

Cape Coral Planning & Zoning Commission Workshop

1015 Cultural Park Blvd.
Cape Coral, FL
www.capecoral.net



AGENDA

Wednesday, September 6, 2017
9:30 AM
Council Chambers

1. CALL TO ORDER

A. CHAIR READ

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

A. Marmo, Peterson, Ranfranz, Read, Schneider, Alternate Robinson and Slapper

5. BUSINESS

A. Land Development Code Article 1 and 2 for Review and Discussion

6. DATE AND TIME OF NEXT MEETING

A. A Planning and Zoning Meeting will be held on Wednesday, October 4, 2017, at 9:00 a.m. in Council Chambers

7. ADJOURNMENT

In accordance with the Americans with Disabilities Act and Florida Statutes 286.26, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City

Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance, if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8700 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

Item Number:	5.A.
Meeting Date:	9/6/2017
Item Type:	BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Land Development Code Article 1 and 2 for Review and Discussion

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Transmit LDC	Backup Material
<input type="checkbox"/> Article 1 General Provisisons	Backup Material
<input type="checkbox"/> Article 2 Discision Making and Administrative Bodies	Backup Material

MEMORANDUM

CITY OF CAPE CORAL COMMUNITY DEVELOPMENT DEPARTMENT

TO: Planning and Zoning Commission

FROM: Robert H. Pederson, Planning Manager

DATE: August 28, 2017

SUBJECT: Continuing P&Z review of the new Land Development Code

Background

First draft copies of Article 6 – Nonconformities and Article 8 – Floodplain Management were distributed for the August 2, 2017 P&Z meeting. These articles were recently sent to the stakeholders group that was formed at the outset of this project. Our goal is to review and discuss comments from P&Z members on these Articles at the September 6 work session.

Transmittal of Articles 1 & 2

Attached are Article 1 – General Provisions and Article 2 – Decision Making and Administrative Bodies for your review. Staff will present and overview of these articles at the September 6 meeting. We are also sending these Articles and all work product for the LDC update to the stakeholders group.

It is important to note that the attached articles are drafts and will undoubtedly change through the course of P&Z review, City Attorney's office review, further staff review, and public comment. This process will continue until final review and hearings by City Council.

Update

Staff continues to work on finalizing the entire LDC draft for your review. As previously stated, a complete rewrite of land development regulations is a complex task, with many interrelationships to be considered. Our work since the August meeting has resulted in further reorganization of the draft LDC, as shown below:

Article	LUDR	LDC*
1	General Provisions	General Provisions
2	District Regulations	Decision Making and Administrative Bodies
3	Supplementary District Regulations	Development Review

4	Land Development Regulations	Zoning Districts
5	Supplementary Development Regulations	Development Standards
6	Floodplain Management	Nonconformities
7	Signs	Signs
8	Administration	Floodplain Management
9	Boards, Commissions, and Committees	Definitions
10	Violations and Penalties	Governmental Dispute Resolution, Vested Rights
11	Definitions	Concurrency
12	Building Codes and City Engineering Standards	Subdivisions
13		Building Codes and City Engineering Standards

*Numbering of Articles may change

P&Z Review

Article 1 General Provisions

Attached is a draft of 1 Article – General Provisions. This article includes the purpose and intent of the zoning rules, the statutory basis for the code, jurisdiction and applicability, transitional rules, rules of construction, and severability sections, among others.

The new Article 1 includes much of the current LUDR Article 1 and provisions that are now part of other Articles (e.g., concurrency requirements will be in a separate article in the LDC).

Article 2 Decision Making and Administrative Bodies

Draft LDC Article 2 contains the powers and duties of City decision making bodies and administrative staff. Most of these provisions are now part of LUDR Articles 8 and 9.

LUDR to LDC Comparison

Staff is working on a chart to list each current code section and to identify where those code provisions are found in the new LDC. This will be an ongoing effort and we will send you a copy as soon as possible.

As always, should you have any questions about a particular code requirement or issue, please feel free to contact me.

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 1 - GENERAL PROVISIONS**

Section 1.1. Title.

This Code shall be known as and referred to as the Land Development Code ("LDC" or "these regulations" or the "Code") of the City of Cape Coral, Florida.

Section 1.2. Authority.

These regulations are enacted pursuant to the requirements and authority of Section 163.3161 et seq., Florida Statutes (the Local Government Comprehensive Planning and Land Development Regulation Act), the Charter of the City of Cape Coral, and the powers and authority in Chapters 60, 162, 166, 171, 177, 286, 380, and 823, Florida Statutes.

Section 1.3. Purpose and Intent of the City of Cape Coral Land Development Code.

The purpose of the City of Cape Coral Land Development Code is to implement the Comprehensive Plan of the City pursuant to Chapter 163, Florida Statutes for the protection and promotion of the safety, health, comfort, appearance, and general welfare of the City and its inhabitants and specifically for the following intent:

- A. Continue to foster community pride and a sense of stewardship in the City;
- B. Preserve and implement the comprehensive plan;
- C. Ensure the application and administration of these regulations continues to improve the overall quality of life and promote development of the City;
- D. Establish zoning districts as a means of achieving unified civic design and proper relationship between the uses of land by regulating the location and use of buildings and other structures;
- E. To minimize and reduce conflicts among various land uses through the application of regulations designed to assure harmonious relationships among land uses;
- F. To ensure safe and convenient traffic circulation, adequate utilities, recreation areas, and the development of economically stable and healthful neighborhoods;
- G. To prevent periodic and seasonal flooding by providing flood control and drainage facilities;
- H. To discourage haphazard, premature, uneconomical, or scattered land development; and
- I. To ensure that the citizens and taxpayers of the city will not have to bear the costs resulting from haphazard land development or the lack of adequate and necessary physical improvements incidental to land development.

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Section 1.4. Jurisdiction and applicability.

- A. These regulations shall govern the development and use of land, buildings, and structures within the municipal boundary of the City.
- B. No building, structure, water, or land shall be used or occupied and no building, structure, or land shall be developed unless in conformity with all provisions of the zoning district in which it is located, all other applicable regulations, and all development approvals.

Section 1.5. Compliance with regulations.

- A. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformance with:
 - 1. The applicable zoning district regulations;
 - 2. The bulk, area, and dimensional regulations of the zoning district;
 - 3. The off-street parking and loading regulations for the use in question;
 - 4. The floor area regulations of the zoning district; and
 - 5. The established flood criteria, as indicated on the most current edition of the federal flood insurance rate maps and in Article 8 applicable to the development site.
- B. No building shall be erected or enlarged after the effective date of these regulations, which reduces any level of service standard established in the City of Cape Coral adopted comprehensive plan.
- C. Nothing in this article shall be construed or applied to annul the vested rights of a property owner to complete development where the property owner demonstrates each of the following:
 - 1. A governmental act of development approval was obtained prior to the effective date of this article or prior to the effective date of an amendment to this article;
 - 2. Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures of money, time, or labor; and
 - 3. That it would be highly inequitable to deny the property owner the right to complete the development.

Section 1.6. Violations, enforcement, and penalties.

The procedures for enforcement and penalties for violations of this Code are set forth in Article 5, Divisions 3 and 4 of the City of Cape Coral Code of Ordinances. The provisions of this Code are supplemental to any other procedures and remedies available to the City of Cape Coral. Nothing contained in this Code prohibits the City of Cape Coral from enforcing its codes or ordinances by other Code Enforcement provisions of the City of Cape Coral Code of Ordinances or other applicable law.

Section 1.7. Buildings under construction.

Any building or structure for which a lawful building permit has been issued prior to the effective date of this article may be completed and used in accordance with the plans and specifications upon which such building permit was granted, provided construction is completed within the life of the building permit.

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Section 1.8. Outstanding permits.

Where there are outstanding and valid building permits authorizing construction of buildings, structures, additions, or alterations and the use or construction of which do not conform to the requirements of this article, such permits shall be valid for the life of the permit. Vested property rights are defined in Article 9, Definitions.

Section 1.9. Time limitation of approvals.

Unless specified otherwise herein, when an approval is granted pursuant to this code, an application for a building permit must be submitted within two years from the date of approval. Failure to submit for a building permit shall render the approval null and void except during the pendency of litigation, whereby the time requirements in this section are tolled. Permitted time frames do not change with successive owners provided, however, one, six-month extension of time may be granted by the Community Development Director for good cause.

Section 1.10. Annexed lands.

In accordance with FS 171.062, all land annexed in to the City of Cape Coral shall retain the Lee County Future Land Use and Zoning Designations until the City Council adopts a comprehensive plan amendment that includes the annexed area and adopts an ordinance establishing a zoning district for the annexed area.

Section 1.11. Comprehensive Plan and Future Land Use Map.

The Comprehensive Plan and Future Land Use Map of the City of Cape Coral are the official statements of policy for the City regarding the use of land. All use or development of land undertaken pursuant to these regulations shall be consistent with the Comprehensive Plan and the Future Land Use Map.

Section 1.12. Official Zoning Map.

- A. The Official Zoning Map is established and incorporated into these regulations by this reference. The Official Zoning Map shows the boundaries of all Zoning Districts as adopted by the City Council pursuant to the procedures of these regulations.
- B. Pursuant to Laws of Fla. Ch. 78-540, § 8, the city shall exercise extraterritorial zoning powers within an area extending 600 feet into the tidal waters adjacent to the corporate city limits. All such areas shall have the same zoning as the adjacent uplands.
- C. The Official Zoning Map, as amended from time to time, shall be kept on file and made available for public reference in the Office of the City Clerk and the Community Development Department.

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Section 1.13. Transitional rules.

- A. Existing unlawful uses and structures. A structure or use not lawfully existing at the time of the adoption of these regulations is lawful only if it conforms with all of the requirements of these regulations.
- B. Existing approved uses. An existing use which is lawful on the date of adoption of these regulations, whether as a “permitted use”, or a “special exception in the zoning district in which it is located, shall not be deemed nonconforming solely because the procedure for approval has changed through the adoption of these regulations. Such uses shall hereafter be deemed a permitted use in the district in which they are located. In the event the use was approved subject to one or more conditions; those conditions shall continue in full force and effect unless a new approval is obtained. If the existing use is nonconforming under the prior Code or these regulations, then such use shall continue to be a nonconforming use, which may be required to come into conformance with these regulations if required by the provisions of Article 6, Nonconformities.
- C. Violations of prior regulations. All violations of prior regulations of the City as of the effective date of this ordinance shall continue to be violations and shall not be considered to be legal nonconformities under this code. The City shall have the same authority to secure civil remedies for violations of such regulations to the same extent that it may secure civil remedies for violations of this ordinance.
- D. Previously granted variances. All variances granted under any prior edition of the Land Development Code and which are still in effect upon adoption of these regulations shall remain in full force and effect, including any conditions attached thereto, and the owner may proceed to develop the property in accordance with the approved variance.
- E. Previously approved special exceptions. All special exceptions approved prior to the adoption of these regulations, and any conditions attached thereto, shall remain in full force and effect, and the owner may proceed to develop the property in accordance with the previous approval. However, if construction has not commenced before the approval expires or if the approval is abandoned, the provisions of these regulations shall govern.
- F. Prior zoning districts. Unless provided otherwise on the Official Zoning Map, upon adoption of these regulations, all existing zoning classifications shall be reclassified with one of the zoning classifications set forth in Article 4, Zoning Districts, as follows:

Archived Zoning Districts (LUDR)	New Zoning Districts (LDC)
	Residential Districts
RE, Residential Estate	RE, Residential Estate
R-1A, Single-Family R-1B, Single-Family RX, Residential Receiving	R-1, Single-Family Residential
R-3, Multi-family Residential	RML, Residential Multi-Family Low RMM, Residential Multi-Family Medium
RD, Residential Development < 3 acres RD, Residential Development > 3 acres	RML, Residential Multi-Family Low RMM, Residential Multi-Family Medium

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N/A	SML, Small Lot Residential
	Nonresidential Districts
Pedestrian Commercial, C-1	C, Commercial
Pedestrian Commercial, C-1 Thoroughfare Commercial, C-3 Professional Office, P-2 Marketplace-Residential District, MR High Intensity Commercial-Industrial, HICI Village District, VILL	NC, Neighborhood Commercial
Professional Office, P-1	P, Professional Office
Corridor District, CORR	Commercial Corridor, CORR
Commerce Park Overlay, CPO	N/A Removed
Industrial, I	I, Industrial
Agricultural, A	A, Agricultural
Institutional, INST	IN, Institutional
Public, P	
Places of Worship, W	N/A Removed
Preservation,	PV, Preservation
PRES (Future Land Use)	
	Mixed Use Districts
South Cape Downtown District, SC	SC, South Cape
N/A	MX, Mixed Use
N/A	MXB, Mixed Use Bimini
N/A	MXS, Mixed Use Seven Islands
Various (Approved PDPs)	PUD, Planned Unit Development

- G. Prior approved PDP projects. All planned development projects (PDPs) approved prior to the adoption of these regulations, and any approved site plan and conditions attached thereto, shall remain in full force and effect. All such approved PDPs shall hereafter be deemed a permitted and approved Planned Unit Development under this code, and the owner may proceed to develop the property in accordance with the previous approval. All previously approved PDP sites are classified in the PUD zoning district under this Code. If construction pursuant to the PDP approval has not commenced before the approval expires or if the approval is abandoned, the provisions of these regulations shall govern.

Section 1.14. General rules of construction.

For the purposes of these regulations, the following rules of construction apply:

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- 189 A. In interpreting and applying the provisions of these regulations, they shall be held to be the minimum
190 requirements for the promotion of the health, safety, order, convenience, and general welfare of the
191 community.
192
- 193 B. The provisions of these regulations shall be construed to achieve the purposes and intent for which
194 they are adopted.
195
- 196 C. Nothing in these regulations is intended to repeal any easement, covenant, deed restriction, or other
197 private agreement; however, where these regulations are more restrictive or impose higher standards
198 or requirements than such easement, covenant, deed restriction, or other private agreement, these
199 regulations shall govern.
200
- 201 D. In the event of a conflict:
202
- 203 1. Between the text of these regulations and any caption, figure, illustration, table, or map, the text
204 of these regulations shall control;
205 2. Between a chart and an illustration, the chart shall control. All illustrations included in these
206 regulations are for illustrative purposes only;
207 3. In limitations, restrictions, or standards applying to an individual use or structure, the more
208 restrictive provisions shall apply; and
209 4. Between these regulations and any federal, state, or county statute or provision which pre-empts
210 local regulation, the federal, state, or county statute or provision shall apply.
211
- 212 E. Words and phrases shall be construed according to the rules of grammar and according to the
213 common and approved usage. Technical words and terms that are used and that may have a particular
214 meaning based on law shall be defined according to that meaning.
215
- 216 F. The terms "Ordinance," "Code," "Law," "Statute," "Title," and "Act" are understood to include the
217 term "as amended" where appropriate. References to technical manuals, resource materials, code
218 references, the comprehensive plan, and similar documents are understood to include the term "as
219 amended" where appropriate.
220
- 221 G. The words "shall," "must," and "will" are mandatory in nature, implying an obligation or duty to
222 comply with the particular provision.
223
- 224 H. The word "or" is alternative in nature.
225
- 226 I. The word "may" is permissive in nature.
227
- 228 J. The word "including" shall be construed to include the phrase "but not limited to."
229
- 230 K. Words used in the present tense include the future tense.
231
- 232 L. The singular number includes the plural number and the plural, the singular.
233

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- M. Words utilizing the masculine gender include the feminine gender and use of the feminine gender includes the masculine.
- N. The words “used” and “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”
- O. The word “herein” means “these regulations.”
- P. The words “building” or “structure” includes any of its parts.
- Q. The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity. A masculine term shall include the feminine version of the term and vice versa.
- R. The word “owner” includes their agents or authorized representatives.
- S. Any act authorized by these regulations to be carried out by a specific official or agency of the City is authorized to be carried out by a designee of such official or agency.
- T. The time within which an act is to be done shall be computed by excluding the first and including the last day; if the last day is a Saturday, Sunday, or a legal holiday the timeframe shall be extended to the next working day.
- U. Any words and terms not defined herein shall have the meaning indicated by common dictionary definition.
- V. Any reference to Federal Statutes, Florida Statutes, Florida Administrative Code, Lee County Code, or any other official code shall be construed to be a reference to the most recent enactment of such statute, code, or rule and shall include any amendments as may, from time to time, be adopted.

Section 1.15. Measurements.

- A. Number of Residential Units Allowed (Density). Unless otherwise provided herein, the maximum number of residential units allowed on a site is determined by multiplying the maximum density allowed under the Comprehensive Plan by the parcel size (i.e., allowable comp plan density (x) parcel size).
- B. Distance requirements. Unless otherwise provided herein, distances shall be measured in accordance with the following:
1. When the LDC requires a distance between uses or developments on different development sites or there are LDC requirements for a development within a certain distance from another development, the distance shall be measured using a straight-line measurement from property line to property line using the closest property line of the parcels involved.
 2. When the LDC imposes requirements on a development within a certain distance of a zoning district, the distance shall be measured using a straight-line measurement from the zoning district line closest to the closest property line of the parcel involved.

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3. When there is a distance requirement between a structure or building on the same development site, the distance shall be measured from the exterior of the buildings or structures, using a straight line measurement from the closest points between the structures being measured.
4. When a portion of a parcel or development site lies within a certain distance of a zoning district or development and the LDC imposes requirements or regulations on a development or parcel within that distance, the requirements and regulations shall be applicable to the entire parcel or development site and not just to the portion within the specified distance.
- C. Floor area, gross. The sum of the floor areas of all floors of a building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, excluding covered parking, loading areas, or parking garages. When an entire level of a building or structure is below ground as measured from floor to floor or ceiling slab to ceiling slab, the floor area of this level shall be excluded from the calculation of gross floor area. In restaurants, gross floor area shall also include any outdoor or patio floor area used or designed for customer service.
- D. Floor area, net. The total floor area of all floors of a building shall be measured by excluding stairwells and elevator shafts, equipment rooms, interior vehicular parking, loading, and all floors below the first or ground floor, except when such areas are used or intended to be used for human habitation or service to the public.
- E. Floor area ratio (FAR). The floor area ratio is measured by the net floor area of all buildings or structures on a lot, parcel, or site divided by the total lot area.
- F. Fractional measurements.
1. When units or measurements result in a requirement of a fraction, any such fraction equal to or greater than exactly fifty percent (50%) shall require the full requirement, unless otherwise provided for in these regulations.
2. Density fractional measurements. When calculating density, any fraction of a unit shall be rounded down to the nearest whole number, unless otherwise provided for in the LDC.
- G. Grade.
1. When used to measure habitable structures, grade shall be the greater of:
- a. The natural elevation of the ground when compared to abutting properties. Natural elevation of the ground when compared to abutting properties, shall be derived by selecting a minimum of two (2) elevation points on each adjoining property line and calculating the average of all the selected elevation points. This calculation will determine the reference plane for calculating the height of habitable structures only;
- b. The base flood elevation requirement for the lowest floor as shown on the flood insurance rate map published by the Federal Emergency Management Agency (FEMA);
- c. Eighteen (18) inches above the FEMA base floor elevation requirement for the bottom of the Lowest Horizontal Structural Member (LHSM) of the lowest floor; or
- d. Eighteen (18) inches above the State of Florida, Department of Environmental Protection minimum requirement for the bottom of the LHSM of the lowest floor.
- For purposes of the definition of grade, the term floor shall be defined as the top of the lowest inside surface of an enclosed area in a building, including the basement. For example, the top of the slab in a concrete slab construction or the top of wood flooring in wood frame

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construction. The term does not include an unfurnished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area.

2. When used to measure non-habitable accessory structures, grade shall be the finished ground surface at the base of the accessory structure being measured. If a retaining wall elevates the non-habitable accessory structure, grade shall be the finished ground surface at the base of the retaining wall.

H. Gross acre. The unit of land area which comprises an acre, including that portion of land within public ownership. Public land area shall include adjoining public rights-of-way and public waterways.

I. Height. The height of buildings and structures shall be measured from the lowest finished floor elevation to the lowest point of the highest horizontal eave or the top of the roof slab for structures with flat roofs. Church spires and steeples, chimneys, parapet walls, machine rooms, elevator towers, and similar features necessary to the design and function of a building but not designed for human occupancy, shall not be included in the measurement of overall height of a building.

J. Lot coverage. That portion of a lot that is covered by all principal and accessory buildings.

K. Lot depth. The depth of a lot is the distance measured from the mean direction of the side lines of the lot from the midpoint of the street lot line to the midpoint of the opposite main rear line of the lot.

L. Lot width. The horizontal distance between the side lines of a lot measured at the front building setback line, or at the front property line where no front setback is required.

M. Net acre. The unit of land area which comprises an acre, less that portion within public ownership. Public land area shall include public rights-of-way, public waterways, and other publicly dedicated areas. Net acre is used for the purpose of calculating the maximum density permitted on a parcel by these regulations.

N. Setback. A setback is the minimum horizontal distance between a structure and a property line. Setbacks shall extend and be measured perpendicular and inward from the respective property lines. When a setback is required along a property line that abuts a waterway, it shall be measured from the face of the seawall in contact with the waterway (wet-face), or from the edge of the waterway where no seawall exists.

Section 1.16. Interpretation of zoning district boundaries.

Zoning district boundaries are usually depicted along streets, alleys, shorelines, property lines, or extensions thereof. Where an uncertainty exists with respect to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

A. Centerlines. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines;

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- B. Lot, section, and tract lines. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- C. Political boundaries. Boundaries indicated as approximately following City limits shall be construed as following City limits;
- D. Shorelines. Boundaries indicated as following shorelines shall be construed to follow such shorelines. In the event of a change in the shoreline, the zoning district boundary shall be construed as moving with the actual shoreline. Boundaries indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines;
- E. Vacations. Whenever any street, alley, or other public way is vacated by official action of the City Council, the zoning district of the property abutting each side of the street, alley, or public way shall be automatically extended to the center of such vacation and all area included within the vacation shall thereafter be subject to all regulations of the extended districts;
- F. Filled lands. Where land is built-up by fill upon areas formerly submerged under water, the district regulations applying to the land immediately adjoining such built-up land shall be automatically extended thereto;
- G. Parallel lines. Boundaries indicated as parallel to or extensions of features indicated in subsections A through F of this section shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
- H. Bisecting lines. Where district boundary lines approximately bisect blocks, the boundaries are the median line of such blocks, between the centerlines of boundary streets;
- I. Uncertainties. Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map or if any other uncertainty exists, the Director of Community Development shall interpret the intent of the official zoning map as to the location of district boundaries; and
- J. Excluded areas. Where land or water areas have been inadvertently excluded from a zoning district classification in any manner, such areas shall be classified in conformance with the most restrictive zoning district which abuts the excluded area until or unless changed pursuant to amendment procedures set forth in Article 3, Sec. 3.x.x.

Section 1.17. Severability.

- A. It is the intent of the City Council of the City of Cape Coral that the articles, chapters, sections, subsections, paragraphs, sub-paragraphs, sentences, clauses, and phrases of this Code are severable, and if any are declared invalid or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the balance of these regulations.

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417 B. It is the further intent of the City Council of the City of Cape Coral that all property within the City be
418 governed by these regulations. Therefore, if the zoning district of a parcel is declared invalid or
419 unconstitutional, either on its face or as-applied, it is the intent of the City Council that the zoning
420 district applied to the parcel shall be the next more restrictive zoning district that is consistent with
421 the future land use district within which the parcel is located.
422

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

CHAPTER 1. CITY COUNCIL

Section 2.1.1. Powers and duties.

The City of Cape Coral is governed by a City Council consisting of seven (7) elected members, plus a Mayor, as more particularly set forth in Article IV of the City Charter. In addition to any authority granted the City Council by state law, City Charter or other regulations of the City, the City Council shall have the power and duty to act as the final decision maker regarding these regulations with respect to certain types of applications and appeals as provided herein.

CHAPTER 2. PLANNING AND ZONING COMMISSION

Section 2.2.1. Powers and duties.

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

Section 2.2.2. Membership; vacancy; compensation.

- A. Membership. The Commission shall consist of seven members. All members shall be residents of the City and will be appointed by a majority vote of the City Council. The term of office for each member shall be three years. Terms of office shall commence on the first day of March of the year in which appointed. In addition to the seven members, two alternate members shall be appointed by a majority vote of the City Council to serve as alternates for the term of one year. Alternate members shall be residents of the City. Alternate members shall substitute for absent members on a rotating basis. When substituting for an absent member, an alternate member may vote and participate in all discussions of the Commission in the same manner and to the same extent as the other members of the Commission. When not substituting for an absent member(s), alternate members shall not vote on any matter, but may participate in all discussions in the same manner and to the same extent as the other members. Alternate members shall have the same attendance requirements as the other

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members of the Commission. Any member may be removed for cause by a majority vote of the City Council. Whenever a vacancy occurs on the Commission, the city shall fill the vacancy for the remainder of the term as soon as practicable after the vacancy occurs.

B. Vacancies.

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

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

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

Section 2.2.3. Meetings; Quorum; Required vote.

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

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

C. Special Meetings. Special meetings of the Commission may be called by the chairperson or by written notice signed by three voting members. No official action shall be taken during any special meeting unless three members concur.

Section 2.2.4. Officers; Staff; Attorney.

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

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

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

Section 2.2.5. Rules and records.

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

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

CHAPTER 3. HEARING EXAMINER

Section 2.3.1. Establishment.

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

Section 2.3.2. Appointment of Hearing Examiner(s); Vacancy: Recusal.

A. The city shall utilize the services of one or more Hearing Examiner(s) to conduct quasi-judicial hearings in accordance with provisions of this code.

B. The City Manager shall recruit qualified persons to serve as a Hearing Examiner.

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

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

E. Hearing Examiners shall not be considered to be city employees.

F. If a Hearing Examiner vacancy occurs as a result of resignation, death, removal, or the Hearing Examiner recuses, disqualifies himself or herself, or does not otherwise hear a particular case, and an alternate Hearing Examiner is unavailable or otherwise unable to hear a case, these cases shall be

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heard by the Planning and Zoning Commission in an advisory capacity and then heard by the City Council for the final decision.

Section 2.3.3 Exercise of power; powers and duties.

- A. Exercise of power. In exercising its powers, a Hearing Examiner may, upon appeal and in conformity with the provisions of this code, reverse or affirm, wholly or partly, or may modify the order, recommendation, requirement, decision or determination made by the Director or an administrative official in the application, interpretation, or enforcement of this code, and may make any necessary order, recommendation, requirement, decision or determination, and to that end shall have all the powers of the administrative official from whom the appeal is taken.
- B. Powers and duties. A Hearing Examiner shall hear and decide or, when applicable, make recommendations, on the following:
1. Applications for special exceptions;
 2. Applications for variances. The Hearing Examiner may impose any reasonable conditions or restrictions on a variance it decides to grant;
 3. Applications for deviations;
 4. Applications for rezoning property; and
 5. Appeals of administrative decisions under the Land Development Code

Section 2.3.4. City Attorney; City Clerk.

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

Section 2.3.5. Decisions; Recommendations.

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

CHAPTER 4. ADMINISTRATIVE DECISION MAKERS AND ENFORCEMENT OFFICERS

Section 2.4.1. City Manager.

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

Section 2.4.2. Community Development Department.

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

Section 2.4.3. Community Development Director.

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

Section 2.4.4. Building Official.

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

Section 2.4.5. Planning Manager.

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

Section 2.4.6. Public Works Director.

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

Section 2.4.7. Development Services Manager.

The Development Services Manager is responsible for the implementation of various City regulations, codes and standards as well as other state and federal regulations pursuant to review and approval of applications for land development permits. The Development Services Manager reviews and approves Site Development Plan approvals, Subdivisions, Construction Plan approvals, Plat approvals, Development Permits, and Certificates of Completion upon determination of compliance with the Development Permit. The Development Services Manager may attach to any approval or permit reasonable conditions, safeguards, limitations, or requirements which are found necessary and consistent with the review to effectuate the purpose of the Land Development Code.

Section 2.4.8. Code Compliance Manager.

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