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CHAPTER 1. DEVELOPMENT REVIEW PROCEDURES

Section 3.1.1. Purpose.

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

Section 3.1.2. Classification of Development Review Procedures

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

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

1. Zoning and Flood Zone Verification Letters
2. Certificates of Zoning Compliance
3. Administrative Interpretations and Similar Use Determinations
4. Sign Permits (See Article 6)
5. Lot Splits and Lot Combines
6. Conditional Uses
7. Master Concept Plan (PUD) Amendments
8. Administrative Deviations
9. Site Development and Subdivision Construction Plans
10. Preliminary Subdivision Plans (See Article 10)
11. Site Improvement Permits
12. Temporary Use Permits:
   a. Firework, pumpkin, and Christmas tree sales.
   b. Outdoor display of merchandise.
   c. Garage sales.
   d. Temporary construction or field office.
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1. Construction staging areas for essential public facilities and post disaster debris staging
2. Temporary sales office.
3. Temporary Storage Containers.
4. Temporary Habitable Structures.
5. Temporary Off-Site Vehicle Sales.
6. Tents for other than Special Events.
7. Other events not named.
8. Temporary Seawall Staging Areas.

13. Reasonable Accommodations (See Article 13)

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

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

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

1. Annexations
2. Future Land Use Map Amendments
3. Comprehensive Plan Text Amendments
4. Land Development Code Text Amendments
5. Plats

D. Other Approvals.

1. Outdoor Display of Merchandise
2. Special Events

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

F. The Community Development Director shall have the authority to require a certificate of zoning compliance or site improvement permit review for other buildings, structures, improvements and installations that are newly created or come about by changes in the state or local building codes; or other improvements deemed necessary for approval.
Section 3.1.3. Development Approval Process; Table 3.1.3

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

<table>
<thead>
<tr>
<th>Application Type</th>
<th>Decision Maker</th>
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<td>Special Exceptions</td>
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<td>Special Events (Parks and Recreation)</td>
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Section 3.1.4. Application submittals.

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.
Section 3.1.5. Pre-application and Neighborhood meetings.

A. Upon request of an applicant, the director may schedule pre-application meetings with applicants and appropriate City staff, for the purpose of reviewing proposed development prior to the formal submission of an application. Applicants are encouraged, though not required, to request a pre-application meeting. A pre-application meeting is required for Planned Unit Development applications.

B. The pre-application meeting shall be informal, and its purpose shall be to discuss the proposals, views, and concepts of the applicant. The purpose is also to discuss whether any additional information will be required. Failure of staff to identify any required permits or procedures at a pre-application meeting shall not relieve the applicant of any such requirements in this code or constitute waiver of the requirement by the decision-making body.

C. At the pre-application meeting staff will:

1. Review the proposed project and any preliminary plans with the applicant.

2. Discuss and inform the applicant about the zoning requirements relevant to the proposal, information necessary for an application, and the approval process(es) for the project. This does not preclude the department from requesting additional information or waiving certain requirements for information later during the review process.

3. Advise the applicant whether the proposed project conforms to the Comprehensive Plan or the requirements of this title.

D. Any recommendations or determinations reached during pre-application meetings are purely advisory and shall not be binding either on the applicant or the City.

E. Applicants are encouraged, though not required, to conduct a neighborhood meeting to advise nearby residents of upcoming development applications. The City will provide a list of surrounding property owners for applicants to notify when a neighborhood meeting is scheduled.

Section 3.1.6. Fees Required.

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

Section 3.1.7. Complete Applications Required.

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

B. Determination of Completeness.
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.


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;
6. Potable water;
7. Wastewater;
8. Solid waste;
9. Storm water; and
10. Transportation facilities. A traffic impact study is required for any development anticipated to generate more than 300 p.m. peak hour average daily trips.

D. If an application is determined to be insufficient, the director shall notify the applicant or agent in writing, stating the additional information required or the modification(s) necessary for conformance.

E. No further action shall be taken on an application determined to be insufficient unless and until the insufficiency(ies) are resolved, as determined by the director. If the insufficiencies have not been remedied within sixty (60) calendar days, the director may void the application.

Section 3.1.9. Decision-making.

A. Administrative approvals. Upon determining that an application and all supporting information are sufficient to render a decision, the Director shall take administrative action required by this code and approve the application, approve the application with conditions, or deny the application.

B. Quasi-judicial and legislative approvals. Upon determining that an application and all supporting information are sufficient to render a decision and any inadequacies have been resolved, the Director shall prepare a report and recommendation to the appropriate decision-making or recommending body.

Section 3.1.10. Public Hearing Scheduling and Notice Requirements.

A. Scheduling for consideration. When an application is deemed sufficient pursuant to LDC Section 3.1.8, the Director shall schedule a public hearing for an appropriate date. No application shall be scheduled for consideration by the Hearing Examiner, Commission, or City Council until either:

1. All specified insufficiencies have been resolved; or
2. The applicant has elected in writing to proceed notwithstanding the unresolved insufficiencies.

B. Required notice of public hearings. Notice of public hearings shall be provided by publication of an advertisement in a newspaper of general circulation, mailed notice to surrounding property owners, and posting of the development site pursuant to the requirements of this section. Table 3.1.2 depicts the public hearing notice requirements for quasi-judicial and legislative applications under this Code.
C. Website posting. Notices of public hearings for development applications shall be posted on the City of Cape Coral website but failure to post a case on the City website shall not constitute a violation of City noticing requirements. In addition, information about public notice and public hearings may be posted by the City on social media outlets.

D. Publication. Publication of advertisements for public hearings concerning comprehensive plan amendments shall meet the requirements of Chapter 163, Florida Statutes. Publications for public hearings concerning zoning amendments shall meet the requirements of Chapter 166 Florida Statutes.

E. Posting. The application site shall be posted with a notice of the public hearing on a sign provided by the Community Development Department at least ten (10) calendar days in advance of any public hearing. The number and placement of public notice signs should be determined by the Department. The signs shall be removed by the City after a final decision. The failure to remove posted notice after a final decision shall not be deemed a failure to comply with this requirement or be grounds to challenge the validity of any final decision on the application(s).

F. Mailed notice. Notice of a public hearing on a proposed development application(s) shall be mailed to all owners of real property within five hundred (500) feet of the periphery of the site in question, whose names and addresses are known by reference to the latest published ad valorem tax records of the Lee County Property Appraiser.

1. Individually owned multi-family units. When real property consists of individually owned multi-family units, notice shall be given to the homeowner’s association, if applicable, all individual unit owners, and all real property owners within five hundred (500) feet. If any area adjacent to the development site is owned by the applicant or any partner listed on the application, the five hundred (500) foot notification boundary shall be extended from these parcels. All property owner associations in the notice area shall be notified.

2. Notice to other jurisdictions. If there are unincorporated lands within 500 feet of the property, Lee County shall also be notified.

3. Applicant responsibility for notice. When the notice radius specified in this section includes property outside of the City limits, the applicant is responsible for obtaining the list of property owners to be notified from the Lee or Charlotte County Property Appraisers and providing this list to the department in sufficient time to comply with noticing requirements. The applicant is responsible for any errors or omissions in the list provided.

4. Content. Generally, all public hearing notices shall contain the following information:

   a. The scheduled date, time, and location of the hearing;

   b. A general description of the nature of the matter to be addressed, written in layman’s terms;

   c. The address of the property;
d. That persons may appear and be heard;

e. That written comments filed with the department will be entered into the record;

f. That the hearing may be continued from time to time as necessary;

g. A telephone number and contact for more information;

h. The case number or title of the ordinance under consideration, if applicable; and

i. Such additional information as may be required pursuant to this code or applicable law for specific types of development approval.

5. Timing of mailed notice. Notice shall be mailed a minimum ten (10) calendar days prior to the date set for the public hearing by first class mail. A copy of the notice shall be available for public inspection during regular business hours at the Community Development Department. If the application includes a simultaneous future land use map amendment and a rezone, the notice for the rezone may be included in the notice required for the land use amendment.

G. Electronic Notice. The Community Development Department may, as a courtesy, send electronic notice to any persons or organizations in the City, or to any governmental, public, or quasi-public organization regarding any matter that may affect the interests of that person or organization, or on any matter on which any such person or organization has requested notice. The failure of the Department to send such notice or the failure of any resident or property owner to receive such courtesy notice shall not affect the validity of the public notice requirements.

H. Exceptions to Mailing and Posting. The mailing and posting notice requirements shall not apply to a land use map amendment initiated by the Council, in response to a judicial order or compliance agreement as described by Section 163.3184(6) and (7), Florida Statutes.

I. Continued or Rescheduled Meetings. Notice of subsequent hearings shall be mailed and published in accordance with this section for:

1. Any hearing for which the Hearing Examiner, Community Development Director, or City Attorney determines new notice should be provided, because of the time elapsed from the original notice, to correct any defect, or apprise affected parties of significant changes to the application as originally noticed;

2. Any hearing continued to an unspecified date, time, and place; or

3. Any hearing where such new notice is required pursuant to applicable law or this Code.

Section 3.1.11 Public Hearing Procedures.

A. General. All public hearings shall be open to the public. Members of the public shall be permitted to testify at all public hearings. A copy of the hearing procedures shall be made available at the hearing.
The applicant may withdraw an application by requesting such withdrawal in writing prior to the commencement of the hearing.

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

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

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

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

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

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

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

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

   b. Staff shall have the responsibility of presenting the case on behalf of the city. The staff report on the application shall be made available by staff to the applicant and the decision-making body or the Hearing Examiner no later than five business days prior to the quasi-judicial hearing on the application. Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file that have not already been transmitted to the Hearing Examiner or City Council with the agenda materials, summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing. Staff shall present its entire case
c. Public comment. Participants in opposition to or support of the application shall make their presentation in any order as determined by the Chair, Hearing Examiner, or Mayor. Each participant shall present their argument in five minutes.

d. For hearings on quasi-judicial matters only, the applicant may cross-examine any witness and respond to any testimony presented.

e. For hearings on quasi-judicial matters only, staff may cross-examine any witness and respond to any testimony presented.

f. The Chair, Hearing Examiner, or Mayor may choose to allow participants to respond to any testimony if the Chair, Hearing Examiner, or Mayor deems the response to be necessary to ensure fairness and due process.

g. Members of the Planning and Zoning Commission, Hearing Examiner, or City Council may ask any questions of the staff, applicant, and participants.

h. Final argument may be made by the applicant, related solely to the evidence in the record.

i. Final argument may be made by the staff, related solely to the evidence in the record.

j. For good cause shown, the Planning and Zoning Commission, Hearing Examiner, or City Council may grant additional time to any of the above time limitations.

k. The Chair, Hearing Examiner, or Mayor shall keep order, and without requiring an objection, may direct a party conducting the direct examination or the cross-examination to stop a particular line of questioning that, in the sole judgment of the Chair, Hearing Examiner, or Mayor merely harasses, intimidates, or embarrasses the individual testifying or being cross-examined; is unduly repetitious or is not relevant; or is beyond the scope of the application or, in the case of cross-examination, is beyond the scope of the testimony by the individual being cross-examined. If the party conducting the direct examination or cross-examination continues to violate directions from the Chair, Hearing Examiner, or Mayor to end a line of questioning deemed improper as set forth herein, the Chair, Hearing Examiner, or Mayor may terminate the direct examination or the cross-examination.

l. The Planning and Zoning Commission, Hearing Examiner, or City Council may, on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. The applicant shall have the right to one continuance; however, all subsequent continuances shall be granted at the sole discretion of the Commission, Hearing Examiner, or City Council.

E. Decisions. For all quasi-judicial hearings in which a decision is made regarding an application for any development permit, the decision to approve or deny shall be based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the Land Development Code, based on the entirety of the record before the Hearing Examiner or City Council.
Council. The Hearing Examiner or Council decisions must be based upon competent substantial evidence in the record.

F. Rules of Evidence for quasi-judicial hearings.

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

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

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

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

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

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

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

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

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

10. Supplementing the record after the quasi-judicial hearing is prohibited, unless specifically authorized by an affirmative vote of the decision-making body, or authorized by the Hearing Examiner, under the following conditions:
a. The supplementation occurs after a quasi-judicial hearing is continued but prior to final action being taken on the application or appeal.

b. If a question is raised by the Planning and Zoning Commission, Hearing Examiner, or City Council at the hearing which cannot be answered at the hearing, the party to whom the question is directed will submit the requested information in writing to the City Clerk and the decision-making body or Hearing Examiner after the quasi-judicial hearing, with copies to the other parties, provided the hearing has been continued or another hearing has been scheduled for a future date and no final action has been taken by the decision-making body or Hearing Examiner. The information requested will be presented to the decision-making body or the Hearing Examiner at least two business days prior to the time of the continued hearing.

c. All parties and participants shall have the same right with respect to the additional information as they had for evidence presented at the hearing.

G. Final decision. The City Council or the Hearing Examiner shall reach a written decision without unreasonable or unnecessary delay. The Hearing Examiner shall provide a copy of the decision to the City Clerk for transmission to the applicant, if the applicant is not the City, to the Director of the Department of Community Development, and the City Attorney.

H. The Record. All evidence admitted into the record at the hearing, the official file, and the adopted development order, ordinance, or resolution of the City Council or the written decision of the Hearing Examiner shall be maintained by the City Clerk or the Department of Community Development.

I. Adjournment. The Chairperson, upon a vote of the majority present, or Hearing Examiner, as applicable, may adjourn a hearing to a date certain without the necessity of additional notice. Adjournment to an uncertain date shall require notice as required for the original hearing and by the Land Development Code.

J. Deferrals. If a hearing is concluded, but action is deferred until a future date, formal notice shall not be required prior to action being taken.

K. Joint hearings. Where deemed necessary, joint hearings may be conducted after proper public notice. In such instances, public notice need only be given by one public body, which shall be the City Council in instances where it is one of the hearing bodies.

L. Regularly scheduled public hearing dates. The Hearing Examiner or the City Council may establish regular dates for public hearings on zoning amendments. Such dates, if established by the Hearing Examiner, or the City Council, shall not prevent the Hearing Examiner or City Council from scheduling additional public hearings whenever such public hearings are deemed necessary.

M. Reading of ordinances. Except for ordinances initiated by the City Council which rezone a parcel or parcels of land involving ten or more contiguous acres, or change permitted, special exception, or prohibited use categories in zoning districts, all ordinances shall be read, either by title or in full, on two separate days at a duly noticed public hearing of the City Council.
N. The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall identify the hearing as quasi-judicial and indicate where copies of the procedures that apply may be obtained.

Section 3.1.12. Decisions under this Article.

A. When this Article authorizes the Community Development Director, Hearing Examiner, or City Council to make decisions under this Chapter, that decision shall be made pursuant to the specific criteria applicable to the application in Chapter 2 (Specific Review Procedures). If Chapter 2 does not include specific criteria for that type of decision, the Community Development Director or Department, Hearing Examiner, Commission, or Council shall make the decision based on whether the application complies with this Article and any regulations authorized by this Code, and will protect the public health, safety, and welfare.

B. Unless otherwise indicated in a specific provision of this Article, the Community Development Director, Hearing Examiner, or City Council may approve the application, deny the application, or approve the application subject to conditions as stated in Section 3.1.13, below.

C. Unless otherwise stated in this Article, or unless a different condition is attached to a permit or approval, permits and approvals granted under this Article are not affected by changes in ownership or tenancy of the property.

Section 3.1.13. Conditions on Approvals.

A. The Community Development Director, Hearing Examiner, or City Council may attach conditions to any quasi-judicial permit or approval under this Chapter, provided the condition is required to bring the development proposed in the application into compliance with the requirements of the Comprehensive Plan or the LDC.

B. The Community Development Director, Hearing Examiner, or City Council may also attach conditions to any quasi-judicial development permit or approval under this Code, provided the condition is necessary to minimize or ameliorate potential adverse impacts of the development proposal. Such conditions shall be reasonably related to the actual or potential impact(s) of the specific use, activity, or structure in question.


A. Review by the Director. Applicants for administrative permits and approvals may request a formal review by the Community Development Director of staff decisions, within thirty (30) calendar days of the date the administrative decision was made. The request for review shall be accompanied by any relevant documents related to the review as determined by the Planning Manager or Development Services Manager. The respective manager shall review the relevant standards and present a written finding to the Community Development Director. The request for review shall be considered by the Community Development Director within 10 days of submittal of a complete request. The Community Development Director may consult with the City Attorney’s office on the matter.
The Community Development Director shall provide a written determination to affirm the staff decision, grant the relief requested in the review, with or without conditions, or respond to the applicant or respective manager for further information, documentation, or proceedings. The written determination by the Director shall be the final administrative decision.

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

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

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

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

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

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

1. Applications for permits or approvals shall be submitted with forms supplied by the Department and any required supporting documentation, plans, or materials required by this Code or specified in the application form(s).

2. Applications shall include any required fee(s) as established by the City Council.

3. Incomplete applications will not be accepted.

4. Before any use of land, building, or structure is established or any established use of land, building, or structure is changed to a different use than that identified in the previously-issued certificate of use under the prior LUDR, a certificate of zoning compliance under this code, or a business tax receipt for the property, the person seeking to establish the use must obtain a certificate of zoning compliance. Failure to secure a certificate of zoning compliance before establishing a use of land, building, or structure or before changing the use of the property from the use recognized in a duly-issued certificate of use under the prior LUDR or a certificate of zoning compliance under this Code to another use, shall be a violation of this Code, and punishable as such.

B. Withdrawal of applications. An applicant may withdraw an application at any time by submitting a letter of request to DCD or providing testimony of the requested withdrawal in a public hearing.

C. Effective date. All permits shall take effect on the day the permit is issued or an approval granted.

D. Reliance on permits during pendency of appeals. Any action(s) taken by a permittee during the pendency of an administrative or quasi-judicial appeal shall be at the sole risk of the permittee.

CHAPTER 3. SPECIFIC REVIEW PROCEDURES - ADMINISTRATIVE PERMITS AND APPROVALS

Section 3.3.1. Zoning Verification Letter or Flood Verification Letter.

A. Purpose and Intent.

1. Zoning Verification Letter. To provide an official determination of the zoning of specific property

2. Flood Zone Verification Letter. To provide an official determination of the FEMA Flood zone, as shown on the Flood Insurance Rate Map (FIRM) for specific property.

B. Review Criteria.

1. The Department will review the applicable City records, maps, and any supporting information and issue a Zoning or Flood Zone verification letter.

2. Verification letters are valid for the date upon which they are issued and may be subject to change.
Section 3.3.2. Certificate of Zoning Compliance.

A. Purpose and Intent.

1. To determine whether a proposed activity or use is permitted in the zoning district of the property in question, prior to application for a building or site development permit.

2. To determine whether all structures and site development requirements (e.g., building setbacks, parking requirements, etc.) are in compliance with the requirements of this Code prior to application for or review of a building or site development permit.

3. Miscellaneous certificates of zoning compliance. The Community Development Director is authorized to approve, approve with conditions, or deny a certificate of zoning compliance for the following buildings, structures, improvements and installations:

   a. Above ground pools that contain water over 24 inches deep;

   b. Agricultural or farm buildings and non-habitable structures on A, Agriculture zoned sites;

   c. Canopy carports, canopies, and other fabric covered framework on residential properties;

   d. Chickee huts constructed by Miccosukee or Seminole Indians;

   e. Chain-link fences, picket fences, ornamental iron fences, and other fences installed on residential property that are deemed non-wind resistant; provided, however, any pool safety barrier fence and any fence with concrete columns shall require a building permit;

   f. Decorative reflective pools and fishponds that contain water less than 24 inches deep, that contain less than 250 square feet in area, and contain less than 2,250 gallons in volume;

   g. Decorative garden-type water fountains and other similar hardscape features;

   h. Portable mini-storage unit, subject to the conditions and limitations of contained in Article 5;

   i. Donation bins, recycling bins, mobile medical, and professional units in accordance with Article 5; and

   j. Anchoring, mooring, docking, or storage of a houseboat.

C. Review Criteria.

1. To determine whether the proposed use is a permitted use, a conditional use, or a special exception under this code.

2. Submittals will be reviewed for compliance with applicable code requirements (e.g., parking, setbacks, conditional use criteria, conditions of approval, etc.)
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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2. To interpret specific comprehensive plan policies.

3. To interpret whether a proposed use, activity, or site “design” complies with the LDC.

4. To determine how specific code requirements may apply to a site or a development proposal when application of such requirements is not explicitly set forth in the LDC.

5. To interpret the application of conditions of approval.

6. To determine whether a proposed use that is not otherwise classified as a permitted, permitted with special regulations, conditional, or special exception use in a zoning district or is not currently defined in this code may classified as a similar use.

B. Review Criteria.

1. To determine whether a proposed use activity or site design complies with specific provisions of the comprehensive plan and is in keeping with the spirit and intent of the comprehensive plan.

2. Consistency with LDC.

3. Whether the proposed use or activity complies with DCD policies and procedures.

C. Similar Use Determinations.

1. Interpretation of Similar Uses. Notwithstanding the requirements of Section 4.4.D., the Director may determine that a specific proposed use may be allowed as a permitted, permitted with specific regulations, conditional, or special exception use in a specific zoning district(s).

2. Similar Use Determination Process.

   a. A similar use determination may be issued if all of the following findings can be made:

      i. The characteristics and activities associated with the proposed use are similar to those of one or more of the allowed uses listed in the zoning district and will not involve a greater level of activity, population density, intensity, traffic generation, parking, dust, odor, noise, or similar impacts than the uses listed in the zoning district;

      ii. The proposed use will meet the purpose and intent of the zoning district that applies to the location of the use;

      iii. The proposed use is consistent with the goals, objectives, and policies of the Comprehensive Plan; and

      iv. The proposed use is not listed a permitted, permitted with specific regulations, conditional, or special exception use in another zoning district.
b. If a similar use determination is approved, the Director shall establish whether the use shall be a permitted use, permitted with specific regulations, a conditional use, or special exception use.

c. Upon approval of a similar use determination, the department shall prepare a text amendment to this ordinance to include the use in the appropriate district, along with any appropriate use regulations.

Section 3.3.4. Lots Splits and Lot Combines.

A. Purpose and Intent.

1. To provide standards for the split and combination of lots and tax parcels along existing platted lot or parcel lines.

2. To provide standards for the split and combination of lots or tax parcels that do not require a replat.

3. To provide for a one time split of property when the lot split or combine does not require approval as a new subdivision plat or replat.

4. This section shall not apply to unrecorded subdivisions.

B. General Requirements

1. All divisions of land in the City shall occur only as a new subdivision plat, a replat, or a lot split. The requirements for subdivisions and replats are set forth in Article 10 of this Code. A lot split that does not meet the requirements of this chapter is deemed a subdivision or a replat and shall be defined and processed as set forth in Article 10.

2. No lot split shall be recognized by the City, no lot that is part of a lot split shall be sold, and no building permit shall be issued unless the lot split has been approved by the City prior to recording in accordance with the requirements of this Article.

3. Lot combinations do not vacate platted property lines or public utility easements. See Section 3.4.5 for Vacations.

C. Review Criteria and Standards

1. Whether the lot split or combine creates nonconforming lots and structures.

2. The lot split or combine shall not cause marine improvements to become nonconforming for setbacks or any other standards regarding such structures.

3. Ensure that the lot split or combine does not create split zoning on a parcel.
4. The newly configured lots parcels must have at least twenty-five feet (25') of frontage on an existing right-of-way, private road, canal, lake, basin, or river. The minimum lot width of the zoning district must be met when measured at the front or rear setback, where applicable.

5. The newly created parcels shall not result in private utility lines crossing property lines.

6. A survey sketch prepared by a professional surveyor and mapper (PSM) indicating the legal description of the parent parcel, boundaries, dimensions, easements, restrictions or agreements affecting the property, rights-of-way, utilities, location of existing buildings, and other pertinent information including wetland boundaries and location of specimen and historic trees. The survey shall be required to be signed, sealed, dated, and certified to the City.

7. Approval and recording. The Community Development Department shall review the proposed lot split for compliance with the criteria listed in this subsection and Article 10, Subdivisions. Once approved the applicant may proceed with the lot split and record the lot split with the Lee County Property Appraiser. Approval shall expire within one (1) year of issuance if not recorded.

**Section 3.3.5. Conditional Uses.**

A. Purpose and Intent.

1. To provide standards and criteria for review and approval of specified conditional uses for a specific site.

2. To provide reasonable limitations or special conditions for conditional uses, in order 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. Proposed conditional uses must meet the following requirements:

1. The conditional use standards identified in Article 5 for the specific zoning district use and conditional use in question.

C. Review Criteria. A Conditional Use may be approved by the Director based on criteria identified in Article 5. These criteria are specific to each conditional use.

**Section 3.3.6. Administrative Deviations.**

A. Purpose and Intent. To grant relief from strict application of LDC requirements to allow minor deviations.

B. Scope. Administrative Deviations may be granted for the following:

1. Setback requirements where the setback is not decreased by more than 10% in the applicable zoning district and the encroachment does not extend into an easement, right-of-way, or is an encroachment over the property line for a zero-lot line site.
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2. Reduction in the overall required parking by 5%.

3. Landscaping or buffers. Up to a 10% reduction in the width of required buffers or the required number of trees and shrubs.

4. Preservation of Vegetation. A deviation from the following regulations to accommodate the preservation of existing native specimen tree(s):
   a. Up to five (5) percent of a required setback; or
   b. Up to five (5) percent of the required parking spaces.

5. Minor sign deviations as set forth in Article 6 of this code.

6. Maximum lot coverage of impervious surfaces. Up to a 10% increase in the maximum percentage of lot coverage by impervious surfaces, provided the applicant submits calculations by a Florida Registered Professional Engineer showing that the conveyance system for the contributing drainage basin can accommodate the additional stormwater run-off from greater than 60% impervious. A property owner may also add retention storage on-site to compensate for the additional runoff in situations where they propose to exceed 60% impervious surfaces. All such calculations and drainage plans must be approved by the City Public Works Department prior to issuance of any building permits.

7. Non-residential design standards in all non-residential and mixed use zoning districts, except for the Neighborhood Commercial district.

C. Review Criteria. An Administrative 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.

E. If an Administrative Deviation is not approved, the applicant may subsequently apply for a Variance.

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Section 3.3.7. Site Development and Subdivision Construction Plans.

A. Applicability. The procedures contained in this Section are applicable to all projects involving land development, including Site Development Plans (SDP) for individual sites, Subdivision Construction Plans (SCP), and sites without structures such as parking lots. Also included are projects which involve the construction of any facility, the expansion of a site through acquisition or lease, alteration or conversion of an existing site or structures, or the change of use of a site or structure where the site or structure does not meet the current standards or criteria of these regulations. The provisions of this Section, where appropriate, are to be applied to on-site and off-site development activity. No land development activity (including land clearing, excavation, or placement of fill) shall commence without obtaining the appropriate approvals and permits required by this code.

B. Exceptions. The requirements of this section do not apply to:

1. Single-family dwellings; or
2. Duplex dwellings on existing platted lots or parcels.

C. Plan Preparation. A professional engineer registered in the state of Florida shall design all required improvements such as streets, drainage systems, water and sewage facilities, etc. All plans, drawings, reports, and calculations shall be prepared, signed, and sealed by the appropriate licensed professional, such as engineers, architects, landscape architects, professional surveyors and mappers, or attorneys, registered in the state of Florida. Other specialized consultants, such as environmental consultants, structural engineers, archaeologists, etc., may be required to assist in the preparation of the plans, drawings, reports, or other documents required for application submittals.

D. Review Process. The application review and approval process follows the administrative review procedure as established in Sections 3.1.4 through 3.1.8 of this Article.

E. Criteria. The Development Services Manager may approve, approve with conditions, or deny the application, after consideration and review of the following:

1. The development, as proposed, conforms to the comprehensive plan and is consistent with the recommendations of any applicable PUD Master Concept Plan, Preliminary Subdivision Plan, or master plans which have been approved or accepted by the City Council;
2. The proposed development plans, landscape plans, engineering plans, lighting plans, and other required plans conform or will conform with all applicable City codes, the Engineering Design Standards, and design standards as set forth in this code;
3. The development will efficiently use or not unduly burden drainage, water, sewer, solid waste disposal, education, recreation, or other necessary public facilities which have been constructed or planned and budgeted for construction in the area;
4. The development provides sufficient on-site storm water management improvements to meet state water quality and flood protection standards;
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 Manager 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 construction 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

the original approval. See Phased Projects Section 3.3.7.T for additional information regarding expiration
of permits and plan approvals in phased projects.

I. Engineer’s Opinions of Probable Construction Costs. The City shall review and approve all cost
opinions prior to acceptance of same.

1. Inspection fees applied to development permits are based on a percentage of the estimated
construction cost, of Developer installed improvement, to be turned over to the City for ownership
and maintenance.

2. Opinions of Probable Construction Costs shall be prepared, signed, and sealed by the professional
engineer of record.

3. Cost opinions shall be a unit quantity itemized estimate of the required improvements including:
mobilization, material and other testing, survey stake out, and a 10% contingency. Lump sums are
only to be used for items typically not contracted as unit price items.

4. Subdivisions. Cost opinions for subdivision improvements are to be provided as required in Article
10 of this code. The cost of improvements required to support a subdivision that will be turned
over to the City for ownership and maintenance will be utilized in determining inspection fees for
the subdivision infrastructure permit. Cost opinions for assuring the completion of subdivision
improvements shall include, in addition to the items listed above, the cost of providing electrical
service for lift stations, pump stations, or other components that may require electric service to
function and setting PCP’s. Upon completion of construction.

J. Amendments. Plan amendments include changes to projects which impact multiple aspects of the
development, may affect multiple plans, and will require multiple departmental reviews to evaluate
the proposed amendment to the plan(s).

1. The amendment process may not be used to substantively modify the scheme of development as
originally approved under an approved SDP or SCP.

2. Proposed amendments that impact a PDP or PUD approval criteria or conditions must receive
approval of an amendment to the PDP or PUD prior to receiving SDP or SCP approval.

3. Amendments may apply to projects that are currently under review, projects under construction
or phased projects that have yet to be completed.

4. The applicant shall submit a letter of intent, the applicable fee, the amended plan(s) and any other
documentation required to review the proposed amendment.

5. The Development Services Manager shall determine if the proposed changes to the plan can be
processed as an amendment, qualify for a lesser review process or requires a greater review
process.
K. Revisions. Revisions to an approved plan while under construction which do not increase the gross square footage of a building or adversely impact compliance with the approved plan, and would not alter the required infrastructure and improvements necessary to serve the project, may be approved in writing by the Development Services Manager provided such revisions fully conform to all existing City regulations. The Development Services Manager will determine if the revision requires an approved plan revision or if the revision can be shown on the Record Drawings.

L. Limited Review. A Limited SDP Review for a new improvement or alteration of existing improvements to an approved project may be requested. Limited Reviews are for proposed improvements which do not substantially affect projects minimum technical requirements of this Code or do not require a review by three or more of the following review disciplines: zoning, planning transportation, drainage, fire, utilities, and landscaping. Changes that exceed the criteria for the scope of a Limited SDP review as specified in this subsection or, as determined by the Development Services Manager, may be processed as an amendment or a full SDP review in accordance with this section. Applications reviewed under this process will be reviewed for compliance with the following general criteria:

1. The development must have no significant adverse effect upon surrounding land uses;
2. The development must have no significant adverse effect upon public facilities in the area;
3. The development must not adversely affect the environmental quality of the area; and
4. The development proposal must be consistent with the City Comprehensive Plan.

M. Site Improvement Permit for minor changes. A permit review of minor changes to an existing development which does not require a separate Site Development Plan review. This approval process may be utilized when the existing project is in full compliance with an approved plan or the site proposed for a minor change meets the following criteria: Any changes to an approved Site Development Plan or project will not increase density, parking requirements, water or sewer usage, or enlarge a structure for human occupancy or assembly by more than 5% of the existing approved plan. For sites lawfully developed without Site Plan review, the 5% exception may be applied if the applicant submits all of the information required under SDP review. Determination of the 5% shall be cumulative based on the originally approved development.

1. All infrastructure exists on the site to service the site;
2. Engineering is not required for the proposed change;
3. Parking meets all parking code requirements;
4. The improvement does not significantly alter the traffic circulation system or significantly change the use of property;
5. The existing project is in compliance with an approved landscape plan or the code in effect at the time of the original construction; and
6. The existing project meets all storm water management requirements.

Section 3.3.8 Site Development Permits and Construction Authorization.

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

1. Site Development Plan – Construction Authorization;
2. Subdivision Infrastructure – Construction Authorization;
3. Site Improvements;
4. Landscaping;
5. Full Demolition;
6. Parking lot seal coating or re-striping of existing parking lots;
7. Underground Fire Lines;
8. Utility Service Relocations;
9. Land Clearing and Fill;
10. Relocation of Residential Storm Drains;
11. Backflow Prevention; and
12. Spot Dredging.

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

C. Approvals.

1. All approvals will be issued in compliance with the approved plans, if applicable, and may contain relevant conditions of the associated plan approval.
2. If the proposed construction or alteration conforms with all applicable provisions of this Code and all other applicable law, the Development Services Manager shall issue a development permit or construction authorization for such construction or alteration.
3. If the proposed construction or alteration fails to conform, he shall refuse to approve and shall deliver written notice to the applicant stating the reason for the refusal.
D. Effect of Approval, Expiration, and Extensions. A site development permit or construction authorization shall expire six months from the date of issuance unless the permitted improvements are under construction and have passed a required inspection within the 90 days prior to the expiration of the approval. Erosion control inspections will not extend the expiration date. An approval may be extended for an additional 90 days. Failure to either pass a required inspection or request an extension within the 90-day period provided will result in expiration of the approval. Thereafter, a new approval will be required to continue construction.

E. Commencement of Construction. After approval of the plans, the applicant may construct the required improvements, subject to obtaining all required permits and written construction authorization. The Development Services Manager shall be notified in advance of the date of commencement of such construction and the applicant shall schedule a preconstruction meeting where representatives of the developer, the City, contractors, and franchise utilities shall discuss the construction of the planned improvements. No work shall take place prior to the preconstruction meeting.

F. Inspections and Certification of Compliance. The developer shall retain the engineer of record or another professional engineer registered in the state of Florida and other professionals, if needed, to inspect the construction progress and certify the construction of all required improvements such as streets, parking areas, drainage structures, drainage systems, water and sewer facilities, landscaping and buffers, and all other improvements, for substantial compliance with the approved plans.

G. Right to enter. The Development Services Manager or duly authorized representative shall have the right to enter upon the property for the purpose of inspecting the quality of materials and workmanship and reviewing the construction of required improvements during the progress of such construction.

H. Periodic inspection required; correction of deficiencies. The Development Services Manager or his designated engineering and utility inspectors shall periodically inspect all phases of construction of streets, drainage improvements and utility installations including those improvements which are not to be dedicated to the public but are subject to this chapter. The Development Services Manager will immediately call to the attention of the developer, or the developer's engineer, any nonconforming work or deficiencies in the work. Correction of deficiencies in the work is the responsibility of the developer. It is the responsibility of the developer’s contractor to schedule the appropriate inspections as identified on the approvals or permits.

I. Stop work orders. The Development Services Manager shall have authority to stop work if improvements not authorized in the approved plan are being installed or upon failure of the applicant or his engineer to coordinate the construction of the required improvements so as to minimize activities which may have adverse impacts on surrounding property.

1. Authority. Whenever the Development Services Manager finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the Development Services Manager is authorized to issue a stop work order. In addition, the Development Services Manager is authorized to issue a stop work order for the failure to contain or remove construction refuse as required in the Code of Ordinances, Chapter 9, Health and Sanitation.
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
be required prior to reinspection. Reinspection fees will be charged for each reinspection in
accordance with the adopted fee schedule and must be paid prior to receiving a Certificate of
Completion.

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

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

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

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

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

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

N. Violation of an approved SDP or SCP.

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

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

3. Submittal of the application and payment of the application fee does not protect the applicant
from the remedies described in Article 1, Section 1-6 of this Code. Any of these forms of relief can
be sought or maintained by the City until the problem is abated.
4. Failure to maintain a development in compliance with a SDP or SCP issued and approved by a certificate of completion constitutes a violation of this Code.

O. Phased Projects. Development projects may be split into phases to accommodate the development plans and schedules of the developer.

1. Site Development Plans. The phasing plan shall show all required facilities, infrastructure, and buildings, if applicable, on the entire parcel that is covered by the SDP approval.

   a. If more than one building is covered by the SDP and the developer does not intend to receive certificates of occupancy (CO) for all the buildings at one time, a separate Site Development Permit or written construction authorization will be required for each building or buildings to receive a CO apart from the other buildings.

   b. A certificate of compliance for streets, utilities, parking areas, and drainage serving each building(s) will be required from the engineer of record prior to the City performing final inspection and closing that phase of the project and prior to receiving a certificate of occupancy from the Building Division.

   c. If a final inspection is requested for only a portion of a development, that portion must be an approved phase of the development in accordance with the approved SDP.

2. Subdivision Construction Plans. Phasing of the SCP shall be in accordance with the PSP approval as established in Article 10.

Section 3.3.9 Temporary Use Permits.

A. Purpose and Intent. To authorize the temporary uses and activities which do not exceed specific time frames.

B. General Standards.

1. Only those uses that are listed below or otherwise approved as temporary uses in Article 5, may be allowed as temporary uses.

2. Each temporary use shall be evaluated by the Community Development Department for compliance with the standards and conditions set forth in the LDC and the applicable zoning district. Special event uses are evaluated by the Parks and Recreation Department.

3. A temporary use permit shall take effect at the time of permit issuance and is in effect only for the specific time-period established in the temporary use approval.

C. Review Criteria. When considering an application for a temporary use, the Community Development Director or Parks and Recreation Director, as appropriate, shall consider whether and the extent to which:

1. The temporary use is consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan;

2. The temporary use complies with all relevant and appropriate portions of Article 5, Development Standards;

3. The temporary use is not incompatible with the character of the immediate surrounding area;

4. The design, duration, and hours of operation of the temporary use minimizes adverse impacts on nearby properties, including visual and noise impacts;

5. Whether the use complies with all relevant standards related to health, sanitation, and transportation;

6. The temporary use complies with all other applicable provisions of this Code;

7. Any permanent structures used in conjunction with a temporary use must comply with the requirement for adequate public facilities referenced in the comprehensive plan; and

8. Whether any public safety detail will be necessary.

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

1. Firework, pumpkin, and Christmas tree sales.

2. Outdoor display of merchandise.

3. Garage sales.

4. Temporary construction or field office.

5. Construction staging areas for essential public facilities and post disaster debris staging.

6. Temporary sales office.

7. Temporary Storage Containers.

8. Temporary Habitable Structures.


10. Tents for other than Special Events.

11. Other events not named.

12. Temporary Seawall Staging Areas.

Section 3.3.10 Special Events.

A. Special events in the city are administered and permitted by the Parks and Recreation Department.

B. Application and general requirements. Special events permits may be issued provided the following requirements are met:

1. A completed, signed, and notarized application shall be submitted no less than 60 days prior to the opening of the event. The application shall include the name and address of each applicant sponsoring the special event, the dates, times, and specific details of the event, and a list of all...
special events that the applicant has sponsored in the City for the past three years. Exceptions
to the 60-day requirement may be approved by the Director of Parks and Recreation based on
the size, duration, or nature of the event. The city reserves the right to verify the applicant’s
previous history of sponsoring special events with other jurisdictions.

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

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

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

4. Insurance requirements.

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

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

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

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

5. All applicable city ordinances and building, fire, and electrical codes shall be met.
6. Most events shall require off-duty City of Cape Coral police officers to be hired for the
duration of any event to include one hour before opening and one hour after closing. The
Police Chief shall determine the exact number of officers required, if any, based upon the
size and nature of the event and past experience with similar events. The cost for the off-
duty detail shall be set using the present rate charged by the Police Department which shall
be paid by the applicant prior to the issuance of the permit. All applicants must comply with
any rules or regulations imposed by the Police Chief which are consistent with this section.

7. Most events shall require off-duty City of Cape Coral firefighters or paramedics, to be hired
for the duration of any event to include one hour before opening and one hour after closing.
The Fire Chief shall determine the exact number of firefighters or paramedics required, if
any, based upon the size and nature of the event and past experience with similar events.
The cost for the off-duty detail shall be set using the present rate charged by the Fire
Department which shall be paid by the applicant prior to the issuance of the permit. All
applicants must comply with any rules or regulations imposed by the Fire Chief which are
consistent with this section. In the event the Fire Chief determines that special equipment
such as all-terrain vehicles, trailers, fireboats, fire and rescue assets, and appropriate
personnel for the special equipment are necessary, the city reserves the right to request
reimbursement for all or part of the discretionary cost from the applicant.

8. No open flame or other device emitting flames or fire shall be used in any tent or air
supported structure while open to the public.

9. All equipment including tents, stages, amusement rides, utility areas, ingress and egress
points, and cooking areas shall be inspected and approved by city fire inspectors or state
officials, if applicable, prior to the opening of the event. If applicable, inspection certificates
and annual permits as required by the State of Florida, shall be submitted to the city prior to
the opening of the event. All equipment or amusement rides, other than those which are
patron-operated or controlled, shall only be operated by persons over 18 years of age who
are employed by the applicant and who are thoroughly familiar with the operation of said
equipment or amusement rides. The operator of such equipment or amusement rides shall
be in the immediate vicinity of the operating controls at all times during the operation of the
equipment or amusement rides and no unauthorized person shall be permitted to handle the
controls during operation.

10. Any person, entity, group, or organization engaging in speech, expression, or assembly, which
is protected by the First Amendment of the United States Constitution or by Article I, Section
4 of the State of Florida Constitution, may do so during a Special Event, subject to the
following reasonable time, place, and manner regulations.

11. If sound amplifying equipment is present on public or private property at the special event,
the Director of Parks and Recreation shall establish one or more designated areas where such
amplified sound may occur. If amplified sound is not permitted for the special event, all
amplified sound shall be prohibited; however, nothing in this regulation shall serve to
prohibit protected speech, expression, or assembly utilizing non-amplified, reasonable
sound. For purposes of this paragraph, amplified sound caused by the police or fire
12. The Director of Parks and Recreation shall be responsible for the provisions of this section, department rules and regulations, and city ordinances. No action shall be taken to enforce this section until a warning to cease such a violation has been issued by a person authorized to enforce this section and the violator continues such violation.

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

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

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

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

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

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

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

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

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

D. Permit Decision.

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

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

3. Order to cease operation. If the Director of Parks and Recreation Department determines that proper provisions have not been made for the protection of the public health, safety, or
welfare he or she may issue an order to cease operating said special event until such time as
satisfactory corrective action has been taken.

E. Violations and Penalties.

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

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

Section 3.3.11. Outdoor Dining Permit

A. Purpose and Intent.

1. To provide standards for outdoor dining on public or private property.

2. To ensure that outdoor dining on public property does not interfere with pedestrian access,
ingress or egress to buildings, or sight visibility triangles.

B. General Requirements

1. All standards for outdoor dining are in Article 5, Section 5.1.16.

2. An outdoor dining permit is required.

3. A site plan indicating location of outdoor dining area including seating, furniture, heaters, or
similar equipment or improvements.

C. Review Criteria and Standards

1. The outdoor dining area shall not interfere with pedestrian access.

2. The outdoor dining area shall allow for ingress or egress to a building.

3. Does not interfere with public safety.

4. The outdoor dining area shall not be placed in any required off-street parking spaces.

Section 3.3.12. Preliminary Subdivision Plans

See Article 10.
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.
2. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of land, structures, or buildings in other districts, shall be considered grounds for the issuance of a variance.

B. Approval Criteria. In order to authorize a variance, the Hearing Examiner must find that the application meets all of following criteria:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

2. That the special conditions and circumstances do not result from the actions of the applicant;

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings, or structures in the same zoning district;

4. That literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations and would cause or impart unnecessary and undue hardship on the applicant;

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;

6. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district; and

7. That the granting of the variance will be in harmony with the general intent and purpose of these regulations, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

C. Effect of Approval. An approved variance shall run with the land.

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.

A. General.

1. No variances shall be granted that would reduce or eliminate minimum requirements for special exception uses.
2. The Hearing Examiner may prescribe appropriate conditions and safeguards in conformity with the special exception use requirements. All such conditions shall be part of the terms under which the special exception is granted.

3. A special exception shall be deemed abandoned if:
   a. The use is discontinued for more than 1 year; or
   b. The special exception has not obtained a certificate of zoning compliance.

4. The proposed use shall comply with all requirements of the underlying zoning district(s), the Land Development Code, and all other applicable law.

B. Standards and Criteria. The following standards shall apply to all applications for special exception uses.

1. Consistency with the Comprehensive Plan?

2. The site must be suitable for the type of special exception use proposed by virtue of its location, shape, topography, and the nature of surrounding development.

3. All buildings shall be setback an adequate distance from property lines and rights-of-way. Greater building setbacks may be required when deemed necessary to protect surrounding properties.

4. Potential adverse impact to surrounding property must be mitigated to the maximum extent possible.

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

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

A. General.

1. The city may retain an easement for utilities or drainage over any vacated right-of-way and that no use may be made of vacated right-of-way which will be inconsistent with or interfere with the retained easement. The party seeking vacation of a plat, city street, alley, canal, other right-of-way, public easement, or other property must shows or submit the following:

   a. Petitioner has color of title to the tract or parcel of land covered by the plat or portion of the plat of which vacation is sought, unless the petitioner is the City of Cape Coral;
b. Letter of approval from Lee County Electric Cooperative, Inc.;

c. Letter of approval from affected telephone companies;

d. Letter of approval from affected cable companies; and

e. Letter of approval from any other affected utility companies (e.g., water, sewer);

2. Applicants requesting to vacate rights-of-way or easements shall provide a recent boundary survey or survey sketch of the property prepared by a registered surveyor showing the area to be vacated and provide a complete legal description(s). The survey or sketch shall show all pavement and all utility and drainage facilities, including water, sewer, cable lines, utility poles, swales, ditches, manholes, and catch basins. Separate drawings and legal descriptions are required for each vacation area when right-of-way and easement configurations differ.

B. Standards and Criteria. Applications for vacations shall be reviewed in accordance with the following criteria:

1. Whether the plat, easements, or rights-of-way are required by the City for any future transportation, access, water management, or public utility purposes.

2. Whether any required easements are necessary to accommodate the vacation of any plat, easement, or right-of-way.

3. If alternate routes are required or available that do not cause adverse impacts to surrounding areas.

4. If the closure of a right-of-way negatively affects areas utilized for vehicles to turn around and exit an area.

5. Whether local utility providers have given consent to the vacation of the plat, easements, or rights-of-way. The local utility providers may require additional easements or relocation of existing utilities facilities to complete the vacation.

C. Additional Procedures and Noticing Requirements. In addition to the standard notice requirements required by this Code, the following additional notice requirements apply for vacations:

1. Specific notice requirements for vacations. Public hearing notices to vacate a plat or portion thereof shall be published once a week for two consecutive weeks, the first publication being not less than two weeks prior to the date of public hearing on the petition.

2. If the parcel to be vacated includes an alley, all property owners serviced by the alley and all property owners serviced by a connecting alley shall be noticed.
3. Adoption and recording of resolution and ordinance. After public hearing, the City Council may approve an application for a vacation if it determines there is no reasonably foreseeable public use for the vacated area. Approval of a vacation shall be by resolution or ordinance. The City may retain easements for utilities or drainage in and upon the vacated area. Upon adoption of the resolution vacating the plat or portion thereof, the City Clerk shall furnish to the petitioner a certified copy thereof and the petitioner shall cause the same to be recorded in the public records of the county and shall return a copy, showing the recording information, to the Department of Community Development.

4. Effect. The adoption and recording of a vacation shall have the effect of vacating all streets and alleys and city-owned easements shown on the portion of the plat so vacated, unless the resolution or ordinance specifically reserved unto the city such city-owned easements or such streets or alleys. If public rights-of-way are vacated, the resolution or ordinance shall specify whether or not easements are reserved therein for utilities and drainage. The resolution or ordinance shall not have the effect of vacating any public canal shown on the portion of the plat vacated, unless the resolution or ordinance specifically so provides.

5. Petitioner’s responsibility. The city, City Council, and all officers, employees, and agents thereof shall not assume any responsibility or liability for any matters and things to be done or completed by the petitioner pursuant to the provisions hereof. It is recognized that this procedure may affect substantial interests in real property and other proprietary rights, and the petitioner shall assume full and complete responsibility for compliance with the requirements of law and these procedures in connection with or arising out of any vacation proceedings instituted by the petitioner.

Section 3.4.6. Rezones

A. Manner of Initiation. Applications for a change in zoning may be initiated in the following manner:

1. The City Council upon its own motion;
2. The Planning and Zoning Commission upon its own motion;
3. The property owner(s) of at least fifty-one percent of the land in the proposed rezone area;
4. The City Manager for a City initiated rezone; or
5. The Community Development Department, following approval of a similar use determination.

B. Review Criteria. An application for a rezone shall be reviewed in accordance with the following criteria:

1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan;
2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;
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.
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.


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.
F. Preapplication conference required. A pre-application conference shall be held with the Community Development Department prior to the submittal of a PUD. The applicant shall indicate the requested PUD zoning district and a sketch of the PUD Master Concept Plan, if applicable.

G. Specific PUD Submittal Requirements. A PUD application shall include the following:

1. A Letter of Intent, including:
   a. Reasons the PUD procedure is more desirable than a conventional plan;
   b. General site description including acreages; and
   c. General project description.

2. A PUD Master Concept Plan indicating:
   a. Location of the uses within the site;
   b. Dimensional standards such as height, setbacks, and lot sizes;
   c. Vehicle circulation patterns, parking areas, and points of access;
   d. Pedestrian and bicycle circulation with links to other external path systems;
   e. Open space plan; and
   f. Landscape and buffer plans.

3. Sample formation of HOA or other organization to operate and maintain open space and other on-site public or private improvements.

4. Phasing plan, if applicable.

H. PUD Zoning Districts. Each PUD shall be rezoned to one of the following designations, based on proposed development:

- RPUD - Residential PUD
- CPUD - Commercial PUD
- IPUD - Industrial PUD
- MXPUD - Mixed Use PUD
- PFPUD - Public Facilities PUD

The proposed PUD zoning district must meet the criteria for rezones as set forth by this Code.

I. Review Standards and Criteria.
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.
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.
b. Open space is not decreased by more than five percent.

c. There are no changes to any condition of approval.

d. There is no change in permitted uses or types of structures.

e. Dimensional standards are changed by no more than ten percent.

2. Review Standards for amendments. An approved PUD Master Concept Plan may be amended if
the applicant demonstrates that the proposed modification:

   a. Is consistent with the efficient development and preservation of the entire PUD;

   b. Does not affect in a substantially adverse manner either the enjoyment of the land abutting
upon, adjoining or across a street from the planned unit development;

   c. Is not granted solely to confer a special benefit upon any person;

   d. Does not contain proposed uses that detract from other uses approved in the PUD;

   e. Does not contain an open space plan that differs substantially in quantity or quality from the
originally approved plan; and

   f. Contains streets and utilities that are coordinated with planned and existing street and
utilities for the remainder of the PUD.

3. Amendments that require City Council Approval. Any amendment to a PUD that does not meet
the criteria in subsection 1 through 2, above must be approved by the City Council.

L. Effect of PUD approvals.

1. PUD zoning. A rezone to a PUD zoning district shall run with the land.

2. Master Concept Plans. A MCP shall be valid for any time period established in the conditions of
approval for the MCP. If a specific time period is not specified then the MCP shall run with the
land.

   OR

3. If a Site Development Plan, a building permit for vertical construction, or a subdivision plat has
not been approved within 10 years, the Master Concept Plan shall be null and void, unless an
extension has been approved by City Council.

M. Extensions. A PUD may receive one extension that is valid for two years. Upon expiration of the
extension, the Master Concept Plan shall be null and void.
Section 3.5.1. Annexations

A. Purpose of Annexations. Annexations shall be considered for the following reasons:

1. The annexation implements the Comprehensive Plan.
2. The annexation increases the City’s inventory of non-residential lands.
3. The annexation results in the removal of enclaves.
4. The annexation results in the logical extension of City boundaries.

B. Manner of Initiation. Applications to annex property into the City may be initiated in the following manner:

1. The City Council; or
2. By a petition of one or more owners of property within an area proposed for annexation.

C. Review Criteria. Proposed annexations shall be reviewed in accordance with the requirements of Chapter 171, Florida Statutes.

D. Effective date of approval: The effective date of an annexation will take place in accordance with Chapter 171, Florida Statutes.

Section 3.5.2. Future Land Use Map Amendments

A. Purpose of Amendments. Future Land Use Map amendments shall be considered for the following reasons:

1. The amendment implements the goals, objectives, and policies of the Comprehensive Plan.
2. The amendment promotes compliance with changes to other city, state, or federal regulations.
3. The amendment results in compatible land uses within a specific area.
4. The amendment implements findings of reports, studies, or other documentation regarding functional requirements, contemporary planning practices, environmental requirements, or similar technical assessments.
5. The amendment is consistent with the City’s ability to provide adequate public facilities and services.
6. The amendment prepares the City for future growth, such as reflecting changing development patterns, identifying demands for community services, reflecting changes necessary to
accommodate current and planned growth in population, and facilitating community
infrastructure and public services.

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

1. The City Council by its own motion;

2. The Planning and Zoning Commission by its own motion;

3. The City Manager for City initiated requests; or

4. By a petition of one or more property owners of at least 51% of the property owners of an area
proposed for amendment.

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

1. Whether the proposed future land use amendment is consistent with the goals, policies, and
future land use designations of the City Comprehensive Plan;

2. The amendment protects the health, safety, and welfare of the community;

3. The proposed amendment and all of the consistent zoning districts, and the underlying permitted
uses, are compatible with the physical and environmental features of the site;

4. The range of zoning districts and all of the allowed uses in those districts are compatible with
surrounding uses in terms of land suitability or density and that a change will not result in negative
impacts on the community or traffic that cannot be mitigated through application of the
development standards in this Code;

5. The site is capable of accommodating all of the allowed uses, whether by right or otherwise,
considering existing or planned infrastructure for roads, sanitary and water supply systems,
stormwater, parks, etc.; and

6. Other factors deemed appropriate by the Commission and City Council.

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

Section 3.5.3. Comprehensive Plan Text Amendments

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

1. The amendment clarifies the intent of the Comprehensive Plan.
The amendment corrects an error in the Comprehensive Plan.

The amendment addresses changes to state legislation, recent case law, or opinions from the Attorney General of the State of Florida.

The amendment implements the Comprehensive Plan.

The amendment promotes compliance with changes to other city, state, or federal regulations.

The amendment results in compatible land uses within the future land use designation.

The amendment implements findings of reports, studies, or other documentation regarding functional requirements, contemporary planning practices, environmental requirements, or similar technical assessments.

The amendment promotes the City’s ability to provide adequate public facilities and services.

B. Manner of Initiation. Comprehensive Plan Text Amendments may be initiated in the following manner:

1. The City Council;

2. The Planning and Zoning Commission; or

3. The City Manager for City initiated requests.

C. Review Criteria. Proposed comprehensive plan text amendments shall be reviewed in accordance with the requirements of Florida Statutes, Chapter 163, and the following criteria:

1. The amendment is consistent with the goals and policies of the City Comprehensive Plan;

2. The amendment protects the health, safety, and welfare of the community; or

3. Other factors deemed appropriate by the Planning and Zoning Commission and City Council.

D. Effective date of approval. The effective date of a comprehensive plan text amendment shall be in accordance with Chapter 163, Florida Statutes.

Section 3.5.4. Land Development Code Text Amendments

A. Purpose of Amendments. Land Development Code (LDC) text amendments shall be considered for the following reasons:

1. The amendment clarifies the intent of the LDC.
2. The amendment corrects an error in the LDC.

3. The amendment addresses changes to state legislation, recent case law, or opinions from the Attorney General of the State of Florida.

4. The amendment implements the LDC or Comprehensive Plan.

5. The amendment promotes compliance with changes to other city, state, or federal regulations.

6. The amendment adds district uses that are consistent with the character of the current range of allowed uses.

7. The amendment results in providing compatible land uses within Cape Coral.

8. The amendment implements findings of reports, studies, or other documentation regarding functional requirements, contemporary planning practices, environmental requirements, or similar technical assessments.

B. Manner of Initiation. Applications for a LDC text amendment may be initiated in the following manner:

1. The City Council by its own motion;

2. The Planning and Zoning Commission by its own motion; or

3. The City Manager for City initiated requests, including text amendments associated with a similar use determination.

C. Review Criteria. Proposed LDC text amendments shall be reviewed in accordance with the following criteria:

1. Whether the proposed LDC text amendment is consistent with the goals, policies, and future land use designations of the City Comprehensive Plan;

2. The amendment results in compatible land uses within a zoning designation;

3. The amendment protects the health, safety, and welfare of the community; or

4. Other factors deemed appropriate by the Planning and Zoning Commission and City Council.

D. Effective date of approval. The effective date of a LDC text amendment shall take place upon adoption.

CHAPTER 6. OTHER APPROvals

Section 3.6.1. Outdoor Display of Merchandise
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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C. Outdoor Display Requiring Council Approval.

1. An application for an outdoor display of merchandise shall be filed with the Community Development Department.

2. A site plan showing the location of the outdoor display shall be provided.

3. A letter of intent detailing the duration of the outdoor display and the nature of items displayed.

4. The applicant shall be responsible for the cost of mailed notice to all property owners within a 500’ radius.

D. Council Action. The Council may approve, deny, or approve with any conditions deemed necessary to address the potential impacts of the outdoor display of merchandise.