public facilities in the area;
  - 1173
  - 1174 3. The development must not adversely affect the environmental quality of the area; and
  - 1175
  - 1176 4. The development proposal must be consistent with the City Comprehensive Plan.
  - 1177
- 1178 M. Site Improvement Permit for minor changes. A permit review of minor changes to an existing  
1179 development which does not require a separate Site Development Plan review. This approval process  
1180 may be utilized when the existing project is in full compliance with an approved plan or the site  
1181 proposed for a minor change meets the following criteria: Any changes to an approved Site  
1182 Development Plan or project will not increase density, parking requirements, water or sewer usage,  
1183 or enlarge a structure for human occupancy or assembly by more than 5% of the existing approved  
1184 plan. For sites lawfully developed without Site Plan review, the 5% exception may be applied if the  
1185 applicant submits all of the information required under SDP review. Determination of the 5% shall be  
1186 cumulative based on the originally approved development.  
1187
- 1188 1. All infrastructure exists on the site to service the site;
  - 1189
  - 1190 2. Engineering is not required for the proposed change;
  - 1191
  - 1192 3. Parking meets all parking code requirements;
  - 1193
  - 1194 4. The improvement does not significantly alter the traffic circulation system or significantly change  
1195 the use of property;
  - 1196
  - 1197 5. The existing project is in compliance with an approved landscape plan or the code in effect at the  
1198 time of the original construction; and  
1199

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1200           6. The existing project meets all storm water management requirements.

1201

1202   **Section 3.3.8 Site Development Permits and Construction Authorization.**

1203

1204   A. The Development Services Manager shall be authorized to approve, approve with conditions, or deny  
1205   a site development permit application and construction authorization for the following improvements  
1206   and installations:

1207

1208           1. Site Development Plan – Construction Authorization;

1209

1210           2. Subdivision Infrastructure – Construction Authorization;

1211

1212           3. Site Improvements;

1213

1214           4. Landscaping;

1215

1216           5. Full Demolition;

1217

1218           6. Parking lot seal coating or re-striping of existing parking lots;

1219

1220           7. Underground Fire Lines;

1221

1222           8. Utility Service Relocations;

1223

1224           9. Land Clearing and Fill;

1225

1226           10. Relocation of Residential Storm Drains;

1227

1228           11. Backflow Prevention; and

1229

1230           12. Spot Dredging.

1231

1232   B. Review. The Development Services Manger shall act upon applications for site development permits  
1233   within 10 calendar days from the date of their submission.

1234

1235   C. Approvals.

1236

1237           1. All approvals will be issued in compliance with the approved plans, if applicable, and may contain  
1238   relevant conditions of the associated plan approval.

1239

1240           2. If the proposed construction or alteration conforms with all applicable provisions of this Code and  
1241   all other applicable law, the Development Services Manager shall issue a development permit or  
1242   construction authorization for such construction or alteration.

1243

1244           3. If the proposed construction or alteration fails to conform, he shall refuse to approve and shall  
1245   deliver written notice to the applicant stating the reason for the refusal.

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- 1246  
1247 D. Effect of Approval, Expiration, and Extensions. A site development permit or construction  
1248 authorization shall expire six months from the date of issuance unless the permitted improvements  
1249 are under construction and have passed a required inspection within the 90 days prior to the  
1250 expiration of the approval. Erosion control inspections will not extend the expiration date. An  
1251 approval may be extended for an additional 90 days. Failure to either pass a required inspection or  
1252 request an extension within the 90-day period provided will result in expiration of the approval.  
1253 Thereafter, a new approval will be required to continue construction.  
1254
- 1255 E. Commencement of Construction. After approval of the plans, the applicant may construct the required  
1256 improvements, subject to obtaining all required permits and written construction authorization. The  
1257 Development Services Manager shall be notified in advance of the date of commencement of such  
1258 construction and the applicant shall schedule a preconstruction meeting where representatives of the  
1259 developer, the City, contractors, and franchise utilities shall discuss the construction of the planned  
1260 improvements. No work shall take place prior to the preconstruction meeting.  
1261
- 1262 F. Inspections and Certification of Compliance. The developer shall retain the engineer of record or another  
1263 professional engineer registered in the state of Florida and other professionals, if needed, to inspect  
1264 the construction progress and certify the construction of all required improvements such as streets,  
1265 parking areas, drainage structures, drainage systems, water and sewer facilities, landscaping and  
1266 buffers, and all other improvements, for substantial compliance with the approved plans.  
1267
- 1268 G. Right to enter. The Development Services Manager or duly authorized representative shall have the  
1269 right to enter upon the property for the purpose of inspecting the quality of materials and  
1270 workmanship and reviewing the construction of required improvements during the progress of such  
1271 construction.  
1272
- 1273 H. Periodic inspection required; correction of deficiencies. The Development Services Manager or his  
1274 designated engineering and utility inspectors shall periodically inspect all phases of construction of  
1275 streets, drainage improvements and utility installations including those improvements which are not  
1276 to be dedicated to the public but are subject to this chapter. The Development Services Manager will  
1277 immediately call to the attention of the developer, or the developer's engineer, any nonconforming  
1278 work or deficiencies in the work. Correction of deficiencies in the work is the responsibility of the  
1279 developer. It is the responsibility of the developer's contractor to schedule the appropriate  
1280 inspections as identified on the approvals or permits.  
1281
- 1282 I. Stop work orders. The Development Services Manager shall have authority to stop work if  
1283 improvements not authorized in the approved plan are being installed or upon failure of the applicant  
1284 or his engineer to coordinate the construction of the required improvements so as to minimize  
1285 activities which may have adverse impacts on surrounding property.  
1286
- 1287 1. Authority. Whenever the Development Services Manger finds any work regulated by this code being  
1288 performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the  
1289 Development Services Manager is authorized to issue a stop work order. In addition, the Development  
1290 Services Manager is authorized to issue a stop work order for the failure to contain or remove  
1291 construction refuse as required in the Code of Ordinances, Chapter 9, Health and Sanitation.

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2. Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, all work on the construction site shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.
  3. Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.
- J. Final inspections by Engineer of Record. Upon completion of all improvements required under the approved plans or phase thereof, an inspection must be performed by the developer's engineer and the landscape architect. Upon finding the development to be completed and in substantial compliance with the approved plans, the engineer and landscape architect must each submit a letter of substantial compliance along with record drawings to the City. No final inspection will be performed by the City until the letter(s) of substantial compliance and record drawings have been accepted. The letter(s) of substantial compliance may include a description of minor changes as shown on the record drawings. Only minor changes which do not substantially affect the technical requirements of the approved plans and this code are to be indicated on the Record Drawings.
1. Letters of substantial compliance shall be digitally signed and sealed in PDF format. Substantial compliance requires that the development, as determined by an on-site inspection by a professional engineer, is completed to all the specifications of the approved plans and that any deviation between the approved plans and actual as-built construction is so inconsequential that, on the basis of accepted engineering practices, it is not significant enough to be shown on the Record Drawings.
  2. The respective professionals shall prepare and submit to the City digitally signed and sealed Record Drawings, in PDF format, of the completed project improvements. Record drawings shall be provided for the complete civil engineering and landscape features of the project.
  3. Record drawings shall be the complete set of approved plans which show strikethrough and markup of the as-built information obtained from direct field observation, survey, or contractor "as-built" drawings. Topographic surveys will not be accepted.
- K. Final Inspections by the City. Upon acceptance of the letter of substantial compliance and record drawings, the Development Services Manager will perform final inspections.
1. If the final inspections reveal that the development or phase is in substantial compliance with the approved plans, a certificate of completion will be issued. A certificate of completion is required prior to the issuance of a certificate of occupancy from the building division for any buildings associated with the project.
  2. If the final inspections reveal that the development or phase thereof is not in substantial compliance with the approved plans, a list of all deviations will be forwarded to the engineer. All deviations must be corrected prior to reinspection. A new letter of substantial compliance may

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1338 be required prior to reinspection. Reinspection fees will be charged for each reinspection in  
1339 accordance with the adopted fee schedule and must be paid prior to receiving a Certificate of  
1340 Completion.

1341  
1342 3. Projects involving permits or approvals issues by County, State, or Federal agencies shall provide  
1343 evidence that the respective agencies have approved, accepted, or certified that the improvements or  
1344 work subject to their review have been satisfactorily completed and are ready for use or to be placed  
1345 into service.

1346  
1347 L. Turnover of developer installed improvements. Projects that include construction of improvements that will  
1348 be turned over to the City for ownership and maintenance must also provide a complete package of  
1349 turnover documents, acceptable to the City, as required by the Director.

1350  
1351 1. Improvements shall be conveyed to the City by bill of sale in a form satisfactory to the City Attorney,  
1352 together with such other evidence as may be required by the City that the improvements proposed  
1353 to be transferred to the City are free of all liens and encumbrances.

1354  
1355 2. Turnover documents must be provided to the Development Services Manager with the submittal of  
1356 the Certification of Substantial Completion and Record Drawings.

1357  
1358 3. Improvements constructed pursuant to this Section may not be placed into service or otherwise  
1359 utilized until the required certificate of compliance has been issued.

1360  
1361 M. Ongoing compliance. A development project must remain in compliance with the approved SDP or  
1362 SCP, including all conditions, after a letter of substantial compliance, certificate of compliance, or  
1363 certificate of occupancy has been issued by the City. This requirement applies to any property covered  
1364 by the SDP or SCP, whether or not it continues to be owned by the original developer. For purposes  
1365 of determining compliance, the SDP or SCP as approved and constructed, or subsequently amended  
1366 in accordance with this section, will control. The standards applicable to review for compliance  
1367 purposes will be based upon the regulations in effect at the time the plan approval, any applicable  
1368 amendment, or revision was constructed.

1369  
1370 N. Violation of an approved SDP or SCP.

1371  
1372 1. Where construction is commenced for improvements not authorized by a SDP or SCP, the  
1373 applicant will be issued a stop work order until an application to amend or correct the respective  
1374 plan approval has been submitted and approved.

1375  
1376 2. An application to amend or correct a SDP or SCP after construction has commenced in violation  
1377 of the original approval will be charged an application fee equal to four times the original  
1378 application base fee.

1379  
1380 3. Submittal of the application and payment of the application fee does not protect the applicant  
1381 from the remedies described in Article 1, Section 1-6 of this Code. Any of these forms of relief can  
1382 be sought or maintained by the City until the problem is abated.

1383

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- 1384 4. Failure to maintain a development in compliance with a SDP or SCP issued and approved by a  
1385 certificate of completion constitutes a violation of this Code.  
1386
- 1387 O. Phased Projects. Development projects may be split into phases to accommodate the development  
1388 plans and schedules of the developer.  
1389
- 1390 1. Site Development Plans. The phasing plan shall show all required facilities, infrastructure, and  
1391 buildings, if applicable, on the entire parcel that is covered by the SDP approval.  
1392
- 1393 a. If more than one building is covered by the SDP and the developer does not intend to  
1394 receive certificates of occupancy (CO) for all the buildings at one time, a separate Site  
1395 Development Permit or written construction authorization will be required for each build  
1396 or buildings to receive a CO apart from the other buildings.  
1397
- 1398 b. A certificate of compliance for streets, utilities, parking areas, and drainage serving each  
1399 building(s) will be required from the engineer of record prior to the City performing final  
1400 inspection and closing that phase of the project and prior to receiving a certificate of  
1401 occupancy from the Building Division.  
1402
- 1403 c. If a final inspection is requested for only a portion of a development, that portion must be  
1404 an approved phase of the development in accordance with the approved SDP.  
1405
- 1406 2. Subdivision Construction Plans. Phasing of the SCP shall be in accordance with the PSP  
1407 approval as established in Article 10.  
1408

**Section 3.3.9 Temporary Use Permits.**

- 1409
- 1410
- 1411 A. Purpose and Intent. To authorize the temporary uses and activities which do not exceed specific  
1412 time frames.  
1413
- 1414 B. General Standards.  
1415
- 1416 1. Only those uses that are listed below or otherwise approved as temporary uses in Article 5, may  
1417 be allowed as temporary uses.  
1418
- 1419 2. Each temporary use shall be evaluated by the Community Development Department for  
1420 compliance with the standards and conditions set forth in the LDC and the applicable zoning  
1421 district. Special event uses are evaluated by the Parks and Recreation Department.  
1422
- 1423 3. A temporary use permit shall take effect at the time of permit issuance and is in effect only for  
1424 the specific time-period established in the temporary use approval.  
1425
- 1426 C. Review Criteria. When considering an application for a temporary use, the Community Development  
1427 Director or Parks and Recreation Director, as appropriate, shall consider whether and the extent to  
1428 which:  
1429



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- 1430 1. The temporary use is consistent with the purposes, goals, objectives, and policies of the  
1431 Comprehensive Plan;  
1432  
1433 2. The temporary use complies with all relevant and appropriate portions of Article 5, Development  
1434 Standards;  
1435  
1436 3. The temporary use is not incompatible with the character of the immediate surrounding area;  
1437  
1438 4. The design, duration, and hours of operation of the temporary use minimizes adverse impacts on  
1439 nearby properties, including visual and noise impacts;  
1440  
1441 5. Whether the use complies with all relevant standards related to health, sanitation, and  
1442 transportation;  
1443  
1444 6. The temporary use complies with all other applicable provisions of this Code;  
1445  
1446 7. Any permanent structures used in conjunction with a temporary use must comply with the  
1447 requirement for adequate public facilities referenced in the comprehensive plan; and  
1448  
1449 8. Whether any public safety detail will be necessary.

1450  
1451 D. Allowable temporary uses: The following temporary use shall require a permit:  
1452

- 1453 1. Firework, pumpkin, and Christmas tree sales.  
1454 2. Outdoor display of merchandise.  
1455 3. Garage sales.  
1456 4. Temporary construction or field office.  
1457 5. Construction staging areas for essential public facilities and post disaster debris staging  
1458 6. Temporary sales office.  
1459 7. Temporary Storage Containers.  
1460 8. Temporary Habitable Structures.  
1461 9. Temporary Off-Site Vehicle Sales.  
1462 10. Tents for other than Special Events.  
1463 11. Other events not named.  
1464 12. Temporary Seawall Staging Areas.

1465  
1466 **Section 3.3.10 Special Events.**  
1467

- 1468 A. Special events in the city are administered and permitted by the Parks and Recreation Department.  
1469  
1470 B. Application and general requirements. Special events permits may be issued provided the following  
1471 requirements are met:  
1472  
1473 1. A completed, signed, and notarized application shall be submitted no less than 60 days prior to  
1474 the opening of the event. The application shall include the name and address of each applicant  
1475 sponsoring the special event, the dates, times, and specific details of the event, and a list of all

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1476 special events that the applicant has sponsored in the City for the past three years. Exceptions  
1477 to the 60-day requirement may be approved by the Director of Parks and Recreation based on  
1478 the size, duration, or nature of the event. The city reserves the right to verify the applicant's  
1479 previous history of sponsoring special events with other jurisdictions.

1480  
1481 1. A refundable clean-up deposit is submitted. The property shall be cleaned within 48 hours of  
1482 the close of the event and returned to substantially the same condition that existed just prior  
1483 to the start of the event or better. The clean-up deposit will be refunded upon satisfactory  
1484 inspection of the property by the city after the event closes. If the property is not returned to  
1485 substantially the same condition that existed just prior to the start of the event, or better, the  
1486 city, in its sole discretion, may utilize the clean-up deposit to do so and refund the remainder,  
1487 if any, to the applicant.

1488  
1489 2. A site plan of the event venue and surrounding property shall be submitted. The site plan  
1490 shall show the layout of all activities, such as stages, equipment, including location(s) where  
1491 sound amplification equipment, if any, will be allowed, amusement rides, animal displays,  
1492 etc., and all support facilities including egress and ingress locations, parking, refuse  
1493 collection, sanitation, and lighting. The site plan shall also identify the presence of any  
1494 environmentally sensitive issues including eagles, burrowing owls, tortoises, osprey, etc.

1495  
1496 3. If the applicant does not own the property for the special event or associated parking, a signed  
1497 and notarized letter of permission from the property owner is required, along with a release  
1498 and indemnification agreement in a form accepted by the City Attorney. If the applicant intends  
1499 to transport patrons to the special event from a specified parking area, complete details  
1500 including all traffic routes to be utilized shall be submitted to the city for approval.

1501  
1502 4. Insurance requirements.

1503  
1504 a. Certificates of insurance for all properties used for the event must be submitted to the  
1505 Parks and Recreation Department for approval by the City Risk Manager no less than 21  
1506 days prior to the event.

1507  
1508 b. Applicants and vendors shall have commercial and general liability insurance, including  
1509 coverage for independent contractors, premises and operations, contractual liability,  
1510 products and completed operations, personal injury, and property damage. Insurance  
1511 coverage shall be no less than \$1,000,000 combined single limit for bodily injury and  
1512 property damage and no less than \$1,000,000 for liquor liability, if applicable.

1513  
1514 c. Vendors shall also have motor vehicle liability insurance of no less than \$1,000,000 per  
1515 vehicle and worker's compensation coverage as required by statute.

1516  
1517 d. The City of Cape Coral shall be named as additional insured. Certificates of insurance shall  
1518 show the City of Cape Coral as the certificate holder.

1519  
1520 5. All applicable city ordinances and building, fire, and electrical codes shall be met.

1521

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- 1522 6. Most events shall require off-duty City of Cape Coral police officers to be hired for the  
1523 duration of any event to include one hour before opening and one hour after closing. The  
1524 Police Chief shall determine the exact number of officers required, if any, based upon the  
1525 size and nature of the event and past experience with similar events. The cost for the off-  
1526 duty detail shall be set using the present rate charged by the Police Department which shall  
1527 be paid by the applicant prior to the issuance of the permit. All applicants must comply with  
1528 any rules or regulations imposed by the Police Chief which are consistent with this section.  
1529
- 1530 7. Most events shall require off-duty City of Cape Coral firefighters or paramedics, to be hired  
1531 for the duration of any event to include one hour before opening and one hour after closing.  
1532 The Fire Chief shall determine the exact number of firefighters or paramedics required, if  
1533 any, based upon the size and nature of the event and past experience with similar events.  
1534 The cost for the off-duty detail shall be set using the present rate charged by the Fire  
1535 Department which shall be paid by the applicant prior to the issuance of the permit. All  
1536 applicants must comply with any rules or regulations imposed by the Fire Chief which are  
1537 consistent with this section. In the event the Fire Chief determines that special equipment  
1538 such as all-terrain vehicles, trailers, fireboats, fire and rescue assets, and appropriate  
1539 personnel for the special equipment are necessary, the city reserves the right to request  
1540 reimbursement for all or part of the discretionary cost from the applicant.  
1541
- 1542 8. No open flame or other device emitting flames or fire shall be used in any tent or air  
1543 supported structure while open to the public.  
1544
- 1545 9. All equipment including tents, stages, amusement rides, utility areas, ingress and egress  
1546 points, and cooking areas shall be inspected and approved by city fire inspectors or state  
1547 officials, if applicable, prior to the opening of the event. If applicable, inspection certificates  
1548 and annual permits as required by the State of Florida, shall be submitted to the city prior to  
1549 the opening of the event. All equipment or amusement rides, other than those which are  
1550 patron-operated or controlled, shall only be operated by persons over 18 years of age who  
1551 are employed by the applicant and who are thoroughly familiar with the operation of said  
1552 equipment or amusement rides. The operator of such equipment or amusement rides shall  
1553 be in the immediate vicinity of the operating controls at all times during the operation of the  
1554 equipment or amusement rides and no unauthorized person shall be permitted to handle the  
1555 controls during operation.  
1556
- 1557 10. Any person, entity, group, or organization engaging in speech, expression, or assembly, which  
1558 is protected by the First Amendment of the United States Constitution or by Article I, Section  
1559 4 of the State of Florida Constitution, may do so during a Special Event, subject to the  
1560 following reasonable time, place, and manner regulations.  
1561
- 1562 11. If sound amplifying equipment is present on public or private property at the special event,  
1563 the Director of Parks and Recreation shall establish one or more designated areas where such  
1564 amplified sound may occur. If amplified sound is not permitted for the special event, all  
1565 amplified sound shall be prohibited; however, nothing in this regulation shall serve to  
1566 prohibit protected speech, expression, or assembly utilizing non-amplified, reasonable  
1567 sound. For purposes of this paragraph, amplified sound caused by the police or fire

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1568 departments of the city in the performance of their official duties, and public background  
1569 sound, shall not be considered amplified sound so as to allow others to use sound amplifying  
1570 equipment.  
1571

1572 12. The Director of Parks and Recreation shall be responsible for the provisions of this section,  
1573 department rules and regulations, and city ordinances. No action shall be taken to enforce  
1574 this section until a warning to cease such a violation has been issued by a person authorized  
1575 to enforce this section and the violator continues such violation.  
1576

1577 13. No person shall be permitted into, or remain on, private property covered by any special  
1578 event permit for an event open to the public without the consent of the permittee.  
1579

1580 14. If a special event is open to the public only upon a payment of an entry fee or charge, no  
1581 person shall be permitted into the special event without first paying the entry fee or charge.  
1582

1583 15. No person shall unreasonably hamper, obstruct, impede, or interfere with any person, entity,  
1584 group, or organization hosting a permitted special event.  
1585

1586 16. All requirements of this section are subject to modification or waiver by the City Council  
1587 based upon the size, duration, nature of the event, and the city's involvement.  
1588

1589 C. Review Criteria. In determining whether a permit shall be issued, the Director of Parks and  
1590 Recreation shall consider certain criteria including:  
1591

1592 1. The size, duration, and nature of the event;  
1593

1594 2. Previous history of organizing one or more events within the City and whether any events  
1595 created hazards or safety situations;  
1596

1597 3. Other events previously scheduled during the same time period within the city; and  
1598

1599 4. If the applicant has been adjudicated guilty of violating any provision of this section. Any  
1600 adjudication may constitute grounds for denial of future special events permits by the city.  
1601

1602 D. Permit Decision.  
1603

1604 1. The Director of Parks and Recreation may, in his or her sole discretion, deny the applicant a  
1605 permit for the special event within the City of Cape Coral.  
1606

1607 2. The Director of Parks and Recreation shall have the authority to designate one or more areas  
1608 during any Special Event for specific activities and to prohibit other activities within designated  
1609 areas. Designated areas shall be posted when such posting is appropriate.  
1610

1611 3. Order to cease operation. If the Director of Parks and Recreation Department determines  
1612 that proper provisions have not been made for the protection of the public health, safety, or

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1613 welfare he or she may issue an order to cease operating said special event until such time as  
1614 satisfactory corrective action has been taken.

1615  
1616 E. Violations and Penalties.

1617  
1618 1. Intentional underestimation of the expected number of persons attending the event or  
1619 failure to comply with any provision of this section, shall constitute a violation of this section,  
1620 and shall subject the applicant to the code enforcement provisions and procedures provided  
1621 in §§ 2-81 through 2-96 of the City of Cape Coral Code of Ordinances including any and all  
1622 provisions that allow the city to seek relief as otherwise provided by law.

1623  
1624 2. Penalty. A violation of this section shall be punishable by a minimum fine of \$100 and a  
1625 maximum fine of \$500, in addition to the taxation of any court costs, or imprisonment for a  
1626 term not to exceed 60 days, or by both a fine and imprisonment.

1627  
1628 **Section 3.3.11. Outdoor Dining Permit**

1629  
1630 A. Purpose and Intent.

- 1631  
1632 1. To provide standards for outdoor dining on public or private property.  
1633  
1634 2. To ensure that outdoor dining on public property does not interfere with pedestrian access,  
1635 ingress or egress to buildings, or sight visibility triangles.

1636  
1637 B. General Requirements

- 1638  
1639 1. All standards for outdoor dining are in Article 5, Section 5.1.16.  
1640  
1641 2. An outdoor dining permit is required.  
1642  
1643 3. A site plan indicating location of outdoor dining area including seating, furniture, heaters, or  
1644 similar equipment or improvements.

1645  
1646 C. Review Criteria and Standards

- 1647  
1648 1. The outdoor dining area shall not interfere with pedestrian access.  
1649  
1650 2. The outdoor dining area shall allow for ingress or egress to a building.  
1651  
1652 3. Does not interfere with public safety.  
1653  
1654 4. The outdoor dining area shall not be placed in any required off-street parking spaces.

1655  
1656 **Section 3.3.12. Preliminary Subdivision Plans**

1657  
1658 See Article 10.

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**CHAPTER 4. SPECIFIC REVIEW PROCEDURES - QUASI-JUDICIAL PERMITS AND APPROVALS**

**Section 3.4.1 General Requirements**

Effective Date. All quasi-judicial permits where the Hearing Examiner issues the final decision shall take effect on the date the Hearing Examiner Order for the application in question is recorded in the public record.

**Section 3.4.2 Deviations**

- A. Purpose and Intent. To grant relief from strict application of LDC requirements to allow minor deviations.
- B. Scope. Deviations may be granted for the following:
  - 1. Non-residential design standards in Article 5, Chapter 8.
  - 2. Landscaping deviations in Article 5, Chapter 5, which do not qualify for an administrative deviation.
  - 3. Design standards in the NC district.
- C. Review Criteria. A Deviation may be approved based on the following criteria:
  - 1. The proposed deviation will not result in development that is inconsistent with the intended character of the applicable zoning district.
  - 2. The normally required code standard(s) is determined to significantly inhibit development of the site.
  - 3. The deviation will not impede the ability of the project or site to adequately provide for service areas and other development features for the project.
  - 4. Access for service and emergency vehicles will not be impeded.
  - 5. The proposed deviations will result in a building and site design of equal or superior quality.
- D. Effective date of approval. A deviation shall take effect upon approval by the Hearing Examiner.

**Section 3.4.3 Variances.**

- A. General.
  - 1. A variance may be sought from any bulk, area, or dimensional standard contained in Article 4, Zoning Districts or Article 5, Development Standards of the LDC.

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- 1705  
1706 2. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no  
1707 permitted use of land, structures, or buildings in other districts, shall be considered grounds for  
1708 the issuance of a variance.  
1709  
1710 B. Approval Criteria. In order to authorize a variance, the Hearing Examiner must find that the application  
1711 meets all of following criteria:  
1712  
1713 1. That special conditions and circumstances exist which are peculiar to the land, structure, or  
1714 building involved and which are not applicable to other lands, structures, or buildings in the same  
1715 zoning district;  
1716  
1717 2. That the special conditions and circumstances do not result from the actions of the applicant;  
1718  
1719 3. That granting the variance requested will not confer on the applicant any special privilege that is  
1720 denied by these regulations to other lands, buildings, or structures in the same zoning district;  
1721  
1722 4. That literal interpretation of the provisions of the regulations would deprive the applicant of rights  
1723 commonly enjoyed by other properties in the same zoning district under the terms of these  
1724 regulations and would cause or impart unnecessary and undue hardship on the applicant;  
1725  
1726 5. That the variance granted is the minimum variance that will make possible the reasonable use of  
1727 the land, building, or structure;  
1728  
1729 6. That granting the variance will not change the use to one that is not permitted in the zoning  
1730 district or different from other land in the same district; and  
1731  
1732 7. That the granting of the variance will be in harmony with the general intent and purpose of these  
1733 regulations, and that the variance will not be injurious to the area involved or otherwise  
1734 detrimental to the public welfare.  
1735  
1736 C. Effect of Approval. An approved variance shall run with the land.  
1737

**Section 3.4.4. Special Exceptions.**

The intent of this section is to permit Special Exception uses which are essential to, or would promote the public health, safety, or welfare in one or more zoning districts, but which might impair the integrity and character of the zoning district or in adjoining districts, such that restrictions or conditions on location, size, extent, and character of performance may be imposed in addition to those standards already imposed in the Land Development Code.

- 1746 A. General.  
1747  
1748 1. No variances shall be granted that would reduce or eliminate minimum requirements for special  
1749 exception uses.  
1750

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- 1751 2. The Hearing Examiner may prescribe appropriate conditions and safeguards in conformity with  
1752 the special exception use requirements. All such conditions shall be part of the terms under  
1753 which the special exception is granted.  
1754
- 1755 3. A special exception shall be deemed abandoned if:  
1756  
1757 a. The use is discontinued for more than 1 year; or  
1758  
1759 b. The special exception has not obtained a certificate of zoning compliance.  
1760
- 1761 4. The proposed use shall comply with all requirements of the underlying zoning district(s), the  
1762 Land Development Code, and all other applicable law.  
1763
- 1764 B. Standards and Criteria. The following standards shall apply to all applications for special exception  
1765 uses.  
1766
- 1767 1. Consistency with the Comprehensive Plan?  
1768
- 1769 2. The site must be suitable for the type of special exception use proposed by virtue of its location,  
1770 shape, topography, and the nature of surrounding development.  
1771
- 1772 3. All buildings shall be setback an adequate distance from property lines and rights-of-way.  
1773 Greater building setbacks may be required when deemed necessary to protect surrounding  
1774 properties.  
1775
- 1776 4. Potential adverse impact to surrounding property must be mitigated to the maximum extent  
1777 possible.  
1778

**Section 3.4.5. Vacations of Plats, Easements, and Rights-of-way.**

1779  
1780  
1781 The purpose and intent of this section is to provide procedures for City Council to vacate rights-of-way,  
1782 easements, and plats pursuant to authority granted under Florida law. The City Council may adopt  
1783 ordinances vacating plats in whole or in part of subdivisions within the corporate limits of the city,  
1784 returning the property covered by such plats either in whole or in part into acreage for the purpose of  
1785 taxation, or vacating public rights-of-way, public easements, or other property in response to  
1786 applications filed from adjoining property owners.  
1787

1788 A. General.

- 1789
- 1790 1. The city may retain an easement for utilities or drainage over any vacated right-of-way and that  
1791 no use may be made of vacated right-of-way which will be inconsistent with or interfere with  
1792 the retained easement. The party seeking vacation of a plat, city street, alley, canal, other right-  
1793 of-way, public easement, or other property must show or submit the following:  
1794
- 1795 a. Petitioner has color of title to the tract or parcel of land covered by the plat or portion of  
1796 the plat of which vacation is sought, unless the petitioner is the City of Cape Coral;



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- 1797  
1798           b. Letter of approval from Lee County Electric Cooperative, Inc.;
- 1799  
1800           c. Letter of approval from affected telephone companies;
- 1801  
1802           d. Letter of approval from affected cable companies; and
- 1803  
1804           e. Letter of approval from any other affected utility companies (e.g., water, sewer);
- 1805  
1806           2. Applicants requesting to vacate rights-of-way or easements shall provide a recent boundary  
1807           survey or survey sketch of the property prepared by a registered surveyor showing the area to  
1808           be vacated and provide a complete legal description(s). The survey or sketch shall show all  
1809           pavement and all utility and drainage facilities, including water, sewer, cable lines, utility poles,  
1810           swales, ditches, manholes, and catch basins. Separate drawings and legal descriptions are  
1811           required for each vacation area when right-of-way and easement configurations differ.
- 1812  
1813           B. Standards and Criteria. Applications for vacations shall be reviewed in accordance with the  
1814           following criteria:
- 1815  
1816           1. Whether the plat, easements, or rights-of-way are required by the City for any future  
1817           transportation, access, water management, or public utility purposes.
- 1818  
1819           2. Whether any required easements are necessary to accommodate the vacation of any plat,  
1820           easement, or right-of-way.
- 1821  
1822           3. If alternate routes are required or available that do not cause adverse impacts to surrounding  
1823           areas.
- 1824  
1825           4. If the closure of a right-of-way negatively affects areas utilized for vehicles to turn around and exit  
1826           an area.
- 1827  
1828           5. Whether local utility providers have given consent to the vacation of the plat, easements, or  
1829           rights-of-way. The local utility providers may require additional easements or relocation of  
1830           existing utilities facilities to complete the vacation.
- 1831  
1832           C. Additional Procedures and Noticing Requirements. In addition to the standard notice requirements  
1833           required by this Code, the following additional notice requirements apply for vacations:
- 1834  
1835           1. Specific notice requirements for vacations. Public hearing notices to vacate a plat or portion  
1836           thereof shall be published once a week for two consecutive weeks, the first publication being  
1837           not less than two weeks prior to the date of public hearing on the petition.
- 1838  
1839           2. If the parcel to be vacated includes an alley, all property owners serviced by the alley and all  
1840           property owners serviced by a connecting alley shall be noticed.
- 1841

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- 1842 3. Adoption and recording of resolution and ordinance. After public hearing, the City Council may  
1843 approve an application for a vacation if it determines there is no reasonably foreseeable public  
1844 use for the vacated area. Approval of a vacation shall be by resolution or ordinance. The City  
1845 may retain easements for utilities or drainage in and upon the vacated area. Upon adoption of  
1846 the resolution vacating the plat or portion thereof, the City Clerk shall furnish to the petitioner  
1847 a certified copy thereof and the petitioner shall cause the same to be recorded in the public  
1848 records of the county and shall return a copy, showing the recording information, to the  
1849 Department of Community Development.  
1850
- 1851 4. Effect. The adoption and recording of a vacation shall have the effect of vacating all streets and  
1852 alleys and city-owned easements shown on the portion of the plat so vacated, unless the  
1853 resolution or ordinance specifically reserved unto the city such city-owned easements or such  
1854 streets or alleys. If public rights-of-way are vacated, the resolution or ordinance shall specify  
1855 whether or not easements are reserved therein for utilities and drainage. The resolution or  
1856 ordinance shall not have the effect of vacating any public canal shown on the portion of the plat  
1857 vacated, unless the resolution or ordinance specifically so provides.  
1858
- 1859 5. Petitioner's responsibility. The city, City Council, and all officers, employees, and agents thereof  
1860 shall not assume any responsibility or liability for any matters and things to be done or  
1861 completed by the petitioner pursuant to the provisions hereof. It is recognized that this  
1862 procedure may affect substantial interests in real property and other proprietary rights, and the  
1863 petitioner shall assume full and complete responsibility for compliance with the requirements  
1864 of law and these procedures in connection with or arising out of any vacation proceedings  
1865 instituted by the petitioner.  
1866

**Section 3.4.6. Rezones**

- 1867
- 1868
- 1869 A. Manner of Initiation. Applications for a change in zoning may be initiated in the following manner:  
1870
- 1871 1. The City Council upon its own motion;  
1872
- 1873 2. The Planning and Zoning Commission upon its own motion;  
1874
- 1875 3. The property owner(s) of at least fifty-one percent of the land in the proposed rezone area;  
1876
- 1877 4. The City Manager for a City initiated rezone; or  
1878
- 1879 5. The Community Development Department, following approval of a similar use determination.  
1880
- 1881 B. Review Criteria. An application for a rezone shall be reviewed in accordance with the following  
1882 criteria:  
1883
- 1884 1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan;  
1885
- 1886 2. Whether the full range of uses allowed in the proposed zoning district will be compatible with  
1887 existing uses in the area under consideration;

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- 3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;
  - 4. Whether the proposed zoning district will serve a community need or broader public purpose;
  - 5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and
  - 6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.
- C. Effective date of approval. A rezone shall take effect upon City Council adoption of the ordinance approving the rezone.
- D. New application after denial. No application for a rezone which has been previously denied by the City Council shall be accepted for at least one year after the date of denial. An application to rezone property to a designation that is different than the designation which was denied by the City Council, will be accepted and considered without consideration of time since the previous application was denied.

**Section 3.4.7. Planned Unit Developments (PUD)**

- A. General.
- 1. A Planned Unit Development (PUD) is an area designed for development as a cohesive unit, where uses and innovations in design and layout of the development provide public benefits when compared to standard zoning or uniform lot and block subdivision patterns and design features.
  - 2. In a PUD, the various land use elements are designed so that they interrelate with each other. The boundary between a PUD and adjacent land area(s) requires particular attention to ensure transition and that land use patterns are compatible.
  - 3. Permitted uses in a PUD must be consistent with the Comprehensive Plan future land use classification for the site(s) in question.
- B. Purpose and Intent. The purpose and intent of a PUD are to:
- 1. Innovation in Design. To encourage innovations in residential, commercial, mixed-use, and industrial development so that the needs of the population may be met by greater variety in type, design and layout of buildings and land uses and by the conservation and more efficient use of the space.
  - 2. Appropriate Land Use. To promote the most appropriate use(s) of the land.

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3. High Quality Development. To improve the design, character, and quality of new development.
  4. Infrastructure. To facilitate the adequate and efficient provisions of roads and utilities.
  5. Increased Compatibility. To achieve compatibility with surrounding neighborhoods and developments.
  6. Provision of Open Space. To preserve open space as development occurs.
  7. Clustering of Uses. To provide for necessary commercial, recreational, and public facilities that are conveniently located to housing.
  8. Increased Flexibility. To provide for flexibility in design for new development and future redevelopment.
  9. Comprehensive Plan. To achieve the goals of the Comprehensive Plan.
  10. To provide a method for previously approved Planned Development Projects to continue to develop under the terms of an approved PDP Development Order and to allow modification to existing PDP approvals under the PUD procedures.
- C. Minimum Parcel Size. The minimum parcel size for a PUD is:
1. Non-residential or mixed use PUD. One acre.
  2. All other PUDs. Three acres.
- D. PUD approval steps. The PUD review and approval process includes:
1. A rezone to the PUD zoning district, which establishes the densities, intensities, and permitted uses within the PUD; and
  2. A Master Concept Plan (MCP), which establishes the design, layout, and dimensional standards of the PUD.
- E. Application and submittal requirements. Application and submittal requirements for a PUD are established in Sections 3.1.4 through 3.1.8 of this Article. In addition, a PUD requires:
1. An application for a rezone to the PUD zoning district; and
  2. A Master Concept Plan application.
  3. Submittal of the specific PUD application requirements listed in subsection G., below.
- A PUD application for parcels 10 acres or larger may apply for a rezone to the PUD zoning district without submitting a MCP for concurrent review and processing.

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- 1980
- 1981 F. Preapplication conference required. A pre-application conference shall be held with the Community
- 1982 Development Department prior to the submittal of a PUD. The applicant shall indicate the requested
- 1983 PUD zoning district and a sketch of the PUD Master Concept Plan, if applicable.
- 1984
- 1985 G. Specific PUD Submittal Requirements. A PUD application shall include the following:
- 1986
- 1987 1. A Letter of Intent, including:
- 1988
- 1989 a. Reasons the PUD procedure is more desirable than a conventional plan;
- 1990
- 1991 b. General site description including acreages; and
- 1992
- 1993 c. General project description.
- 1994
- 1995 2. A PUD Master Concept Plan indicating:
- 1996
- 1997 a. Location of the uses within the site;
- 1998
- 1999 b. Dimensional standards such as height, setbacks, and lot sizes;
- 2000
- 2001 c. Vehicle circulation patterns, parking areas, and points of access;
- 2002
- 2003 d. Pedestrian and bicycle circulation with links to other external path systems;
- 2004
- 2005 e. Open space plan; and
- 2006
- 2007 f. Landscape and buffer plans.
- 2008
- 2009 3. Sample formation of HOA or other organization to operate and maintain open space and other
- 2010 on-site public or private improvements.
- 2011
- 2012 4. Phasing plan, if applicable.
- 2013
- 2014 H. PUD Zoning Districts. Each PUD shall be rezoned to one of the following designations, based on
- 2015 proposed development:
- 2016
- 2017 RPUD - Residential PUD
- 2018 CPUD - Commercial PUD
- 2019 IPUD - Industrial PUD
- 2020 MXPUD - Mixed Use PUD
- 2021 PFPUD - Public Facilities PUD
- 2022
- 2023 The proposed PUD zoning district must meet the criteria for rezones as set forth by this Code.
- 2024
- 2025 I. Review Standards and Criteria.

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1. Every PUD shall be in conformance with the City Comprehensive Plan. The maximum density or intensity within any PUD shall be consistent with the future land use designation of the site as determined by the Comprehensive Plan.
2. Specific uses, densities, and intensities for each PUD are established in the PUD rezone ordinance. The approved uses, densities, and intensities for a PUD shall take precedence over other standards and requirements in these regulations. The uses approved in a PUD shall be permitted uses.
3. Specific bulk, area, and dimensional standards for each PUD are approved in the MCP for a PUD and shall take precedence over the standards and requirements in these regulations for development that is not within an approved PUD. Elements to be evaluated for a PUD shall include:
  - a. Appropriateness of the proposed or density or intensity of the development;
  - b. Internal and external compatibility of the development and surrounding uses;
  - c. Transition and separation between surrounding uses;
  - d. Vehicular and pedestrian circulation patterns;
  - e. Arrangement and functionality of open space;
  - f. Access points;
  - g. Public amenities, if applicable;
  - h. Additional amenities that will serve the project; and
  - i. Details and design of internal and external buffers.
4. Open Space.
  - a. For all PUDs except for IPUDs, a minimum of twenty-five percent of the total land area shall consist of common open space. The City may consider a request by the applicant for less than twenty-five percent common open space when deemed appropriate because of size, location, or nature of the proposed development.
  - b. The amenities or off-site improvements shall be utilized by the City or developed by the applicant to mitigate the reduction of open space or to fulfill the recreational needs of the City.
  - c. Areas that Do Not Count as Open Space. Parking and loading areas, streets, and rights-of-way shall not count toward usable open space.

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- d. Areas that Count as Open Space. Water bodies, surface water retention areas, preservation areas, and riparian areas that are preserved as open space shall count towards this minimum standard, even when they are not usable by or accessible to the residents of the PUD. All other open space shall be conveniently accessible from all occupied structures in the PUD.
  - e. Improvements Required. All common open space and recreational facilities shall be shown on the PUD Plan and shall be constructed and fully improved according to the development schedule established for each development phase of the PUD.
  - f. Landscaping along Sidewalks. All sidewalks within a PUD must be shaded by canopy trees. The area used for shading the sidewalks can be considered as part of the minimum open space requirement.
  - g. Maintenance of Open Space. All open space shall continue to conform to its intended use, as specified on the PUD Master Concept Plan. To ensure that public open space identified in the PUD will be used as open space, restrictions, easements, or covenants shall be recorded in deeds or the open space areas may be dedicated to the public to ensure their maintenance and to prohibit the division of any public open space. Any subdivision of land will require a Property Owners Association (POA) or Home Owners Association (HOA) to ensure that open spaces within a PUD are maintained. The City is not required to accept dedication of open space areas.
5. PUD Perimeter Buffers. The boundary between a PUD and adjacent land uses shall be landscaped with a buffer that has sufficient width and shall include screening to ensure a proper transition and increase compatibility between land uses. The buffer shall be approved by City Council.
6. Street Standards. All streets, roads, and drive aisles shall be designed and constructed in conformance with the City Engineering and Design Standards.
7. Phasing. When a PUD is developed in phases, a proportional amount of the open space and recreations areas shall be included in each phase, in order to comply with the open space requirements of this chapter at the completion of each phase of the development.
- J. Master Concept Plan and concurrent Preliminary Subdivision Plan review. The approved Master Concept Plan may be used for Preliminary Subdivision Plan approval, as defined in Article 10, provided required details and information for PSP review are included in the MCP.
- K. Amendments to Planned Unit Developments.
- 1. Administrative Amendments. Amendments to an approved PUD may be approved administratively if they meet the following criteria:
    - a. Density or intensity is increased by less than ten percent.

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- 2118           b. Open space is not decreased by more than five percent.  
2119  
2120           c. There are no changes to any condition of approval.  
2121  
2122           d. There is no change in permitted uses or types of structures.  
2123  
2124           e. Dimensional standards are changed by no more than ten percent.  
2125  
2126           2. Review Standards for amendments. An approved PUD Master Concept Plan may be amended if  
2127           the applicant demonstrates that the proposed modification:  
2128  
2129           a. Is consistent with the efficient development and preservation of the entire PUD;  
2130  
2131           b. Does not affect in a substantially adverse manner either the enjoyment of the land abutting  
2132           upon, adjoining or across a street from the planned unit development;  
2133  
2134           c. Is not granted solely to confer a special benefit upon any person;  
2135  
2136           d. Does not contain proposed uses that detract from other uses approved in the PUD;  
2137  
2138           e. Does not contain an open space plan that differs substantially in quantity or quality from the  
2139           originally approved plan; and  
2140  
2141           f. Contains streets and utilities that are coordinated with planned and existing street and  
2142           utilities for the remainder of the PUD.  
2143  
2144           3. Amendments that require City Council Approval. Any amendment to a PUD that does not meet  
2145           the criteria in subsection 1 through 2, above must be approved by the City Council.  
2146  
2147           L. Effect of PUD approvals.  
2148  
2149           1. PUD zoning. A rezone to a PUD zoning district shall run with the land.  
2150  
2151           2. Master Concept Plans. A MCP shall be valid for any time period established in the conditions of  
2152           approval for the MCP. If a specific time period is not specified then the MCP shall run with the  
2153           land.  
2154           OR  
2155           3. If a Site Development Plan, a building permit for vertical construction, or a subdivision plat has  
2156           not been approved within 10 years, the Master Concept Plan shall be null and void, unless an  
2157           extension has been approved by City Council.  
2158  
2159           M. Extensions. A PUD may receive one extension that is valid for two years. Upon expiration of the  
2160           extension, the Master Concept Plan shall be null and void.  
2161

**CHAPTER 5. SPECIFIC REVIEW PROCEDURES - LEGISLATIVE APPROVALS**

2163



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2164 **Section 3.5.1. Annexations**  
2165

- 2166 A. Purpose of Annexations. Annexations shall be considered for the following reasons:  
2167  
2168 1. The annexation implements the Comprehensive Plan.  
2169  
2170 2. The annexation increases the City’s inventory of non-residential lands.  
2171  
2172 3. The annexation results in the removal of enclaves.  
2173  
2174 4. The annexation results in the logical extension of City boundaries.  
2175  
2176 B. Manner of Initiation. Applications to annex property in to the City may be initiated in the following  
2177 manner:  
2178  
2179 1. The City Council; or  
2180  
2181 2. By a petition of one or more owners of property within an area proposed for annexation.  
2182  
2183 C. Review Criteria. Proposed annexations shall be reviewed in accordance with the requirements of  
2184 Chapter 171, Florida Statutes.  
2185  
2186 D. Effective date of approval: The effective date of an annexation will take place in accordance with  
2187 Chapter 171, Florida Statutes.  
2188

2189 **Section 3.5.2. Future Land Use Map Amendments**  
2190

- 2191 A. Purpose of Amendments. Future Land Use Map amendments shall be considered for the following  
2192 reasons:  
2193  
2194 1. The amendment implements the goals, objectives, and policies of the Comprehensive Plan.  
2195  
2196 2. The amendment promotes compliance with changes to other city, state, or federal regulations.  
2197  
2198 3. The amendment results in compatible land uses within the a specific area.  
2199  
2200 4. The amendment implements findings of reports, studies, or other documentation regarding  
2201 functional requirements, contemporary planning practices, environmental requirements, or  
2202 similar technical assessments.  
2203  
2204 5. The amendment is consistent with the City’s ability to provide adequate public facilities and  
2205 services.  
2206  
2207 6. The amendment prepares the City for future growth, such as reflecting changing development  
2208 patterns, identifying demands for community services, reflecting changes necessary to

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2209 accommodate current and planned growth in population, and facilitating community  
2210 infrastructure and public services.

2211  
2212 B. Manner of Initiation. Applications for a Future Land Use Map Amendment (FLUMA) may be initiated  
2213 in the following manner:

- 2214  
2215 1. The City Council by its own motion;  
2216  
2217 2. The Planning and Zoning Commission by its own motion;  
2218  
2219 3. The City Manager for City initiated requests; or  
2220  
2221 4. By a petition of one or more property owners of at least 51% of the property owners of an area  
2222 proposed for amendment.

2223  
2224 C. Review Criteria. Proposed future land use map amendments shall be reviewed in accordance with the  
2225 requirements of Chapter 163, Florida Statutes, and the following criteria:

- 2226  
2227 1. Whether the proposed future land use amendment is consistent with the goals, policies, and  
2228 future land use designations of the City Comprehensive Plan;  
2229  
2230 2. The amendment protects the health, safety, and welfare of the community;  
2231  
2232 3. The proposed amendment and all of the consistent zoning districts, and the underlying permitted  
2233 uses, are compatible with the physical and environmental features of the site;  
2234  
2235 4. The range of zoning districts and all of the allowed uses in those districts are compatible with  
2236 surrounding uses in terms of land suitability or density and that a change will not result in negative  
2237 impacts on the community or traffic that cannot be mitigated through application of the  
2238 development standards in this Code;  
2239  
2240 5. The site is capable of accommodating all of the allowed uses, whether by right or otherwise,  
2241 considering existing or planned infrastructure for roads, sanitary and water supply systems,  
2242 stormwater, parks, etc.; and  
2243  
2244 6. Other factors deemed appropriate by the Commission and City Council.

2245  
2246 D. Effective date of approval. The effective date of a future land use map amendment shall be in  
2247 accordance with Chapter 163, Florida Statutes.

2248  
2249 **Section 3.5.3. Comprehensive Plan Text Amendments**

2250  
2251 A. Purpose of Amendments. Comprehensive Plan text amendments shall be considered for the following  
2252 reasons:

- 2253  
2254 1. The amendment clarifies the intent of the Comprehensive Plan.

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- 2255
- 2256 2. The amendment corrects an error in the Comprehensive Plan.
- 2257
- 2258 3. The amendment addresses changes to state legislation, recent case law, or opinions from the
- 2259 Attorney General of the State of Florida.
- 2260
- 2261 4. The amendment implements the Comprehensive Plan.
- 2262
- 2263 5. The amendment promotes compliance with changes to other city, state, or federal regulations.
- 2264
- 2265 6. The amendment results in compatible land uses within the future land use designation.
- 2266
- 2267 7. The amendment implements findings of reports, studies, or other documentation regarding
- 2268 functional requirements, contemporary planning practices, environmental requirements, or
- 2269 similar technical assessments.
- 2270
- 2271 8. The amendment promotes the City’s ability to provide adequate public facilities and services.
- 2272
- 2273 B. Manner of Initiation. Comprehensive Plan Text Amendments may be initiated in the following
- 2274 manner:
- 2275
- 2276 1. The City Council;
- 2277
- 2278 2. The Planning and Zoning Commission; or
- 2279
- 2280 3. The City Manager for City initiated requests.
- 2281
- 2282 C. Review Criteria. Proposed comprehensive plan text amendments shall be reviewed in accordance with
- 2283 the requirements of Florida Statutes, Chapter 163, and the following criteria:
- 2284
- 2285 1. The amendment is consistent with the goals and policies of the City Comprehensive Plan;
- 2286
- 2287 2. The amendment protects the health, safety, and welfare of the community; or
- 2288
- 2289 3. Other factors deemed appropriate by the Planning and Zoning Commission and City Council.
- 2290
- 2291 D. Effective date of approval. The effective date of a comprehensive plan text amendment shall be in
- 2292 accordance with Chapter 163, Florida Statutes.
- 2293

**Section 3.5.4. Land Development Code Text Amendments**

- 2294
- 2295
- 2296 A. Purpose of Amendments. Land Development Code (LDC) text amendments shall be considered for
- 2297 the following reasons:
- 2298
- 2299 1. The amendment clarifies the intent of the LDC.
- 2300

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- 2301 2. The amendment corrects an error in the LDC.  
2302  
2303 3. The amendment addresses changes to state legislation, recent case law, or opinions from the  
2304 Attorney General of the State of Florida.  
2305  
2306 4. The amendment implements the LDC or Comprehensive Plan.  
2307  
2308 5. The amendment promotes compliance with changes to other city, state, or federal regulations.  
2309  
2310 6. The amendment adds district uses that are consistent with the character of the current range of  
2311 allowed uses.  
2312  
2313 7. The amendment results in providing compatible land uses within Cape Coral.  
2314  
2315 8. The amendment implements findings of reports, studies, or other documentation regarding  
2316 functional requirements, contemporary planning practices, environmental requirements, or  
2317 similar technical assessments.  
2318  
2319 B. Manner of Initiation. Applications for a LDC text amendment may be initiated in the following  
2320 manner:  
2321  
2322 1. The City Council by its own motion;  
2323  
2324 2. The Planning and Zoning Commission by its own motion; or  
2325  
2326 3. The City Manager for City initiated requests, including text amendments associated with a similar  
2327 use determination.  
2328  
2329 C. Review Criteria. Proposed LDC text amendments shall be reviewed in accordance with the following  
2330 criteria:  
2331  
2332 1. Whether the proposed LDC text amendment is consistent with the goals, policies, and future land  
2333 use designations of the City Comprehensive Plan;  
2334  
2335 2. The amendment results in compatible land uses within a zoning designation;  
2336  
2337 3. The amendment protects the health, safety, and welfare of the community; or  
2338  
2339 4. Other factors deemed appropriate by the Planning and Zoning Commission and City Council.  
2340  
2341 D. Effective date of approval. The effective date of a LDC text amendment shall take place upon  
2342 adoption.  
2343

**CHAPTER 6. OTHER APPROVALS**

**Section 3.6.1. Outdoor Display of Merchandise**

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A. Purpose and Intent.

1. To provide standards and criteria for review and approval of outdoor display of merchandise.
2. To provide reasonable limitations or special conditions for outdoor display to address, minimize, or ameliorate potential impacts of the use on surrounding property and for the protection of the public health, safety, and welfare.

B. General Requirements.

1. Outdoor display of merchandise is prohibited in all residential districts (except for the A district) and in the P1, MX7, MXB, PV, INST.
2. Unless otherwise permitted, outdoor display of merchandise in C, CC, NC, SC, and A districts is prohibited, except on improved property in accordance with the following standards.
3. The following items may be displayed in conjunction with an existing licensed business location which retails these items: boats; new or used cars by auto dealerships or auto rental companies; bicycles; motorcycles; garden equipment such as lawnmowers; landscaping nursery items displayed by a nursery business; tires at auto repair businesses; and temporary uses authorized in Article 5, Chapter 9.
4. In addition to outdoor display listed above, the outdoor displays of fruit, vegetables, flowers, jewelry, books or antiques are allowed in the SC zoning district.
5. This restriction shall not apply to special events approved pursuant to Article 5, Section 5.9.10. Special Events.
6. All other outdoor display of merchandise must be approved by the City Council following review at a public meeting.
7. Except in the downtown zoning district(s), such displays may be no closer than ten feet to the front or rear property lines and five feet to side property lines or 15 feet to the side property line on corner lots. Such displays may not be placed in required parking. In the SC district, such displays are not required to be set back from any property lines. If such displays are placed on a public sidewalk, such displays shall comply with the following regulations:
  - a. Displays may be placed on the public sidewalk only directly in front of the lawfully existing business which retails the items being displayed.
  - b. Displays shall be placed on tables, shelves and/or racks that are moved indoors during any hours the business is not open and that do not exceed six feet in height and do not extend more than two feet onto the public sidewalk.

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- 2393 C. Outdoor Display Requiring Council Approval.  
2394  
2395 1. An application for an outdoor display of merchandise shall be filed with the Community  
2396 Development Department.  
2397  
2398 2. A site plan showing the location of the outdoor display shall be provided.  
2399  
2400 3. A letter of intent detailing the duration of the outdoor display and the nature of items displayed.  
2401  
2402 4. The applicant shall be responsible for the cost of mailed notice to all property owners within a  
2403 500' radius.  
2404  
2405 D. Council Action. The Council may approve, deny, or approve with any conditions deemed necessary to  
2406 address the potential impacts of the outdoor display of merchandise.  
2407