

Cape Coral Planning & Zoning Commission/Local Planning

Agency



AGENDA

Wednesday, June 6, 2018

9:00 AM

Council Chambers

1. CALL TO ORDER

A. Chair Read

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

A. Bennie, Marmo, Peterson, Ranfranz, Read, Schneider, Slapper and Alternates O'Connor and Stevens

5. APPROVAL OF MINUTES

A. May 2, 2018 regular meeting minutes

6. CITIZENS INPUT

7. BUSINESS

8. PLANNING AND ZONING COMMISSION / LOCAL PLANNING AGENCY PUBLIC HEARING

A. Ordinance 39-18

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral

Comprehensive Plan by amending Policy 1.15 of the Future

Land Use Element to establish the Seven Islands Sub-District

Land Use Classification, which provides specific development limitations that are unique to the area.

B. Ordinance 40-18 (LU 18-0002)

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map to designate a parcel of land classified as Mixed Use (MX) Land Use as comprising the Seven Islands Sub-District for parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida.

C. Ordinance 42-18/LU 18-0001

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Commercial/Professional (CP) to Single-Family Residential (SF) Land Use for property described as Lots 1-28 and 55-82, Block 3170, Cape Coral Unit 66; property located north of SW 28th Street, south of SW 26th Street, east of SW 9th Avenue, and west of SW 8th Court. (Applicant: Sullico II, LLC)

D. Ordinance 43-18/LU 17-0012

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Mixed Use Preserve (MUP), Class III, Type D to Multi-Family Residential (MF) and from Urban Services Reserve Area to Urban Services Transition Area for a parcel lying in a portion of the Southwest Quarter of Section 29, Township 44 South, Range 23 East, Lee County Florida; property located northeast of Veterans Parkway and to the west of the Sandoval Subdivision. (Applicant: MSI Holdings, LLC)

9. STAFF UPDATES

10. OTHER BUSINESS

- A. Land Development Code Updates - ORDINANCE 35-18** **WHAT THE ORDINANCE ACCOMPLISHES:** An ordinance repealing Articles I-X and XII of the City of Cape Coral Land Use and Development Regulations and adopting Article 1-10, 12 and 13 of the new City of Cape Coral Land Development Code.

11. LPA MEMBER COMMENTS

12. DATE AND TIME OF NEXT MEETING

- A. Planning and Zoning Meeting July 11, 2018, 9:00 a.m. in Council Chambers with Workshop to follow.**

13. 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 City Clerk's 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: 1.A.
Meeting Date: 6/6/2018
Item Type: CALL TO ORDER

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Chair Read

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:
WHAT THE ORDINANCE ACCOMPLISHES:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number: 4.A.
Meeting Date: 6/6/2018
Item Type: ROLL CALL

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Bennie, Marmo, Peterson, Ranfranz, Read, Schneider, Slapper and Alternates O'Connor and Stevens

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
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Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number:	5.A.
Meeting Date:	6/6/2018
Item Type:	APPROVAL OF MINUTES

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

May 2, 2018 regular meeting minutes

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
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Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:
WHAT THE ORDINANCE ACCOMPLISHES:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> May 2, 2018 regular meeting minutes	Backup Material

**MINUTES OF THE REGULAR MEETING
OF THE CITY OF CAPE CORAL
PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY**

WEDNESDAY, May 2, 2018

COUNCIL CHAMBERS

9:00 A.M.

Chair Read called the meeting to order at 9:00 a.m.

A moment of silence was observed.

Pledge of Allegiance.

ROLL CALL: Peterson, Ranfranz, Read, Slapper and Stevens were present. Bennie and Marmo were excused. Schneider was absent.

ALSO PRESENT: Brian Bartos, Assistant City Attorney
John Naclerio, Assistant City Attorney
Wyatt Daltry, Planning Team Coordinator
Robert Pederson, Planning Manager

APPROVAL OF MINUTES

March 7, 2018 Regular Meeting Minutes

Commissioner Peterson moved, seconded by Commissioner Ranfranz to approve the minutes of the regular meeting held on March 7, 2018 as presented.

Commission polled as follows: Peterson, Ranfranz, Read, Slapper, and Stevens voted "aye." All "ayes." Motion carried 5-0.

**BUSINESS
CITIZENS INPUT**

Art Castellanos stated he is an Architect. His office is located at 1625 SE 46th Street, Cape Coral. He explained as an Architect he has a vested interest. He noted he is the President of the (AIA) Florida Association-American Institute of Architects, Local Chapter, and would like to give some input into reviewing the changes to the zoning codes to improve them.

Planning and Zoning Commission – Applicant Interviews

Robert Maurice O'Connor

Mr. O'Connor shared his experience as a Federal Express driver. He retired 3 years ago, and is a Commercial Real Estate advisor. He expressed his interest in the position that is open as an alternate

Commissioner Slapper motioned, seconded by Commissioner Peterson, to recommend to Council the appointment of Robert O'Connor as an Alternate member.

Commission polled as follows: Read, Peterson, Ranfranz, Slapper, and, Stevens voted "aye." Five "ayes." Motion carried 5-0.

Mr. Pederson stated the next meeting will be on May 16, 2018 and the Commissioners can set up a meeting with Mr. Struve one on one to discuss the revisions to the codes. He explained how the information will be provided for the following LDC meeting. This will be Articles 1-10 and 12-13. Article 11 was pulled. We are working with the Attorney's Office. He noted there are new standards for the Bimini Basin. The actual first Public Input will be at the next meeting.

Mr. Pederson explained they pulled out the noise regulations that were in Article 5. There are some changes that will be needed in the near future. This will not change the special events provisions. There will be amendments to the Comprehensive Plan. Some of the zoning districts need to be amendments to the Comprehensive Plan.

Mr. Bartos stated Article 5 is in a draft status on the City website for the Commissioners to review.

Commissioner Peterson inquired about storing Boats and RV's. He would like to see provisions made for residents to be able to park a boat in their garage.

Mr. Pederson stated guest houses have limits in the code. There is a height limit of 35 to 38 ft. The building should not be larger than the home. The garage should not be bigger than the house.

Commissioner Slapper questioned the requirements for Bimini Basin.

Mr. Pederson stated the design standards have a performance base measure, to try to be sensitive to the level of noise.

Mr. Struve explained currently there are architect standards that have requirements. We are encouraging people to get out on the streets and walk. This is for a shopping environment, designed to increase the shopping downtown in the Bimini district.

Mr. Bartos stated regarding detached garages, they wanted a size limit and a height limit. This was to discourage building over the garage.

Mr. Pederson stated the attached garage can be any size you want, and the detached garage does not have a common wall. He spoke about one applicant that wanted to build a large garage on the lot behind his home.

Commissioner Slapper questioned the noise and building on Bimini Basin. He stated this is the time to look at different types of standards to avoid future problems.

Mr. Pederson stated our code now is performance based. We are not proposing changes on the noise. There is a nuisance standard to look at regarding the decibel level. A bar can open today in this area and we would look at the plan to determine the sound barriers.

Chair Read encouraged the Commissioners to review all the codes to provide input at the next meeting.

Mr. Pederson stated staff is trying to find common ground in these issues. There will be a need for compromise along the way.

STAFF UPDATES

None

OTHER BUSINESS

None

DATE AND TIME OF NEXT MEETING

The next special meeting was scheduled for Wednesday, May 16, 2018, at 9:00 a.m. in Council Chambers.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:16 a.m.

Submitted by,

Patricia Sorrels
Recording Secretary

Item Number:	8.A.
Meeting Date:	6/6/2018
Item Type:	PLANNING AND ZONING COMMISSION / LOCAL PLANNING AGENCY PUBLIC HEARING

**AGENDA
REQUEST
FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 39-18

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:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to establish the Seven Islands Sub-District Land Use Classification, which provides specific development limitations that are unique to the area.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 39-18
Future Land Use Element GOP excerpt
Ord 39-18 Summary 7 Islands Sub-District
TXT 18-0002 case report

PREPARED BY:

Division- Department- City

Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Ordinance 39-18	Ordinance
▣ Future Land Use Element GOP excerpt	Backup Material
▣ Ord 39-18 Summary 7 Islands Sub-District	Backup Material
▣ TXT 18-0002 Case Report	Backup Material

ORDINANCE 39 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING POLICY 1.15 OF THE FUTURE LAND USE ELEMENT TO ESTABLISH THE SEVEN ISLANDS SUB-DISTRICT LAND USE CLASSIFICATION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Cape Coral hereby adopts Comprehensive Plan amendments necessary to update the Comprehensive Plan as follows:

The amendment to Policy 1.15 of the Future Land Use Element establishes the Seven Islands Sub-District which provides specific development limitations that are unique to the area. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4, F.S., whichever is applicable.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODSEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
Comp Plan Amendment-Seven Island Sub District

EXHIBIT A
FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

OBJECTIVE 1: Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2020, while the long-term planning horizon shall be the year 2035.

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Policy 1.15: Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

...

- r. **OPEN SPACE (OS):** The Open Space Future Land Use Classification is designed to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated

spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

- s. Sub-Districts: In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Non-residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 110,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights in the Sub-District may be transferred among any properties in the Seven Islands Sub-District through mutual agreement of the property owners, as long as the density and intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan.

This Sub-District shall be placed in the Mixed-Use future land use map classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found in Policy 1.15.f and development incentive program requirements identified in Policy 1.23. Mixed use development is required in the Seven Islands Sub-District. Development in the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;
All of Tract "G" and all of Lots 1 through 5, Block 6401;
All of Tract "F" and all of Lots 1 through 7, Block 6402;
All of Tract "E" and all of Lots 1 through 4, Block 6403;
All of Tract "D" and all of Lots 1 through 3, Block 6404;
All of Tract "C" and all of Lots 1 and 2, Block 6405;
All of Tract "B" and all of Lots 1 through 7, Block 6406;
All of Tract "A" and all of Lots 1 through 8, Block 6407;
All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

Policy 1.16: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

...

FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

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Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

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Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 70,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map

classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.f and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

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All of Tract "E" and all of Lots 1 through 4, Block 6403;

All of Tract "D" and all of Lots 1 through 3, Block 6404;

All of Tract "C" and all of Lots 1 and 2, Block 6405;

All of Tract "B" and all of Lots 1 through 7, Block 6406;

All of Tract "A" and all of Lots 1 through 8, Block 6407;

All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

Policy 1.16: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

Cape Coral City Council Summary

June 4, 2018

ORDINANCE 39-18

TXT18-0002

Background

- **City is amending Policy 1.15.s of the Comprehensive Plan to create the Seven Islands Sub-District**
- **Sub-District is an overlay of the Mixed Use future land use**
- **Purpose is to provide specific development parameters for the Seven Islands site, in accordance with the adopted vision plan**

Background

- **Development parameters within Sub-District include:**
 - 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);**
 - 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);**
 - 3. A 40,000-square foot community center;**
 - 4. A marina; and**
 - 5. Park uses.**
- **Follow up ordinance (Ordinance 40-18) would map the Sub-District**

Planning Division Staff Report

TXT18-0002

Review Date: April 26, 2018

Prepared by: Wyatt Daltry, AICP, Planning Team Coordinator

Request: Amend Policy 1.15.s of the Comprehensive Plan's Future Land Use Element to create the Seven Islands Sub-District, to permit greater development flexibility in the Mixed-Use future land use map classification.

STAFF RECOMMENDATION:

APPROVAL

Positive Aspects of Application:	<ul style="list-style-type: none">• Streamlines the development review process in the Mixed-Use (MX) future land use by removing the PDP requirement for the Seven Islands Sub-District
Negative Aspects of Application:	<ul style="list-style-type: none">• Some parties may wish to have greater oversight through the PDP process for the Seven Islands development
Mitigating Factors:	<ul style="list-style-type: none">• Adequate protection for potential impacts to surrounding residential areas are assured through LUDR requirements and landscape buffering

Background

In 2016, the City embarked upon a master planning effort for the Seven Islands site, off Old Burnt Store Road. The master planning effort involved feedback from residents and visitors. A vision plan was approved by the Cape Coral City Council in late-2016. The Council considered a number of options for the Seven Islands and approved Option D-1. In late-2017, the City Council adopted Ordinance 23-17, which established the Mixed-Use future land use map classification on the Seven Islands site.

Efforts to prepare the property for future development in accordance with the vision plan are moving forward. These include development of a Seven Islands-specific zoning district as part of the Land Development Code update and this Comprehensive Plan text amendment for a specific Sub-District to establish specific development uses, intensities and densities for this property.

Summary and Analysis of the Proposed Changes

The language below in Policy 1.15.s establishes the Seven Islands Sub-District which provides specific development limitations that are unique to the area. Sub-Districts are specific areas mapped on the Future Land Use Map; a future land use map amendment is considered to be proposed concurrently with this ordinance.

Staff proposes the following language to Policy 1.15:

...

- r. OPEN SPACE (OS): The Open Space Future Land Use Classification is designed to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

- s. Sub-Districts: In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Non-residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 70,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.f and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;

All of Tract "G" and all of Lots 1 through 5, Block 6401;

All of Tract "F" and all of Lots 1 through 7, Block 6402;

All of Tract "E" and all of Lots 1 through 4, Block 6403;

All of Tract "D" and all of Lots 1 through 3, Block 6404;

All of Tract "C" and all of Lots 1 and 2, Block 6405;

All of Tract "B" and all of Lots 1 through 7, Block 6406;

All of Tract "A" and all of Lots 1 through 8, Block 6407;

All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

Policy 1.16: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

Consistency with the Comprehensive Plan

The proposed changes are consistent with the following policies in the Future Land Use Element of the Comprehensive Plan.

Mixed Use

The proposed language is consistent with Policy 1.20, FLUE:

Policy 1.20: The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Recommendation

Staff recommends approval of the proposed text amendment.

Item Number:	8.B.
Meeting Date:	6/6/2018
Item Type:	PLANNING AND ZONING COMMISSION / LOCAL PLANNING AGENCY PUBLIC HEARING

**AGENDA
REQUEST
FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 40-18 (LU 18-0002)

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:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map to designate a parcel of land classified as Mixed Use (MX) Land Use as comprising the Seven Islands Sub-District for parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 40-18
LU 18-0002 Aerial
LU 18-0002 Proposed FLU
LU 18-0002 Zoning
LU 18-0002 Case Report
Staff Presentation - Introduction

PREPARED BY:

Division- Department- City
 Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Ordinance 40-18 (LU 18-0002)	Ordinance
▣ LU 18-0002 Aerial	Backup Material
▣ LU 18-0002 Proposed FLU	Backup Material
▣ LU 18-0002 Zoning	Backup Material
▣ LU 18-0002 Case Report	Backup Material
▣ Staff Presentation - Intro	Backup Material

ORDINANCE 40 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO DESIGNATE A PARCEL OF LAND CLASSIFIED AS MIXED USE (MX) LAND USE AS COMPRISING THE SEVEN ISLANDS SUB-DISTRICT, SAID PROPERTY BEING DESCRIBED AS PARCELS OF LAND LYING IN SECTIONS 12 AND 13, SECTION 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, SAID PARCELS OF LAND BEING MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE CITY OF CAPE CORAL LAND USE MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL TO REFLECT THE LAND USE MAP AMENDMENT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by the CITY OF CAPE CORAL regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below-described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan. The below-described parcel has a land use designation of Mixed Use (MX) and is hereby further designated the Seven Islands Sub-District as follows:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;
 All of Tract "G" and all of Lots 1 through 5, Block 6401;
 All of Tract "F" and all of Lots 1 through 7, Block 6402;
 All of Tract "E" and all of Lots 1 through 4, Block 6403;
 All of Tract "D" and all of Lots 1 through 3, Block 6404;
 All of Tract "C" and all of Lots 1 and 2, Block 6405;
 All of Tract "B" and all of Lots 1 through 7, Block 6406;
 All of Tract "A" and all of Lots 1 through 8, Block 6407;
 All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be: The date a final order is issued by the Department of Community Affairs finding the amendment to be in compliance in accordance with Chapter 163.3184(9), F.S.; or the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(9), F.S.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR
SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2018.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/lu18-0002

SUBJECT PARCELS

OLD BURNT STORE RD N

NW 39TH AVE

NW 38TH PL

NW 38TH AVE

NW 37TH PL

NW 37TH AVE

NW 36TH PL

NW 36TH AVE

NW 35TH PL

NW 6TH ST

NW 33RD AVE

NW 7TH ST

NW 7TH TER

NW 5TH TER

NW 4TH ST

NW 4TH ST

NW 4TH ST

NW 5TH TER

NW 5TH ST

NW 5TH TER

NW 39TH AVE

NW 38TH PL

NW 38TH AVE

NW 37TH PL

NW 3RD ST

NW 3RD TER

NW 2ND TER

NW 2ND ST

NW 1ST TER

NW 1ST ST

EMBERS PKWY W

SW 1ST ST

SW 1ST ST

SW 1ST TER

SW 1ST LN

SW 37TH PL

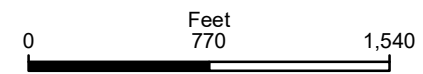
SW 37TH AVE

SW 36TH PL

SW 35TH PL

SW 35TH AVE


SW 34TH PL



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. LU18-0002

 Subject Parcels




MAY 9TH, 2017


CITY OF CAPE CORAL
Department of
Community Development
Planning Division

PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0002


LEGEND

 500' Proximity Boundary

 Subject Parcels


Future Land Use

 SF

 SM

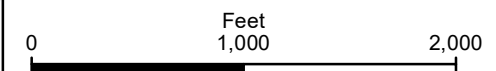
 Seven Islands Sub-District

 PK

 PR



MAY 9TH, 2018



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SUBJECT PARCELS


500' PROXIMITY BOUNDARY

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT ZONING MAP
500' Proximity Boundary

Case No. LU18-0002

LEGEND

 500' Proximity Boundary

 Subject Parcels

Zoning

 PRES-Regulated by FLU

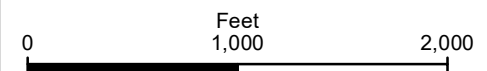
 R-1A

 R-1B

 RD



MAY 9TH, 2018



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SUBJECT PARCELS

500' PROXIMITY BOUNDARY

STAFF REPORT

LU18-0002

City of Cape Coral

DOCKET/CASE/APPLICATION NUMBER

Wyatt Daltrey, AICP, Planning Team

Coordinator (239) 573-3160,

wdaltrey@capecoral.net

STAFF PLANNER

APPLICANT/PROPERTY OWNER

101 Old Burnt Store Road North

606 Old Burnt Store Road North

4100 Tropicana Parkway West

PROPERTY ADDRESS/LOCATION

BRIEF SUMMARY OF REQUEST

City-initiated Future Land Use Map Amendment to amend three properties (50.72 acres) from Mixed Use (MX) to the Seven Islands Sub-District.



MAP SOURCE

EXISTING ZONING	EXISTING LAND USE	PROPOSED LAND USE	SITE IMPROVEMENTS	SIZE OF PROPERTY
Residential Development (RD)	MX	MX w/in the Seven Islands	Undeveloped.	50.72 acres

STAFF RECOMMENDATION**APPROVE****DENY**

Compatibility with the Comprehensive Plan:	PROPERTY HISTORY Property purchased by City of Cape Coral in 2013. Site of future Seven Islands development. City Council identified preferred development option and adopted the Seven Islands Vision Plan on December 11, 2016. Amendment to Mixed Use completed in late-2017.
Positive Aspects of Application:	<ul style="list-style-type: none"> N2 UEP is bringing utilities to area Amendment will implement adopted City Vision Plan Development of site can be a positive transformative project for NW Cape Coral
Negative Aspects of Application:	<ul style="list-style-type: none"> Nearby residents may have concerns with scale, noise, and traffic for project allowable in Sub-District
Mitigating Factors:	<ul style="list-style-type: none"> Old Burnt Store RD is being widened, providing additional traffic capacity for area

Review Date: April 26, 2018

Case Staff: Wyatt Daltry, AICP, Planning Team Coordinator

Review Approved
By: Robert Pederson, AICP, Planning Manager

Location: Northwest Cape Coral. Unit 76, Cape Coral Subdivision.

STRAP Number	Block	Lot	Site Address
134422C200801G000	6400	12	106 OLD BURNT STORE RD N
124422C200808I000	6408	TR I	4100 TROPICANA PKWY W
124422C200807A000	6405	TR C	606 OLD BURNT STORE RD N

Area: ±50.72 acres

Current FLU	Proposed	Acreage
Mixed Use	Mixed Use within the Seven Islands Sub-District	50.72

50.72 acres total

Subject Property:	Future Land Use	Zoning
Current:	Mixed Use (MX)	Residential Development (RD)
Proposed:	Mixed Use within the Seven Islands Sub-District	N/A
	Surrounding Future Land Use	Surrounding Zoning
North:	Single Family/Multi-Family by PDP	R-1B, and RD
South:	Single Family Residential (SF)	R-1B, and RD
East:	SF	R-1B, and RD
West:	Natural Resources/Preservation (PRES)	Preservation – regulated by Preserve FLU (PRES)

Urban Service Area: Transition

Type of Street Access: Seven Islands are accessible from Embers Parkway, Ceitus Parkway, Tropicana Parkway, and local roadways. Direct access to site will be from Old Burnt Store Road.

BACKGROUND

In 2013, the City of Cape Coral purchased 491 properties; most of which are north of Pine Island Road (SR 78) and have sizes from 0.25 acres to 50-acre tracts. Part of the Seven Islands were included in that transaction.

Cape Coral has long needed additional commercial and mixed use opportunities, particularly along the waterfront. The 2013 purchase provided the City with a unique opportunity to facilitate mixed use development on the waterfront. To accomplish this, the City contracted with CPH Engineers who, with sub-consultants, developed a Seven Islands and Northwest Cape Coral Vision Plan with assistance and input from city staff and the public.

In late 2016, the City Council evaluated several development options for the Seven Islands property. Council directed City staff to move forward with implementing a vision plan, which had the following development metrics:

1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);
2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);
3. A 40,000-square foot community center;
4. A marina; and
5. Park uses.

Subsequently, staff reviewed the Comprehensive Plan and determined that the MX future land use map classification was the land use that would best accomplish Council direction to implement the newly-adopted vision plan. Ordinance 23-17 was adopted last year which accomplished this task. A new zoning district is contemplated for the site, to be adopted as part of the City update to the Land Use and Development Regulations.

In order to best effectuate the future development of the site in accordance with the Vision Plan, staff proposes a future land use map amendment to place a Sub-District on the Seven Islands site. Sub-Districts are used to identify specific development mixes or limitations. Three Sub-Districts are currently mapped on the Future Land Use Map: Paradise Preserve, Tyson Shores, and Judd Creek. This Sub-District will be an overlay of the Mixed Use future land use map classification. Parallel with this effort is a text amendment that will establish the Seven Islands Sub-District in the Future Land Use Element of the Comprehensive Plan.

Additional Site Information

Protected Species

Eagle nests are present in the vicinity. The City requires species surveys prior to issuance of City of Cape Coral permits or development approvals, in accordance with the Conservation and Coastal Management Element of the Comprehensive Plan. Furthermore, development within 1,100' of an active eagle nest is regulated by Chapter 23 of the City Code of Ordinances.

Should additional protected species be identified on the property as part of the development review of the site, the City will abide by Policy 1.2.5 of the Conservation and Coastal Management Element, which states:

"Policy 1.2.5: The City will assist in the implementation of and compliance with all state and federal regulations concerning species listed as endangered, threatened, species of special concern, or commercially exploited by monitoring development activities, providing information on listed species in building permit packages, and assisting in investigations as requested."

Utilities

The site is in the Urban Services Transition and Reserve area as designated by the City Comprehensive Plan. Utilities are in the process of construction, which started in late 2017.

Soils and Drainage

The site has two soil classifications; Estero Muck and Matlacha Gravelly Fine Sand. These soils have various limitations for development, which are typically overcome using various engineering solutions such as importing fill. The soil types should not present an obstacle to future land development although special feasibility studies may be required.

The soil study for this area dates from a 1984 Soil Survey of Lee County, Florida performed by the Soil Conservation Service. The area has been modified significantly since the survey was undertaken; most of the area identified by Estero Muck has since been converted into the Northwest Spreader canal, or has had additional dredge spoil more consistent with Matlacha Gravelly Fine Sand.

REGIONAL PLAN ANALYSIS

Southwest Florida Regional Planning Council's (SWFRPC) Strategic Regional Policy Plan (SRPP):

This amendment is addressed by Economic Development Goal 1, Strategy: "Ensure the adequacy of lands for commercial and industrial centers, with suitable services provided."

Lee County Metropolitan Planning Organization's (MPO) Long Range Transportation Plan:

This area is not addressed in the MPO's Long Range Transportation Plan.

COMPREHENSIVE PLAN ANALYSIS

Staff analyzed the Comprehensive Plan to evaluate the proposed future land use map amendment. Most direction in the Comprehensive Plan for complex, multi-use development is based in the Future Land Use Element.

Future Land Use Element

Policy 1.20: The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Unlike many pre-platted, residential areas of Cape Coral, a mixed-use development such as the Seven Islands area has an opportunity to become an identifiable commercial district.

Policy 3.1: The City of Cape Coral will encourage the development of future commercial (retail, office and/or services) areas at or near transportation nodes by assigning appropriate future land use designations.

The FLUMA site is located at two intersections of collectors and arterial roadways (Tropicana PKWY/Old Burnt Store RD and Embers PKWY/Old Burnt Store RD).

OBJECTIVE 4: Location of Future Development: Future private development requiring public water and wastewater will be directed into the Urban Services Infill Area and the Urban Services Transition Area illustrated on the Future Land Use Map, unless specifically accepted by the provisions of this plan.

The site is in the Urban Services Transition Area. Utilities will be extended to this area as part of the North 2 Utility Expansion Project, which began in 2017.

Policy 10.1: Requests for development orders and building permits will be coordinated with governmental agencies including, but not necessarily limited to, Lee County, Charlotte County, the Regional Planning Council, the South Florida Water Management District, and other State and Federal agencies.

The City will implement this policy as part of the development review. The proposed FLUMA will be reviewed by the SWFRPC, SFWMD, and other state agencies.

Conservation and Coastal Management Element

Policy 1.1.8: The City will (as a cooperative effort with appropriate governmental agencies) continue to investigate the effectiveness and function of the spreader waterway systems in reducing the adverse environmental impacts of surface water discharge from Cape Coral into Matlacha Pass State Aquatic Preserve, and will periodically evaluate whether improvements are needed in the spreader system to reduce measurable negative impacts on the Matlacha Pass Ecosystem.

The City continues to abide by this policy.

Policy 1.3.9: Marina and boat ramp siting preference shall be given to areas where water depths can accommodate vessels with a four foot, or greater, draft, and to those facilities which are to be available for public use, and where economic need and feasibility can be demonstrated.

Depths of four (4) feet or greater are present at this location.

Policy 1.3.10: The City will consider consistency with the countywide marina siting plan, adopted on June 29, 2004, in the permitting of marinas. The City will also consider consistency with the general criteria of the Florida Fish and Wildlife Conservation Commission, Boat Facility Siting Guide, adopted August 2000:

- Expansion of existing facilities may be preferred over new facilities, if environmentally sound;
 - There should be no impact to seagrass;
 - Mitigation for seagrass destruction should not be allowed;
 - Areas with adequate depth and good flushing which require no new dredging are preferable;
 - Locations near inlets and popular boating destinations are preferable;
 - Piling construction is preferred over dredge and fill techniques;
-

- Marinas should not be sited in essential manatee habitats; and
- Marinas should not be situated in areas with high manatee mortality occurrence.

Impact to seagrass is anticipated to be minimal due to lack of seagrass present in area. The Spreader Canal has adequate depth during most of the year, and currently indicates sufficient flushing. Seven Islands is north of former boat lift, near the canal entrance to Matlacha Pass; a popular boating destination. Seven Islands is north of Manatee Park at Sirennia Vista, which is not designated an essential manatee habitat, but a popular location for spotting manatees.

Policy 1.7.16: Recognizing the importance of the Matlacha Pass Preservation Area, including the Matlacha Pass State Aquatic Preserve and the Matlacha Pass National Wildlife Refuge, as representing a unique and vitally important estuarine mangrove community, the City of Cape Coral will continue to abide by all rules and regulations imposed by state authorities to ensure the protection of this area. To implement this policy the City will prohibit all development within the Preservation Area, except for providing public access for enjoyment of the natural area, and will review adjacent applications for development orders to minimize adverse impacts of development upon this unique area.

This policy is best addressed during the development of the site; however, care will be taken to ensure protection of the adjacent Aquatic Preserve. No development within the Preservation area is anticipated.

Objective 2.1: Public Access to the coast. The City will continue to maintain and/or increase public access sites to the coastal zone.

The proposed marina use and public park will provide and improve public access to the Northwest Spreader Canal.

Policy 2.1.3: All coastal public access development will be done in accordance with the objectives and policies of Goal 1 so as not to destroy or damage coastal natural resources.

Acknowledged.

Policy 4.3.3: The City shall not approve any future land use map amendment that would increase the maximum residential density within the coastal high-hazard area, unless one of the following criteria is met, in accordance with Section 163.3178(9), F.S.:

1. The proposed amendment would not exceed a 16-hour out-of-county hurricane evacuation time for a category 5 storm event, as measured on the Saffir-Simpson scale; or
 6. A 12-hour evacuation time to shelter is maintained for a category 5 storm event as measured on the Saffir-Simpson scale and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available; or
 7. Appropriate mitigation is provided that will satisfy the provisions of either of the previous two paragraphs. Appropriate mitigation shall include, without limitation, payment of money, contribution of land, and construction of hurricane shelters and transportation facilities. Required mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to development. For future land use map amendments initiated by a developer, the City and the developer shall enter into a binding agreement to memorialize the mitigation plan prior to adoption of the amendment.
-

The City will work with Lee County to meet the third criteria of this policy, to provide additional shelter space necessary to mitigate the proposed increase of dwelling units in the Coastal High Hazard Area.

Transportation Element

Policy 2.2.7: The City shall discourage new strip style commercial development through efforts to promote the concentration of commercial development at the nodes of major intersections.

As discussed in Policy 3.1, Future Land Use Element, the site is located at two intersections of collector and arterial roadways (Tropicana PKWY/Old Burnt Store RD and Embers PKWY/Old Burnt Store RD). Furthermore, the Seven Islands site is not representative of “strip-style” commercial development, given the mixed-use nature and waterfront focus in the vision plan.

In conclusion, the FLUMA meets the policies of the Comprehensive Plan.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts at buildout. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual amount of dwelling units, population, etc.

Current Impacts: The entire 50.72-acre site is MX, and the analysis below assumes a density of 16 dwelling units per acre and using this floor-area-ratio, a maximum of 552,341 square-feet of commercial space.

Proposed Impacts: The impact assessment summary of the proposed use, a maximum of 995 dwelling units for the site, a 240-room hotel, and 70,000 square-feet of commercial space.

Dwelling Units

Existing:	811 presently
Proposed:	995
Net Change:	+184

Population*

Existing:	2,059 with existing FLUM
Proposed:	2,527
Net Change:	+468

* 2.54 persons/household = avg. household size; 2010 Census

Water Use

Existing:	<u>327,902 gal/day total</u> 162,200 gal/day residential (200 gal/day x 811 DU's) + 165,702 gal/day
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commercial (552,341 square feet x 0.3 gal/sq ft/day)
 Proposed: 244,000 gal/day total 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day commercial (70,000 square feet x 0.3 gal/sq ft/day) + 24,000 gal/day hotel (100 gal/day/room x 240 rooms)
 Net Change: -83,902 gal/day
 Facility Capacity: 30.1 MGD
 Permitted Usage: 16.9 MGD
 Avg. Daily Usage: 9.4 MGD

Sewage

Existing: 327,902 gal/day total 162,200 gal/day residential (200 gal/day x 811 DU's) + 165,702 gal/day commercial (552,341 square feet x 0.3 gal/sq ft/day)
 Proposed: 244,000 gal/day total 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day commercial (70,000 square feet x 0.3 gal/sq ft/day) + 24,000 gal/day hotel (100 gal/day/room x 240 rooms)
 Net Change: -83,902 gal/day
 Facility Capacity: 28.4 MGD
 Avg. Daily Usage: 12.8 MGD

The wastewater generated by development permitted by future land use map amendments in the future would be evaluated as part of those later reviews and concurrency requirements would be required to be met at the time of those respective reviews.

Solid Waste

Existing Generation: 84,877 lbs. total/day 9,759 lbs/day residential (4.74 lbs./person/day x 2,059 residents) + 75,118 lbs/day commercial (552,341 square feet x 0.136 gal/sq ft/day)
 Proposed: 22,458 lbs. total/day 11,978 lbs/day residential (4.74 lbs./person/day x 2,527 residents) + 9,520 lbs/day commercial (70,000 square feet x 0.136 gal/sq ft/day) + 960 lbs/day hotel (4 lbs/day/room x 240 rooms)
 Net Change: -62,419 lbs./day
 Facility Capacity: 1,836 tons/day
 Existing Demand: 1,384 tons/day
 Capacity Available: Yes

Traffic/Daily Trips

Existing Generation: 0 presently; 772 AM peak trips/hour and 2,323 PM peak trips/hour with existing FLUM
 Proposed: 438 AM peak trips/hour and 713 PM peak trips/hour
 Net Change: -334 AM peak hour trips and -1,610 PM peak hour trips
 Facility Capacity: Old Burnt Store Road, a collector roadway, Tropicana Parkway, a minor arterial roadway, and Embers Parkway, a minor arterial roadway currently access the subject properties. All roadways meet or surpass the minimum acceptable Level of Service Standard of "D."
 Capacity Available: Yes

Development Impact Analysis

Hurricane Evacuation

The site is in Evacuation Zone A (most vulnerable). The Seven Islands Sub-District future land use could increase potential residential dwelling units by 184 dwelling units, thus causing an impact on hurricane evacuation times. The City will mitigate impacts of increased dwelling units within the Coastal High Hazard Area through an agreement with Lee County, to provide additional shelter space.

Park Lands

The level of service standard (LOS) for parkland and facilities is based on permanent population. Based on 184 additional dwelling units, there could be a maximum increase in park demand of 1.87 acres.

Protected Species

The City requires an environmental survey prior to issuance of any land clearing, site clearing, or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, state, or federal protective or mitigation measures may be required by the developer to proceed.

School Impacts

There will be an increase in the potential number of dwelling units with a Seven Islands Sub-District future land use, resulting in an increase in the projected number of students.

Existing dwelling units:	0 presently; 811 dwelling units with existing FLUM
Existing students:	0 presently; 73 (811 DU x .091 students per multi-family dwelling unit)
Proposed dwelling units:	995 dwelling units
Proposed students:	91 (995 DU x .091 students per multi-family dwelling unit)
Change:	+18 students

Recommendation:

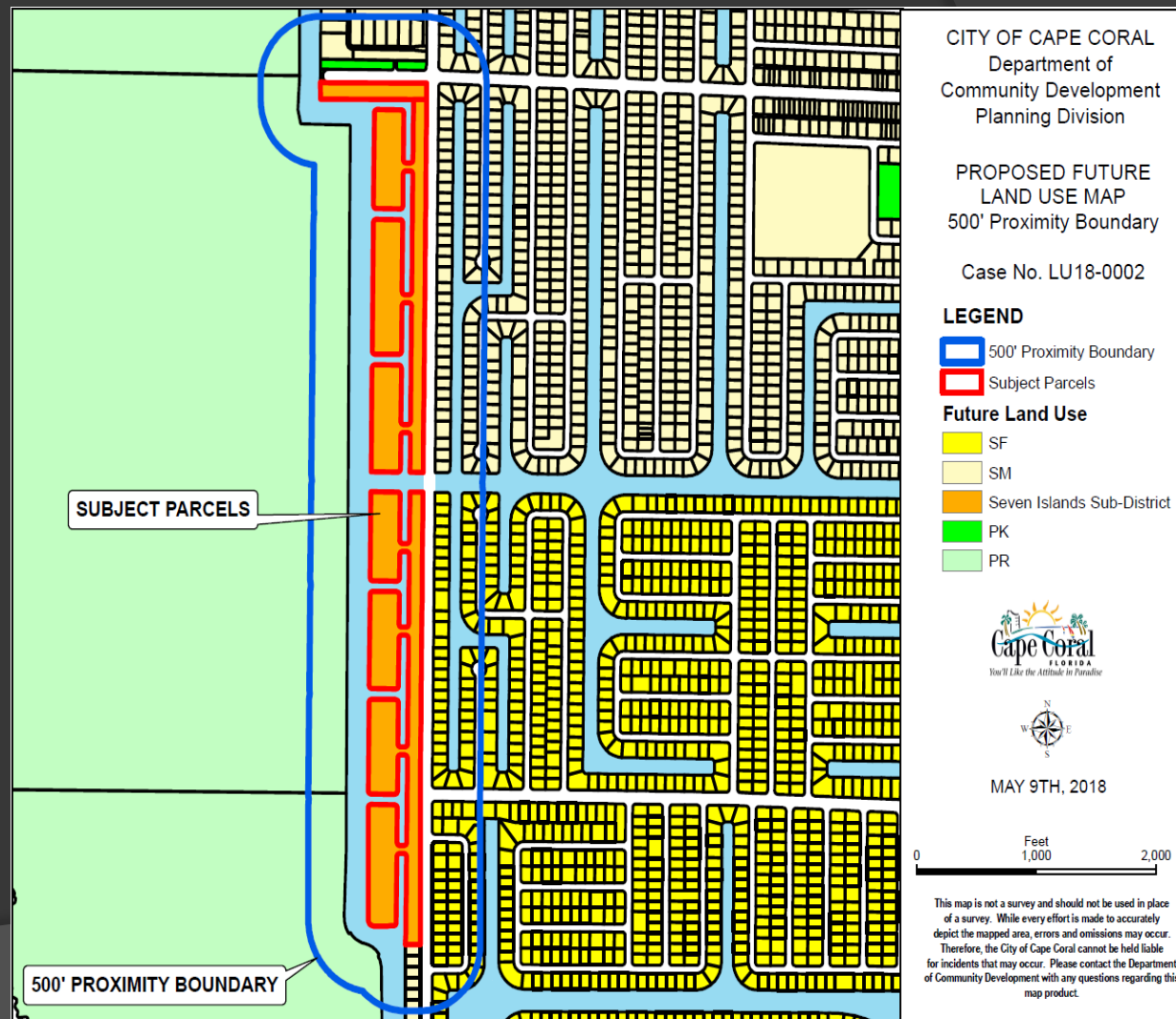
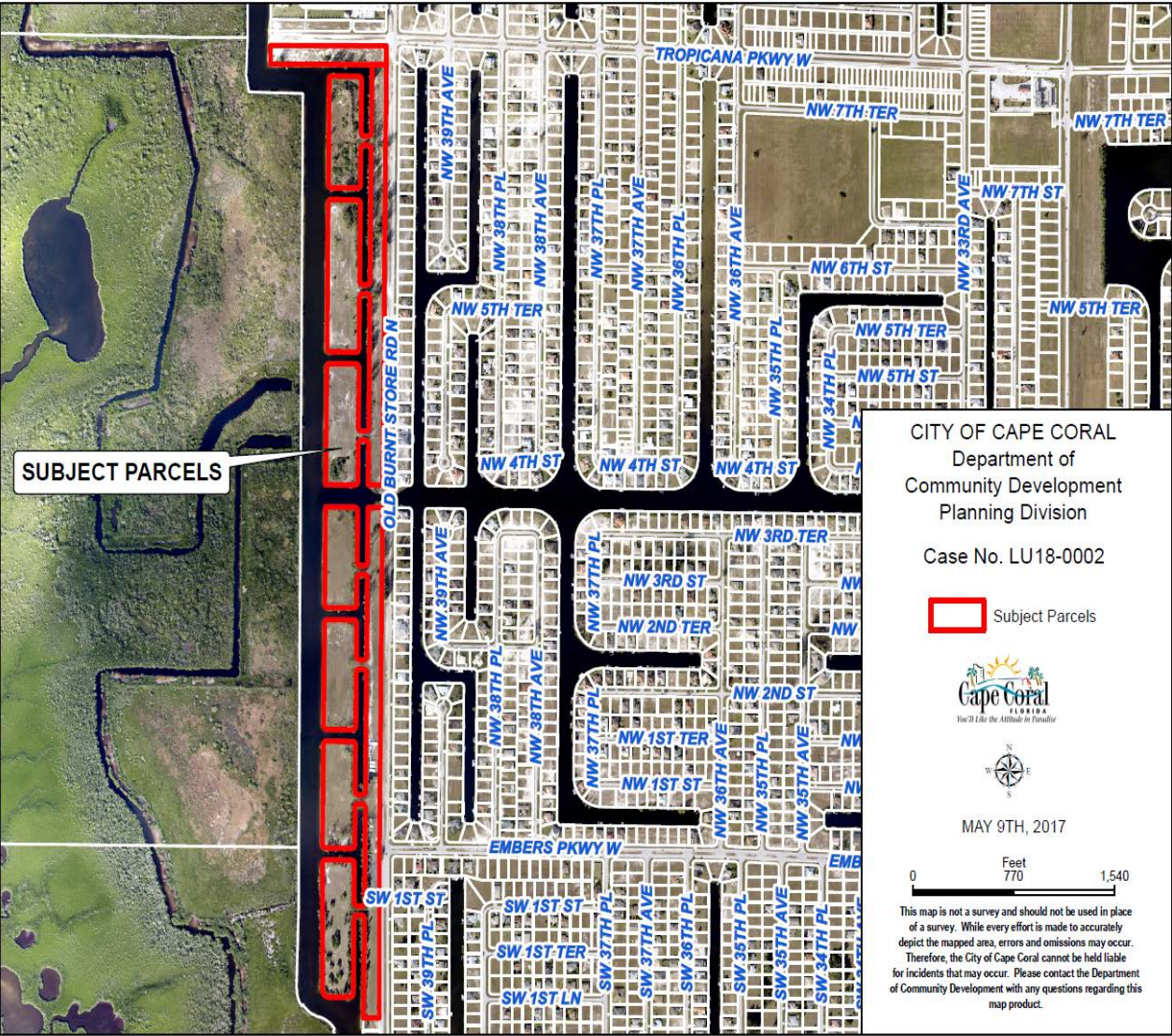
Planning Division staff recommends **Adoption** of the proposed large-scale future land use map amendment request.

**CAPE CORAL CITY COUNCIL
ORDINANCE 40-18
LU18-0002
JUNE 4, 2018**

LU18-00002

- Applicant: City of Cape Coral
- Request: A large-scale future land use amendment from Mixed Use (MX) to the Seven Islands Sub-District for a 50.72-acre site.





Background

- **Purpose of amendment is to place a Sub-District on the property**
- **Sub-Districts are placed over the future land use; development would be in accordance with mixed-use future land use**
- **Following limitations within Sub-District:**
 - 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);**
 - 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);**
 - 3. A 40,000-square foot community center;**
 - 4. A marina; and**
 - 5. Park uses.**

Summary

- **N2 UEP is bringing utilities to area**
- **Amendment will implement adopted City Vision Plan and provide specific development guidance for the Seven Islands site**
- **Development of site can be a positive transformative project for NW Cape Coral**

Recommendation

Planning Division staff recommends Transmittal for the following reasons:

- The request is consistent with the Comprehensive Plan and Land Use and Development Regulations**
- The request will provide support for development of Seven Islands site in accordance with adopted city vision**

Item Number:	8.C.
Meeting Date:	6/6/2018
Item Type:	PLANNING AND ZONING COMMISSION / LOCAL PLANNING AGENCY PUBLIC HEARING

**AGENDA
REQUEST
FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 42-18/LU 18-0001

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
 - 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:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Commercial/Professional (CP) to Single-Family Residential (SF) Land Use for property described as Lots 1-28 and 55-82, Block 3170, Cape Coral Unit 66; property located north of SW 28th Street, south of SW 26th Street, east of SW 9th Avenue, and west of SW 8th Court. (Applicant: Sullico II, LLC)

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 42-18

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, Principal Planner

ATTACHMENTS:

Description	Type
▣ Ordinance 42-18/LU 18-0001	Ordinance
▣ Backup Material	Backup Material

ORDINANCE 42 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM COMMERCIAL/PROFESSIONAL (CP) TO SINGLE-FAMILY RESIDENTIAL (SF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 1-28 AND 55-82, BLOCK 3170, CAPE CORAL UNIT 66, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTH OF SW 28TH STREET, SOUTH OF SW 26TH STREET, EAST OF SW 9TH AVENUE, AND WEST OF SW 8TH COURT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by SULLICO II, LLC, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM COMMERCIAL/PROFESSIONAL (CP) TO SINGLE-FAMILY RESIDENTIAL (SF)

Lots 1-27, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida.

Lot 28, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida, *less and except* that portion of said Lot 28 lying within the right of way for the extension of SE 26th Street as set forth in that certain plat of Home Depot according to the map or plat thereof as bearing Official Records Instrument # 2006000203514, Public Records of Lee County, Florida.

Lot 55, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida, *less and except* that portion of said Lot 55 lying within the right of way for the extension of SE 26th Street as set forth in that certain plat of Home Depot according to the map or plat thereof as bearing Official Records Instrument # 2006000203514, Public Records of Lee County, Florida.

Lots 56-82, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida.

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this small scale development amendment to the Comprehensive Plan shall be thirty-one (31) days after the adoption of this ordinance. Alternatively, if the small scale development amendment adopted by this ordinance is challenged by an "affected person" within thirty (30) days after adoption, then the effective date of this amendment shall be the date upon which either the state land planning agency or the Administration Commission issues a

"final order" determining that this small scale development amendment is "in compliance" as provided in Section 163.3187(5), Florida Statutes.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO _____
GUNTER _____
CARIOSCIA _____
STOUT _____

NELSON _____
STOKES _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/lu18-0001



DEPARTMENT OF COMMUNITY DEVELOPMENT
REQUEST TO PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY AND COUNCIL
FOR A LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

JAN 25 18 8.75

FEE \$1,225.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

CASE # LUB-0001

OWNER OF PROPERTY

Sullico II LLC

Address: 15946 Double Eagle Drive

City: Morrison State: CO Zip 80465

Email: _____

Phone: _____

AUTHORIZED REPRESENTATIVE

Avalon Engineering Inc

Address: 2503 Del Prado Blvd Suite 200

City: Cape Coral State: FL Zip 33904

Email: Linda@avaloneng.com

Phone: 239-573-2077

Unit 66 Block 3170 Lot(s) List Subdivision Cape Coral

Legal Description _____

Address of Property Parcels on SW 8th Ct and SW 9th Avenue

Plat 23 Page 23

Current Zoning C-1 Strap Number See Listing

Current Land Use CP Proposed Land Use SF

Parcel Size: Width 1120 Depth 250 Sq. Ft. 280,000 Acreage 6.42 Acres
Soil Type: 13- Boca Fine Sand and 69 Matlacha Gravely Fine Sand 3.44 owned by Sullico

Urban Services Area: (check one) ☒ Infill ☐ Transition ☐ Reserve

Natural Resources: (state habitat type, e.g. high lands, wetlands, upland forest, oak hammocks, etc.):

FLUCCS: 192 Inactive land with street patterns but without structures and 121 Fixed Single Family units

Animal Species: (list any endangered, threatened, or species of special concern on-site)

None

Estimated Development:

Estimate total lot coverage: 20 %

Estimate total building floor area 56,000 sq. ft.

Estimate type of future development and percentages (e.g. business offices, commercial retail, automotive repair, etc.)

Single Family Homes

Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection. If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer: Yes ☒ No ☐
City Water: Yes ☒ No ☐

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

Sullico II LLC

Elaine M. Sullivan, Managing Member
NAME (PLEASE TYPE OR PRINT)

Elaine M. Sullivan, Managing Member
AUTHORIZED SIGNATURE

(SIGNATURE MUST BE NOTARIZED)
STATE OF FL, COUNTY OF CHARLOTTE

Sworn to (or affirmed) and subscribed before me this 30 day of NOVEMBER, 2017, by ELAINE M. SULLIVAN who is personally known or produced FL DRIVER LICENSE as identification.



Exp. Date: 01-11-2020 Commission Number: FF 949461

Signature of Notary Public:

Printed name of Notary Public:

Michael A. Gardner

MICHAEL A. GARDNER

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT

Avalon Engineering

(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING
COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS
AND/OR CITY COUNCIL FOR

Land Use Map Amendment

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT 66 BLOCK 3170 LOT(S) Listing SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Sullico II LLC

Elaine M. Sullivan, Managing Member

PROPERTY OWNER (Please Print)

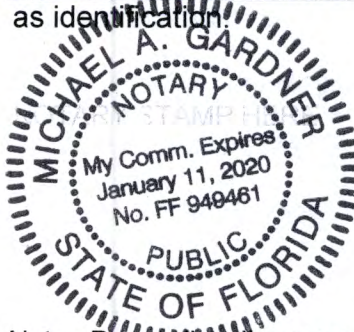
PROPERTY OWNER (Please Print)

Elaine M. Sullivan, Managing Member
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF CHARLOTTE

Subscribed and sworn to (or affirmed) before me this 30 day of NOVEMBER, 2017, by
ELAINE M. SULLIVAN who is personally known or produced FL DRIVER LICENSE
as identification.



Exp. Date: 01-11-2020 Commission Number: FF 949461

Signature of Notary Public:

Michael A. Gardner

Printed name of Notary Public:

MICHAEL A. GARDNER

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

Avalon Engineering, Inc
(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING
COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS
AND/OR CITY COUNCIL FOR

Land Use Map Amendment and Zoning Map Amendment

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT 66 BLOCK 3170 LOT(S) 9 & 10 SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Jeffrey A. Oddy

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

Jeffrey A. Oddy

PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 8th day of January, 2018, by
Jeffrey Oddy who is personally known or produced ABC
as identification.



Exp. Date: 8/23/19 Commission Number: FF911672

Signature of Notary Public: [Signature]

Printed name of Notary Public: Katrina Learn

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the 8th day of JAN, 2018

Jeffrey A. Oddy
NAME (PLEASE TYPE OR PRINT)

Jeffrey A. Oddy
APPLICANT'S SIGNATURE

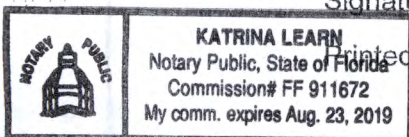
STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 8th day of January, 2018 by Jeffrey Oddy who is personally known or produced FLDL as identification.

Exp. Date: 8/23/19 Commission Number: FF911672

Signature of Notary Public:

Printed name of Notary Public:



Katrina Learn

Detail by Entity Name

Florida Limited Liability Company
SULLICO II, LLC

Filing Information

Document Number	L13000173163
FEI/EIN Number	46-5305473
Date Filed	12/16/2013
Effective Date	12/12/2013
State	FL
Status	ACTIVE

Principal Address

83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Mailing Address

83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Changed: 03/02/2015

Registered Agent Name & Address

SULLIVAN, ELAINE M
83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Authorized Person(s) Detail

Name & Address

Title MGRM

SULLIVAN, ELAINE M
83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Annual Reports

Report Year	Filed Date
2015	03/02/2015
2016	02/12/2016
2017	01/20/2017

Document Images

01/20/2017 -- ANNUAL REPORT	View image in PDF format
02/12/2016 -- ANNUAL REPORT	View image in PDF format
03/02/2015 -- ANNUAL REPORT	View image in PDF format
04/18/2014 -- ANNUAL REPORT	View image in PDF format
12/16/2013 -- Florida Limited Liability	View image in PDF format



Avalon Engineering, Inc.
2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077 Fax: (239) 573-2076
#AA C001936 #EB 0003128

January 24, 2018

Mr. Vince Cautero, Director
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

PROJECT: BLOCK 3170 LOTS 1-28 & 55-82

SUBJECT: SMALL SCALE LAND USE MAP AMENDMENT LETTER OF INTENT

Dear Mr. Cautero:

As provided for in Section 8.7 of the City of Cape Coral Land Use and Development Regulations, and on behalf of two of the property owners within Block 3170, Sullico II LLC, and Jeffrey A. Oddy, we respectfully request an amendment to the Future Land Use Map to change the designation of the subject 6.42 acres within Block 3170 for Lots 1 -28 and 55-82. The subject property has a Land Use designation of CP (Commercial Professional), and the applicants are requesting a Land Use designation of SF (Single Family).

In addition to the applicants for this case, we have also received signed acknowledgements of support from three (3) other single family home owners within this Block, Cynthia Cavanaugh, Equity Trust for Katherine Davis, and Maria Rosa Flick.

The subject Block is located south of Veterans Parkway and west of Skyline Blvd, just south of the Home Depot Shopping Center in Section 34, Township 44E, and Range 23 S in the SW Section of Cape Coral. There are a total of 56 Lots within Block 3170. The applicants, Sullico II, LLC owns thirty (30) Lots and Mr. Oddy owns two (2) lots, for a total ownership of 57% of the Lots within this Block. 51% is required for the submittal of a Land Use Map Amendment Application.

In 2001, the Land Use and Zoning were amended for this Block and four (4) other Blocks, north to Veterans Parkway and east to Skyline Blvd, from SF (Single Family) to CP (Commercial Professional), in order to support a large commercial subdivision that was planned to contain two (2) Big Box developments, several national anchor stores, some local space, and outparcels fronting Skyline Blvd. As a result of the development of the Home Depot, the vision to incorporate this 6.42 acres into the current Shopping Center diminished, as commercial interest no longer looks favorable on a second phase of this center, for an another big box, or a couple of anchor retail stores and additional out-parcels.

Twenty-two (22) Lots (or 39% of this Block) are developed with Single Family Homes, all of which were constructed prior or during the Land Use and Zoning Amendments to commercial. No new Single Family Homes have been constructed on Block 3170 since the Land Use and Zoning was amended, as the City's C-1 (Pedestrian Commercial) Zoning does not permit single family development.

Development Blocks to the west 3172, 3171, and 3166, currently have single family development consisting of between 58% to 75%, with new single family building permits being submitted monthly within this area.

Market Studies, that have been prepared by developers of National Chains, over and over since 2003, indicate that retail development is not conducive on this Block, due to the linear distance from Skyline Blvd, however, there is much developer interest in expanding on the success of the single family development to the west of the site.

Commercial development has occurred on Blocks that have Lots fronting Skyline Blvd. Since the Lots fronting Skyline have been developed, it is not feasible for Block 3170, which is located 634 feet from Skyline Blvd to be developed with commercial uses.

Please accept this evaluation of the propose amendment with respect to determining consistency with these General Standards:

1. The extent to which the value of the property is diminished by the proposed land use restriction or zoning of the property;

The value of the property will not be diminished with the proposed Land Use Amendment. Prior to approval of the Land Use Map Amendment to commercial within this area of the Cape, including Block 3170, Blocks that did not front Skyline Blvd were designated as Single Family.

Eleven (11) Single Family homes were constructed within Block 3170 prior to the approval of the Land Use Map Amendment to Commercial Professional.

All parcels within this area have been assessed for City water, wastewater, and irrigation. Due to the commercial zoning and land use owners of the Lots within Block 3170, are currently not able to permit a single family home on their parcel.

The Land Use Amendment was approved in 2001, and for seventeen years this Block has been available for commercial development. Commercial development has occurred only along Skyline Blvd and the corner of Veterans Parkway and Skyline Blvd. Since commercial development has not occurred, it is necessary to consider the needs of the existing homeowners within this Block.

2. The extent to which, the removal of a proposed land use restriction or change in zoning depreciates the value of other property in the area;

The proposed change will allow the existing single family homes to be a permitted use with the ability to rebuild in case of a natural event or an emergency. The amendment would have little effect on the existing or future commercial development, since this site, over the years, has had the ability to develop with commercial uses and has not.

3. The suitability of the property for the zoning purpose or land use restriction imposed on the property as zoned;

Block 3170 is adjacent to other existing single family zoned Blocks, directly to the west and behind the Shopping Center. The proposed land use change would not only be suitable for this Block, but it will provide the current homeowners a sense of security that they deserve, as their existing home will be a permitted use and the homeowners will know that they will have only single family uses constructed adjacent to them. The current single family home owners within this Block have been living with the uncertainty of not knowing what would be built next or in close proximity to them since 2001.

4. The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning;

The character of the neighborhood consists of a majority of the area being single family residential with commercial zoned vacant and development parcels fronting Skyline Blvd. The current uses consist of a Home Improvement Store, automotive services (repair and parts store), fast food restaurant (Dairy Queen), convenience store with gas pumps, a bank, and a variety store. The existing commercial square footage fronts on Skyline Blvd, with residential located at least 634 feet from Skyline Blvd and 1068 feet from Veteran's Parkway.

5. The relative gain to the community as compared to the hardship, if any imposed, by the proposed land use restrictions or from rezoning said property;

There would be a positive effect in amending the land use for Block 3170. The property would have a better chance of being developed within the next few years, which would increase the City's tax base and provide an increase in the amount and type of housing products available within the Cape.

The redevelopment of the existing Shopping Center to incorporate and integrate the proposed parcel, as required to create a commercial node and a unified development, is unlikely, thus leaving this Block isolated from the existing commercial, without visibility and direct access to a major street.

6. The community need for the use proposed by the zoning or land use restriction;

Block 3170 was originally designated for Single Family use. The Block contains 11 single family homes. Over the last 17 years, the character of the Block has not changed. The community need is to protect the existing Single Family homes within this Block and to encourage investment and development rather than foster an area that can't invest in the improvements to their developed properties, thus allowing for the possibility of Blight.

7. Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property;

The Block was land used commercial in 2001 and rezoned to C-1 (Pedestrian Commercial). This Block has been marketed as available commercial property since that date. There has been no interest in the development of this parcel for a commercial use, due to the lack of frontage along a major street.

8. The extent to which the proposed land use restriction or zoning promotes the health, safety, morals, or general welfare of this community;

The proposed land use change from CP (Commercial Professional) to SF (Single Family) will provide the City of Cape Coral with additional housing options in an area, which are in close proximity to public transit, adjacent to shopping and within walking distance of job opportunities.

9. The extent to which the proposed land use, land use restriction, or zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan; and

This proposed land use change from CP (Commercial Professional) to SF (Single Family) will not degrade the level of service of any public facility below the adopted level of service. In addition, the peak hour trips associated with the number of Single Family homes that would be able to be developed is less than the peak hour trips associated with retail, commercial service, or even a mini-warehouse use.

10. Whether the proposed land use restriction, removal of a restriction, or zoning is consistent with the City of Cape Coral Comprehensive Land Use Plan.

Policy 1.13 of the City's Future Land Use Element of the Comprehensive Plan states that commercial nodes should be located around or in the vicinity of intersection of major city roadways.

Block 3170 is over 634 feet away from a major city roadway and over 1068 feet from the intersection. This Block would not be considered a commercial node.

Policy 1.14 of the City's Future Land Use Element of the Comprehensive Plan states that the benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance from the intersection and whether the subject property represents a new commercial property or an expansion of an existing commercial area.

New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties.

The subject property currently has a land use designation of commercial. If a commercial development were to occur on this site it would be considered new development according to Policy 1.14 and as such this new commercial development would not meet the requirements of this policy, which is to be located in the vicinity of the intersection.

Policy 1.14 of the City's Future Land Use Element of the Comprehensive Plan states that in the City of Cape Coral there are two ideal access provisions for a commercial property a) Access via a platted City parking area and b) Direct access onto an arterial or collector roadway having an adopted City access management plan. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged.

Block 3170 property currently has a land use designation as commercial. If a commercial development were to develop on this site the development would not meet the requirements of this policy as it does not meet either ideal access provisions. The subject parcel should be encouraged to develop with a single family use and not a commercial use.

The Commercial Corridor Study identified 17 separate commercial corridors within the City of Cape Coral. Each of these Corridors will require a certain amount of commercial square footage to meet the needs of that particular area, and that each of those Corridor areas should be viewed separately to determine those needs. Additional commercial land that is available within one corridor may not provide a benefit if not within an area needing commercial space nor within an area without a commercial market, as commercial is market driven.

This Block should be considered additional commercial land that is in an area that has existing commercial square footage and without a commercial market.

Single Family Land Use Advantages for this Block:

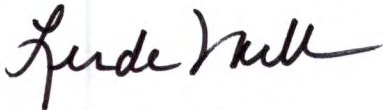
- 1) This Block contains existing single family homes.
- 2) This Block is located within a centralized area and has a large percentage of commercial square footage already developed within this corridor.
- 3) This Block has accessibility to public transit.
- 4) The land use amendment will encourage improvements to the existing single family homes, and allow the owners to obtain home mortgages and home insurance since the SF use will be permitted.
- 5) The change in land use will allow the owners of the existing homes to market their properties as single family homes rather than future investment properties. This will create a more stable neighborhood with more owner occupied homes.
- 6) The subject parcel is located out-side of the Coastal High Hazard Area and would be permitted to request a residential zoning.
- 7) The Block is currently platted into single family lots, typical of Cape Coral, with enough land area to support a single family home and individual amenities (pools, playgrounds, barbeque areas, etc). In addition, these lots have access to City utilities.

Cautero /Letter of Intent
LUMA/ Block 3170
January 24, 2018
Page 7

On behalf of the applicant, Avalon has reached out to each homeowner within this Block with two direct mailings explaining our application for a land use amendment. Avalon has not received any unfavorable response to this land use map amendment application from the homeowners within this Block. Should you or your staff have questions or require additional information, please let us know.

Sincerely,

AVALON ENGINEERING, INC.

A handwritten signature in black ink, appearing to read "Linda Miller". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Miller".

Linda Miller, AICP
Senior Planner

Block 3170	56 Lots (22 Developed -34 Undeveloped -30 are owned by Sullico II, LLC)			
Strap	Improved	Lot	Address	Owner
344423C2031700560	No	55, 56	2606 SW 8TH CT	INA GROUP LLC
344423C2031700570	No	57, 58	2608 SW 8TH CT	SULLICO II LLC
344423C2031700590	No	59, 60	2612 SW 8TH CT	SULLICO II LLC
344423C2031700610	No	61 - 63	2618 SW 8TH CT	SULLICO II LLC
344423C2031700640	No	64 - 66	2624 SW 8TH CT	SULLICO II LLC
344423C2031700670	No	67 - 69	2630 SW 8TH CT	SULLICO II LLC
344423C2031700700	No	70 - 72	2702 SW 8TH CT	SULLICO II LLC
344423C2031700730	Yes	73, 74	2706 SW 8TH CT	CAVANAUGH CYNTHIA A
344423C2031700750	Yes	75, 76	2710 SW 8TH CT	HANCOCK FRANCIS J
344423C2031700770	Yes	77, 78	2714 SW 8TH CT	2311803 ONTARIO INC
344423C2031700790	No	79, 80	2718 SW 8TH CT	SULLICO II LLC
344423C2031700810	No	81, 82	2722 SW 8TH CT	SULLICO II LLC
344423C2031700010	No	1, 2	2723 SW 9TH AVE	SULLICO II LLC
344423C2031700030	Yes	3, 4	2719 SW 9TH AVE	ARROW RE SUB 1 LLC
344423C2031700050	Yes	5, 6	2715 SW 9TH AVE	EQUITY TRUST COMPANY
344423C2031700070	No	7, 8	2711 SW 9TH AVE	SULLICO II LLC
344423C2031700090	Yes	9, 10	2707 SW 9TH AVE	ODDY JEFFREY A
344423C2031700110	Yes	11, 12	2703 SW 9TH AVE	NORTHUP SCOTT E
344423C2031700130	Yes	13, 14	2633 SW 9TH AVE	SASH THOMAS W
344423C2031700150	Yes	15, 16	2629 SW 9TH AVE	FLICK MARIA ROSA
344423C2031700170	No	17, 18	2625 SW 9TH AVE	SULLICO II LLC
344423C2031700190	Yes	19, 20	2621 SW 9TH AVE	KEMP STEPHEN G + ELLEN K
344423C2031700210	No	21, 22	2617 SW 9TH AVE	SULLICO II LLC
344423C2031700230	No	23, 24	2613 SW 9TH AVE	SULLICO II LLC
344423C2031700250	Yes	25, 26	2609 SW 9TH AVE	MCCRACKEN RANDY + MARLENE J
344423C2031700270	No	27, 28	2607 SW 9TH AVE	LJH INVESTMENTS LLC

Protected Species Assessment

Block 3170

Lots 1, 2, 7, 8, 17, 18, 21 - 24, 57-72, 79-82

Cape Coral, Florida 33914

Section 34, Township 44S, Range 23E

December, 2017

Prepared for:

Sullico II LLC

15946 Double Eagle Drive

Morrison, CO 80465

Prepared by:

Avalon Engineering, Inc.

2503 Del Prado Boulevard South, Suite 200

Cape Coral, Florida 33904

INTRODUCTION

This 3.44 acre area is located between SW 8th Court and SW 9th Avenue, west of Skyline Blvd and south of Veterans Parkway. Adjacent properties consist of the following: to the north is commercial building, to the south is residential, to the east is lots zoned commercial but developed with some single family homes, and to the west is developed and undeveloped single family lots. The parcel is located in Section 34, Township 44S, Range 23E, Cape Coral, Florida.

SITE CONDITIONS

A site inspection was conducted by Scott Tucker on December 27, 2017. The weather was partly cloudy with temperatures in the 50's.

VEGETATION CLASSIFICATIONS

The table below displays the (#1) vegetative associations found on the subject parcel. These vegetative associations were identified using the Florida Land Use Cover Classification System. (FLUCCS) and are shown on the table below. Also included is a description of each FLUCCS association below.

FLUCCS CODE	DESCRIPTION	APPROXIMATE ACREAGE
192	Inactive land with street patterns but without structures (routinely mowed).	3.44
TOTAL ACREAGE		3.44

SURVEY METHOD

To provide at least 100% visual coverage, four centered transects were completed at 20' intervals within the construction area. This method was selected to examine for the presence or absence of protected or listed species within the entire construction area.

If a sign or sighting was observed, an aerial photograph was marked depicting the approximate location. The attached scale aerial map depicts the results of this survey. Other listed protected species which could occur on the subject parcel according to City of Cape Coral which were surveyed for are as follows:

SPECIES	SCIENTIFIC NAME	OBSERVED
Burrowing Owl	Athene cunicularia	No
Gopher Tortoise	Gopherus polyphemus	No

RESULTS

The Protected Species Survey revealed the presence of no species listed by either the U.S. Fish & Wildlife Service (USFWS) or by the Florida Fish & Wildlife Conservation Commission (FFWCC).

Attachment: Transect Line Map



 PROTECTED SPECIES TRANSECT
 LINE JANUARY 10, 2018

1 of 1 <small>017-250/LUMA</small>	TRANSECT MAP (AERIAL)	LAND USE MAP AMENDMENT BLOCK 3170, UNIT 66 CAPE CORAL, FLORIDA	AVALON ENGINEERING, INC.  2503 DEL PRADO BLVD. #200 CAPE CORAL, FLORIDA 33904 FBPE#3128 (239) 573-2077	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">DATE</th> <th style="width: 10%;">BY</th> <th style="width: 75%;">REVISION DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>12/12/17</td> <td>LM</td> <td>INITIAL SUBMITTAL</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	DATE	BY	REVISION DESCRIPTION	12/12/17	LM	INITIAL SUBMITTAL										THIS PLAN IS INTENDED FOR CONCEPTUAL PLANNING PURPOSES ONLY. SITE LAYOUT MAY CHANGE SIGNIFICANTLY BASED UPON SURVEY, ENVIRONMENTAL AND REGULATORY CONSTRAINTS. "NOT FOR CONSTRUCTION"
DATE	BY	REVISION DESCRIPTION																		
12/12/17	LM	INITIAL SUBMITTAL																		



Avalon Engineering, Inc.
2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077 Fax: (239) 573-2076
#AA C001936 #EB 0003128

January 24, 2018

Mr. Vince Cautero, Director
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

PROJECT: SMALL SCALE LAND USE MAP AMENDMENT - BLOCK 3170

SUBJECT: TRAFFIC GENERATION STATEMENT

Dear Mr. Cautero,

Included herewith are the traffic generation calculations for the above referenced project. As the project creates less than 300 vehicle trips, peak hour of the generator, a traffic impact statement will not be necessary.

Source: I.T.E. Trip Generation Manual, 9th Edition
Land Use: (210) Single Family Detached Housing
Dwelling Unit: 28 (maximum dwelling units)

A.M. Peak Hour of the Generator:
0.77 Average Rate per dwelling unit

5.61 vehicles entering 26%
15.95 vehicles exiting 74%
21.56 TOTAL VEHICLES

P.M. Peak Hour of the Generator:
1.02 Average Rate per dwelling unit

18.27 vehicles entering 64%
10.29 vehicles exiting 36%
28.56 TOTAL VEHICLES

If you should have any questions or require additional information, please feel free to call me.

Sincerely,

AVALON ENGINEERING, INC.

Lihda Miller, AICP
Senior Planner

Date 1-13-18

To the City of Cape Coral Planning Division,

I own a single family home within Block 3170 in Cape Coral. I support the proposed Land Use and Zoning Map Amendments that are being requested, as these amendments will change the Land Use and the Zoning on my Lots back to Single Family Residential.

Lots: 73 & 74

CYNTHIA A. CAVANAUGH
Cynthia A. Cavanaugh

Cynthia A. Cavanaugh
Signature of Owner

Date 12/16/17

To the City of Cape Coral Planning Division,

Equity Trust owns a single family home within Block 3170 in Cape Coral. We support the proposed Land Use and Zoning Map Amendments that are being requested, as these amendments will change the Land Use and the Zoning on the lots back to Single Family Residential.

Lots: 5 & 6

Kitty Davis

Printed Name

Kitty A

Signature of Owner

Trustee, Kathryn R. Davis

Title of Signer for Equity Trust Company

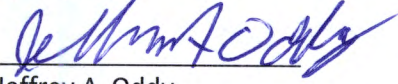
Date

1/8/18

To the City of Cape Coral Planning Division,

I own a single family home within Block 3170 in Cape Coral. I support the proposed Land Use and Zoning Map Amendments that are being requested, as these amendments will change the Land Use and the Zoning on my Lots back to Single Family Residential.

Lots: 9 & 10



Jeffrey A. Oddy


Signature of Owner

Exhibit A

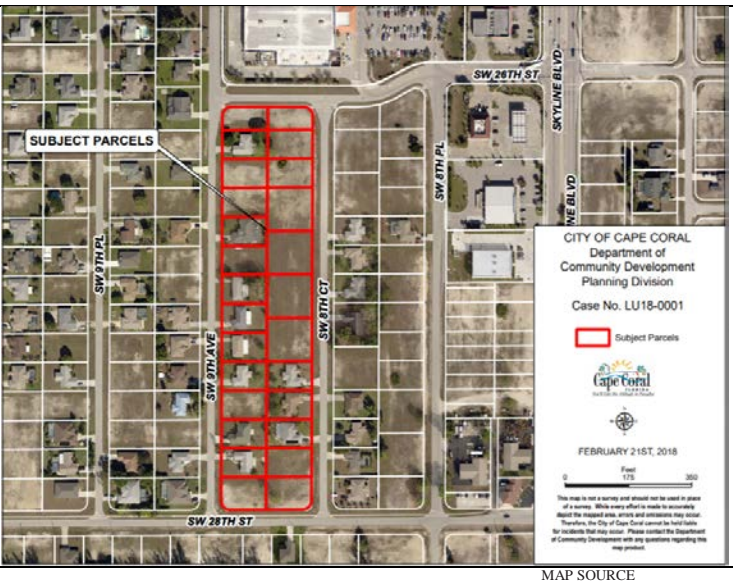
Land Use Map Amendment Application - Block 3170

Legal Description

Block 3170, Lots 1-28 & 55-82 in Cape Coral Unit 66 as platted in Plat Book 22, Page 23 in the records of Lee County, Florida.

PLANNING DIVISION STAFF REPORT
LU18-0001

PROPERTY ADDRESSES Multiple Addresses. See attached list. Site is South of Veterans Parkway and West of Skyline Boulevard.	APPLICANTS/PROPERTY OWNERS Sullico II, LLC. Multiple property owners. See attached list.
--	--

SUMMARY OF REQUEST The applicant requests a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Single-Family Residential (SF) future land use designation several properties. The site is 6.42 acres, although, only 3.44 acres is owned by the applicant. The site is a mix of single-family homes and undeveloped parcels.	
--	---

STAFF RECOMMENDATION: **Approval**

Positive Aspects of Application:	There are several single-family homes that would be reverted to a conforming use. Amendment would allow for construction of single-family homes.
Negative Aspects of Application:	The amendment would be a loss of commercial land. Over half of the block is under common ownership, which increases potential for quality development.
Mitigating Factors:	No parcels within the site have developed commercially since the future land use and zoning of the site was amended. The site is two blocks removed from frontage along collector or arterial road.

SITE INFORMATION

Location: Multiple addresses.
Unit 66. All of Block 3170 (Lots 1-82)
South of Veterans Parkway and West of Skyline Boulevard.

STRAP Number: Multiple STRAP numbers.

Site Area: 6.44 acres

Site:	Future Land Use	Zoning
Current:	Commercial/Professional	Pedestrian Commercial (C-1)
Proposed:	Single-Family Residential (SF)	N/A
	Surrounding Future Land Use	Surrounding Zoning
North:	CP	C-1
South:	SF	Single-Family Residential (R-1B)
East:	CP	C-1
West:	SF	R-1B

Urban Service

Area: Transition

City Water/Sewer: Yes

Type of

Access Road: The block has frontage on four local streets – SW 26th Street, SW 28th Street, SW 9th Ave and SW 8th Court.

Soil Types and Limitations for Development:

Map Unit		Limitations	
		Dwellings without basements	Small commercial buildings
13	Boca Fine Sand	Moderate (wetness)	Moderate (wetness)

The soil in the area presents moderate limitations for dwellings and small commercial buildings. These limitations are typically overcome by using various engineering solutions, such as importing fill. The soil type, therefore, may not present an obstacle to any proposed amendment. However, special feasibility studies may be required at the development stage of the property.

Drainage: Must comply with South Florida Water Management District and the City of Cape Coral Engineering Design Standards.

Natural Resources: The site consists of undeveloped land and single-family homes. The overall hydrology is considered non-hydric.

Flora & Fauna Habitat: Prior to any permit for development being issued, an environmental survey must be undertaken, and mitigation performed to minimize the impacts of development, if any, on the protected species habitat.

FINDINGS OF FACT

The site is all of Block 3170 in southwestern Cape Coral. Block 3170 consists of 56 parcels and is 6.44 acres. 20 parcels in the block are developed with single-family homes, while the remaining parcels are undeveloped. The applicant, Sullico II, LLC, owns 30 parcels in the block and the remaining parcels are owned by a variety of owners. No other individual or business owns more than one parcel in the block. The site is bounded by four local streets; SW 26th Street to the north, SW 8th Court to the west, SW 28th Street to the south, and SW 9th Avenue to the east. Surrounding development consists of a Home Depot to the north and a combination of single-family homes and undeveloped parcels to east, west, and south. The Home Depot site was a part of Block 3170¹ prior to the development being approved and subdivided by a Planned Development Project (PDP) in 2005.

The parcels in Block 3170 have gone through several future land use and zoning changes in the past. The Block was designated as Single-Family/Multi-Family (SM) upon the adoption of the Comprehensive Plan in 1989. In two separate amendments in 2002 and 2005, the future land use of the parcels was amended from SM to Commercial/Professional (CP). Similarly, two separate rezones in 2002 and 2008 changed the zoning within the block from Single-Family Residential (R-1B) to Pedestrian Commercial (C-1). The future land use and zoning amendments were sought by a previous owner who owned most of the parcels in Block 3170.

The applicant is seeking the amendment to build more single-family homes in the block. The applicant states there is little demand for commercial development in the block, while, there is demand for single-family home development.

¹ Prior to re-plat.

NOTICE OF CHANGE OF LAND USE

The City of Cape Coral proposes to adopt ORDINANCE 42-18, AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM COMMERCIAL/ PROFESSIONAL (CP) TO SINGLE-FAMILY RESIDENTIAL (SF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 1-28 AND 55-82, BLOCK 3170, CAPE CORAL UNIT 66, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTH OF SW 28TH STREET, SOUTH OF SW 26TH STREET, EAST OF SW 9TH AVENUE, AND WEST OF SW 8TH COURT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

A public hearing on the ordinance will be held Wednesday, June 6, 2018 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Planning and Zoning Commission will consider a recommendation to change the City's future land use map amendment request. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person 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. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.

Rebecca Van Deutekom, CMC
City Clerk



Ordinance 42-18
LU18-0001

**COMMERCIAL/
PROFESSIONAL
(CP) TO SINGLE-
FAMILY
RESIDENTIAL (SF)
FOR LOTS 1-28 AND
55-82, BLOCK 3170,
UNIT 66**

NP-0000961360

☐ PROOF O.K. BY: _____ ☐ O.K. WITH CORRECTIONS BY: _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

ADVERTISER: CITY OF CAPE CORAL_DEPT
SALES PERSON: Legal Display
PUBLICATION: NP-DAILY
SIZE: 3 col X 9.25 in

PROOF CREATED AT: 5/21/2018 2:09 PM
PROOF DUE: -
NEXT RUN DATE: 05/27/18

NP-0000961360.INDD



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: LU18-0001

REQUEST: The applicant requests a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Single-Family Residential (SF) future land use designation several properties.

LOCATION: Site is South of Veterans Parkway and West of Skyline Boulevard.

CAPE CORAL STAFF CONTACT: Chad Boyko, Principal Planner, 239-573-3162, cboyko@capecoral.net

APPLICANT: Sullico II, LLC

AUTHORIZED REPRESENTATIVE: Avalon Engineering

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Local Planning Agency will hold a public hearing at 9:00A.M. on Wednesday June 6, 2018 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the City of Cape Coral Local Planning Agency will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After City of Cape Coral Local Planning Agency has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, 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 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the City of Cape Coral Local Planning Agency with respect to any matter considered at such meeting or hearing, he or she will need a record of the

Department of Community Development
Post Office Box 150027 • Cape Coral, Florida 33915-0027
1015 Cultural Park Blvd. • Cape Coral, Florida 33990
Email: planningquestions@capecoral.net

proceedings, and that, for such purpose, he or she 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 to be based.



Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Sullico LLC

APPLICATION NO: LU18-0001

STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 29th day of May, 2018.

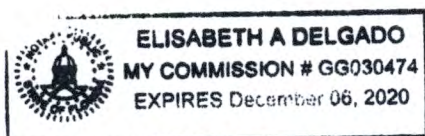


Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29th day of May, 2018, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/6/20 Commission # 66030474




Signature of Notary Public


Elisabeth A. Delgado
Print Name of Notary Public

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT ZONING MAP
500' Proximity Boundary

Case No. LU18-0001

LEGEND

 500' Proximity Boundary

 Subject Parcels

Zoning

 C-1

 R-1B

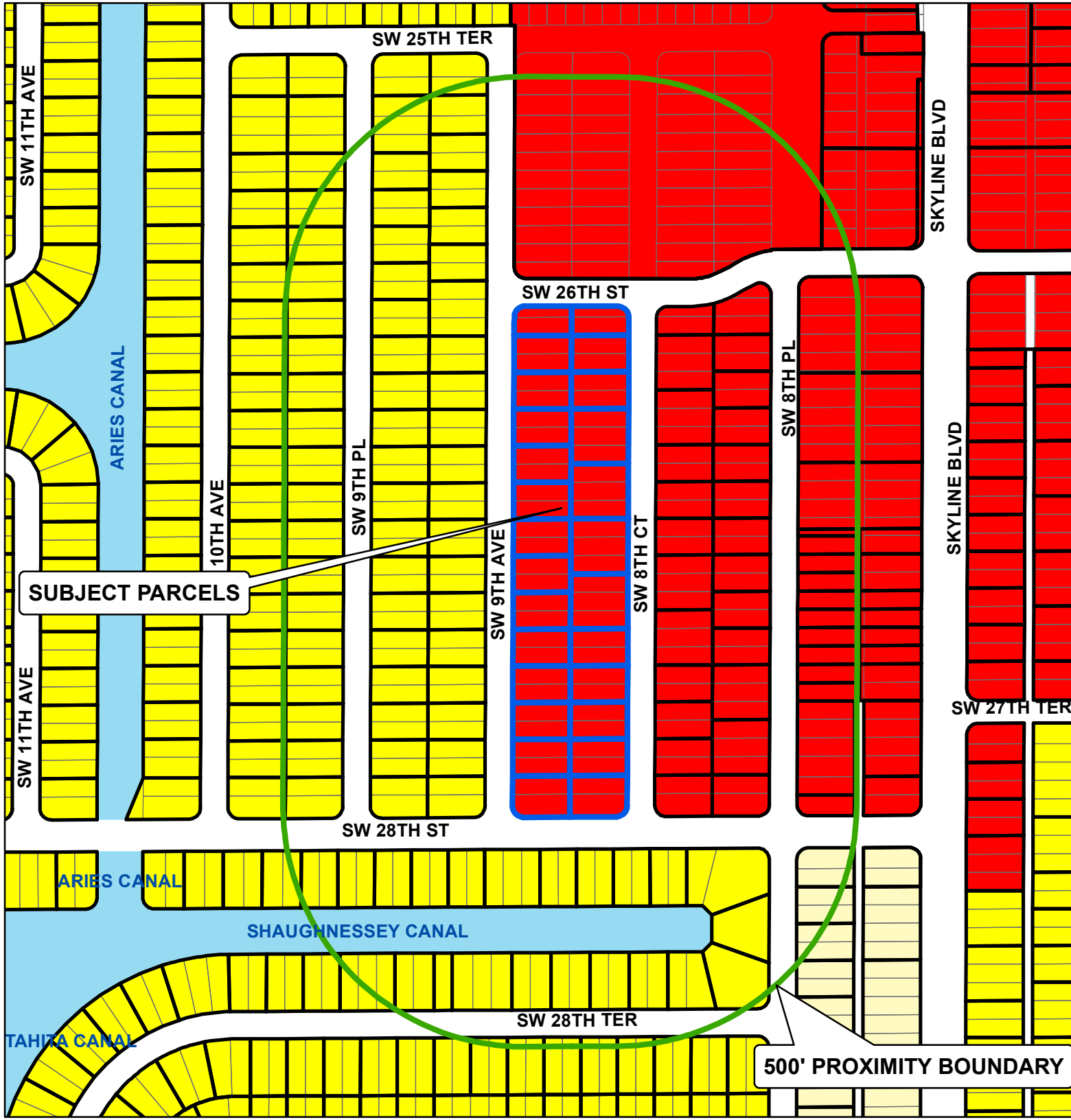
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FEBRUARY 21ST, 2018



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.





CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0001

LEGEND

 500' Proximity Boundary

 Subject Parcels

Future Land Use

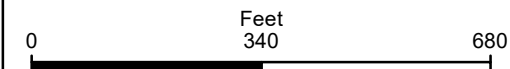
 SF

 MF

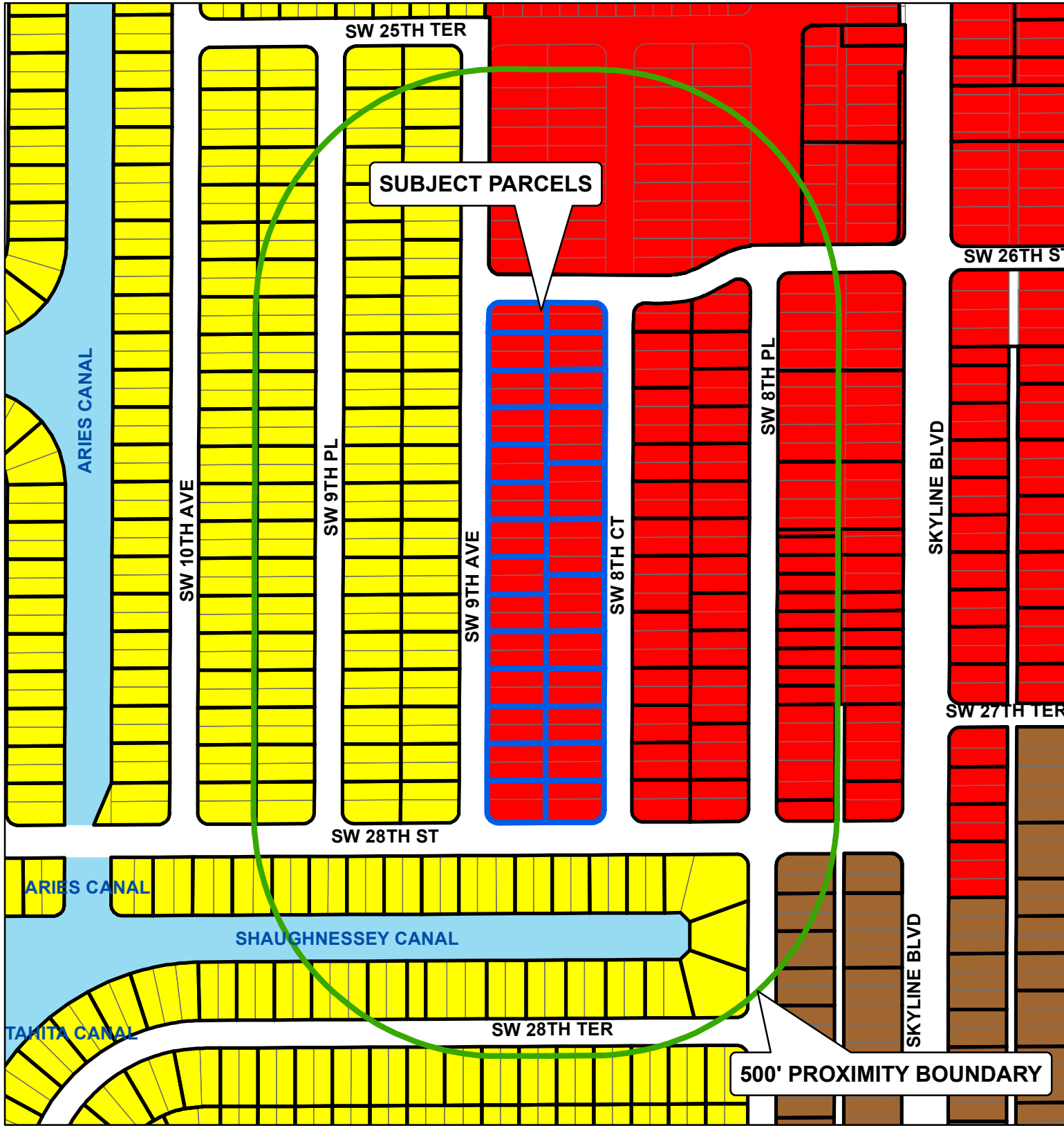
 CP



FEBRUARY 21ST, 2018



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CITY OF CAPE CORAL
Department of
Community Development
Planning Division

PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0001

LEGEND

 500' Proximity Boundary

 Subject Parcels

Future Land Use

 SF

 MF

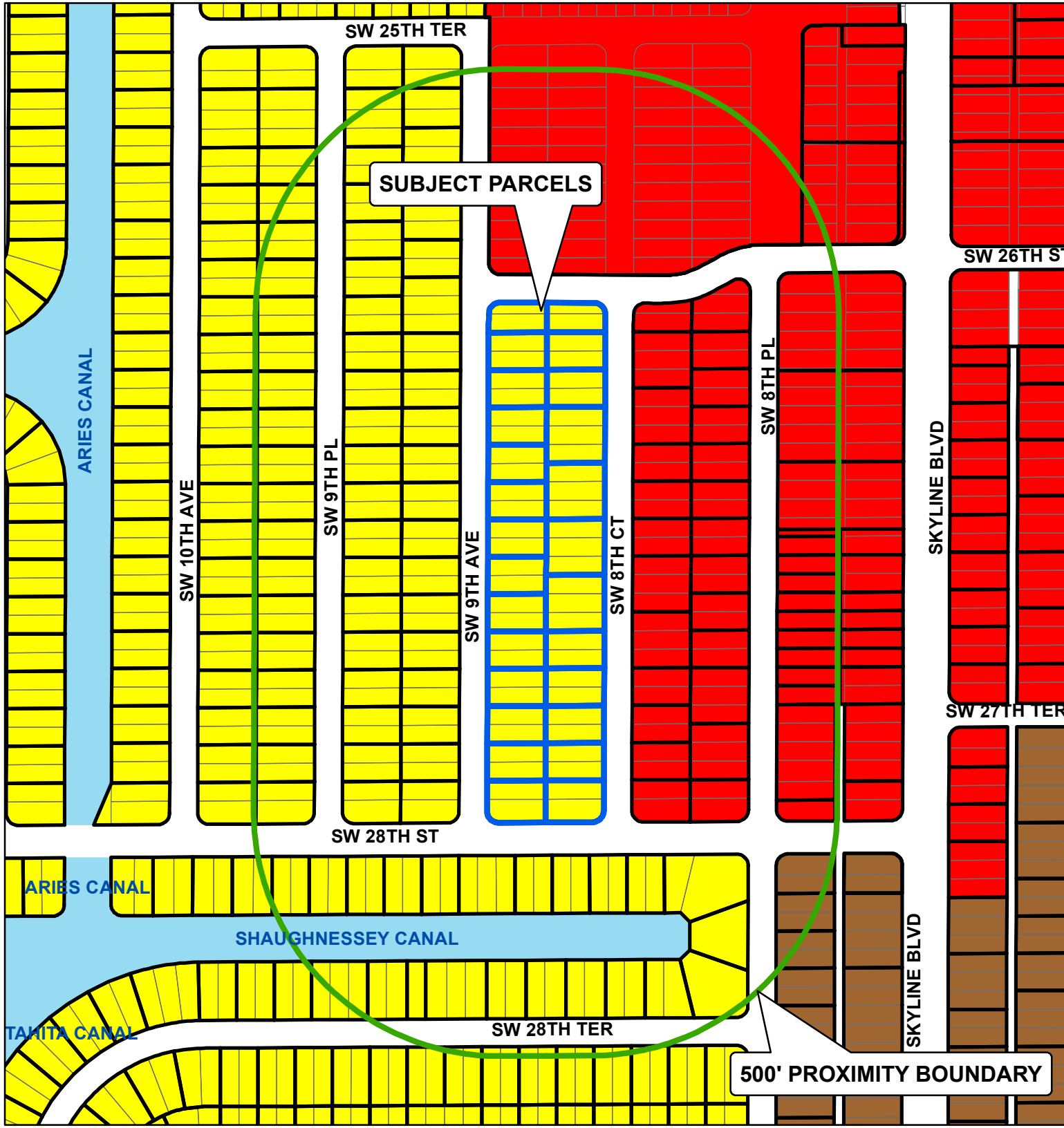
 CP



FEBRUARY 21ST, 2018



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SUBJECT PARCELS

SW 9TH PL

SW 9TH AVE

SW 8TH CT

SW 8TH PL

SW 26TH ST


SKYLINE BLVD

INE BLVD

SW 28TH ST

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. LU18-0001

 Subject Parcels



FEBRUARY 21ST, 2018



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.

Item Number:	8.D.
Meeting Date:	6/6/2018
Item Type:	PLANNING AND ZONING COMMISSION / LOCAL PLANNING AGENCY PUBLIC HEARING

**AGENDA
REQUEST
FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 43-18/LU 17-0012

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
 - 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:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Mixed Use Preserve (MUP), Class III, Type D to Multi-Family Residential (MF) and from Urban Services Reserve Area to Urban Services Transition Area for a parcel lying in a portion of the Southwest Quarter of Section 29, Township 44 South, Range 23 East, Lee County Florida; property located northeast of Veterans Parkway and to the west of the Sandoval Subdivision. (Applicant: MSI Holdings, LLC)

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 43-18/LU 17-0012

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, Principal Planner

ATTACHMENTS:

Description	Type
▣ Ordinance 43-18/LU 17-0012	Ordinance
▣ Backup Material	Backup Material

ORDINANCE 43 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM MIXED USE PRESERVE (MUP), CLASS III, TYPE D TO MULTI-FAMILY RESIDENTIAL (MF) AND FROM URBAN SERVICES RESERVE AREA TO URBAN SERVICES TRANSITION AREA FOR A PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTHEAST OF VETERANS PARKWAY AND TO THE WEST OF THE SANDOVAL SUBDIVISION; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by MSI HOLDINGS, LLC, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM MIXED USE PRESERVE (MUP), CLASS III, TYPE D TO MULTI-FAMILY
RESIDENTIAL (MF) AND
FROM URBAN SERVICES RESERVE AREA TO URBAN SERVICES TRANSITION AREA

A PLOT OR PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER, WEST LINE OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°51'53"E. ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF THE AFORESAID SECTION 29 TO A POINT ALONG THE EASTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY AS RECORDED IN OFFICIAL RECORDS BOOK 2910, PAGE 2471 PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 566.85 FEET; THENCE RUN S.89°51'53"E. FOR 2192.43 FEET; THENCE RUN S.00°12'27"W. TO A POINT ALONG THE ARC OF A CURVE AND THE AFORESAID RIGHT OF WAY LINE OF VETERANS PARKWAY FOR 2702.64 FEET; THENCE RUN ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST FOR 1871.14 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 1565.02 FEET, A CENTRAL DELTA ANGLE OF 68°30'11" A CHORD THAT BEARS N.49°41'42"W. AND A CHORD DISTANCE OF 1761.67 FEET TO A POINT OF TANGENCY; THENCE RUN N.15°26'36"W. TO A POINT OF CURVATURE FOR 480.72 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTHWEST FOR 1001.86 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 2067.90 FEET, A CENTRAL DELTA ANGLE OF 27°45'32", A CHORD THAT BEARS N.29°19'22"W. AND A CHORD DISTANCE OF 992.09 FEET TO A POINT OF TANGENCY; THENCE RUN N.43°12'08"W. FOR 329.10 FEET TO THE POINT OF BEGINNING.

CONTAINING; 3,689,459.55 SQ FEET OR 84.7 ACRES, MORE OR LESS

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4., F.S., whichever is applicable.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2018.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/LU17-0012



DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT
Questions: 239-574-0553

Case # _____

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT Shellie Johnson and/or Brian Smith
(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL
PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR
Large Scale Comprehensive Plan Map Amendment
(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT BLOCK LOT(S) SUBDIVISION

OR LEGAL DESCRIPTION Lee County STRAP #29-44-23-C4-00002.0000

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

MSI Holdings, LLC

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

H. Charles Talarian
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

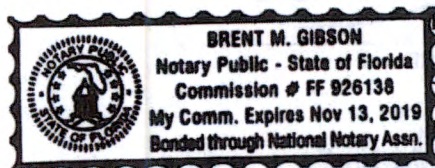
STATE OF

FL

COUNTY OF

LEE

Subscribed and sworn to (or affirmed) before me this 16th day of NOVEMBER, 2017, by
H. Charles Talarian who is personally known or produced FL DL T145-323-39-066-0
as identification.



Exp. Date:

11/13/19

Commission Number:

FF 926138

Signature of Notary Public:

Billy

Printed name of Notary Public:

Brent M. Gibson

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.



DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

Questions: 239-574-0553

Case # _____

Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection.
If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer: Yes ☒ No ☐
City Water: Yes ☒ No ☐

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

H. CHARLES TAPALIAN
NAME (PLEASE TYPE OR PRINT)

[Signature]
AUTHORIZED SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FL, COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 16 day of NOVEMBER, 2017, by
H. CHARLES TAPALIAN who is personally known or produced FL DL T145-323-39-D66-0
as identification.

Exp. Date: 11/13/19 Commission Number: FF 926138
Signature of Notary Public: [Signature]
Printed name of Notary Public: BRENT M. GIBSON





DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT
Questions: 239-574-0553

Case # _____

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the

_____ day of _____, 20____
H. CHARLES TAPALIAN _____
NAME (PLEASE TYPE OR PRINT) APPLICANT'S SIGNATURE
STATE OF FL, COUNTY OF LEE

Subscribed and sworn to (or affirmed) before me this 16th day of November, 2017, by
H. CHARLES TAPALIAN who is personally known or produced FL DL T145-323-39-066-0
as identification.



Exp. Date: 11/13/19 Commission Number: FF 926138
Signature of Notary Public: Brent M. Gibson
Printed name of Notary Public: Brent M. Gibson



DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT
Questions: 239-574-0553

Case # _____

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT Shellie Johnson and/or Brian Smith
(Name of person giving presentation)

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PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR
Large Scale Comprehensive Plan Map Amendment
(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT BLOCK LOT(S) SUBDIVISION

OR LEGAL DESCRIPTION Lee County STRAP #29-44-23-C4-00002.0000

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

MSI Holdings, LLC H. CHARLES TALACIA
PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

H. Charles Talacia
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF LEE

Subscribed and sworn to (or affirmed) before me this 16th day of NOVEMBER, 2017, by
H. CHARLES TALACIA who is personally known or produced FL DL T145-323-39-066-0
as identification.



Exp. Date: 11/13/19 Commission Number: FF 926138
Signature of Notary Public: Billy
Printed name of Notary Public: BRENT M. GIBSON

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

MSI Cape 80 Large Scale Comprehensive Plan Map Amendment



Resubmittal, January 2018

Application Narrative

The applicant is requesting a Comprehensive Plan Map Amendment for ±84.7 acres located on the northeast side of Veterans Parkway, adjacent and west of the Sandoval Subdivision. The property falls within the Mixed Use Preserve (MUP) Land Use Class III, Type D category and the applicant is requesting a map amendment to change the Land Use category to Multi-Family to allow for development of a multi-family residential community. The subject property is located in the Urban Services Reserve Area, and the applicant is requesting a change to Transition Area as part of this application.

The subject property is currently undeveloped but is disturbed, containing two large excavation lakes that are surrounded by long, narrow areas of wooded vacant land. The property is currently zoned Agriculture, however the intent of the owner is to rezone the property immediately following approval of the Land Use Map Amendment. Water and sewer are available to the property, though not directly adjacent to the site.

Land Use, zoning and use information of surrounding properties is provided below:

	Future Land Use	Zoning	Existing Use
North	Rural (Lee County)	RS-2 (Lee County)	Residential
South	Mixed Use Preserve / Single Family Residential	Agriculture (A) / Single Family Residential (R-1B)	Vacant / Residential
East	Single Family/Multi-Family	Single Family Residential (R-1 B) / Multi-Family (R-3)	Residential
West	Mixed Use Preserve Class III, Type D	Agriculture (A)	Vacant

The applicant desires to develop the vacant areas of the subject property with multi-family residential units. While the MUP Class III, Type D category does allow for up to 20% of the land area to be developed residentially, the allowable average density is limited to 4.4 dwelling units per acre. The property has a greater development potential, hence the request to amend the Land Use designation to Multi-Family which will allow for a maximum density of 16 development units per acre.

While the MUP Class III, Type D Land Use category does allow for commercial development, location of the property is not ideal for commercial use. The property is situated with significant frontage on Veterans Parkway which has a posted speed in this location of 55 miles per hour and is a divided roadway with limited access to the property. The high speed, combined with road curvature and access challenges is not conducive for commercial success and points of access would likely have to occur at the curvature of the road, creating potential safety issues. Additionally, a substantial commercial development already exists in near proximity to the subject

property, precluding the need for additional services. Approximately 1/3 mile east at the intersection of Surfside and Veterans is the Shops at Surfside commercial center. Approximately 1.5 miles to the north at the intersection of Burnt Store Road and Pine Island Road is the Coral Shores Shopping Plaza. These two large commercial centers are located more ideally for commercial development.

The proposed multi-family residential development will offer a compatible land use with the surrounding development. The residential development to the east (Sandoval) is comprised of a mix of single family and multi-family development. The site configuration provides extensive separation from the single family lots via existing large lake areas. The single-family properties within the northern development (Royal Tee) are separated by a fairway, and development of the subject property will focus activity areas internal to the property to the greatest extent possible.

Comprehensive Plan Consistency

Future Land Use Element

Goal: "To protect the public investment by encouraging efficient use of community infrastructure...assure orderly and efficient growth of the City encouraging development in those areas which are best served by infrastructure and community services..."

The subject property is ideally located to offer orderly and efficient growth of the City of Cape Coral. Water and sewer are available to the site and the property is surrounded by similar residential development to the north, east and south. Veteran's Parkway to the west provides adequate access to the site and commercial supportive services are available within close proximity to the property.

Policy 1.15: Multiple Family Residential, not more than 16 units per acre.

The applicant is requesting a Land Use change to this category. The proposed development will not exceed 16 units per acre.

Policy 4.1: Requirement for public water and wastewater will be directed into the Urban Services Infill and Transition Areas; and

Policy 7.1: Appropriateness of additional lands into the Urban Services Transition Area.

As part of this application, the applicant is requesting changing the urban services designation of the subject property from Urban Reserve to Urban Transition. Water and wastewater are available to the site, and the applicant understands that extension of such services is the responsibility of the developer.

The Urban Services Map reflects adjacent properties to the east and south are within the Transition Area and the property to the north, in Lee County is fully developed. The land use pattern suggests Veterans Parkway as a logical boundary for urban service area transition. The

subject property can be considered an isolated parcel with regard to Urban Reserve service area description.


Housing Element

GOAL: To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.

The applicant is proposing a multi-family residential development supporting housing options that meet the needs of present and future residents of the City of Cape Coral.

PLANNING DIVISION STAFF REPORT
LU17-0012

SITE ADDRESS No site address. Site is east of Veterans Parkway and west of Surfside Boulevard.	APPLICANTS/PROPERTY OWNERS MSI Holdings, LLC
--	--

SUMMARY OF REQUEST The applicant proposes a Future Land Use Map Amendment for an 84.47 acre site from Mixed Use Preserve (MUP) Type III to Multi-Family Residential (MF). The existing zoning is Agricultural (A). The applicant is also requesting to change the Urban Services designation from Reserve to Transition.	 <p>CITY OF CAPE CORAL Department of Community Development Planning Division Case No. LU17-0012</p> <p>Subject Parcel</p> <p>JANUARY 9TH, 2017</p> <p>0 400 800 Feet</p> <p>This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the subject area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for damages that may occur. Please contact the Department of Community Development with any questions regarding this map product.</p> <p>MAP SOURCE</p>
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STAFF RECOMMENDATION:

Positive Aspects of Application:	The amendment addresses a need for multi-family development. Site has ideal frontage and size for large multi-family development. Majority of surrounding development is residential.
Negative Aspects of Application:	The amendment would constitute a loss of commercial land that is large enough to accommodate a quality commercial development.
Mitigating Factors:	The site is ideal for commercial or multi-family, both of which are needed in Cape Coral.

Site Information

Urban Service Area: The site is in the Urban Service Reserve Area. Utilities have been installed in areas surrounding the site.

City Water and Sewer: The site is not connected to City water and sewer, however, connection would be possible from nearby sites.

Street Access: The site has road frontage on Veterans Memorial Parkway, which is classified as a principal arterial.

STRAP Number: 29-44-23-C4-00002.0000

Block/Lot(s): The site is not platted within a subdivision.

Zoning and Land Use Information:

Subject Property:	Future Land Use	Zoning
Current:	Mixed Use Preserve (MUP)	Agricultural (A)
Proposed:	Multi-Family Residential (MF)	N/A

Surrounding Areas	Future Land Use	Zoning
North:	Lee County Future Land Use	Lee County Zoning
South:	Single-Family Residential (SF)	Single-Family Residential (R-1B)
East:	Single-Family/Multi-Family (SM)	R-1B
West:	MUP Type III	A

Background

The 84.47 site is in the southwestern quadrant of the City and was formerly used a borrow pit that has ceased operations for several years. The site has frontage along Veterans Parkway West and is surrounded by two residential subdivisions¹ to the north and east, an undeveloped site to the west², and single-family homes to the south. The site topography is similar to many former borrow pits with the majority of the site consisting of two large lakes where soil was dredged out. The site also has two driveway stubs that would allow access at the time of development.

The original future land designation was Single-Family/Multi-Family (SM)³. In 2007, the future land use designation was amended to Mixed Use Preserve (MUP) Type III, Class D. The future land use amendment was City-initiated and intended to make the site and a site to the west across Veterans Parkway available for commercial development. The sites were seen as a good fit for commercial development because of the sites are large, un-platted, and have access along a major arterial. The site has retained Agricultural (A) zoning since 1989.

The applicant states in their "Letter of Intent" that the owners intend to construct multi-family residences, rather than commercial or mixed use. The applicants state the current future land use designation allows residential units but only 20% of the area can be developed residentially and the maximum density is 4.4 units per acre. The requested future land use designation of MF would allow 16 units per acre. The applicant also states they do not believe commercial is ideal based upon several factors such as limited roadway access, the curvature and speed of traffic on Veterans Parkway, and the presence of existing commercial in the area.

Additional Site Information

Protected Species

The applicant has not submitted an Environmental Species Survey, however, the applicant will be required to submit the survey prior to any development of the site. Should protected species be identified on the site as part of the development review of the site, the City will abide by Policy 1.2.5 of the Conservation and Coastal Management Element, which states:

"Policy 1.2.5: The City will assist in the implementation of and compliance with all state and federal regulations concerning species listed as endangered, threatened, species of special concern, or commercially exploited by monitoring development activities, providing information on listed species in building permit packages, and assisting in investigations as requested."

Soils and Drainage

The site has one soil classification; Boca Fine Sand. This soil has limitations for development, which are typically overcome using various engineering solutions such as importing fill. The soil type should not present an obstacle to future land development although special feasibility studies may be required.

¹ The subdivision to the north is within unincorporated Lee County.

² The site is also owned by the applicant.

³ From the 1989 adoption of the Comprehensive Plan.

Analysis

Planning staff analysis will analyze the appropriateness of the existing future land use designation – Mixed Use Preserve (MUP) and the proposed Multi-Family Residential (MF) future land use designation with several Comprehensive Plan policies.

Comprehensive Plan

Mixed Use Preserve (MUP) Class III, Type D Future Land Use Designation

The site has a Future Land Use Designation of MUP Class III, Type D. The MUP designation is defined in the Comprehensive Plan in Chapter, Policy 1.15.Q. The MUP designation was created promote non-residential and mixed use development that would create employment centers while simultaneously creating open spaces. The MUP designation also has five classes that determine the allowable uses and four types that determine the development percentage of those uses. The site is designated Class III, Type D which allows a maximum residential allocation of 20% or the option to develop a site with 100% non-residential uses. The maximum residential density is 4.4 units per acre and a maximum floor area ratio (FAR) of 2.0. MUP also allows shifting of residential density or commercial intensity from wetlands areas to upland areas.

Multi-Family Residential (MF) Future Land Use Designation

The applicant is seeking an amendment to the MF future land use designation. The MF future land use designation allows a maximum of 16 dwelling units per acre, except for large assemblies of land that may construct 20 dwelling units per acre.

The applicant's proposed Future Land Use Map amendment would allow the site to develop with multi-family dwelling units⁴ on 100% of the site.

Chapter 4 – Future Land Use Element

Policy 1.13

Policy 1.13 encourages commercial development at commercial nodes to decrease the potential for strip development and to facilitate compact development that encourages pedestrian friendliness. A commercial node is defined as the intersection of two four-lane parkways or boulevards. The site has frontage along Veterans Parkway, which is a 4-lane roadway, but the site is over 2,500 feet away from the nearest commercial node⁵, **therefore, staff finds that the site may not be appropriate for commercial or mixed-use development according to Policy 1.13.**

Policy 1.14

Policy 1.14 addresses eight commercial siting guidelines that provide guidance on whether or not a site is appropriate for a commercial or mixed-use Future Land Use designation. The MUP designation is not listed as a Future Land Use designation that should be evaluated according the commercial siting guidelines, however, the MUP has development allocations similar to the Commercial Activity Center (CAC). The MUP allows primarily commercial development, therefore

⁴ Or any use permitted in the site's current zoning district at the time.

⁵ Veterans Parkway and Surfside Boulevard.

the commercial siting guidelines are an appropriate method of evaluating the applicant's request. The guidelines are also a guide on determining compatibility between existing residential uses and potential commercial uses. A response to each of the commercial siting guidelines follows in **bold**.

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a 'new' commercial property (a commercial property not abutting any existing commercial properties) or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties (see below: Integration).

Staff Response: The site has frontage on a principal arterial, however, the site is over 2,000 feet away from the nearest major intersection. Planning staff finds that the current MUP future land use designation is not consistent with the above guideline.

Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral, most City blocks are rows of back-to-back lots approximately 250 feet deep. Preferably adequate depth is achieved if any number of contiguous properties, owned by the same landowner (see "Ownership Pattern", below) occupy the entire 250 feet of depth. Adequate depth would not be achieved if the subject properties have different owners, and if the contiguous properties are not reasonably compact (see below, "Compactness").

Staff Response: The site has an irregular shape, however, the property has varying depths between 500 feet and 1,500 feet, therefore, Planning staff finds that the MUP future land use designation is consistent with the above guideline.

Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties.

Staff Response: The site has an irregular shape that does not resemble a compact square or a rectangle, therefore, Planning staff finds that the MUP future land use designation is not consistent with the above guideline.

Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties.

Staff Response: The site is over 1,300 feet away from the nearest commercial or mixed-use development, which reduces or eliminates potential integration. The site is a unique area of the City, where there are several large housing developments adjacent to the site, both to the north and the east. These large developments are generally master-planned with significant buffers and have more separation from surrounding development than many other pre-platted areas of the City which may not have significant buffers between developments. The nature of this area reduces the need for true integration of commercial uses, however, Planning staff finds that the lack of nearby commercial nodes makes existing MUP future land use designation not consistent with the above guideline.

Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial development that might serve the City as shopping or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product.

Properties proposed for conversion to a commercial future land use, where such properties would represent an expansion of an existing commercial area may be considered “assembled,” for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties.

Staff Response: The site is not considered an assemblage of property because the site is an unplatted tract. The site is also much larger than the three acres recommended in the guideline. The site would allow for development that does not resemble “strip commercial”. Planning staff finds that the MUP future land use designation is consistent with the above guideline.

Intrusion

“Intrusion,” as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial

properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no definite guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single family development. Commercial development that is separated from a residential area by a street, canal, vegetative buffer, or other geographic features may be considered less intrusive than a commercial development that directly abuts a residential area. The degree of compactness (see "Compactness" above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While the finding of intrusion is subjective and depends on many factors, the principle is the proposed commercial property would not likely be intrusive *if* adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas.

Staff Response: The surrounding residential areas to the north, south, and east within 1,000 feet are more than 25% developed. The area to the west is undeveloped. Staff finds that the majority of the surrounding is more than 25% developed, therefore, Planning staff finds that the MUP future land use designation is not consistent with the above guideline.

Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

- a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Use and Development Regulations refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote conversion of a dedicated City parking area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.
- b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans.

Staff Response: As stated previously, the site has frontage on Veterans Parkway, which is maintained by Lee County and has an access management plan adopted by Lee County. The site is not within close proximity to any dedicated City parking area. The site has frontage on an arterial roadway with an approved access management plan, therefore, Planning staff finds that the MUP future land use designation is consistent with

the above guideline.

Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use that consist of multiple parcels, or groups of parcels, or under multiple ownerships are unlikely to develop as a true “commercial node.” Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development (see Policy 1.13, above). Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses.

Staff Response: The site is one property that is over 80 acres in size with one owner. The site does not consist of multiple parcels with similar ownership as mentioned in the guideline, however, the site is large enough to develop a commercial site that is not considered “strip commercial”. Planning staff finds that while the site is not a cohesive, compact, or interrelated network of commercial properties, the site is a large tract that offers the potential for a quality commercial development based upon factors such as size and access, therefore, the MUP future land use designation is consistent with the above guideline.

In summary, Policy 1.14 contains eight commercial siting guidelines. The site is consistent with four of these guidelines (Adequate Depth, Assembly, Access, and Ownership Pattern) and is inconsistent with four guidelines (Compactness, Integration, Intrusion, and Major Intersection). Policy 1.14 does not require a proposed amendment to meet a certain threshold number of guidelines for approval or denial, rather the guidelines are meant to provide a compatibility analysis. Staff finds that upon analysis of these guidelines, the site is appropriate for commercial or mixed-use development and the current MUP future land use designation may be compatible with the surrounding area.

Policy 3.1

Policy 3.1 states that the City of Cape Coral will encourage commercial development at transportation nodes by designating areas with appropriate future land use categories. Planning staff finds that the proposed amendment is not at a transportation node, therefore, **this policy is not supportive of the current MUP future land use designation.**

Objective 3, Policy 3.3

Policy 3.3 identifies commercial corridors and the projected amount of commercial square footage and the type of developments (Neighborhood Shopping Center, Power Center, Regional Shopping Center, etc) that would meet the needs of the community in the future. The Veterans Parkway corridor is projected to need 188 acres of commercial land along with two neighborhood shopping centers, a community shopping center and one power center. The amendment would remove over 80 acres of land that could be used for commercial development⁶. This policy does not prohibit future land use map amendments that remove commercial land from these corridors, however, in order for the future needs of the

⁶ This is not considering the unique topography of the site.

community to be met, additional land should potentially be considered for a conversion from residential to commercial.

Regional Plan Analysis

Southwest Florida Regional Planning Council's (SWFRPC) Strategic Regional Policy Plan (SRPP):

This existing MUP future land use designation is consistent with the SRPP Strategy that prioritizes locating commercial development along transportation corridors. Veterans Parkway is a four-lane arterial roadway and is considered a major transportation corridor.

Lee County Metropolitan Planning Organization's (MPO) 2040 Long Range Transportation Plan:

Veterans Parkway has not been identified for improvements or widening in the MPO's 2040 Long Range Transportation Plan.

Cape Coral Economic Development Plan

The proposed amendment is supported by the City Economic Development Master Plan (EMDP). The site is not designated as an "Area of Economic Opportunity" per the EDMP. The amendment to Multi-Family Residential (MF) would be supported by Initiative 6, Objective 2, Strategy 2.1 which is to "Increase the amount of multi-family residential dwelling units" in the City. The amendment could potentially add over 1,200 multi-family dwelling units based upon the size of the parcel and the density allowed by the MF future land use designation. The addition of the multi-family dwelling units is also supported by a needs analysis⁷ that was conducted which determined that the City needs 1,450 multi-family units per year for the next 5 years in order to keep up with demand.

Analysis Summary

After a review of the Comprehensive Plan and analyzing the proposed MF future land use designation, Planning staff finds that the existing MUP designation or the proposed MF designation can both be viewed as appropriate and compatible with the surrounding area. The site is large and has ideal access to support a quality commercial development. The site is also bordered by large residential communities on two sides and multi-family development would be compatible with these developments. Furthermore, the City has an identified need for both large-scale commercial development and large multi-family developments. Commercial or multi-family development are also supported by several Comprehensive Plan policies and studies. While the topography was not part of the analysis, the site does have some unusual site conditions because it was used as a borrow pit in the past. Future development may be impacted by this topography as a large portion of the site is a man-made lake.

Urban Service Boundary Amendment

The applicant has requested to amend the Urban Service area for the site from a Reserve classification to a Transition classification. The Reserve classification is for sites that do not have access to utilities and for areas that are not anticipated to have utilities for several years. The Transition classification is for site and areas that are anticipated to have utilities installed in the near future⁸ or may already have utilities installed.

⁷ Need for Multi-Family Rental Apartments

⁸ 1-3 years.

The site is surrounded by properties that have had City utilities for several years. Utilities were not provided to the site given uncertainty regarding future development, however, utilities can be provided from nearby sites. The applicants request to amend to Urban Service boundary is supported by the following Comprehensive Plan policies.

Objective 4, Policy 4.1: Future development requiring access or connect to public water and sewer facilities will be located within either the Urban Services Infill or Transition Areas.

Response: Future development of the site will require public water and wastewater, therefore, the Urban Services boundary should be extended to the site.

Objective 7. Development in the Urban Services Area: The City will discourage premature “leap-frog” development within the Urban Services Reserve Area.

Response: Development of the site would not be considered leap frog development, however, the site has access to utilities and is near large development with municipal water and wastewater service.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts at buildout. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual number of dwelling units, population, etc. present within the subject area.

The site has a Mixed Use Preserve (MUP) Future Land Use designation. The site is designated Class III, Type D which allows a maximum residential allocation of 20% or the option to develop a site with 100% non-residential uses. The maximum residential density is 4.4 units per acre and a maximum floor area ratio (FAR) of 2.0. MUP also allows the shifting of residential density or commercial intensity from wetlands areas to upland areas. The site is zoned Agricultural (A) and the site would need a rezone to achieve the maximum density and intensity.

This analysis will be based upon 80% of the site developing with non-residential uses at an FAR of 2.0⁹ and 20% of the site developing with residential uses with a density of 4.4 dwelling units. Based upon the calculations, a future development could be built that includes 5,837,040 sq. ft. and 74 dwelling units.

The analysis will also consider the proposed Multi-Family Residential (MF) future land use designation. The MF designation would allow 16 dwelling units per acre. The site is 84.47 acres which would allow a maximum of 1,351 dwelling units. This analysis will be based upon the maximum amount of development allowed by the Comprehensive Plan and the Land Use Development Regulations (LUDR).

Dwelling Units

Existing:	74
Proposed:	1,351
Net Change:	+1,277

⁹ Developing at an FAR of 2.0 is unlikely given topography of the site and historical Cape Coral development patterns.

Population*

Existing:	188
Proposed:	3,432
Net Change:	+3,244

* 2.54 persons/household = avg. household size; 2010 Census

Non-Residential Square Footage

Existing:	5,837,040 sq. ft.
Proposed:	0 sq. ft.
Net Change:	-5,837,040 sq. ft.

Water Use

Existing:	<u>1,765,912 gal/day total</u> (74 dwelling units x 200 gal/day) + (5,837,040 sq. ft. x 0.3 gal/sq ft/day)
Proposed:	<u>270,200 gal/day total</u> (1,351 dwelling units x 200 gal/day)
Net Change:	-1,495,712 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	9.4 MGD

Sewage

Existing:	<u>1,765,912 gal/day total</u> (74 dwelling units x 200 gal/day) + (5,837,040 sq. ft. x 0.3 gal/sq ft/day)
Proposed:	<u>270,200 gal/day total</u> (1,351 dwelling units x 200 gal/day)
Net Change:	-1,495,712 gal/day
Facility Capacity:	28.4 MGD
Avg. Daily Usage:	12.8 MGD

Solid Waste

Existing Generation:	<u>794,728 lbs. total/day</u> (188 persons x 4.74 lbs/person/day) + (51,836 sq. ft. x 0.136 lbs/sq ft/day)
Proposed:	<u>16,268 lbs. total/day</u> (3,432 persons x 4.74 lbs/person/day)
Net Change:	-48,460 lbs/day
Facility Capacity:	1,836 tons/day
Existing Demand:	1,384 tons/day
Capacity Available:	Yes

Traffic/Daily Trips

Existing Generation:	6,629 PM peak trips/hour
----------------------	--------------------------

Proposed: 838 PM peak trips/hour
 Net Change: -5,791 AM peak trips/hour and -100 PM peak trips/hour
 Facility Capacity: Veterans Parkway meets the minimum acceptable Level of Service Standard of "D."
 Capacity Available: Yes

Hurricane Evacuation

The subject area is in Evacuation Zone A, however, this amendment would result in an increase of dwelling units. This would have a negative effect on the evacuation times for the surrounding road network.

Park Lands

The levels of service standard (LOS) for parkland and facilities is based on permanent population. Based on potential development of 1,351 dwelling units (3,342 persons), additional park land would be needed for regional, neighborhood, community and specialty parks.

Protected Species

The City requires an environmental survey prior to the issuance of any land clearing, site clearing, or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, state, or federal protective or mitigation measures may be required by the developer to proceed.

School Impacts

There will be an increase in dwelling units based upon the requested future land use designation. The Lee County School estimates that the amendment will generate 119 additional school students. The school district has indicated that there is sufficient elementary school capacity, however, the amendment will increase a deficit in middle and high school capacity. The school district does indicate that sufficient school seating for middle and high school is available in their service areas.

Recommendation:

Planning Division staff finds that the proposed Future Land Use amendment is consistent with several policies of the City's Comprehensive Plan and is compatible with the surrounding neighborhood and therefore recommends **approval** of the proposed large-scale future land use map amendment request.

Planning Staff Contact Information

Chad Boyko, AICP, Principal Planner

239-573-3162/cboyko@capecoral.net



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: LU17-0012

REQUEST: The applicant proposes a Future Land Use Map Amendment for an 84.47 acre site from Mixed Use Preserve (MUP) Type III to Multi-Family Residential (MF). The existing zoning is Agricultural (A). The applicant is also requesting to change the Urban Services designation from Reserve to Transition.

LOCATION: Site is east of Veterans Parkway and west of Surfside Boulevard.

CAPE CORAL STAFF CONTACT: Chad Boyko, Principal Planner, 239-573-3162, cboyko@capecoral.net

APPLICANT: EnSite, Inc.

AUTHORIZED REPRESENTATIVE: Avalon Engineering

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Local Planning Agency will hold a public hearing at 9:00 A.M. on Wednesday June 6, 2018 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the City of Cape Coral Local Planning Agency will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After City of Cape Coral Local Planning Agency has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, 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 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the City of Cape Coral Local Planning Agency with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she 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 to be based.



NOTICE OF CHANGE OF LAND USE

The City of Cape Coral proposes to adopt ORDINANCE 43-18, AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM MIXED USE PRESERVE (MUP), CLASS III, TYPE D TO MULTI-FAMILY RESIDENTIAL (MF) AND FROM URBAN SERVICES RESERVE AREA TO URBAN SERVICES TRANSITION AREA FOR A PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTHEAST OF VETERANS PARKWAY AND TO THE WEST OF THE SANDOVAL SUBDIVISION; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

A public hearing on the ordinance will be held Wednesday, June 6, 2018 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Planning and Zoning Commission will consider a recommendation to change the City's future land use map amendment request. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person 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. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.

Rebecca Van Deutekom, CMC
City Clerk



Ordinance 43-18
LU17-0012

**MIXED USE PRESERVE (MUP),
CLASS III, TYPE D TO MULTI-
FAMILY RESIDENTIAL (MF)
AND FROM URBAN SERVICES
RESERVE AREA TO URBAN
SERVICES TRANSITION AREA
FOR AREA NORTH OF
VETERANS PKWY AND SOUTH
OF PINE ISLAND ROAD**

NP-0000961361

☐ PROOF O.K. BY: _____ ☐ O.K. WITH CORRECTIONS BY: _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

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Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: MSI Holdings, LLC

APPLICATION NO: LU17-0012

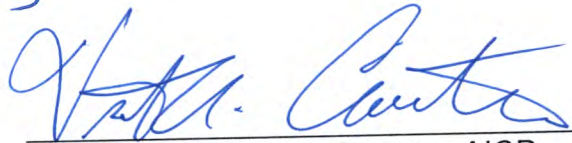
STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Caution, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 29th day of May, 2018.

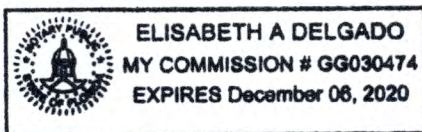


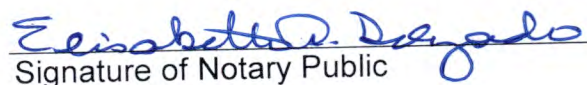
Vincent A. Caution, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29th day of May, 2018, by Vincent A. Caution, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/6/20 Commission # 66030474




Signature of Notary Public

Elisabeth A. Delgado
Print Name of Notary Public



SUBJECT PARCEL

ROYAL TEE CIR

BELLINGHAM CT

WOODBOURNE PL

SANDOVAL BLVD

SUNVALE CT

SOMERV


MIRACLE PKWY

VET

DAN

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. LU17-0012

 Subject Parcel



JANUARY 9TH, 2017

0 Feet 430 860








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CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU17-0012

LEGEND

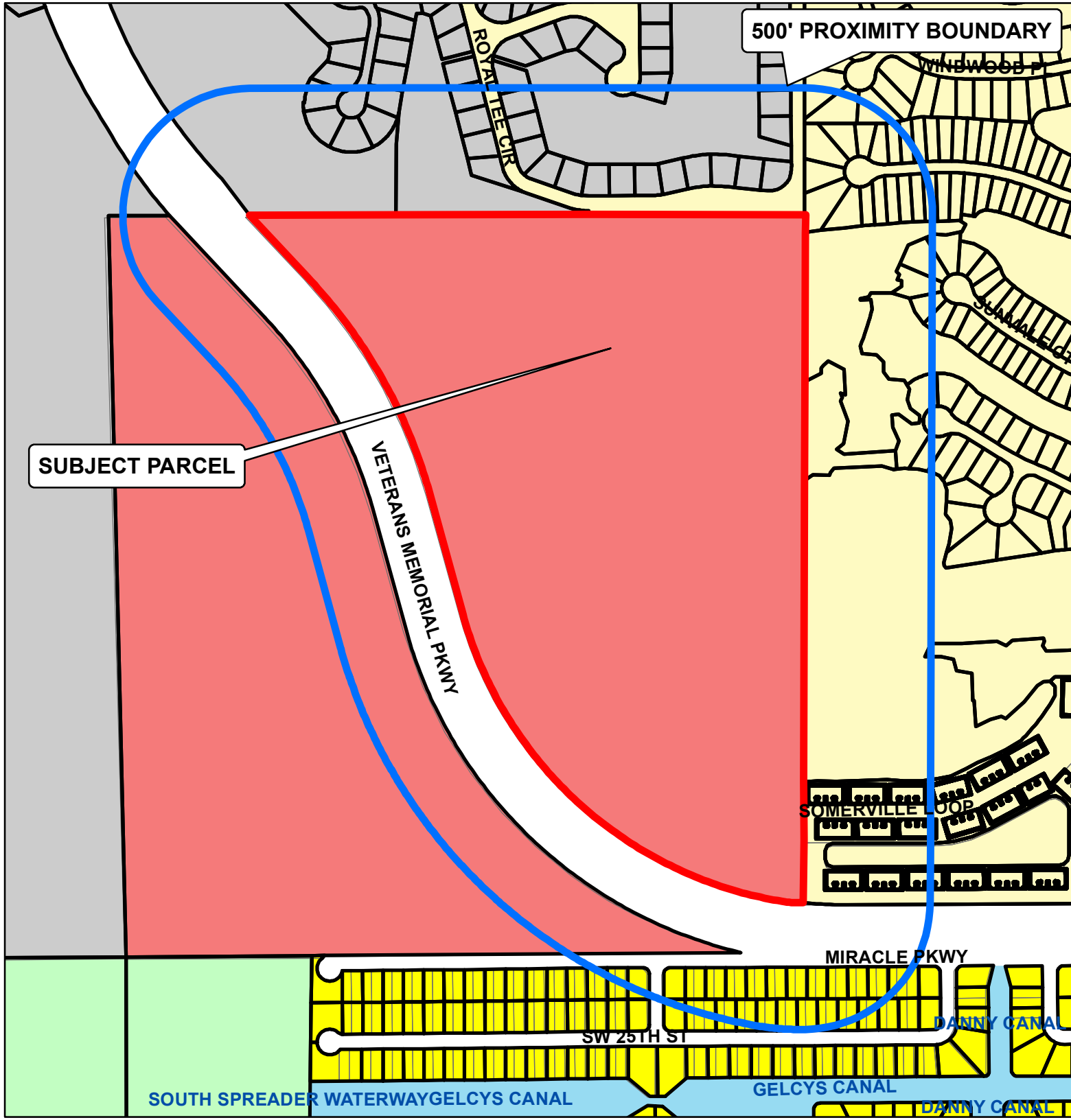
-  Subject Parcel
-  500' Proximity Boundary
- Future Land Use**
 -  SF
 -  SM
 -  MUP
 -  PR
 -  LEE COUNTY FLU



JANUARY 9TH, 2017



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



CURRENT ZONING MAP
500' Proximity Boundary

Case No. LU17-0012

LEGEND

-  500' Proximity Boundary
 Subject Parcel

Zoning

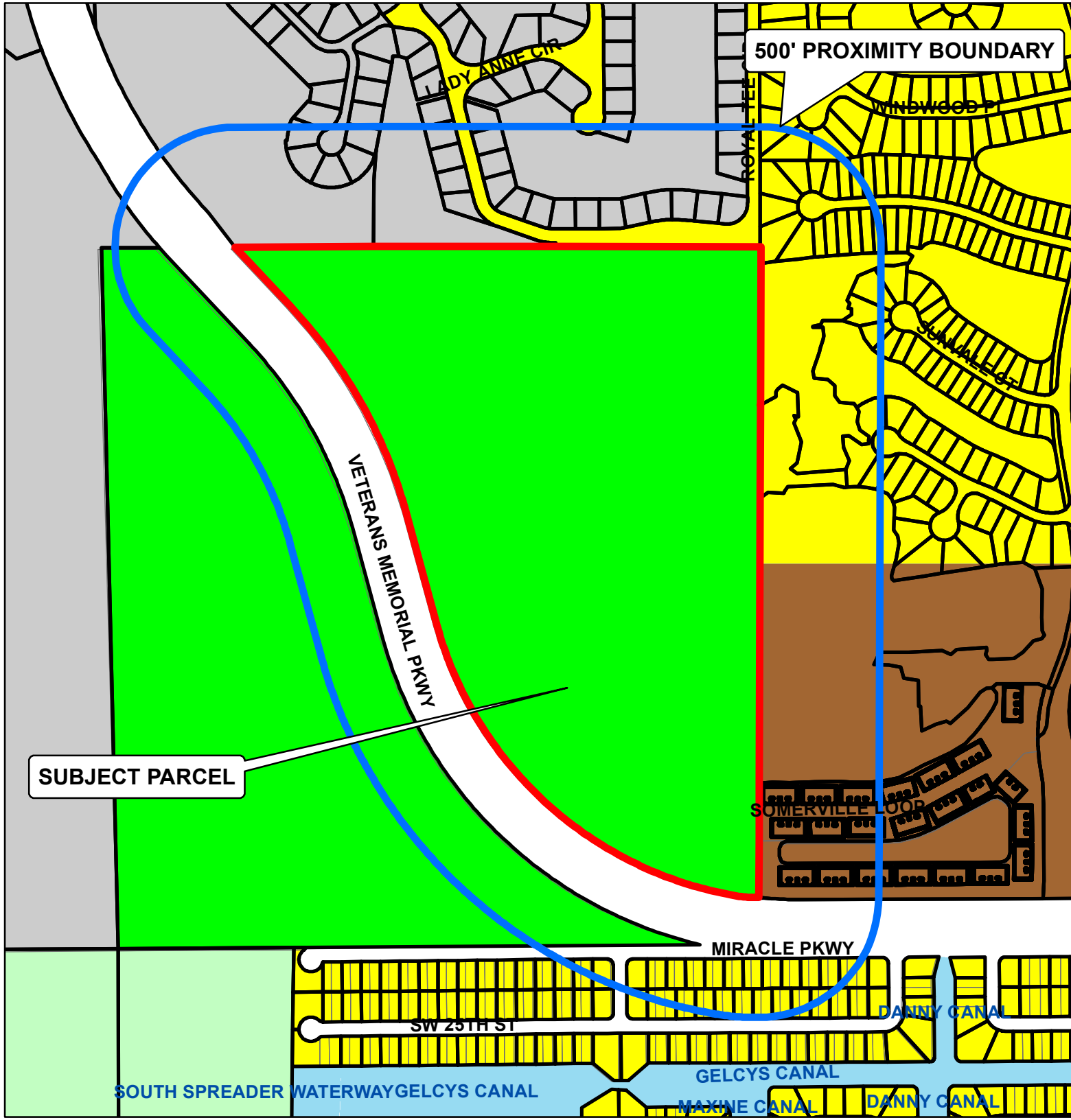
-  A
 C-1
 PRES-Regulated by FLU
 R-1B
 R-3
 LEE COUNTY ZONING



JANUARY 9TH, 2017



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


PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU17-0012

LEGEND

-  Subject Parcel
-  500' Proximity Boundary

Future Land Use

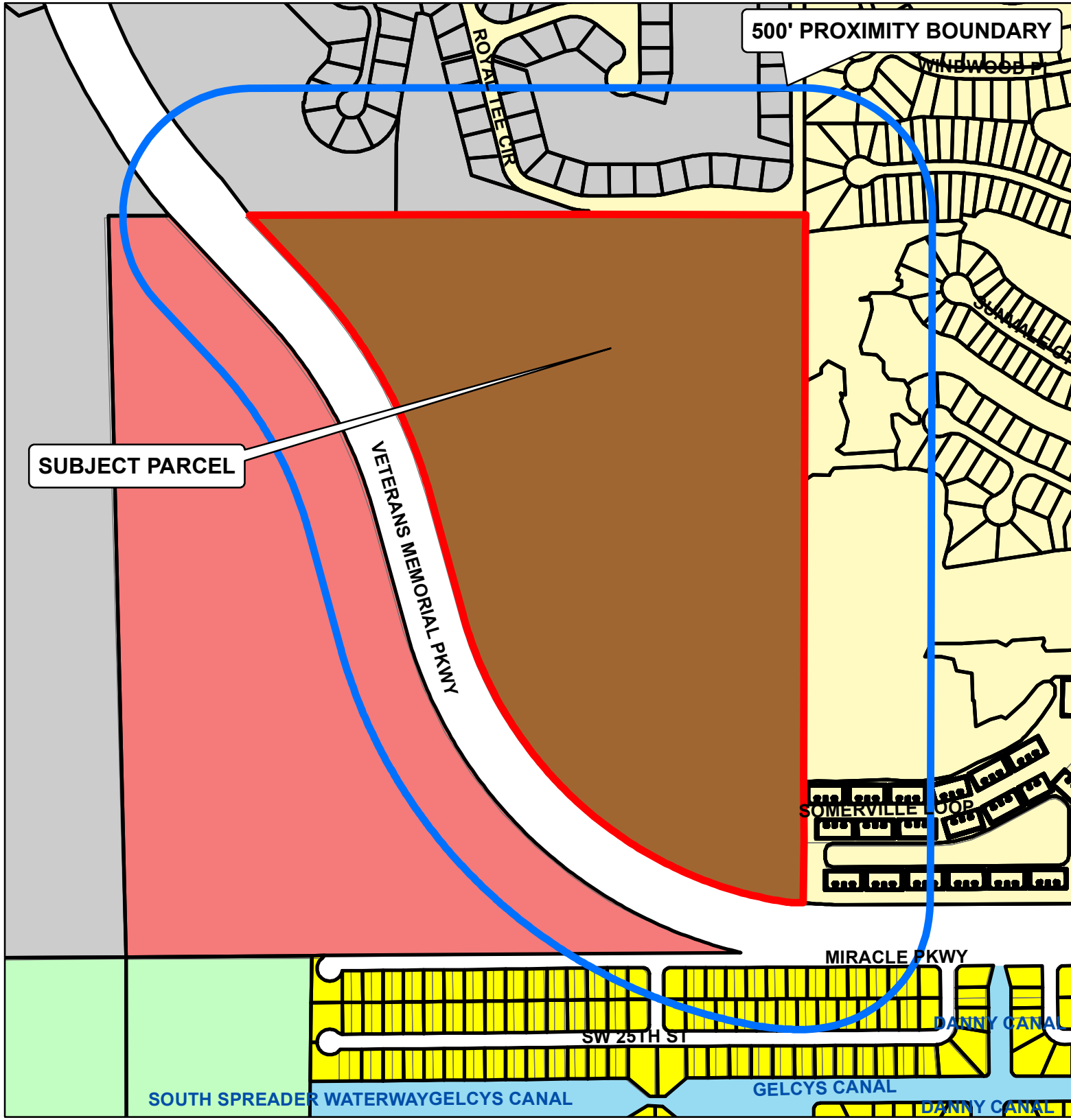
-  SF
-  SM
-  MUP
-  PR
-  MF
-  LEE COUNTY FLU



JANUARY 9TH, 2017



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Item Number: 10.A.
Meeting Date: 6/6/2018
Item Type: OTHER BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Land Development Code Updates - ORDINANCE 35-18 WHAT THE ORDINANCE ACCOMPLISHES: An ordinance repealing Articles I-X and XII of the City of Cape Coral Land Use and Development Regulations and adopting Article 1-10, 12 and 13 of the new City of Cape Coral Land Development Code.

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

Land Development Code Updates -ORDINANCE 35-18

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance repealing Articles I-X and XII of the City of Cape Coral Land Use and Development Regulations and adopting Article 1-10, 12 and 13 of the new City of Cape Coral Land Development Code. Re-write Updates.

LEGAL REVIEW:

EXHIBITS:

See attached Summary and separate Articles

PREPARED BY:

Kristin
Kantarze Division- Planning Department- Community Development

SOURCE OF ADDITIONAL INFORMATION:

Robert Pederson, Planning Division Manager, Ext. 3169 (573-3169), rpederso@capecoral.net

ATTACHMENTS:

Description	Type
▣ LDC Summary	Backup Material
▣ Article 1- General Provisions	Backup Material
▣ Article 2 - Decision Making	Backup Material
▣ Article 3 - Development Review	Backup Material
▣ Article 4 - Zoning Districts	Backup Material
▣ Article 5 - Development Standards	Backup Material
▣ Article 6 - Parking	Backup Material
▣ Article 7 - Signs	Backup Material
▣ Article 8 - Nonconformities	Backup Material
▣ Article 9 - Floodplain Management	Backup Material
▣ Article 10 - Subdivisions	Backup Material
▣ Article 11 - Definitions	Backup Material
▣ Article 12 - Building Code and EDS	Backup Material
▣ Article 13 - Reasonable Accommodations	Backup Material

MEMORANDUM

CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Planning and Zoning Commission members

FROM: Robert H. Pederson, Planning Manager

DATE: May 10, 2018

SUBJECT: Ordinance No. 35-18 – New City of Cape Coral Land Development Code

Land Development Code Update Summary

This memo is to provide the Planning and Zoning Commission with an overview of the changes in the draft Land Development Code as we move forward to the public hearing stage of this effort beginning with first public hearing on May 16. A more detailed staff report and analysis of specific topics will be provided for future P&Z public hearings.

Process:

The City began the process of a total update (rewrite) of the Land Use and Development Regulations (LUDRs) in late 2015. The proposed regulations are being renamed as the Land Development Code (LDC) to distinguish the new code from the current LUDR.

The City contracted with Calvin Giordano and Associates for the early stages of this project. The Community Development Department has carried this work forward over the past year, with many changes to the draft along the way.

A series of public workshops with the Planning and Zoning Commission began in August of 2017. The May 16 public hearing will be the first of a series of public hearing by P&Z. Additional hearings are scheduled for June 6 and June 20, 2018. At the end of the public hearing process, the P&Z will make a recommendation to the City Council.

It is important to note that there are four separate aspects to adopting the new LDC. These are:

1. The text of the LDC;
2. A new zoning map;
3. Text amendments to the Comprehensive Plan; and
4. Changes to the Future Land Use Map.

For the May 16 public hearing, please note that the advertising did not list Article 11, Definitions, even though P&Z has received drafts of this article. We are currently reviewing the definitions with the City Attorney before holding a P&Z public hearing on this article.

Similarly, Article 6, Parking, does not yet show any changes to the residential parking requirements (e.g., parking of boats, commercial vehicles, etc.). The City Council discussed these requirements at their Committee of the Whole meeting on March 26. The City is currently evaluating whether to bring forward an ordinance changing these regulations as a separate matter before incorporating any such changes in the LDC.

Zoning Map

Adoption of a new LDC will also require adoption of a new zoning map for the entire City. The new map is required to reflect the names of the new zoning districts and any proposed changes to existing zoning. For example, all lots currently zoned R-1A or R-1B will be rezoned to the new R-1 zoning district.

Other zoning map changes are necessary because several zoning districts (e.g., Village, Highway Commercial, Marketplace Residential, Worship) are being eliminated and new zoning districts assigned to property in those districts. Staff is preparing a draft of the new zoning map, which will be scheduled for a public hearing before the Hearing Examiner. It should also be noted that the proposed zoning map does not include any rezone requests from individual property owners.

Organization of the LDC:

The LDC has been organized into 13 Articles:

- Article 1. General Provisions
- Article 2. Decision Making and Administrative Bodies
- Article 3. Development Review Process
- Article 4. Zoning Districts
- Article 5. Development Standards
- Article 6. Parking
- Article 7. Signs
- Article 8. Nonconformities
- Article 9. Floodplain Management
- Article 10. Subdivisions
- Article 11. Definitions
- Article 12. Building Code and EDS
- Article 13. Reasonable Accommodations & Dispute Resolution

Overall Changes

The new LDC is a total rewrite when compared to the existing LUDRs. As such, the changes are not shown in the underline/strikethrough format that is used for individual text amendments. It should also be noted that many requirements of the current code have not been substantially changed and have been carried forward in the LDC, although edited and reorganized for clarity.

Major changes are summarized below. The overall direction for the LDC is to:

- Simplify the language in the code where possible
- Address “community values issues” that are embodied in the current LUDR
- Reorganize the code and include more graphics
- Increase the number and types of permits that may be approved administratively
- Reduce the number of zoning districts by combining some similar districts, eliminating districts that are rarely or no longer used, and including new districts for Bimini Basin and Seven Islands.
- Eliminate the detailed NAICS system of classifying land uses and use broader categories of retail, office, and other land uses for greater flexibility
- Establish a Planned Unit Development zoning district that will replace the current PDP process
- Establish a process for “micro-cottage” developments
- Place all definitions in one location in the LDC

New Concepts in the LDC

Planned Unit Developments.

The LDC adds Planned Unit Developments (PUD). PUDs are a form of development entitlement that creates a zoning district tailored to a specific project. The PUD identifies uses and dimensional regulations such as setbacks and heights. A PUD will also have a Master Concept Plan that will provide a general plan of how the development will function and provide compatibility and consistency with the area. The Master Concept Plan will identify access points, landscape buffer, building locations etc. The PUD will provide a more efficient method for development projects and will provide a clear outline of what the development will look like. PUDs will replace the current system of Planned Development Projects (PDPs).

Micro Cottage Village Developments

This concept was brought forward after City Council direction was given to staff at a Committee of the Whole. Micro cottage Village Developments (MCVDs) provide a location for City residents who wish to reside on lots which are much smaller than the typical Cape Coral property. This housing type encourages efficient use of land, affordability, and energy conservation. Micro cottage housing allows for a higher density single family development than is normally allowed (8.8 du/acre). This is made possible

by smaller home sizes, clustered home sites, and parking and design standards. These units will be site built homes ranging from 600-1100 square feet. Minimum property size for this type of development is 3 acres. These developments do not include Tiny Houses on Wheels (THOW).

Accessory dwelling units / guest houses

Accessory dwelling units provide an opportunity add variety and housing choice in residential neighborhoods and can be an effective way to add affordable rental housing stock to existing neighborhoods. ADUs also provide options for residents to age in place or to live with or near family and caregivers, providing a flexible way to address family needs for additional housing. A guest house is similar to an ADU in that living quarters (e.g., a bedroom, bath, and living area) may be in detached accessory structure, but no kitchen is allowed.

Currently, ADUs and Guest Houses are not allowed in Cape Coral. The LDC contains draft regulations to allow ADUs and Guest Houses, subject to a number of standards. See Article 5, Sections 5.2.2 and 5.2.1

Regulations for mobile food trucks

Mobile food vendors are not currently allowed, although there are number of these in the City. The LDC includes regulations for this use. See Article 5. Section 5.10.13.

Comprehensive Plan Text and Map Amendments

To implement the new LDC, a number of text amendments to the Comprehensive Plan will be necessary. The reason for this is that the Comprehensive Plan has many references to specific zoning districts, which are being changed as part of the LDC. The new zoning districts in the LDC also need to be addressed in the Comprehensive Plan to establish which zoning districts(s) are consistent with each Future Land Use Designation.

There are also references to programs (such as a transfer of development rights) that will no longer be part of the LDC. The LDC also includes increases in allowable density for certain zoning districts that require changes to the Comprehensive Plan.

All Comprehensive Plan text or map amendments will be come to P&Z in the upcoming months for public hearing and the P&Z recommendation to the City Council.

Summary of Changes by Article

Article 1. General Provisions

No major changes from various provisions of the current LUDR. These requirements have been organized into one article and edited for clarity.

Article 2. Decision Making and Administrative Bodies

No major changes from various provisions of the current LUDR. These requirements have been organized into one article and edited for clarity.

Article 3. Development Review Process

These requirements have been updated for clarity, consistency, and reorganized. The number of administrative approvals have increased (e.g., model homes). Please refer to Table 3.1.3 that illustrates the types of development approval (administrative, quasi-judicial, and legislative), the recommending authority and decision maker for each type of permit, and the public notice requirements for each permit type.

Article 4. Zoning Districts

This article establishes and describes all zoning districts within the City (see Chapter 4.1), and establishes specific regulations within each zoning district (see Chapter 2).

This article also contains the tables showing the classification of land uses, which district(s) each land use is allowed in, and the use hierarchy for the approval process for each use. The setback, height, and other dimensional standards are also contained in Article 4.

General Comparison of old vs. new zoning districts:

Old Zoning District	New Zoning District
Single-Family Residential (R-1A or R-1B)	Single-Family Residential (R-1)
Residential Development (RD)	Single-Family Residential (R-1) Multi-Family Residential Low (RML) Multi-Family Residential Medium (RMM)
Residential Estate (RE)	Residential Estate (RE)
Residential Receiving (RX)	Single-Family Residential (R-1)
Agricultural (A)	Agricultural (A)
Pedestrian Commercial (C-1)	Commercial (C)
Professional Office (P-1)	Professional Office (P)
Thoroughfare Commercial (C-3)	Commercial (C)
Professional Business (P-2) Never mapped	
Light Industrial (I-1)	Industrial (I)
Village (VILL)	Commercial Corridor (CC)
Corridor (CORR)	Commercial Corridor (CC)
Institutional (INST)	Institutional (INST)
Worship (W)	Single-Family Residential (R-1) or Commercial (C)
Marketplace Residential (MR)	Multi-Family Residential Low (RML) Multi-Family Residential Medium (RMM) Commercial (C) Professional Office (P)
Preservation (PRES)	Preservation (PRES)

South Cape (SC)	South Cape (SC) Mixed-Use Bimini (MXB)
High Intensity Commercial Industrial (HICI) Never Mapped	

Multi-family zoning

One important change to the zoning districts is established of two separate districts for multi-family development. The current LUDR has one multi-family district, R-3. Over time, most of the current R-3 zoning has been or is currently being developed with duplexes and not larger multi-family projects. In 2016, the City received the results of a housing study, which identified a critical need for nearly 1,500 multi-family dwelling units per year for the next five years, just to meet the current demand for affordable and workforce housing. Duplexes do not meet these needs. Accordingly, the LDC attempts to address this need by creating two multi-family districts; RML and RMM.

RML is a low density multi-family district and will be mapped where the predominate develop pattern is existing duplexes. Larger multi-family developments will be permitted in this district.

The RMM district will be mapped on larger parcels of at least one acre. Duplexes or single-family homes will be prohibited in the RMM district to facilitate larger scale projects and not have RMM zoned areas consumed with lower density residential products.

The densities for the RML and RMM is 25 dwelling units per acre, which is an increase over the current maximum density of 16 dwelling units per acre.

Neighborhood Commercial (NC)

The City has developed a mixed use, form-based zoning district known as the Neighborhood Commercial zoning district. Development types, densities, and intensities are based on the size of the NC development tract. This district will help provide an urban form for specific locations on major roadways.

Mixed Use Seven Islands (MX7)

The City has developed a new zoning district consistent with the Seven Islands and NW Cape Vision Plan approved by Council in 2016. The Mixed-Use Seven Islands district is designed to permit a mix of residential and commercial uses, a park, and a marina to be consistent with Vision Plan. The maximum residential development is 995 dwelling units, with 110,000 square feet of commercial space, of which 40,000 is a community center.

Mixed Use Bimini (MXB)

In preparation for redevelopment of the Bimini Basin, a separate zoning district for the Bimini Basin area has been included. The Mixed-Use Bimini Basin zoning district permits

mixed-use development in an urban form and increases residential density by-right to 50 dwelling units per acre (75 dwellings/acre under certain circumstances).

Use Hierarchy

The new LDC has created two additional use types of zoning approval processes. These are identified in a Land Use Hierarchy. Land uses with Specific Regulations (P*) and Conditional Uses (CU) will be utilized along with Permitted Uses and Special Exception Uses. These uses will provide a set of regulations or conditions that will be required of the use dependent on the zoning district. The current LUDR either permits uses without any regulations or requires applicant to apply for a special exception which requires a public hearing. The benefit of the P* and CU uses is that applicants will no longer be required to apply for a special exception for many uses, such as model homes. The P* and CU uses will provide a more streamlined approach by eliminating a public hearing for a SE and will provide the community a clear understanding of how a project will be developed for P* and CU uses.

Article 5. Development Standards

Article 5 contains the development standards for specific land uses and activities in one location. In the current LUDR, these regulations are scattered throughout several articles.

Marine Improvements: Article 5, Chapter 4

Key changes:

1. Formatting – have moved all defined terms to Article 11 (Definitions).
2. Increased the distance in which a marine improvement can extend into a waterway (25% of the waterway width or 40 feet, whichever is less). This increase is intended to eliminate the need for many Deviations for marine improvements.
3. Increased the maximum dock surface area for marine improvements.
4. Eliminated the deviation process and now require a variance for owners seeking additional dock surface area beyond that allowed by code and the new standards allowing larger marine improvements.

Landscaping: Article 5, Chapter 5

Key changes:

1. Doubles the landscaping required for duplexes when compared to the current LUDRs.
2. Slightly reduces minimum buffer widths for commercial, corridor, professional, or institutional zoned sites abutting residential zoned properties. The regulations now focus on the quantity and type of landscaping rather than the width of the buffer.
3. Eliminates a requirement to have a wall to screen off-street parking areas in the South Cape District.
4. Allow administrative approval of certain deviations to the landscaping requirements.

Nonresidential Design Standards: Article 5, Chapter 8

Key changes:

1. Formatting – moved SC architectural standards from the SC District to Chapter 8.
2. Formatting – moved screening requirements from the nonresidential design standards to a separate LDC chapter (Chapter 7).
3. Explicitly exempted several building types from the nonresidential design standards.
4. Increases the minimum glazing requirement for buildings in order to eliminate blank walls.
5. Simplifies and clarifies the design requirements for the sides of a building.
6. Establishes a minimum standard for pitched roofs.
7. Allow administrative approval of certain deviations to design standards

Article 6. Parking

- Parking requirements are eased a bit, particularly for large retail uses.
- Community value parking issues. Any changes to current practice pending Council direction (February COW)

Article 7. Signs

- The current sign code was adopted in 2013 with a minor revision in 2014
- No substantive changes are proposed to maintain integrity of regulations approved in 2013 that were crafted by a diverse group of stakeholders
- Changes are proposed are to be consistent with “Gilbert” court decision, which established that sign regulations must be content neutral
- Format changes are included to use tables rather than verbiage
- Minor changes to sizes of freestanding signs for multi-tenant sites

Article 8. Nonconformities

- Allows a bit more flexibility in expanding a nonconforming structure (allows additions provided the degree of nonconformity is not increased).
- Single-family structures and duplexes that are non-conforming due to a city-initiated comprehensive plan amendment will continue to be treated as a conforming structure so long as the property owner who owned the property at the time of amendment continues to own the property.

Article 9. Floodplain Management

- Virtually no change from current code
- This maintains our Community Rating System discount for flood insurance policies

Article 10. Subdivisions

- Preliminary subdivisions will now be an administrative approval
- A PDP will not be required for new subdivisions
- Final Plats continue to require Council approval (required by F.S.)

Article 11. Definitions

- Definitions – The Definitions section has been revised to provide clean and concise definitions that are more up-to-date than the previous LUDR. New definitions have been added to reflect new uses in the LDC.
- Combines all definitions in one article, with certain definitions grouped together by subject (e.g., marine improvements, signs, and floodplain definitions)
- A work in progress

Article 12. Building Code and EDS

- No substantive changes
- This article was revised earlier this year to reference the latest Florida Building Code
- Note: The EDS is incorporated by reference. If PW has made past changes made without an ordinance process or wants to include new changes, a separate ordinance would be required

Article 13. Reasonable Accommodations

- The City adopted the ordinance for reasonable accommodations in 2016. There are no substantive changes to this ordinance.

What is not changing in the LDC?

Noise standards – At this time, there are no changes to the City noise ordinance in the Code of Ordinances or the LDC. However, the proposed Mixed-Use Bimini zoning district does have performance standards for sound amplification devices (e.g. speakers). These standards require that amplified sound be oriented away from surrounding residential uses. The City will need to address the noise ordinance in future, as a separate amendment to the Code of Ordinances.

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

Sections:

- Section 1.1.** Title
- Section 1.2.** Authority
- Section 1.3.** Purpose and Intent
- Section 1.4.** Jurisdiction and Applicability
- Section 1.5.** Compliance with regulations
- Section 1.6.** Violations, enforcement, and penalties
- Section 1.7.** Buildings under construction
- Section 1.8.** Outstanding permits
- Section 1.9.** Time limitation of approvals
- Section 1.10.** Annexed lands
- Section 1.11.** Comprehensive Plan and Future Land Use Map
- Section 1.12.** Official Zoning Map
- Section 1.13.** Transitional rules
- Section 1.14.** General rules of construction
- Section 1.15.** Measurements
- Section 1.16.** Interpretation of zoning district boundaries
- Section 1.17.** Severability

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, as amended.

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;

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- 47 D. Establish zoning districts as a means of achieving unified civic design and proper relationship between
48 the uses of land by regulating the location and use of buildings and other structures;
49
50 E. To minimize and reduce conflicts among various land uses through the application of regulations
51 designed to assure harmonious relationships among land uses;
52
53 F. To ensure safe and convenient traffic circulation, adequate utilities, recreation areas, and the
54 development of economically stable and healthful neighborhoods;
55
56 G. To prevent periodic and seasonal flooding by providing flood control and drainage facilities;
57
58 H. To discourage haphazard, premature, uneconomical, or scattered land development; and
59
60 I. To ensure that the citizens and taxpayers of the city will not have to bear the costs resulting from
61 haphazard land development or the lack of adequate and necessary physical improvements incidental
62 to land development.
63

64 **Section 1.4. Jurisdiction and applicability.**
65

- 66 A. These regulations shall govern the development and use of land, buildings, and structures within the
67 municipal boundary of the City.
68
69 B. No building, structure, water, or land shall be used, occupied, or developed unless in conformity with
70 all provisions of the zoning district in which it is located, all other applicable regulations, and all
71 development approvals.
72

73 **Section 1.5. Compliance with regulations.**
74

- 75 A. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered
76 except in conformance with:
77
78 1. The applicable zoning district regulations;
79
80 2. The bulk, area, and dimensional regulations of the zoning district;
81
82 3. The off-street parking and loading regulations for the use in the building in question;
83
84 4. The floor area regulations of the zoning district;
85
86 5. The established flood criteria, as indicated on the most current edition of the federal flood
87 insurance rate maps and the requirements in Article 9 applicable to the development site; and
88
89 6. All other applicable laws, rules, and regulations.
90
91 B. No building shall be erected or enlarged after the effective date of these regulations, which reduces
92 any level of service standard established in the City of Cape Coral adopted comprehensive plan.

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Section 1.6. Violations, enforcement, and penalties.

The procedures for enforcement and penalties for violations of this Code are set forth in Chapter 2, 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.

Section 1.8. Outstanding permits.

Where there are outstanding and valid building permits authorizing construction of buildings, structures, additions, or alterations, 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.

Section 1.9. Time limitation of approvals.

Time limits for permits issued under this Code are specified for each type of development permit. Conditions of approval attached to permit approvals may establish additional time limits on the life of a permit or establish specific timeframes for certain actions.

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.

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- 139 B. The Official Zoning Map shall be the official record of zoning status of land within the city. The Official
140 Zoning District Map shall be maintained by the city electronically. The city is divided into districts, or
141 zones, as provided by this ordinance. The electronic format of the map will reside within the city
142 Geographic Information System (GIS) as the zoning layer and shall be maintained by the Department
143 of Community Development - Planning Division. The map will be updated on a continuous basis
144 following approval of zoning changes by City Council. The electronic format of the map will be
145 viewable via the Internet and paper copies can be produced on demand.
146
- 147 C. Pursuant to Laws of Fla. Ch. 78-540, § 8, the city shall exercise extraterritorial zoning powers within
148 an area extending 600 feet into the tidal waters adjacent to the corporate city limits. All such areas
149 shall have the same zoning as the adjacent uplands.
150
- 151 D. The Official Zoning Map, as amended from time to time, shall be kept on file and made available for
152 public reference in the Office of the City Clerk and the Community Development Department.
153 Amendments to zoning on the Official Zoning District Map shall be consistent with the adopted Cape
154 Coral Comprehensive Plan, including the Future Land Use Map and its accompanying text.
155 Amendments shall be made on or after the effective date of such zoning change. The Director of the
156 Department of Community Development shall ensure that amended zoning district boundaries are
157 accurately placed on the zoning map. The City Clerk shall keep records on file which identify the official
158 action by which a map amendment was made, the date of such action, the land area affected and the
159 date of posting.
160
- 161 E. Should the map or any portion thereof become damaged, destroyed, or lost the City Council is
162 authorized, by ordinanceresolution, to replace the map or damaged portion and the new map shall
163 supersede the one replaced. The new map may correct drafting or other errors, but no replacement
164 shall have the effect of changing the official zoning status of property unless the prior map has been
165 totally destroyed. The City Clerk shall preserve any records relating to its adoption and amendment.
166
- 167 F. Unauthorized changes. Substantial changes of the nature affecting the zoning of property is strictly
168 prohibited and unlawful, unless in conformity with the requirements and procedures of this ordinance
169 or applicable law.
170

171 **Section 1.13. Transitional rules.**
172

- 173 A. Existing unlawful uses, lots, and structures. A structure, lot, or use not lawfully existing at the time of
174 the adoption of these regulations is lawful only if it conforms with all of the requirements of these
175 regulations. All other violations of prior regulations of the City as of the effective date of this ordinance
176 shall continue to be violations and shall not be considered to be legal nonconformities under this code
177 unless such violation(s) becomes lawful by adoption of this code.
178
- 179 B. Existing approved uses. An existing use which is lawful on the date of adoption of these regulations,
180 whether as a “permitted use”, or a “special exception use” in the zoning district in which it is located,
181 shall not be deemed nonconforming solely because the procedure for approval has changed through
182 the adoption of these regulations.
183

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- 184 C. Previously granted variances. Unless becoming conforming pursuant to Subsection A, above, all
185 variances granted under any prior edition of the Land Development Code and which are still in effect
186 upon adoption of these regulations shall remain in full force and effect, including any conditions
187 attached thereto, and the owner may proceed to develop the property in accordance with the
188 approved variance.
189
- 190 D. Previously approved special exceptions. All special exceptions approved prior to the adoption of these
191 regulations, and any conditions attached thereto, shall remain in full force and effect, and the owner
192 may proceed to develop the property in accordance with the previous approval. However, if
193 construction has not commenced before the approval expires or if the approval is abandoned, the
194 provisions of these regulations shall govern.
195
- 196 E. Prior zoning districts. Unless provided otherwise on the Official Zoning Map, upon adoption of these
197 regulations, all existing zoning classifications shall be reclassified with one of the zoning classifications
198 set forth in Article 4, Zoning Districts, as follows:
199
- 200 1. Residential zoning districts.
201
- 202 a. Single-family residential (R-1)
203
- 204 b. Multi-family residential low density (RML)
205
- 206 c. Multi-family medium density (RMM)
207
- 208 d. Residential Estate (RE)
209
- 210 e. Agriculture (A)
211
- 212 2. Non-residential zoning districts.
213
- 214 a. Commercial (C)
215
- 216 b. Commercial Corridor (CC)
217
- 218 c. Industrial (I)
219
- 220 d. Institutional (INST)
221
- 222 e. Preservation (PV)
223
- 224 f. Professional (P)
225
- 226 3. Mixed Use zoning districts.
227
- 228 a. Neighborhood Commercial (NC)
229

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- b. Mixed Use Bimini (MXB)
- c. Mixed Use Seven Islands (MX7)
- d. South Cape (SC)
- e. Planned Unit Development (PUD)

F. 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 substantial 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:

- A. These regulations shall be deemed the minimum requirements for the promotion of the health, safety, order, convenience, and general welfare of the community.
- B. These regulations shall be construed to achieve the purposes and intent for which they are adopted.
- C. Nothing in these regulations is intended to repeal any easement, covenant, deed restriction, or other private agreement; however, where these regulations are more restrictive or impose higher standards or requirements than such easement, covenant, deed restriction, or other private agreement, these regulations shall govern.
- D. In the event of a conflict:
 - 1. Between the text of these regulations and any caption, figure, illustration, table, or map, the text of these regulations shall control;
 - 2. Between a chart and an illustration, the chart shall control. All illustrations included in these regulations are for illustrative purposes only;
 - 3. When limitations, restrictions, or standards apply to an individual lot, use, or structure the more restrictive provisions shall apply; and
 - 4. Between these regulations and any federal, state, or county law or regulation which pre-empts local regulation, the federal, state, or county law or regulation shall apply.

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- 275 E. Words and phrases shall be construed according to the rules of grammar and according to the
276 common and approved usage. Technical words and terms that are used and that may have a particular
277 meaning based on law shall be defined according to that meaning.
278
- 279 F. The terms "Ordinance," "Code," "Law," "Statute," "Title," and "Act" are understood to include the
280 term "as amended", unless the context clearly indicates otherwise. References to technical manuals,
281 resource materials, code references, the comprehensive plan, and similar documents are understood
282 to include the term "as amended" unless the context clearly indicates otherwise.
283
- 284 G. The words "shall," "must," and "will" are mandatory in nature, implying an obligation or duty to
285 comply with the particular provision.
286
- 287 H. The word "or" is alternative in nature.
288
- 289 I. The word "may" is permissive in nature.
290
- 291 J. The word "including" shall be construed to include the phrase "but not limited to."
292
- 293 K. Words used in the present tense include the future tense.
294
- 295 L. The singular number includes the plural number and the plural, the singular.
296
- 297 M. Words utilizing the masculine gender include the feminine gender and use of the feminine gender
298 includes the masculine.
299
- 300 N. The words "used" and "occupied" as applied to any land or building shall be construed to include the
301 words "intended, arranged, or designed to be used or occupied."
302
- 303 O. The word "herein" means "these regulations."
304
- 305 P. The words "building" or "structure" includes any of its parts.
306
- 307 Q. The word "person" includes an individual, a corporation, a partnership, an incorporated association,
308 or any other similar entity.
309
- 310 R. The word "owner" includes his or her agents or authorized representatives unless the context clearly
311 indicates otherwise.
312
- 313 S. Any act authorized by these regulations to be carried out by a specific official or agency of the City is
314 authorized to be carried out by a designee of such official or agency, unless the context clearly
315 indicates otherwise.
316
- 317 T. The time within which an act is to be done shall be computed by excluding the first and including the
318 last day; if the last day is a Saturday, Sunday, or a legal holiday the timeframe shall be extended to the
319 next working day.
320

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Section 1.15. Measurements.

- A. Number of Residential Units Allowed (Density). 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), except when the zoning district of a parcel permits lot sizes that equate to a smaller maximum density for that parcel.
- 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 parcels or there are LDC requirements for a development within a certain distance from another development parcel, the distance shall be measured using a straight-line measurement from the closest point of one parcel to the closest point of the parcel(s) 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 closest point of a zoning district boundary to the closest point of the parcel(s) involved.
- 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.
3. 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. Unless otherwise specified, gross floor area for food service establishments shall also include any outdoor or patio floor area on the property 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 from the gross floor area 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, parcel, or site area.
- F. Fractional measurements.

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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 these regulations.

G. Grade.

1. When used to measure habitable structures, grade shall be the highest elevation 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 flood 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 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. Building Height. The height of buildings 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 building height.

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

J. 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.

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- 413
414 K. Lot width. The horizontal distance between the side lines of a lot measured at the front building
415 setback line, or at the front property line where no front setback is required.
416
417

- 418 L. Setback. A setback is the minimum horizontal distance between a structure and a property line.
419 Setbacks shall extend and be measured perpendicular and inward from the respective property lines.
420

421 **Section 1.16. Interpretation of zoning district boundaries.**
422

423 Zoning district boundaries are usually depicted along streets, alleys, shorelines, property lines, or
424 extensions thereof. Where an uncertainty exists with respect to the boundaries of districts as shown on
425 the Official Zoning Map, the following rules shall apply:
426

- 427 A. Centerlines. Boundaries indicated as approximately following the centerlines of streets, highways, or
428 alleys shall be construed to follow such centerlines;
429
430 B. Lot, section, and tract lines. Boundaries indicated as approximately following platted lot lines shall be
431 construed as following such lot lines;
432
433 C. Political boundaries. Boundaries indicated as approximately following City limits shall be construed as
434 following City limits;
435
436 D. Shorelines. Boundaries indicated as following shorelines shall be construed to follow such shorelines.
437 In the event of a change in the shoreline, the zoning district boundary shall be construed as moving
438 with the actual shoreline. Boundaries indicated as approximately following the centerline of streams,
439 rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines;
440
441 E. Vacations. Whenever any street, alley, or other public way is vacated by official action of the City
442 Council, the zoning district of the property abutting each side of the street, alley, or public way shall
443 be automatically extended to the center of such vacation and all area included within the vacation
444 shall thereafter be subject to all regulations of the extended districts;
445
446 F. Filled lands. Where land is built-up by fill upon areas formerly submerged under water, the district
447 regulations applying to the land immediately adjoining such built-up land shall be automatically
448 extended thereto;
449
450 G. Parallel lines. Boundaries indicated as parallel to or extensions of features indicated in subsections A
451 through F of this section shall be so construed. Distances not specifically indicated on the official
452 zoning map shall be determined by the scale of the map;
453
454 H. Bisecting lines. Where district boundary lines approximately bisect blocks, the boundaries are the
455 median line of such blocks, between the centerlines of boundary streets;
456
457 I. Uncertainties. Where physical or cultural features existing on the ground are at variance with those
458 shown on the official zoning map or if any other uncertainty exists, the Director of Community

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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. 3.4.5.

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

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- Section 2.4.1.** City Manager
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- Section 2.4.6.** Public Works Director
- Section 2.4.7.** Development Services Manager
- Section 2.4.8.** Code Enforcement Manager

CHAPTER 1. PLANNING AND ZONING COMMISSION

Section 2.1.1. Powers and duties.

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

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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.

Section 2.21.2. 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 members of the Commission. Board members and alternate members shall be subject to the forfeiture of office provisions of Section 2.58 of the Cape Coral Code of Ordinances. 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.

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Section 2.21.3. 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. 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.

Section 2.21.4. Staff; Attorney.

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

Section 2.12.5. 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.
- C. 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 32. HEARING EXAMINER

Section 2.32.1. 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 2.32.2. 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

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in accordance with provisions of this code.

- B. The City Council shall 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.
- C. 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.
- D. Hearing Examiners shall not be considered to be city employees.
- E. 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 heard by the Planning and Zoning Commission in an advisory capacity and then heard by the City Council for the final decision.

Section 2.32.3 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 vacations;
 - 5. Applications for rezoning property;
 - 6. Applications for PUD master control plans; and
 - 7. Appeals of administrative decisions under the Land Development Code.

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Section 2.32.4. 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 2.32.5. 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 43. ADMINISTRATIVE DECISION MAKERS AND ENFORCEMENT OFFICERS

Section 2.43.1. 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 2.43.2. Department of Community Development.

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

Section 2.43.3. 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 2.34.4. 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.

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Section 2.43.5. 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 2.43.6. 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 2.43.7. Development Services Manager.

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

Section 2.43.8. Code Enforcement Manager.

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

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CHAPTER 1. DEVELOPMENT REVIEW PROCEDURES

- Section 3.1.1.** Purpose
- Section 3.1.2.** Classification of Development Review Procedures
- Section 3.1.3.** Development Approval Process; Table 3.1.3
- Section 3.1.4.** Application submittals
- Section 3.1.5.** Pre-application meetings
- Section 3.1.6.** Fee Required
- Section 3.1.7.** Complete Applications Required
- Section 3.1.8.** Review for Sufficiency and Code Requirements
- Section 3.1.9.** Decision- making
- Section 3.1.10.** Public Hearing Scheduling and Notice Requirements
- Section 3.1.11.** Public Hearing Procedures
- Section 3.1.12.** Decisions under this Article
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CHAPTER 2. GENERAL REVIEW PROCEDURES

- Section 3.2.1.** All Permits and Approvals

CHAPTER 3. SPECIFIC REVIEW PROCEDURES- ADMINISTRATIVE PERMITS AND APPROVALS

- Section 3.3.1.** Zoning Verification Letter of Flood Verification Letter
- Section 3.3.2.** Certificate of Zoning Compliance
- Section 3.3.3.** Administrative Interpretations and Similar Use Determinations
- Section 3.3.4.** Lots Splits and Lot Combines
- Section 3.3.5.** Conditional Uses
- Section 3.3.6.** Administrative Deviations
- Section 3.3.7.** Site Development and Subdivision Construction Plans
- Section 3.3.8.** Site Development Permits
- Section 3.3.9.** Temporary Use Permits
- Section 3.3.10.** Temporary Storage
- Section 3.3.11.** Seasonal Sales
- Section 3.3.12.** Construction Trailers
- Section 3.3.13.** Construction staging areas and post disaster debris staging
- Section 3.3.14.** Temporary sales offices
- Section 3.3.15.** Temporary Habitable structures
- Section 3.3.16.** Special Events
- Preliminary Subdivision Plans** (See Article 10)

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

- Section 3.4.1.** General Requirements
- Section 3.4.2.** Deviations

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Section 3.4.3. Variances

Section 3.4.4. Special Exceptions

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

Section 3.4.6. Rezones

Section 3.4.7. Planned Unit Developments (PUD)

CHAPTER 5. SPECIFIC REVIEW PROCEDURES – LEGISLATIVE APPROVALS

Section 3.5.1. Annexations

Section 3.5.2. Future Land Use Map Amendments

Section 3.5.3. Comprehensive Plan Text Amendments

Section 3.5.4. Land Development Code Text Amendments

Plats (See Article 10)

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. Special Events
 - b. Temporary Storage
 - c. Seasonal Sales

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- d. Construction Trailers
 - e. Construction Staging Areas and Post Disaster Staging
 - f. Temporary Sales Offices
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. 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.

E. 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.

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TABLE 3.1.3 DEVELOPMENT APPROVAL AND REQUIRED NOTICE								
Decision Maker				Notice				
D	Director	Recommendation	Decision Maker	Notice (Minimum 10 days prior to hearing)	Published	Mailed	Posted	
HEX	Hearing Examiner							
LPA	Planning and Zoning / Local Planning Agency							
CC	City Council							
SC	Superior Court							
	Application Type							
Administrative	Zoning Verification Letters		D					
	Zoning Compliance Letters		D					
	Administrative Interpretations		D					
	Temporary Use Permits		D					
	Sign Permits		D					
	Lot Splits and Lot Combines		D					
	Subdivisions – Preliminary		D					
	Subdivisions – Final Plat		D					
	Conditional Uses		D					
	Administrative Deviations		D					
	Administrative Variances		D					
	Reasonable Accommodations		D					
	Business Tax Receipts		D					
	Site Development Plans		D					
	PUD Amendments - Minor		D					
Quasi-Judicial	Deviations	D	HEX	✓	✓	✓	✓	
	Variances	D	HEX	✓	✓	✓	✓	
	Special Exceptions	D	HEX	✓	✓	✓	✓	
	Vacations – Easement/Lot/Plat	HEX	CC	✓	✓	✓	✓	
	Rezones	HEX	CC	✓	✓	✓	✓	
	PUDs	HEX	CC	✓	✓	✓	✓	
	PUD Amendments - Major	D	HEX	✓	✓	✓	✓	
	Appeals – Administrative		HEX	CC/SC	✓	✓	✓	✓
	Appeals – Quasi-Judicial		CC	SC	✓	✓	✓	✓
	Appeals - Legislative		CC	SC	✓	✓	✓	✓
Legislative	Annexations	D	CC	✓	✓	✓	✓	
	Future Land Use Map Amendments	LPA	CC	✓	✓			
	Comp Plan Text Amendments	LPA	CC	✓	✓			
	LDC Text Amendments	LPA	CC	✓	✓			

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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.

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Section 3.1.5. Pre-application and Preliminary Design Review 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. Preliminary Design Review Advisory Meetings. Upon request of an applicant, the director may schedule a preliminary design review advisory meeting with applicants and appropriate City staff, for the purpose of reviewing the design and engineering requirements for a proposed development project prior to the formal submission of an application. Applicants are encouraged, though not required, to request a preliminary design review advisory meeting. A preliminary design review advisory meeting is required for Planned Unit Development applications. The substance and process of a preliminary design review advisory meeting shall follow the requirements of pre-application meetings detailed in subsections B and C, above.
- E. Any recommendations or determinations reached during a pre-application or preliminary design review advisory meetings are purely advisory and shall not be binding either on the applicant or the City.

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.

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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.

Section 3.1.8. Review for Sufficiency and Code Requirements.

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

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

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2. Environmentally sensitive lands;

3. Fire protection;

4. Parks and open space;

5. Police protection;

6. Potable water;

7. Wastewater;

8. Solid waste;

9. Stormwater; 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

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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:

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- 366
- 367 a. The scheduled date, time, and location of the hearing;
- 368
- 369 b. A general description of the nature of the matter to be addressed, written in layman's terms;
- 370
- 371 c. The address of the property;
- 372
- 373 d. That persons may appear and be heard;
- 374
- 375 e. That written comments filed with the department will be entered into the record;
- 376
- 377 f. That the hearing may be continued from time to time as necessary;
- 378
- 379 g. A telephone number and contact for more information;
- 380
- 381 h. The case number or title of the ordinance under consideration, if applicable; and
- 382
- 383 i. Such additional information as may be required pursuant to this code or applicable law for
- 384 specific types of development approval.
- 385
- 386 5. Timing of mailed notice. Notice shall be mailed a minimum ten (10) calendar days prior to the
- 387 date set for the public hearing by first class mail. A copy of the notice shall be available for public
- 388 inspection during regular business hours at the Community Development Department. If the
- 389 application includes a simultaneous future land use map amendment and a rezone, the notice for
- 390 the rezone may be included in the notice required for the land use amendment.
- 391
- 392 G. Electronic Notice. The Community Development Department may, as a courtesy, send electronic
- 393 notice to any persons or organizations in the City, or to any governmental, public, or quasi-public
- 394 organization regarding any matter that may affect the interests of that person or organization, or on
- 395 any matter on which any such person or organization has requested notice. The failure of the
- 396 Department to send such notice or the failure of any resident or property owner to receive such
- 397 courtesy notice shall not affect the validity of the public notice requirements.
- 398
- 399 H. Exceptions to Mailing and Posting. The mailing and posting notice requirements shall not apply to a
- 400 land use map amendment initiated by the Council, in response to a judicial order or compliance
- 401 agreement as described by Section 163.3184(6) and (7), Florida Statutes.
- 402
- 403 I. Continued or Rescheduled Meetings. Notice of subsequent hearings shall be mailed and published in
- 404 accordance with this section for:
- 405
- 406 1. Any hearing for which the Hearing Examiner, Community Development Director, or City Attorney
- 407 determines new notice should be provided, because of the time elapsed from the original notice,
- 408 to correct any defect, or apprise affected parties of significant changes to the application as
- 409 originally noticed;
- 410
- 411 2. Any hearing continued to an unspecified date, time, and place; or

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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 present a brief synopsis of the application; introduce any appropriate additional

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- 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 in 30 minutes.
- 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

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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. 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 two 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

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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

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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.

Section 3.1.14. Appeals.

- 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

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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. 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. Any aggrieved party by a decision of the Hearing Examiner on a quasi-judicial matter or a Hearing Examiner decision on an 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 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.
- E. 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.
- F. 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.

CHAPTER 2. GENERAL REVIEW PROCEDURES

Section 3.2.1. All Permits and Approvals.

- A. General Requirements for all permit applications.

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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.

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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.)

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D. Specific Requirements for Certificates of Zoning Compliance.

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

E. Notice of revocation. When a notice of revocation is issued it shall state the following:

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

IF THE VIOLATION IS NOT CURED OR IF NO WRITTEN REQUEST FOR A HEARING IS RECEIVED BY THE CITY OF CAPE CORAL WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTIFICATION BY THE CERTIFICATE HOLDER, THE CERTIFICATE OF ZONING COMPLIANCE SHALL BE CONSIDERED REVOKED.

F. Stay pending hearing. If the holder of the certificate of zoning compliance requests a hearing before the City Council, the certificate of zoning compliance shall remain in effect during the pendency of the action before the City Council.

Section 3.3.3. Administrative Interpretations and Similar Use Determinations.

A. Purpose and Intent.

1. To determine whether a proposed use, activity, or site design complies with comprehensive plan.

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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 be 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 as a permitted, permitted with specific regulations, conditional, or special exception use in another zoning district.

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- 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.

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.

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- 916
- 917 5. The newly created parcels shall not result in private utility lines crossing property lines.
- 918
- 919 6. A survey sketch prepared by a professional surveyor and mapper (PSM) indicating the legal
- 920 description of the parent parcel, boundaries, dimensions, easements, restrictions or agreements
- 921 affecting the property, rights-of-way, utilities, location of existing buildings, and other pertinent
- 922 information including wetland boundaries and location of specimen and historic trees. The survey
- 923 shall be required to be signed, sealed, dated, and certified to the City.
- 924
- 925 7. Approval and recording. The Community Development Department shall review the proposed lot
- 926 split for compliance with the criteria listed in this subsection and Article 10, Subdivisions. Once
- 927 approved the applicant may proceed with the lot split and record the lot split with the Lee County
- 928 Property Appraiser. Approval shall expire within one (1) year of issuance if not recorded.
- 929

930 **Section 3.3.5. Conditional Uses.**

931

- 932 A. Purpose and Intent.
- 933
- 934 1. To provide standards and criteria for review and approval of specified conditional uses for a
- 935 specific site.
- 936
- 937 2. To provide reasonable limitations or special conditions for conditional uses, in order to address,
- 938 minimize, or ameliorate potential impacts of the use on surrounding property and for the
- 939 protection of the public health, safety, and welfare.
- 940
- 941 B. General Requirements. Proposed conditional uses must meet the following requirements:
- 942
- 943 1. The conditional use standards identified in Article 5 for the specific zoning district use and
- 944 conditional use in question.
- 945
- 946 2. The proposed conditional use will not result in development that is inconsistent with the intended
- 947 character of the applicable zoning district.
- 948
- 949 3. A listed conditional use that does not meet the applicable conditional use standards may apply
- 950 for approval as a Special Exception.
- 951
- 952 C. Review Criteria. A Conditional Use may be approved by the Director based on criteria identified in
- 953 Article 5. These criteria are specific to each conditional use.
- 954

955 **Section 3.3.6. Administrative Deviations.**

956

- 957 A. Purpose and Intent. To grant relief from strict application of LDC requirements to allow minor
- 958 deviations.
- 959
- 960 B. Scope. Administrative Deviations may be granted for the following:
- 961

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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.
 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.
- 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.

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

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development activity 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.

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- 1054
- 1055 7. Projects subject to SDP review comprised of 2 or more parcels with unique strap numbers must
- 1056 be combined into a single parcel with one strap number prior to issuance of the Site Development
- 1057 Permit.
- 1058
- 1059 8. Projects subject to SDP review required to provide easements shall provide executed copies of
- 1060 staff approved easements to the City prior to issuance of the Site Development Permit. The City
- 1061 may require such easements be accepted by City Council and recorded in the public records prior
- 1062 to issuance of the Site Development Permit.
- 1063
- 1064 9. Projects that involve a vacation of plat or release of easement may have review or approval
- 1065 withheld until such vacation or release of easement has been approved or recorded, as
- 1066 determined by the Director.
- 1067
- 1068 10. The City may attach any reasonable conditions, safeguards, limitations, or requirements to the
- 1069 approval of a plan which are found necessary and consistent with the review to effectuate the
- 1070 purpose of this section and to carry out the purpose of this Code and the Comprehensive Plan.
- 1071
- 1072 F. Plats. If the development is a subdivision, a plat meeting the requirements of F.S. Ch. 177, Part 1 and
- 1073 the City of Cape Coral Technical Requirements for Plat Approval, which are hereby incorporated by
- 1074 reference, must be submitted prior to approval of Subdivision Construction Plans. The preliminary
- 1075 plat submittal is not required until after the first round of SCP sufficiency comments, though it may
- 1076 be submitted earlier. Refer to Article 10 Subdivisions.
- 1077
- 1078 G. Plan Approval. Upon successfully addressing departmental comments, the Development Services
- 1079 Manager shall approve the application provided all departmental reviewers have accepted the plans or
- 1080 accepted the plans with conditions. Upon receiving plan approval and meeting any applicable
- 1081 conditions, the issuance of a permit shall be authorization for the applicant to begin those
- 1082 construction activities specifically covered by the plan approval. Construction activities shall not occur
- 1083 before all applicable state and federal permits have also been obtained.
- 1084
- 1085 H. Effect of Plan Approval. Site Development Plans and Subdivision Construction Plans are valid for
- 1086 two years from the date of approval. If a development permit to construct the improvements has not
- 1087 been obtained prior to the expiration date, the approval expires and becomes null and void. An
- 1088 applicant may apply for a one-year extension for good cause. Such an extension may be granted for
- 1089 any plan approved after the effective date of this ordinance and two years prior to adoption. The
- 1090 extension request must be filed prior to the expiration date of plan approval. If the project is within a
- 1091 PDP, a PUD, or a phased development, the expiration of plan approvals may differ, as established in
- 1092 the original approval. See Phased Projects Section 3.3.7.T for addition information regarding expiration
- 1093 of permits and plan approvals in phased projects.
- 1094
- 1095 I. Engineer's Opinions of Probable Construction Costs. The City shall review and approve all cost
- 1096 opinions prior to acceptance of same.
- 1097
- 1098 1. Inspection fees applied to development permits are based on a percentage of the estimated
- 1099 construction cost, of Developer installed improvement, to be turned over to the City for ownership

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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

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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. A permit review of minor changes to an existing development which does not require a separate Site Development Plan review. This permit 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 Plan project or SDP 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.

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

1. Site Development;
2. Subdivision Infrastructure;

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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. Issuance of Permits.

1. All permits 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 authorizing such construction or alteration.
3. If the proposed construction or alteration fails to conform, he shall refuse to issue the permit 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 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 permit. Erosion control inspections will not extend the expiration date. A permit may be extended for an additional 90 days. Failure to either pass a required inspection or request a permit extension within the 90-day period provided will result in expiration of the permit. Thereafter, a new permit 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. The Development Services Manager shall be

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1238 notified in advance of the date of commencement of such construction and the applicant shall
1239 schedule a preconstruction meeting where representatives of the developer, the City, contractors,
1240 and franchise utilities shall discuss the construction of the planned improvements. No work shall take
1241 place prior to the preconstruction meeting.
1242

- 1243 F. Inspections and Certification of Compliance. The developer shall retain the engineer of record or another
1244 professional engineer registered in the state of Florida and other professionals, if needed, to inspect
1245 the construction progress and certify the construction of all required improvements such as streets,
1246 parking areas, drainage structures, drainage systems, water and sewer facilities, landscaping and
1247 buffers, and all other improvements, for substantial compliance with the approved plans.
1248
- 1249 G. Right to enter. The Development Services Manager or duly authorized representative shall have the
1250 right to enter upon the property for the purpose of inspecting the quality of materials and
1251 workmanship and reviewing the construction of required improvements during the progress of such
1252 construction.
1253
- 1254 H. Periodic inspection required; correction of deficiencies. The Development Services Manager or his
1255 designated engineering and utility inspectors shall periodically inspect all phases of construction of
1256 streets, drainage improvements and utility installations including those improvements which are not
1257 to be dedicated to the public but are subject to this chapter. The Development Services Manager will
1258 immediately call to the attention of the developer, or the developer's engineer, any nonconforming
1259 work or deficiencies in the work. Correction of deficiencies in the work is the responsibility of the
1260 developer. It is the responsibility of the developer's contractor to schedule the appropriate
1261 inspections as identified on the permit.
1262
- 1263 I. Stop work orders. The Development Services Manager shall have authority to stop work if
1264 improvements not authorized in the approved plan are being installed or upon failure of the applicant
1265 or his engineer to coordinate the construction of the required improvements so as to minimize
1266 activities which may have adverse impacts on surrounding property.
1267
- 1268 1. Authority. Whenever the Development Services Manager finds any work regulated by this code being
1269 performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the
1270 Development Services Manager is authorized to issue a stop work order. In addition, the Development
1271 Services Manager is authorized to issue a stop work order for the failure to contain or remove
1272 construction refuse as required in the Code of Ordinances, Chapter 9, Health and Sanitation.
1273
- 1274 2. Issuance. The stop work order shall be in writing and shall be given to the owner of the property
1275 involved, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order,
1276 all work on the construction site shall immediately cease. The stop work order shall state the reason for
1277 the order, and the conditions under which the cited work will be permitted to resume.
1278
- 1279 3. Unlawful continuance. Any person who shall continue any work after having been served with a stop
1280 work order, except such work as that person is directed to perform to remove a violation or unsafe
1281 condition, shall be subject to penalties as prescribed by law.
1282
- 1283 J. Final inspections by Engineer of Record. Upon completion of all improvements required under the

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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. The City may withhold final Certifications of Completion or Occupancy pending receipt of such verification.

L. Turnover of developer installed improvements. Projects that include construction of improvements that will

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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.

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- 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 of the buildings at one time, a separate Site Development Permit will be required for each build or builds 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 permit 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;

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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. Temporary storage.
2. Seasonal sales.
3. Construction trailers.
4. Construction staging areas and post disaster debris staging.
5. Temporary sales offices.
6. Temporary habitable structures.
7. Special Events.

Section 3.3.10. Temporary storage.

- A. Temporary storage containers are prohibited in any zoning district of the city, except as follows:**
1. Residential zoning districts. No more than one temporary storage container per dwelling unit is permitted in residential zoning districts.
 2. Non-residential zoning districts. No more than two temporary storage containers are permitted in non-residential zoning districts. In the case of multi-tenant non-residential properties, each business or tenant may have a temporary storage container.
 3. This section is not intended to restrict the storage or location of temporary storage containers on the premises of a business which is lawfully engaged in the sale, rental, or distribution of such containers so long as the containers are on the property of such business as "merchandise" and not for temporary storage of items or goods.

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4. The provisions of this section shall not apply to prohibit or restrict the location of temporary storage containers on any property for which a valid City of Cape Coral building permit has been issued and is in effect provided that the construction on the property has not been abandoned or allowed to lie idle in violation of Chapter 9 of the City of Cape Coral Code of Ordinances.

B. General Requirements:

1. No temporary storage container may be placed in one or more parking spaces if the required number of parking spaces is reduced below the minimum number of spaces required for the site.
2. No temporary storage container shall block or reduce access to fire lane(s), handicapped parking area(s), or drainage facilities or structures, including swales and catch basins.
3. Temporary storage containers shall not be placed in an easement or in any area designated as a buffer.
4. The maximum size of temporary storage containers shall not exceed ten feet in width, ten feet in height, or 40 feet in length.
5. Non-residential zoning districts. Temporary storage container permits are valid for 30 days. A maximum of two temporary storage container permits may be issued for a property or, in the case of multi-use or multi-unit properties, for each business or commercial enterprise located on the property in any calendar year. Temporary container permits may run consecutively without any minimum period required to elapse between the issuance of permits.
6. Residential zoning districts. Temporary storage container permits are valid for seven days. A maximum of two temporary storage container permits may be issued in any calendar year. Temporary container permits may run consecutively without any minimum period required to elapse between the issuance of permits. No dwelling unit shall utilize a temporary storage container for more than 14 days in any 12-month period.

Section 3.3.11 Seasonal sales.

- A. Except as provided herein, temporary outdoor seasonal sales of merchandise are prohibited. Seasonal sales of pumpkins, Christmas trees, or fireworks are permitted when conducted or sponsored by governmental agencies, nonprofits, charitable or religious organizations, sports, educational groups, social groups such as garden clubs, and fraternities or sororities. Seasonal sales of Girl Scout cookies and similar sales are permitted.
- B. Permitted seasonal fundraising events involving outdoor sales of merchandise shall meet the appropriate requirements of the Building Code, Electrical Code, Fire (Life Safety) Code, and Plumbing Code, particularly regarding temporary sanitary facilities; and are prohibited unless they received all required permits in compliance with this subsection. Sales of pumpkins, Christmas

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trees, or fireworks shall be permitted in all zoning districts except R1, RML, RE, MX7, and PV, . With the prior approval of the City, such sales may be permitted in accordance with the following limitations and requirements:

1. Pumpkins may be sold from October 1 through November 5;
 2. Christmas trees may be sold from November 15 through January 1;
 3. Fireworks may be sold from December 15 through January 1 and from June 1 through July 10;
 4. The hours of operation of all such seasonal sales shall be limited to 8:00 a.m. through 10:00 p.m.; and
 5. Seasonal sales shall comply with all location and permitting requirements specified in § 3.2.1.
- C. In the RMM zoning districts, the City may withhold approval of the seasonal sale if he or she determines that such sale would result in adverse impacts on the surrounding neighborhood. Alternatively, the City may place condition(s) on the approval of a seasonal sale in an RMM zoning district, if such condition(s) are necessary in order to protect the surrounding neighborhood from adverse impacts which would otherwise result from the seasonal sale.

Section 3.3.12 Construction trailers.

- A. Construction trailers in residential zoning districts are subject to the following requirements.
1. Construction trailers shall not be connected to potable water and sewer facilities. If the construction trailer is wired for electricity, the wiring must conform to all applicable city electric codes.
 2. The construction trailer must be removed from the site prior to issuance of a certificate of occupancy.
 3. No overnight residential use shall be permitted in a construction trailer.
 4. Construction trailers must comply with the setback requirements of the zoning district or the site.
 5. Construction trailers shall not be larger than 200 square feet.
- B. Construction trailers in non-residential zoning districts are subject to the following requirements.
1. When a construction trailer is used as a temporary office, the trailer must be wired for electricity and must be connected to potable water and sewer facilities, if available. Wiring and plumbing must conform to applicable Electric and Plumbing Codes.

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3. The construction trailer must be located at the construction site or an abutting site with the property owner's written permission.
4. The construction trailer must be removed from the site prior to issuance of a certificate of occupancy.
5. No overnight residential use shall be permitted in a construction trailer.
6. Construction trailers must comply with the setback requirements of the zoning district or the site.

Section 3.3.13 Construction staging areas and post disaster debris staging.

- A. Contractor staging for essential public facilities. Contractor staging areas for materials used in construction of essential public facilities are permitted in all zoning districts, subject to the following requirements:
 1. The temporary staging area shall serve a project being carried out in the vicinity of the construction staging area;
 2. No land clearing, removal of vegetation, or fill shall occur to accommodate the staging area;
 3. All activities at the staging area shall occur between 7:00 a.m. to 7:00 p.m. Monday through Saturday only.
 4. Fencing required
 5. No structures other than a permitted construction trailer may be placed on the property.
 6. No outdoor lighting is permitted for any staging area in a residential zoning district.
- B. Construction staging areas. Construction staging areas are a permitted activity in all zoning districts, provided the staging area is on the same parcel where construction activity is authorized by a valid building permit. Construction staging areas on vacant, adjoining, or nearby parcels is prohibited.
- C. Post disaster debris staging areas. Post disaster debris staging areas are allowed in all zoning districts on sites designated by the City for such activity.
- D. Post disaster construction staging. Staging areas for post disaster reconstruction efforts are allowed in all non-residential zoning districts. Post disaster construction staging is allowed in residential zoning districts as a (special exception/conditional) use.

Section 3.3.14 Temporary sales offices.

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- A. Temporary sales offices are mobile structures used only for the sale or lease of units within that development. For the purpose of this section, units within the development shall mean residential, non-residential, or mixed use habitable space or leasable floor area, whether occupying all of a building or individual areas within a building including residential units, residential or non-residential units, individual units in a multi-unit non-residential development, or freestanding residential or non-residential structures.
- B. Requirements for a temporary sales office. The following requirements must be met prior to the approval of a temporary sales office:
1. Connection to sewer and water is required. If sanitary sewer and potable water are unavailable to the site, bottled water and portable sanitary facilities may be utilized until such time as sanitary sewer and potable water are available. A temporary sales office shall be connected to such facilities within 90 days of availability or within 90 days of the permitted temporary sales office, whichever is less.
 2. The temporary sales office shall meet the setbacks of the zoning district in which it is located.
 3. A temporary sales office shall not be used as a place of habitation or abode by any person(s), and shall not be used or occupied for business, office, or other purpose(s) at any time except between the hours of 7:00 a.m. and 9:00 p.m.
 4. A minimum of three paved off-street parking spaces shall be provided for the temporary sales office.
 5. The entrance to the site on which the temporary sales office is located shall consist of a city approved driveway or construction entrance. Any impervious area added for the temporary sales office shall be subject to review and approval by the city.
 6. The base of any temporary sales office shall be fully obscured by landscaping and skirting. Shrubs must be planted on 30-inch centers and have a minimum planted height of two feet. The type of irrigation, if applicable, must also be provided on the plan. Erosion shall be minimized and prevented to the extent practicable around any disturbed area.
 7. The maximum duration of the permit shall not exceed one year. The Director may extend permits for up to six months each, based upon factors that include:
 - a. Size of the project.
 - b. Number of lots or units in the development remaining to be sold or leased.
 - c. Effect that the extension would have on the surrounding properties.
 - d. Developer's need for an extension and efforts, if any, the developer has put forward toward completion of the development (e.g., effort to complete construction in a timely manner, delays beyond the reasonable control of the developer, etc.).

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- 1648
- 1649 8. A temporary sales office shall be removed no later than the date the development is completed
- 1650 or within 30 days after notice by the city that the application for development has been denied,
- 1651 whichever is applicable.
- 1652

- 1653 C. Permit application and submittal requirements. A permit shall be required for a temporary sales
- 1654 office. In order to obtain a permit for the use of a structure for a temporary sales office, the
- 1655 applicant shall submit the following to the Department of Community Development:
- 1656

- 1657 1. A scaled drawing of the site, identifying the location of the temporary sales office with
- 1658 dimensions. Construction plans shall also be submitted.
- 1659
- 1660 2. The names of the property owner and the operator of the temporary sales officer. In the
- 1661 event the operator is different from the property owner, written and notarized consent from
- 1662 the property owner must be submitted. Such written consent shall be revocable. In the event
- 1663 such consent is revoked, the temporary sales office shall be removed within 30 days.
- 1664
- 1665 3. The length of time the temporary mobile sales office is proposed for the site.
- 1666
- 1667 4. The description of potable water and sanitary facilities that will be available for the
- 1668 temporary office.
- 1669

- 1670 D. Inspection by city officials. In order to ensure compliance with all applicable laws and regulations,
- 1671 the temporary sales office shall be held open for reasonable inspection, without court order, by
- 1672 employees or agents of the City of Cape Coral or any other duly authorized governmental agency.
- 1673

1674 **Section 3.3.15 Temporary Habitable structures.**

1675

- 1676 A. Purpose and intent. The purpose of this ordinance is to provide a means by which residents,
- 1677 business owners, governmental agencies, and medical facilities are able to live and conduct
- 1678 business on the same site as their damaged structure using temporary housing and temporary
- 1679 business structures. When disasters result in significant destruction rendering homes and
- 1680 businesses uninhabitable, temporary housing and temporary business structures will provide
- 1681 residents and businesses with the ability to quickly resume normal activities during the restoration
- 1682 of their permanent structures.
- 1683

- 1684 B. Definitions. Terms used in this subsection shall have the meanings as defined in Article 11,
- 1685 Definitions, unless the context clearly indicates or requires a different meaning.
- 1686

- 1687 C. Declaration of habitable structure emergency. Following a disaster, the city shall evaluate the
- 1688 effect of the disaster on the public health, safety, and welfare. If the City Council finds that the
- 1689 disaster has negatively affected residential housing or business structures in the city by a
- 1690 significant degree, the City Council may, by a majority vote, declare the existence of a habitable
- 1691 structure emergency. Upon the declaration of a habitable structure emergency by vote of the
- 1692 City Council, the provisions of this subsection shall become effective. The habitable structure
- 1693 emergency shall identify the disaster which created the emergency situation, and may be

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declared for either a specified period of time or an indefinite period of time. If the emergency is for an indefinite period of time, the emergency shall continue until City Council, by a majority vote, terminates the habitable structure emergency.

- D. Habitable structure emergencies. During a habitable structure emergency, the city will allow, in accordance with the provisions set forth herein, the use of temporary structures. Temporary residential structures and temporary business structures must be approved by the city with a temporary placement permit. Application and issuance criteria for a temporary placement permit are as set forth below.
- E. Temporary business structures may be used for business owners to provide a means for a business to remain open during the time the permanent business structure is being repaired or replaced. Temporary business structures may be used to provide temporary facilities for governmental uses, critical public facilities, charitable, religious, or educational institutions that have been rendered uninhabitable. The regulations for temporary business structures shall apply to temporary business structures used for governmental uses, critical public facilities, charitable, religious, or educational institutions. For these institutions, the habitable structure regulations shall apply; however, the Building Official may waive any regulations when strict enforcement may preclude them from carrying out their normal or emergency functions. Critical facilities shall be limited to the following:
1. Federal, state, regional, or local government facilities;
 2. State, county, or local emergency operations centers;
 3. Police, fire, and emergency medical facilities;
 4. Radio and television stations;
 5. Public, semi-public, and privately-owned utilities;
 6. Hospitals, emergency medical care facilities, infusion centers, dialysis centers, physician's offices; and
 7. Nursing homes and assisted living facilities.
- F. Temporary placement permit. Following the declaration of a habitable structure emergency, a property owner may apply for a temporary placement permit (TPP) to locate onsite while the permanent structure is being repaired or rebuilt. A temporary placement permit (TPP) may be considered by the Building Official when the following criteria are met:
1. The existing permanent habitable structure has been determined to be uninhabitable as the result of a disaster by inspection of the city Building Official;
 2. The property owner or occupant of a damaged structure desires to locate in a temporary residential or business structure; and

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1740 3. A habitable structure emergency must be in effect at the time of application.

1741
1742 G. Applications for temporary placement permits.

1743
1744 1. Application forms and required fees.

1745
1746 2. The following permits are required prior to application for a TPP:

1747
1748 a. City permits for hook-up to electric, potable water, and wastewater utilities; and

1749
1750 b. A State Department of Health or State Department of Environmental Protection permit
1751 authorizing the connection of the temporary residence to an onsite or small domestic
1752 wastewater treatment system.

1753
1754 H. Time limits. Temporary structures may be located for a period not to exceed 30 days. At the end
1755 of that 30-day period, if no application has been filed, the temporary habitable structure must
1756 be immediately removed from the site. If an application has been filed within the 30-day time
1757 period, the temporary habitable structure may remain in place until the TPP is either approved
1758 or denied. Once approved, the temporary habitable structure may remain in accordance with the
1759 TPP. If denied, the temporary structure shall be removed within five days from the date of denial.

1760
1761 I. Terms of use of temporary habitable structures. Applicants for a temporary habitable structure
1762 shall be subject to the following:

1763
1764 1. Except as otherwise provided herein, temporary structures shall not be occupied until such
1765 time as a valid TPP has been issued and is in effect for the site.

1766
1767 2. Connection to sanitary sewer and potable water, or onsite water and wastewater facilities,
1768 and an external electrical system are required within 20 days of issuance of the TPP.
1769 Inspections for such connections shall be called into the city within two days of completion
1770 of each connection. Electrical and plumbing connections must be done by electricians or
1771 plumbers licensed to do business in the City of Cape Coral.

1772
1773 If there is no electricity to the site due to a power outage, a generator may be used. Upon
1774 restoration of electricity to the property, connection to the local power grid must be made
1775 within 24 hours of power restoration.

1776
1777 3. An application for a building permit is required within three months from the date of
1778 issuance of the TPP for temporary residential structures or within six months for temporary
1779 business structures. Failure to apply for a building permit within the required time shall deem
1780 the TPP revoked pursuant.

1781
1782 4. If a building permit application has not been submitted within the required time-frames, an
1783 applicant may petition City Council for relief from the time restrictions of this subsection.
1784 City Council shall determine whether the failure to apply for a building permit is due to good
1785 cause shown by the applicant. If City Council denies the request for relief, the temporary

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structure shall be removed from the site within ten days from the date of denial, or at the end of the initial three-month period for temporary residential structures, or at the end of the initial six-month period for temporary business structures, whichever is later.

5. Temporary habitable structures with a TPP may be used until the earlier of: 1) completion of the rehabilitation or reconstruction of the damaged structure; or 2) until such time as the owner or occupants of the damaged structure are established in a permanent structure at another location.

6. Occupants must comply with all mandatory hurricane evacuation requirements.

J. Temporary structures. Temporary habitable structures must comply with the following:

1. Temporary residential structures may consist of a recreational vehicle or a travel trailer. Temporary business structures may consist of recreational vehicles, travel trailers, or mobile offices. At the discretion of the Building Official, additional types of temporary business structures may be allowed, consistent with applicable federal, state, and local regulations and the provisions of this ordinance.
2. Must meet all applicable National Fire Protection Association and Life Safety codes and regulations as well as all applicable state and local requirements for tie-downs.
3. Shall contain plumbing (both water and wastewater) and electrical connections and shall be capable of being hooked up or attached to external plumbing and electrical systems. Temporary residential structures shall contain a kitchen capable of being hooked up or attached to external plumbing and electrical systems. Requirements for temporary business structures shall be based upon the proposed use.
4. Shall meet the Florida Accessibility Code for building construction amenities.

K. Placement of temporary habitable structures. The following site considerations are required for placement of a temporary habitable structure:

1. Temporary residential structures may be anywhere on the site of the existing permanent residence; however, no a temporary residence is allowed within road rights-of-way or drainage or utility easements. The city may waive any development regulations regarding lot areas, dimensions, setbacks, lot coverage, height, and open space to accommodate temporary residential structures.
2. Where more than one existing permanent residence has been rendered uninhabitable, the Building Official may allow up to the number of damaged permanent residences or residential units on the site. Such determination shall be based upon consideration of life, health, and safety requirements.
3. For temporary business structures:

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- 1832 a. Temporary business structures may be anywhere on the parcel of the existing business;
1833 however, temporary business structures are not allowed within road rights-of-way or
1834 drainage or utility easements. The city may waive any development regulations regarding
1835 lot areas, dimensions, setbacks, lot coverage, height, and open space to accommodate
1836 temporary business structures.
1837
- 1838 b. Temporary business structures may be on property adjacent to the permanent business
1839 structure if a notarized, written consent from the property owner is submitted at the
1840 time of application for a TPP.
1841
- 1842 c. The establishment of an emergency response team center on a parcel containing a
1843 business does not necessarily preclude the placement of one or more temporary business
1844 structures on the same parcel.
1845
- 1846 d. Parking for a temporary business structure shall be provided based upon the square footage
1847 of the temporary business structure, including handicapped parking. However, a minimum
1848 of two handicapped parking spaces must be provided.
1849
- 1850 e. The entrance to the site shall have a city approved driveway or construction entrance.
1851 Any impervious area added for the temporary business structure shall be subject to
1852 review and approval by the city.
1853
- 1854 f. Additional conditions or restrictions may be placed on a temporary business structure as
1855 a condition of issuance in areas including, but not limited to, the following:
1856 i. Hours of operation;
1857 ii. Traffic control and access;
1858 iii. Lighting; and
1859 iv. Noise control.
1860
- 1861 L. Issuance and revocation. The Building Official may revoke a TPP upon finding that any of the
1862 following has occurred:
1863
- 1864 1. Failure to connect to water, sewer, and electrical within 20 days of the receipt of the TPP.
1865
- 1866 2. If an application for a building permit has not been submitted within required time from the
1867 date of receipt of the TPP, or relocation has not occurred before the time of expiration of the
1868 TPP, or, if a building permit later expires.
1869
- 1870 3. If, upon inspection by the Building Official, a temporary residence is not in compliance with
1871 the requirements of this subsection.
1872
- 1873 4. Failure to evacuate temporary residence during mandatory evacuation orders.
1874
- 1875 5. Upon revocation of a TPP, the temporary residence must be vacated and the temporary
1876 residence removed within five days of revocation. Failure to vacate or remove the temporary
1877 residence constitutes a violation subject to the penalty imposed herein.

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M. Extensions and expiration of temporary placement permits.

1. Residential TPPs shall be valid for six months from the date of issuance. The Building Official may, for good cause shown, issue up to two extensions for six months each, for an 18-month maximum period of validity from the date of issuance.
2. Non-residential TPPs shall be valid for nine months from the date of issuance. The Building Official may, for good cause shown, issue up to two extensions for six months each, for a 21-month maximum period of validity from the date of issuance.
3. All applications for extensions of time must be submitted prior to the date of expiration of the current TPP.
4. Any further extensions after the second extension and maximum time period may not be issued by the Building Official; however, applicants may submit a request to City Council for their approval of any further extension of time for the TPP.
5. Factors to be considered by the Building Official or the City Council in determining whether to grant an extension of time of the TPP shall include:
 - a. The ability of the property owner or occupant of the temporary residential or business structure to secure permanent quarters; and
 - b. Any hardship that, in the opinion of the Building Official or City Council, as applicable, would warrant a further extension of the TPP.
6. Upon the expiration of a TPP, a temporary residence or business structure must be removed or placed in proper storage on the property within 30 days. Failure to remove or properly store the temporary residence or business structure constitutes a violation subject to the penalty imposed herein.
7. Termination of temporary habitable structure. Once an uninhabitable structure has been issued a certificate of occupancy or certificate of use for a new or rehabilitated residence, business, or institutional facility, the TPP shall be deemed to be terminated. A temporary residential or business structure must then be removed or placed in proper storage on the property within 30 days. Failure to remove or properly store the temporary residence or business structure constitutes a violation subject to the penalty imposed herein.
8. Penalty. Any violation of the provisions of this subsection shall be subject to a \$500 fine. Each day of violation shall constitute a separate offense and shall be punishable as such.

Section 3.3.16 Special Events.

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

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- 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.
 2. 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.
 3. 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.
 4. 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.
 5. 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.

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- 1970
- 1971 d. The City of Cape Coral shall be named as additional insured. Certificates of insurance shall
- 1972 show the City of Cape Coral as the certificate holder.
- 1973
- 1974 6. All applicable city ordinances and building, fire, and electrical codes shall be complied with.
- 1975
- 1976 7. Most events shall require off-duty City of Cape Coral police officers to be hired for the
- 1977 duration of any event to include one hour before opening and one hour after closing. The
- 1978 Police Chief shall determine the exact number of officers required, if any, based upon the
- 1979 size and nature of the event and past experience with similar events. The cost for the off-
- 1980 duty detail shall be set using the present rate charged by the Police Department which shall
- 1981 be paid by the applicant prior to the issuance of the permit. All applicants must comply with
- 1982 any rules or regulations imposed by the Police Chief which are consistent with this section.
- 1983
- 1984 8. Most events shall require off-duty City of Cape Coral firefighters or paramedics, to be hired
- 1985 for the duration of any event to include one hour before opening and one hour after closing.
- 1986 The Fire Chief shall determine the exact number of firefighters or paramedics required, if
- 1987 any, based upon the size and nature of the event and past experience with similar events.
- 1988 The cost for the off-duty detail shall be set using the present rate charged by the Fire
- 1989 Department which shall be paid by the applicant prior to the issuance of the permit. All
- 1990 applicants must comply with any rules or regulations imposed by the Fire Chief which are
- 1991 consistent with this section. In the event the Fire Chief determines that special equipment
- 1992 such as all-terrain vehicles, trailers, fireboats, fire and rescue assets, and appropriate
- 1993 personnel for the special equipment are necessary, the city reserves the right to request
- 1994 reimbursement for all or part of the discretionary cost from the applicant.
- 1995
- 1996 9. No open flame or other device emitting flames or fire shall be used in any tent or air
- 1997 supported structure while open to the public.
- 1998
- 1999 10. All equipment including tents, stages, amusement rides, utility areas, ingress and egress
- 2000 points, and cooking areas shall be inspected and approved by city fire inspectors or state
- 2001 officials, if applicable, prior to the opening of the event. If applicable, inspection certificates
- 2002 and annual permits as required by the State of Florida, shall be submitted to the city prior to
- 2003 the opening of the event. All equipment or amusement rides, other than those which are
- 2004 patron-operated or controlled, shall only be operated by persons over 18 years of age who
- 2005 are employed by the applicant and who are thoroughly familiar with the operation of said
- 2006 equipment or amusement rides. The operator of such equipment or amusement rides shall
- 2007 be in the immediate vicinity of the operating controls at all times during the operation of the
- 2008 equipment or amusement rides and no unauthorized person shall be permitted to handle the
- 2009 controls during operation.
- 2010
- 2011 11. Any person, entity, group, or organization engaging in speech, expression, or assembly, which
- 2012 is protected by the First Amendment of the United States Constitution or by Article I, Section
- 2013 4 of the State of Florida Constitution, may do so during a Special Event, subject to the
- 2014 following reasonable time, place, and manner regulations.
- 2015

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2016 12. If sound amplifying equipment is present on public or private property at the special event,
2017 the Director of Parks and Recreation shall establish one or more designated areas where such
2018 amplified sound may occur. If amplified sound is not permitted for the special event, all
2019 amplified sound shall be prohibited; however, nothing in this regulation shall serve to
2020 prohibit protected speech, expression, or assembly utilizing non-amplified, reasonable
2021 sound. For purposes of this paragraph, amplified sound caused by the police or fire
2022 departments of the city in the performance of their official duties, and public background
2023 sound, shall not be considered amplified sound so as to allow others to use sound amplifying
2024 equipment.
2025

2026 13. The Director of Parks and Recreation shall be responsible for the provisions of this section,
2027 department rules and regulations, and city ordinances. No action shall be taken to enforce
2028 this section until a warning to cease such a violation has been issued by a person authorized
2029 to enforce this section and the violator continues such violation.
2030

2031 14. No person shall be permitted into, or remain on, private property covered by any special
2032 event permit for an event open to the public without the consent of the permittee.
2033

2034 15. If a special event is open to the public only upon a payment of an entry fee or charge, no
2035 person shall be permitted into the special event without first paying the entry fee or charge.
2036

2037 16. No person shall unreasonably hamper, obstruct, impede, or interfere with any person, entity,
2038 group, or organization hosting a permitted special event.
2039

2040 17. All requirements of this section are subject to modification or waiver by the City Council
2041 based upon the size, duration, nature of the event, and the city's involvement.
2042

2043 C. Review Criteria. In determining whether a permit shall be issued, the Director of Parks and
2044 Recreation shall consider certain criteria including:
2045

2046 1. The size, duration, and nature of the event;
2047

2048 2. Previous history of organizing one or more events within the City and whether any events
2049 created hazards or safety situations;
2050

2051 3. Other events previously scheduled during the same time period within the city; and
2052

2053 4. If the applicant has been adjudicated guilty of violating any provision of this section. Any
2054 adjudication may constitute grounds for denial of future special events permits by the city.
2055

2056 D. Permit Decision.
2057

2058 1. The Director of Parks and Recreation may, in his or her sole discretion, deny the applicant a
2059 permit for the special event within the City of Cape Coral.
2060

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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.

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

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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

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- 2153
- 2154 7. That the granting of the variance will be in harmony with the general intent and purpose of these
- 2155 regulations, and that the variance will not be injurious to the area involved or otherwise
- 2156 detrimental to the public welfare.
- 2157

2158 C. Effect of Approval. An approved variance shall run with the land.

2159

2160 **Section 3.4.4. Special Exceptions.**

2161

2162 The intent of this section is to permit Special Exception uses which are essential to, or would promote

2163 the public health, safety, or welfare in one or more zoning districts, but which might impair the integrity

2164 and character of the zoning district or in adjoining districts, such that restrictions or conditions on

2165 location, size, extent, and character of performance may be imposed in addition to those standards

2166 already imposed in the Land Development Code.

2167

2168 A. General.

2169

- 2170 1. No variances shall be granted that would reduce or eliminate minimum requirements for special
- 2171 exception uses.
- 2172
- 2173 2. The Hearing Examiner may prescribe appropriate conditions and safeguards in conformity with
- 2174 the special exception use requirements. All such conditions shall be part of the terms under
- 2175 which the special exception is granted.
- 2176
- 2177 3. A special exception shall be deemed abandoned if:
- 2178
- 2179 a. The use is discontinued for more than 1 year; or
- 2180
- 2181 b. The special exception has not obtained a certificate of zoning compliance.
- 2182
- 2183 4. The proposed use shall comply with all requirements of the underlying zoning district(s), the
- 2184 Land Development Code, and all other applicable law.
- 2185

2186 B. Standards and Criteria. The following standards shall apply to all applications for special exception

2187 uses.

2188

- 2189 1. Consistency with the Comprehensive Plan?
- 2190
- 2191 2. The site must be suitable for the type of special exception use proposed by virtue of its location,
- 2192 shape, topography, and the nature of surrounding development.
- 2193
- 2194 3. All buildings shall be setback an adequate distance from property lines and rights-of-way.
- 2195 Greater building setbacks may be required when deemed necessary to protect surrounding
- 2196 properties.
- 2197

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- 2198 4. Potential adverse impact to surrounding property must be mitigated to the maximum extent
2199 possible.
2200

2201 **Section 3.4.5. Vacations of Plats, Easements, and Rights-of-way.**
2202

2203 The purpose and intent of this section is to provide procedures for City Council to vacate rights-of-way,
2204 easements, and plats pursuant to authority granted under Florida law. The City Council may adopt
2205 ordinances vacating plats in whole or in part of subdivisions within the corporate limits of the city,
2206 returning the property covered by such plats either in whole or in part into acreage for the purpose of
2207 taxation, or vacating public rights-of-way, public easements, or other property in response to
2208 applications filed from adjoining property owners.
2209

2210 A. General.
2211

- 2212 1. The city may retain an easement for utilities or drainage over any vacated right-of-way and that
2213 no use may be made of vacated right-of-way which will be inconsistent with or interfere with
2214 the retained easement. The party seeking vacation of a plat, city street, alley, canal, other right-
2215 of-way, public easement, or other property must show or submit the following:
2216

- 2217 a. Petitioner has color of title to the tract or parcel of land covered by the plat or portion of
2218 the plat of which vacation is sought, unless the petitioner is the City of Cape Coral;
2219
2220 b. Letter of approval from Lee County Electric Cooperative, Inc.;
2221
2222 c. Letter of approval from affected telephone companies;
2223
2224 d. Letter of approval from affected cable companies; and
2225
2226 e. Letter of approval from any other affected utility companies (e.g., water, sewer);
2227

- 2228 2. Applicants requesting to vacate rights-of-way or easements shall provide a recent boundary
2229 survey or survey sketch of the property prepared by a registered surveyor showing the area to
2230 be vacated and provide a complete legal description(s). The survey or sketch shall show all
2231 pavement and all utility and drainage facilities, including water, sewer, cable lines, utility poles,
2232 swales, ditches, manholes, and catch basins. Separate drawings and legal descriptions are
2233 required for each vacation area when right-of-way and easement configurations differ.
2234

2235 B. Standards and Criteria. Applications for vacations shall be reviewed in accordance with the
2236 following criteria:
2237

- 2238 1. Whether the plat, easements, or rights-of-way are required by the City for any future
2239 transportation, access, water management, or public utility purposes.
2240
2241 2. Whether any required easements are necessary to accommodate the vacation of any plat,
2242 easement, or right-of-way.
2243

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- 2244 3. If alternate routes are required or available that do not cause adverse impacts to surrounding
2245 areas.
2246
- 2247 4. If the closure of a right-of-way negatively affects areas utilized for vehicles to turn around and exit
2248 an area.
2249
- 2250 5. Whether local utility providers have given consent to the vacation of the plat, easements, or
2251 rights-of-way. The local utility providers may require additional easements or relocation of
2252 existing utilities facilities to complete the vacation.
2253
- 2254 C. Additional Procedures and Noticing Requirements. In addition to the standard notice requirements
2255 required by this Code, the following additional notice requirements apply for vacations:
2256
- 2257 1. Specific notice requirements for vacations. Public hearing notices to vacate a plat or portion
2258 thereof shall be published once a week for two consecutive weeks, the first publication being
2259 not less than two weeks prior to the date of public hearing on the petition.
2260
- 2261 2. If the parcel to be vacated includes an alley, all property owners serviced by the alley and all
2262 property owners serviced by a connecting alley shall be noticed.
2263
- 2264 3. Adoption and recording of resolution and ordinance. After public hearing, the City Council may
2265 approve an application for a vacation if it determines there is no reasonably foreseeable public
2266 use for the vacated area. Approval of a vacation shall be by resolution or ordinance. The City
2267 may retain easements for utilities or drainage in and upon the vacated area. Upon adoption of
2268 the resolution vacating the plat or portion thereof, the City Clerk shall furnish to the petitioner
2269 a certified copy thereof and the petitioner shall cause the same to be recorded in the public
2270 records of the county and shall return a copy, showing the recording information, to the
2271 Department of Community Development.
2272
- 2273 4. Effect. The adoption and recording of a vacation shall have the effect of vacating all streets and
2274 alleys and city-owned easements shown on the portion of the plat so vacated, unless the
2275 resolution or ordinance specifically reserved unto the city such city-owned easements or such
2276 streets or alleys. If public rights-of-way are vacated, the resolution or ordinance shall specify
2277 whether or not easements are reserved therein for utilities and drainage. The resolution or
2278 ordinance shall not have the effect of vacating any public canal shown on the portion of the plat
2279 vacated, unless the resolution or ordinance specifically so provides.
2280
- 2281 5. Petitioner's responsibility. The city, City Council, and all officers, employees, and agents thereof
2282 shall not assume any responsibility or liability for any matters and things to be done or
2283 completed by the petitioner pursuant to the provisions hereof. It is recognized that this
2284 procedure may affect substantial interests in real property and other proprietary rights, and the
2285 petitioner shall assume full and complete responsibility for compliance with the requirements
2286 of law and these procedures in connection with or arising out of any vacation proceedings
2287 instituted by the petitioner.
2288

Section 3.4.6. Rezones

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- 2290
- 2291 A. Manner of Initiation. Applications for a change in zoning may be initiated in the following manner:
- 2292
- 2293 1. The City Council upon its own motion;
- 2294
- 2295 2. The Planning and Zoning Commission upon its own motion;
- 2296
- 2297 3. The property owner(s) of at least fifty-one percent of the land in the proposed rezone area;
- 2298
- 2299 4. The City Manager for a City initiated rezone; or
- 2300
- 2301 5. The Community Development Department, following approval of a similar use determination.
- 2302
- 2303 B. Review Criteria. An application for a rezone shall be reviewed in accordance with the following
- 2304 criteria:
- 2305
- 2306 1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan;
- 2307
- 2308 2. Whether the full range of uses allowed in the proposed zoning district will be compatible with
- 2309 existing uses in the area under consideration;
- 2310
- 2311 3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing
- 2312 and potential uses in the area under consideration;
- 2313
- 2314 4. Whether the proposed zoning district will serve a community need or broader public purpose;
- 2315
- 2316 5. The characteristics of the proposed rezone area are suitable for the uses permitted in the
- 2317 proposed zoning district; and
- 2318
- 2319 6. Whether a zoning district other than the district requested will create fewer potential adverse
- 2320 impacts to existing uses in the surrounding area.
- 2321
- 2322 C. Effective date of approval. A rezone shall take effect upon City Council adoption of the ordinance
- 2323 approving the rezone.
- 2324
- 2325 D. New application after denial. No application for a rezone which has been previously denied by the
- 2326 City Council shall be accepted for at least one year after the date of denial. An application to rezone
- 2327 property to a designation that is different than the designation which was denied by the City
- 2328 Council, will be accepted and considered without consideration of time since the previous
- 2329 application was denied.
- 2330

Section 3.4.7. Planned Unit Developments (PUD)

- 2331
- 2332
- 2333 A. General.
- 2334

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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.

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.
9. Comprehensive Plan. To achieve the goals of the Comprehensive Plan.
10. To provide a method for previously approved Planned Development Projects to continue to develop under the terms of an approved PDP Development Order and to allow modification to existing PDP approvals under the PUD procedures.

C. Minimum Parcel Size. The minimum parcel size for a PUD is:

1. Non-residential, mixed use, or multi-family PUD. One acre.
2. All other PUDs. Three acres.

D. PUD approval steps. The PUD review and approval process includes:

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- 2381
- 2382 1. A rezone to the PUD zoning district, which establishes the densities, intensities, and permitted
- 2383 uses within the PUD; and
- 2384
- 2385 2. A Master Concept Plan (MCP), which establishes the design, layout, and dimensional standards
- 2386 of the PUD.
- 2387
- 2388 E. Application and submittal requirements. Application and submittal requirements for a PUD are
- 2389 established in Sections 3.1.4 through 3.1.8 of this Article. In addition, a PUD requires:
- 2390
- 2391 1. An application for a rezone to the PUD zoning district; and
- 2392
- 2393 2. A Master Concept Plan application.
- 2394
- 2395 3. Submittal of the specific PUD application requirements listed in subsection G., below.
- 2396
- 2397 A PUD application for parcels 10 acres or larger may apply for a rezone to the PUD zoning district
- 2398 without submitting a MCP for concurrent review and processing.
- 2399
- 2400 F. Preapplication conference required. A pre-application conference shall be held with the Community
- 2401 Development Department prior to the submittal of a PUD. The applicant shall indicate the requested
- 2402 PUD zoning district and a sketch of the PUD Master Concept Plan, if applicable.
- 2403
- 2404 G. Specific PUD Submittal Requirements. A PUD application shall include the following:
- 2405
- 2406 1. A Letter of Intent, including:
- 2407
- 2408 a. Reasons the PUD procedure is more desirable than a conventional plan;
- 2409
- 2410 b. General site description including acreages; and
- 2411
- 2412 c. General project description.
- 2413
- 2414 2. A PUD Master Concept Plan indicating:
- 2415
- 2416 a. Location of the uses within the site;
- 2417
- 2418 b. Vehicle circulation patterns and points of access;
- 2419
- 2420 c. Pedestrian and bicycle circulation with links to other external path systems;
- 2421
- 2422 d. Open space plan; and
- 2423
- 2424 e. Landscape and buffer plans.
- 2425

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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;

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- 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.

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- 2517 6. Street Standards. All streets, roads, and drive aisles shall be designed and constructed in
2518 conformance with the City's Engineering and Design Standards.
2519
- 2520 7. Phasing. When a PUD is developed in phases, a proportional amount of the open space and
2521 recreations areas shall be included in each phase, in order to comply with the open space
2522 requirements of this chapter at the completion of each phase of the development.
2523
- 2524 J. Master Concept Plan and concurrent Preliminary Subdivision Plan review. The approved Master
2525 Concept Plan may be used for Preliminary Subdivision Plan approval, as defined in Article 10,
2526 provided required details and information for PSP review are included in the MCP.
2527
- 2528 K. Amendments to Planned Unit Developments.
2529
- 2530 1. Administrative Amendments. Amendments to an approved PUD may be approved
2531 administratively if they meet the following criteria:
2532
- 2533 a. Density or intensity is increased by less than ten percent.
2534
2535 b. Open space is not decreased by more than five percent.
2536
2537 c. There are no changes to any condition of approval.
2538
2539 d. There is no change in permitted uses or types of structures.
2540
2541 e. Dimensional standards are changed by no more than ten percent.
2542
- 2543 2. Review Standards for amendments. An approved PUD Master Concept Plan may be amended if
2544 the applicant demonstrates that the proposed modification:
2545
- 2546 a. Is consistent with the efficient development and preservation of the entire PUD;
2547
2548 b. Does not affect in a substantially adverse manner either the enjoyment of the land abutting
2549 upon, adjoining or across a street from the planned unit development;
2550
2551 c. Is not granted solely to confer a special benefit upon any person;
2552
2553 d. Does not contain proposed uses that detract from other uses approved in the PUD;
2554
2555 e. Does not contain an open space plan that differs substantially in quantity or quality from the
2556 originally approved plan; and
2557
2558 f. Contains streets and utilities that are coordinated with planned and existing street and
2559 utilities for the remainder of the PUD.
2560
- 2561 3. Amendments that require City Council Approval. Any amendment to a PUD that does not meet
2562 the criteria in subsection 1 through 2, above must be approved by the City Council.

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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.

CHAPTER 5. SPECIFIC REVIEW PROCEDURES - LEGISLATIVE APPROVALS

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 in to 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

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- 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 the 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

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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.

2. The amendment corrects an error in the Comprehensive Plan.

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 Comprehensive Plan.

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

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

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

8. 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.

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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.

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Land Development Code
Article 3 – Development Review**

- 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.

DRAFT

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 4 – ZONING DISTRICTS**

CHAPTER 1 – GENERAL PROVISIONS, ZONING DISTRICTS ESTABLISHED, ZONING USE TABLES

- Section 4.1.** Purpose and Intent
- Section 4.2.** Establishment of Zoning Districts
- Section 4.3.** Zoning District Development Standards
- Section 4.4.** Uses by Zoning District

CHAPTER 2 – SPECIFIC REGULATIONS BY DISTRICT

- Section 4.5.1.** Single-Family Residential (R1)
- Section 4.5.2.** Residential Multi-Family Low (RML)
- Section 4.5.3.** Residential Multi-Family Medium (RMM)
- Section 4.5.4.** Residential Estate (RE)
- Section 4.5.5.** Agricultural (A)
- Section 4.5.6.** Commercial (C)
- Section 4.5.7.** Professional Office (P)
- Section 4.5.8.** Industrial (I)
- Section 4.5.9.** Institutional (INST)
- Section 4.5.10.** Preservation (PV)
- Section 4.5.11.** Commercial Corridor (CC)
- Section 4.5.12.** Neighborhood Commercial (NC)
- Section 4.5.13.** Mixed-Use Bimini District (MXB)
- Section 4.5.14.** Mixed-Use Seven Islands District (MX7)
- Section 4.5.15.** South Cape Downtown District (SC)

CHAPTER 1 – GENERAL PROVISIONS

Section 4.1. Purpose and Intent.

- A. The purpose of this article is to encourage and promote the safety, health, and general welfare of the citizens of Cape Coral, Florida by providing for:
1. Efficiency and economy in the process of development;
 2. Appropriate and best use of land;
 3. Convenience of traffic and circulation of people and goods;
 4. Adequate public utilities and facilities;
 5. Promotion of the civic amenities of beauty and visual interest;
 6. Development in accord with the comprehensive plan by establishing zoning districts;
 7. Regulation of the location and use of buildings, structures, and land; and

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8. Regulation of:

- a. Height, bulk, and access to light and air of buildings and structures;
- b. The area of yards and other open spaces; and
- c. The density or intensity of development on a given site.

- B. To accomplish these objectives, the regulations and districts and accompanying zoning map have been designed with reasonable consideration, among other things, to reflect the character of the districts and their suitability for particular uses.

Section 4.2. Establishment of Zoning Districts

For regulating and restricting the use of land and the erection, construction, reconstruction, altering, moving, or use of buildings and structures, the City of Cape Coral is divided into zoning districts. The City zoning districts are classified as follows:

A. Residential Zoning Districts

- 1. Residential Single Family (R-1). This district is established to encourage and protect single-family development and to permit other uses generally compatible with single-family residential uses.
- 2. Residential Multi-Family Low (RML). This district is to accommodate multi-family housing to meet the needs of a diverse community, while ensuring that there is a transition to single-family neighborhoods which protects the integrity of those neighborhoods. The RML district acts as a transition zone from lower density residential to higher density residential or non-residential uses or zoning districts.
- 3. Residential Multi-Family Medium (RMM). This zoning district is to accommodate multi-family housing at a higher density than RML to meet the needs of a diverse community. The RMM district also acts as a transition zone from lower density residential areas to non-residential land uses or zoning districts.
- 4. Residential Estate (RE). This district is established to provide areas for single-family dwellings typically on parcels of 40,000 square feet or more in areas of the city that are rural in character. The RE district permits the keeping of some domesticated livestock for use by the occupants.
- 5. Agriculture (A). This district is to accommodate agricultural activities and operations which may include crop cultivation; the breeding, raising, or keeping of livestock or fur bearing animals; dairy farming; apiculture; and to allow all accessory uses and structures customarily incidental to those activities.

B. Non-Residential Zoning Districts

- 1. Commercial (C). This district is designed to encourage and facilitate commercial activities intended to serve a relatively large trade area, appropriate commercial locations on major thoroughfares

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in developed areas, and is intended to meet the needs of motorists and other consumers through the provision of automobile-oriented commercial activities to meet the needs of several types and varieties of general commercial activities.

2. Professional Office (P). This district is designed to encourage the compatible development of major professional and related office complexes in areas which are suitable for such activities. The P District may serve as a transition between commercial corridors and nearby residential uses.
3. Industrial (I). This district is to accommodate manufacturing, fabrication, warehousing, and other related activities that typically utilize large work forces, generate semi-tractor trailer traffic, and may produce external impacts such as noxious smells, smoke, or noise.
4. Institutional (INST). This district is to allow for development of nonprofit or quasi-public uses such as religious institutions, libraries, public or private schools, hospitals, or government owned or operated structures. Many of these uses provide meeting places for the citizens of Cape Coral and valuable civic engagement opportunities.
5. Preservation (PV). This district is to identify environmental resources or natural features as areas intended to remain in a predominately natural or undeveloped state to provide resource protection and opportunities for passive recreation and environmental education for present and future generations.

C. Mixed Use Zoning Districts

1. Commercial Corridor (CC). This district is established to implement the recommendations of the Pine Island Road Master Plan and to promote such uses as retail, office, limited warehouse and light manufacturing, multi-family residential and large-scale commercial retail uses.
2. Neighborhood Commercial (NC). This district is intended to create a variety of dynamic walkable, mixed-use environments; provide a range and mix of commercial and housing choices near each other; and to create quality usable public spaces. The NC District utilizes form-based design standards and provides development options based on parcel size.
3. Mixed Use Seven Islands (MX7). This district is intended to implement master plan recommendations for the Seven Islands Area consistent with the Seven Islands ~~Sub District~~Vision Plan. A further objective is to foster a sense of place and create a destination environment in northwestern Cape Coral. To achieve these objectives, the MX7 district allows a more flexible approach to comprehensive design and coordinated development of a multi-use neighborhood than is possible under other zoning classifications.
4. Mixed Use Bimini (MXB). This district is to promote redevelopment and enhancement of the Bimini Basin area of Cape Coral to create a destination for residents and visitors, consistent with the Downtown Mixed Future Land Use Classification and the Bimini Basin Revitalization and Implementation Plan. This district encourages mixed-use development. Existing commercial and professional buildings will be supplemented with entertainment activities and a wide diversity of

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housing types to create a vibrant work, live, shop, and play district that serves the entire city and region.

4.5. This district is intended to implement master plan recommendations for the Bimini Basin Area. A further objective is to foster a sense of place and create a destination environment in southeastern Cape Coral. To achieve these objectives, the MXB district allows a more flexible approach to comprehensive design and coordinated development of a multi-use neighborhood than is possible under other zoning classifications.

5.6. South Cape (SC). This district is to promote redevelopment and enhancement of the traditional commercial center of Cape Coral into a more compact and walkable form growth and to create a destination for residents and visitors. This district encourages mixed-use development. Existing commercial and professional buildings will be supplemented with entertainment activities and a wide diversity of housing types to create a vibrant work, live, shop, and play district that serves the entire city and region.

It is intended that the South Cape regulations act as a stimulus to development through provisions that permit a flexible approach to infill development on various lot sizes, as well as special provisions related to particular locations within the district. Therefore, many of the provisions contained herein, including uses and dimensional regulations, are regulated by lot size, or the extent of roadway frontage or a combination thereof.

6.7. Planned Unit Development (PUD). This district is 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.

Section 4.3. Zoning District Development Dimensional Standards

The purpose of this section is to identify the bulk, area, and dimensional standards for construction in each zoning district.

Table 4.3.1. Zoning District Dimensional Standards

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		ZONE DISTRICT DIMENSIONS							
ZONE DISTRICT	Lot and Structure		Minimum Setbacks (feet)						Maximum Height (feet)
	Minimum Lot Area (Square ft.)	Maximum FAR	Front	Front, Cul-de-Sac	Side	Rear	Double Frontage	Corner Lot Side	
		RESIDENTIAL							
R-1	10,000*	None	25	18	7.5	20/10	25	10	38
RML	10,000	None	25	18	7.5	20/10	25	10	38
RMM	43,560	None	25	18	6	26	25	10	50
RE	40,000	None	50	36	35	35	50	25	38
A	None**	None	50	36	35	35	50	25	38
		NON-RESIDENTIAL							
C	None	1	6	None	0/6	10	6	10	None
CC	None / MF 4 ac	1	15	None	0/6	15	15	10	None
P	None	1	6	None	6/6	10	6	10	None
I	None	1	20	None	0/6	10	20	10	None
INST	None	1	25	None	15	25	25	10	60
PV	None	None	50	None	50	50	50	10	38

* See Section 5.11.6.K (Micro cottage standards)

** 5 acres for non-residential uses

Section 4.3.2 Projections and Encroachments into Setbacks

Encroachments into required setbacks. Every part of the required setbacks on a parcel shall be open and unobstructed from 30 inches above the ground, as measured from the average elevation of the crown of road along the property frontage, except as provided below or as shown in Table 4.3.2, below.

- A. Structures less than 30 inches in height are not considered encroachments into minimum required setbacks.
- B. Bermed earth, plant materials, sidewalks, and driveways are not considered encroachments.
- C. Encroachments into required setbacks:
 1. Cornices, overhangs, decorative awnings with no ground support installed over windows and at entrances, eaves and gutters, balconies, and means of egress may project a maximum of three feet into required setbacks.
 2. Awnings requiring pole supports to be placed in a setback area, or those without pole supports which encroach more than 3 feet into required setbacks, may be approved, in districts other than RE or R1, at the discretion of the Director of Community Development. Such awnings must

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function as decorative architectural elements as opposed to garage, carport, or other similar storage facilities.

3. Air conditioning, pool equipment, and generators permitted and installed prior to the effective date of this ordinance may be maintained and replaced provided the new equipment does not encroach more than three feet into any required setback. All air conditioners, generators, and pool equipment installed after the effective date of this ordinance must comply with all setback requirements and be out of easements.
4. Permitted encroachments into required setbacks are not allowed to encroach into utility easements (See Article 5, Section 5.1.6).

Table 4.3.2 Permitted Setback Encroachments

Projection or Feature	Encroachment (measured from primary structure envelope)			Max Height
	Front Yard	Side Yard	Rear Yard	
Architectural features	2 ft.	2 ft.	2 ft.	N/A
Awnings and canopies	3 ft.	3 ft.	3 ft.	N/A
Balconies	3 ft.	3 ft.	3 ft.	N/A
Chimneys	N/A	2 ft.	2 ft.	per Building Code
Eaves, gutters, and overhangs	3 ft.	3 ft.	3 ft.	N/A
Porches	5 ft.	3 ft.	3 ft.	N/A
Solar Photovoltaic (PV) Arrays, attached to primary structure	N/A	3 ft.	3 ft.	3 ft. above a peaked roof, 10 ft. above a flat roof
Mechanical equipment: AC, generator, pool equipment	N/A	5 ft.	5 ft.	N/A
Stairways	5 ft.	3 ft.	5 ft.	N/A
Ornamental Walls	5 ft.	1.5	5 ft.	30 inches

Section 4.4. Uses by Zoning District – Use Hierarchy.

A. Classification of Uses Listed in Table 4.4.

1. Permitted Uses. Uses that are allowed by right. These uses are shown in the table with a “P”.

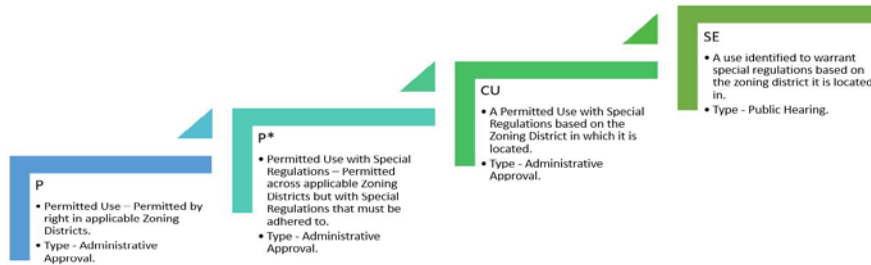
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2. Permitted Uses with Specific Regulations. Uses that are permitted with specific regulations that apply in all zoning districts where those uses are permitted. The specific regulations are provided in Article 5, Chapter 11. These uses are shown in the table with a “P*”.
3. Conditional Uses. Uses which are generally appropriate in a Zoning district. Conditional uses are permitted uses which, because of potential impacts, may require reasonable special limitations or conditions of approval peculiar to the use for the protection of the public health, safety, or welfare and the integrity of the Comprehensive Plan. The specific requirements for conditional uses are provided in Article 5, Chapter 12. These uses are shown in the table with a “CU”.
4. Special Exception Uses. Those uses or structures that may not be appropriate generally or without restriction throughout a district but which, if controlled as to ~~number~~, area, location, or their relationship and potential impacts to nearby residences or neighborhoods, would be acceptable. These uses are shown in the table with an “SE”.
5. Prohibited Uses. Any use not specifically listed as a permitted use, a permitted use with specific regulations, a conditional use, a special exception use, a permitted accessory use, or permitted through a similar use determination shall be considered expressly prohibited.

B. Uses not listed in Table 4.4.

1. Accessory Uses. Accessory uses are customarily associated with and are incidental and subordinate to such principal uses. An accessory use shall be subject to the same regulations that apply to the principal use in each district, except as otherwise provided.
2. Temporary Uses. Uses that are deemed temporary in nature regulated by ~~separate ordinance~~ Article 5, Chapter 10 or the City Code of Ordinances, shall not be subject to the standards and requirements as set forth in this article, except that the City may impose conditions which may include limiting the period of approval, imposing hours of operations, operational standards to minimize impacts on surrounding properties, and any other conditions deemed necessary to minimize detrimental impacts to the welfare of the community. These uses are listed in Article 5, Chapter 10 or the City Code of Ordinances.
3. Similar Use Determinations. See Article 3-~~3~~ Section 3.3.3.

USE HIERARCHY



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260 **Table 4.4 Use Table**

261 The following table of permitted uses, when read together with the definitions set forth in Article 11 shall
262 be used to determine the zoning district in which a given use may be established.

draft

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Use Table

P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted

	Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts						
		R	RML	RMM	RE	A	P1	C	I	INST	PV	CC	NC	MX7	MXB	SC		
																PK	PR	SEC
Residential	Single-family	P	P		P	P												
	Duplex		P*															
	Multi-family		CU	P								CU	CU	CU	CU	CU	CU	CU
	Single-family Attached - 3 or more		CU	P								CU	CU	CU	CU			
	Micro-Cottage	P*																
	Assisted Living Facility		SE	P			P	P				P	P			P		
	Family Day Care Home –5 or fewer	P	P	P	P	P												
	Community Residential Home – up to 6 res	P	P	P	P	P												
	Community Residential Home – 7 to 14 residents		P	P														
	Model Home	P*	P*		P*													
	Home Business	CU	CU		CU	P												
	Home Occupation	P*	P*	P*	P*	P*							P*	P*	P*	P*	P*	P*
Public and Institutional Uses	Animal Shelter					P			SE	SE								
	Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Educational Facilities – Primary and Secondary	P	P	P	P	P				P			P			P		
	Educational Facilities – Vocational Schools			SE				P	P	P		P				P		
	Educational Facilities – Colleges and universities								P	P								
	Essential Service Facilities - Major	SE	SE	SE	SE	SE	SE	P	P	P	SE	P	SE	SE	SE	SE	SE	SE
	Essential Service Facilities - Minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Government Office Facilities					P	P	P		P		P	P	P	P	P	P	P
	Hospital							P		P		P						
	Public Parks and Recreational Facilities	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P
	Public Safety – Police/Fire	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

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Use Table																		
P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted																		
Use Category	Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts						
		R1	RML	RMM	RE	A	P1	C	I	INST	PV	CC	NC	MX7	MXB	SC		
																PK	PR	SEC
Recreation and Entertainment	Sexually Oriented Business								P									
	Commercial Recreation, Indoor							P				P	P			P	P	P
	Commercial Recreation, Outdoor					P		P				P						
	Golf Course w/ Ancillary activities	P	P	P	P	P												
	Golf, Driving Range					P												
	Golf, Miniature					P		P				P	P			P	P	P
	Marina							P					P	P	P	P		
	Shooting Range/Archery - Indoor							P				P						
Shooting Range/Archery - Outdoor					SE												276	
Vehicle-related Commercial	Boat Sales							P	P			P					P	P
	Car Wash							P				P						
	Commercial Parking lot or Garage							P							P	P	P	P
	Heavy Vehicle, Sales & Rental								P			P						
	Light Vehicle, Rental							P				P	P				P	P
	Light Vehicle, Sales											P*						
	Vehicle Repair, Major								P			SE						
	Vehicle Repair, Minor							CU	P			P						
	Vehicle Fueling Station							CU	P			P	CU				CU	
	Vehicle Storage					P			P									
	Accessory Parking Lot		P*															

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Use Table

P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted

Use Category	Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts						
		R1	RML	RMM	RE	A	P1	C	I	INST	PV	CC	NC	MX7	MXB	SC		
																PK	PR	SEC
Food and Beverage	Bar							P				P	P	P	P	P	P	P
	Brewpub							P				P	P	P	CU	P	P	P
	Craft Brewery, Distillery, Winery							P*				P*	P*	P*	P*	P*	P*	P*
	Mobile Food Trucks						P*	P*	P*	P*		P*	P*	P*	P*	P*	P*	P*
	Restaurant, no drive-thru						SE	P				P	P	P	P	P	P	P
	Restaurant, drive-thru							P	P			P						P
Lodging	Bed and Breakfast	SE	SE	SE	SE	SE												
	Campground					P												
	Hotel/Motel							P								P	P	P
	Resort	P*	P*	P*				P										
	RV Park					P*												

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Use Table

P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted

Use Category	Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts						
		R1	RML	RMM	RE	A	P1	C	I	INST	PV	CC	NC	MX7	MXB	SC		
																PK	PR	SEC
Commercial and Professional Services	Animal Kennel, Indoor				P	P		P				P			P		P	P
	Animal Kennel, Outdoor					P												
	Day Care Facilities – Adult or Child		CU	CU	CU	CU	P	P		P		P	P		P		P	P
	Banks and Finance - no drive thru						P	P				P	P			P	P	P
	Banks and Finance w/ drive thru						P	P				P						P
	Building and Construction w/o outdoor storage/display						P	P				P	P		P	P	P	P
	Building and Construction w/ outdoor storage/display							CU				CU						
	Self-Storage							P*				P*						
	Personal Services						P	P				P	P	P	P	P	P	P
	Pharmacy – no drive through						P	P				P	P	P	P	P	P	P
	Pharmacy with drive through							P				P						P
	Professional Offices						P	P				P	P	P	P	P	P	P
	Professional Services						P	P				P	P				P	P
	Radio and TV Station								P	P		P	P				P	P
	Repair Shops DEFINITION							P	P			P	P				P	P
	Retail							P				P	P	P	P	P	P	P
	Retail >50,000 sq. ft. per tenant							P				P	SE			SE	SE	SE

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Use Table

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Use Category	Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts						
		R1	RML	RMM	RE	A	P1	C	I	INST	PV	CC	NC	MX7	MXB	SC		
																PK	PR	SEC
Agriculture	Animal Boarding					P												
	Community Garden	CU	CU	CU	CU	P				P								
	Farms – Produce & Livestock					P												
	Greenhouse / Nursery					P						P						
	Outdoor storage – Agricultural					P												
	Stable				P	P												
	Roadside Food and Vegetable Stand					P*												
Industrial	Dry Cleaning/Laundry Plant								P									
	Extraction w/ancillary use								P									
	Industrial, Heavy								P									
	Industrial, Light								P			SE						
	Laboratory – medical, research, testing						SE		P	SE		SE						
	Energy Resource Generation					SE				P								
	Storage, Outdoor Screened					P			P	SE		CU						
	Storage, Outdoor					P			P									
	Solid Waste Transfer					SE				SE								

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Use Table																		
P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted																		
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		R1	RML	RMM	RE	A	P1	C	I	INST	PV	CC	NC	MXB	MX7	SC		
																PK	PR	SEC
Places of Assembly	Amphitheaters/ Arenas					SE				SE						SE	SE	SE
	Banquet Hall						P				P	P				P	P	P
	Clubs, Private and Fraternal						P				P	P					P	P
	Community Centers									P				P	P	P	P	P
	Cultural and Civic Facilities							P		P	SE			P		P	P	
	Movie Theaters							P				P	P	P	P	P	P	P
	Religious Institution	CU	CU	CU	CU	CU	P	P		P						P	P	P
Other	Cemetery / Mausoleum					P				P								
	Crematory								P			P						
	Funeral Homes							P	P			P	P				P	P
	Wireless Antennas					P*	P*	P*	P*			P*	P*				P*	P*
	Solar Arrays					P*			P*	P*								

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CHAPTER 2. SPECIFIC REGULATIONS BY DISTRICT

This chapter establishes specific regulations for uses, activities, or structures within a zoning district.

Section 4.5.1. Single-Family Residential (R1)

Specific regulations for micro-cottages, model homes, childcare facilities, and home occupations are in Article 5, Chapter 11.

Specific conditions for home-based businesses and religious institutions are in Article 5, Chapter 12.

Section 4.5.2. Residential Multi-Family Low (RML)

Specific regulations for duplexes, model homes, and home occupations are in Article 5, Chapter 11.

Specific conditions for multi-family residences, single-family attached, home-based businesses, day care facilities and religious institutions are in Article 5, Chapter 12.

Section 4.5.3. Residential Multi-Family Medium (RMM)

Specific regulations for home occupations are in Article 5, Chapter 11.

Specific conditions for day care facilities and religious institutions are in Article 5, Chapter 12.

Section 4.5.4. Residential Estate (RE)

A. Specific regulations for model homes and home occupations are in Article 5, Chapter 11 and 12.

Specific conditions for home-based businesses, day care facilities and religious institutions are in Article 5, Chapter 12.

B. Non-domestic animals.

1. Non-domestic animals regulated in this section are considered to be a pet or for household consumption, and shall not be used for any commercial purposes.
2. Non-domestic animals are only allowed in the Residential Estate zoning district for sites with a Low Density Residential II Future Land Use Map classification pursuant to the regulations below and the requirements of the City Code of Ordinances.
3. Horses. The keeping of horses, including foals and yearlings, is permitted in the Residential Estate zoning district regardless of the Future Land Use Map classification. Any roofed structure for shelter of such animals shall be setback at least 100 feet from any property line.

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4. Cattle, mules, goats, sheep, swine, and poultry. The keeping, raising, and breeding of non-domestic animals, including cattle, mules, goats, sheep, swine, and poultry may be permitted in the Residential Estate as follows:
- a. Lot size. The minimum lot area required for the keeping, raising, and breeding of non-domestic animals, as identified in this section, is 100,000 square feet.
 - b. Animals within this subsection may not be kept or allowed to run within 100 feet of any zoning district other than the Residential Estate (RE) within the Low Density Residential II Future Land Use Map classification and Agricultural zoning districts.
 - c. Buildings or other roofed structures or enclosures for the keeping of animals within this subsection must be set back a minimum of 150 feet from any zoning district other than Residential Estate (RE) or Agricultural (A) zoning districts, under separate ownership.
 - d. The keeping and raising of non-domestic animals within this subsection is permitted in the Residential Estate zoning district for personal use only, or for youth or farm-education programs such as 4-H or The National FFA Organization.
- C. Accessory structures. Accessory structures in the Residential Estate zoning district shall not have a maximum size.

Section 4.5.5. Agricultural (A)

- A. Specific regulations for commercial recreation with outdoor uses, RV parks, wireless antennas, and home occupations are in Article 5, Chapter 11 and 12.
- B. Specific conditions for day care facilities and religious institutions are in Article 5, Chapter 12.
- ~~B. C. —~~ Carports, garages or other buildings not used as a dwelling and customarily incidental to the principal permitted use of the premises.

C. A minimum of five acres is required for all non-residential uses.

Section 4.5.6. Commercial (C)

Specific regulations for commercial parking lots and parking garages as a standalone use, craft brewery, distillery, and wineries, mobile food trucks; and storage, neighborhood storage, and wireless antennas are found in Article 5, Chapter 11 and 12.

Specific conditions for vehicle repair, minor, vehicle fueling stations, and building and construction with outdoor display are in Article 5, Chapter 12.

Section 4.5.7. Professional Office (P)

Specific regulations for mobile food trucks and wireless antennas are found in Article 5, Chapter 11.

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Section 4.5.8. Industrial (I)

Specific regulations for mobile food trucks and wireless antennas are found in Article 5, Chapter 11.

Section 4.5.9. Institutional (INST)

A. Specific regulations for mobile food trucks and wireless antennas are found in Article 5, Chapter 12.

B. Outdoor storage that is accessory to a principal use shall be screened from view from all rights-of-way by an opaque fence or wall.

Section 4.5.10. Preservation (PV)

Reserved.

Section 4.5.11. Commercial Corridor (CC)

Table 4.5.11.

Commercial Corridor Development Parameters		
	Development Area	
	0 – 3.99 acres	4 acres or greater
Free-standing Commercial Development Area		100%
Maximum FAR		1.0
Free-standing Residential Minimum Density	Not allowed	12 du/acre
Maximum Density	Not allowed	25 du/acre
Mixed-Use Minimum Density	3 du/acre	12 du/acre
Maximum Density	12 du/acre	25 du/acre
Maximum FAR	1.0	2.0
Minimum Front Setback	20 ft.	20 ft.
Minimum Side Setback	6 ft.	6 ft.
Min. Rear Setback	10 ft.	10 ft.

Specific regulations for commercial parking lots and parking garages as a standalone use; craft brewery, distilleries, and wineries, mobile food trucks, neighborhood storage, and wireless antennas are found in Article 5, Chapter 11 and 12.

Specific conditions for multi-family residential, single-family attached with 3 units or greater, building and construction with outdoor storage, and screened outdoor storage are in Article 5, Chapter 12.

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Section 4.5.12. Neighborhood Commercial (NC)

- A. Specific regulations for multi-family residences; single family attached 3 units or greater; commercial parking lots and parking garages as a standalone use; vehicle fueling stations; craft brewery, distilleries, and wineries; mobile food trucks; wireless antennas; and home occupations are found in Article 5, Chapter 11 and 12.

Specific conditions for multi-family residential, single-family attached with 3 units or greater, and vehicle fueling stations are in Article 5, Chapter 12.

- B. Mix of uses. Development in the NC district is encouraged to have a mix of residential and non-residential uses, however, a mix of uses is not required.
- C. Use areas. All land areas within developments in the NC District shall be categorized as one of the three following use areas:
1. Free-standing non-residential. Free-standing non-residential areas include the footprint and land areas associated with buildings that contain no residential units.
 2. Free-standing residential. Free-standing residential areas include the footprint and land areas associated with buildings that contain residential units and buildings that contain non-residential floor area usage that is less than 30% of the building's floor area. In calculating the floor area of the building, the total floor area of the building is the floor area of the building remaining after the area of any structured parking is excluded. Also, any pre-existing single-family residences do not necessarily constitute free-standing residential development, unless such residences otherwise meet the criteria for such development.
 3. Mixed-Use. Mixed-use areas include the footprint and land areas associated with compound use buildings that shall mean buildings with at least 30% of their floor areas allocated to non-residential uses.
- D. Density, intensity, and use area allocations.
1. The allowable densities, intensities, and use area allocations within the NC District may vary with the land area allocated to each use in a development project.
 2. A development can consist of one or more properties that are the subject of a single application for development.
 3. If an application includes properties that are not contiguous, the application must demonstrate that the properties function as a unified development.
 4. The land area that may be allocated to any of the three use area allocations varies with the size of the development project, with generally increasing flexibility as a function of the total land area of the development. Densities and intensities associated with any of the three use area categories apply only to the land area of the project that is allocated to that specific use. In

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determining the land area within any of the three use area allocations, the area of any common areas for surface water management, parking, landscaping, and circulation shall be apportioned among the three use area allocations in the same proportion as the non-common areas relate to the area of the development, excluding common areas.

Table 4.5.12.

Neighborhood Commercial Development Parameters			
	Land Area of Development Project		
	1 acre or less	1 acre – 19.99 acres	20 acres or greater
Free-standing Commercial Development Area Maximum FAR	0-100% 1.0	25%-75% 1.0	25%-75% 1.0
Free-standing Residential Development Area Minimum Density Maximum Density	N/A N/A N/A	25%-75% 12 du/acre 25 du/acre	25%-75% 12 du/acre 25 du/acre
Mixed-Use Development Area Minimum Density Maximum Density Maximum FAR	0-100% 3 du/acre 12 du/acre 1.0	0-100% 12 du/acre 25 du/acre 2.0	0-100% 12 du/acre 25 du/acre 2.0
Build-to / Front Setback	6 ft. – 10ft.	10 ft.	10 ft.
Minimum Side Setback	0 or 6	0 or 6	0 or 6
Min. Rear Setback	6	6	6

- E. Limitations on density and intensity within the NC District. In the Urban Services Reserve Area, residential uses are restricted to 4.4 dwelling units per acre and non-residential development is limited to uses that do not generate an estimated flow of more than 880 gallons of sewage per acre per day.
- F. Use area allocations. All developments in the NC District shall be categorized as one of the three following use areas:
- Free-standing non-residential. Free-standing non-residential areas contain no residential units.

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- 520
- 521 2. Free-standing residential. Free-standing residential areas include the footprint and land areas
- 522 associated with buildings that contain residential units and buildings that contain non-
- 523 residential floor area usage that is less than 50% of the building's ground floor area.
- 524
- 525 3. Pre-existing single-family residences do not constitute free-standing residential development.
- 526
- 527 4. Mixed-Use. Mixed-use areas include the footprint and land areas associated with mixed-use
- 528 buildings with at least 50% of the ground floor areas allocated to non-residential uses.
- 529
- 530 G. Use Area Calculations
- 531
- 532 1. The uses of a building (residential, non-residential, mixed-use) shall be calculated by the floor
- 533 area occupied by a use excluding any structured parking areas.
- 534
- 535 2. Developments that incorporate non-residential and residential uses shall clearly indicate the
- 536 land areas (square footage, percentage of development site, and locations) to be used for non-
- 537 residential, residential, and mixed-use, as well as the uses proposed within each of the
- 538 designated areas.
- 539
- 540 3. In determining land area within any of the three use area allocations common areas, including
- 541 surface water management, parking, landscaping, and circulation shall be distributed among
- 542 the three use area allocations in the same proportion as the non-common areas.
- 543
- 544 H. Development Standards
- 545
- 546 1. Drive-thru facilities are prohibited.
- 547
- 548 2. Loading Docks and Service Areas.
- 549
- 550 I. All loading docks and building service areas containing air handling equipment, generators, meters,
- 551 etc., shall be screened by a masonry wall from a pedestrian-level view from any adjacent residential
- 552 future land use category, public sidewalk, or public street, excluding alleys.
- 553
- 554 J. Such walls shall be designed to appear as an architectural extension of the principal building and
- 555 incorporate architectural trim and features consistent with the adjacent facade.
- 556
- 557 K. Walls required for screening loading docks or building service areas shall not exceed the height
- 558 limitations provided in Article 5 of this code unless approved by the DCD Director.
- 559
- 560 L. On sites greater than one acre the following shall apply:
- 561
- 562 1. The first story of the building frontage shall be at least 75% of the parcel width as measured
- 563 along the front property line. For adjoining parcels that are being developed simultaneously as
- 564 one site with one or more buildings, this percentage applies to the combination of lots and
- 565 building frontages.
- 566

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2. At least 40% of the building frontage shall be built at the minimum front setback line.
3. Off-street parking spaces shall not be within the front yard.
4. Outdoor display of cars, boats, motorcycles, and vehicles is prohibited.
5. Deviations from the requirements of this section may be approved pursuant to Article 3 of this code.

Section 4.5.13. Mixed-Use Bimini (MXB)

- A. Mix of Uses Allowed. Any type of dwelling unit as well as any accessory use is allowed, so long as the location and mix of types is consistent with the Bimini Basin Revitalization and Implementation Plans. A residential use may be intermixed with a nonresidential use or uses in the same block, lot, or building.
- B. Maximum Height and Density.
 1. The maximum shall be 50 dwelling units per acre.
 2. The maximum height shall be 8 stories or 115 feet.
 3. Developments that include at least 20% of the total units as affordable or workforce housing shall permit a maximum density of 75 dwelling units an acre and a maximum height of 12 stories or 150 feet.
- C. Compatibility and design standards. All uses must conform to the guidelines of the Bimini Basin Revitalization and Implementation Plan. Uses must be compatible with existing or planned development on or adjacent to the site.
 1. Orientation, and Design.
 - a. A building facing public streets, excluding alleys, must provide a public entrance.
 - b. The first story of all non-civic buildings within the MXB shall provide shade via awnings, canopies, or similar features for no less than 50% of the building length.
 - c. No less than 25% of building wall frontage, as measured by square footage, on major streets must have transparent doors and glazing or windows.
 - d. Office uses may only be comprise 20% of the ground floor public street facing building façade.
 - e. For properties with frontages on more than one street, ground floor storefront windowss shall be located on a minimum of two public streets.
 - f. No less than 30% of all upper floor street facing building facades shall be fenestrated have windows.

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g. ~~With the exception for bathroom and kitchen mirrors, windows shall be transparent; no mirror-type or, dark-tinted, or colored glass~~ is permitted for windows and doors in the MXB district.

h. Window signs are prohibited.

~~i. Ground floor window sills shall be no more than 24 inches above grade.~~

~~j.i.~~ No wall-in or window-in air conditioning units are permitted.

~~k.i.~~ All HVAC, mechanical and electrical equipment shall not be visible from the street.

2. External access and internal circulation.

a. Drive-thru facilities are prohibited.

b. The internal vehicular circulation system must follow a pattern of intersecting streets that provide alternative routes.

c. Points of external access and alignments of internal roadways must facilitate use of public transit. This includes dedication of rights-of-way sufficient for bus pull-outs and bus shelters, as well as transit easements on private streets.

d. A comprehensive pedestrian and bicycle circulation system must link all uses, with the intent of minimizing walking distances and reducing dependence on the private automobile for internal travel and external access; and include:

i. Pedestrian sidewalks within the rights-of-way of Cape Coral Parkway;

ii. Pedestrian pathways and bikeways within open space areas, in addition to the sidewalks; and

iii. Safe and convenient access to retail and service uses, community and public facilities, and public transit, carpool, or vanpool services.

3. Public facilities and utilities.

a. All utility lines must be placed underground.

b. Street lighting must be provided.

D. Green area and public use space requirements. The minimum amount of green area is 10 percent of the gross area of the site. This green area must include the following:

1. Within the nonresidential area, a plaza for public use;

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2. Within the residential area, a public park or common open space suitable for active or passive recreation within a reasonable walking distance of any area devoted to multi-family or single-family attached dwelling units; and
 3. Street trees are required on public streets. Street trees shall be placed at a maximum of 30' on center.
- E. Outdoor sound amplification. In addition to the requirements found in Section 5.9.3, the following regulations shall apply:
1. Sound amplification devices shall be oriented toward the use hosting the device, and shall not be oriented toward surrounding residential uses.
 2. A proposal to establish an outdoor venue in the MXB district is required to submit a site plan amendment. All proposed outdoor venues associated with a new business shall submit a site plan application to the City which shall be subject to review and approval by the HEX. The site plan amendment shall be reviewed in accordance with the following:
 - a. For waterfront properties, no site plan amendment shall be approved unless the information provided by the applicant indicates that the outdoor sound amplification equipment will be oriented and located in a way that sound will not be projected directly towards the water, unless, the information provided shows that sound barriers or other means of noise attenuation shall be placed so as to substantially reduce the amplified sound that would otherwise impact adjacent properties or adjacent street right-of-way.
 - b. For all other properties, no outdoor amplified sound plans shall be approved unless the information provided by the applicant indicates that the outdoor sound amplification equipment will be oriented toward the interior of the property, unless the information provided shows that sound barriers or other means of noise attenuation shall be placed to substantially reduce the amplified sound that would otherwise impact adjacent properties or adjacent street right-of-way.
 - i. The outdoor amplified sound equipment and any sound barriers or other attenuation devices approved as part of the plan shall comply with any applicable requirements of the Florida Building Code, including any local amendments.
 - ii. No amplified sound equipment shall be operated in a manner which violates Cape Coral Code of Ordinances Chapter 23, Protected species; and
 - iii. Amplified sound equipment shall be placed no higher than six feet above grade.
- F. Specific regulations for multi-family residences; single family attached 3 units or greater; commercial parking lots and parking garages as a standalone use; bars; craft brewery, distilleries, and wineries; mobile food trucks; arenas and amphitheaters; and home occupations are found in Article 5, Chapter 12 and 13.

Section 4.5.14. Mixed-Use Seven Islands District (MX7)

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- A. Intent and purpose. It is the intent of this district to implement City Council adopted plans to create a comprehensively planned, mixed-use development for the Seven Islands area. The specific purposes of the Mixed-Use Seven Islands District are:
1. To provide for an integrated mix of uses that includes:
 - a. A diversity of housing options;
 - b. A diversity of commercial, office, research and development, and institutional uses providing employment as well as goods and services; and
 - c. Adequate open space for active and passive recreation that encourages public interaction.
 2. To provide for access via a circulation system and pattern that encourages travel on foot and by bicycle within the neighborhood and the use of public transit for external travel, augmented by locations for automobile parking that do not inhibit such circulation.
 3. To provide, where appropriate, for integration and compatibility of residential uses with commercial, office, research and development, or institutional uses.
 4. To establish land use and design standards that will ensure compatibility with surrounding uses.
 5. To establish standards and procedures through which the land use objectives and guidelines of an approved and adopted master or area plan serve as the basis for evaluating an individual multi-use neighborhood proposal.
 6. To authorize development that is consistent or may be shown to be consistent with applicable laws, regulations, and restrictions addressing environmental protection.
- B. Where applicable. Land classified MX7 must be in an area for which an approved and adopted Use same language as above master or area plan recommends mixed use development at an appropriate scale.
- C. Location. The location of properties identified as MX7 are limited to those identified in the Seven Islands Master Plan. Properties identified as MX7 are limited to Tracts A-G, and I, and Blocks 6400-6408, Unit 76, Cape Coral Subdivision.
- D. Residential. Any type of dwelling unit as well as any accessory use is allowed, so long as the location and mix of types must be consistent with the Seven Islands Master Plan. A residential use may be intermixed with a nonresidential use or uses in the same block, lot, or building.
- E. Maximum residential dwelling units and non-residential square footage. The maximum number of residential dwelling units is 995 dwelling units, and non-residential square footage is 110,000 square feet, no less than 40,000 of which is a community center. The mix of residential dwelling units and non-residential square footage shall be in accordance with the Seven Islands Master Plan, concept D1.

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- F. Compatibility and design standards. All uses must conform to the guidelines of the Seven Islands Master Plan. Uses must be compatible with existing or planned development on or adjacent to the site.
1. Height and Orientation.
 - a. No building may be constructed to a height greater than 8 stories/115 feet, or as indicated in the Seven Islands Master Plan, Concept D1.
 - b. A building primarily used for retail or office use must be oriented toward the street on which it fronts. Off-street parking shall be kept to a minimum between the building and the front lot line.
 2. External access and internal circulation.
 - a. The internal vehicular circulation system must follow a pattern of intersecting streets that provide alternative routes.
 - b. Points of external access and alignments of internal roadways must facilitate use of public transit. This includes providing sufficient rights-of-way for bus pull-outs and bus shelters, as well as transit easements on private streets.
 - c. A comprehensive pedestrian and bicycle circulation system must link all uses, with the intent of minimizing walking distances and reducing dependence on the private automobile for internal travel and external access; and include:
 - i. Pedestrian sidewalks within the rights-of-way of Old Burnt Store Road and Tropicana Parkway;
 - ii. Pedestrian pathways and bikeways within open space areas, in addition to the sidewalks, when environmental factors do not prohibit the construction of paths and bikeways; and
 - iii. Safe and convenient access to retail and service uses, community and public facilities, and public transit, carpool, or vanpool services.
 3. Public facilities and utilities.
 - a. All utility lines must be placed underground.
 - b. Street lighting must be provided in accordance with the site plan.
- G. Green area and public use space requirements. The minimum amount of green area is 30 percent of the gross area of the site. This green area must include the following:
1. Within the nonresidential area, a plaza for public use;
 2. Within the residential area, a public park or common open space suitable for active or passive recreation within a reasonable walking distance of any area devoted to multi-family or single-family attached dwelling units; and

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3. Integration of active and passive spaces to encourage joint use by employees and residents, subject to the following criteria:
- a. Active open spaces include large, open play fields, local parks, and small recreation areas;
 - b. Passive open space areas and preserve natural features such as trees and wetlands; and
 - c. Active and passive open spaces will not be isolated from the Seven Islands development.
- H. Surface parking. The form, arrangement, and landscaping of off-street surface parking for multi-family dwellings and commercial uses are designed to avoid large expanses of paved area. Parking shall be away from the street frontage and in the interior of the lot, unless the City Council makes a finding that parking between the building and front lot line will serve the purposes of the district more effectively than an interior location.
- I. Drive-thru lanes prohibited. To encourage pedestrian-friendliness, no use may utilize drive-thru lanes in the MX7 district.
- J. Specific regulations for multi-family residences; single family attached 3 units or greater; commercial parking lots and parking garages as a standalone use; movie theaters; craft brewery, distilleries, and wineries; mobile food trucks; and home occupations are found in Article 5, Chapter 12 and 13.

Section 4.5.15. South Cape District

The South Cape District special regulations are intended to act as a stimulus to development through provisions that permit a flexible approach to infill development within the City's Community Redevelopment Area. Developments providing affordable housing are incentivized by providing greater residential density, and building height than that permitted by right.

Specific conditions for multi-family residential and vehicle fueling stations are in Article 5, Chapter 12.

A. Maximum Density and Height

Table 4.5.15. Maximum Density and Height

	Maximum Height (stories/feet, whichever is less)	Maximum Density (du/acre)
Baseline	6/95	50
Minimum 20% of Units Affordable	10/120	70

1. All buildings or portions of buildings within 200 feet of the R1 zoning district shall be limited to six stories or 95 feet, whichever is less.
2. Maximum building height shall not apply to the following building components: elevator and stair bulkheads; solar energy systems; shade devices associated with parking structures or recreational

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amenities; skylights or similar components associated with daylighting; and mechanical equipment, provided that such equipment is architecturally screened on all sides.

- B. Standards for site design. Sites shall be designed to incorporate safe and convenient vehicular use areas and pedestrian ways, with landscape, lighting, and signage treatments intended to result in a comprehensive design.

1. Streets. Streets in the South Cape zoning district are classified as follows:

- a. Primary streets

- i. Cape Coral Parkway
- ii. Coronado Parkway
- iii. SE 47th Terrace

- b. Secondary streets. All streets other than those included as a primary street within the boundaries of the SC district.

- i. Del Prado Boulevard
- ii. Miramar Street
- iii. Lafayette Street
- iv. SE 46th Lane, Street
- v. SE 10th Lane
- vi. Leonard Street

- c. Local streets. All streets other than those included as a primary or secondary.

2. Building setbacks.

- a. Front. The following front setbacks are established based upon the established street types:

- i. Primary; minimum, 8 feet; maximum 12 feet
- ii. Secondary: minimum 8 feet; maximum None

- b. Side.

- i. If adjacent to an alley, a 5-foot setback is required; otherwise, 0.
- ii. If adjacent to single family property, a minimum ten-foot setback, is required inclusive of a five-foot landscaped strip.
- iii. If adjacent to existing ROW, see subsection (a) above.
- iv. If adjacent to a navigable waterway, fifteen feet.
- v. If adjacent to a public utility easement, a minimum 6-foot setback is required.

- c. Rear.

- i. If adjacent to an alley, a 5-foot setback is required.
- ii. If adjacent to single family property, a minimum ten-foot setback, is required inclusive of a five-foot landscaped strip; otherwise 0.
- iii. If adjacent to existing ROW, see subsection (a) above.
- iv. If adjacent to a navigable waterway, fifteen feet

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- d. Variations in required in setbacks may be approved by the DCD Director to accommodate pedestrian amenities, such as public plazas, pedestrian entries, outdoor dining areas and similar public use areas, or landscaping.

3. Street Frontage Standards:

- a. Parking structures or buildings elevated over surface parking lots shall have an occupied ground floor space for a minimum depth of 20 feet from the frontage lines.
- b. Properties with a frontage along a primary street, residential 1st floors are permitted beyond a depth of 50 feet from the building setback. Buildings shall have a principal pedestrian entrance on a primary frontage line.
- c. Properties with a frontage along a primary that abut an alley, vehicular egress shall be provided from the alley rather than a frontage line.
- d. No loading docks and service areas shall be on primary street frontage lines.
- e. Outdoor storage areas are not permitted on primary street frontages.

C. Parking Requirements. Parking requirements for the South Cape district can be found in Article 6.

D. Affordable Housing Density Incentive. Density incentives are opportunities offered to property owners and applicants to meet specific development goals while providing benefits to the community at large. Developers who dedicate a minimum of 20% of the total units as affordable will be eligible for increased density in accordance with Table 4.7.4.a Maximum Density and Height.

1. Location of Units. Affordable units must be provided on-site.
2. Maximum Number of Units. Developers shall not dedicate more than 50% of the total units as affordable.
3. Criteria for affordable housing. The affordable housing development incentive shall be available to a development only when an affordable housing incentive development agreement has been entered into by the applicant and the City of Cape Coral and such agreement has been approved by the City Attorney and the City of Cape Coral prior to execution. Amendments to such agreement shall be executed in the same manner as the original agreement. The affordable housing incentive development agreement shall include, at a minimum, the following provisions:
- a. Legal description of the land subject to the agreement and the names of its legal and equitable owners;
- b. Total number of residential dwelling units in the development;

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- c. Minimum number of affordable housing units, categorized by level of household income, type of unit (condominium or rental), and number of bedrooms, required in the development;
- d. Total number of affordable housing dwelling units permitted in the development;
- e. Gross residential density of the development;
- f. Amount of monthly rent for rental units, or the price and conditions under which a condominium unit will be sold, for each affordable housing unit;
- g. The price of affordable housing units offered for rent or sale shall be based on the number of bedrooms in the unit and shall not exceed low income limits established annually by the United States Department of Housing and Urban Development for the Metropolitan Statistical Area which includes the Cape Coral downtown CRA;
- h. No affordable housing unit in the development shall be rented or sold to a tenant whose household income has not been verified as an income qualified family. Such verification shall be the responsibility of the owner and shall be submitted to the City for approval.
- i. No affordable housing unit that is to be sold, leased with option to purchase, or otherwise conveyed by the development shall be sold, leased with option to purchase, or otherwise conveyed to a buyer whose household income has not been verified and certified in accordance with this subsection as low-income family. Such verification and certification shall be the responsibility of the applicant and shall be submitted to the City for approval. It is the intent of this subsection to keep housing affordable; therefore, any person who buys an affordable housing unit must agree, in a lien instrument to be recorded with the Clerk of the Circuit Court of Lee County, Florida, that if he or she sells the property (including the land, the unit, or any combination thereof) within 15 years after his or her original purchase at a sales price in excess of 5% per year of his original purchase price that he or she will pay to the City of Cape Coral an amount equal to the sales price in excess of 5% increase per year. The lien instrument may be subordinated to a qualifying first mortgage at the option of the city. For example, a person originally buys a designated affordable housing unit for \$100,000 and sells it after five years for \$150,000. A 5% increase per year for five years will give a value of \$127,628. Deducting this amount from the sales price of \$150,000 gives a difference of \$22,372. The seller would then owe the City of Cape Coral \$22,372. Payment of this amount would release the first owner from the recorded lien against the property. Such payment shall be maintained in a segregated fund, established by the city solely for affordable housing purposes, and such money shall be used solely to encourage, provide for, or promote affordable housing in the City of Cape Coral;
- j. No affordable housing unit for which credit is awarded shall be occupied by the applicant, any person related to or affiliated with the applicant, or a resident manager;
- k. The applicant shall advertise, rent, sell, and maintain the affordable housing unit in a nondiscriminatory manner and make available all relevant information to any person who is interested in renting or purchasing such affordable housing unit. The applicant shall agree

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to be responsible for payment of any real estate commissions and fees. The affordable housing units in the development shall be identified on all building plans submitted to the city and described in the application for affordable housing development incentive;

l. Except as required in this subsection, the applicant shall not disclose to persons, other than the potential tenant, buyer or lender of the particular affordable housing unit or units, which units in the development are designated as affordable housing units;

m. The square footage, construction and design of the affordable housing units shall be the same as market rate dwelling units in the development;

n. The affordable housing units shall be integrated with, and not segregated from, the market rate dwelling units in the development. The conditions contained in the affordable housing incentive development agreement shall constitute covenants, restrictions, and conditions which shall run with the land and shall be binding upon the property and every person having any interest therein at anytime and from time to time. The affordable housing incentive development agreement shall be recorded in the official records of Lee County, Florida, subsequent to the recording of the deed pursuant to which the applicant acquired fee simple title to the property;

o. In the case where a development will occur in more than one phase, the percentage of affordable housing units to which the applicant has committed for the total development shall be maintained in each phase and shall be constructed as part of each phase of the development on the property. For example, if the total development's affordable housing development incentive is based on the provision of 10% of the total dwelling units as affordable housing rental units for low income households with two bedrooms per unit, then each phase shall maintain that same percentage (10% in this case) cumulatively.

p. Each affordable housing unit shall be restricted to remain and be maintained as an affordable housing unit designated in accordance with the affordable housing incentive development agreement for at least 15 years from the issuance of a certificate of occupancy for such unit; and

q. The applicant and owner of the development shall provide on-site management to assure appropriate security, maintenance and appearance of the development and the dwelling units where these issues are a factor.

3. Certificate of Occupancy. A certificate of occupancy shall not be issued to any affordable unit until all affordable housing requirements applicable to that unit are satisfied. If, after the issuance of the first certificate of occupancy, the city determines any requirement in this subsection has not been met, then the city may revoke the certificate of occupancy and would subject the applicant or owner to any penalty imposed by law.

E. Specific regulations for multi-family residences; commercial parking lots and parking garages as a standalone use; vehicle fueling stations; craft brewery, distilleries, and wineries; mobile food trucks; wireless antennas; and home occupations are found in Article 5, Chapter 12 and 13.

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- Section. 5.11.11. Self-Storage Facility.
- Section. 5.11.12. Vehicle fueling stations.

CHAPTER 1. GENERAL REQUIREMENTS FOR ALL DEVELOPMENT

Section 5.1.1. Purpose and Intent

The purpose of this article is to provide standards for all development in the City of Cape Coral.

Section 5.1.2. Connection to utilities.

All development is required to connect to public or private utilities, as required as by the City of Cape Coral Code of Ordinances, Chapter 19 Water and Sewer Utilities.

Section. 5.1.3. Requirements for underground utilities.

- A. In new residential subdivisions, all utility lines (including electrical power distribution, telephone, communication, street lighting, and cable television signal service) shall be installed underground. This Section shall apply to all cable, conduits, or wires forming part of an electrical distribution system, including service lines to individual properties.

However, this Section shall not apply to wires, conductors, or associated apparatus and supporting structures whose exclusive function is in transmission of electrical energy between generating stations, substations, transmission lines of other utility systems, and main distribution feeder electric lines delivering power to local distribution systems. Appurtenances such as transformer boxes, pedestal-mounted terminal boxes, and meter cabinets may be placed above ground and in such a manner as to minimize noise effects upon the surrounding residential properties.

- B. The developer shall provide for the necessary costs and other arrangements for such underground utility installation.

- C. For all new buildings in the Commercial Corridor, South Cape, and PUD zoning districts all onsite utilities including telephone, electricity, cable television, and other wires of all kinds shall be placed underground. However, appurtenances to these systems that require aboveground installation, including utility panel boxes, are exempt from this requirement if the appurtenances are not placed in front yards. When such appurtenances are placed in utility easements abutting a platted alley,

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they shall be placed at least ten and one-half feet from the centerline of the platted alley. These underground requirements also apply to those improvements to non-conforming structures that exceed the 50% thresholds as described in Article 8, Nonconformities. All utility infrastructure, including electric utility poles and power lines, shall be concealed from public view wherever possible. All new electric distribution lines shall be located in utility easements abutting platted alleys and the utility poles shall be positioned so that a minimum clearance of ten and one-half feet from the centerline of any platted alley is maintained. For properties that do not have a rear platted alley, the electric distribution lines and utility poles shall be placed in the rear utility easement wherever possible.

D. In the South Cape zoning district where overhead or underground utility lines have been placed in the six-foot PUE, a property owner shall choose one of the following options:

1. Relocate the utility lines to the alley or other acceptable location, at the property owner's sole expense, and subject to approval by the affected utility provider(s) and the City of Cape Coral; or
2. Place a concrete sidewalk or architectural elements on the front six-foot property setback. If overhead electric lines are in place, no awnings, canopies, balconies, colonnades, arcades, or front porches may be constructed forward of this line even if otherwise required by this code. If underground lines of any type are in place, the property owner is solely responsible for repairing any damage to lawful encroachments into the six-foot easement resulting from maintenance or improvements to utility lines.

Section 5.1.4. Access required.

Except as otherwise provided, all building sites shall have access on a street or a road shown on an approved and recorded final plat. One or more buildings may have no direct access to a street provided that the approving authority finds that such building site(s) have adequate indirect access to a street such as a recorded easement or right-of-way through or over another parcel. The city may prohibit direct access from a parcel or building site to a street when the approving authority finds that prohibition of direct access would promote the public health, safety, and welfare based on factors including traffic or transportation safety and when the parcel or building site could be afforded indirect access to a street or other road via another parcel or building site.

Section 5.1.5. Protection of underground pipelines and utilities.

A. Intent. It is the intent of the City Council to protect underground pipelines and utilities from destruction or damage to prevent:

1. Death or injury to persons;
2. Property damage to private and public property; and
3. Loss of essential pipeline or utility services to the general public.

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- 231 B. Notice requirements for excavation. No excavator shall make or begin any excavation on public
232 property or dedicated easements without first obtaining information concerning the possible
233 location of utility lines in the area of the proposed excavation. The excavator may obtain such
234 information by contacting each entity who may have utility facilities in the area of the proposed
235 excavation. Such contact may be made by telephone, written correspondence, e-mail, messenger,
236 or in person.
237
- 238 C. Notice requirements when marking of lines is necessary. If marking of utility lines is necessary, the
239 excavator shall notify that entity so that the entity receives notification at least 48 hours (excluding
240 Saturdays, Sundays and legal holidays) prior to the commencement of the excavation. When
241 marking is necessary the utility line concerned shall be marked by the entity. Marking of a utility
242 line is necessary when:
243
- 244 1. A proposed excavation, except blasting, is planned with five feet of a utility line located on
245 public property or a dedicated easement.
246
- 247 2. A proposed excavation, by blasting, is planned in such proximity to a utility line that the utility
248 line will be destroyed, damaged, or disturbed.
249
- 250 D. Penalties for violation. Any person violating this section shall be punished as provided in the Code
251 of Ordinances of the City of Cape Coral.
252

253 **Section 5.1.6. Protection of easements.**
254

- 255 A. In the R-1, RML, RE, and A zoning districts, the six-foot easement around the perimeter of sites shall
256 be preserved and nothing shall be placed or constructed on such easements other than a paved
257 driveway, walkway, sidewalk, fences or well. In addition, for non-residential uses lawfully located
258 in residential zoning districts, paved off-street parking areas may be placed or constructed on the
259 six-foot easement around the perimeter of the site.
260
- 261 B. In the RMM zoning district, where lot depth is greater than 131 feet, the six-foot easement around
262 the perimeter of the sites shall be preserved and nothing shall be placed or constructed on such
263 easement other than a paved driveway, walkway, sidewalk, paved off-street parking areas, or a well
264 when site conditions make it impractical to locate elsewhere. On sites with a depth of less than 131
265 feet, paving of the front easement for parking purposes shall be permitted.
266
- 267 C. Lawn sprinkler systems and landscaping may be placed in the 6' PUE easements as permitted by the
268 Code of Ordinances or the Land Development Code.
269
- 270 D. In the C, CC, I, INST, MX, MXB, MX7, NC, P, and SC zoning districts, paved off-street parking areas,
271 paved driveways, sidewalks, wells, walkways at ground level, lawn sprinkler systems, or landscaping
272 may be placed in an easement provided that all other requirements of the Code of Ordinances or
273 the Land Development Code are met.
274
- 275 E. Nothing in this section shall prohibit the construction of seawalls, davits, docks, or other structures
276 as permitted by the Cape Coral Code of Ordinances.

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F. If a utility removes, damages, or disturbs the construction or other material within an easement as allowed by this section, the property owner shall be responsible for the cost of its removal, relocation, repair, or replacement. If any plant material in an easement required by Chapter 5 of this Article of the Land Development Code is removed or damaged, the property owner shall replace all such material within 30 days of the completion of the utility work. In addition, prior to issuing a permit to locate, place, construct, or install any structure, construction, driveway, or other material in an easement, the city may require the property owner to agree to indemnify and to hold the city harmless from any or all costs or expenses incurred as a result of such location, placement, construction, or installation in the easement.

G. The city may deny applications to place wells, fences, walls, or other materials in an easement if such would conflict with existing or proposed utilities or drainage functions.

Section. 5.1.7. Required visibility triangles.

As an aid to allow for safe operation of vehicles, pedestrians, and cyclists in the proximity of intersecting streets, driveways, alleys, and bicycle paths, there shall be limitations on the height of fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and other fixtures as visually depicted in the Cape Coral Engineering and Design Standards and as follows:

A. All landscaping and signs within the visibility triangle shall provide unobstructed visibility between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard.

B. The property owner shall be responsible for maintaining all landscaping within the visibility triangle.

C. Landscaping, except required turf and ground cover, shall not be closer than five feet from the edge of any roadway and three feet from the edge of any alley or pavement.

D. It shall be unlawful for any person to plant or cause to be planted any tree or shrub or to place any structure in the public right-of-way without the necessary permit.

E. The elevation grades of the public right-of-way adjacent to private property shall not be altered.

F. The Community Development Director shall make the final determination regarding visibility triangles.

Section 5.1.8. Sidewalks and alleys.

A. Non-Residential Zoning Districts. As part of construction of each building erected in non-residential zoning districts (C, CC, I, INST, MX, MXB, MX7, NC, P, and SC) sidewalks shall be installed prior to the issuance of a certificate of occupancy pursuant to the standards and specifications set forth in the City of Cape Coral Engineering Design Standards.

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- 323 B. All sidewalk, curbs, and gutters shall be constructed to the widths shown in the City of Cape Coral
324 Engineering Design Standards, except where a sidewalk has been installed and the established
325 width is less than five feet, the minimum width of the sidewalk to be installed shall be the width of
326 the existing sidewalk.
327
- 328 C. All improvements in the public right of way such as curbing, street paving, and gutters shall be
329 constructed according to the City of Cape Coral Engineering and Design Standards.
330
- 331 D. Lot owners who erect buildings or change the use on only a portion of a lot must provide the curbs,
332 sidewalks, and gutters for the entirety of the property, as required by this subsection, which shall
333 be at the expense of the lot owner.
334
- 335 E. As part of the construction of each building erected in the C, CC, I, INST, MX, MXB, MX7, NC, P, and
336 SC zoning districts adjacent to a platted alley the alley shall be improved prior to the issuance of a
337 certificate of occupancy. Such alley portion shall be constructed in accordance with the Engineering
338 Design Standards along the length of the property line of the site lying adjacent to the platted alley.
339 In addition to new construction in the C, CC, I, INST, MX, MXB, MX7, NC, P, and SC zoning districts,
340 alterations to existing sites lying adjacent to a platted alley shall be required to make the alley
341 improvements required by this section if the value of such alterations exceeds 50% of the
342 replacement value of the site improvements. These improvements include parking areas, internal
343 curbing, and retention areas but exclude internal, previously existing modifications to the building.
344
- 345 F. Payment in Lieu of Construction. At the discretion of the City, the City may accept payment in lieu of
346 construction for all or part of the off-site improvements required by the City. For projects where
347 payment in lieu of construction will be employed, the developer shall submit to the City 110% of the
348 estimated cost of the improvements as prepared by a professional engineer licensed in the state of
349 Florida, which shall be reviewed and approved by the City. The developer shall provide the City with
350 payment for all construction costs prior to the issuance of a development permit for the site.
351
- 352 G. Residential. As part of the construction of each building erected in the R1, RML, RMM, RE, and A
353 zoning districts, sidewalks shall be required adjacent to streets designated for sidewalks by the
354 Comprehensive Plan Traffic Circulation Element and Bicycle Pedestrian Plan. This does not apply to
355 existing structures that are being remodeled or repaired.
356

357 **Section 5.1.9. Work in the Public Right-of-Way and Public Utility Easements**
358

- 359 A. General. Except as provided below, no construction, change, modification, or alteration of any
360 type or nature whatsoever, including, but not limited to, the addition or removal of fill,
361 vegetation, or other materials, and/or the placement, installation or erection of any object or
362 vegetation, shall be allowed within a city-owned right-of-way or swale, except as provided in
363 Chapter 1 of this Article.
364
- 365 B. No permit required. The following work and/or activities shall be allowed in the public right-of-
366 way or roadway easement areas without the necessity of a city permit:
367

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- 368 1. Trimming, cutting, and/or maintenance of trees, shrubs, and other vegetation existing as of
369 the effective date of this ordinance in the public rights-of-way or swales;
370
- 371 2. Markers, commonly known as buttons, turtles, or half-moons, may be placed 18 inches from
372 the edge of the pavement in residential zoning districts provided that such markers shall not
373 exceed a height of four inches. However, no markers shall be placed within any public right-
374 of-way which is adjacent to a roadway with four or more lanes;
375
- 376 3. Mailboxes may be placed in the public rights-of-way or swales so long as they are in
377 accordance with the City of Cape Coral Engineering Design Standards. The mailbox may be
378 immediately surrounded by a small bed consisting of landscape edging materials or concrete
379 curbing, bedding plants and/or groundcover, and mulch or decorative rock provided that
380 such decorative rock shall not exceed four inches when measured in any direction, pursuant
381 to Chapter 5 of this Article. In no event shall the diameter of the plant bed exceed two feet
382 when measured from the outer-most edges of any landscape edging material or concrete
383 curbing utilized;
384
- 385 C. Permit required. The following work and/or activities shall be allowed in the public right-of-way
386 or roadway easement areas provided that the property owner first obtains a permit from the
387 city:
388
- 389 1. Culvert installation and appurtenant work;
390
- 391 2. Sod installation and appurtenant work;
392
- 393 3. Driveway installation and appurtenant work;
394
- 395 4. Curb, gutter, sidewalk, sod, and paving without alley improvements;
396
- 397 5. Curb, gutter, sidewalk, sod, and paving, with alley improvements;
398
- 399 6. Installation of sprinkler systems. However, if the sprinkler system is disturbed, damaged, or
400 destroyed by the City performing work in the public right-of-way, the owner shall be solely
401 responsible for any cost resulting from such disturbance, damage to, or destruction of the
402 sprinkler system in the right-of-way; and
403
- 404 7. Median landscaping as permitted in Chapter 5 of this Article.
405
- 406 D. Under no circumstances shall any of the activities permitted above result in any change,
407 modification, or alteration of any type whatsoever, to the established grade, slope, or contour of
408 the public swale or right-of-way not specifically addressed by the *City of Cape Coral Engineering*
409 *Design Standards* .
410
- 411 E. None of the prohibitions contained in this ordinance shall apply to any construction, change,
412 modification, or alteration within a public right-of-way or swale which is performed by or
413 required by a governmental entity or public utility.

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- F. Public Utilities. No public utility including electric, phone, cable tv, internet, cellular, or gas company will be allowed to install or maintain facilities, begin construction, change, modify, or alter in any way whatsoever the public right-of-way, swale, or adjacent public utility easements, including the addition or removal of fill, vegetation, or other materials, without a permit.

Section 5.1.10. Maintenance of city rights-of-way.

All property owners shall be responsible to either maintain or construct the city-owned right-of-way lying between their property boundaries and the city pavement, to include the following standards.

- A. Prior to preparation of a building lot for construction, the building permit holder shall obtain the correct swale flow line elevations from the Engineering Department and proceed immediately to create the required swale needed to allow continuous uninterrupted flow of stormwater throughout the construction process.
- B. During construction or reconstruction straw bales or other approved erosion control devices shall be placed in the swale adjacent to both property lines to impede all foreign matter from entering the stormwater system. The erosion control devices shall remain in place until placement of final sod in the right-of-way.
- C. No excavated material or construction material shall restrict stormwater flow within the swale area.
- D. Upon issuance of the certificate of occupancy, the owner shall maintain the swale indefinitely to the same standard that is applied to privately-owned property.
- E. All pavement cuts must be repaired to meet or exceed engineering design standards.

Section 5.1.11. Building numbers and addresses.

All buildings in the City of Cape Coral shall display a proper building number at least four feet from the ground level. All building numbers shall be visible from the public right-of-way which the front of the building faces. Building numbers of sufficient size which are affixed to both sides of mail boxes on such right-of-way or building numbers which are affixed to lawful signs not attached to the building may be substituted for number affixed to buildings.

Section 5.1.12. General regulations for lots, yards, and setbacks.

- A. Double frontage other than corner lots. Double frontage other than corner lots shall meet front setback regulations on all adjacent streets.
- B. Corner lots. In the SC and MXB zoning district(s), corner lots shall be deemed to have front lot lines abutting all street right-of-way lines. For corner lots in all other zoning districts, the following shall apply:

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1. The front of any building site shall be determined by the lesser dimension of a single lot (not building site). This frontage shall have the established setback for the particular zoning district, but in no instance be less than 25 feet.
2. The remaining street frontage shall have a setback of no less than ten feet in all zoning districts. The remaining street frontage shall be maintained as a front yard and the regulations for fences, shrubbery, and walls of this ordinance shall apply.
3. On sites bounded by three streets, one lot line shall be designated by the Director as the rear and maintained as the rear setback of that zoning district. For purposes of this section, all but the rear yard shall be maintained as a front yard and the regulations for fences, shrubbery, and walls of this ordinance shall apply.
4. The front of a single-family residential building shall not be offset from the front property line by an angle greater than 45 degrees.

- C. No parcel shall be reduced below the minimum dimensional requirements in the zoning district. This provision shall not apply when a portion of a parcel is acquired for a public purpose.

Section 5.1.13. Single-family residential standards

In addition to all other provisions of this Code, single-family residential uses shall be subject to the following requirements.

- A. In the R1 and RE zoning districts only one single family residence shall be permitted per parcel.
- B. Ornamental walls. Ornamental walls attached to the principal building shall have the following requirements
 1. Ornamental walls shall not be higher than four feet at any point where they extend beyond the roof overhang and into the side setback.
 2. Ornamental walls may extend into the side setback but shall not extend into the six-foot perimeter easements.
 3. An ornamental wall not to exceed 30 inches in height may be installed in the front yard.
 4. Ornamental walls may be in the form of a planter.
 4. A planter may be incorporated into the construction of a wingwall.

- C. Water discharge. All gutter downspouts or similar water discharge devices shall direct the discharge to the front or rear property lines.

Section 5.1.14. Multi-family residential.

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In addition to other provisions of this ordinance, single-family attached structures, duplexes, and multi-family residential uses shall be subject to the following requirements.

A. Distance between buildings.

1. Clustered buildings. Buildings may be constructed on proper building sites in cluster style providing a minimum of 20 feet is maintained between the buildings up to a height of 38 feet.

a. One foot shall be added to the 20-foot distance for every foot of height increase over 38 feet.

b. Carports will not be considered in determining the 20-foot distance between buildings.

B. Water discharge.

1. Water discharge. All gutter downspouts or similar water discharge devices shall direct the discharge to the front or rear property lines.

2. This provision shall be applicable only to duplexes in multi-family residential uses.

Section 5.1.15. Dumpster Enclosures.

Except where noted below, all sites with uses other than single-family residences and duplexes, shall provide commercial trash receptacles in accordance with the regulations in this section.

A. Screening.

1. Except for the SC and MXB Districts, when commercial trash receptacles are in a rear yard that abuts an alley, all commercial trash receptacles shall be enclosed from view on at least three sides by an opaque visual barrier.

2. When a commercial trash receptacle is visible from an adjacent property or an adjacent street, at ground level, then the commercial trash receptacle shall be enclosed on the fourth side by an opaque gate that shall be the same height as the opaque visual barrier on the other three sides.

3. The principal structure may be used as the opaque visual barrier on one or more sides provided the commercial trash receptacle is completely concealed from view.

B. Materials.

1. The following materials, either singly or in any combination, are the only materials that may be used for the opaque visual barrier and gate:

a. Wood fencing;

b. Plastic or vinyl fencing;

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- 551
552 c. Concrete block and stucco wall;
553
554 d. Brick wall; or
555
556 e. Formed, decorative, or precast concrete.
557
558 2. Chain link fencing, whether singly, or combination with other materials, including plastic slats,
559 shall be prohibited.
560
561 3. Gates shall be constructed of a durable, opaque material, consistent or complimentary in color
562 with the enclosure and of a height to screen the container.
563
564 C. Location.
565
566 1. Commercial trash receptacles shall not be located on unimproved sites.
567
568 2. Commercial trash receptacles and accompanying visual barriers, are subject to the following
569 minimum setbacks:
570
571 a. Six feet from the front property lines in the SC and MXB Districts.
572
573 b. Three feet from alley rights-of-way.
574
575 3. When located in a public utility or drainage easement, the property owner shall be solely
576 responsible for removal of the commercial trash receptacle as well as for any cost resulting from
577 disturbance, damage, destruction, or restoration of the receptacle resulting from work associated
578 with utilities in such easement. Prior to issuing a permit, the City may require the property owner
579 to agree, in writing, to indemnify and to hold the city harmless from any costs or expenses
580 resulting from placing a commercial trash receptacle in an easement.
581
582 4. A commercial trash receptacle may be placed on an adjoining property provided that the premises
583 are adjacent to or directly behind the development and written consent of the adjoining property
584 owner is submitted to and approved by the Director. The adjoining property owner may revoke
585 this consent upon written notice to the development and the Director. The development shall
586 have 30 days from revocation to relocate the commercial trash receptacle and to comply with all
587 requirements of this section.
588
589 5. Developments within 25 feet of a City-owned parking lot may, upon approval by the Director,
590 locate enclosures on the City-owned parking lot. Approval may be revoked at any time, upon
591 reasonable notification, by the City.
592
593 D. Dimensions. The dumpster enclosure shall have a minimum interior dimension of ten feet by ten feet
594 and a height at least six inches higher than the enclosed commercial trash receptacle. Neither the
595 dumpster enclosure or the gate providing access to the commercial trash receptacle shall be
596 considered a fence or a wall pursuant to the City Code of Ordinances or Land Development Code.

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- 597
598 E. All dumpster enclosures shall be located so that a sanitation vehicle has physical access to the
599 commercial trash receptacle that is adequate for safely servicing the facility.
600
601 F. Each commercial trash receptacle shall be located on a concrete pad.
602
603 G. All solid waste or other refuse, including recycling materials stored in commercial trash receptacles,
604 shall be concealed by a lid attached that shall remain in the closed position unless materials are being
605 placed into the receptacle or the receptacle is being serviced. No material shall be permitted to
606 overflow the receptacle.
607
608 H. In the event a commercial trash receptacle is in a dumpster enclosure that includes a gate, regardless
609 of whether such a gate would have been required pursuant to this section, the gate shall be of a type
610 that opens sufficiently to allow unimpeded access to the trash receptacle by the sanitation vehicle
611 and shall have drop pins, hooks, or other devices installed to hold the gate open while the receptacle
612 is being serviced. All gates shall remain closed unless the receptacle is being serviced.
613
614 I. Deviations. In the event an owner is unable to comply with the requirements of this section, the owner
615 may request an administrative deviation from the Director. In determining whether to approve an
616 administrative deviation, the Director shall consider factors such as dimensions of the property, site
617 constraints such as existing development, or other location factors that may make compliance with
618 this section impossible or impractical. The determination to approve an administrative deviation shall
619 be at the sole discretion of the Director.
620
621 J. Maintenance. Commercial trash containers shall be maintained in a manner which is not a nuisance
622 to surrounding uses.
623
624 1. The receptacle shall be stored in the enclosure and the gate(s) to the enclosure shall remain closed
625 at all times unless it is being accessed at that time.
626
627 2. Refuse may not be left outside of the enclosure or on the ground within the enclosure.
628

629 **Section 5.1.16. Outdoor seating.**
630

631 Outdoor seating may be permitted as an accessory use to a restaurant, hotel, bar, or fraternal organization
632 provided the following conditions are met:
633

- 634 A. All outdoor seating:
635
636 1. Music may be permitted to be performed or amplified in outdoor seating areas, in accordance
637 with Section 12-22 of the City's Code of Ordinances, or in accordance with a permit per Chapter
638 9 of this Article.
639
640 2. Parking shall be provided at a rate of 1 parking space per 200 square feet of outdoor seating area.
641
642 B. Outdoor seating in public areas.

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1. The number of outdoor seats and tables shall be limited to that number that can be reasonably accommodated according to the available widths of the associated storefront and sidewalk or patio area. Adjacent sidewalk bulb-out areas, even if not directly in front of the associated storefront, may be considered on an individual basis, when the affected storefront owner does not object.
2. Clear pedestrian access shall be maintained at all times, and no seating or tables shall interfere with ingress and egress to buildings or create an unsafe situation with street traffic.
3. The sidewalk café owner or operator shall remove any seating or tables when the business is closed, or when an authorized agent of the city makes such a request.
4. Public sidewalks adjacent to any approved sidewalk café shall be properly maintained for safety and cleanliness by the sidewalk café owner or operator on a daily basis. Litter, dirt, grime, grease, and food shall not be permitted to accumulate at any time.
5. An indemnity agreement, provided by the director of Community Development shall be signed and provided by the sidewalk café owner or operator, along with proof of public liability insurance as approved by the city attorney.

CHAPTER 2 ACCESSORY STRUCTURES

Section. 5.2.1. General Requirements.

- A. This chapter shall pertain to residential properties unless otherwise specifically stated herein. Accessory structures on non-residential properties shall be reviewed per the standards of that zoning district. Agriculturally zoned properties shall not be considered residential for purposes of this section.
- B. Accessory buildings shall be constructed to conform to the minimum building requirements and shall meet all other regulations applicable to the district.
- C. Residential accessory buildings shall be in the rear yard, other than those listed in Section 5.2.1, and shall comply with all of the requirements found in this Section.
- D. Accessory structures, such as pergolas, arbors, trellises, and flag poles may be in the rear, side, or front yard of the primary structure. Fences and sheds may be permitted in the rear or side yard of the primary structure.
- E. No accessory structure, including fences, shall be constructed on any residential parcel not containing a primary structure.
- F. Accessory buildings shall be elevated above the base flood elevation (BFE) or provide hydrostatic vents consistent with FEMA regulations.

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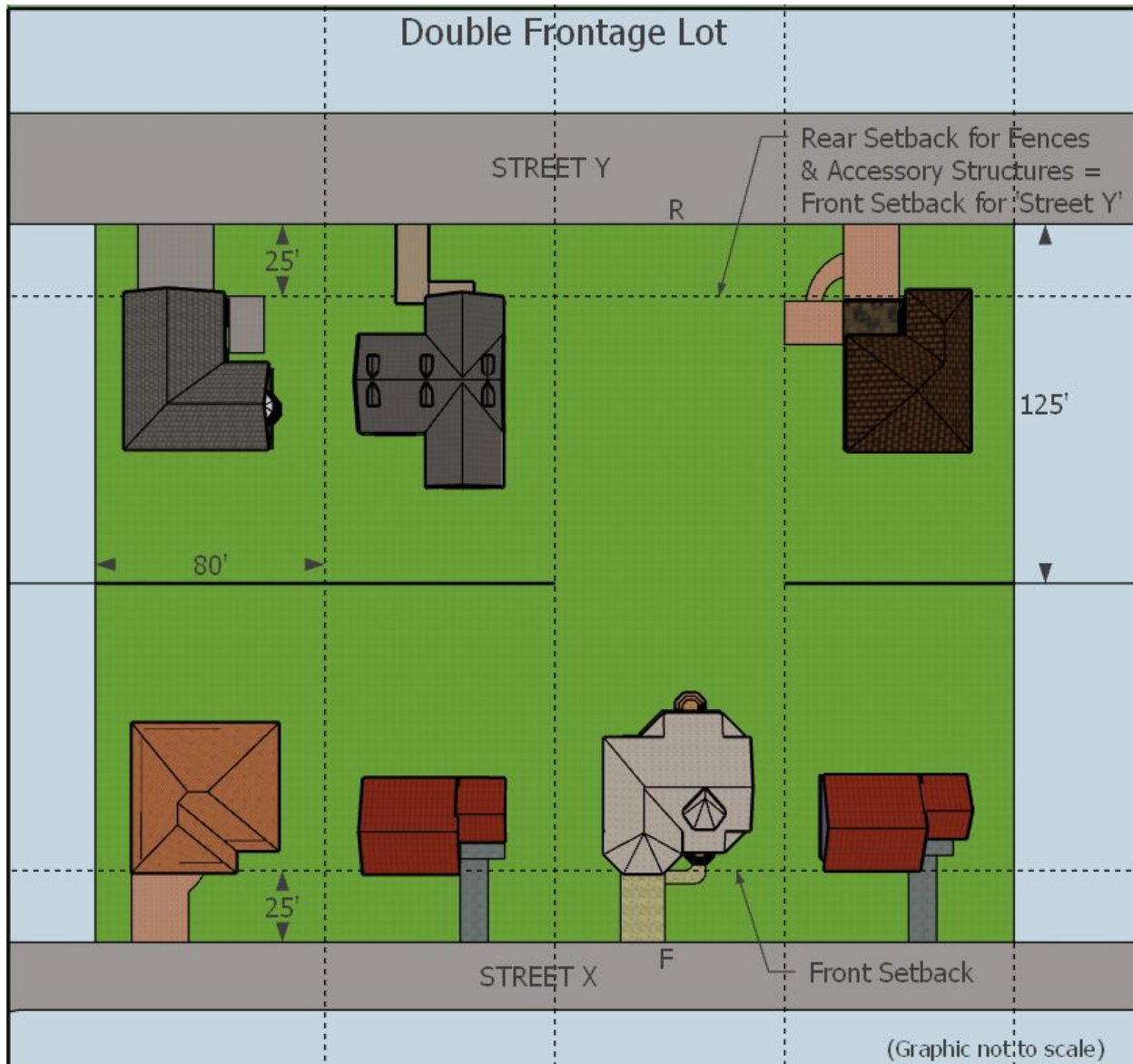
- G. All nonconforming accessory structures shall be subject to the requirements of Article 8 Nonconformities.
- H. Any accessory structure not listed in this chapter may be reviewed and considered for approval through a similar use determination process.
- I. In non-residential districts, all accessory structures shall be reviewed and held to the same standard as a non-residential structure.
- J. Setbacks shall be measured from the property line and must be considered in addition to all other locational requirements.

Table 5.2.1.A. Setback Requirements for Accessory Structures.

Residential Accessory	Setback – measured from property line			Maximum Building Height	Separation Distance
	Front Yard	Side Yard	Rear Yard		
Arbors, trellises, pergolas	Sec 5.17	7.5 ft.	10 ft.	14 ft.	N/A
Courts and Playing Surfaces	X	7.5 ft.	10 ft.	N/A	N/A
Decks, unenclosed	X	7.5 ft.	10 ft.	30 inches	N/A
Detached Garage	X	SAP	10 ft.	14 ft.	5 ft.
Fences and Walls	Per Sec 5.1.12				N/A
Flagpoles	15 ft.	7.5 ft.	10 ft.	35 ft.	N/A
Fountains and Sculptures	15 ft.	10 ft.	10 ft.	Per sec 5.1.15	N/A
Gazebo	X	7.5 ft.	10 ft.	10 ft.	5 ft.
Greenhouse	X	SAP	SAP	15 ft.	5 ft.
Detached guesthouse/ADU's	X	SAP	SAP	14 ft.	5 ft.
Swing sets and similar play structures	X	7.5 ft.	6 ft.	8 ft.	N/A
Solar Photovoltaic (PV) Arrays, at grade	X	7.5 ft.	10 ft.	9 ft.	N/A
Sheds	X	7.5 ft.	10 ft.	14 ft.	5 ft.
Sunshelter	X	7.5 ft.	6 ft. or over a dock	14 ft.	5 ft.
Swimming pools and reflecting pools	X, RE≥3 acres SAP	7.5 ft., RE≥3 acres SAP	10 ft., RE≥3 acres SAP	30 inches	N/A
Swimming Pool Screen enclosure	X, RE≥3 acres SAP	7.5 ft., RE≥3 acres SAP	10 ft., RE≥3 acres SAP	SAP	N/A

X Not permitted
SAP Same as Principle Structure
N/A Not Applicable

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Section 5.2.2. Accessory Dwelling Units (ADUs)

A. All ADUs shall comply with the following:

1. An ADU may be within a single-family detached dwelling or a detached accessory building on the same lot as a principal dwelling.
2. The accessory dwelling unit must have a bathroom and shall share the same sewage disposal and water supply systems as the principal dwelling unit unless separate sewer and water connections are required by the City of Cape Coral.
3. A minimum of one additional off-street parking space shall be provided. The additional space shall be on the same lot as the principal dwelling unit.

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- 717
- 718 4. No new access points or driveways shall be created or installed for access to the ADU.
- 719
- 720 5. The accessory dwelling may contain no more than a living area, one bedroom, one bath, and a
- 721 kitchen.
- 722
- 723 6. The owner of the property shall live in the principal dwelling or the ADU.
- 724
- 725 B. ADUs within a single-family dwelling shall comply with the following:
- 726
- 727 1. There shall only be one entrance to the front of the house. Separate entrances to an ADU are
- 728 permitted at the side or the rear of the principal dwelling unit.
- 729
- 730 2. If the ADU and the principal residence are on the same floor or story, the ADU shall be limited to
- 731 30 percent of the total living area of the principal dwelling or 800 square feet, whichever is less.
- 732 If the ADU is on a single floor or story and there is no increase in the size of the house, the entire
- 733 floor or story may be used for the ADU.
- 734
- 735 C. Detached structures serving as an ADU shall comply with the following:
- 736
- 737 1. May not exceed one story.
- 738
- 739 2. Must comply with the zoning district dimensional regulations.
- 740
- 741 3. Maximum building height shall not exceed 14 ft.
- 742
- 743 4. May not exceed 30 percent of the area of the primary structure or 800 square feet, whichever is
- 744 less.
- 745
- 746 **Section. 5.2.3. Arbors, trellises, and pergolas.**
- 747
- 748 A. Arbors, trellises, and pergolas shall be allowed as freestanding or attached structures. There is no limit
- 749 on the number of attached pergolas, arbors, and trellises per primary structure.
- 750
- 751 B. Freestanding pergolas and arbors are limited to 200 square feet of coverage per single-family
- 752 detached residential property. Freestanding pergolas and arbors are limited to 100 square feet per
- 753 unit of a duplex property.
- 754
- 755 C. The amount of freestanding square footage coverage for multi-family residential developments may
- 756 be determined by the Community Development Director. The criteria for this determination include:
- 757
- 758 1. Design, size, location, and number of proposed arbors, trellises, and pergolas;
- 759
- 760 2. Design, size of property, location, and number of units of the multi-family residential
- 761 development; and
- 762

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- 763 3. Whether the structure will be contrary to the public interest.

764
765 D. Attached pergolas.

- 766
767 1. Attached pergolas may be placed over the front entrance or walkway into a residence, and must
768 not extend beyond the most forward portion of the primary structure.
769
770 2. A pergola is considered attached if a minimum of 20% of the pergola's perimeter is attached to
771 the primary structure.
772
773 3. A pergola that is attached to a previously-attached pergola is considered to be an extension of
774 the original attached pergola; the enlarged pergola must abide by the setback requirements listed
775 in Table 5.2.1.A.
776

777 E. Pergolas, generally.

- 778
779 1. Pergolas must conform to all zoning requirements in terms of height and setbacks.
780
781 2. The only exception to the prohibition of the placement of a pergola in the rear setback is for
782 pergolas on docks.
783
784 3. If placed in the rear yard of a waterfront property, or on a dock, pergolas must not unreasonably
785 restrict or block the view of the canal or waterway of an adjoining lot.
786

787 **Section. 5.2.4. Attached and detached garages.**

- 788
789 A. All single-family detached and each unit of a duplex structures shall include a garage with minimum
790 dimensions of 14 feet by 20 feet. Carports are prohibited on single-family detached and duplex
791 residential properties requiring a garage.
792

793 B. For attached garages, the following shall apply:

- 794
795 1. A garage shall be considered attached if it shares at least a four-foot length of common wall with
796 the principal structure. Attachment through a roof structure only shall not be adequate to
797 consider the garage attached.
798
799 2. For purposes of this LDC, an attached garage shall be considered to be a part of the principal
800 structure and shall comply with all district regulations for the zoning district in which it is located.
801
802 3. An operable garage door capable of providing access to the garage by a motor vehicle is required.
803
804 4. A driveway providing vehicular access to the garage is required and shall be constructed and
805 maintained in a condition that is safe and free of potholes, and in accordance with the City of
806 Cape Coral Engineering Design Standards.
807
808 5. The garage shall not be included in determining the living area.

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- 809
810 6. No garage or storage area shall be used as living quarters unless another garage is constructed
811 prior to conversion.
812

813 C. For detached garages, the following shall apply:
814

- 815 1. A detached garage shall meet all of the setback requirements of the principal structure.
816
817 2. A detached garage shall be on the same parcel as the principal structure.
818
819 3. A detached garage shall not exceed 800 square feet in area.
820
821 4. The height of a detached garage shall not exceed 14 feet in height when measured according to
822 the definition of "building height" in the Land Development Code.
823
824 5. An operable garage door capable of providing access to the garage by a motor vehicle is required.
825
826 6. The maximum size and height restrictions shall not apply in the RE district.
827
828 7. No plumbing shall be allowed in a detached garage except that a single one-compartment sink
829 shall be allowed.
830
831 8. The exterior building materials of a detached garage shall conform to the exterior building
832 materials of the principal structure.
833
834 9. A parcel may contain both an attached and detached garage, but only one detached garage shall
835 be permitted.
836

837 **Section. 5.2.5. Courts and playing surfaces.**
838

839 A. Requirements in the R1, RE, RML, and A districts.
840

- 841 1. Lighting is prohibited on all outdoor recreation facilities on all properties containing single-family
842 detached and duplex dwellings.
843
844 2. An opaque landscape hedge shall be planted between a recreational facility and a side or rear
845 property line of different ownership. The landscaping shall be maintained at a minimum of four
846 feet in height and shall be provided along the entire length of the recreational facility.
847

848 B. Requirements in the RMM or other districts with permitted multi-family uses.
849

- 850 1. Lighting may be installed to allow evening use of the facility. All outdoor lighting shall be installed
851 and maintained in such a manner that the light falls substantially within the perimeter of the
852 property through the use of shielding and limitations on intensity. In no instance shall the facility
853 lighting create glare off of the property exceeding 0.3 footcandles which impacts any roadway.
854 Directional lighting may not be installed which shines directly into any dwelling unit.

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- 855
- 856 2. An opaque landscape buffer, a minimum of four feet in height, shall be installed which shields the
- 857 recreational facility from any adjacent right-of-way. Fencing may be installed to a maximum
- 858 height of ten feet.
- 859

860 **Section. 5.2.6. Decks.**

861

- 862 A. Decks extending into rear or side yard may not exceed a height of 30 inches above grade. Decks over
- 863 30 inches in height shall meet all setbacks.
- 864
- 865 B. Deck height shall be measured from the walking surface of the deck, not the railing.
- 866
- 867 C. Railing shall be spaced in such a way as to allow air and light to pass through.
- 868

869 **Section. 5.2.7. Fences and walls.**

870

871 A. General Requirements.

872

- 873 1. All fences shall be of sound construction and not detract from the surrounding area.
- 874
- 875 2. No barbed wire, spire tips, sharp objects, or electrically charged fences shall be erected, except
- 876 as otherwise provided herein. This shall not be interpreted to mean that bona fide agricultural
- 877 users cannot use barbed wire or electrically charged fences to control livestock when located in
- 878 districts permitting the raising, keeping, or breeding of livestock.
- 879
- 880 3. No fences shall be placed within the visibility triangle.
- 881
- 882 4. If a fence or wall is located in a public utility or drainage easement, the property owner shall be
- 883 solely responsible for removal of the fence or wall as well as for any cost resulting from
- 884 disturbance, damage, or destruction of the fence or wall resulting from work associated with
- 885 utilities or drainage facilities, including those related to alley improvements within such
- 886 easement.
- 887
- 888 5. No fence shall enclose any utility meter, including water and electric service meters. The
- 889 location of any utility meters shall be shown in the permit application. This restriction shall not
- 890 apply to city maintained or constructed facilities.
- 891
- 892 6. Unless the posts or other supports used in connection with the fence or wall are visible from
- 893 and identical in appearance from both sides of the fence, all posts or other supports used in
- 894 connection with the fence or wall shall be on the side of the fence or wall that faces the property
- 895 on which it is to be erected. If a fence or wall is constructed in such a way that only one side of
- 896 the fence is "finished", then the "finished" side of the fence shall face outward toward the street
- 897 or adjoining property (facing away from the property on which it is erected). The "finished" side
- 898 of the fence shall be the side that is painted, coated, or smoothed so as to be more decorative
- 899 in appearance.
- 900

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7. Fencing for critical public utilities infrastructure, including water and wastewater facilities and electric and natural gas facilities, which may enclose either an entire site or only an area containing equipment, may be maintained at a height of eight feet. Barbed wire, spire tips, sharp objects, or electrically charged fencing are permitted on the top of fencing around critical infrastructure sites or equipment, however, the height of the fencing together with any barbed wire, spire tips, sharp objects, or electrically charged fencing may not exceed eight feet, and only the top two feet may contain barbed wire, spire tips, sharp objects, or electrically charged fencing.
8. A fence shall not be constructed on unimproved property.
9. No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design, and location has been approved in writing and proper permit issued by the Director.
10. Fencing for recreational facilities may be increased in height to ten feet. Such fencing must immediately enclose the recreational facility. Hooded backstops for diamond sports may be increased to a maximum height of 28 feet. For sports other than diamond sports, backstops may be increased to a height of 12 feet. All fencing at recreational facilities must be constructed of at least nine-gauge fence fabric and schedule 40 tubing.
11. A may be maintained at a height greater than otherwise allowed herein if a higher fence height is required by the city for the purpose of screening a special exception use.
12. A fence or wall shall be constructed of one or more of the following materials:
1. Wood (decay resistant or pressure treated only), shall be painted or stained;
 2. Concrete block with stucco (CBS);
 3. Reinforced concrete with stucco;
 4. Stone or brick, including cast (simulated) stone or brick;
 5. Concrete;
 6. Wrought iron;
 7. Aluminum; or
 8. Plastic or vinyl.

For fences or walls located in a public utility or drainage easement, only the following materials are permitted:

1. Wood (decay resistant or pressure treated only);

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- 947
- 948 2. Aluminum;
- 949
- 950 3. Chain-link without slats; or
- 951
- 952 4. Plastic or vinyl.
- 953
- 954 B. Residential Zoning Districts.
- 955
- 956 1. A No fence shall be maintained at a height greater than six feet, and no wall or fence shall be
- 957 erected or placed within the front setback lines of any residential lot, except if a residential use
- 958 abuts property used for commercial or professional purposes, a fence may be maintained at a
- 959 height up to eight feet along the side(s) of the property which abut(s) the property or properties
- 960 containing commercial or professional uses. For purposes of this section, a property shall be
- 961 deemed to abut another property if the two properties are either immediately adjacent to each
- 962 other or separated only by an alley. Properties separated by a street, canal, lake, or other body
- 963 of water shall not be deemed to be abutting properties.
- 964
- 965 2. Any fencing within 20 feet of the rear property line on waterfront sites must be open mesh
- 966 above a height of three feet. The Director may, in his or her discretion, approve minor
- 967 projections above the restricted heights for architectural features.
- 968
- 969 3. No part of a fence shall be located forward of the forward-most part of the side of the principal
- 970 structure to which the fence is closest. In no instance shall a fence enclose any portion of the
- 971 front facade of the principal structure.
- 972
- 973 4. No fence, hedge, or other growth shall be erected on any residential property within the city
- 974 which shall unreasonably restrict or block the view of a canal or other waterway from an
- 975 adjoining lot, or except as required to screen a special exception use. No fence or hedge or
- 976 other growth shall be erected on property which would obstruct the view of either a pedestrian
- 977 or driver of a moving vehicle so as to create a hazard to the health and welfare of its citizens.
- 978
- 979 5. Multi-family developments over 1 acre in size may construct a fence or wall around the entire
- 980 perimeter of the property or in a location not otherwise allowed by this subsection.
- 981
- 982 C. Non-Residential and Mixed-Use Zoning Districts.
- 983
- 984 1. Construction of fences must meet the following restrictions:
- 985
- 986 a. Maximum height: six feet (except that property in a commercial, professional, or mixed-use
- 987 zoning district, which contains a non-residential use, and which abuts a a residential use,
- 988 whether such use is in a residential zoning district or mixed-use zoning district, may erect a
- 989 fence up to eight feet in height along the side(s) of the property which abut(s) a residential
- 990 use. A property shall be deemed to abut another property if the two properties are
- 991 immediately adjacent to each other or separated by only an alley. Properties separated by
- 992 a street, canal, lake, or other body of water shall not be deemed to be abutting properties.

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b. Required setbacks:

Front	No part of a fence shall be located forward of the forward-most part of the side of the principal structure to which the fence is closest. In no instance shall a fence enclose any portion of the front facade of the principal structure.
Side (not on a corner site)	None
Side (corner site)	None for free-standing residential uses in mixed-use zoning districts; 7 feet for non-residential and compound uses in Marketplace Residential zoning district; 10 feet for non-residential and compound uses in all other commercial, professional, and mixed-use zoning districts
Rear (not on alley)	None
Rear (on alley)	10 feet

D. Multi-family developments over 1 acre in size may construct a fence or wall around the entire perimeter of the property or in a location not otherwise allowed by this subsection.

E. Industrial zoning district:

1. Maximum height: eight feet.
2. Required setbacks: none, except that fences shall be setback 10' from alleys.
3. Fencing shall provide an opaque visual barrier, constructed of materials which conform to applicable codes, to conceal storage areas.

F. Agricultural zoning district:

1. Maximum height: eight feet.
2. Required setbacks: none.

G. Institutional zoning district:

1. Maximum height: eight feet.
2. Required setbacks: none, except that fences shall be setback 10' from alleys.
3. Fencing shall provide an opaque visual barrier, constructed of materials which conform to applicable codes, to conceal storage areas.

H. Preservation zoning district:

1. Maximum height: eight feet.
2. Required setbacks: none.

I. South Cape and MXB zoning district(s):

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1. Maximum height.

a. When placed in front yards, 42 inches.

b. When not placed in front yards, six feet (except that a property which contains a non-residential use, and which abuts a property containing a residential use, whether such use is in a residential zoning district or mixed-use zoning district, may erect a fence up to eight feet in height along the side(s) of the property which abut(s) a property containing a residential use). For purposes of this subsection, a property shall be deemed to abut another property if the two properties are either immediately adjacent to each other or separated by only an alley. Properties which are separated by a street, canal, lake, or other body of water shall not be deemed to be abutting properties.

c. Fences, walls, and hedges may be maintained at a height greater than otherwise allowed herein if a higher height is required by the city for the purpose of screening a special exception use.

d. Fencing for recreational facilities may be increased in height to ten feet. Such fencing must immediately enclose the recreational facility. Hooded backstops for diamond sports may be increased to a maximum height of 28 feet.

e. Required setbacks:

Front	None
Side or rear (not on alley)	None
Side or rear (on an alley)	15 feet from the alley centerline
Abutting a navigable waterway	10 feet

Section.5.2.8. Flags and Flagpoles.

A. Residential zoning districts or sites with residential uses shall be limited to no more than two flagpoles.

B. In non-residential zoning districts, in mixed use zoning districts, and on sites containing non-residential uses in residential zoning districts, no more than three flagpoles are allowed on a site.

C. Flagpoles shall not exceed 35 feet in height other than those on non-residential properties abutting Pine Island Road which shall not exceed 80 feet in height.

D. The installation of a flag standard on a site does not require a permit. The number of flags that may be displayed on a flagpole or on a single flag standard is not limited.

E. For the purposes of this article, flags on non-residential, private property which contain a symbol other than that of a nation, government, political subdivision, or other entity shall be presumed commercial; however, it shall be considered a rebuttable presumption, which may be overturned by the Director if the evidence contradicting it is true or if a reasonable person of average intelligence could logically conclude from the evidence that the presumption is not valid.

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Section. 5.2.9. Fountains, reflecting pools, and sculptures.

- A. Fountains and sculptures shall not to exceed 12 feet in height.
- B. Reflecting pools greater than 24 inches in depth deep shall be fenced for safety.

Section. 5.2.10. Gazebos, sun shelters, and similar structures.

- A. Gazebos, sun shelters, and similar structures on residential single-family detached or duplex parcels may not exceed 150 square feet in roof coverage. The total area of all such structures shall not exceed 300 square feet.
- B. All structures in all other zoning districts may not exceed 300 square feet.
- C. The maximum height shall not exceed 14 feet above grade from the lowest point of the grade under the shelter, including overhangs.
- C. These structures shall not be constructed within six feet of any rear lot line except on waterfront lots where sun shelters are permitted to be constructed on docks. These structures shall not overhang the edges of the dock or be constructed over an easement.

Section. 5.2.11. Guest houses.

- A. Detached structures serving as a guest house shall comply with the following:
 - 1. Guest Houses shall only be on constructed on sites with a principal residential dwelling unit.
 - 2. May not exceed one story.
 - 3. Maximum building height shall not exceed 14 ft.
 - 4. May not exceed 30% of the area of the primary structure or 800 square feet, whichever is less.
- B. A guest house is not a dwelling unit to be rented, it provides only guest accommodations and shall meet the following requirements:
 - 1. A guesthouse may not contain more than two bedrooms.
 - 2. A guesthouse may not contain a kitchen or the electrical or gas connections to install a stove or oven.
 - 3. An additional parking space must be provided for a guesthouse.

Section. 5.2.12. Play or recreation equipment.

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A. On residential single-family detached and duplex properties, the City shall not be responsible for permitting and inspection of play equipment.

B. Play equipment for other than single-family detached and duplex properties must be permitted and inspected prior to any use.

Section. 5.2.13. Sheds and greenhouses.

A. The maximum height of a shed or greenhouse shall not exceed 15 feet in overall height.

B. The maximum floor area shall not exceed 200 square feet.

C. Sheds and greenhouses are allowed in the R1, RML, RE, and A districts.

D. A lot may contain no more than one shed and one greenhouse.

E. Sheds and greenhouses may be within the side yard of a parcel so long as the shed or greenhouse is screened. Screening is required for that portion of the wall of the shed or greenhouse that is visible from the right-of-way and the nearest adjoining residential property. A wall, fence, shrubs, or a combination thereof may be used to meet screening requirements as follows:

1. If an opaque wall or fence is used for screening, the wall or fence shall be six-feet in height. The wall or fence may be constructed of wood, vinyl, or a material that has the appearance of wood or vinyl, or the wall may be masonry, but not be unfinished concrete block. All other materials are prohibited. A screening wall with a continuous foundation may not encroach into any easement.

2. Alternatively, sheds or greenhouses may be screened with shrubs that meet the following requirements:

a. A row of shrubs planted along both sides of the shed and extend at least five feet beyond the walls of the shed or greenhouse.

b. All shrubs required for screening within this subsection shall be a minimum of 32 inches in height and be in at least a seven-gallon container size at the time of planting. All shrubs shall be planted no more three feet apart as measured on center.

c. All shrubs shall be maintained at a minimum height of six feet at maturity and shall be maintained in good condition as long as the shed requires screening pursuant to this subsection.

3. A shed or greenhouse that would be visible from the right-of-way or from the nearest adjoining property, but for an existing fence, wall, or landscaping that shields the shed or greenhouse is exempt from additional screening requirements. In the event the screening is removed or altered to cause the shed or greenhouse to be visible from the right-of-way or nearest adjoining property, the shed or greenhouse shall be screened in accordance with those requirements outlined above or moved to fully comply with this Section.

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- 1166
- 1167 4. On a double frontage lot, sheds or greenhouses shall be screened from view from rights-of-way
- 1168 and adjoining properties. See Diagram 5.1.12. Double frontage lot fence and accessory structure
- 1169 requirements.
- 1170

- 1171 5. On double frontage lots, sheds or greenhouses in the rear yard shall be setback to a distance
- 1172 equivalent to the front setback of any adjacent lots that are not double frontage lots.
- 1173

1174 **Section. 5.2.14. Solar Photovoltaic (PV) Arrays.**

1175

1176 A. General requirements.

1177

- 1178 1. Permitted accessory equipment. Rooftop photovoltaic solar systems shall be deemed permitted
- 1179 accessory equipment for all buildings in all zoning categories. Nothing contained in this chapter
- 1180 shall be deemed to prohibit the installation of rooftop photovoltaic solar systems on buildings
- 1181 containing legally nonconforming uses.
- 1182
- 1183 2. Maintenance. The photovoltaic system shall be properly maintained and be kept free from
- 1184 hazards, including faulty wiring, loose fastenings, or being maintained in a condition that is unsafe
- 1185 or detrimental to public health, safety, or general welfare.
- 1186
- 1187 3. Abandonment. Abandoned or unused freestanding solar energy systems not in use for a period
- 1188 of 18 months shall be removed at the owner's expense.
- 1189

1190 B. Building-mounted PV systems.

1191

- 1192 1. Roof mounted:
- 1193
- 1194 a. Notwithstanding the height limitations of the zoning district, building mounted solar energy
- 1195 systems shall not extend higher than three feet above the ridge level of a roof, for structures
- 1196 with gable, hip, or gambrel roofs and shall not extend higher than 10 feet above the surface
- 1197 of the roof when installed on flat or shed roof.
- 1198
- 1199 b. The solar collector surface and mounting devices shall be set back not less than one foot from
- 1200 the exterior perimeter of a roof for every one foot that the system extends above the roof
- 1201 surface on which the system is mounted. Solar energy systems that extend less than one foot
- 1202 above the roof surface shall be exempt from this provision.
- 1203
- 1204 2. Wall mounted or flush to a building or structure:
- 1205
- 1206 a. PV arrays are allowed on the walls or sides of any building or structure but shall not encroach
- 1207 into the required front yard setback and may not encroach into side and rear yard setback by
- 1208 more than three feet and shall not extend into or over an easement.
- 1209
- 1210 b. A minimum of nine feet vertical distance shall be maintained under the PV array where
- 1211 needed to provide adequate clearance for pedestrians.

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- c. To the maximum extent possible, wall mounted PV arrays shall be designed as compatible to the structure and surface to which it is attached.

C. At-grade PV systems.

1. Applicability. The following regulations apply to any PV array that is erected or installed at-grade (ground level).
2. Exemptions. The restrictions of this Subsection with respect to height, location, and setbacks are not applicable to any accessory component to a freestanding outdoor lighting fixture, telephone pole, parking meter, or any other similar structure, as determined by the city.
3. Height. The maximum height of any at-grade PV array shall not exceed twelve feet.
4. Residential location. For PV arrays in or abutting residential zoning districts, the minimum setbacks are as follows:
 - a. PV arrays up to nine feet in height shall be setback at least seven and one-half feet from the rear and interior side property lines;
 - b. Arrays greater than nine feet in height shall be setback at least 10 feet from such property lines.
 - c. PV arrays are not allowed within the front setback of a residentially zoned property.
 - d. The area of the solar collector surface of freestanding solar energy systems shall not exceed five percent of the lot area.
5. Commercial location. For PV arrays in non-residential zoning districts and not adjacent to residentially zoned property, at-grade PV systems must meet all setback requirements for a structure within the zoning district.
6. The supporting framework for freestanding solar energy systems shall not include unfinished lumber.

Section. 5.2.15. Swimming Pools.

- A. The construction of portable or permanent swimming pools or hot tubs is prohibited in the front yard of any residential lot, other than RE zoned parcels greater than 3 acres.
- B. Pools, hot tubs, and pool decks in rear or side yards may not exceed a height of 30 inches above grade.
- C. All swimming pools and enclosures constructed or erected on any parcel, other than accessory to a single-family detached or duplex residence, shall meet the minimum yard requirements specified for buildings or structures in the zoning district the construction occurs.

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- D. Portable swimming pools. Portable swimming pools are prohibited in the front or the side of any residential lot. Portable swimming pools capable of holding 24 inches in depth or more of water shall be anchored into the ground sufficiently to prohibit movement during a hurricane. Portable pools shall be enclosed by a fence or other protective material, or otherwise shall be covered, when not in use, by a protective cover so that a child cannot accidentally enter the pool. Drainage of pools so as to permit the water to run onto property of other people is prohibited. Wading or splash pools not capable of holding 12 inches or more of water are exempt from the provisions of this subsection.

Section. 5.2.16. Unattended donation bins.

Commercial developments may place a donation bin in the parking lot if the parking lot contains a minimum of 125 parking spaces. All donation bins must meet the following requirements:

- A. Bins may not be in a required parking space or a drive aisle;
- B. Bins may not be placed in required landscape buffers and trees may not be removed in order to locate a bin;
- C. Bins shall be maintained in good condition and appearance with no structural damage, holes, or visible rust and shall be free of graffiti;
- D. Bins shall be locked or otherwise secured;
- E. Bins shall contain the following contact information in two-inch type visible from the front of each unattended donation box: the name, address, email, and phone number of the permittee and operator; and
- F. Bins shall be serviced and emptied as needed, but at least once per month, or within five business days of a request by the City. Boxes, garbage, and donation goods shall not be permitted to accumulate around unattended donation bins.

CHAPTER 3. Land Clearing, Filling, Excavation, and Construction Sites.

Section 5.3.1. Borrow pits; regulation of removal or extraction of dirt, soil, sand, rock, oil, gas, etc.; procedures.

- A. Removal or extraction of dirt, soil, and sand.
1. All borrow pits from which dirt, sand or soil has been removed shall be completely enclosed by a fence or earth berm at least six feet in height.
 2. Prior to any such removal or excavation, the following shall be submitted to the Department of Community Development: drainage plans, aerial photo of the site, a plan for development of the total site when the removal is completed, the estimated costs of restoring the site to a safe and developable condition, and a deposit of funds or other financial instruments payable to the

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City of Cape Coral is required equal to the estimated cost of restoring the site. The estimated cost for restoring the site shall include fence or berm removal, lake bank sloping and stabilization, site grading, seeding or mulching, drainage, and any other items that the Department, Hearing Examiner, or Council deems appropriate to ensure that the site is restored to a safe and usable condition. The plans shall be reviewed by the Hearing Examiner and written recommendation made to the Council prior to application for an excavation permit.

3. Determination of the size of buffer strip necessary shall be made by the Hearing Examiner subject to final approval of the City Council.

B. Removal or extraction of rock, gravel, shell, aggregate, or marl.

1. All such excavations shall be sealed by fencing or grading or other device from general public access. All entrances to said excavation shall be fenced and locked during nonbusiness hours.
2. Prior to any such removal or excavation, the following shall be submitted to the Department of Community Development: drainage plans, aerial photograph of the site, a plan for development of the total site when the removal is completed, the estimated costs of restoring the site to a safe and developable condition, and a deposit of funds or other financial instruments payable to the City of Cape Coral is required equal to the estimated cost of restoring the site. The estimated cost for restoring the site shall include fence or berm removal, lake, bank sloping and stabilization, site grading, seeding or mulching, drainage, and any other items that the Department, HEX, or Council deems appropriate to ensure that the site is restored to a safe and usable condition. The plans shall be reviewed by the HEX and written recommendation made to the Council prior to application for an excavation permit.
3. Determination of the size of buffer strip necessary shall be made by the Hearing Examiner subject to final approval by the City Council.
4. No excavation or extraction may be made with explosives without express permission of the Council. Excavation or borrow pit permits involving explosives must be renewed every 90 days.

C. Excavations, removal, or extraction for purposes of oil or gas exploration or production.

1. All such excavations, removals, or extractions shall be sealed by fencing or grading or other device from general public access. All entrances shall be fenced and locked during nonbusiness hours.
2. Prior to any such excavation, removal, or extraction the following shall be submitted to the Department of Community Development: drainage plans, aerial photograph of the site, a plan for development of the total site when the removal is completed, the estimated costs of restoring the site to a safe and developable condition, and a deposit of funds or other financial instruments payable to the City of Cape Coral is required equal to the estimated cost of restoring the site. The estimated cost for restoring the site shall include fence or berm removal, lake, bank sloping and stabilization, site grading, seeding or mulching, drainage, and any other items that the Department, Hearing Examiner, or Council deems appropriate to ensure that the

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site is restored to a safe and usable condition. The plans shall be reviewed by the HEX and written recommendation made to the Council prior to application for an excavation permit. No permit to drill a gas or oil well shall be issued unless City Council approves the application for such permit by resolution.

3. Determination of the size of buffer strip necessary shall be made by the Hearing Examiner subject to final approval by the City Council.
4. No excavation or extraction may be made with explosives without express permission of the Council. Excavation permits involving explosives must be renewed every 90 days.
5. No person or entity may engage in any oil and gas exploration or production that utilizes well stimulation within the corporate boundaries of the City of Cape Coral or, consistent with F.S. §377.24(6), within the tidal waters of the state abutting or immediately adjacent to the corporate limits of the municipality, or within three miles of the City's corporate limits extending from the line of the mean high tide. As used in this section, the term "well stimulation" shall mean a well intervention, exploration, operation, or maintenance procedure performed by injecting fluid into a rock formation in order to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. Well stimulation does not include routine well cleaning that does not affect the integrity of the well or the formation.

D. Procedures.

1. The applicant shall meet with the Director and other city staff deemed appropriate by the Director prior to a public hearing with the Hearing Examiner to review staff concerns and to establish the basis for determining cost estimates as required.
2. All excavation or borrow pit requests shall be reviewed by the city staff, the Lee County Health Department, and the Hearing Examiner. After their review and recommendation, the City Council shall call for a public hearing on the application and shall determine whether or not said application shall be granted.
3. If the conceptual plan as presented by the applicant will require a zoning amendment for development, the applicant must prepare and submit a planned development project for the entire project prior to approval of the excavation.
4. If the excavation or borrow pit application is approved, the applicant may then apply for an excavation or borrow pit permit.

Section. 5.3.2. Land Clearing, Filling, and, Excavation.

- A. Proposed alterations to ground elevation or vegetative cover not associated with an approved Site Development Plan, Final Subdivision Plan, or building permit shall be submitted to the Director with an application for a permit for Land Clearing and Fill containing the required plans and documentation. The director may require certification by a registered professional engineer that site improvements

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have been made in accordance with permits issued pursuant to this Section. The following activities shall require a site improvement permit:

1. Clearing of trees and vegetation without disturbing the soil surface;
2. Clearing including stump removal and grubbing of top soils; and
3. Filling.

B. Maintenance:

1. The applicant shall be responsible for the maintenance, repair, and replacement of all existing vegetation as may be required by the provisions of Chapter 8.
2. In buffer areas and areas outside the impervious cover, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Plant materials required by Chapter 8 of this article which is unhealthy, dying, or dead shall be replaced during the next planting season.

C. Excavation involving more than surface contouring for erosion control is only permitted with approval of a Site Development Plan or Final Subdivision Plan.

D. In all districts, other than agriculture zoning, the city shall not permit any new borrow pits or mining activities, however, reshaping or restoration of existing borrow pits may only be permitted incidental to an approved Site Development Plan or Final Subdivision. Agriculturally zoned lands may propose new borrow pits as a Special Exception.

E. The following land clearing activities shall not require a permit:

1. Removal of invasive plants without disturbance of the soil; or
2. Land clearing for agricultural uses.

Section. 5.3.3. Construction Site Maintenance.

Construction sites shall be maintained in a manner which is non-deleterious to nearby properties. The requirements of this Section set minimum standards for the operation of the project site to eliminate or minimize impacts to the site and to the neighborhood to include vehicle parking and loading area, traffic control, fencing, placement of materials, safety, neatness, and cleanliness.

A. Construction site management plan required. All development and building permit applications must be accompanied by a construction site management plan, unless waived by the building official or development services manager.

1. Parking plan shall include:

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- 1442 a. Location of on-site and adjacent unpaved portion of the right-of-way parking and the
1443 maximum number of vehicles that will be parked along the unpaved portion of the right-of-
1444 way.
1445
1446 b. Parking plan for worker vehicles and machinery on the site.
1447
1448 c. A single access with dimensions.
1449
1450 2. A temporary fence location, height, and type shall comply with the following:
1451
1452 a. For the purposes of construction site screening only, chain link fencing is permitted and shall
1453 be faced with a screen mesh.
1454
1455 b. A maximum height of six feet in residential zoned properties and eight feet in commercially
1456 zoned properties.
1457
1458 c. Fencing may not be required in agriculture or preservation zoned properties, upon a
1459 determination by the Director.
1460
1461 3. Construction trailers, loading and unloading areas, and material storage areas shall not be stored
1462 in areas intended for stormwater retention or rain gardens.
1463
1464 4. Traffic control plans shall include:
1465
1466 a. Access points with dimensions;
1467
1468 b. Area to be stabilized and a written plan on staging of construction related traffic including
1469 adequate parking (both on and off-site); and
1470
1471 c. Plan for delivery of materials.
1472
1473 B. Approval of plan and waivers. The building official or development services manager shall review,
1474 approve, or deny the construction site management plan and is authorized to grant waivers from
1475 submittal requirements:
1476
1477 1. If the requirement is unrelated to proposed development;
1478
1479 2. If the impact of the proposed development is negligible in that submittal requirement area; or
1480
1481 3. If unusual site conditions do not allow full compliance with this Section.
1482

CHAPTER 4. MARINE IMPROVEMENTS.

Section. 5.4.1. Purpose and Intent

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In order to allow all waterfront property the same ability to utilize and access adjacent waterways, the development of docks, wharves, mooring piles, and watercraft moorings must be accomplished in a standard and unified manner. Boat slips and docks may be constructed by the owner of a waterfront lot, with adequate water frontage, where a principal building exists.

Section. 5.4.2. General Requirements.

- A. An applicant who disagrees with the measurement of the calculated waterway width by the city's Geographic Information System (GIS) may submit a survey of the waterway width, prepared by a professional surveyor licensed in the state of Florida, to support the applicant's contention that the calculated waterway width is inaccurate.
- B. No dock or piling shall be permitted that interferes with the right to navigate safely within the waterways of the city. In no event shall the navigable area be reduced to less than 50% of the calculated waterway width.
- C. The elevation of pilings shall not exceed 10 feet above the seawall cap or, if no seawall exists, 13 feet above mean water level.
- D. The elevation of the decking of a marine improvement shall not exceed two feet above the seawall cap, or if no seawall exists, five feet above mean water level. For marine improvements in the Caloosahatchee River, and for marine improvements in canals within 300 feet of the platted shoreline of the Caloosahatchee River, the elevation of the decking shall not exceed four feet above the seawall cap, or if no seawall exists, seven feet above mean water level.
- E. All pilings or mooring posts shall be offset a minimum of two and one-half feet from any storm drain outfall pipe. Such measurement shall be made from the outside edge of the outfall pipe to the center of the piling or mooring post.
- F. All docks permitted under this Section that project from a parcel with a seawall shall have a ladder extending from the dock into the waterway. No ladder extending from a dock into a waterway shall be made of wood.
- G. The property owner shall be solely responsible for compliance with all applicable provisions of the Lee County Manatee Protection Plan.
- H. Prior to the final inspection by the City, the owner shall submit a final signed and sealed survey showing that all construction is in compliance with the requirements of this Code.

Section. 5.4.3. Dimensional Standards

- A. Protrusions into waterway.
 - 1. Marine improvements may extend 25% of the calculated waterway width or 40 feet, whichever is less, as measured from the water frontage line, provided the marine improvements are setback 12 feet from each extended side property line.

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- 1533
- 1534 2. Marine improvements which extend six feet or less into a waterway such as captains' walks, as
- 1535 measured from the water frontage line, may extend the full length of the water frontage of the
- 1536 parcel.
- 1537
- 1538 3. Marine improvements in the Caloosahatchee River shall be subject to state and federal
- 1539 regulations.
- 1540
- 1541 4. Marine improvements for outside corner parcels, excluding a "T" intersection, of two canals, may
- 1542 extend into the waterways as follows:
- 1543
- 1544 a. Extend the two waterfrontage lines (Diagram 5.4.3.A.) of the property to a point equal to 25%
- 1545 of the canal width or 40 feet, whichever is less.
- 1546
- 1547 b. Then, in each intersecting canal, the extended waterfrontage lines shall run parallel to the
- 1548 waterfrontage lines and shall be setback 12 feet from the extended side property line.
- 1549
- 1550 c. The area formed by the aforesaid lines and area of intersection, shall be the area permitted
- 1551 for marine improvements.
- 1552
- 1553 5. Marine improvements for end parcels. Parcels at or adjacent to canal ends or parcels on lakes and
- 1554 basins (excluding outside corner parcels) are subject to the following:
- 1555
- 1556 a. Except for parcels governed by Section 5.4.3.A, end parcels shall be permitted to have marine
- 1557 improvements projecting into the waterway up to a maximum of 30 feet. Adjacent parcels
- 1558 shall be permitted to have marine improvements projecting into the waterway up to a
- 1559 maximum of 30 feet or 25% of the calculated canal width, whichever is less.
- 1560
- 1561 b. With respect to end parcels with at least 80 feet of water frontage line, no part of a marine
- 1562 improvement which extends more than six feet in to a canal shall be located less than 12 feet
- 1563 from the ends of the water frontage line of the parcel. See Diagrams 5.4.3.A. & J
- 1564
- 1565 c. With respect to end parcels with more than 40 feet, but less than 80 feet, of water frontage
- 1566 line, any part of a marine improvement which extends more than six feet into a canal shall be
- 1567 set back from the ends of the water frontage line of the parcel in accordance with the
- 1568 following formula: $(\text{Parcel Waterfrontage} - 40 \text{ feet}) \times 0.3$. The foregoing restrictions shall apply
- 1569 to marine improvements projecting from adjacent parcels (based on the length of their
- 1570 waterfrontage lines) in the same manner as end parcels, except that on the side of the
- 1571 adjacent parcel that abuts an end parcel, a marine improvement may be built up to the side
- 1572 boundary of the adjacent parcel's marine improvement area, as determined pursuant to
- 1573 paragraph 10.b below. See Diagram 5.4.3.H
- 1574
- 1575 d. With respect to end and adjacent parcels with 40 feet or less of water frontage, no marine
- 1576 improvement shall extend more than six feet into the canal except in accordance with the
- 1577 following: $(\text{Parcel Waterfrontage} - 40 \text{ feet}) \times 0.3$. The foregoing restrictions shall apply to
- 1578 marine improvements projecting from adjacent parcels (based on the length of their

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- waterfrontage lines) in the same manner as end parcels, except that on the side of the adjacent parcel that abuts an end parcel, a marine improvement may be built up to the side boundary of the adjacent parcel's marine improvement area, as determined pursuant to paragraph 10.b below.
- e. With respect to end and adjacent parcels with 40 feet or less of water frontage, no marine improvement shall extend more than six feet into the canal except in accordance with the following:
- i. Such a parcel may have either a platform dock not more than ten feet wide and extending not more than 16 feet into the canal or not more than two finger piers (with or without a boat lift) that together total no more than six feet in deck width and that extend not more than 30 feet into the canal.
 - ii. No marine improvement that projects more than six feet into the canal shall extend more than ten feet either side of the center point of the water frontage line of the parcel. Furthermore, no marine improvement shall extend beyond the ends of the water frontage line of the parcel. All marine improvements shall be centered on the centerline of the waterfront parcel's marine improvement area. See Diagram 5.4.3.F
7. When a parcel is at the corner of a waterway so as to include water frontage (all under the same ownership) on both the side and end of a waterway, the property owner may install or erect a marine improvement that extends from the side of the waterway to a maximum distance of 25% of the calculated width of the waterway or 30 feet, whichever is less, and from the end of the waterway a distance of 30 feet into the waterway.
8. Except as otherwise provided herein for joint marine improvements, no marine vessel (or any part thereof) when secured in any way to a marine improvement projecting from an end parcel, an adjacent parcel, or a parcel on a lake or basin (excluding outside corner parcels) shall extend beyond the boundaries of the marine improvement area of the parcel unless prior written consent of the affected property owner is obtained. Such consent shall be revocable by the affected property owner and shall automatically terminate in the event the ownership of the affected property changes. In the event ownership changes, the written consent of the new owner must be obtained if the marine vessel is to continue to extend beyond the ends of the water frontage of the parcel.
9. Marine improvements that do not project more than six feet into a waterway as measured from the water frontage line may extend the full length of the water frontage of the parcel. However, where the end of a parcel water frontage line abuts the water frontage line of another parcel, the angle at which such two water frontage line ends meet shall be bisected and apportioned equally between the two waterfront parcels. In that event, no marine improvement shall extend beyond the bisector of the angle.
10. No marine improvement that projects more than six feet from the water frontage line of the property shall be permitted to be outside of the marine improvement area for a waterfront parcel. The boundaries and dimensions of the marine improvement area shall be determined as follows:

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- a. End parcels.
- i. The access width of the waterway shall be calculated by subtracting from the calculated waterway width twice the maximum distance that a marine improvement along one side of the waterway could lawfully project as determined pursuant to Section 5.4.4.A.1.
 - ii. The waterway access ratio shall be calculated by dividing the waterway access width by the calculated width of the waterway.
 - iii. The waterway center point (WCP) is a point on the centerline of the canal 30 feet from the water's end. All marine improvement area lines and intersections are calculated and plotted from the WCP. See Diagram 5.4.3.B.
 - iv. Offset points for the parcel are determined as follows: If the parcel has 80 feet or more of water frontage line, then the offset points shall be located 12 feet from each end of the water frontage line of the parcel. If the parcel has more than 40 feet, but less than 80 feet of water frontage line, then the offset points shall be located in from the ends of the water frontage line the distance (in feet) resulting from the following formula: (Feet of Water Frontage Line - 40) x 0.3. If the parcel has 40 feet or less of water frontage line, then the ends of the parcel's water frontage line shall be the offset points. See Diagram 5.4.3.C.
 - v. From the WCP, plot a line having the same relationship to the WCP as the water frontage line has to the center of the canal end, but with all distances reduced in size by the waterway access ratio. This line is the offset line for the parcel. See Diagram 5.4.3.D.
 - vi. The marine improvement area is that area enclosed by the water frontage line, the offset line, and lines connecting the ends of the offset line to corresponding offset points. See Diagram 5.4.3.E.
- b. Adjacent parcels. The marine improvement area for an adjacent parcel shall be calculated in the same manner as that for an end parcel except as follows:
- i. Adjacent parcel that abuts an end parcel with 40 feet or less of water frontage line. On the side of the adjacent parcel that abuts an end parcel with 40 feet or less of water frontage line, the side boundary of the marine improvement area shall constitute the side boundary of such adjacent parcel's marine improvement area. See Diagram 5.4.3.I. & J.
 - ii. Adjacent parcel that abuts an end parcel with more than 40 feet of water frontage line. On the side of the adjacent parcel that abuts an end parcel with more than 40 feet of water frontage line, the side boundary of the adjacent parcel's marine improvement area shall be determined by drawing a line from the end of the subject adjacent parcel's water frontage line (on the same side as the subject end parcel) to the nearest terminus point of the subject end parcel's offset line and passing through the adjacent parcel's offset line. The side boundary shall be that portion of the aforesaid line between the end of the adjacent parcel water frontage line and the parcel's offset line. However, in no event shall the side boundary extend beyond the bisector of the angle formed where the adjacent parcel's water frontage line abuts the end parcel's water frontage line. The bisector shall be extended into the waterway the maximum distance a marine improvement could lawfully project within the marine improvement area. See Diagram 5.4.3.G.

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- c. Parcels on lakes and basins (excluding outside corner parcels). A waterfront parcel shall be deemed to be on a lake or a basin if the parcel abuts a body of water identified as a lake or a basin on the officially adopted Future Land Use Map of the City of Cape Coral. Except for outside corner parcels, all waterfront parcels on lakes or basins shall be categorized as corner parcels, adjacent parcels, or end parcels. A corner lake or basin parcel shall be a parcel that either touches or is on both sides of an interior corner of a lake or basin. In other words, a corner lake or basin parcel may be one with a water frontage line that is V-shaped because it physically runs along the edge of the lake or basin, turns at the corner, and continues along the edge of the lake or basin, or it may be a parcel the water frontage line of which ends at a corner of the lake or basin where another side of the lake or basin begins, or it may be a parcel that is angled in such a way that each end of its water frontage line touches a different side of the lake or basin. Also, an adjacent lake or basin parcel shall be a parcel that is on a lake or basin and that abuts at least one corner parcel. All other parcels on lakes or basins and that are neither corner parcels or adjacent parcels shall be treated as end parcels.
- d. The marine improvement area for parcels on lakes or basins shall be calculated as follows:
- i. For an end parcel, the side of the lake or basin upon which the parcel is physically located shall be deemed to be the end of the lake or basin and the sides of the lake or basin shall be deemed to be the sides of the lake or basin running roughly perpendicular to the end of the lake or basin and to the left and to the right of the parcel (when facing the lake or basin). For purposes of this Section, the waterway access ratio for all end lake and basin parcels shall be one. In addition, the WCP for end lake or basin parcels shall be 40 feet into the lake or basin as measured perpendicularly to the lake or basin end from the center of the lake or basin end. All marine improvement area lines and intersections are calculated and plotted from the WCP. The remainder of the marine improvement area boundary calculations for end lake or basin parcels shall be the same as those performed with respect to canal end parcels.
 - ii. For corner lake or basin parcels, the configuration of the marine improvement area shall be determined by the physical configuration of the particular corner parcel. With respect to a corner parcel the water frontage line of which lies entirely on one side or end of a lake or basin, but terminates at the corner of the lake or basin where the other side of the lake or basin begins, the marine improvement area shall be calculated in the same manner as for end lake or basin parcels except that the side boundary of such marine improvement area (on the side where the corner of the lake or basin is located) shall be formed by a line bisecting the angle of such corner and extending to the offset line of the marine improvement area. See Diagram 5.4.3.K.
 - iii. With respect to a corner parcel that is angled so that each end of its water frontage line is on a different side of the lake or basin or for a corner parcel with a V-shaped water frontage line, the marine improvement area configuration shall be determined as follows: First, calculate the waterway access ratio for each side of the lake or basin in the same manner as the waterway access ratio for a canal is determined. Then measure the distance from the center of each side of the lake or basin touched by the corner property to the end of the water frontage line, or to the offset point, if any, on such side of the lake or basin. Multiply each of the aforesaid distances by the waterway access ratio for the relative side of the lake or basin to obtain the length of the waterway line for each side of

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the lake or basin. Plot the waterway line from the center of the side of the lake or basin for which it was calculated to a point that is 30 feet waterward from the water frontage line. The offset line for a corner parcel marine improvement area is formed by connecting the two foregoing points. The marine improvement area for the corner parcel is that area enclosed by the parcel water frontage line, the offset line, and lines connecting the ends of the offset line to the corresponding offset points for the parcel, if any, or to the ends of the water frontage line. See Diagrams 5.4.3.L & M.

- iv. For adjacent lake or basin parcels, the marine improvement area shall be calculated in the same manner as that for end lake or basin parcels except as follows: With respect to an adjacent lake or basin parcel that abuts a corner parcel with 40 feet or less of water frontage line, the side boundary of the corner parcel marine improvement area (on the side where it abuts the adjacent parcel) shall form the side boundary of the adjacent parcel marine improvement area. With respect to an adjacent lake or basin parcel that abuts a corner parcel with more than 40 feet of water frontage line, the side boundary of the adjacent parcel (on the same side as the subject corner parcel) shall be determined by drawing a line from the end of the adjacent parcel water frontage line to the nearest terminus point of the subject corner parcel offset line and passing through the adjacent parcel offset line. The side boundary of the adjacent parcel shall be that portion of the aforesaid line between the end of the adjacent parcel water frontage line and such parcel's offset line. See Diagram 5.4.3.M
 - v. Owners of waterfront parcels on a lake or basin aggrieved by the interpretation or application of this Section to such parcel due to the physical configuration of the particular lake or basin, then the Director may interpret and apply the provisions of this Section so as to alleviate the hardship resulting from the configuration of the lake or basin and so as to enable the waterfront parcel a reasonable marine improvement area.
6. In the event a significant portion of a waterway is not developable on one side due to ecological or other constraints, a marine improvement on the opposite side of the unnavigable portion shall be permitted to project into the waterway up to 50% of the calculated waterway width or 40 feet, whichever is less, as measured from the waterfrontage line. See Diagram 5.4.3.N
 7. No marine vessel (or any part thereof) when secured in any way to a marine improvement shall extend beyond the ends of the water frontage of the parcel from which the marine improvement projects.
 8. All properties adjacent to bridges shall be reviewed individually by the city to determine what, if any, marine improvement may project from that property. Factors to be considered in making this determination include, but are not limited to, public safety and the impact of a planned marine improvement on navigability.

B. Maximum dock surface area.

1. For parcels with more than 40 feet of waterfrontage, the maximum deck surface area coverage shall be calculated as follows: the linear feet of water frontage of the parcel minus 20 feet times one-half times the linear feet of the maximum projection into the waterway (25% of the calculated width of the waterway or 40 feet, whichever is less).

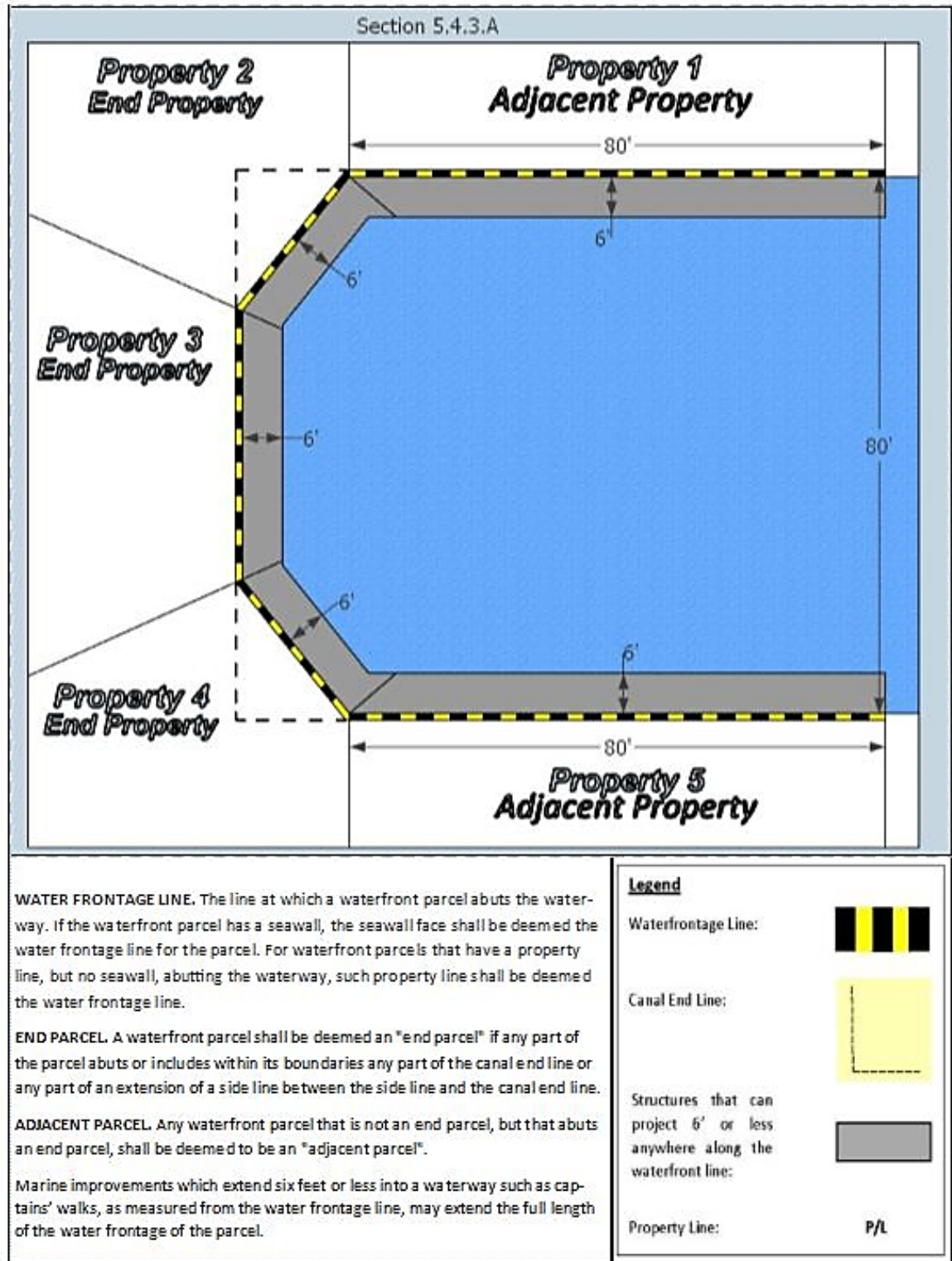
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- 1762 2. For parcels with 40 feet or less of waterfrontage, the maximum deck surface area shall be
1763 calculated as follows: the linear feet of waterfrontage of the parcel times one-quarter times
1764 the linear feet of the maximum projection into the waterway (25% of the calculated width of
1765 the waterway or 40 feet, whichever is less).

1766

1767 **Section 5.4.3. Graphics**

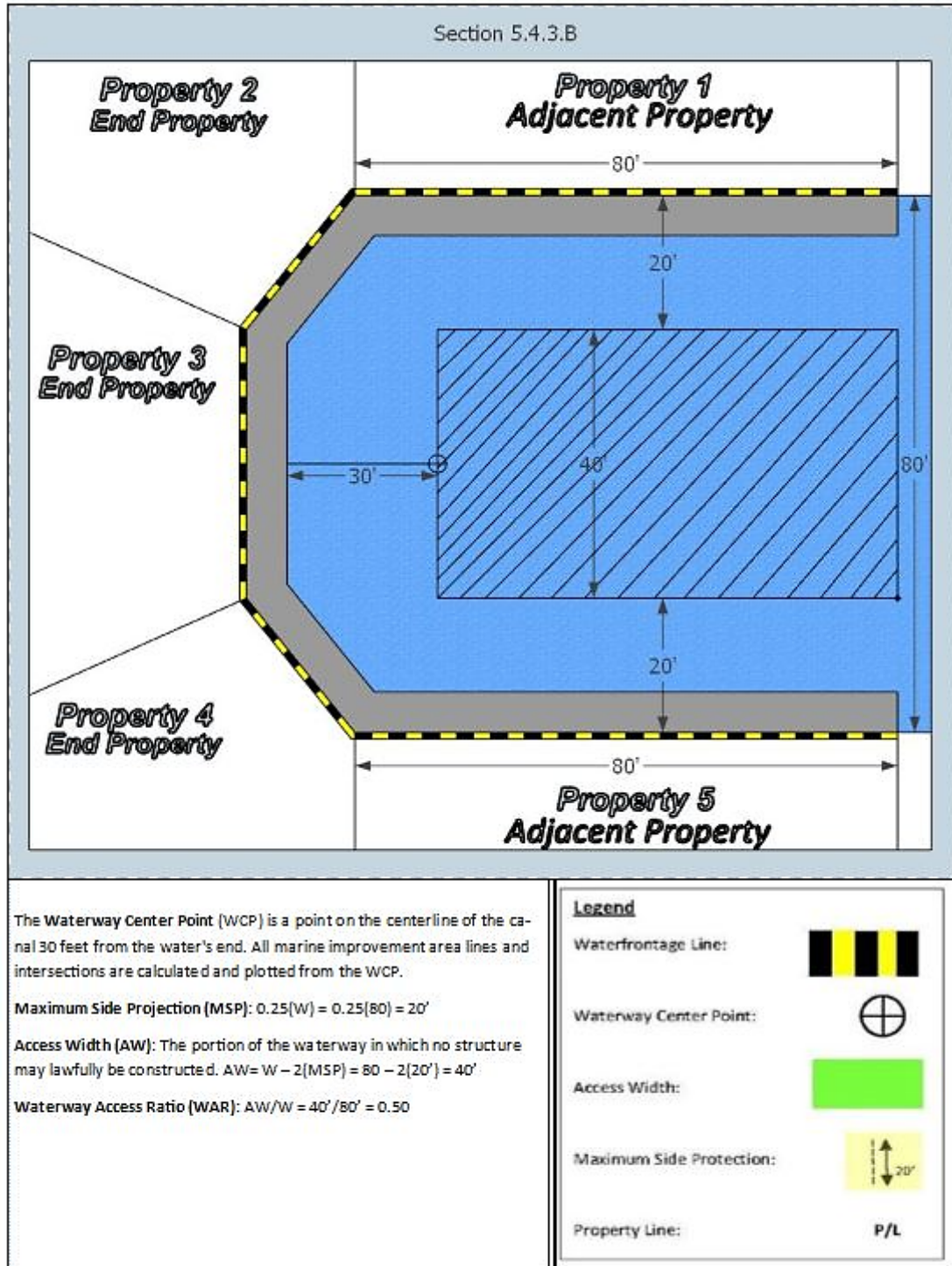
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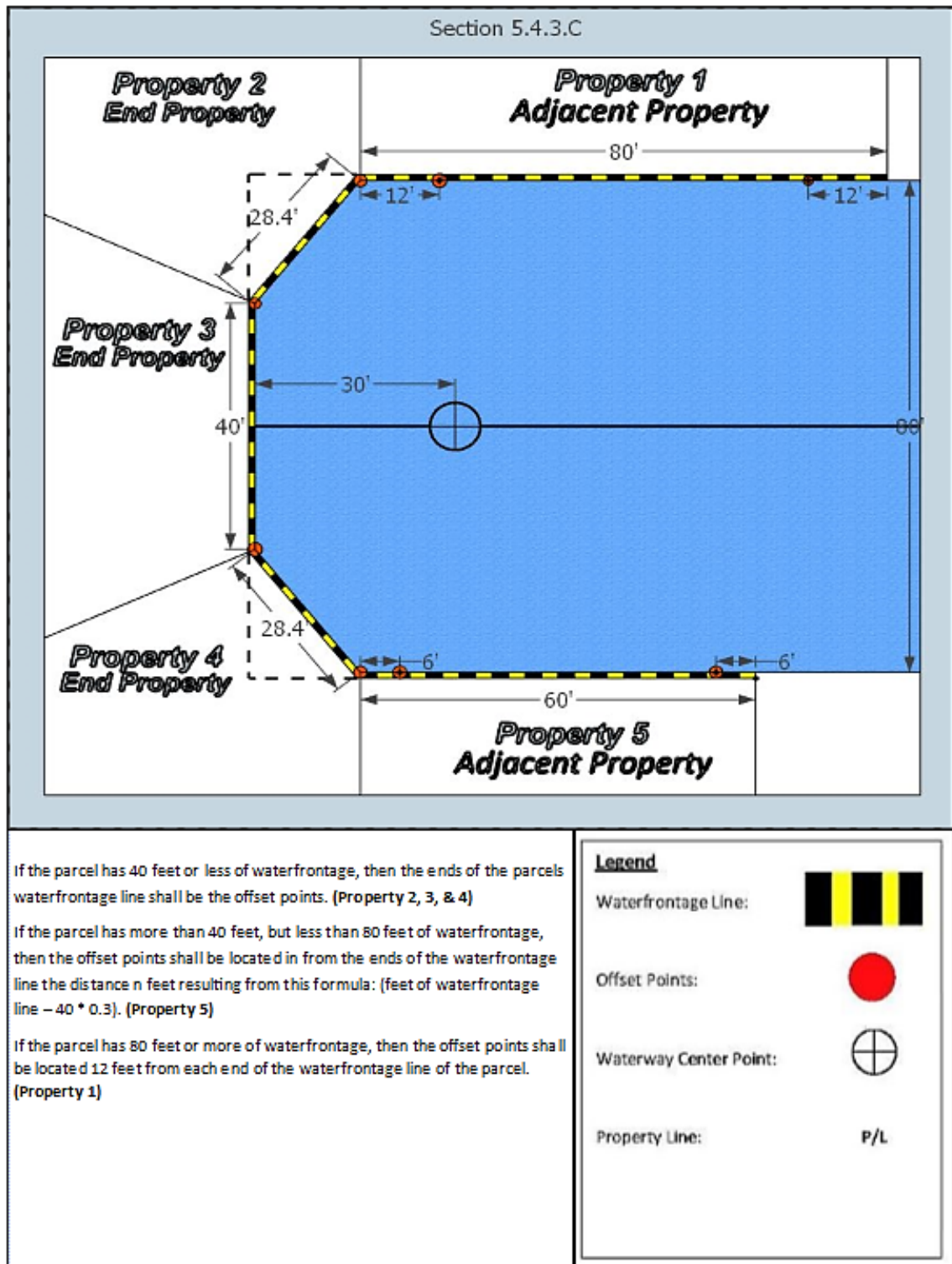
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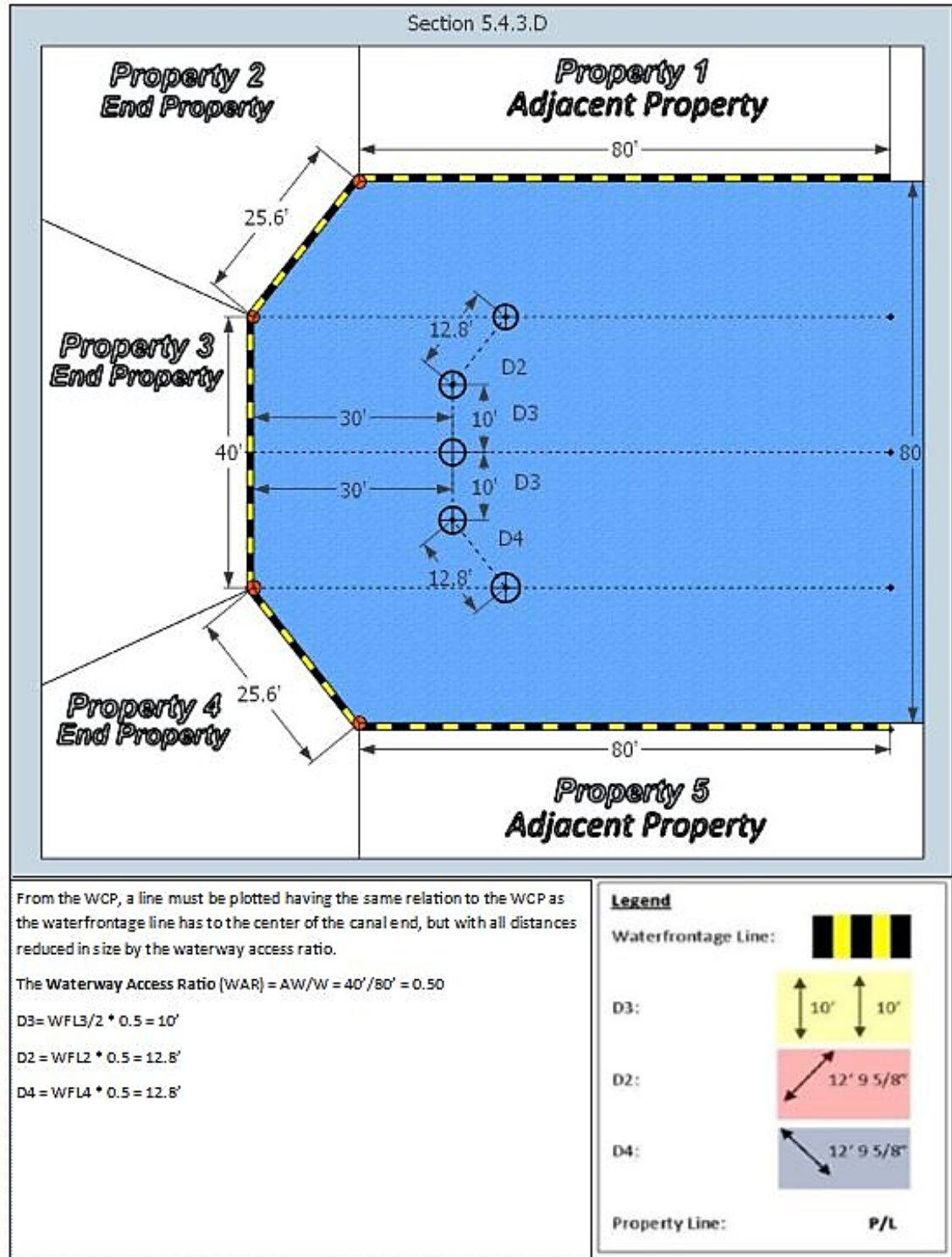
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3.

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4.



Section 5.4.3.F

**Property 2
End Property**

**Property 1
Adjacent Property**

**Property 3
End Property**

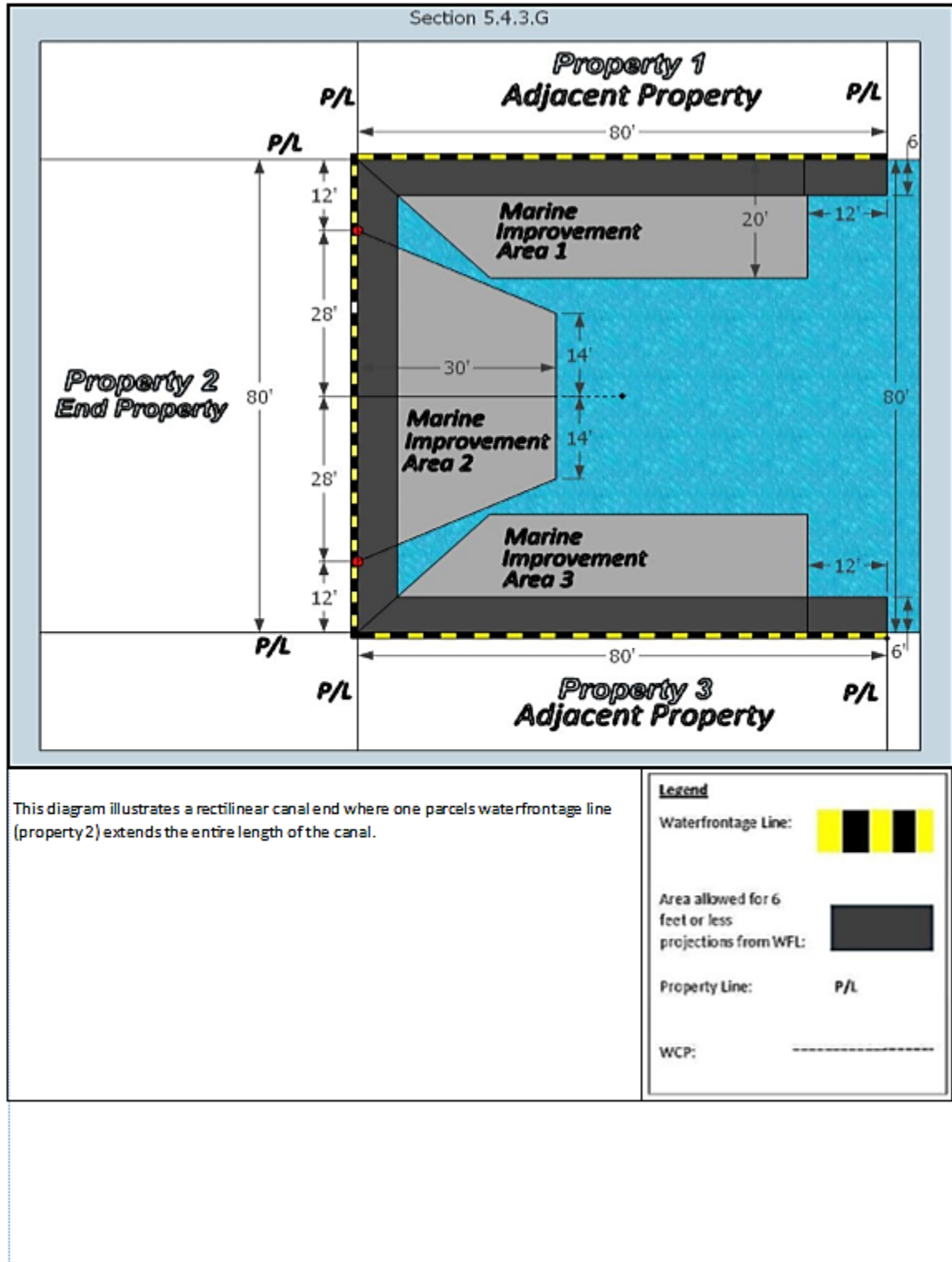
**Property 4
End Property**

**Property 5
Adjacent Property**

Legend

- Waterfrontage Line: [Symbol: Dashed line with yellow and black segments]
- Waterway Center Point: [Symbol: Circle with a cross inside]
- No structure within this area: [Symbol: Red hatched area]
- Area allowed for 6' or less projections from wall: [Symbol: Solid black area]
- Property Line: [Symbol: P/L]

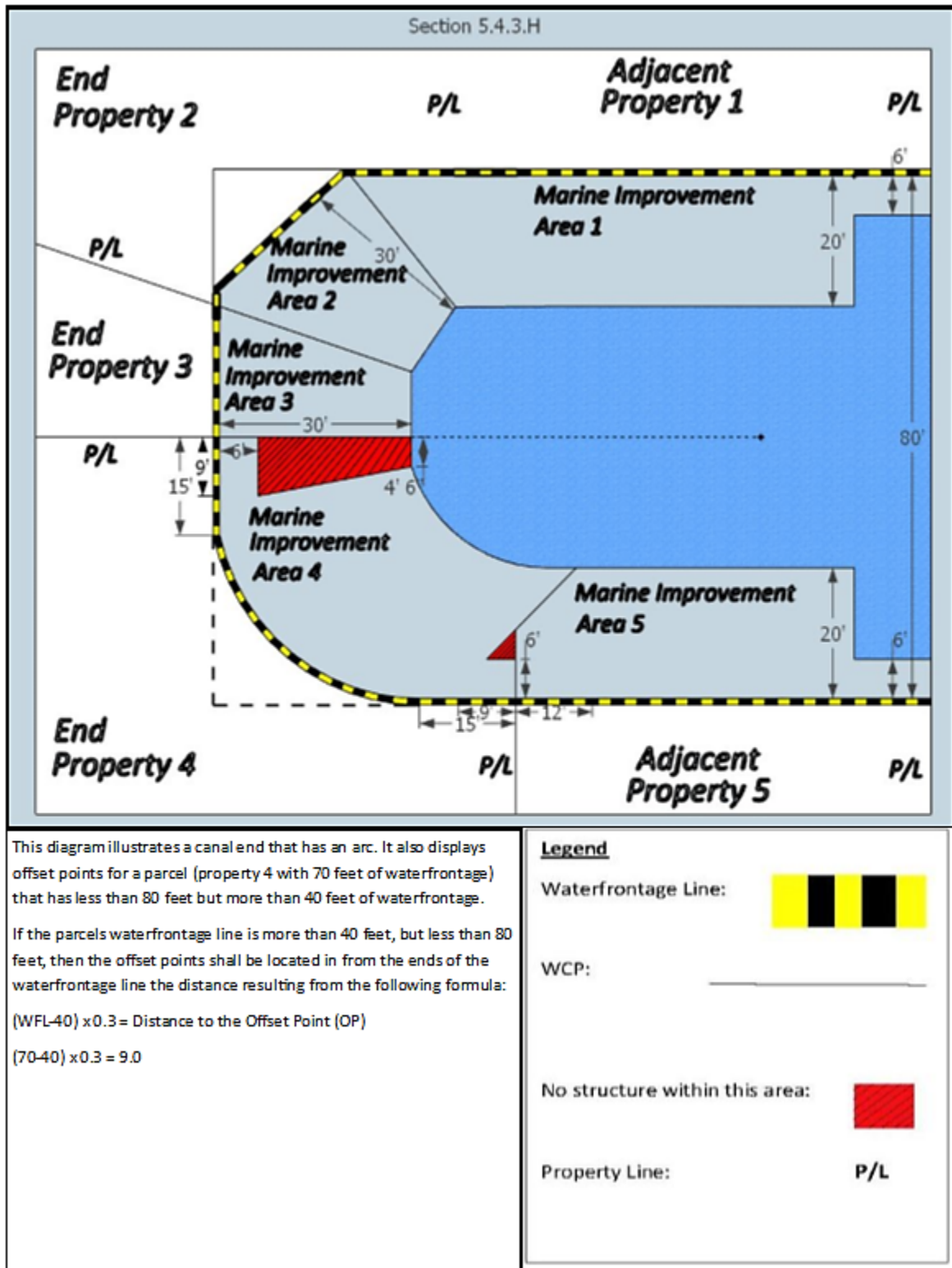
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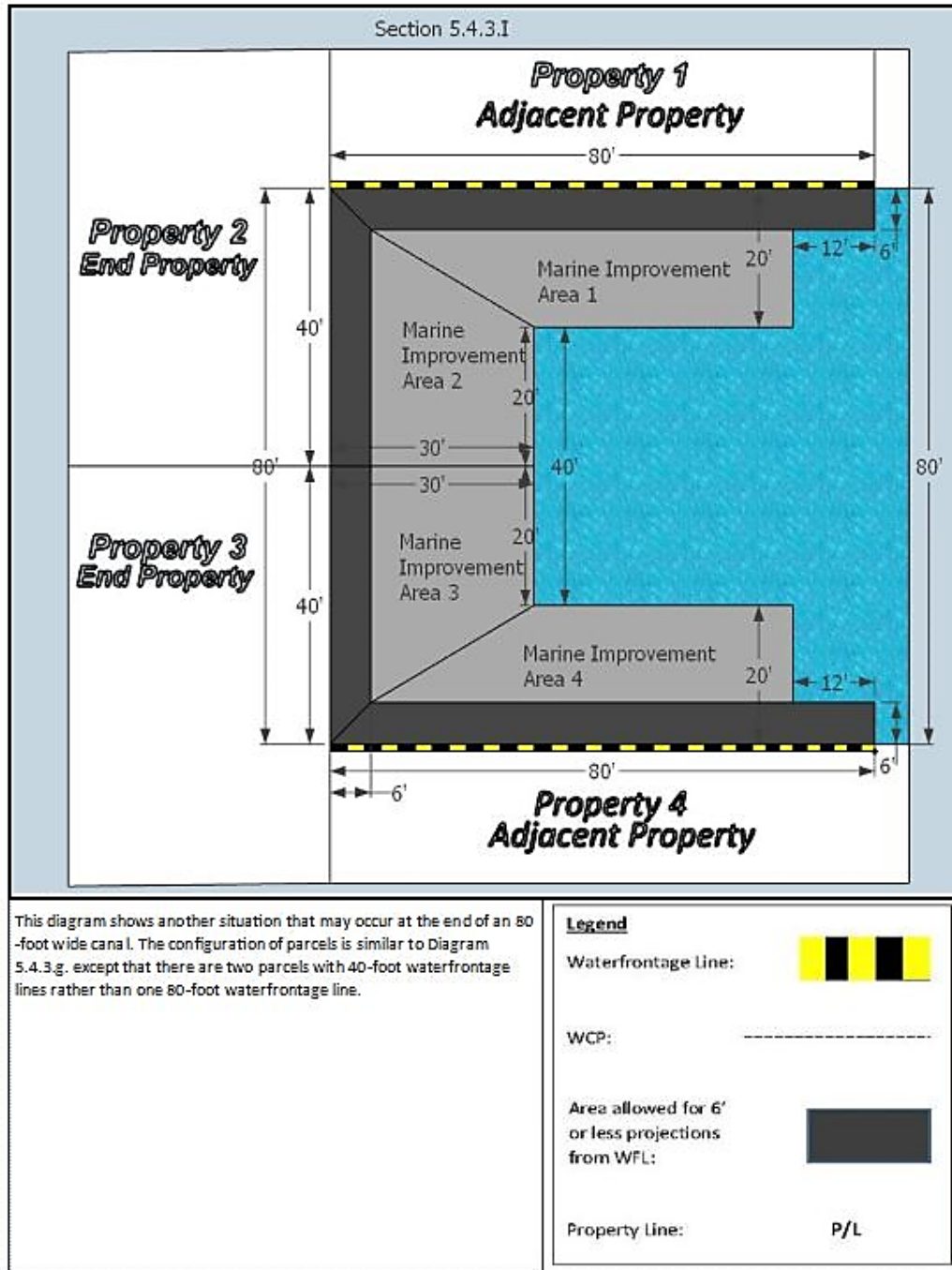
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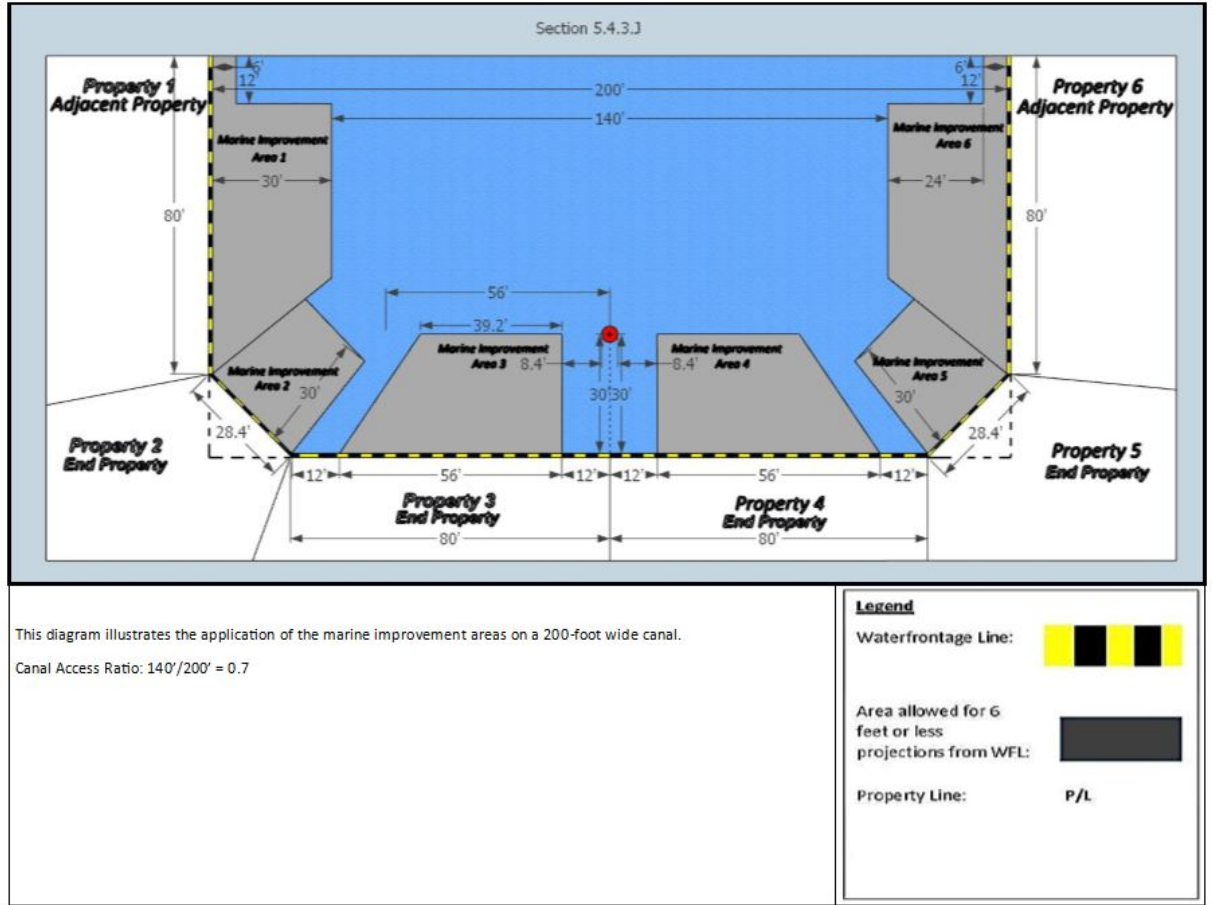
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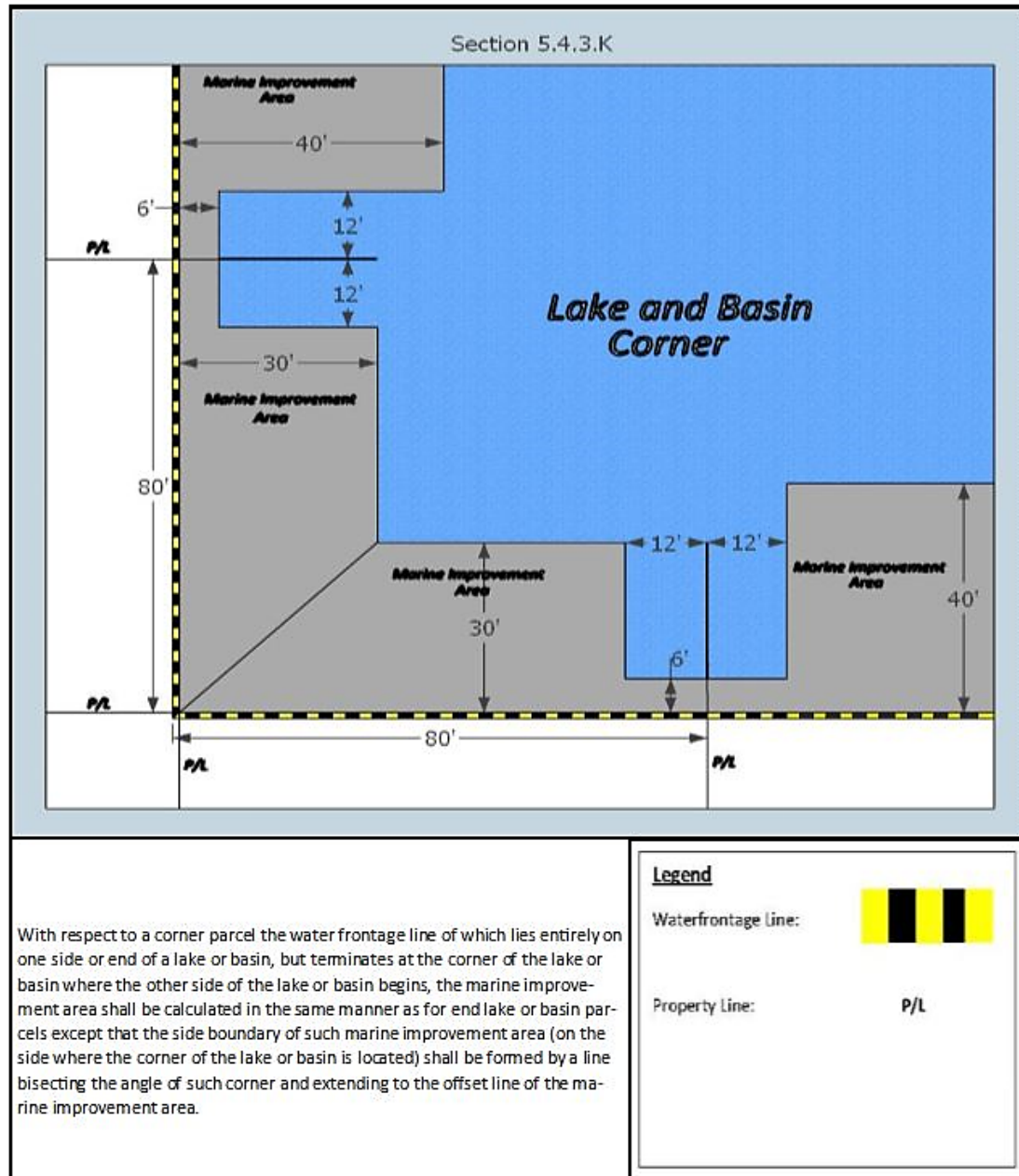
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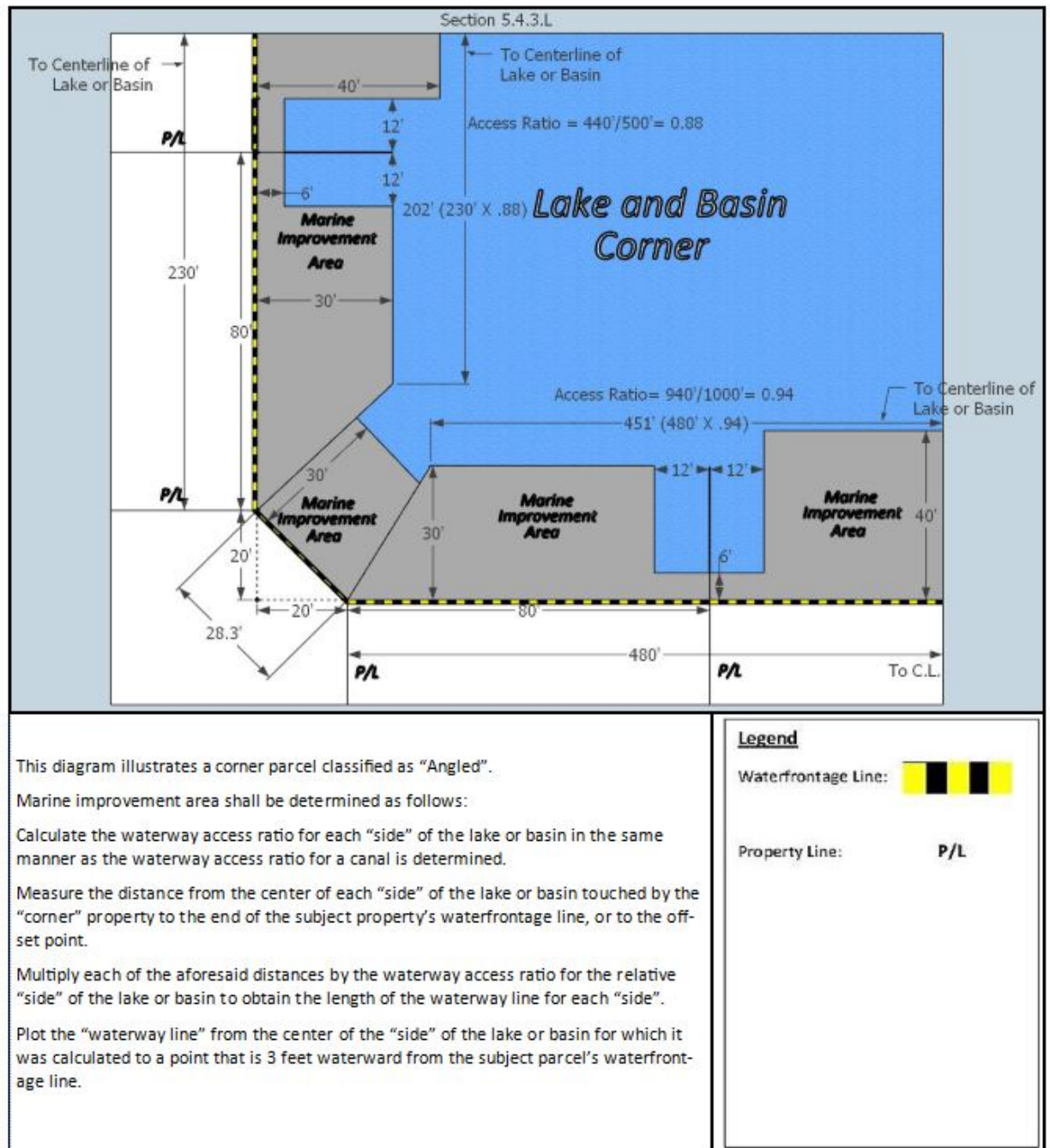
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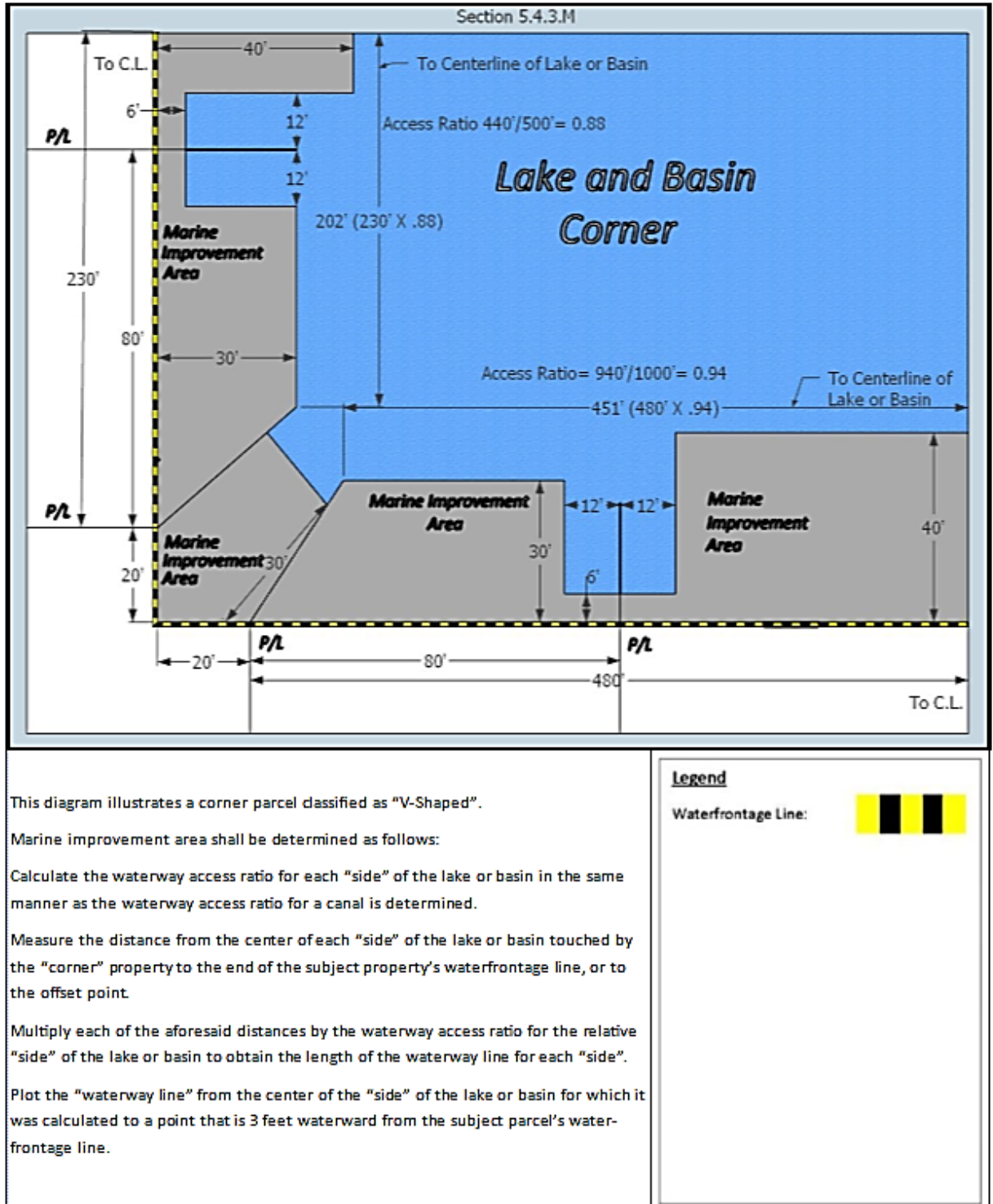
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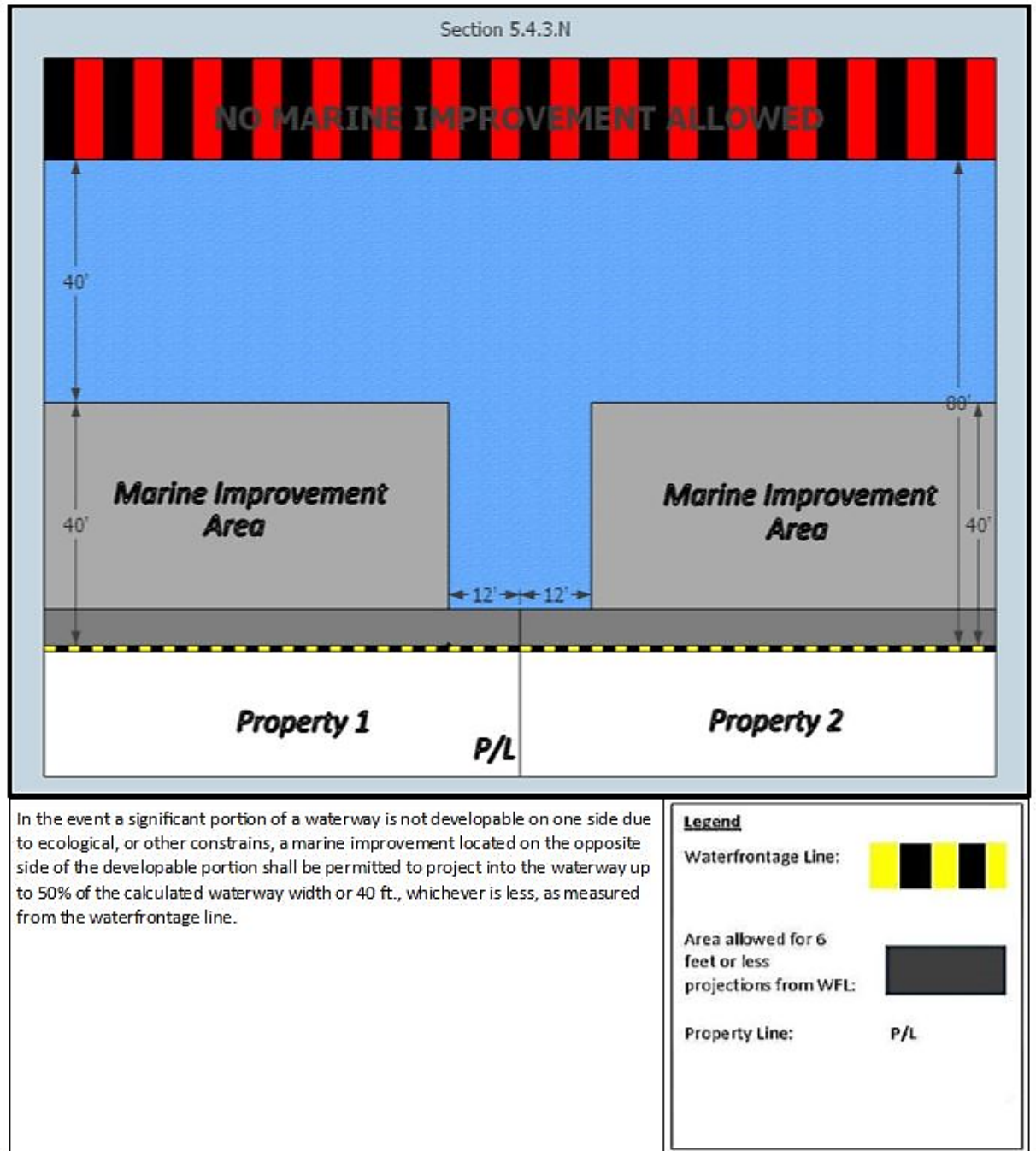
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12.

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1781

13.

Section 5.4.3.O

2 Options

80'

20'

Marine Improvement Area

Corner Property

P/L

40'

80'

6'

20'

P/L

Each of the two waterfrontage lines of the property shall be extended from the point immediately preceding where it begins to curve to meet the other waterfrontage line or from where it angles to meet the other waterfrontage line, whichever is applicable, to a point 25% of the calculated canal width or 40 feet, whichever is less. Then, in each intersecting canal, a line shall be drawn that is parallel to the extension of each of the waterfrontage lines and that runs through a point that is located at 25% of the calculated waterway width or 40 feet from the waterfrontage line, whichever is less.

Legend

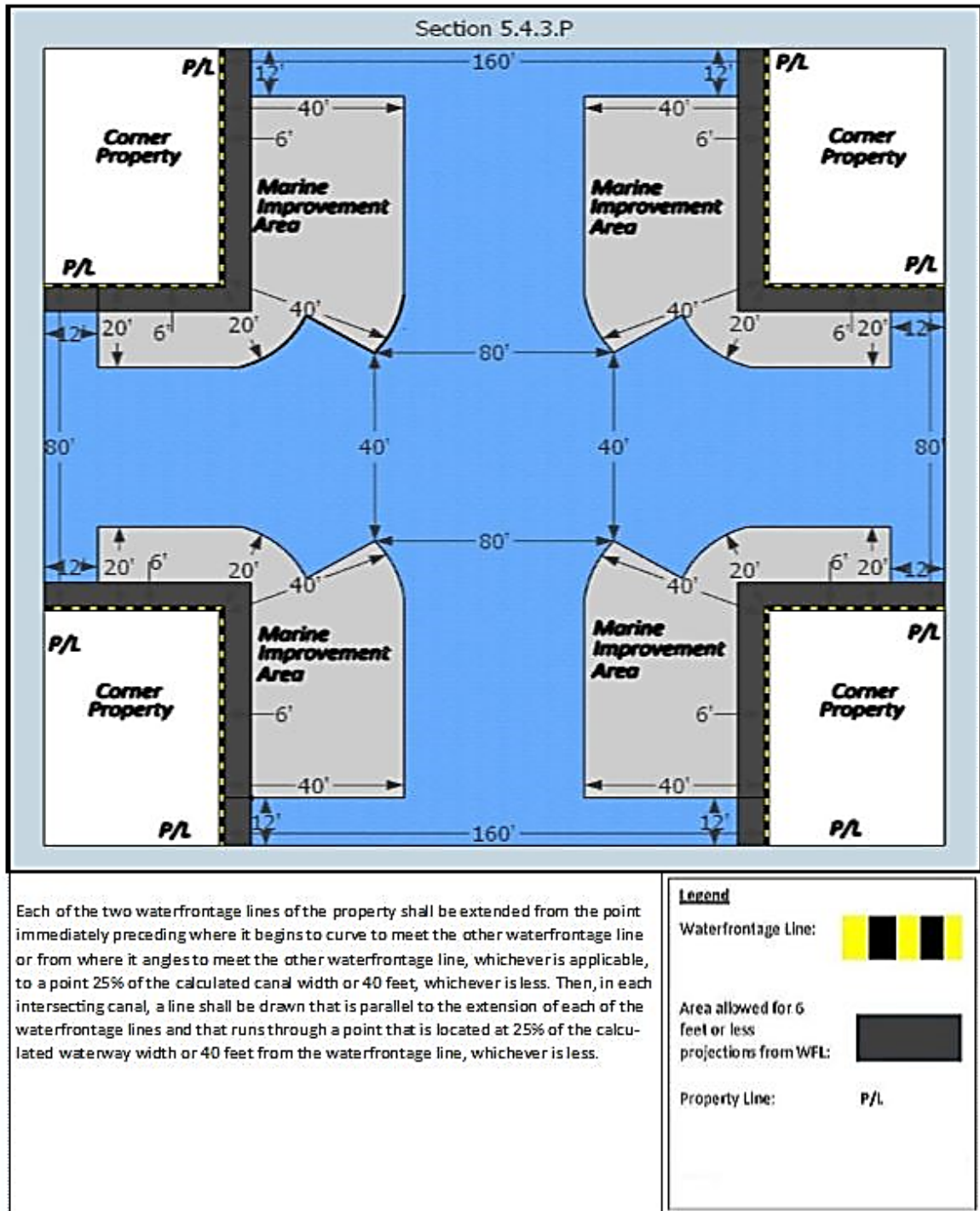
Waterfrontage Line:

Area allowed for 6 feet or less projections from WFL:

Property Line: P/L

14.

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15.

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Section 5.4.4. Joint Marine Improvements.

Owners of adjoining waterfront parcels may adjust their abutting marine improvement area boundaries and offset requirements by entering into a written joint use agreement, provided the marine improvements are connected. A captain's walk does not constitute a connection for requiring a joint marine improvement. All limitations regarding the maximum area of marine improvements shall apply to each property and the maximum marine improvement area allowed for each parcel shall not be combined or modified in any way so as to increase the maximum marine improvement area allowed for either parcel. Marine vessels or boat canopies when secured in any way to a joint marine improvement may extend beyond the end of one of the waterfront parcels involved at the point where such parcel abuts the other parcel sharing the marine improvement. However, no marine vessel (or any part thereof) shall extend beyond the outer ends of the water frontage of the two waterfront parcels except as provided in § 5.4.3.A.8 The joint use agreement shall, at a minimum, comply with the following requirements.

- A. The agreement shall contain the name(s) and current home address(es) of both property owners.
- B. The agreement shall identify the waterway upon which the subject parcels are located and shall identify the waterfront parcels involved by legal description and by STRAP number. The agreement shall also include a signed and sealed survey of the subject adjoining parcels.
- C. The agreement shall include a drawing of the proposed marine improvement(s) to be constructed, showing the design and dimensions of the marine improvement(s), and where the marine improvements will project from the parcels.
- D. The agreement shall identify those areas that would be subject to access (ingress and egress) easements in conjunction with the joint marine improvement. Such easement(s) shall identify by legal description the property to which the easement attaches and shall be irrevocable except with the written consent of the city. The rights of each party with respect to such easement(s) shall run with the title to the respective parcels. A drawing identifying the easements shall also be included with the agreement.
- E. The agreement shall identify the responsibilities of each of the parties for the construction and maintenance of the facilities. However, identification or division of responsibilities between parties in the agreement shall not affect the ability of the city to enforce any and all provisions of its Code of Ordinances or Land Development Codes against the property owner(s) of the joint marine improvement, jointly and severally.
- F. The agreement shall state that the parties understand and agree to abide by all applicable federal, state, and local regulations pertaining to the construction, maintenance, and use of the facilities.
- G. The agreement shall run with the land and be binding upon the parties, their successors, heirs, and assignees and it shall provide that it may not be rescinded or amended without the written consent of the city.
- H. The parties to the agreement shall record the agreement, at their own expense, in the public records of Lee County. The agreement shall satisfy all requirements for recording, including those contained

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in the Florida Statutes. No permit for the construction of a joint marine improvement or for the erection or installation of a boat canopy on a joint marine improvement shall be issued by the city until the parties have first provided to the city a copy of the fully executed agreement and evidence of recording that is satisfactory to the city, in its sole discretion.

- I. Prior to execution and recording of the agreement, the parties shall submit a draft of the proposed agreement to the Community Development Director for review and comment.

Section. 5.4.5. Quays and mooring piles.

- A. A seawall may be altered to accommodate the mooring of a vessel if it is determined that the seawall is structurally sufficient for that purpose.
- B. Mooring piles may be installed directly adjacent to the seawall to allow for the mooring of watercrafts without a dock.
- C. Pilings shall not be higher than eight feet above mean high water.
- D. Any watercraft moored at a quay or a pile may not be any closer than 10 feet to the adjacent property line.

Section. 5.4.6. Davits, watercraft lifts, and floating docks.

- A. Lifts: An electrical permit is required to install a lift within an existing u-shaped dock.
- B. Davits:
1. The minimum side setback for davit installation shall be five feet from the side lot line to the center of the davit base.
 2. Davits, including swinging lifts when extended over the water, may not extend further than 25% into the waterway or 30 feet whichever is less.
 3. Overhead hoists, davits, or machinery shall not exceed eight feet above mean high water when not in use.
- C. Floating docks and lifts:
1. For dimensional requirements refer to Section 5.4.3. above.
 2. A floating dock or lift must be anchored in place so as not to impede the use of neighboring waterfront property.

Section. 5.4.7. Boathouses and canopies.

- A. Boathouses are prohibited.

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- 1880
- 1881 B. No overhead structure shall be constructed on any dock other than an approved boat canopy or sun
- 1882 shelter. Sun shelters shall be erected or installed on docks only in accordance with Section 5.2.10. of
- 1883 this article. Boat canopies are permitted to be erected or installed on marine improvements for the
- 1884 purpose of protecting a vessel from the elements only in accordance with the following:
- 1885
- 1886 1. The support(s) and frame(s) of a boat canopy shall be constructed of a corrosion-resistant
- 1887 material. Boat canopy supports shall be arranged in an open design so as to allow visibility through
- 1888 the sides with openings no smaller than four feet in any dimension. No boat canopy support or
- 1889 frame shall be of a solid or opaque design so as to create a wall. No boat canopy shall have
- 1890 wooden framing or supports. No shutter roll-up design shall be permitted.
- 1891
- 1892 2. The canopy shall be fabric or a material which can be rolled and folded without damage. The
- 1893 canopy shall be attached to the boat canopy supports or frames in such a manner that it detaches
- 1894 in a wind load of 70 mph or greater.
- 1895
- 1896 3. The boat canopy shall not extend horizontally more than 30 inches over or beyond any dock to
- 1897 which the canopy is attached.
- 1898
- 1899 4. No boat canopy shall exceed 40 feet in length or 18 feet in width.
- 1900
- 1901 5. Boat canopies, their supports, and frames shall be maintained in good repair at all times. No
- 1902 canopy, canopy support, or frame shall be allowed to fall into disrepair or to become dilapidated,
- 1903 structurally dangerous, or unsafe. In the event a boat canopy, canopy support, or frame falls into
- 1904 disrepair, it shall be the responsibility of the owner of the waterfront parcel to remove the
- 1905 offending structure.
- 1906
- 1907 6. Only one canopy may be permitted per parcel.
- 1908
- 1909 7. No boat canopy, when measured at its highest point, shall extend more than 14 feet above the
- 1910 seawall cap, or if no seawall exists, above the decking of the marine improvement.
- 1911

1912 **Section. 5.4.8. Bulkheads, seawalls, and retaining walls.**

1913

- 1914 A. Mandatory seawalls required; saline or brackish water. All parcels having frontage or direct and
- 1915 immediate access to frontage on any saline, brackish, or tidally influenced canal or other body of
- 1916 water within or bordering the boundaries of the city is required to have a seawall bulkheading the
- 1917 entire frontage exposed to contact with the water.
- 1918 B. Seawalls; fresh or non-saline water. All parcels having frontage or direct and immediate access to
- 1919 frontage on any freshwater or non-tidal canal or other body of water within or bordering the
- 1920 boundaries of the city are required to have a seawall bulkheading the entire frontage exposed to
- 1921 contact with the water or alternatives to vertical bulkheads as specified in the City of Cape Coral
- 1922 Engineering Design Standards. Seawalls or their alternative shall be structurally maintained at owner's
- 1923 expense so as not to cause a nuisance or hazard to safety. The provisions of this Section shall not apply
- 1924 to any parcels adjacent to or contiguous with any drainage ditch, canal, pond, or lake within any public
- 1925 or private golf course or public park.

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- C. Bulkheads under SFWMD jurisdiction. The construction of bulkheads, in association with water management system lake construction under jurisdiction of SFWMD, shall be in compliance with SFWMD criteria.

Single-family residential and duplex parcels. Parcels bounded by bulkheads shall construct an infiltration trench adjacent to and along the entire length of the bulkhead.

CHAPTER 5. LANDSCAPING

Section 5.5.1. Purpose and intent.

This section is established to provide general landscape regulations, to improve the appearance of certain setback and yard areas, including off-street vehicular parking, open lot sales and service areas, and to protect and preserve the appearance, character, and value of the surrounding neighborhoods. The principles of the Florida-Friendly Landscaping Program with regard to planning and design, soil improvement, efficient irrigation, limited turf areas, mulches, drought tolerant plants, and appropriate maintenance are the basis for the principles in this section and should be used as guidance in all new construction and landscape renovations so as to provide the most green with the least water and create a landscape that can survive largely undamaged in case of short term water restrictions.

Section 5.5.2. Florida-Friendly Landscaping Program principles.

The city strongly encourages adherence to the Florida-Friendly Landscaping Program that includes the following principles:

- A. Right plant, right place. Plants selected to suit a specific site will require minimal amounts of water, fertilizer and pesticides.
- B. Water efficiently. Irrigate only when lawn and landscape need water.
- C. Fertilize appropriately. Less is often better. Over-use of fertilizer can be hazardous to your yard and the environment.
- D. Mulch. Maintaining a layer of mulch will help retain soil moisture, prevent erosion and suppress weeds.
- E. Attract wildlife. Plants in private yards that provide food, water and shelter can conserve Florida's diverse wildlife.
- F. Manage yard pests responsibly. Unwise use of pesticides can harm people, pets, beneficial organisms, and the environment.
- G. Recycle yard waste. Grass clippings, leaves, and yard trimmings recycled onsite provide nutrients to the soil and reduce waste disposal.

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H. Reduce stormwater runoff. Water running off from private yards can carry pollutants such as soil, debris, fertilizer, and pesticides that can adversely impact water quality.

I. Protect the waterfront. Waterfront property is very fragile and should be carefully protected to maintain freshwater and marine ecosystems.

Section 5.5.3. Applicability.

Except as provided under Section 5.5.4, Exemption, the landscape standards of this section shall apply to all new construction of single-family homes and duplexes, and to all other new construction requiring site plan review per under Article 3. Additionally, all landscape standards of this section shall apply to amendments to a site plan that would have the effect of:

A. Increasing the total square footage of any one building or the total square footage of all buildings on a site by more than 20%;

B. Increasing the number of buildings; or

C. Adding any new or expanding any existing off-street parking area.

D. No certificate of occupancy or certificate of completion shall be issued until the Department of Community Development (DCD) has determined that the applicant has complied with all the provisions of this section and has approved the finished landscape product.

Section 5.5.4. Exemption.

These regulations do not apply to projects located where the City Council has established specific landscape standards for a unique area of the city; unless the specific landscape standards otherwise expressly state their applicability.

Section 5.5.5. Conflicts.

If any of the landscape standards of this section conflict with any other provision of the City of Cape Coral Code of Ordinances or the LDC the provision that establishes the more specific standard governs. If neither conflicting provision establishes a more specific standard, then the more stringent provision governs unless otherwise expressly provided.

Section 5.5.6. Landscape plans.

A. Landscape plan required. A landscape plan that meets the requirements below shall be provided as required by Article 3.

B. Landscape plan standards. Landscape plans for all projects that require a landscape plan, including Site Development Plans and Subdivision Construction Plans shall be signed and sealed by a landscape architect, or other licensed professional authorized pursuant to F.S. Chapter 481, Part II, as amended. All landscape plans shall meet the following requirements and contain the following information:

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1. Scale of not less than one-inch equals 30 feet. This requirement shall not preclude the inclusion of a smaller-scaled drawing such as a key map for the purpose of establishing the orientation of landscape plans for large sites that, because of their size, cannot be displayed on a single sheet.
2. Zoning district and future land use classification for the subject parcel and all abutting parcels.
3. The approximate location, quantity, diameter/caliper, botanical and common name, and native status of all heritage trees and other existing trees with a caliper of two inches or greater, and whether they are proposed to be preserved or removed. Trees to be removed, if any, shall be indicated on a separate sheet.
4. Location, quantity, spacing, diameter/caliper, overall height (at time of planting) of proposed trees, palm trees, botanical and common name, and native status. Any existing trees located within the street right-of-way, between the closest outside edge of pavement and the subject property shall be shown.
5. Location, quantity, spacing, container size, overall height (at time of planting) of proposed shrubs and groundcover, botanical and common name, and native status.
6. Types, amounts, and placement of other hardscape materials such as berms and walls required by this section or Section 5.5.13, or both.
7. A statement or plan describing compliance with the irrigation standards of these regulations.
8. Location and type of existing and proposed utility lines, easements, electrical transformer boxes, fire hydrants or fire appliances, sidewalks, parking spaces, light poles, and stop signs.
9. Indication of existing and proposed grades if existing vegetation is to be retained on site.
10. Existing or proposed onsite curbing.
11. Calculations, notes, and installation details indicating how the proposed landscaping will be in compliance with requirements of this section.
12. Vegetation protection barricades to be used during construction, for all trees to be preserved.
13. Safe sight distance triangles.
14. Locations of proposed and existing off-street parking area lighting, if applicable.
15. A note that all existing prohibited vegetation shall be removed.

Section 5.5.7. Planting near utility infrastructure.

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Landscaping shall not interfere with or obstruct any existing or proposed pad-mounted transformer, overhead or underground utility line, utility service, fire hydrant, or fire appurtenance.

- A. Overhead power lines. Canopy tree branches or palm tree fronds within ten feet of existing overhead transmission or distribution lines, measured radially from the line, shall be subject to trimming or removal by the power company as necessary to maintain public overhead utilities in accordance with the National Electric Safety Code (NESC). No canopy trees or palm trees shall be planted closer to an overhead transmission or distribution line than as specified by the Minimum Separation Distance Between Center of Trees and Overhead Transmission or Distribution Lines indicated in Table 1. In order to avoid conflicts with power lines and avoid the need for removal or pruning that would harm or distort their natural shape, it is recommended that no canopy trees or palm trees should be planted closer to an overhead transmission or distribution line than as specified by the Recommended Separation Distance Between Trees and Overhead Transmission or Distribution Lines indicated in Table 1. The separation between a tree and an overhead transmission or distribution line shall be the distance from the center of the tree at ground level to the closest point on the ground that is within the vertical plane of an overhead transmission or distribution line at rest. A species of canopy tree or palm tree that is not listed in Tables 5.5.7.A and 5.5.7.B shall not be planted within 20 feet of existing overhead transmission or distribution lines without the prior written consent of the Department of Community Development Director.

Table 5.5.7.A: Minimum Separation Distance Between Palm Trees and Overhead Transmission or Distribution Lines			
PALMS			
Common Name	Botanical Name	Minimum Separation Distance (in feet) Between Center of Trees and Overhead Transmission or Distribution Lines	Recommended Separation Distance (in feet) Between Center of Trees and Overhead Transmission and Distribution Lines
Allexandra Palm	Archontophoenix alexandrae	10	13
Areca Palm	Chrysalidocarpus lutescens (Dypsis lutescens)	No minimum distance	No minimum distance
Bamboo Palm	Chamedorea spp.	No minimum distance	No minimum distance
Cabbage Palm (Sabal Palm)	Sabal palmetto	8	13
Canary Island Date Palm	Phoenix canariensis	15	21
Chinese Fan Palm	Livistonia chinensis	8	13
Christmas Palm	Adonidia merrillii (Veitchii merrillii)	No minimum distance	No minimum distance
Coconut Palm	Cocos nucifera	10	21
Date Palm	Phoenix dactylifera	10	21
Dwarf Palmetto	Sabal minor	No minimum distance	No minimum distance
European Fan Palm	Chamaerops humilis	No minimum distance	No minimum distance
Fishtale Palm	Caryota mitis	8	14

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Foxtail Palm	<i>Wodyetia bifurcata</i>	8	15
Lady Palm	<i>Rhapis excelsa</i>	No minimum distance	No minimum distance
Macarthur Palm	<i>Ptychosperma macarthuri</i>	8	14
Majesty Palm	<i>Ravenea glauca</i>	No minimum distance	No minimum distance
Needle Palm	<i>Rhapidophyllum hystrix</i>	No minimum distance	No minimum distance
Paurotis Palm (Everglades Palm) (may grow to 25 feet)	<i>Acoelorrhaphe wrightii</i>	No minimum distance	13
Pindo Palm	<i>Butia capitata</i>	No minimum distance	No minimum distance
Pygmy Date Palm	<i>Phoenix roebellini</i>	No minimum distance	No minimum distance
Queen Palm	<i>Syagrus romanzoffianum</i>	9	18
Royal Palm	<i>Roystonea</i> spp.	10	21
Saw Palmetto	<i>Serenoa repens</i>	No minimum distance	No minimum distance
Senegal Island Date Palm (Reclinata Palm)	<i>Phoenix redinata</i>	8	16
Silver Palm	<i>Coccothrinax argentata</i>	No minimum distance	No minimum distance
Solitare (Alexander) Palm	<i>Ptychosperma elegans</i>	8	14
Thatch Palm	<i>Thrinax</i> spp.	No minimum distance	No minimum distance
Washingtonia Palm (Mexican Washington Palm)	<i>Washingtonia robusta</i>	8	13

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Table 5.5.7.B: Minimum Separation Distance Between Canopy Trees and Overhead Transmission or Distribution Lines			
CANOPY			
Common Name	Botanical Name	Minimum Separation Distance (in feet) Between Center of Trees and Overhead Transmission or Distribution Lines	Recommended Separation Distance (in feet) Between Center of Trees and Overhead Transmission and Distribution Lines
Bald Cypress	<i>Taxodium distichum</i>	15	30
Black Olive (also see Shady Lady Black Olive)	<i>Bucida buceras</i>	20	30
Cassia fistula	<i>Cassia fistula</i>	15	30
Gumbo Limbo	<i>Bursera simaruba</i>	15	30
Jacaranda	<i>Jacaranda mimosfolia</i>	20	30

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Laurel Oak	Quercus laurifolia	15	30
Live Oak	Quercus virginiana	20	30
Mahogany	Swietenia macrophylla	15	30
Pigeon Plum	Coccoloba diversifolia	8	10
Slash Pine	Pinus elliottii	15	30
Southern Magnolia	Magnolia grandiflora	15	30
Wild Tamarind	Lysiloma bahamensis	25	35
Yellow Poinciana	Peltophorum pterocarpum	15	20
Drake Elm	Ulmus parvifolia	15	
Red Maple	Acer rubrum	15	30
Satin Leaf	Chrysophyllum oliviforme	12	15
Shady Lady Black Olive	Bucida buceras "Shady Lady"	No minimum distance	15
Tabebuia, pink or yellow	Tabebuia spp.	10	15

- B. Visibility triangles. All landscaping and buffers shall conform to the design limitations established by Article 5, Section 5.1.7, Visibility Triangles.

Section 5.5.8. Existing trees.

- A. Generally. Except for trees on the Florida Exotic Pest Plant Council's list of Category I invasive exotics, existing trees may be used to meet the minimum tree requirements for the site if they are indicated on the landscape plan (when a landscape plan is required), have a minimum diameter at breast height (DBH) of two inches, and are properly protected during any clearing or construction on the property.

Developers are encouraged to preserve existing heritage trees. For any site other than a single-family or duplex site, if during development or any time throughout the life of the development, regardless of change in ownership or use(s), any heritage tree is removed or damaged, it shall be replaced with a Florida native tree that meets the quality of materials standards in this article, with a minimum caliper of six inches measured at a height of 12 inches above the ground, with a height not less than 20 feet; however, this requirement shall not increase the total number of trees otherwise required for the site by more than 10%.

- B. Protection of trees during development activities. Prior to any land preparation or other development activities, a protective barrier shall be established around all trees that are not to be removed, as follows:
1. The protective barrier shall enclose at least that area within a radius of one foot for every inch of caliper DBH around the tree.

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2. The protective barrier may encompass more than one tree, and shall be established with a barrier as follows:
- a. Posts shall be implanted in the ground deep enough to be stable and with at least three feet visible above ground.
 - b. The protective posts shall be placed not more than six feet apart and shall be linked together at a height of at least three feet by rope, chain, silt fence fabric, or orange safety fence at least three feet in height, or any combination thereof.
3. Required protective barriers and perimeter lines shall remain in place until all construction activity, except landscaping within the protected area, is terminated.
- C. Construction activity limitations.
1. No attachment, wires (other than supportive wires), signs or permits may be fastened to any tree that is not to be removed.
 2. Landscaping activities within the area of the protective barrier (before and after it is removed) shall be accomplished with manual labor or light machinery that, if self-propelled, is not designed to bear the weight of the operator. Such light machinery may include string trimmers, walk-behind lawn mowers, or chainsaws. Except as necessary to perform landscaping activities as described above, no construction personnel shall enter the area within the protective barrier. Further, no equipment, tools, construction materials, debris of any kind, or more than six inches of soil shall be placed within the protective barrier.
 3. If fill is deposited adjacent to a protective barrier, a suitable temporary or permanent retaining structure shall be constructed to prevent siltation within the area of the protective barrier.
 4. If it can be reasonably accomplished, water, sewer, and other utility lines should be routed around the protective barrier of trees that are not to be removed. If a line cannot reasonably be routed around the protective barrier, the line shall be tunneled beneath the area and shall be offset to one side of the trunk to prevent damage to the main tap roots.
- D. Exempt trees. This subsection shall not apply to trees grown at commercial nurseries, as part of their stock.
- Section 5.5.9. Prohibited vegetation.**
- A. The following invasive exotic plants are prohibited and shall be removed from the development site, in its entirety. For projects developed in phases, all invasive exotic plants shall be removed from areas to be developed under future phases at the time the first or any subsequent phase is developed. Methods to remove and control invasive exotic plants must be included on required landscape plans, for projects that require a landscape plan. Methods of removal and control that would damage native vegetation to be preserved are prohibited. The development sites shall be maintained free from

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invasive exotic plants in perpetuity. For purposes of this subsection, invasive exotic plants include the following listed plants, or those plants currently listed as a Category I invasive by the Florida Exotic Pest Plant Council (FLEPPC) at the time of development:

Table 5.5.9: PROHIBITED INVASIVE EXOTICS	
Common Name	Scientific Name
Earleaf Acacia	acacia auriculiformis
Woman's Tongue	Albizia lebbbeck
Bishopwood	Bischofia javanica
Australian Pines	All Casuarina species
Carrotwood	Cupianopsis anacardioides
Rosewood	Dalbergia sissoo
Air Potato	Dioscorea alata
Murray Red Gum	Eucalyptus camaldulensis
Cuban Laurel Fig	Ficus microcarpa
Japanese Climbing Fern	Lygodium japonicum
Old World Climbing Fern	Lygodium microphyllum
Melaleuca, Paper Tree	Melaleuca quinquenervia
Downy Rose Myrtle	Rhodomyrtus tomentosa
Chinese Tallow	Sapium sebiferum
Brazilian Pepper, Florida Holly	Schirus terebinthifolius
Tropical Soda Apple	Solanum viarum
Java Plum	Syzygium viarum
Rose Apple	Syzygium jambos
Cork Tree	Thespesia populnea
Wedelia	Wedelia trilobata

- B. The Weeping Fig (*Ficus benjamina*) is prohibited due to aggressive root systems unless it is maintained as a hedge with a maximum height of eight feet.
- C. City of Cape Coral and state-prohibited vegetation shall be removed from all sites prior to issuance of certificate of occupancy or certificate of completion.

Section 5.5.10. Quality, size, spacing, and species mix.

All plant materials required by this section shall conform to the following at the time of planting:

- A. Plant installation standards. Plant materials shall be installed in soil conditions that are conducive to the proper growth of the plant material. Soil in planting areas shall be loose, permeable, friable, and free of limestone and other construction materials, off-street parking area base material, rocks, noxious weeds, grasses, hard pan, clay, or other debris. For purposes of this section, noxious weeds

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are those plants listed in Section 5B-57.007, F.A.C, State Noxious Weed List, by the Florida Department of Agriculture and Consumer Services. It is recommended that such materials be removed to a depth of two and one-half feet for the well-being of plant materials. Required canopy trees, accent trees, palm trees, and shrubs shall be planted on grades not exceeding 3:1.

- B. Plant species and grade. A minimum of 50% of all required canopy trees and accent trees and a minimum of 30% of all required shrubs and groundcovers, excluding turf grass areas, shall be Florida native as defined by this section. Any plant material on the Florida Exotic Pest Plant Council's list of Category I invasive exotics, as may be amended, shall not be counted toward the required plantings in this section. The City of Cape Coral prohibits the use of any plant material on the Florida Exotic Pest Plant Council's list of Category II invasive exotics, which are not expressly prohibited by Section 5.5.9. Plant materials used in conformance with the provisions of this section shall meet or exceed the Standards for Florida No. 1, as set forth in the latest edition of "Grades and Standards for Nursery Plants" published by the State Department of Agriculture and Consumer Services, including minimum crown spread diameter, root-ball sizes, and container volumes.
- C. Tree standards.
1. Canopy tree size. Except in the South Cape Downtown District, all canopy trees required to meet minimum requirements shall have a minimum height of ten feet, and shall have a minimum caliper of two inches measured at a height of 12 inches above the ground. In the South Cape Downtown District, all canopy trees required to meet minimum requirements shall have a minimum height of 12 feet and a minimum caliper of three inches measured at a height of 12 inches above the ground.
 2. Palm tree size. Palm trees required to meet minimum requirements shall have a minimum size of 16 feet overall, unless located within ten feet of a walkway, in which case they shall have a minimum of ten feet of clear trunk at planting.
 3. Accent tree size. Accent trees required to meet minimum requirements shall have a minimum height of eight feet, have a minimum caliper of one and one-half inches measured at a height of six inches above the ground.
 4. Tree species mix. A mix of species shall be provided according to the overall number of trees required to be planted. Species shall be planted in proportion to the required mix. The minimum number of species to be planted is indicated in Table 2.

Table 5.5.10: Required Species Mix	
Required Number of Trees	Minimum Number of Species
1 - 4	1
5 - 10	2
11 - 20	3
21 - 30	4
31+	5

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- 2213
- 2214 5. Shrub standards. Except as otherwise provided herein, shrubs planted in residential development
- 2215 shall be a minimum of 18 inches in height and be in at least a three-gallon container size at time
- 2216 of planting. Shrubs planted in all non-residential and mixed-use development must be a minimum
- 2217 of 24 inches in height and be in at least a seven-gallon container size at time of planting. Shrubs
- 2218 required for buffer yard plantings must be a minimum of 32 inches in height and be in at least a
- 2219 seven-gallon container size at time of planting. Ornamental grasses may be used in lieu of 30% of
- 2220 shrubs required. Saw palmettos (*Serenoa repens*) and coonties (*Zamia floridana*) may be used as
- 2221 shrubs, provided they are 12 inches in height at time of planting.
- 2222
- 2223 6. Groundcovers and sod.
- 2224
- 2225 a. Groundcovers shall be planted no more than 24 inches apart for one-gallon pots or 12 inches
- 2226 apart for four-inch pots.
- 2227
- 2228 b. Wherever used, sod shall be installed with no gaps or overlaps, so as to present a finished
- 2229 appearance and prohibit erosion of the planted area.
- 2230
- 2231 7. Firewise landscaping. Landscaping within areas subject to wildfire hazard and should incorporate
- 2232 firewise landscaping techniques promulgated by the Florida Department of Economic
- 2233 Opportunity and the Department of Agriculture and Consumer Services.
- 2234

2235 **Section 5.5.11. Planting in public drainage or utility easements.**

2236

2237 No canopy trees, accent trees, palm trees, or shrubs required by this section shall be planted within a

2238 public drainage or utility easement without approval of the city. The city may deny approval to place

2239 landscaping materials in an easement if such would conflict with existing or proposed utilities or drainage

2240 functions. If the city approves the placement of any plant material installed to meet the requirements of

2241 this section within a public drainage or utility easement and the landscape material is removed or

2242 damaged by construction or maintenance of drainage facilities or utilities, the property owner shall

2243 replace all such plant material within 30 days of the completion of the drainage or utility work, in

2244 accordance with the following criteria:

2245

2246 A. Canopy trees.

2247

- 2248 1. If planted back in the public drainage or utility easement, the property owner shall replace the
- 2249 canopy tree with a tree having a minimum caliper as the removed or damaged tree; however, if
- 2250 the removed or damaged tree is greater than four inches in caliper (measured at a height of 12
- 2251 inches above the ground), the replacement tree shall be required to be a minimum of four inches
- 2252 in caliper.
- 2253
- 2254 2. If planted in an alternate location that is not within a public drainage or utility easement, the
- 2255 property owner shall replace the canopy tree with one meeting the minimum size required within
- 2256 this Chapter and that is subject to all other requirements of this section. For sites required to have
- 2257 a site plan, such alternate plant location shall be indicated on a revised landscape plan and is
- 2258 subject to approval by the city.

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B. Palm trees.

1. If planted back in the public drainage or utility easement, the property owner shall replace the palm tree with a palm tree having a minimum caliper as the removed or damaged palm tree; however, if the removed or damaged palm tree is greater than nine inches in caliper (measured at a height of 12 inches above the ground), the replacement palm tree shall be required to be a minimum of nine inches in caliper.

2. If planted in an alternate location that is not within a public drainage or utility easement, the property owner shall replace the palm tree with one meeting the minimum size required within this Chapter and that is subject to all other requirements of this section. For sites required to have a site plan, such alternate plant location shall be indicated on a revised landscape plan and is subject to approval by the city.

C. Shrubs. Regardless of whether the shrub is located in a public drainage or utility easement, the property owner shall replace the shrub with a shrub meeting the minimum size required within this chapter.

The property owner shall notify the city when the replacement planting required by this subsection have been installed and are ready for re-inspection.

Section 5.5.12. Single-family homes and duplexes.

The following landscape requirements shall be met for all single-family and duplex units.

A. Trees required for single-family homes. All newly constructed single-family homes shall have a minimum number of trees per building site in accordance with Table 5.5.12.A: Trees Required for Single-Family Homes. Where a home site includes a septic tank between the structure and the street, trees shall be planted a minimum of six feet from the septic tank or its drain field.

Table 5.5.12.A: Trees Required for Single-Family Homes			
	Canopy Trees	Accent Trees	Palm Trees
Option A:	3	—	—
Option B:	2	—	3
Option C:	2	2	—
Option D:	1	2	3

B. Trees required for Duplexes. All newly constructed duplexes shall have a minimum number of trees per side in accordance with Table 5.5.12.B Trees Required for Duplexes. Where a site includes a septic tank between the structure and the street, trees shall be planted a minimum of six feet from the septic tank or its drain field.

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Table 5.5.12.B: Trees Required for Duplexes (PER SIDE)			
	Canopy Trees	Accent Trees	Palm Trees
Option A:	3	—	—
Option B:	2	—	3
Option C:	2	2	—
Option D:	1	2	3

- C. Credit for larger, canopy trees. The required number of canopy trees may be reduced by one tree if an existing or proposed canopy tree is at least two inches of increased caliper above the minimum planting size specified in this Chapter. Single-family homes and duplexes are not eligible for the Tree Credit Program provided by Section 5.5.15.
- D. Shrubs required. Each single-family home and duplex shall be landscaped with a minimum of 20 three-gallon shrubs of which a minimum of ten shall be planted at any location in the front yard.
- E. Mulch, groundcover, and planting beds.
1. The soil surface of the land area not covered by structures or hardscape features shall be covered with sod or planting beds containing canopy trees, accent trees, palm trees, shrubs, groundcover, or any combination thereof. When shrubs are used in planting beds, shall be planted not more than 48 inches apart. Permeable synthetic turf may be used in lieu of sod, so long as it is not used to cover more than 20% of the total land area not covered by structures or hardscape features and is not within a front yard or right-of-way.
 2. A two-inch minimum layer of organic mulch, measured after watering-in, shall be placed and maintained around all newly installed canopy trees, accent trees, palm trees, and shrubs. A two-inch minimum layer of organic mulch, measured after watering-in, shall be placed around all newly installed groundcover plants so that bare areas of sod are not exposed; however, the mulch around groundcover plants is not required to be maintained after the groundcover becomes established. Except as otherwise provided in these regulations, each canopy tree, accent tree, and palm tree shall have organic mulch no less than 36 inches beyond its trunk in all directions; however, the mulch shall be kept away from the trunks and stems of plants so as to avoid conditions that may be conducive to collar rot, basal canker, or other fungi. The use of cypress or cedar mulch is strongly discouraged.
 3. The use of any inorganic mulch, including pebbles or shells to cover the soil surface is not recommended. Inorganic mulch should only be used to frame the outside of beds or to control erosion and should not be used to cover the root ball of newly planted trees or shrubs. Inorganic mulch shall not exceed 10% of the total land area not covered by hardscape features.
 4. The right-of-way from the edge of the street pavement to the property line shall be planted with sod or other approved groundcovers, except as otherwise provided in the City of Cape Coral Code of Ordinances or Land Use and Development Regulations.

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- F. Irrigation systems. Irrigation systems are encouraged but not required; however, where they are installed, they shall meet the standards of Section 5.5.14.

Section 5.5.13. Landscaping for all development other than single-family homes and duplexes.

The provisions of this section shall not apply to single-family homes and duplexes unless otherwise specifically stated herein. The soil surface of the land area not covered by structures or hardscape features shall be covered with sod or planting beds containing canopy trees, accent trees, palm trees, shrubs, groundcover, or any combination thereof. Shrubs in planting beds shall be planted not more than 48 inches apart. Permeable synthetic turf may be used in lieu of sod, so long as it is not used to cover more than 20% of the total land area not covered by structures or hardscape features and is not within a front yard or right-of-way. The right-of-way from the edge of the street pavement to the property line shall be planted in accordance with the requirements of subsection B. below.

A. Tree planting requirements.

1. Except in the South Cape District, all sites, exclusive of buffer areas, shall have at least one canopy tree for each 1,000 square feet of gross land area, except that accent trees or palm trees may be substituted for a required canopy tree as indicated below. Trees required for buffers shall not be used for meeting the minimum number of trees required for a site. In the South Cape District, all sites shall have at least one canopy tree for each 3,500 square feet of gross land area, except that accent trees or palm trees may be substituted for a required canopy tree as indicated below. For all districts, in the event the calculation of required number of canopy trees yields a fractional number, that number shall be rounded up to the next highest whole number prior to any calculation of the quantity of substituted accent trees or palm trees. Trees planted to meet the other requirements of this section can be included in the calculation of total number of trees required by this section. Such trees may be planted singularly or grouped together. Required canopy trees shall not be spaced less than 20 feet on center. Except in the South Cape District, each canopy tree shall be planted in a minimum planting area of 100 square feet with a minimum dimension of seven feet in width unless an alternative minimum planting area or dimensions are approved by the Director, based on planting details that ensure reasonable soil surface and planting medium volumes.
2. In the South Cape District, each canopy tree shall be planted a minimum planting area of 24 square feet with a minimum dimension of four feet in width unless an alternative minimum planting area or dimensions are approved by the Director, based on planting details that ensure reasonable soil surface and planting medium volumes. Except in the South Cape District not more than 50% of the required canopy trees may be substituted with accent trees or palm trees in accordance with Section 5.5.13. In the South Cape District, not more than 25% of the required canopy trees may be substituted with accent trees or palm trees, in accordance with Section 5.5.13., as follows:
 - a. Accent trees may be substituted for required canopy trees at a rate of two accent trees for each canopy tree required; however, no canopy tree required for a landscape buffer yard shall be substituted with an accent tree, unless the minimum width of available buffer yard options would preclude compliance with the minimum separation distance between trees and overhead power lines.

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- b. The following palms shall not be substituted for required canopy trees:

Table 5.5.13.A: PROHIBITED SUBSTITUTIONS FOR CANOPY TREES	
Common Name	Botanical Name
Areca Palm	<i>Chrysalidocarpus lutescens</i> (<i>Dypsis lutescens</i>)
Bamboo Palm	<i>Chamedorea</i> spp.
Christmas Palm	<i>Adonidia merrillii</i> (<i>Veitchii merrillii</i>)
Dwarf Palmetto	<i>Sabal minor</i>
European Fan Palm	<i>Chamaerops humilis</i>
Lady Palm	<i>Rhapis excelsa</i>
Majesty Palm	<i>Ravenea glauca</i>
Needle Palm	<i>Rhapidophyllum hystrix</i>
Pygmy Date Palm	<i>Phoenix roebellini</i>
Saw Palmetto	<i>Serenoa repens</i>
Silver Palm	<i>Coccothrinax argentata</i>
Thatch Palm	<i>Thrinax</i> spp.

To meet tree planting requirements in a landscape buffer yard or in off-street parking and vehicle use areas, palm trees, other than those listed above, may be substituted for canopy trees at a rate of three palm trees per each canopy tree substituted, regardless of the palm tree species. Except in the South Cape Downtown District, to meet tree planting requirements for areas other than a landscape buffer or off-street parking and vehicle use areas, palm trees may be substituted for required canopy trees at a rate of one palm tree per each canopy tree substituted. In the South Cape Downtown District, to meet tree planting requirements for areas other than a landscape buffer yard, palm trees may be substituted for required canopy trees at a rate of two palm trees per each canopy tree substituted.

- c. Except for plantings in or near surface water management areas, a two-inch minimum layer of organic mulch, measured after watering-in, shall be placed and maintained around all newly installed canopy trees, accent trees, palm trees, and shrubs. Except in the South Cape District, each tree shall have organic mulch no less than 36 inches beyond its trunk in all directions. In the South Cape District, each tree shall have organic mulch no less than 18 inches beyond its trunk in all directions. All mulch shall be kept away from the trunks and stems of plants so as to avoid conditions that may be conducive to collar rot, basal canker, or other fungi.

The use of cypress or cedar mulch is strongly discouraged.

- d. The use of any inorganic mulch, including pebbles or shells to cover the soil surface shall only be used to frame the outside of beds or to control erosion. Inorganic mulch shall not exceed 10% of the total land area not covered by structures, pools, accent boulders, driveways, sidewalks, or other paving. It be used to cover the root ball of newly planted trees or shrubs.

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- The balance of the soil surface shall be covered with planting beds with a two-inch minimum layer of organic mulch.
- e. Canopy trees shall not be planted within seven feet of any roadway, sidewalk, or public utility unless an acceptable root barrier material is installed between the tree and the roadway, sidewalk, or public utility. Acceptable root barrier material shall consist of one of the following: a manufactured root barrier material, installed in accordance with manufacturer's directions, reinforced concrete with a minimum depth of 16 inches, or a continuous sheet of aluminum with a minimum depth of 16 inches and a minimum thickness of 0.024 inches. Where a root barrier is required, it shall be installed for a minimum distance of 20 linear feet.
- f. In the event a property owner installs a public sidewalk closer than seven feet to any extant canopy tree, the property owner shall install an acceptable root barrier material in accordance with manufacturer's directions, such as herbicide impregnated materials or reinforced concrete of sufficient width and length, which will prevent the encroachment or undermining by the tree's root system, prior to the installation of the sidewalk.
- g. In the South Cape District, in the event that the tree requirements in this section cannot be met due to site constraints, the property owner may pay an in lieu of fee to the Downtown CRA Tree Fund. Such site constraints shall include size of site, access or circulation requirement making trees impracticable, or extant site layout. The City Council shall establish a fee based on the average cost of the aforementioned trees. The city will use the funds in the Downtown CRA Tree Fund to provide or enhance the landscaping and vegetation in public areas of the Downtown CRA. To qualify to pay an in lieu of tree fee, a property owner must apply for approval by the Director of the Department of Community Development. If the Director approves the application, then the property owner may pay an in lieu of tree fee meeting planting requirements. This provision does not preclude applicants from applying for deviations in accordance with Section 5.5.20.
- B. Right-of-way. The right-of-way from the edge of the street pavement to the property line shall be planted with sod or other approved groundcovers, except as otherwise provided in the City of Cape Coral Code of Ordinances or Land Development Code.
- C. Landscape design features. Six types of landscaping may be required on a site, depending on the site location and the specific elements of the development: foundation landscaping, landscaping adjacent to roads, off-street parking and vehicle use areas, retention/detention areas, and buffers. Trees planted to meet the requirements of these landscape design features can be included in the calculation of total number of trees required by this section under tree planting requirements.
1. Foundation Landscaping. To provide aesthetic relief between a building and off-street parking or vehicular use areas, all new development, except development in the Industrial District and South Cape District, must provide foundation landscaped areas equal to 10% of the proposed building gross ground level floor area. These foundation landscaped areas must be between the off-street parking area and the building, between public streets and the building, or between vehicular access ways and the building, or any combination thereof, with emphasis on the side(s) most visible to the public. Foundation landscaping may consist of surface level landscaped areas, raised

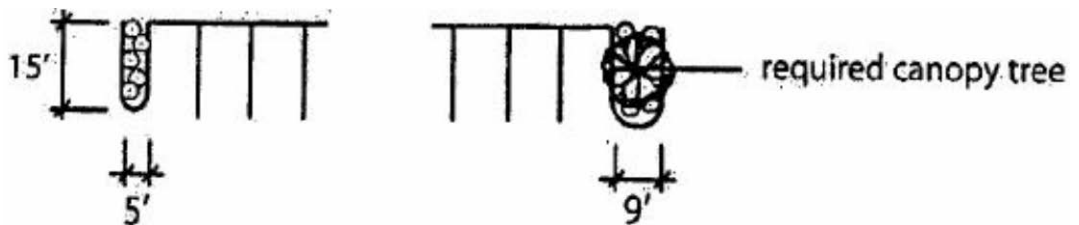
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planters, planter boxes, or any combination thereof. The width of the foundation landscaped areas shall be five feet, except for sites less than one acre with an average depth less than or equal to 135 feet, in which case the width shall be three feet. Foundation landscaped areas may be planted with trees, but must be planted with shrubs spaced a maximum of three feet on centers.

2. Landscaping Adjacent to Roads. Where a development site abuts a public right-of-way, excluding a dedicated alley, the following shall apply except within Mixed-Use Districts:
 - a. Except as otherwise provided herein, a strip of land, a minimum of ten feet in width, shall be provided between the abutting right-of-way and any structure or off-street parking area. For sites or portions of sites that are 135 feet or less in depth, the width may be reduced to five feet.
 - b. At a minimum, perimeter landscaping in this area shall consist of the following:
 - i. One shrub for every three linear feet of landscaped area, planted separately or grouped, except where a carport or an off-street parking or vehicular use area abuts the strip of land that is required adjacent to roads. Where a carport or an off-street parking or vehicular use area abuts the strip of land required adjacent to roads, a continuous hedge, consisting of shrubs spaced no greater than three feet on center is required.
 - ii. The requirement for canopy trees or accent trees depends on the presence of overhead electric distribution or transmission lines. Shade or accent trees shall be provided as follows:
 - (a) Except as provided below, one canopy tree for each 30 linear feet of frontage is required. If the calculations yield a fractional number, that number shall be rounded up to the next highest whole number. Trees may be placed in any arrangement within the landscape strip provided that the spacing between tree trunks is no greater than 60 feet.
 - (b) In locations where an adequate separation distance from overhead distribution or transmission lines, as specified in Table 1, § 5.2.7., is not available, two accent trees may be substituted for any shade tree required for each 30 linear feet of frontage.
 - c. Ingress and egress from the public right-of-way through all such landscaping to off-street parking or other vehicular use areas shall be permitted and may be subtracted from the linear dimension used to determine the number of trees and shrubs required.
 - d. Landscaping required under this section shall not supersede visibility requirements at the intersection of roads, and ingress/egress lanes as required in Article III, § 3.7., Visibility Triangles.
3. Off-street parking and vehicle use areas. The provisions of this section apply to all new off-street parking or other vehicular use areas not situated directly beneath a building containing habitable space.

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- a. Protection of landscaped areas from vehicular encroachment. When a landscaped area abuts or is within an off-street parking or vehicular use area, wheel stops or curbing shall be used to protect landscaped areas from encroachment. The placement of shrubs and trees shall be in accordance with the Parking Lot Standards of the City of Cape Coral Engineering Design Standards.
- b. Except in the South Cape District, landscaping for sites with both of the following: 1) an average depth less than or equal to 135 feet and 2) an area less than or equal to one acre. All off-street parking areas shall be landscaped to provide visual relief and cooling effects and to define logical areas for pedestrian and vehicular circulation, as follows:
- i. Minimum landscaped area. Landscaped areas including, but not limited to, landscaped islands, foundation landscaping, and landscaping within divider medians shall equal or exceed a minimum of 5% of the total off-street parking and vehicle use areas.
 - ii. Tree planting. At least one canopy tree shall be provided for every 150 square feet of required planting area. Palm trees may be substituted for canopy trees in accordance with this Chapter.
 - iii. Divider medians. Where canopy trees are planted in divider medians, the minimum width of the divider median shall be nine feet.
 - iv. Landscaping at the end of a row of parking spaces. Each row of parking spaces containing ten or more parking spaces shall be terminated by a landscaped area at each end that measures not less than five feet in width and not less than 15 feet in length. No trees shall be planted in landscaped islands less than nine feet in width.

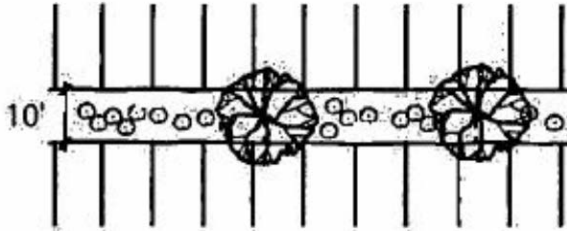


- c. Except in the South Cape District, landscaping for sites with either of the following: 1) an average depth greater than 135 feet; or 2) an area greater than one acre. All off-street parking areas shall be landscaped to provide visual relief and cooling effects and to define logical areas for pedestrian and vehicular circulation, as follows:
- i. Minimum landscaped area. Landscaped areas including landscaped islands, foundation landscaping, and landscaping within divider medians shall equal or exceed a minimum of 10% of the total paved surface area. Landscaped areas reserved for future parking spaces may not be included in this calculation.
 - ii. Tree planting.
 - (1) At least one canopy tree shall be provided for every 150 square feet of required planting area. Palm trees may be substituted for canopy trees in accordance with this Chapter.

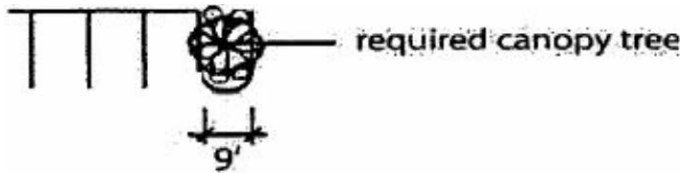
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(2) No parking space may be more than 100 feet from a tree.

- iii. Divider medians. If a divider median is used to meet the landscaping requirements, it shall be a minimum width of nine feet.



- iv. Landscaping at the end of a row of parking spaces. Each row of parking spaces containing ten or more parking spaces shall be terminated by a landscaped area that measures not less than nine feet in width and not less than 15 feet in length. Each such landscaped area shall be planted with at least one canopy tree. Palm trees may be substituted for canopy trees in accordance with this Chapter.



- v. Landscape materials. All interior landscaped areas not dedicated to trees or to preservation of existing vegetation shall be landscaped with grass, groundcover, shrubs or other approved landscaping materials and this shall be noted on the landscape plans.

- d. Landscaping for sites in the South Cape District. Except within city dedicated parking areas, all off-street parking areas and applicable off-street parking area setbacks shall be landscaped to provide visual relief and cooling effects and to define logical areas for pedestrian and vehicular circulation, as follows:

- i. Minimum landscaped area.

- (1) Unless otherwise provided herein, all required landscape areas shall be planted with trees, shrubs, groundcover, sod, or any combination thereof. At a minimum, the landscape area(s) shall include low-lying shrubs or ground cover plants with a minimum 50% coverage of the landscape area at time of planting. When utilized, shrubs shall be planted at no more than three feet on center.
- (2) All applicable minimum off-street parking area setbacks required by Article 4, Chapter 5, except rear when abutting an alley, shall be landscaped unless otherwise provided herein. This provision shall not apply to portions of setbacks areas utilized for shared curb cuts, joint driveways and shared off-street parking areas across lot lines.
- (3) Ingress and egress from the right-of-way through any setback area is permitted and the width of the ingress and egress may be subtracted from required landscape areas.

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- ii. Landscaping for lots with a lot frontage greater than or equal to 125 feet. Off-street parking areas containing 24 or more parking spaces shall provide a landscaped area that measures not less than nine feet in width and not less than 15 feet in length for every 12 parking spaces. Such landscaped area(s) shall be located as intermediate within or terminal islands to parking space rows. Each such landscaped area shall be planted with at least one canopy tree and groundcovers or sod.
4. Retention/detention areas.
- a. Planting of trees, palm trees, shrubs, and groundcovers in retention/detention areas is encouraged, provided that the placement does not conflict with the volume of storage required for the retention/detention areas and does not significantly interfere with or impede the flow of runoff in the retention/detention area.
- b. All retention/detention areas shall be stabilized with sod or other groundcover capable of stabilizing the soil. Organic mulch is not allowed.
5. Buffers.
- a. Determination of required buffer. Landscape buffer and screening shall be required to separate uses of differing zoning districts from each other. The type and width of buffer required shall be determined by using Table 5.5.13.B: Table of Minimum Buffer Requirements. If the developing property contains a non-residential use in a Residential District, the buffer shall be as indicated along the row labeled "Non-Residential Uses in Residential Districts"; otherwise, the buffer required shall be as indicated along the row of the developing property's zoning district under the applicable column. The buffer that is required along any segment of property line, if any, is dependent on the zoning of the abutting property and property separated by only a street containing not more than two lanes for motor vehicle traffic. A bicycle "lane" shall not be considered to be a lane for motor vehicle traffic. The specifications for each type of buffer are provided in Table 5.5.13.B.

TABLE 5.5.13.B MINIMUM BUFFER WIDTH With wall/Without wall										
DEVELOPING PROPERTY	ZONING	R1, RE	ABUTTING PROPERTY							SC, MXB
			RML	RMM	C	CC	P	I	INST	
	R-1, RE	X	X	X	X	X	X	X	X	X
	RML	5	X	X	X	X	X	X	X	X
	RMM	10 / 20	5	X	X	X	X	X	X	X
	C	10 / 20	10 / 15	10 / 15	X	X	X	X	X	X
	CC	10 / 20	10 / 15	10 / 15	X	X	X	X	X	X
	P	5	5	5	X	X	X	X	X	X
	I	40 wall	40	40	10 / 20	10 / 20	30	X	X	X
	INST	10 / 20	10 / 20	10 / 20	X	X	X	X	X	X

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	SC, MXB	5	5	5	X	X	X	X	X	X

b. Buffer specifications.

- i. The standards for minimum width, plant types and quantities, and opaque features shall be in accordance with Table 5.5.13.B: Minimum Buffer Width and Table 5.5.13 C, Buffer Plantings. All plants provided within a buffer are specific to, and must be located within the buffer area. The buffer landscaping is in addition to other landscaping required by this Chapter and this landscaping must be within the buffer area. For buffer options that include a wall, the wall must conform to the standards of Article 5, Chapter 2, including the setback requirements.
- ii. The buffer width shall be measured along a line perpendicular or radial to the property line.
- iii. The number of each type of plant required shall be determined by dividing the length of each side of the property requiring a given type of buffer by 100 and multiplied by the number of plants per 100 feet indicated for a selected option. If the calculations yield a fractional number, that number shall be rounded up to the next highest whole number.
- iv. If a wall is required, the wall shall extend the entire length of the property line, or until it connects to another wall.
- v. Ingress and egress from the right-of-way through any buffer shall be avoided; however, where it is determined by the city that avoidance is impractical or not preferable due to traffic flow or safety considerations, penetration through a buffer to ingress and egress from the right-of-way may be permitted and the width of the ingress and egress can be subtracted from the length of the buffer for the calculation of the number of plants required.
- vi. Plants, berms, or walls required for buffers within required sight triangles shall be in accordance with standards provided in Article 5, Section 1. Further, no fence, wall, or plant material shall be placed within a buffer that would impede the movement of or obstruct the view of either a pedestrian or driver of a vehicle that would create a potential safety hazard.

TABLE 5.5.13 C: - BUFFER PLANTINGS										
Plants per 100 Linear Feet - Canopy/Accent/Shrub										
DEVELOPING PROPERTY	ABUTTING PROPERTY									
	ZONING	R-1, RE	RML	RMM	C	CC	P	INST	I	SC, MXB
	R-1, RE	X	X	X	X	X	X		X	
	RML	4/0/33	X	X	X	X	X		X	
	RMM	5/5/66	4/0/33	X	X	X	X		X	
		5/3/33 w/ wall								
		5/5/66	5/5/66	5/5/66	X	X	X		X	

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C	5/3/33 w/ wall	3/2/33 w/ wall	3/2/33 w/ wall						
CC	5/5/66	5/4/33	5/2/66						
	5/3/33 w/ wall	3/2/66 w/ wall	5/4/32	X	X	X		X	
P	3/2/33	4/0/33	4/0/33	X	X	X		X	
I	9/4/80 w/ wall	8/6/48	8/6/48	5/5/66	5/5/66	10/8/		X	
		5/3/66 w/ wall	5/3/66 w/ wall	5/3/33 w/ wall	5/3/33 w/ wall	64			
INST	5/5/66 5/3/33	5/5/66 5/3/33	5/5/66 5/3/33	X	X	X		X	
SC, MX	4/0/33	4/0/33	4/0/33						

- c. Buffer requirements. No development within required buffer. Required buffer shall not contain any development other than drainage facilities, sidewalks, plants, walls, or berms. Driveways shall only be allowed in the required buffer if the buffer runs along a street. No grading, development, or land-disturbing activities shall occur within the buffer unless as part of an approved development or landscape plan.
- d. Buffer maintenance.
- i. Any landscape buffer required pursuant to this section shall be maintained in order to preserve such buffer.
 - ii. The plantings, walls, and berms that constitute screening for any buffer required pursuant to this section shall be maintained for the life of the development. Such maintenance shall include all actions necessary to keep the buffer free of litter and debris, and to keep plantings, walls, and berms in good repair and neat appearance.
 - iii. In the event that any buffer screening or any element thereof, is damaged or fails to live so that it no longer furthers the purpose and intent of this section, it shall be replanted or replaced, whichever is applicable, with the type and size of material specified on the landscape plan.
- e. Plant and tree arrangement. Required plants and trees shall be distributed in a manner to meet the intent of screening incompatible uses. In the event that plant materials are prohibited in a public drainage or utility easement which abuts or is coincident with a buffer, no new plant materials shall be centered closer than two feet from such easement.
- f. Existing vegetation.
- i. Retaining existing Florida native trees and other vegetation within a buffer is strongly encouraged.
 - ii. If existing plants do not fully meet the standards for the type of buffer required, additional plant materials shall be installed.
- g. Buffer walls and berms.
- i. Whenever a wall is required within a buffer, it is shown in Table 5.5.13.B.

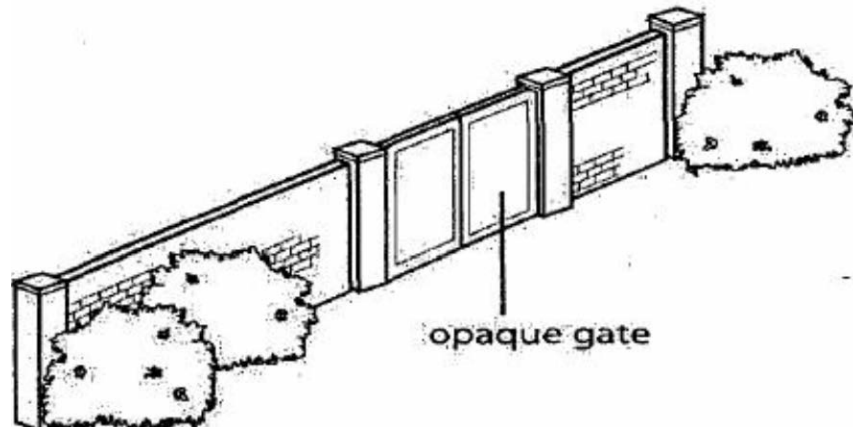
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- 2677 ii. Where the buffer requires a berm, the berm shall be graded to appear smooth, rounded,
2678 and natural. Slopes shall not exceed a 3:1 grade.
- 2679 iii. Whenever a wall is required within a buffer, the wall shall conform to all requirements of
2680 Article 5 Section 2, and the requirements herein, and all other requirements for a wall.
2681 The wall may be placed anywhere in the buffer, provided at least 75% of the required
2682 trees and 100% of the required shrubs are on the side facing outward toward the right-
2683 of-way or abutting property (facing away from the property on which the wall is erected).
2684 Bare concrete block, even if painted, is prohibited. The following materials, either singly
2685 or in any combination, are the only materials that may be used to form the wall:

- 2686
- 2687 (a) Concrete block coated with stucco;
2688 (b) Textured concrete block;
2689 (c) Stone;
2690 (d) Brick; or
2691 (e) Formed, decorative, or precast concrete.
- 2692

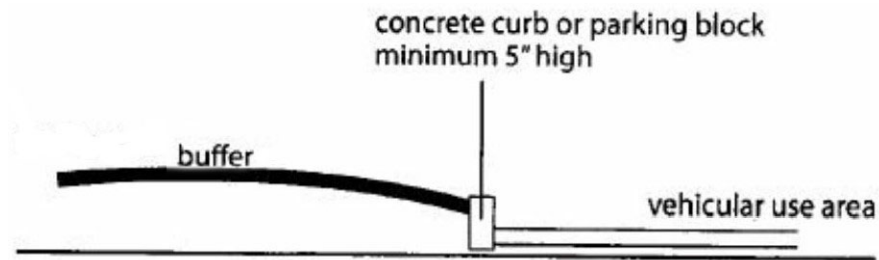
- 2693 iv. Whenever a wall is required within a buffer, it shall be 100% opaque and shall be the
2694 maximum height allowed for the use and the location of the wall.
- 2695

- 2696 h. Gates. A gate may be allowed in a buffer wall, provided such gate is opaque, unless spanning
2697 a vehicular entrance, and meets the intent and purpose of this section. Gates shall be
2698 maintained in accordance with the maintenance standards for screening contained in this
2699 section.



- 2700
- 2701
- 2702 i. Staggered walls. Whenever a wall is required within a buffer, it may be divided along the
2703 length of a buffer so that a wall consists of a series of wall segments instead of a continuous
2704 line. Such a divided wall shall be allowed only if it meets the intent and purpose of this section
2705 and if the wall segments overlap by a minimum of one-half of the distance between the two
2706 wall segments.
- 2707
- 2708 j. Vehicular use areas. Concrete curbs or wheel stops at least five inches high shall be provided
2709 between vehicular use areas and buffer areas.
- 2710

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2711
2712
2713 3. Location of buffer.
2714

- 2715 a. The landscape buffer required by this section shall be located along the perimeter of a
2716 property except at approved entrances or exits to the parcel.
2717
2718 b. Buffers shall extend to the lot line or right-of-way line, except where easements, covenants,
2719 visibility triangles, or natural features require the buffer to be set back from the property line.
2720 The presence of an easement, covenant, or natural feature does not necessarily preclude the
2721 placement of a buffer, unless due to the nature of the easement, covenant, or natural feature
2722 the placement of a buffer would be precluded.
2723
2724 c. Nothing other than open landscaped areas shall be located between the required buffer and
2725 the site perimeter unless the presence of an easement, covenant, or natural feature, which
2726 due to its nature, would preclude open landscaped areas.
2727
2728 d. Buffers may not be located on any portion of an existing or dedicated street right-of-way or
2729 roadway easement.
2730

2731 **Section 5.5.14. Irrigation.**
2732

2733 All landscaping shall contain an automatic irrigation system. All required irrigation systems shall be
2734 designed to minimize the application of water to impervious areas, including roads, drives, and other
2735 vehicle areas. Required irrigation shall also be designed to avoid damage to existing native vegetation
2736 from over watering or from physical conflicts with plant roots. The following standards shall apply to the
2737 design, installation, and maintenance of irrigation systems:
2738

- 2739 A. The irrigation system shall be properly maintained and operated consistent with watering
2740 schedules established by the South Florida Water Management District or the City of Cape Coral,
2741 whichever is more restrictive.
2742
2743 B. Existing native plants are exempt from this requirement.
2744
2745 C. Automatic control systems shall be equipped with an operable rain sensor or other devices, such
2746 as soil moisture sensors, to prevent unnecessary irrigation.
2747

2748 **Section 5.5.15. Tree credits.**
2749

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- A. Tree credits for all development other than single-family homes and duplexes are available, to encourage the planting of larger trees than are otherwise required and to preserve trees existing on development sites. Based on the gross square feet of land area, each tree credit earned can count toward the number of trees required, subject to limitations indicated below. If tree credits are used, the credits shall be shown in the calculations on the landscape plan. Single-family homes and duplexes are not eligible for the tree credit program provided by this subsection. In no event, shall the number of trees required in a buffer be reduced.
- B. Credit for planting larger canopy trees. One tree credit shall be applied to the overall tree count for each two inches of increased caliper above the minimum planting size specified in this Chapter. In no event, however, shall the actual number of trees be less than one-half of the total number required.
- C. Credit for preserving existing canopy trees. Existing canopy trees in good health and meeting the minimum standards provided in this Chapter that are preserved on a site, and that are properly protected prior to and during the course of development activities, may be used to meet the requirements of this section for the site where the existing trees are located. For purposes of this subsection, development activities include land clearing, construction, grading, or placement of fill. Canopy trees that exceed the minimum size required by Article 5, Section 15 are credited at the following ratios for existing canopy trees:

TABLE 5.5.13.D: CREDIT FOR PRESERVING EXISTING CANOPY TREES	
CREDITS	
1.	6" up to 12" caliper = credit for 2 trees
2.	12" up to 18" caliper = credit for 3 trees
3.	18" up to 24" caliper = credit for 4 trees
4.	24" or greater caliper = credit for 5 trees

- No credit shall be given to canopy trees on the Florida Exotic Pest Plant Council list of Category I or Category II invasive exotics.
- D. Credit for preserving existing palms. Existing palm trees in good health and having a minimum of ten feet of clear trunk that are preserved on a site and properly protected prior to and during the course of development activities, may be used to meet the requirements of this section for the site where the existing palm trees are located. This credit shall be available for palms preserved in place or transplanted within a site, using accepted horticultural procedures.

Section 5.5.16. Landscape maintenance.

- A. General maintenance required. The property owner shall maintain all landscaping in accordance with the approved landscape plan, if any, and with the standards contained in this section, including:
1. Trees, palm trees, shrubs, and other vegetation shall be trimmed so as to not be an obstruction to pedestrian or vehicular traffic or traffic visibility;

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2. Trees, palm trees, shrubs, and tree bed(s) shall be kept free of refuse, debris, and disease;

3. Nonliving materials shall be maintained in good condition at all times.; and

4. Shrubs planted in non-residential and mixed-use developments shall grow and be maintained at all times according to the minimum size specified on the approved landscape plan or to a minimum height of 36 inches, if not specified on the approved landscape plan. Shrubs that do not meet the minimum height specified or the alternate minimum height of 36 inches shall be replaced with like kind species and be maintained at a height of 36 inches.

This requirement shall not preclude the placement of additional plant materials or other landscape features that comply with other requirements of these regulations.

B. Compliance required. For any development for which a landscape plan was submitted, the city shall not issue a certificate of occupancy or certificate of completion until the landscape architect or other licensed professional authorized pursuant to F.S. Chapter 481, Part II, who prepared, signed, and sealed the plan certifies to the city that all elements of the landscape plan have been installed in accordance with the approved plan. Each development will be inspected by the City of Cape Coral within two years after the certificate of occupancy or certificate of completion is issued, and from time to time thereafter to ensure compliance with the applicable landscape standards and with the approved landscape plan, if any. Any dead or missing plant, or plant that appears to be dying or unable to sustain healthy future growth shall be replaced by one that conforms to the requirements of this section and approved landscape plan, if any. Failure to comply with this requirement shall constitute a violation of the City of Cape Coral Code of Ordinances, subject to any penalty imposed by law.

C. Changes subsequent to landscape plan approval. The replacement of plants indicated on an approved landscape plan with plants of the same species, or the placement of hardscape features that comply with other requirements of these regulations shall not require the submission of an amended landscape plan. The substitution of plants indicated on an approved landscape plan with plants of an alternative species of the same size and plant category (canopy tree, accent tree, palm tree, shrub) shall not require the submission of an amended landscape plan, unless a specific species has been prescribed as a condition of approval by the Hearing Examiner or City Council; however, any such substitution shall meet all other landscape requirements, including the minimum separation distance between trees and overhead power lines, the Florida native plant percentage, the tree species mix, and species specific palm tree substitution requirements. Except as described above, after a landscape plan has been approved, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the landscape plan without first obtaining written approval of an amendment to the landscape plan. The approval of an amendment to a landscape plan does not constitute an amendment to the site plan. Modifications that require approval of an amended landscape plan include:

1. Replacement of any plant indicated on an approved landscape plan with a plant of a different species; or

2. The reduction of any quantity or size of plants below the size that was indicated on the most recently approved landscape plan.

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The city may impose a reasonable fee for the review and approval of an application for an amendment to a landscape plan. An application for an amendment to a landscape plan shall be reviewed in accordance with the standards herein, unless the landscaped area is a legal nonconformity. An application for an amendment to a nonconforming landscaped area shall be reviewed in accordance with Article 5, Section 6.

D. Nonconforming landscaped areas.

1. Legal nonconforming landscaped areas established. All landscaped areas which were lawful prior to the adoption of this Code but which fail by reason of adoption of such amendment to comply therewith, are hereby declared to be nonconforming. Such nonconforming landscaped areas are hereby declared to be lawful and shall not be required to be altered to conform with such regulations as adopted by the City of Cape Coral; provided, however, that such nonconforming landscaped areas are restricted and subject to the requirements of this section.

2. Requirements for nonconforming landscaped areas.

a. For sites with an approved landscape plan, nonconforming landscaped areas, including buffers, shall be maintained in accordance with approved landscape plans, as modified by requirements of any approval for PUD, PDP, special exception, or variance, if any. If the minimum requirements for landscaping are reduced subsequent to the most recently approved landscape plan, the property owner may request approval of an amended landscape plan meeting the minimum requirements pursuant to Article 5, Section 6.

b. For single-family and duplex sites, nonconforming landscaped areas shall be maintained in accordance with landscape regulations in effect at the time of issuance of the original building permit for the primary structure.

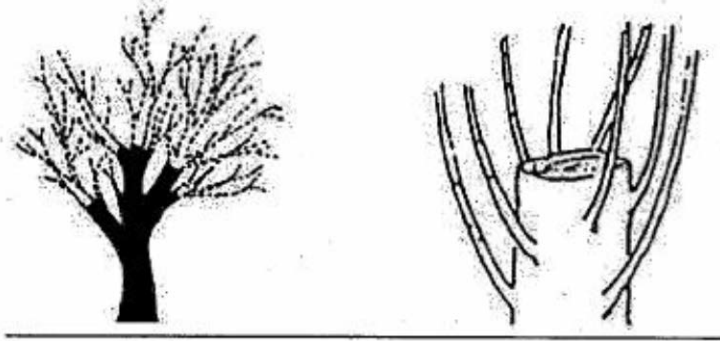
c. For sites without an approved landscape plan, other than single-family and duplex sites, nonconforming landscaped areas shall be maintained in accordance with landscape regulations in effect at the time of the most recent site plan approval.

E. Canopy tree pruning.

1. Except as otherwise provided herein, trees required by regulations in effect at the time of site development shall only be pruned to promote healthy, uniform, natural growth, to keep trees trimmed back from doors, windows, and public sidewalks or where necessary to promote health, safety, and welfare. Pruning shall be in accordance with "American National Standard for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices (Pruning) (A300, Part 1)" by the American National Standard Institute and "Best Management Practices: Tree Pruning" by the International Society of Arboriculture (ISA). Pruning of trees on any site over one acre should be supervised by a certified arborist. Pruning necessary to maintain public overhead utilities shall be in accordance with the National Electric Safety Code (NESC).

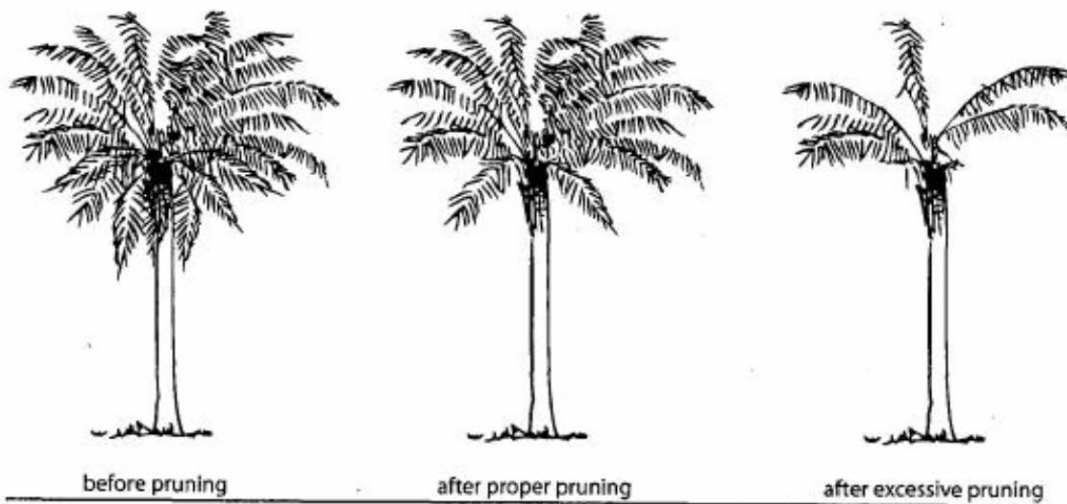
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2. Trees required by regulations in effect at the time of site development shall not be pruned so as to include topping of trees through removal of crown material or the central leader, or any other similar procedure to permanently limit growth to a reduced height or spread or that cause irreparable harm to the natural form of the tree, except where such procedures are necessary to maintain public overhead utilities. Severely pruned trees required by regulations in effect at the time of site development must be replaced by the property owner. Replacement trees must meet the tree size requirements of this Chapter. A tree's growth habit shall be considered in advance of conflicts that might arise (e.g., signs, power lines, sidewalks, buildings, and similar conflicts).



Excessively pruned trees.

3. Palm maintenance and pruning. Palms shall only be pruned in such a manner that removal of fronds does not exceed a 9:00 to 3:00 pattern and no more than one-half of the fronds are removed at a single time. This limitation shall not apply to flower stalks or fronds that are yellow or dead.



Section 5.5.17. Planting in medians.

- A. Permits.

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1. Required. It shall be unlawful for any person to place any landscape material, including plant materials and hardscape materials other than mulch, in any median under the control of the city, without first obtaining a permit for such work from the City.

2. Application. An application for a permit shall be submitted on a form provided by the city and include all required information as specified in the permit application forms.

B. Median design. Landscaping in medians shall be in accordance with the City of Cape Coral Engineering Design Standards.

C. Prohibited vegetation. The prohibited vegetation standards of section 9 of this article shall apply in medians.

D. Review criteria. In determining whether a permit will be issued, the city shall consider factors that include, but are not limited to, the following:

1. Relationship to traffic and pedestrian safety;

2. Location of existing and proposed public utilities, power lines, and other right-of-way improvements;

3. Effect on surface waters and drainage patterns;

4. Aesthetic effect of the proposed landscaping, including whether the resultant theme would be consistent throughout the specific median, and whether the proposed landscaping would coordinate with the landscape theme, if any, established in the vicinity;

5. Type, size, and location of any extant plant materials and hardscape materials, if any;

6. Type, size, and location of proposed plant materials and hardscape materials on the median;

7. Method of removal of existing plant materials and hardscape materials;

8. Adequacy of proposed irrigation, its expense to the city, and availability of water supply; and

9. The city's ability to maintain the landscaping in the event that the permittee fails to do so including economic ability, manpower, and location of the median.

E. Approval.

1. In its approval of any permit request, the city may impose conditions, which may include one or more of the following:

a. Modifications to the planting plan, including but not limited to the design to ensure integration with the aesthetic character of the neighborhood, the requirement that the entire

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- median be included in the design, as well as to plant sizes, species, location, and nature placement of hardscape materials;
- b. Modification of plant installation or removal methods or specifications;
 - c. Regulation of the commencement and completion date, work hours, or phasing of installation or removal;
 - d. Modification to the proposed maintenance schedule;
 - e. Requirement of a financial instrument to ensure maintenance or removal of the landscaping;
 - f. Requirement that all or part of the landscaping be installed and maintained by a licensed landscape contractor or certified arborist;
 - g. Requirement that temporary traffic control measures be implemented by a barricade company with certification by the American Traffic Safety Services Association (ATSSA) or the International Municipal Signal Association (IMSA);
 - h. Requirement that curbing be installed;
 - i. Requirement that erosion control measures be implemented; and
 - j. Submission of a hold harmless agreement acceptable to the city.
- 2. The permittee shall be responsible for compliance with the permit and any associated conditions, along with the maintenance of the landscaping. The limitation on the time period for installing landscape materials shall not apply to replacement of materials as part of maintenance.
 - 3. Approval of a permit to install landscape materials in a median shall not obviate the requirement to obtain all other necessary permits, including permits for irrigation and signs.
- F. Changes subsequent to approval. After a planting plan has been approved, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the planting plan without first obtaining written approval of an amendment to the planting plan. Modifications that require approval of an amended landscape plan include the following:
- 1. Replacement of any plant indicated on an approved planting plan with a plant of a different species; or
 - 2. Modification of the location of any plants or other landscape materials.
- The city may impose a reasonable fee for the review and approval of an application for an amendment to a planting plan. An application for an amendment shall be reviewed in accordance with the standards herein. The replacement of plants indicated on an approved landscape plan with plants of the same species shall not require the submission of an amended landscape plan.

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- 2994
- 2995 G. Permit expiration and extension. A permit for installing landscape materials in any median under the
- 2996 control of the city shall be valid for a one-year period from the date of issuance, except as otherwise
- 2997 provided within the permit approval. The permittee is solely responsible for submitting an application
- 2998 for renewal of the. In determining whether the permit should be renewed, the city shall consider all
- 2999 of the factors listed in subsection D. above, as well as the condition in which any materials planted
- 3000 pursuant to the permit have been maintained.
- 3001
- 3002 H. Maintenance. Once any landscape materials are installed in a median, the materials are the property
- 3003 of the city. Except when the city determines that it is in its best interest to maintain portions of
- 3004 landscaping in medians permitted in accordance with this subsection, the permittee shall be
- 3005 responsible for maintaining any and all landscaping permitted by this subsection in accordance with
- 3006 Section 16 of this chapter. Should any plant material or other landscape material or portion thereof
- 3007 become a safety hazard, unsightly, or die or become diseased, or if it is installed or maintained in a
- 3008 manner inconsistent with the permitting requirements herein, the city shall have the option of
- 3009 performing maintenance, replacing, or removing it. The City will determine compliance with this
- 3010 subsection.
- 3011
- 3012 I. Removal.
- 3013
- 3014 1. The authorization in this section for the removal of landscaping in medians shall be construed as
- 3015 supplementary to any other means of enforcement available to the city and shall not be construed
- 3016 so as to negate the authority of the Code Enforcement Special Magistrate to hear and adjudicate
- 3017 appropriate cases.
- 3018
- 3019 2. The city may also, in its sole discretion, remove any landscape materials placed in any median
- 3020 under the city's control, for utility maintenance, safety, or any other reason.
- 3021
- 3022 J. Revocation. If any condition of approval is not satisfied, the city may revoke or stop work on any
- 3023 permit issued pursuant to this subsection.
- 3024
- 3025 **Section 5.5.18. Cul-de-sac or roundabout landscaping.**
- 3026
- 3027 A. Permit required. It shall be unlawful for any person to place any landscape materials in any cul-de-sac
- 3028 or roundabout under the control of the city, without first obtaining a permit for such work from the
- 3029 City.
- 3030
- 3031 B. Planting design and materials. Permits shall be issued only for the planting of approved trees or shrubs
- 3032 on cul-de-sac or roundabout. Such plantings on cul-de-sac or roundabout shall be in accordance with
- 3033 the City of Cape Coral Engineering Design Standards.
- 3034
- 3035 1. Trees. All trees to be planted in a cul-de-sac or roundabout shall be of at least ten-gallon size at
- 3036 the time of planting. The following trees are: Mahogany, Wild Tamarind, Yellow or Pink Tabebuia,
- 3037 Buttonwood, Crepe Myrtle, Gumbo Limbo, Southern Magnolia, Paradise tree, Pigeon Plum, Sago
- 3038 Palm, or Pygmy Date Palm. However, other types of trees may be permitted providing the criteria

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established in this section are met. The prohibited vegetation standards of this Chapter shall apply in cul-de-sac and roundabout.

2. Shrubs. Shrubs to be planted should be durable in harsh conditions with slow, unobtrusive growth habits. All shrubs shall be of at least three-gallon size at the time of planting. The following shrubs are recommended for planting: Carissa, Cocoplum, Yaupon Holly, Myrsine, Necklace Pod, Podocarpus, and Wax Myrtle. However, other types of shrubs may be permitted providing the criteria established in this section are met.

3. Other vegetation. The planting of flowers or any vegetation (other than approved trees or shrubs) by any private person or entity on cul-de-sac or roundabout owned by the city is prohibited. In addition, cul-de-sac or roundabout shall be left in sod. However, a small bed immediately surrounding a tree or shrub may be mulched.

C. Plan submittal. Prior to the issuance of a permit for planting and prior to the planting of any tree or shrub on any cul-de-sac or roundabout, a planting plan shall be submitted for review to the City. The planting plan shall include all pertinent dimensions, source of water supply to landscape materials, and the proposed location of the trees or shrubs, with the species of tree or shrub by name.

D. Approval criteria. In determining whether a permit will be issued, the city shall consider the following criteria:

1. The location of existing and proposed public utilities and power lines;

2. Vehicular use areas and intersecting streets;

3. Diversion of surface waters or drainage patterns;

4. Relationship to and effects on traffic safety;

5. Type and location of trees or shrubs to be planted; and

6. Type and location of any extant trees, palm trees, shrubs, or other vegetation on the cul-de-sac or roundabout.

E. Permit expiration and renewal. A permit for planting trees or shrubs on a cul-de-sac or roundabout shall be valid for a period of one year from the date of issuance. At the expiration of such one-year period, the permit shall automatically expire unless renewed in accordance with the provisions of this section. The permittee shall be solely responsible for submitting an application for renewal of the permit. In determining whether the permit should be renewed, the city shall consider all of the criteria listed above as well as the existing condition of the trees or shrubs planted.

F. Maintenance. Once any landscape materials are installed, the materials are the property of the city. The person or entity to which the permit for planting is issued shall be responsible for maintaining any and all trees or shrubs in good condition so as to present a healthy, neat, and orderly appearance for keeping such trees or shrubs free of refuse, debris, and disease. Failure to maintain such trees or

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shrubs in accordance with this provision shall be grounds not only for denial of a renewal or revocation of the planting permit, but also shall be grounds for removal by the city of the trees or shrubs planted.

- G. Removal. Any landscape materials planted or installed without the express written permission of the city shall be subject to removal by the city in its sole discretion. Except for the city and persons with a permit or other written authorization from the city, no person shall remove landscape materials from a cul-de-sac or roundabout.

Section 5.5.19. Lateral right-of-way planting.

- A. No permit required. Except in the South Cape Downtown district, no permit shall be required for a private person or entity who owns the property abutting the city-owned lateral right-of-way to plant trees and shrubs in the city-owned lateral right-of-way.

- B. Placement of planting material. In the South Cape Downtown District, in order to provide a cohesive urban streetscape, applicants may enter into an agreement with the city for placement of planting material in the lateral right-of-way. In all other districts, the planting of trees, palm trees, and shrubs, and the placement of the tree bed(s) shall be allowed in the city-owned lateral right-of-way subject to the following restrictions:

1. Planting near utility infrastructure shall be in accordance with the requirements of Section 7 of this article;
2. One or more trees may be immediately surrounded by a bed consisting of landscape edging materials, bedding plants or groundcover, and mulch or decorative rock so long as the size of the bed is reasonably related to the size and number of trees contained therein. Groundcover or annual bedding plants shall be permitted within the tree bed. Unless otherwise permitted, no other landscape edging material, concrete curbing, bedding plant or groundcover, mulch, or decorative rock shall be allowed in the city-owned lateral right-of-way;
3. The property owner abutting the portion of the lateral right-of-way in which the plantings and the tree bed(s) are placed shall be responsible for any and all costs incurred by the city for damage sustained to any underground utility facilities as a result of said plantings or placement of the tree bed(s), and shall indemnify and hold the city, its officers, employees, and agents, harmless from any and all claims for injuries and damages to persons and property, both real and personal resulting from said plantings or placement of the tree bed(s);
4. No tree, shrub, landscape edging material, concrete curbing, bedding plant, groundcover, mulch, or decorative rock shall be placed in the city-owned lateral right-of-way within five feet of the roadway. Canopy trees shall not be planted within seven feet of any roadway, sidewalk or public utility, unless an acceptable root barrier material, installed in accordance with this Chapter.
5. No tree, shrub, landscape edging material, concrete curbing, bedding plant, groundcover, mulch, or decorative rock shall be placed in the city-owned lateral right-of-way:
 - i. Within five feet of either side property boundaries, as measured perpendicular from the side property line;

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- ii. Within three feet of the bottom on the swale in either direction;
- iii. Within three feet of a public sidewalk; or
- iv. So as to be an obstruction to pedestrian or vehicular traffic or traffic visibility and each shall be maintained accordingly.

C. Maintenance. Once any landscape materials are installed in a lateral right-of-way, the materials are the property of the city. The person or entity who owns the property abutting a portion of the lateral right-of-way along a city street in which the trees, palm trees, shrubs, landscape edging material, concrete curbing, bedding plants, or groundcover, mulch, or decorative rock have been placed shall be responsible for the following:

1. Maintaining all plantings and tree bed(s) in good condition so as to present a healthy, neat, and orderly appearance;
2. Trimming such trees, palm trees, shrubs, and tree bed(s) so as to not be an obstruction to pedestrian or vehicular traffic or traffic visibility; and
3. Keeping such trees, palm trees, shrubs, and tree bed(s) free of refuse, debris, and disease.

Failure to maintain such trees, palm trees, shrubs, and tree bed(s) in accordance with this provision shall constitute a violation of this section and shall be grounds for removal by the city of the trees, palm trees, shrubs, and tree bed(s) in the right-of-way.

D. Removal.

1. The authorization in this section for the removal of trees, palm trees, shrubs, and tree bed(s) shall be construed as supplementary to any other means of enforcement available to the city and shall not be construed so as to negate the authority of the Code Enforcement Special Magistrate to hear and adjudicate appropriate cases.
2. The city may also, in its sole discretion, remove any trees, palm trees, shrubs, and tree bed(s) placed in a city-owned lateral right-of-way for utility maintenance, safety, or any other reasonable cause. Except for the city, persons with written authorization from the city, and the property owner abutting the portion of the lateral right-of-way in which landscape materials have been placed, no person shall remove landscape materials from a lateral right-of-way.
3. All expenses incurred by the city for removal trees, palm trees, shrubs, and tree bed(s), for any reason, shall be the responsibility of the property owner.
4. If, for any reason, such trees, palm trees, shrubs, and tree bed(s) are removed, the adjoining owner shall be responsible for returning the right-of-way to its original condition prior to the placement of the plantings and tree bed(s) and any expenses related thereto regardless of whether the removal of the trees, palm trees, shrubs, and tree bed(s) was performed by the property owner or the city pursuant to this section.

Section 5.5.20. Deviations.

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- 3177
- 3178 A. Deviations from the provisions of this section may be approved by the Director and as further
- 3179 provided herein) provided that the deviation will not be contrary to the public interest and will be in
- 3180 harmony with the general intent and purpose of this section and where either of the following applies:
- 3181
- 3182 1. Conditions exist that are not the result of the applicant and which are such that a literal
- 3183 enforcement of the regulations involved would result in unnecessary or undue hardship; or
- 3184
- 3185 2. Literal conformity with the regulations would inhibit innovation or creativity in design.
- 3186
- 3187 B. In determining whether a particular deviation request should be approved as the result of
- 3188 unnecessary or undue hardship, factors the Director shall consider include, but are not limited to, the
- 3189 following: site constraints such as shape, topography, dimensions, and area of the property, the effect
- 3190 other regulations would have on the proposed development, or other locational factors that may
- 3191 make compliance with this section impossible or impracticable, and the effect the requested deviation
- 3192 would have on the community appearance. Additionally, the Director shall find that the approval of
- 3193 the deviation(s) would serve the intent of this section to protect the health, safety, and welfare of the
- 3194 public while ensuring a high level of overall aesthetic appeal and visual interest in the city.
- 3195
- 3196 C. In determining whether a particular deviation request should be approved because literal conformity
- 3197 with the regulations would inhibit innovation or creativity in design, the Director may approve the
- 3198 request for deviation(s) if the applicant demonstrates that the design of the landscaping for which
- 3199 one or more deviations is sought is unique and innovative and, further, that the approval of the
- 3200 deviation(s) would enhance such unique and innovative design. Additionally, the Director shall find
- 3201 that the approval of the deviation(s) would serve the intent of this section to protect the health,
- 3202 safety, and welfare of the public while ensuring a high level of overall aesthetic appeal and visual
- 3203 interest in the city. For purposes of this section, indicia of unique and innovative design may include,
- 3204 but are not limited to, the following:
- 3205
- 3206 1. Landscape details that are unique or that are exceptional in quality by virtue of artistic
- 3207 composition, quality of materials, dimensional attributes, or any combination thereof;
- 3208
- 3209 2. Plant massing that evokes exceptional expression through use of angularity, curvature, or other
- 3210 means;
- 3211
- 3212 3. Design elements or other forms that achieve dynamic or symmetric aesthetic balance; or
- 3213
- 3214 4. Other details or forms that preclude visual monotony and are pleasing in aesthetic character.
- 3215
- 3216 D. Requests for deviations and the reasons therefore shall be set forth by the applicant in the application
- 3217 for deviation and shall be accompanied by documentation including, a narrative that clearly defines
- 3218 the section(s) of the regulations of the requested deviation, a narrative explanation as to the reason
- 3219 for the requested deviation and why it should be approved, sample detail drawings, elevations, and
- 3220 perspectives which shall graphically demonstrate the proposed deviation(s) and illustrate how each
- 3221 deviation would operate to the benefit, or at least not to the detriment, of the public interest.
- 3222

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- E. For deviations to avoid unnecessary or undue hardship, the Director subject to these standards and criteria, shall approve only the minimum deviation from the provisions of this section. For deviations to avoid the inhibition of innovation or creativity in design, the Director shall approve deviations necessary to enhance the unique and innovative design. The Director may impose reasonable conditions of approval in conformity with this section. Violation of such conditions and safeguards, when made a part of the terms under which a deviation is granted, shall be deemed a violation of this section and shall be enforceable not only by revocation of the deviation, but also by all other remedies available to the city, including all code enforcement procedures.

CHAPTER 6. LIGHTING.

Section. 5.6.1. Purpose and applicability.

The purpose and intent of this Section is to create outdoor lighting standards that promote the health, safety, and welfare of the residents and decrease the impacts of ambient lighting on the natural sky by establishing maximum intensities of lighting and controlling glare from lighting fixtures. The provisions of this article shall apply to all permanent outdoor lighting from any light source in nonresidential development.

Section. 5.6.2. Outdoor lighting standards.

- A. Outdoor lighting fixtures. All outdoor lighting fixtures shall be installed in such a manner that the source of each individual light is shielded, positioned, and maintained so as not to be visible off the premises.
- B. Light shielding for parking lot illumination. All parking lot lighting shall have no light emitted above 90 degrees.
- C. Outdoor lighting fixtures adjacent to residential. Any outdoor lighting fixture providing light to any parcel adjacent to a residentially zoned parcel, whether adjoining or not, shall emit no more than 0.1 foot-candles of light, as measured from the property line of the adjacent residential parcel, using a standard light meter, the cell of which is directed towards the source of the light.
- D. All areas designed for use after daylight hours shall be adequately lit, in accordance with Table 5.6.2. below.

Table 5.6.2. Lighting levels for commercial and industrial developments

Outdoor Lighting Area	Lighting Level minimum - maximum (foot-candles)
Entrance of commercial or industrial building	1 - 5
Sidewalk or walkway from parking area to entrance	.5 - 2
Parking lot	.5 - 3
Gas station canopy	10 - 15
Loading and unloading areas	15 - 20

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- E. Illumination ratio. Luminaire fixtures in parking lots shall be arranged in order to provide uniform illumination throughout the parking lot area of not more than a 4:1 ratio of average to minimum illumination, and not more than 12:1 ratio of maximum to minimum illumination.
- F. Automatic Switching Requirements. Controls shall be provided that automatically extinguish all outdoor lighting when sufficient daylight is available using a control device or system such as a photoelectric switch, astronomic time switch, or equivalent functions from a programmable lighting controller, building automation system, or lighting energy management system, all with battery or similar backup power or device.
- F. Modifications. Additions, modifications, or replacement of more than 25 percent of outdoor lighting fixtures existing as of the effective date of this ordinance shall require the submission of a complete inventory and photometric plan detailing all existing and any proposed new outdoor lighting. Any new lighting shall meet the requirements of this ordinance.
- G. Exempt lighting. The provisions above shall not apply to streetlights, single-family residences, duplexes, or governmental facilities.

CHAPTER 7. SCREENING

This Chapter shall not apply to single-family detached or duplex residential development.

Section. 5.7.1. Screening of rooftop equipment.

All rooftop equipment shall be screened from view from the right-of-way or adjacent properties by the use of a parapet wall or other architectural feature to screen the equipment or shall be set back adequately from the building edge to conceal the equipment from adjacent properties at ground level.

Section. 5.7.2. Screening of storage areas.

- A. All permitted storage areas shall be screened from adjacent properties and the right-of-way. Permissible screening materials include:
- B. A six-foot high wall of concrete or similar approved material, Section. 5.2.7 on walls;
- C. A six-foot high opaque fence of an approved material, Section. 5.2.7 fences; or
- D. A vegetative buffer, consisting of two staggered rows of shrubs a minimum of three feet tall at planting. The buffer shall create a dense barrier, at 80% opacity, within two years.

Section. 5.7.3. Air conditioning units and mechanical equipment.

- A. All mechanical equipment at ground level shall be screened from adjacent property and the right-of-way. When possible, sound deadening materials shall be used. Permissible screening materials include:

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1. A wall or opaque fence of adequate height to screen the view of the equipment, see Section. 5.2.7 for approved materials.

2. A vegetative buffer, which meets the specifications in Section 5.6 for a four-foot tall buffer.

Section. 5.7.4. Permanently installed stand-by generators.

Permanently installed stand-by generators serving all properties other than single-family and duplex residences where life and safety does not depend on the performance of the system.

- A. The generator may only be used in emergency situations when there is a power outage.

- B. Repairs and testing may only occur during daylight hours a maximum of once per week.

- C. Installation of a generator shall comply with the following restrictions:

1. The generator shall not encroach more than three feet into any required setback, and in no case shall be any closer than two and one-half feet from any property line. The generator shall not be installed in an easement.

2. The generator shall be screened from public view by:

- a. A vegetative buffer which meets the specifications in Section 5.6 for a five-foot high hedge; or

- b. A wall or opaque fence, of an adequate height to screen the equipment, which meets the specifications of Section 5.2.7.

3. Permanent signs shall be placed at the electrical service indicating the type and location of the generator.

CHAPTER 8. NON-RESIDENTIAL DESIGN STANDARDS.

Section 5.8.1. Purpose and Intent.

The appearance of non-residential and mixed-use development affects the visual image and attractiveness of the City of Cape Coral. Utilitarian design and developments with minimal architectural features detract from the city's image and character. The purpose and intent of the non-residential design standards is to promote the City as an attractive destination for tourists and residents, and to support economic vitality while protecting the public health, safety, and welfare. These regulations intend to:

- A. Enhance the visual image and attractiveness of the City;

- B. Establish reasonable standards that offer flexible and diverse design options;

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C. Ensure development in Cape Coral is of consistent high quality and character; and

D. Regulate site layout and architectural features to ensure aesthetic and visual interest.

Section 5.8.2. Applicability.

A. The standards of this section shall apply to all non-residential and mixed-use development for which application for site plan approval, or a building permit is made.

B. These design standards shall apply to existing development if a building's gross floor area is increased by 50% or more.

C. Development on Industrial zoned sites shall be exempt from these standards.

D. The design standards of this section do not apply when the City Council has established specific design standards for a unique area of the city unless the specific design standards otherwise expressly state their applicability.

Section 5.8.3. Exemptions.

The following types of buildings shall be exempt from the non-residential design standards.

A. Any building that has received a temporary use permit.

B. Any accessory structure.

C. Bona fide agricultural buildings in the Agricultural District like barns and stables.

D. Guard houses.

E. Government facilities that are screened or not visible from a public street.

F. Model homes.

G. Municipal pump station buildings.

H. Neighborhood storage and mini-storage buildings provided the buildings are enclosed with a wall with a minimum height of six feet.

I. Pavilions, carports, gas canopies, and similar buildings that have support posts or columns but no sides.

J. Buildings similar to those listed above as determined by the Director.

Section 5.8.4. Conflicts.

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If any of the non-residential and mixed-use design standards of this section conflict with any other provision of the City of Cape Coral Code of Ordinances or Land Development Code, the provision that establishes the more specific standard or architectural theme governs. If neither conflicting provision establishes a specific standard or architectural theme, then the more restrictive provision governs unless otherwise expressly provided.

Section 5.8.5. Appearance, Building Mass, and Design Treatments.

- A. Consistency Within a Development. Except for buildings on outparcels that contain only one unit, designed and constructed to be occupied by a single end user, regardless of the number of business operations conducted within the single unit, buildings within a development shall be designed with color schemes, building materials, finishes, roof types, roof lines, and exterior roof finishing consistent with or that resemble those of the principal building or structure on the main parcel(s).
- B. Consistency and Integrity of Building Components. All portions of any exterior side of a building, extending from finished grade to the top of the parapet wall or eaves, extending the entire width of the side of a building, must be designed with consistent architectural style, detail and trim features. All architectural features other than parapet walls, including towers or cupolas, shall be designed so as to have an equivalent character from any ground-level angle from which they can be viewed. Although perfectly symmetrical or uniform treatments are not required, architectural features that appear to enclose a spatial volume when viewed from one angle but not from all angles, or that incorporate gratuitous treatments that are not intended to be viewed from all ground-level angles, are prohibited.
- C. Transparency of Building Walls. Windows and doors used to meet the transparency requirements identified below shall have a visible transmittance of at least 50% and an exterior reflectance no greater than 20%.
 - 1. For buildings abutting and facing a public street, transparent windows, doors, or any combination thereof, shall cover at least 25% of the first story building wall area between two feet and 10 feet above grade.
 - 2. For buildings with walls abutting but not facing a public street, transparent windows, doors, or any combination thereof, shall cover at least 15% of the first story building wall area between two feet and 10 feet above grade.
 - 3. For lots abutting dedicated city parking areas or portions of alleys abutting dedicated city parking areas, transparent windows, doors, or any combination thereof, shall cover at least 25% of the first story building wall area between two feet and 10 feet above grade.
- D. Sides of a building. For buildings located on outparcels, all exterior sides of a building shall comply with this section. Additionally, except for a side of a building built flush with a side lot line, a side of a building that faces a rear lot line of an abutting property, and a side of a building that faces a property line that abuts an alley, all sides of a building shall comply with the standards of this section.

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1. All exterior sides of a building subject to this subsection shall include a repeating or varying pattern and shall comply with both design elements listed below. At least one of the three design elements shall repeat horizontally. All elements shall repeat or alternate at intervals of no more than 50 feet, either horizontally or vertically.
- a. Each wall shall provide visual differentiation of wall surfaces through variations in a minimum of one of the following:
- i. Building materials;
 - ii. Finish textures; or
 - iii. Color.
- b. Each wall shall provide a minimum of two of the following architectural features:
- i. Columns;
 - ii. Pilasters;
 - iii. Awnings;
 - iv. Canopies;
 - v. Reveals (if provided shall have a minimum depth of ½ inch);
 - vi. Corbels;
 - vii. Quoins ;
 - viii. Keystones;
 - ix. Cornices (if provided shall have a minimum height of four inches); or
 - x. Other features as determined by the DCD Director that provide articulation or reduce building massing.
2. All exterior sides of a shall provide design elements in accordance with the gross square footage of a building, as provided herein. Required design elements may be located on an exterior wall of a building, on the roof of the building, or on both the wall(s) and the roof of a building, as applicable. If located on a roof, the design element shall be located on a portion of the roof that faces in the same direction as the exterior wall. It is not the intent of this section, however, to require the design elements to be on both the exterior wall(s) and the roof.

Building Gross Floor Area (sq. ft.)	Minimum number of Design Elements Required
10,000 sq. ft. or less	3
10,001 to 49,999 sq. ft.	4
50,000 sq. ft. or greater	5

- a. Architectural features and detailing that create a frame and definition to the primary public entrance;
- b. One or more canopies or awnings that extend a total length of at least 30% of the length of any side of a building subject to this subsection;
- c. One or more attached porticos;
- d. Peaked or arched roof form;

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- e. Overhanging eaves a minimum of 18 inches wide on all portions of a building with a pitched roof;
 - f. Arcade;
 - g. Colonnade;
 - h. Arches or arched forms other than roof forms or an arcade;
 - i. Windows or glazing that exceed the minimum glazing requirements of Subsection 5.8.5.C. by a minimum of 10% for a wall;
 - j. Ornamental or structural details, including, banding or moldings used throughout the exterior building walls that add decoration and detail to a building roofline, building openings, or windows;
 - k. Two or more ornamental or structural details that are horizontally continuous (except for interruptions for doors and windows), which may include belt courses or any type of three-dimensional molding, banding, projections, recesses, or niches that help to define a base, body, and cap to the proposed building;
 - l. A tower such as a clock tower or bell tower;
 - m. A cupola;
 - n. Sculptured artwork (excluding corporate logos or advertising);
 - o. Vertical articulation of walls, including pilasters, columns, or other relief with maximum separation of one third of the wall on which they are located, not to exceed a separation of 100 feet;
 - p. Planter boxes that are integrated into the building architecture or wing walls that incorporate landscaped areas or places for sitting; or
 - q. Curved wall containing an uninterrupted curve along at least 10% of the length of any side of a building subject to this subsection.
3. For buildings with a gross floor area of greater than 50,000 square feet, no exterior wall shall exceed 100 linear feet in a horizontal direction within a single, continuous wall plane, nor shall any single, continuous wall plane constitute more than 60% of the building's total length. A wall shall be deemed to be in a single, continuous wall plane unless it is offset (recessed or projected) by at least 36 inches from any adjacent wall plane or contains a pilaster that projects at least 36 inches from the wall.

Section 5.8.6. Wall Height Transition.

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A. Buildings that are more than twice the height of the height of extant buildings on abutting property shall incorporate one or more transitional height elements to segue the height of the new building to the height of the closest existing building. The transitional height element shall be incorporated on the new building at the approximate cornice or roof line of the nearest existing building, if any. Where there is no extant building on adjacent property, the requirements of this sub-section will not apply. Where no single building is "nearest" to the new building, but instead two or more buildings are located an equidistance from the new building, the property owner may select the approximate cornice or roof line of any of such equidistant buildings at which to incorporate the transitional height element on the new building.

B. Transitional height elements may include:

1. Cornices or other decorative elements that run the length and width of the building and project a minimum of six inches from the wall;
2. Upper story setbacks and offsets at the approximate cornice or roof line of the nearest existing building as provided above;
3. Variations in roof planes.

Section 5.8.7. Building Materials.

Only the following finish materials for exterior walls are permitted. All other finish materials are prohibited.

A. Concrete block with stucco finish (CBS), synthetic stucco (an exterior cladding system with a stucco-like outer finish applied over insulating boards or composite materials), or other exterior coating that is the visual equivalent of stucco. Non-textured concrete block with visible mortar joints, even if painted, is not an acceptable finished material.

B. Textured or ribbed concrete block, e.g. "split-face block".

C. Reinforced concrete of any finish.

D. Glass or other glazing, whether transparent, translucent, or applied as a veneer. For purposes of this subsection, glazing consists of glass or any material that resembles glass including, but not limited to, Plexiglass or polycarbonate.

E. Stone or brick, including simulated stone or brick.

F. Wood, other than plywood or T1-11 type paneling, if termite-resistant species, pressure-treated, painted, or stained.

G. Fiber-reinforced cement panels or boards.

H. Tile.

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I. Architectural metal panels, provided that corrugated metal panels shall not exceed 30% of the surface of any wall.

J. Vinyl siding, provided that vinyl siding shall not exceed 30% of the surface of any wall.

Section 5.8.8. Roofs.

A. All non-residential and mixed-use buildings shall have variations in rooflines and roof features that are consistent with the building's mass and scale. In addition, roofs shall include features from at least two of the following five categories below. Flat, unadorned roofs are prohibited.

1. Parapet wall provided the parapet extends completely around the building on all sides. However, this requirement shall not prohibit the substitution of a pitched roof in lieu of a parapet for part of a building.

2. A three-dimensional cornice treatment, a minimum of four inches high (not applicable along any portion of a wall that is built flush to the side lot line). Flashing at the top of a parapet shall not qualify as a cornice. Cornices shall return a minimum of eight feet around corners that transition from a building wall that requires a cornice to a building wall that does not require a cornice.

3. Varied roof lines with different roof heights and or separate or distinct roof segments that fall at different horizontal planes above the cornice line;

4. Overhanging eaves that extend at least 18 inches beyond the supporting walls, with a minimum fascia of six inches in height (not applicable along any portion of a wall that is built flush to the side lot line);

5. Vertical variation in the roof line with a minimum change in elevation of two feet.

B. Pitched roofs such as gable, hip, shed or mansard roofs shall be clad with highly durable materials such as standing seam metal, slate, ceramic, or fireproof composite tiles. Fiberglass and asphalt shingles are prohibited except for dimensional grade or better.

1. Allowed slope. Pitched roofs shall have a minimum slope of three feet vertical rise for every 12 feet of horizontal run. The maximum slope of a pitched roof shall not exceed a one-foot vertical rise for every on foot of horizontal run.

C. Roofs covering pavilions, carports, gas canopies, and similar structures with support posts or columns but no sides. Buildings with roofs that lack walls, whether free-standing or attached to another building, shall have a minimum slope of three feet vertical rise for every 12 feet of horizontal run. Unless a roof with an alternative design is approved by the DCD Director, all roofs are required to possess a pitched roof with a minimum slope of three feet vertical rise for every 12 feet of horizontal run. The DCD Director shall consider the following two criteria in determining whether to approve a roof with an alternative design:

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1. Whether the design of the roof evokes exceptional expression through the use of angularity, curvature, or other means; or

2. Whether the design of the roof precludes visual monotony and enhances the aesthetic character.

Flat and parapet roofs are prohibited for buildings covered by this subsection.

Section 5.8.9. Building Design Standards in the SC District.

A. All buildings, whether residential, nonresidential or compound use, shall conform to the design standards provided herein., except as superseded by the following requirements.

B. Public entrances. Public entrances shall be provided as follows:

1. Any building facade that faces a street (excluding alleys) shall provide a public entrance oriented toward such street. In the case of a corner lot where more than one building facade faces a street, a corner entrance may serve to meet the requirements for the two streets that intersect and create the corner. All public entrances shall have convenient pedestrian access providing a direct connection from the street to the entrance via a walkway a minimum of four feet in width and not traversing any portion of an off-street parking area. In the event the City determines that this provision cannot be met due to site constraints, such walkway may traverse the off-street parking area but shall be clearly delineated by a change in paving material, pavement markings, or similar treatment.

2. Any building facade that faces a dedicated city parking area shall provide a public entrance oriented toward such dedicated city parking area with convenient pedestrian access providing a direct connection via a walkway a minimum of four feet in width.

3. It is not the intent of these provisions to require more than two public entrances to any use intended to be occupied by a single tenant. In the event that the provisions above cumulatively require more than two public entrances, then the requirements may be reduced such that two public entrances shall be required. In determining the orientation of such public entrances. Parkway street designations and dedicated city parking areas shall have priority.

C. Transparency of building walls. Except for parking structures, building walls shall contain transparent windows, doors, or any combination thereof, meeting the following standards:

1. For lots abutting parkway or primary street designations, transparent windows, doors, or any combination thereof, shall cover at least 50% of the first story building wall area that faces the parkway or primary street designation. Above the first story, non-residential uses, except hotels, shall provide transparent windows, doors, or any combination thereof, covering at least 25% of the entire building wall area; residential and hotel uses shall provide at least 15%.

2. For lots abutting secondary or tertiary street designations, non-residential uses, except hotels, shall provide transparent windows, doors, or any combination thereof, covering at least 25% of

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the entire building wall area that faces the secondary or tertiary street designations; residential and hotel uses shall provide at least 15%.

3. For lots abutting dedicated city parking areas or portions of alleys abutting dedicated city parking areas, non-residential uses, except hotels, shall provide transparent windows, doors, or any combination thereof, covering at least 25% of the entire building wall area that faces the dedicated city parking area; residential and hotel uses shall provide at least 15%.
4. Non-residential use building walls facing navigable waterways shall provide transparent windows, doors, or any combination thereof, covering at least 25% of the entire building wall area.
5. For lots abutting parkway, primary, or secondary street designations, all window and door glass that faces such designations, shall have a visible transmittance of at least 50% and an exterior reflectance no greater than 20%. The bottom of such windows shall be no higher than 36 inches above grade, or six inches above the floor of the lowest habitable story, whichever is higher. However, if the building is designed with floodproofing panels or barriers, the bottom of such windows shall be located no higher than six inches above the top of the floodproofing panel or barrier.
6. The exterior of windows and doors shall remain unshuttered at all times of the day. This provision shall not apply to the following:
 - a. Un-walled areas such as, but not limited to, dining and seating areas associated with restaurants and bars.
 - b. Hurricane shutters or flood-proofing panels during the time period in which a flood watch or warning, a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of Lee County. Such shutters or panels shall be removed within a week from the time they are put up, unless a hurricane, tropical storm, or flood has impacted the area, in which case the shutters may remain up for not more than three months from the date of the incident, except for good cause shown to the City.
- D. Non-residential buildings with a first story consisting of more than 35,000 square feet of floor area and consisting of a single use shall meet the following requirements:
 1. One public entrance shall be provided for every 75 feet of overall building frontage; or
 2. Liner buildings meeting the following requirements shall be provided:
 - a. Liner buildings shall be provided along at least 50% of the overall building frontage.
 - b. Liner buildings shall contain active uses with at least one public entrance provided for every 75 feet of liner building frontage. Such liner buildings shall comply with all applicable building setbacks and building frontages.
 - c. Liner buildings shall have an interior depth of at least 15 feet.

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d. Liner buildings may be detached from, attached to, or integrated into the principal building.

E. Architectural elements design standards: awnings, canopies, colonnades, arcades, balconies, front porches, stoops/landings, and cupolas. A first story facade facing a street or dedicated city parking area shall provide shade with awnings, canopies, colonnades, arcades, balconies, or any combination thereof, for at least 50% of its length or width, unless prohibited by Article 4, Chapter 5. Architectural elements, or any combination of architectural elements, may occur forward of the minimum setback, as applicable, but shall not extend forward of a lot line. Architectural elements, or any combination of architectural elements shall not encroach into an easement unless approved by the City. The city may require the property the property owner to enter into a formal easement agreement in a form acceptable to the City Attorney. The property owner is solely responsible for repairing any damage to encroachments in the easement that result from maintenance or public infrastructure improvements.

1. The City shall consider the following criteria in determining whether to approve an architectural element, or any combination of architectural elements, that would encroach into the easement:

- a. The extent to which the architectural element would encroach into the easement;
- b. The effect of such encroachment on any utilities that are either currently located in the easement or that may be located in the easement in the future; and
- c. The effect of such placement on any abutting properties or streetscape.

2. Awnings and canopies. Awnings and canopies extending from the first story, facing a street or dedicated city parking area, and serving to meet the 50% length/width requirement of Article 4, Chapter 5 shall conform to the following:

- a. Depth shall be a five-foot minimum projection from the building facade.
- b. Height shall be an eight-foot minimum clearance, including suspended signs.

3. Colonnades and arcades. Colonnades and arcades facing a street or dedicated city parking area shall conform to the following:

- a. Depth shall be a minimum of five feet from the building wall to the inside column face.
- b. Height shall be an eight-foot minimum clearance, including suspended signs. The lowest point on arches shall not extend below seven feet.
- c. Openings between piers, columns, or similar supporting elements shall be at least 50% of the colonnade or arcade facade area.
- d. Open multi-story verandas, awnings, balconies, and enclosed habitable space shall be permitted above the colonnade or arcade.

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- 3760 4. Balconies. Balconies shall be open and un-air-conditioned. Balconies may have roofs. Roofed
3761 balconies may be enclosed with screen and may contain privacy partitions. Balconies shall not
3762 project beyond the rear building setback requirement, as applicable. Balconies shall be located
3763 no closer than six feet from the abutting side lot line. Balconies facing a street or dedicated city
3764 parking area shall have a height clearance of ten feet minimum from grade; their decorative or
3765 supporting elements that project from building walls shall have a clearance of seven feet from
3766 grade.
3767
- 3768 5. Front porches. Front porches shall be un-air-conditioned. may be screened, and shall conform to
3769 the following:
3770
- 3771 a. Front porches facing a street or dedicated city parking area and serving to meet the minimum
3772 building frontage requirements of Article 4, Chapter 5 shall be a minimum of eight feet in
3773 depth.
3774
- 3775 b. Open multi-story verandas, awnings, balconies, and enclosed habitable space shall be
3776 permitted above front porches.
3777
- 3778 6. Stoops and landings. Stoops and landings may be roofed or unroofed, and shall maintain the
3779 required minimum building setback, as applicable. However, access to a stoop, whether by stairs,
3780 ramp, or other means, may extend forward of the minimum building setback as applicable, if
3781 approved by the Director but shall not be located less than three feet from the front lot line.
3782
- 3783 7. Cupolas. When provided, cupola(s) shall have a maximum of 400 square feet in horizontal
3784 dimension and shall be limited to two per building.
3785
- 3786 8. Garage doors associated with residential uses, when facing the front of the lot, shall be set back
3787 at least 20 feet behind the building line.
3788

3789 **Section 5.8.10. Equipment and Loading Areas**
3790

- 3791 A. For all non-residential and mixed-use developments, air conditioning, heating, and similar equipment
3792 shall be placed on the roof or the ground.
3793
- 3794 1. Air conditioning and heating equipment shall be prohibited from being mounted on the side of a
3795 building.
3796
- 3797 2. Rooftop equipment shall be screened on all sides in a manner consistent with the architectural
3798 design of the building. Such screening shall be at least as high as the highest portion of the
3799 equipment or apparatus being screened.
3800
- 3801 3. Equipment located on the ground shall be located or screened so as not to be visible from any
3802 property line abutting a public street other than an alley when viewed along a line perpendicular
3803 or radial to such property line. Screening shall consist of a wall, fence, plant material, or any
3804 combination thereof. Fences used for screening shall not be constructed of chain link with or

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without slats and are encouraged to be designed to appear to be constructed of material the same as the building, and to incorporate architectural trim features consistent with the building.

4. Electric meters and similar panels may be wall-mounted and are subject to the same screening requirements outlined in subsection c. above.

5. Attic vents and solar panels are exempt from the requirements of this subsection.

B. Loading areas that are visible from an abutting property with a residential future land use classification or that is separated from a property with a residential future land classification by an alley or a two-lane street shall be screened by a wall that is at least six feet in height, which is constructed of the same material as the building or is designed to appear to be constructed of material the same as the building, and that incorporates architectural trim features consistent with the building, by an earthen berm that is at least six feet in height, or by a combination of wall and berm that is at least six feet in height.

Section 5.8.11. Deviations.

A. Deviations from the provisions of this section may be approved by the Director provided that the deviation will not be contrary to the public interest and will be in harmony with the general intent and purpose of this section and where either of the following applies:

1. Conditions exist that are not the result of the applicant and which are such that a literal enforcement of the regulations involved would result in unnecessary or undue hardship; or

2. Literal conformity with the regulations would inhibit innovation or creativity in design.

B. In determining whether a particular deviation request should be approved as the result of unnecessary or undue hardship, factors the Director shall consider include, but are not limited to, the following: site constraints such as shape, topography, dimensions, and area of the property, the effect other regulations would have on the proposed development, or other locational factors that may make compliance with this section impossible or impracticable, the effect the requested deviation would have on the community appearance including, but not limited to, consideration of the mass, scale, and other characteristics of a proposed building relative to the characteristics of existing and approved surrounding buildings whether on the same or nearby sites, and the relative visibility and character of equipment or loading areas which are otherwise required to be screened along with constraints on alternative location of such equipment or loading areas. Additionally, the Director shall find that the approval of the deviation(s) would serve the intent of this section to protect the health, safety, and welfare of the public while ensuring a high level of overall aesthetic appeal and visual interest in the city.

C. In determining whether a particular deviation request should be approved because compliance with the regulations would inhibit innovation or creativity in design, the Director approve the request for deviation(s) if the applicant demonstrates that the design of the building or development for which one or more deviations is sought is unique and innovative and further, that the approval of the deviation(s) would enhance such unique and innovative design. Additionally, the Director shall find

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that the approval of the deviation(s) would serve the intent of this section to protect the health, safety, and welfare of the public while ensuring a high level of overall aesthetic appeal and visual interest in the city. For purposes of this section, indicators of unique and innovative design may include, but are not limited to, the following:

1. Architectural details that are unique or that are exceptional in quality by virtue of artistic composition, quality of materials, dimensional attributes, or any combination thereof;
 2. Building forms that evoke exceptional expression through use of angularity, curvature, or other means;
 3. Design elements or other forms that achieve dynamic or symmetric aesthetic balance; or
 4. Other details or forms that preclude visual monotony and are pleasing in aesthetic character.
- D. Requests for deviations and the reasons therefor shall be set forth by the applicant in the application for deviation and shall be accompanied by documentation including sample detail drawings, schematic architectural drawings, site plans, floor plans, elevations, and perspectives which shall graphically demonstrate the proposed deviation(s) and illustrate how each deviation would operate to the benefit or at least not to the detriment, of the public interest.
- E. Subject to these standards and criteria, the Director shall approve only the minimum deviation from the provisions of this section necessary to avoid either the unnecessary or undue hardship or the inhibition of innovation or creativity in design. The Director may impose reasonable conditions of approval in conformity with this section. Violation of such conditions and safeguards, when made a part of the terms under which a deviation is granted, shall be deemed a violation of this section and shall be enforceable not only by revocation of the deviation, but also by all other remedies available to the city, including, but not limited to, all code enforcement procedures.

CHAPTER 9. TEMPORARY USES.

Section. 5.9.1. Purpose and applicability.

- A. The purpose of this Section is to ensure all temporary events and activities are located and coordinated in harmony with the surrounding community. Temporary uses are authorized in this article as temporary accessory or principal uses for time periods proportionate and appropriate to the nature of the temporary use. Temporary uses permitted by this article may not be listed as a use in a particular zoning district. Temporary uses not listed in this article may be permitted through a temporary use agreement approved by the Director of Community Development
- B. All temporary uses and special events approved subject to the standards and requirements set forth under this article are deemed to be a privilege and not a right, which may be revoked by the city for failure to comply with any of the provisions of this article or any other local, state, or federal law governing the event. Approved temporary uses and special events may also be revoked if such revocation is in the best interest of the city based on emergency, disorder, or other unforeseen conditions. Private events held on private property shall not require a temporary use permit. Signs

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shall be limited to the signs permitted in Section 5.9.10 of this article and shall not be allowed within the right-of-way.

C. Application for a temporary permit.

1. Temporary use permits shall be coordinated by the Community Development department who may request reviews from the Fire, Police, Building, and Public Works departments as necessary to ensure safety.

2. If a temporary use or event is proposed at a public park property, an application must be submitted to the Parks and Recreation Department along with any applicable fees and proof of insurance.

3. Private events held on private property shall not require a temporary use permit.

Section. 5.9.2. Firework, pumpkin, and Christmas tree sales.

Temporary outdoor sales are prohibited, except as provided here in. Excepted seasonal events involving outdoor sales of merchandise shall meet all appropriate requirements of the Building Code, Electrical Code, Fire (Life Safety) Code, and Plumbing Code, particularly regarding temporary sanitary facilities. Temporary outdoor sales are prohibited unless they have applied for and received all required permits in compliance with this Subsection. Firework, pumpkin, and Christmas tree sales may be in all nonresidential zoning districts except the Preservation and Public Zoning Districts subject to the following:

A. Application. A complete application must be submitted to the Department of Community Development, along with a conceptual site plan.

B. Dates and hours of operation:

1. Firework sales may be operated from December 15 through January 1 and from June 1 through July 10;

2. Pumpkin sales may be operated from October 1 through November 5;

3. Christmas tree sales may be operated from November 15 to January 1; and

4. Lots may be open from 8 AM to 10 PM.

C. Parking and facilities.

1. Temporary sales lots must provide five parking spaces per half acre. A paved parking lot shall not be required.

2. Permission to place one or more tents (up to a total of 425 square feet in size) on the site, provided that the applicant provides proof of fire-retardancy and adequate tie-down measures with the application. Tents larger than 425 square feet shall require a separate tent permit. The location

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and setback of the tent(s) shall be shown on the conceptual site plan. If a sales trailer is being used in lieu of a sales tent, the sales trailer shall be handicap-equipped and accessible in accordance with the Florida Accessibility Code for Building Construction and ADA requirements and shall be anchored in accordance with all applicable building code standards.

3. Permission to utilize an electric generator on site. A temporary electric pole shall not, however, be authorized by the temporary sale permit. A temporary electric pole shall require a separate permit to be applied for and issued to a licensed electrical contractor.

- D. The Director may approve temporary outdoor seasonal sales in the RML zoning district, if it is determined that such sale would not result in adverse impacts on the surrounding neighborhood. Approval of a season sale in the RML district may include conditions to protect the surrounding neighborhood from adverse impacts.

- E. The applicant shall request inspection by the city of the items authorized pursuant to this Section and shall receive approval thereof prior to beginning the sale activity. Inspection of items authorized pursuant to this Section shall be made by the Community Development and Fire Departments.

Section. 5.9.3. Outdoor display of merchandise.

Unless otherwise permitted, outdoor display of merchandise is prohibited, except on improved property in accordance with the following conditions:

- A. All outdoor display of merchandise for sale, in non-residential districts is permitted with the following conditions:

1. Except in the downtown zoning district, such displays may be no closer than 10 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.
2. Displays may not be in required parking. If such displays are placed on a public sidewalk, the display 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, 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.

- B. Outdoor display of merchandise for sale on vacant property is prohibited, except as permitted for seasonal events in accordance with Section 5.9.2. or special events in accordance with Section 5.9.10.

Section. 5.9.4. Garage sales.

Garage sales may be permitted on a private property in accordance with the following regulations:

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- 3989
- 3990 A. Garage sales are permitted to be held for a period not to exceed three days, on the basis of three such
- 3991 activities per residence per year, not to be held closer than 30 days apart.
- 3992
- 3993 B. Prior to conducting a garage sale, the person conducting such sale is required to obtain a permit online
- 3994 from the city website or at the Code Enforcement Division. Such permit shall be posted or otherwise
- 3995 displayed on the property where the sale is being held to be visible from the street. In the event a
- 3996 garage sale is conducted without a permit, such sale shall be closed by the Police Department or the
- 3997 Code Enforcement Division, and shall remain closed until a valid garage sale permit is received from
- 3998 the city. Garage sale permits shall include authorization for on-site signs and off-site signs in
- 3999 accordance with applicable portions of the City of Cape Coral Land Development Code. On-site or off-
- 4000 site garage sale signs shall not be attached to any utility pole, street sign, tree, or other landscaping.
- 4001
- 4002 C. The purchase of items for resale at a residence, which in essence establishes a residence as a second-
- 4003 hand store, is hereby prohibited.
- 4004
- 4005 D. A violation of this Section shall be punishable by a fine of not less than \$75 and not more than \$250.
- 4006 Each day any violation of any provision of this Section occurs or continues shall constitute a separate
- 4007 offense. As an alternative, violators may be cited by a Code Enforcement Officer to appear before the
- 4008 Code Enforcement Special Master. In such event, violators shall be subject to fine(s) not to exceed
- 4009 \$250 per day for first time violations or not to exceed \$500 per day for repeat violations, as imposed
- 4010 by the Code Enforcement Special Master pursuant to the City of Cape Coral Code of Ordinances or the
- 4011 Florida Statutes. A person is subject to arrest if he or she refuses to close down a garage sale for which
- 4012 no valid permit is in effect.
- 4013

4014 **Section. 5.9.5. Temporary construction or field office.**

4015

- 4016 A. Construction trailers in residential zoning districts are subject to the following requirements.
- 4017
- 4018 1. Construction trailers shall not be connected to potable water and sewer facilities. If the
- 4019 construction trailer is wired for electricity, the wiring must conform to all applicable city
- 4020 electric codes.
- 4021
- 4022 2. The construction trailer must be removed from the site prior to issuance of a certificate of
- 4023 occupancy.
- 4024
- 4025 3. No overnight residential use shall be permitted in a construction trailer.
- 4026
- 4027 4. Construction trailers must comply with the setback requirements of the zoning district or the
- 4028 site.
- 4029
- 4030 5. Construction trailers shall not be larger than 200 square feet.
- 4031
- 4032 B. Construction trailers in non-residential zoning districts are subject to the following
- 4033 requirements.
- 4034

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1. When a construction trailer is used as a temporary office, the trailer must be wired for electricity and must be connected to potable water and sewer facilities, if available. Wiring and plumbing must conform to applicable Electric and Plumbing Codes.
2. The construction trailer must be located at the construction site or an abutting site with the property owner's written permission.
3. The construction trailer must be removed from the site prior to issuance of a certificate of occupancy.
4. No overnight residential use shall be permitted in a construction trailer.
5. Construction trailers must comply with the setback requirements of the zoning district or the site.

Section 5.9.6. Construction staging areas and post disaster debris staging

- A. Contractor staging for essential public facilities. Contractor staging areas for materials used in construction of essential public facilities are permitted in all zoning districts, subject to the following requirements:
 1. The temporary staging area shall serve a project being carried out in the vicinity of the construction staging area;
 2. No land clearing, removal of vegetation, or fill shall occur to accommodate the staging area;
 3. All activities at the staging area shall occur between 7:00 a.m. to 7:00 p.m. Monday through Saturday only;
 4. Fencing required;
 5. No structures other than a permitted construction trailer may be placed on the property; and
 6. No outdoor lighting is permitted for any staging area in a residential zoning district
- B. Construction staging areas. Construction staging areas are a permitted activity in all zoning districts, provided the staging area is on the same parcel where construction activity is authorized by a valid building permit. Construction staging areas on vacant, adjoining, or nearby parcels is prohibited.
- C. Post disaster debris staging areas. Post disaster debris staging areas are allowed in all zoning districts on sites designated by the City for such activity.

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- D. Post disaster construction staging. Staging areas for post disaster reconstruction efforts are allowed in all non-residential zoning districts. Post disaster construction staging is allowed in residential zoning districts as a (special exception/conditional) use.

Section. 5.9.7. Temporary sales office.

- A. Temporary sales offices are mobile structures used only for the sale or lease of units within that development. For the purpose of this section, units to be located within the development shall mean residential, non-residential, or mixed use habitable space or leasable floor area, whether occupying all of a building or individual area within a building including residential units, residential or non-residential units, individual units in a multi-unit non-residential development, or freestanding residential or non-residential structures.
- B. Requirements for a temporary sales office. The following requirements must be met prior to the approval of a temporary sales office:
1. Connection to sewer and water is required. If sanitary sewer and potable water are unavailable to the site, bottled water and portable sanitary facilities may be utilized until such time as sanitary sewer and potable water are available. A temporary sales office shall be connected to such facilities within 90 days of availability or within 90 days of the permitted temporary sales office, whichever is less.
 2. The temporary sales office shall meet the setbacks of the zoning district in which it is located.
 3. A temporary sales office shall not be used as a place of habitation or abode by any person(s), and shall not be used or occupied for business, office, or other purpose(s) at any time except between the hours of 7:00 a.m. and 9:00 p.m.
 4. A minimum of three paved off-street parking spaces shall be provided for the temporary sales office.
 5. The entrance to the site on which the temporary sales office is located shall consist of a city approved driveway or construction entrance. Any impervious area added for the temporary sales office shall be subject to review and approval by the city.
 6. The base of any temporary sales office shall be fully obscured by landscaping and skirting. Shrubs must be planted on 30-inch centers and have a minimum planted height of two feet. The type of irrigation, if applicable, must also be provided on the plan. Erosion shall be minimized and prevented to the extent practicable around any disturbed area.
 7. The maximum duration of the permit shall not exceed one year. The Director may extend permits for up to six months each, based upon factors that include:
 - a. Size of the project.

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- 4121
- 4122 b. Number of lots or units in the development remaining to be sold or leased.
- 4123
- 4124 c. Effect that the extension would have on the surrounding properties.
- 4125
- 4126 d. Developer's need for an extension and efforts, if any, the developer has put forward
- 4127 toward completion of the development (e.g., effort to complete construction in a timely
- 4128 manner, delays beyond the reasonable control of the developer, etc.).
- 4129
- 4130 8. A temporary sales office shall be removed no later than the date the development is completed
- 4131 or within 30 days after notice by the city that the application for development has been denied,
- 4132 whichever is applicable.
- 4133
- 4134 C. Permit application and submittal requirements. A permit shall be required for a temporary sales
- 4135 office. In order to obtain a permit for the use of a structure for a temporary sales office, the
- 4136 applicant shall submit the following to the Department of Community Development:
- 4137
- 4138 1. A scaled drawing of the site, identifying the location of the temporary sales office with
- 4139 dimensions. Construction plans shall also be submitted.
- 4140
- 4141 2. The names of the property owner and the operator of the temporary sales officer. In the
- 4142 event the operator is different from the property owner, written and notarized consent from
- 4143 the property owner must be submitted. Such written consent shall be revocable. In the event
- 4144 such consent is revoked, the temporary sales office shall be removed within 30 days.
- 4145
- 4146 3. The length of time the temporary mobile sales office is proposed for the site.
- 4147
- 4148 4. The description of potable water and sanitary facilities that will be available for the
- 4149 temporary office.
- 4150
- 4151 D. Inspection by city officials. To ensure compliance with all applicable laws and regulations, the
- 4152 temporary sales office shall be held open for reasonable inspection, without court order, by
- 4153 employees or agents of the City of Cape Coral or any other duly authorized governmental agency.
- 4154
- 4155 **Section. 5.9.8. Temporary Storage Containers.**
- 4156
- 4157 A. Temporary storage containers are prohibited in any zoning district of the city, except as follows:
- 4158
- 4159 1. Residential zoning districts. No more than one temporary storage container per dwelling unit is
- 4160 permitted in residential zoning districts.
- 4161
- 4162 2. Non-residential zoning districts. No more than two temporary storage containers are permitted
- 4163 in non-residential zoning districts. In the case of multi-tenant non-residential properties, each
- 4164 business or tenant may have a temporary storage container.

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- 4165
- 4166 3. This section is not intended to restrict the storage or location of temporary storage
- 4167 containers on the premises of a business which is lawfully engaged in the sale, rental, or
- 4168 distribution of such containers so long as the containers are on the property of such business
- 4169 as "merchandise" and not for temporary storage of items or goods.
- 4170

- 4171 4. The provisions of this section shall not apply to prohibit or restrict the location of temporary
- 4172 storage containers on any property for which a valid City of Cape Coral building permit has
- 4173 been issued and is in effect provided that the construction on the property has not been
- 4174 abandoned or allowed to lie idle in violation of Article 5-2 of the City of Cape Coral Code of
- 4175 Ordinances.
- 4176

4177 B. General Requirements:

4178

- 4179 1. No temporary storage container may be placed in one or more parking spaces if the required
- 4180 number of parking spaces is reduced below the minimum number of spaces required for the
- 4181 site.
- 4182
- 4183 2. No temporary storage container shall block or reduce access to fire lane(s), handicapped
- 4184 parking area(s), or drainage facilities or structures, including swales and catch basins.
- 4185
- 4186 3. Temporary storage containers shall not be placed in an easement or in any area designated
- 4187 as a buffer.
- 4188
- 4189 4. The maximum size of temporary storage containers shall not exceed ten feet in width, ten
- 4190 feet in height, or 40 feet in length.
- 4191
- 4192 5. Non-residential zoning districts. Temporary storage container permits are valid for 30 days.
- 4193 A maximum of two temporary storage container permits may be issued for a property or, in
- 4194 the case of multi-use or multi-unit properties, for each business or commercial enterprise
- 4195 located on the property in any calendar year. Temporary container permits may run
- 4196 consecutively without any minimum period required to elapse between the issuance of
- 4197 permits.
- 4198
- 4199 6. Residential zoning districts. Temporary storage container permits are valid for seven days. A
- 4200 maximum of two temporary storage container permits may be issued in any calendar year.
- 4201 Temporary container permits may run consecutively without any minimum period required
- 4202 to elapse between the issuance of permits. No dwelling unit shall utilize a temporary storage
- 4203 container for more than 14 days in any 12-month period.
- 4204

4205 **Section 5.9.9. Temporary Habitable Structures**

4206

- 4207 A. Purpose and intent. The purpose of this ordinance is to provide a means by which residents,
- 4208 business owners, governmental agencies, and medical facilities are able to live and conduct
- 4209 business on the same site as their damaged structure using temporary housing and temporary

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business structures. When disasters result in significant destruction rendering homes and businesses uninhabitable, temporary housing and temporary business structures will provide residents and businesses with the ability to quickly resume normal activities during the restoration of their permanent structures.

B. Definitions. Terms used in this subsection shall have the meanings as defined in Article 11, Definitions, unless the context clearly indicates or requires a different meaning.

C. Declaration of habitable structure emergency. Following a disaster, the city shall evaluate the effect of the disaster on the public health, safety, and welfare. If the City Council finds that the disaster has negatively affected residential housing or business structures in the city by a significant degree, the City Council may, by a majority vote, declare the existence of a habitable structure emergency. Upon the declaration of a habitable structure emergency by vote of the City Council, the provisions of this subsection shall become effective. The habitable structure emergency shall identify the disaster which created the emergency situation, and may be declared for either a specified period of time or an indefinite period of time. If the emergency is for an indefinite period of time, the emergency shall continue until City Council, by a majority vote, terminates the habitable structure emergency.

D. Habitable structure emergencies. During a habitable structure emergency, the city will allow, in accordance with the provisions set forth herein, the use of temporary structures. Temporary residential structures and temporary business structures must be approved by the city with a temporary placement permit. Application and issuance criteria for a temporary placement permit are as set forth below.

E. Temporary business structures may be used for business owners to provide a means for a business to remain open during the time the permanent business structure is being repaired or replaced. Temporary business structures may be used to provide temporary facilities for governmental uses, critical public facilities, charitable, religious, or educational institutions that have been rendered uninhabitable. The regulations for temporary business structures shall apply to temporary business structures used for governmental uses, critical public facilities, charitable, religious, or educational institutions. For these institutions, the habitable structure regulations shall apply; however, the Building Official may waive any regulations when strict enforcement may preclude them from carrying out their normal or emergency functions. Critical facilities shall be limited to the following:

1. Federal, state, regional, or local government facilities;
2. State, county, or local emergency operations centers;
3. Police, fire, and emergency medical facilities;
4. Radio and television stations;
5. Public, semi-public, and privately-owned utilities;

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6. Hospitals, emergency medical care facilities, infusion centers, dialysis centers, physician's offices; and

7. Nursing homes and assisted living facilities.

F. Temporary placement permit. Following the declaration of a habitable structure emergency, a property owner may apply for a temporary placement permit (TPP) to locate onsite while the permanent structure is being repaired or rebuilt. A temporary placement permit (TPP) may be considered by the Building Official when the following criteria are met:

1. The existing permanent habitable structure has been determined to be uninhabitable as the result of a disaster by inspection of the city Building Official;

2. The property owner or occupant of a damaged structure desires to locate in a temporary residential or business structure; and

3. A habitable structure emergency must be in effect at the time of application.

G. Applications for temporary placement permits.

1. Application forms and required fees.

2. The following permits are required prior to application for a TPP:

a. City permits for hook-up to electric, potable water, and wastewater utilities; and

b. A State Department of Health or State Department of Environmental Protection permit authorizing the connection of the temporary residence to an onsite or small domestic wastewater treatment system.

H. Time limits. Temporary structures may be located for a period not to exceed 30 days. At the end of that 30-day period, if no application has been filed, the temporary habitable structure must be immediately removed from the site. If an application has been filed within the 30-day time period, the temporary habitable structure may remain in place until the TPP is either approved or denied. Once approved, the temporary habitable structure may remain in accordance with the TPP. If denied, the temporary structure shall be removed within five days from the date of denial.

I. Terms of use of temporary habitable structures. Applicants for a temporary habitable structure shall be subject to the following:

1. Except as otherwise provided herein, temporary structures shall not be occupied until such time as a valid TPP has been issued and is in effect for the site.

2. Connection to sanitary sewer and potable water, or onsite water and wastewater facilities, and an external electrical system are required within 20 days of issuance of the TPP. Inspections for such connections shall be called into the city within two days of completion

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of each connection. Electrical and plumbing connections must be done by electricians or plumbers licensed to do business in the City of Cape Coral.

If there is no electricity to the site due to a power outage, a generator may be used. Upon restoration of electricity to the property, connection to the local power grid must be made within 24 hours of power restoration.

3. An application for a building permit is required within three months from the date of issuance of the TPP for temporary residential structures or within six months for temporary business structures. Failure to apply for a building permit within the required time shall deem the TPP revoked pursuant.

4. If a building permit application has not been submitted within the required time-frames, an applicant may petition City Council for relief from the time restrictions of this subsection. City Council shall determine whether the failure to apply for a building permit is due to good cause shown by the applicant. If City Council denies the request for relief, the temporary structure shall be removed from the site within ten days from the date of denial, or at the end of the initial three-month period for temporary residential structures, or at the end of the initial six-month period for temporary business structures, whichever is later.

5. Temporary habitable structures with a TPP may be used until the earlier of: 1) completion of the rehabilitation or reconstruction of the damaged structure; or 2) until such time as the owner or occupants of the damaged structure are established in a permanent structure at another location.

6. Occupants must comply with all mandatory hurricane evacuation requirements.

J. Temporary structures. Temporary habitable structures must comply with the following:

1. Temporary residential structures may consist of a recreational vehicle or a travel trailer. Temporary business structures may consist of recreational vehicles, travel trailers, or mobile offices. At the discretion of the Building Official, additional types of temporary business structures may be allowed, consistent with applicable federal, state, and local regulations and the provisions of this ordinance.
2. Must meet all applicable National Fire Protection Association and Life Safety codes and regulations as well as all applicable state and local requirements for tie-downs.
3. Shall contain plumbing (both water and wastewater) and electrical connections and shall be capable of being hooked up or attached to external plumbing and electrical systems. Temporary residential structures shall contain a kitchen capable of being hooked up or attached to external plumbing and electrical systems. Requirements for temporary business structures shall be based upon the proposed use.
4. Shall meet the Florida Accessibility Code for building construction amenities.

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- L. Placement of temporary habitable structures. The following site considerations are required for placement of a temporary habitable structure:
1. Temporary residential structures may be anywhere on the site of the existing permanent residence; however, no a temporary residence is allowed within road rights-of-way or drainage or utility easements. The city may waive any development regulations regarding lot areas, dimensions, setbacks, lot coverage, height, and open space to accommodate temporary residential structures.
 2. Where more than one existing permanent residence has been rendered uninhabitable, the Building Official may allow up to the number of damaged permanent residences or residential units on the site. Such determination shall be based upon consideration of life, health, and safety requirements.
 3. For temporary business structures:
 - a. Temporary business structures may be anywhere on the parcel of the existing business; however, temporary business structures are not allowed within road rights-of-way or drainage or utility easements. The city may waive any development regulations regarding lot areas, dimensions, setbacks, lot coverage, height, and open space to accommodate temporary business structures.
 - b. Temporary business structures may be on property adjacent to the permanent business structure if a notarized, written consent from the property owner is submitted at the time of application for a TPP.
 - c. The establishment of an emergency response team center on a parcel containing a business does not necessarily preclude the placement of one or more temporary business structures on the same parcel.
 - d. Parking for a temporary business structure shall be provided based upon the square footage of the temporary business structure, including handicapped parking. However, a minimum of two handicapped parking spaces must be provided.
 - e. The entrance to the site shall have a city approved driveway or construction entrance. Any impervious area added for the temporary business structure shall be subject to review and approval by the city.
 - f. Additional conditions or restrictions may be placed on a temporary business structure as a condition of issuance in areas including, but not limited to, the following:
 - i. Hours of operation;
 - ii. Traffic control and access;
 - iii. Lighting; and
 - iv. Noise control.

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M. Issuance and revocation. The Building Official may revoke a TPP upon finding that any of the following has occurred:

1. Failure to connect to water, sewer, and electrical within 20 days of the receipt of the TPP.
2. If an application for a building permit has not been submitted within required time from the date of receipt of the TPP, or relocation has not occurred before the time of expiration of the TPP, or, if a building permit later expires.
3. If, upon inspection by the Building Official, a temporary residence is not in compliance with the requirements of this subsection.
4. Failure to evacuate temporary residence during mandatory evacuation orders.
5. Upon revocation of a TPP, the temporary residence must be vacated and the temporary residence removed within five days of revocation. Failure to vacate or remove the temporary residence constitutes a violation subject to the penalty imposed herein.

N. Extensions and expiration of temporary placement permits.

1. Residential TPPs shall be valid for six months from the date of issuance. The Building Official may, for good cause shown, issue up to two extensions for six months each, for an 18-month maximum period of validity from the date of issuance.
2. Non-residential TPPs shall be valid for nine months from the date of issuance. The Building Official may, for good cause shown, issue up to two extensions for six months each, for a 21-month maximum period of validity from the date of issuance.
3. All applications for extensions of time must be submitted prior to the date of expiration of the current TPP.
4. Any further extensions after the second extension and maximum time period may not be issued by the Building Official; however, applicants may submit a request to City Council for their approval of any further extension of time for the TPP.
5. Factors to be considered by the Building Official or the City Council in determining whether to grant an extension of time of the TPP shall include:
 - a. The ability of the property owner or occupant of the temporary residential or business structure to secure permanent quarters; and
 - b. Any hardship that, in the opinion of the Building Official or City Council, as applicable, would warrant a further extension of the TPP.

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6. Upon the, expiration of a TPP, a temporary residence or business structure must be removed or placed in proper storage on the property within 30 days. Failure to remove or properly store the temporary residence or business structure constitutes a violation subject to the penalty imposed herein.

7. Termination of temporary habitable structure. Once an uninhabitable structure has been issued a certificate of occupancy or certificate of use for a new or rehabilitated residence, business, or institutional facility, the TPP shall be deemed to be terminated. A temporary residential or business structure must then be removed or placed in proper storage on the property within 30 days. Failure to remove or properly store the temporary residence or business structure constitutes a violation subject to the penalty imposed herein.

8. Penalty. Any violation of the provisions of this subsection shall be subject to a \$500 fine. Each day of violation shall constitute a separate offense and shall be punishable as such.

Section. 5.9.10. Special events.

- A. Permit required. The following types of events shall require a permit:

1. An event expected to draw 500 or more persons at any session, as participants or spectators, which is proposed to be held on public property; or
2. An event expected to draw less than 500 persons at any session as participants or spectators, which is proposed to be held on public property, if a street closing is required; or
3. An event expected to draw 500 or more persons at any session as participants or spectators, which is proposed to be held on private property; if said participants or spectators will occupy adjacent public streets or public property during the event.

- B. An applicant may apply for a permit to sponsor a special event in the city by submitting the following documents to the Department of Parks and Recreation:

1. A completed, signed, and notarized application shall be submitted no less than 60 days prior to the opening of the event. Exceptions to the 60-day requirement may be approved by the Director of Parks and Recreation, based upon the size, duration, and nature of the event. The city reserves the right to verify the applicant's previous history of sponsoring special events with other jurisdictions.
2. A non-refundable application and processing fee of \$40.
3. A \$250 refundable clean-up deposit in the form of either cash or certified check payable to the City of Cape Coral. The property shall be cleaned within 48 hours of the close of the event and returned to substantially the same condition as just prior to the start of the event, or better. The clean-up deposit will be refunded to applicant upon satisfactory inspection of the property, by the city, after the event closes. If, within 48 hours after the close of the event, the property is not

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4480 returned to substantially the same condition as prior to the start of the event, or better, the city,
4481 in its sole discretion, may utilize the clean-up deposit to do so and refund the remainder, if any,
4482 to the applicant.

4483
4484 C. A tent may be erected for a special event for a maximum of five days. Any tent over 900 square feet
4485 will require a fire inspection.

4486
4487 D. Insurance requirements.

4488
4489 1. Certificates of insurance for all properties used for the event must be submitted to the Parks and
4490 Recreation Department for approval by the City Risk Manager no less than 21 days prior to the
4491 event.

4492
4493 2. Applicants and vendors shall have commercial or general liability insurance, including coverage
4494 for independent contractors, premises and operations, contractual liability, products and
4495 completed operations, personal injury, and property damage. Insurance coverage shall be no less
4496 than \$1,000,000 combined single limit for bodily injury and property damage and no less than
4497 \$1,000,000 for liquor liability, if applicable.

4498
4499 3. Vendors shall also have motor vehicle liability insurance for any motor vehicle of no less than
4500 \$1,000,000 and workers' compensation coverage, as required by statute.

4501
4502 4. The City of Cape Coral shall be named as additional insured. Certificates of insurance shall show
4503 the City of Cape Coral as the certificate holder.

4504
4505 E. In determining whether a permit shall be issued, the Director of Parks and Recreation, shall consider
4506 certain criteria including:

4507
4508 1. The size, duration, and nature of the event;

4509
4510 2. Previous history, if any, of organizing events within Lee County and whether said events created
4511 hazards or safety situations;

4512
4513 3. Other events previously scheduled during the same time period within the city;

4514
4515 4. If the applicant has been adjudicated guilty of violating any provision of this Section, said
4516 adjudication may constitute grounds for denial of future special events permits by the city; and

4517
4518 5. The Director of Parks and Recreation, may, in his or her sole discretion, deny the applicant a
4519 permit for the special event within the City of Cape Coral.

4520
4521 F. Special events shall be held in accordance with the following:

4522
4523 1. All applicable city ordinances and building, fire, and electrical codes shall be complied with.

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2. 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 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.
3. 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 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, or 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.
4. 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.
5. All equipment including, but not limited to, tents, stages, amusement rides, utility areas, ingress and egress locations, 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 and 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 and amusement rides. The operator of such equipment and amusement rides shall be in the immediate vicinity of the operating controls at all times during the operation of the equipment and amusement rides and no unauthorized person shall be permitted to handle the controls during said operation.
6. Special event signs shall be permitted in accordance with the Land Development Code, Article 7.
7. 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.
 - a. 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. The Director of Parks and Recreation shall post designated areas when such posting is appropriate.

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- b. If sound amplifying equipment is present, it shall be in accordance with a permit issued per Section 5.9.3 Outdoor Entertainment Event. The Director of Parks and Recreation shall establish one or more designated areas on public property within the area of the special event where such amplified sound may occur. If sound amplifying equipment is present on private property at the special event, the Director of Parks and Recreation may establish one or more designated areas on public property within the area of the special event where other amplified sound may occur. If amplified sound is not present on public or private property during 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.
- c. 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.
8. 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.
9. 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.
10. No person shall unreasonably hamper, obstruct, impede, or interfere with any person, entity, group, or organization hosting a permitted special event.
- G. Order to cease operation. If the Director of the City of Cape Coral 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 the special event until satisfactory corrective action has been taken.
- H. 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.
- I. 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 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.
- J. 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 5.9.11. Temporary Off-Site Vehicle Sales.

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The display of vehicles, including, but not limited to, automobiles, trucks, vans, recreational vehicles such as camping trailers, motorcycles and recreational terrain vehicles, and water craft such as boats, jet skis and wave runners, displayed for the purpose of sale, lease, trade or rental, shall be permitted at an off-site location (that is, on an improved property that is not the approved location of the business).

A. Temporary Off-Site Vehicle Sales shall adhere to the following requirements:

1. The commercial establishment seeking the temporary sale permit must have the written permission of the owner, or an authorized representative of the owner, of the property on which the temporary sale will be conducted. The written permission shall state that, as a condition of the city's issuance of a permit for the temporary sale, the property owner agrees to be responsible for any damage to the city's right-of-way or utility systems as a result of the sale and that any such damage shall be repaired at the expense of the property owner. In addition, such written permission shall also state that, in consideration of the city's issuance of the permit, the property owner shall hold the city harmless from any claim, loss, damage, or cause of action that arises because of the temporary sale or the issuance of the permit therefore, including any loss or damage to the owner's property or improvements thereon. Such written permission shall have a notarized signature and shall be filed with the Department of Community Development.
2. The duration of any such temporary sale shall not exceed five consecutive days.
3. The property on which the off-site sale is conducted shall not have been used for temporary off-site sales for more than six occasions in the preceding one-year period.
4. Temporary sales shall only be conducted between the hours of 8:00 a.m. to 9:00 p.m.
5. The display of vehicles and the operation of the temporary sale shall not interfere with the normal parking and traffic circulation of the business(es) located on the site.
6. The temporary off-site vehicle sales permit shall, at all times during the permitted time period authorized for the sales, be displayed on the site upon which such sales are being conducted.
7. No temporary sale shall begin until a permit therefore has been approved and issued by the city and all fees are paid in accordance with the city's adopted fee schedule. Prior to the issuance of a temporary sale permit, a complete application must be submitted to the Department of Community Development, along with a conceptual site plan. In addition to the proposed site layout and setbacks, the conceptual site plan shall address vehicular traffic and parking measures, fire protection measures, sanitary facilities and lighting and areas of electric needs. The temporary sale permit shall include, as applicable:
 - a. The right to erect one sign or banner, a maximum of 32 square feet in size, or two such signs or banners for properties having frontage on more than one street. In lieu of such sign(s) or banner(s), the applicant may display an inflatable object in accordance with Article 7 of this code. The applicant shall include with the application sign details such as the placement of

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the sign and anchoring or tie-down measures. The placement and anchoring of the means of advertisement shall not interfere with the visual safety of motoring traffic.

- b. Permission to place one or more tents (up to a total of 425 square feet in size) on the site, provided that the applicant provides proof of fire-retardancy and adequate tie-down measures with the application. Tents larger than 425 square feet shall require a separate tent permit. The location and setback of the tent(s) shall be shown on the conceptual site plan. If a sales trailer is being used in lieu of a sales tent, the sales trailer shall be handicap-equipped and accessible in accordance with the Florida Accessibility Code for Building Construction and ADA requirements and shall be anchored in accordance with all applicable building code standards.
- c. Permission to utilize an electric generator on site. A temporary electric pole shall not, however, be authorized by the temporary sale permit. A temporary electric pole shall require a separate permit to be applied for and issued to a licensed electrical contractor.
- d. d. The applicant shall request inspection by the city of the items authorized under this section and shall receive approval thereof prior to beginning the off-site sale activity. Inspection of items authorized pursuant to subparagraphs a. through c. shall be made by the Department of Community Development. Items authorized pursuant to subparagraphs b. and c. shall also be made by the Fire Department.

- B. Any other outdoor display on improved property must be approved by City Council and is subject to review annually at the discretion of Council, except that the City Manager may approve requests for temporary displays of no longer than five days duration no more than two times per calendar year for any location or applicant when he or she is satisfied that the request would be in keeping with the harmony of the zoning district and that it would violate none of the ordinances of the City of Cape Coral.

Section. 5.9.12. Tents, for other than Special Events.

A tent may be permitted to be erected for a for a maximum of five days for an event. Any tent over 900 square feet will require a fire inspection.

Section. 5.9.13. Other events not named.

A person desiring to hold any temporary event, not listed herein, shall contact the Community Development department regarding the necessity of a permit and any additional permissions that may be required.

Chapter 10. - SPECIFIC USE REGULATIONS

Section. 5.10.1. Purpose and applicability.

The uses listed in this chapter are deemed to be appropriate uses when developed and operated in accordance with the requirements listed within each Section. Approval may be granted administratively

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as long as the requirements are met and maintained. The applicant shall provide all documents necessary to prove that the requirements are met prior to receiving approval to operate and on an ongoing basis as required for the specific use.

Section. 5.10.2. Craft breweries, distilleries, and wineries.

A. Requirements. All craft breweries, distilleries, or wineries which produces alcoholic beverages for consumption on premise or provide retail sales, shall comply with the following requirements:

1. The business owner shall submit semi-annual production records to the Department of Community Development for all alcohol and nonalcohol products produced within the establishment.
2. All mechanical equipment used in the alcohol production process shall be behind a wall or fence that separates the equipment from any property line abutting a public street other than an alley when viewed along a line perpendicular or radial to such property line. The wall or fence shall be opaque and have a minimum height of six feet.
3. Loading and unloading areas shall be provided to the side or rear of the building. Loading and unloading areas shall not be along the front of the building.
4. Spent or used grain or similar wastes may be placed outdoors for a period not to exceed 24 hours. The temporary stockpiling for spent or used grain shall be:
 - a. Clearly shown on a detailed dimensional and labeled drawing that depicts the location of the stockpiled spent grains on the property and the distance of the stockpiled grains from the property lines and the building containing the artisan brewery, distillery, or winery;
 - b. Located only along the side or rear of the building; and
 - c. Fully enclosed in containers that are behind an opaque wall or fence. The wall or fence shall have a minimum height of six feet. Cargo containers and tractor trailers shall not be utilized for the temporary stockpiling of spent or used grains even if the cargo containers and tractor trailers are behind an opaque wall or fence.

B. Waiver of requirements.

1. Permitted and Conditional Uses.

To encourage the repurposing of existing buildings in the NC or SC districts, any craft brewery, distillery, or winery that is approved as a permitted use, the provisions of this Section may be waived in part or in their entirety by the Director for the purpose of spurring economic development based on the criteria contained in Subsection 2.

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2. Criteria. In determining whether to waive one or more of these standards the Community Development Director shall utilize the following criteria:
- a. The visibility of the mechanical equipment and loading areas from any public street(s).
 - b. The proximity and visibility of the mechanical equipment and loading areas from existing residential development.
 - c. The existence of site conditions that are not the result of the applicant and which are such that a literal enforcement of the regulations involved would result in unnecessary or undue hardship.
 - d. The effect other regulations would have on the proposed development or other locational factors that may make compliance with this Section impossible or impracticable.
 - e. The annual production of alcohol anticipated to be produced by the establishment.
 - f. The size and extent of the equipment requiring screening.

Section. 5.10.3. Duplex.

In RML zoning districts a duplex must meet the following conditions:

- A. Both units must be served by a single, circular driveway to avoid residents backing into streets.
- B. Landscaping shall be provided at a rate of two trees and six shrubs per each 2,500 square feet of the lot.
- C. Attached residential developments shall incorporate three of the following design elements into each dwelling unit:
 - 1. Dwelling entry as the primary façade feature;
 - 2. Garage door recessed from the front façade, a preferred minimum of four feet;
 - 3. Horizontal eaves broken up with gables, projection, and articulation;
 - 4. Projecting eaves and gables, related to building massing;
 - 5. Building massing and roof form which articulate individual unit definition;
 - 6. Offset of four feet where two garage doors are adjacent to each other; or
 - 7. Projections and decorative elements, such as trellises, for visual interest.

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Section. 5.10.4. - Home occupations.

Home occupations shall only be allowed as an accessory use to a residential use, provided the following conditions are met:

- A. All home occupations operated in or from a residence shall comply with federal, state, and county rules and regulations, city license regulations specified herein, and any other applicable ordinances of the City of Cape Coral.
- B. No person other than members of the immediate family may be employed for a salary, commission or upon any other remunerative basis.
- C. No condition shall be permitted which tends to cause or increase the fire hazard to the residence, such as storage of paints or other flammable materials in excess of normal family use.
- D. No storage of materials or supplies shall be allowed outside the structure nor shall any indoor display of materials be visible from the outside of the structure.
- E. No home occupation shall occupy an area greater than 10% of the living area of the structure.
- F. The home occupation shall not generate pedestrian or vehicular traffic beyond that which is reasonable to the district in which it is located and it shall not involve the use of commercial vehicles for delivery of materials to or from the residence.
- G. The appearance of the structure shall in no way be altered for the conduct of the home occupation within the structure nor shall the conduct be such that the structure may be recognized as serving a non-residential use either by color, materials, construction, lighting, signs, sounds, noises, vibrations, audible or visible interference in any radio or television receiver off the premises, or cause fluctuations in the electric voltage line off the premises.
- H. No business operated under a fictitious name shall be issued a license to operate under this Section.

Section. 5.10.5. RV resorts

- A. General provisions. Within a recreational vehicle park, recreational vehicles that meet the requirements herein, whether self-propelled or pulled by a towing vehicle, and camping cabins, as regulated herein, may be used for temporary lodging. Facilities to accommodate administration, maintenance, recreation, dining, and personal care may be included within a recreational vehicle park. Recreational vehicle parks shall be deemed to be nonresidential uses, and any transient guest site occupied by a registered guest of a recreational vehicle park shall not be deemed to be a "residence", "dwelling," or "residential premises" within the meaning of other provisions of the City of Cape Coral regulations. The management of all transient guest sites and camping cabins must be performed by a single on-site management company or entity, regardless of whether the transient guest sites, camping cabins, or both are owned by more than one person or entity.

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- 4845 B. Lodging unit characteristics. Lodging shall only be allowed within recreational vehicles and camping
4846 cabins that have all of the following characteristics:
4847
- 4848 1. Recreational vehicles:
4849
- 4850 a. Shall be no more than eight and one-half feet in body width, exclusive of safety devices
4851 when slide outs are retracted;
4852
- 4853 b. Shall have water and wastewater systems designed for continuous connection to water and
4854 wastewater service facilities while parked at a transient guest site; and
4855
- 4856 c. Shall not be constructed with collapsible partial sidewalls that fold for towing in such a way
4857 as to be unusable for occupancy.
4858
- 4859 2. Camping cabins shall comply with all of the following criteria:
4860
- 4861 a. Cabins shall be constructed in compliance with the Florida Building Code;
4862
- 4863 b. The square footage of interior space shall be a minimum of 200 square feet and a maximum
4864 of 600 square feet;
4865
- 4866 c. Cabins shall be equipped with electric service and a full bathroom;
4867
- 4868 d. Cabins are exempt from non-residential design standards, however when there is more than
4869 one cabin in a development, the color scheme, exterior materials on walls, exterior roof
4870 finishing, and roof type must be consistent among all cabins;
4871
- 4872 e. Corrugated metal is prohibited for exterior walls; and
4873
- 4874 f. Roofs shall consist of pitched roofs, including but not limited to, gable, hip, or mansard
4875 roofs; however, mansard roofs with flat decks and shed style roofs are prohibited.
4876
- 4877 C. Location. Recreational vehicle parks are permitted only on property with a Mixed-Use future land
4878 use designation. No new recreational vehicle park shall be developed and no existing recreational
4879 vehicle park shall be expanded within a coastal high hazard area, as depicted in the Comprehensive
4880 Plan.
4881
- 4882 D. Minimum interior road standards. All interior roads shall be privately owned and maintained, and
4883 shall be constructed in accordance with the structural requirements within the City of Cape Coral
4884 Engineering Design standards.
4885
- 4886 E. Overall recreational vehicle park area and density. The following requirements shall apply to the
4887 recreational vehicle park net area:
4888
- 4889 1. Minimum recreational vehicle park net area: 25 acres;
4890

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2. Maximum net density: 10 transient guest sites per acre, based on net area; and

3. Minimum net density: For recreational vehicle parks with a net area of less than 50 acres, the minimum quantity of transient guest sites shall be 50; for recreational vehicle parks with a net area of 50 or more acres, there shall be no less than one transient guest site per acre, rounded to the nearest whole number.

For purposes of this section, the net area shall mean the area of the recreational vehicle park minus extant wetland areas and water areas (e.g. streams, waterways, lakes, estuaries). If an extant wetland or water area is expanded or contracted, the net area shall be based on the resultant wetland and water areas.

F. Transient guest sites. Transient guest sites can be designed with either: 1) a pad for parking one recreational vehicle; 2) one camping cabin; or 3) a pad for parking one recreational vehicle and one camping cabin. The following standards shall apply to transient guest sites within a recreational vehicle park:

1. Each transient guest site shall be clearly defined by a permanent marker, constructed of a durable material such as masonry or metal, placed at all corners;

2. No transient guest site shall include any space used for common areas, such as roadways, sidewalks, or community recreation areas;

3. No more than 25% of the total transient guest sites shall be developed with a camping cabin. Transient guest sites with a pad for parking one recreational vehicle and one camping cabin shall not be factored into the 25% limitation to the number of camping cabins;

4. All transient guest sites shall be designed to provide runoff of surface water to a drainage system or basin external to the transient guest site;

5. Impervious area shall not exceed 65% of any transient guest site. Pervious areas of each transient guest site shall be covered in turf, groundcover, shrubs, trees, or any combination thereof;

6. Each transient guest site shall have direct vehicular access to an interior road. No transient guest site shall have direct vehicular access to a public street;

7. No transient guest site shall be located closer than 40 feet to any public street right-of-way;

8. Separation: Each transient guest site shall be designed to ensure minimum separation between units. When measuring the distance from a recreational vehicle pad, paved areas that project more than four and one-half feet from the centerline of the pad, e.g., driveway apron flares, walkways, and patio areas, may be excluded. Distances of separation shall be as follows:

a. Between camping cabins: 15 feet;

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- 4937 b. Between a camping cabin and a recreational vehicle pad on the same transient guest site:
4938 15 feet;
4939
4940 c. Between a camping cabin and a recreational vehicle pad on a separate transient guest site:
4941 20 feet;
4942
4943 d. Between a transient guest site boundary line and a camping cabin: 7½ feet; and
4944
4945 e. Between transient guest site boundary line and a recreational vehicle pad: 7½ feet.
4946
4947 9. Each transient guest site designed with a pad for parking a recreational vehicle shall have the
4948 following standards:
4949
4950 a. Maximum number of recreational vehicles: 1;
4951
4952 b. Minimum site area: 2,000 square feet;
4953
4954 c. Maximum site area: 1 acre;
4955
4956 d. Minimum site width: 35 feet, measured at right angles to and between the designated side
4957 boundary lines; and
4958
4959 e. Pad and driveway materials: Each pad for a recreational vehicle and associated driveway
4960 shall be paved with concrete or pavers, or as otherwise approved by the city. The use of
4961 asphalt as a paving material for vehicle pads and driveways is prohibited.
4962
4963 10. Each transient guest site developed with a camping cabin shall have the following standards:
4964
4965 a. Maximum number of camping cabins: 1;
4966
4967 b. Minimum site: 2,500 square feet; and
4968
4969 c. Parking space: Each site developed with a camping cabin shall include a minimum of one
4970 automobile vehicle parking space, paved with concrete or pavers, or as otherwise approved
4971 by the city, with minimum dimensions of 9 feet by 18 feet. This limitation shall not apply to
4972 transient guest sites with a pad for parking one recreational vehicle and one camping cabin.
4973 The use of asphalt as a paving material for vehicle parking spaces is prohibited.
4974
4975 11. Each transient guest site developed with both a pad for parking a recreational vehicle and with
4976 a camping cabin shall have the following standards:
4977
4978 a. Maximum number of units: one camping cabin and a pad for parking no more than one
4979 recreational vehicle;
4980
4981 b. Minimum site area: 5,000 square feet;
4982

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c. Maximum site area: 1 acre;

d. Minimum site width: 35 feet, measured at right angles to and between the designated side boundary lines; and

e. Pad and driveway materials: Each pad for a recreational vehicle and associated driveway shall be paved with concrete or pavers, or as otherwise approved by the city. The use of asphalt as a paving material for vehicle pads and driveways is prohibited.

12. Each transient guest site may also include accessory structures for outdoor living, including, but not limited to, an outdoor kitchen, fire pit, spa, hot tub, gazebo, shade shelter, marine improvements, and other hardscape features.

G. Utilities. Each transient guest site shall have direct connections to central potable water, central wastewater, and electric services. All water and wastewater utility infrastructure within a recreational vehicle park shall be privately owned and maintained, except as otherwise approved by the City Council. Within the recreational vehicle park, all telephone, electric, television cable service, or other wires of all kinds must be underground, provided, however, that appurtenances to these systems which require aboveground installation may be exempted from these requirements and primary facilities providing service to the site of the development or necessary to service areas outside the planned development project may be exempted from this requirement.

H. Lighting. All roads, walkways and parking areas shall be provided with lighting adequate to ensure the safety of vehicular and pedestrian traffic. All lighting shall be designed so that it is not directed toward neighboring properties.

I. Parking. In addition to parking spaces on transient guest sites, a minimum of one parking space per ten recreational vehicle sites within the park shall be provided for visitors.

J. Designated storage. Except for boats at a rental facility or moored at a marine improvement, boats and utility trailers (tow dollies, "toy haulers", etc.) shall be stored in a designated storage area that shall occupy no more than 5% of the gross area of the park. Such storage area shall be for the exclusive use of registered guests. only during the period the guest is a registered occupant of a transient guest site. Designated storage areas shall be enclosed by an opaque visual barrier that is a minimum of eight feet in height. The following materials, either singly or in any combination, are the only materials that may be used to form the opaque visual barrier:

1. Wood, plastic, vinyl, or metal fencing;
2. Concrete block and stucco wall;
3. Brick wall; or
4. Formed, decorative, or precast concrete.

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No storage area shall be located closer than 40 feet to any exterior property line of the recreational vehicle park. No repair or maintenance other than cleaning shall be conducted within such storage area.

- K. Recreation area. At least one recreation area shall be provided within the park, designed and improved to serve the recreational needs of the park users. The recreation area(s) shall be a minimum of 500 square feet per transient guest site. All recreation areas shall be accessible to all occupants of the park. If more than one recreation area is provided, no recreation area shall be less than 10,000 square feet. A minimum of 50% of the total required recreation area shall be comprised of recreation within a building, or outdoor facilities for active recreation, including, but not limited to, swimming pools, ball fields, tennis courts, or play lots with facilities. No portion of any transient guest site, perimeter buffer yard, internal road or road easement, or stormwater management area, except as provided below, shall be counted as required recreation area. Bodies of water may be counted toward required recreation area if recreational use is not otherwise prohibited on or in the body of water and if recreational amenities, including, but not limited to, a beach, boat rental or launching facilities, are provided. In no event, however, shall bodies of water comprise more than 50% of the required recreation area.
- L. Landscaping plan. Requests for special exception approval for a recreational vehicle park shall be accompanied by a landscaping plan that provides, at a minimum, compliance with Section 5.5.
- M. Phasing. The Director shall not issue a certificate of use for a recreational vehicle park prior to completion of construction of all of the transient guest sites, internal roads, drainage system, potable water and wastewater utilities, landscaping and buffering, and accessory structures approved for the park, unless the Hearing Examiner and Appeals (or the City Council, when applicable) approves a phasing plan that identifies size, location, sequence, and timing of the various phases of the development. If a phasing plan is approved, the Director shall not issue a certificate of use for any phase that has not been completed in its entirety.
- N. Operation generally.
1. Responsibilities of management. The owner of a recreational vehicle park shall, at all times, maintain the park and its facilities in a clean, orderly and sanitary condition. The park management shall inform all registered occupants of transient guest sites of the provisions of this section and other related ordinances and statutes, and of their responsibilities thereunder.
 2. Certificate of use required. No lodging within recreational vehicles or camping cabins shall occur prior to the issuance of a certificate of use for the recreational vehicle park.
 3. Length of occupancy. No owner of any recreational vehicle park shall allow or permit any transient guest sites in a recreational vehicle park to be rented to or occupied by any person or recreational vehicle for any period of time that would permit or allow any person or recreational vehicle to remain at such recreational vehicle park for more than 180 days in any 365-day period.

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4. Register of occupants. The owner or operator of any recreational vehicle park shall file a report with the Director showing the guest names and addresses, recreational vehicle license numbers, dates of arrival and departure, and the transient guest site occupied by each guest at the recreational vehicle park during the preceding calendar quarter. Such reports shall be filed not later than April 15th, July 15th, October 15th and January 15th for the immediately preceding calendar quarter.

O. Inspections authorized. The Director is hereby authorized to make periodic inspections of the recreational vehicle park and transient guest sites for the purpose of determining satisfactory compliance with the regulations of this section pertaining to the health, safety and welfare of the community.

P. Incidental facilities and amenities. Various facilities and amenities incidental to a recreational vehicle park are permissible, however, all facilities and amenities must meet all requirements stated herein together with any additional conditions of approval.

1. The following facilities may be approved as incidental to a recreational vehicle park:

- a. Administrative offices;
- b. Caretaker or watchperson residence (no more than one);
- c. Car wash (Recreational vehicle washing facilities only);
- d. Clubhouses;
- e. Gatehouses;
- f. Grounds maintenance facilities;
- g. Laundry facilities;
- h. Marine improvements;
- i. Restrooms and community showers; and
- j. Sanitary dump stations.

2. The following amenities are permitted as amenities incidental to the recreational vehicle park even though they are typically land use classifications identified as individual "uses" within other zoning districts.

- a. Banquet halls;
- b. Bars;

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c. Commercial Recreation – indoor and outdoor;

d. Cultural and civic facilities;

e. Personal services;

f. Professional Offices;

g. Restaurant, no drive-thru; and

h. Retail.

3. For recreational vehicle parks with no frontage on any type of arterial or collector street, food stores, personal services, and restaurants shall be limited as follows:

a. Vehicular ingress/egress for parking lots supporting an amenity shall not be directly accessible from any public street, but shall only be accessible from a road within the park;

b. No signs shall be visible from outside the recreational vehicle park; and

c. The cumulative gross leasable floor area occupied by food stores, personal services, and restaurants shall not exceed 3% of the net area of the recreational vehicle park. For purposes of this section, the net area shall mean the area of the recreational vehicle park minus extant wetland areas and water areas (e.g. streams, waterways, lakes, estuaries). If an extant wetland or water area is expanded or contracted, the net area shall be based on the resultant wetland and water areas. Food stores shall not occupy more than 25,000 square feet of contiguous gross leasable floor area.

4. For recreational vehicle parks with frontage on any type of arterial or collector street, food stores, personal services, and restaurants shall be limited as follows:

a. Vehicular ingress and egress for parking lots supporting food stores, personal services, and restaurants may be directly accessible from a public street. Visible evidence of the commercial character of food stores, personal services, and restaurants may be observable from a street outside the park. For food stores, personal services, and restaurants that have vehicular ingress/egress directly accessible from a public street, or present visible evidence, observable from a street outside the park, of their commercial character, no certificate of use shall be issued until a minimum of 20% of the total transient guest sites for the entire recreational vehicle park have been constructed or installed; and

b. The cumulative gross leasable floor area of food stores, personal services, and restaurants shall not occupy more than 3% of the net area of the park. Not more than 25,000 square feet of contiguous gross leasable floor area shall be devoted to food stores.

5. In the event that a recreational vehicle park fails to meet the minimum required number of transient guest sites as a result of removal of transient guest sites or conversion to another use,

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or if the offering of lodging at transient guest sites is discontinued for one year or more, any activity that had previously been approved as an amenity incidental to the recreational vehicle park use shall lose its status as an amenity and shall be treated in the same manner as a nonconforming use.

Q. Prohibitions. The following uses, activities or improvements listed below are prohibited within a recreational vehicle park:

1. Permanent residential use is prohibited, except in an approved caretaker/watchperson residence.
2. Lodging within any structure other than an approved recreational vehicle, camping cabin, caretaker, or watchperson residence (e.g., tent, mobile home, garage, shed, or agricultural building) is prohibited within a recreational vehicle park.
3. The storage of a recreational vehicle, boat, or accessory trailer during any period when the owner or lessee of the vehicle is not a registered occupant of a transient guest site is prohibited. Storage of boats and accessory trailers is prohibited on individual transient guest sites or on internal roads.
4. The parking of a recreational vehicle, automobile, or truck in an area not designated for parking is prohibited.
5. Drive-thru facilities for restaurants are prohibited.
6. Fuel pumps for retail sales of fuel are prohibited.

R. Evacuation plan. Prior to issuance of a certificate of use for a recreational vehicle park, the developer shall provide an emergency response plan, approved by the Fire Chief that requires the removal of all recreational vehicles in the event of a hurricane. At a minimum, all recreational vehicles and occupants shall evacuate when notified of a "Hurricane Watch" being issued for the city. Any amendment by the developer to an approved evacuation plan requires approval by the Fire Chief.

Section. 5.10.6. Micro cottage Village Development (MCVD).

Micro cottage Village Developments (MCVDs) provide a location for City residents who wish to reside on lots which are much smaller than the typical Cape Coral property. This housing type encourages efficient use of land, affordability, and energy conservation. Micro cottage housing allows for a higher density single family development than is normally allowed. This is made possible by smaller home sizes, clustered home sites, and parking and design standards. These villages shall be developed to ensure that they provide an attractive, clean option for these residents which also will not have a deleterious effect on nearby properties.

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- 5209 A. Minimum area and density requirements. The minimum allowable area for a MCVD shall be three
5210 acres and the maximum density of micro cottages shall not exceed 8.8 dwelling units per acre. The
5211 minimum lot size for individual lots shall be 5,000 square feet.
5212
- 5213 B. Buffering. Sites adjacent to single family zoning and land use shall provide a 25' buffer along each
5214 abutting perimeter.
5215
- 5216 C. Availability of infrastructure. MCVDs shall be serviced by city utilities.
5217
- 5218 D. Clustering. A MCVD is composed of clusters of micro cottages.
5219
- 5220 1. Minimum units per cluster: 4.
5221
- 5222 2. Maximum units per cluster: 12.
5223
- 5224 E. Common open space. Each cluster of micro cottages shall have common open space and provide a
5225 sense of openness and community for residents. Open space requirements are as follows:
5226
- 5227 1. Each cluster of micro cottages shall have common open space to provide a sense of openness and
5228 community for residents;
5229
- 5230 2. At least 400 square feet per micro cottage of common open space is required for each cluster.
5231
- 5232 3. Each area of common open space shall be in one contiguous and useable piece.
5233
- 5234 4. To be considered as part of the minimum open space requirement, an area of common open
5235 space must have a minimum dimension of 20 feet on all sides.
5236
- 5237 5. The common open space shall be at least 3,000 square feet in area, regardless of the number of
5238 units in the cluster.
5239
- 5240 6. Required common open space may be divided into no more than two separate areas per cluster.
5241
- 5242 7. At least two sides of the common open area shall have micro cottages along its perimeter.
5243
- 5244 8. Parking areas, yard setbacks, private open space, and driveways do not qualify as common open
5245 space.
5246
- 5247 F. Community Buildings. Community buildings are permitted in MCVDs. Community buildings shall be
5248 clearly incidental in use and size to dwelling unit and shall be no more than one story.
5249
- 5250 G. Ownership. Community buildings, parking areas and common open space shall be owned and
5251 maintained commonly by the MCVD residents, through a condominium association, a homeowners'
5252 association, or a similar mechanism, and shall not be dedicated to the City.
5253
- 5254 H. Size. Micro cottages shall meet the following requirements:

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1. The gross floor area of each micro cottage shall not exceed 1,100 square feet.
 2. At least 25% of the micro cottages in each cluster shall have gross floor area less than 1,000 square feet.
 3. Micro cottage areas that do not count toward the gross floor area or footprint calculations are:
 - a. Interior spaces with a ceiling height of six feet or less, such as in a second floor are under the slope of the roof;
 - b. Architectural projections—such as bay windows, fireplaces, or utility closets—no greater than 24 inches in depth and six feet in width;
 - c. Attached unenclosed porches;
 - d. Garages or carports;
 4. The footprint of each micro cottage shall not exceed 850 square feet.
- I. Unit Height. The maximum height of a micro cottage shall be 25 feet.
- J. Orientation of micro cottages.
1. Each dwelling unit shall be clustered around a common open space. Each unit shall have a primary entry and covered porch oriented to the common open space.
 2. Lots in a MCVD can abut either a street or an alley.
 3. Each unit abutting a public street (not including alleys) shall have a façade, secondary entrance, porch, bay window or other architectural enhancement oriented to the public street.
- K. Micro cottage Setbacks. The minimum setbacks for all structures (including micro cottages, parking structures, and community buildings) in a MCVD are:
1. Ten feet from any public right-of-way.
 2. Ten feet from any other structure.
 3. Micro cottages shall be no more than 25 feet from the common open area, measured from the façade of the micro cottage to the nearest delineation of the common open area.
 4. No part of any structure in the MCVD (including micro cottages, parking structures, and community buildings) shall be more than 150 feet, as measured by the shortest clear path on the ground, from fire department vehicle access.

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L. Porches. Micro cottage units shall have covered front porches. The front porch shall be oriented toward the common open space. Covered porches shall have at least 60 square feet in area.

M. Garages. Garages are not required or encouraged in MCVDs.

N. Parking.

1. Minimum Number of Off-Street Parking Spaces:

Micro cottage	Required Parking
600-800 square feet	1.00 space
800-1000 square feet	1.5 spaces
1000-1100 square feet	2.00 spaces

2. The MCVD shall include additional guest parking. A minimum of .5 guest parking spaces per dwelling unit, rounded up to the next whole number, shall be provided for each Micro cottage cluster. Guest parking may be clustered with resident parking; however, the spaces shall include signs identifying them as reserved for visitors.

3. Parking shall be separated from the common area and public streets by landscaping or architectural screening. Solid board fencing shall not be allowed as an architectural screen.

4. Parking areas shall be accessed only by a private driveway or a public alley.

5. The design of garages and carports, including roof lines, shall be similar to and compatible with that of the dwelling units within the MCVD.

6. Parking areas shall be limited to no more than five contiguous spaces.

O. Walkways.

1. A MCVD shall have sidewalks along all public streets.

2. A system of interior walkways shall connect each micro cottage to each other and to the parking area, and to the sidewalks abutting any public streets bordering the MCVD.

3. Walkways and sidewalks shall be at least four feet in width.

Section 5.10.7. Roadside Food and Vegetable Stand.

Roadside food and vegetable stands shall be subject to the following requirements:

A. Must meet the minimum building setback requirements for the district;

B. May be in operation during daylight hours only;

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- 5342 C. Shall provide a designated parking area at the side or rear of the roadside food and vegetable stand
5343 sufficient to accommodate ten vehicles;
5344
5345 D. Shall be no larger than eight feet by 32 feet in dimensions, and must be structurally sound;
5346
5347 E. Must meet state, county, or local access requirements;
5348
5349 F. May sell fruits, plants, and vegetables only;
5350
5351 G. Must be built with tie downs capable of withstanding 110 mph winds; and
5352
5353 H. Must contain adequate toilet facilities.
5354

5355 **Section 5.10.8. Accessory Parking Lots.**
5356

5357 Accessory parking lots shall meet the following requirements:
5358

- 5359 A. The proposed parking on RML property shall be used only in connection with an existing use or
5360 structure in the C, CC, and P zoning districts.
5361
5362 B. The parcel shall meet minimum dimensional requirements.
5363
5364 C. The area within the RML zoning district proposed for commercial parking shall be composed of
5365 contiguous lots within that district and owned by the commercial or professional property owner
5366 or corporation served by the parking site.
5367
5368 D. A minimum of 40% of the required parking spaces shall be located within a Commercial or
5369 Professional zoning district. The number of required parking spaces shall be determined by Article
5370 6.
5371
5372 E. The location of RML areas proposed for parking shall be immediately to the rear, or across any
5373 service alley, and within the extended side yard lot lines of the property that the parking is intended
5374 to serve.
5375
5376 F. Driveways from the accessory parking in RML areas to residential streets shall not be permitted.
5377 However, commercial property fronting on Del Prado Boulevard or Santa Barbara Boulevard on one
5378 side and on a single-family residential district, as designated on the adopted Future Land Use Map,
5379 on the opposite side, shall be permitted access for the commercial property to the single-family
5380 residential street in accordance with the City of Cape Coral Engineering Design Standards.
5381
5382 G. The driveway shall be included in any traffic impact study for the property to determine the
5383 driveway's impact on the local street and its intersections and if improvements are needed.
5384
5385 H. Where necessary for safe and efficient turn movements, the city may restrict certain turn
5386 movements at the driveway accessing the single-family residential street.
5387

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- I. For a commercial property fronting on Del Prado Boulevard on one side and on a single-family residential district, as designated on the adopted Future Land Use Map, on the opposite side, access for the commercial property shall be permitted to the single-family residential street only on those streets which provide access to existing and planned signalized intersections on Del Prado Boulevard.
- J. The parking area shall be classified as part of the entire non-residential building site.
- K. A landscape plan for the commercial parking area proposed in an R-3 district shall be submitted with the application for a special exception use. Landscape plans shall be drawn to scale, including dimensions and distances, and shall clearly delineate.
1. Existing and proposed parking spaces, or other vehicular use areas, access aisles, driveways, and ingress and egress points;
 2. The location and floor area of existing building to be served;
 3. The source of water supply for plantings and materials to be installed or, if existing, to be used in accordance with the requirements hereof.
 4. All parking areas shall be landscaped in accordance with the requirements of Section 5.5.13 of this Article.
 5. There shall be a minimum of seven feet of green area in side setbacks and ten feet of green area in setbacks from street lot lines which face residential areas.
 6. There shall be a continuous undulating 18 inch to three feet high by five feet deep berm of earth extending along the property facing streets.
- I. Lighting. If any parking areas are artificially lighted, they shall be so designed and arranged that lighting is primarily directed on-site. Such areas shall not be lighted at any time other than during the same hours that the use to which the parking is appurtenant is open for business, except for necessary security lighting.
- J. Stormwater Management. All parking areas shall incorporate appropriate stormwater quality design features to be reviewed with the SDP application.

Section. 5.10.9. Solar Arrays.

Solar Arrays shall meet the following requirements:

- A. These facilities may only be permitted in the Agriculture, Institutional, or Industrial zoning districts.
- B. Solar Arrays may only be permitted on lots over one acre in size.
- C. Must maintain appropriate security fencing and signs for protection.

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- D. Solar Arrays shall be effectively screened with a fence, landscape material, or a combination thereof, where visible from an abutting property or right-of-way as determined by the Director.
1. The structures may be screened with an opaque wall or fence, up to the height allowed in that zoning district.
 2. Alternatively, the structures may be screened with shrubs that meet the following requirements:
 - a. A row of shrubs shall be planted along all sides of the facility for which screening is required.
 - b. All shrubs required for screening shall be a minimum of 32 inches in height and be in at least a seven-gallon container size at the time of planting. All shrubs shall be planted at a spacing of three feet apart as measured on center.
 - c. All shrubs shall be maintained at a minimum height of six feet at maturity and shall be maintained in good condition as long as the structures requiring screening remain.
 - d. An adequate combination of the two screening options may be permitted.

Section 5.10.10. Vehicle Sales, Light.

Vehicle Sales, Light must meet the following requirements:

- A. The minimum parcel size shall be 2 acres.
- B. Vehicle Sales, Light shall be a standalone use only.
- C. All display areas must be on a impervious surface such as asphalt or concrete.
- D. All repairs must be ancillary and must be conducted within a building.
- E. Other than vehicles, no outdoor display of any other items shall be permitted.

Section 5.10.11. Wireless Communication Facilities

Wireless Communication Facilities are permitted with the following requirements:

1. Adequate documentation that co-location on an existing approved tower or on an existing building or structure, has been attempted and is not feasible. Such documentation shall include:
2. The results of a designed service study demonstrating to the satisfaction of the city that the equipment planned for a proposed communication tower cannot be accommodated on an existing or approved and un-built structure.

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3. The designed service study analysis shall be based upon a search area radius of three-quarters of a mile minimum distance from the location of the intended WCF or tower, including areas outside the City of Cape Coral. At the discretion of the city, based on the city's knowledge of existing co-location opportunities, the city may allow an applicant to provide an affidavit from a professional radio frequency engineer which establishes the search area diameter for the proposed WCF or tower location and identifies all other alternatives in the area. Further information may be required by the city on the ability of the WCF or tower to be accommodated on specific sites within three-quarters of a mile of the proposed WCF or tower.
4. When co-location is determined by staff to be infeasible, the determination shall be based upon the results of the designed service study and other evidence provided by the applicant documenting one or more of the following reasons:
- a. Structural limitation. The proposed equipment would exceed the structural capacity of the existing or approved structure, as documented by a licensed professional engineer, and the existing or approved structure cannot be reinforced, modified, or replaced to accommodate the planned or equivalent equipment at a reasonable cost.
 - b. Interference. The proposed equipment would cause interference or obstruction materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified professional and the interference or obstruction cannot be prevented at a reasonable cost.
 - c. Insufficient height. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a licensed, if applicable, professional.
 - d. Lack of space. Evidence from the applicant, verified by a licensed professional, of the lack of space on existing towers or other structures within the search radius to accommodate the proposed facility.
 - e. Other factors. Other reasons that make it unfeasible to locate the planned equipment upon an existing or approved tower or building as documented by a qualified and licensed, if applicable, professional.
 - f. Technical consultants. The city shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate applications for wireless telecommunications facilities or towers and to charge reasonable fees as necessary to offset the cost of such evaluations.

Section. 5.10.12. Wireless Facility Design standards.

In addition to any other applicable requirements provided elsewhere in the Land Development Code, an application for a communication tower shall include the following:

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- A. Fall zone. In the event of a catastrophic failure or collapse, towers shall be designed to collapse within an engineered fall zone lying wholly within the lot lines of the parcel containing the tower. Such fall zone shall be certified by a professional engineer, licensed in the State of Florida.
- B. Tower design for co-location. A proposed tower shall be designed to allow for future rearrangement of antennas, to provide space for antennas to be mounted at varying elevations, and to accommodate co-location.
- C. Monopoles or stealth. All towers shall be monopoles or stealth design.
- D. Illumination. A tower shall not be artificially lighted except as may be required by federal or state regulations.
- E. Surface or finish color. All towers shall be painted or have a non-contrasting finish that minimizes the visibility of the facility from public view, except where contrasting color is required by federal or state regulation. In addition, the exterior of support facilities shall be designed to be compatible with the architectural design prevailing among the structures in the surrounding developed area.
- F. Sign. The main access gate in the tower shall have affixed to it a sign not to exceed two feet by three feet in size which displays the owner's or permittee's name and an emergency telephone number.
- G. Maximum height. The maximum height of towers shall be 100 feet if the tower is designed for one service provider, 120 feet if the tower is designed to accommodate two service providers, or 140 feet if the tower is designed to accommodate three or more service providers.
- H. Landscape screening. The accessory components to the tower shall be screened from view by shrubs maintained at a height of six feet, immediately adjacent to the fence surrounding the facility and minimum of eight trees planted outside of the shrub buffer

Section. 5.10.13. Mobile food vendor.

Mobile food vendors may include vehicles, carts, or trailers, hereafter referred to as food trucks, may be permitted on public or private property subject to the following requirements:

- A. Mobile operations may only be conducted from 7:00 a.m. to 10:00 p.m. on weekdays and from 7:00 a.m. to 11:00 p.m. on weekends.
- B. For purposes of these requirements, the vending area includes the space taken up by: a portable stand, vehicle, or trailer, any signs, equipment, merchandise, and any tents, tarpaulins, canopies, or awnings. Mobile vending areas shall not be in:
1. Driveway aisles, no parking zones, landscaped area, loading areas, or fire lanes; mobile operations shall not impede the on-site circulation of motor vehicles.
 2. Food trucks shall not be in ~~required~~ parking spaces unless the number of spaces on the site exceeds the minimum amount required for uses on the property. The utilization of an off-street

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parking space for the operation of a mobile operation must not cause the site to become deficient in required off-street parking.

3. Food trucks shall not operate on the public right-of-way.

C. Food trucks may operate on vacant, unimproved property only when approved as a special event pursuant to Section 5.9.10 of this Article.

D. The total space dedicated to the mobile operation and vending area shall not exceed an area of 600 square feet.

E. Food trucks shall be a minimum of 20 feet from the property line of an existing residential use, except that a mobile food unit may be a minimum of 10 feet from the property line if the residential use is separated by a six-foot high masonry wall.

F. Alcoholic beverage sales and use of sound amplification devices are prohibited.

G. Electric service connection to an on-site approved outlet is permitted, provided that no wiring or cables are run beyond the vending area or pose any danger to the patrons.

H. Prior to permitting a food truck to operate on a site, the vendor must submit an application for operation and the following documents:

1. A site plan or survey indicating the following:

a. Location of the individual mobile food unit and associated vending area. Mobile operations shall be located so as to minimize the impacts on adjacent residential uses.

b. Location of improvements on the site.

c. Location of on-site parking areas,

d. Rights-of-way, internal circulation, and ingress and egress.

e. A letter from the owner of the property indicating that the mobile food vendor has permission to operate from his or her property.

I. Signs associated with the operation shall be confined to the vehicle, trailer, or cart and one ground sign within 10 feet of the vending area. The ground sign shall be in compliance with the size requirements listed Article 7 and may not be within a right-of-way.

J. When multiple food trucks plan to be together for an event, a special event permit will be required if the event meets the thresholds listed in Section 5.9.10. of this Article.

K. Except as otherwise provided in this Code, it is unlawful to conduct mobile vending in any outdoor location without first obtaining a permit in accordance with the provisions of this Section.

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L. The vendor must be able to produce for inspection: a copy of a letter or other written communication from the property owner or representative that authorizes the mobile operation and, for mobile food service operators, a copy of the applicant's mobile food dispensing license issued by the Department of Business and Professional Regulations.

M. Mobile operations at City or County parks, sports stadiums, or similar venue during events shall be exempt from the requirements of this Section but must comply with all other applicable requirements in this code.

Mobile vendors, other than food trucks, shall be permitted only in conjunction with a special event or a farmer's market.

Section. 5.10.14. Model homes.

Model Homes shall be subject to the following requirements.

A. Model homes are intended to facilitate the sale of the model design, or products similar in design to the model and is not intended to allow the full scope of real estate activities and shall be restricted primarily to the sale and marketing of the model, or products similar to the model. Model homes shall be permitted as a temporary, conditional use, not to exceed 10 years, in residential zoning districts (R1, RE, RML) or within a Planned Development.

B. A model home must meet all of the zoning and building requirements for a residence in that zoning district as well as the following:

1. Parking. Three off-street vehicular parking spaces, including the garage, shall be provided on the model site or on an adjacent vacant property.
2. On-site parking. A parking space may be provided in the garage. A handicap parking space is required and shall count as one of the three required spaces.
3. Off-site parking. Adjacent vacant single-family lot(s) may be used for model home parking. A plan to provide parking on an adjacent parcel shall require ownership by the same or an affidavit of authorization from the property owner as well as a surety deposit payable to the City of Cape Coral to convert the property back to a residential or other permitted use when the structure is converted or sold. The deposit shall cover the costs associated with the conversion of the parking lot. The deposit shall be based on no less than 110% of the estimated cost by a professional engineer licensed in the State of Florida which shall be signed and sealed by the engineer, and found to be acceptable to the City. Funds and resulting interest shall be returned upon conversion of the site to a residential or other permitted use, the entire amount if the work is completed by the applicant, or the remaining funds if the City completes the work.
4. A hedge row of at least 36 inches in height shall be planted and maintained around the vehicular parking area.

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- 5662 5. On-site or off-site parking shall be a paved or pavered surface with appropriate signs and
5663 markings, including handicap parking.
5664
- 5665 6. Treatment of stormwater runoff will be required for the first inch of runoff from the paved area
5666 associated with the parking lot area only.
5667
- 5668 7. Model home parking lots require a Limited Site Development Plan approval prior to construction.
5669
- 5670 B. Handicapped standards shall be met throughout the home, including access per the Florida Building
5671 Code and handrail and grab bar requirements.
5672
- 5673 C. Garage office. For any garage being used as an office for a model home the applicant must submit the
5674 following:
5675
- 5676 1. Plan of garage-office facility, including false walls, temporary electrical and plumbing.
5677
- 5678 2. Plan showing how garage will be returned to its original use.
5679
- 5680 3. \$10,000.00 refundable surety to ensure that the garage is converted back to the FEMA standards
5681 for single-family home usage.
5682
- 5683 D. Sign standards as defined in Article 7 of this code.
5684
- 5685 F. Upon completion of the construction and approval of the unit as a model home, a "temporary
5686 certificate of occupancy" will be issued to the owner of the model home to remain open for a period
5687 of five years. Extensions beyond this five-year temporary certificate of occupancy may be granted for
5688 the structure in the event an extension is approved for the model's permit by the Director of
5689 Community Development. The initial approval and maximum extension will allow the use of an
5690 individual model home to exist for a cumulative 10 years. The decision to extend the initial permit
5691 shall be pursuant to the following considerations:
5692
- 5693 1. The number of existing model homes within the immediate area of the extension request and
5694 impacts of those on the neighborhood.
5695
- 5696 2. The adequacy of the right(s)-of-way upon which the model home fronts.
5697
- 5698 3. The character or makeup of the area surrounding the model home.
5699
- 5700 4. The potential effect of the model home on adjacent and surrounding properties.
5701
- 5702 5. The existence of complaints relating to that model home.
5703
- 5704 6. A demonstration of good cause from the applicant why the extension request is needed.
5705
- 5706 7. Approval as a model home shall be recorded against the title.
5707

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Chapter 11. - CONDITIONAL USES

Section. 5.11.1. Purpose and applicability.

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 4 for the specific zoning district use and conditional use in question.
2. The proposed conditional use will not result in development that is inconsistent with the intended character of the applicable zoning district.
3. A listed conditional use that does not meet the applicable conditional use standards may apply for approval as a Special Exception.

C. Review Criteria. A Conditional Use may be approved by the Director based on criteria identified in Article 4. These criteria are specific to each conditional use.

Section. 5.11.2. Brewpubs.

Brewpubs in the MXB district must meet the following conditions:

- A. The area used for brewing, bottling, and kegging of all beverages produced by the establishment shall not exceed 40 percent of the total floor area of the restaurant, bar, or nightclub, or exceed a total floor area of 2,500 square feet devoted for brewing, bottling, and kegging, whichever is less.
- B. An interior floor plan shall be submitted that clearly shows the area of the building that will be devoted to the brewing, bottling, and kegging component of the establishment.
- C. No outdoor storage shall be allowed including the use of portable storage units, cargo containers, and tractor trailers, except as follows: spent or used grain may be placed outdoors for a period not to exceed 24 hours. The temporary stockpiling for spent or used grain shall be:
 1. Clearly shown on a detailed dimensional and labeled drawing that depicts the location of the stockpiled spent grains and the distance of the stockpiled grains from property lines and the building containing the brewpub;

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2. Placed only along the side or rear of the building; and

3. Fully enclosed in containers that are screened behind an opaque wall or fence. The wall or fence shall have a minimum height of six feet.

Section. 5.11.3. Attached residential of three-units or more.

Attached residential structures of three-units or more in the RML, CC, NC, MX, MXB, and SC zoning districts must meet the following conditions:

A. The number of linearly attached units must be between three and nine.

B. Landscaping shall be provided at a rate of two trees and six shrubs per 2,500 square feet of lot, rounding up to the next full number.

C. Attached residential developments shall incorporate three of the following design elements into each dwelling unit:

1. Dwelling entry as the primary façade feature;

2. Garage door recessed from the front façade, a preferred minimum of four feet;

3. Horizontal eaves broken up with gables, projection, and articulation;

4. Projecting eaves and gables, related to building massing;

5. Building massing and roof form which articulate individual unit definition;

6. Offset of four feet where two garage doors are adjacent to each other; or

7. Projections and decorative elements, such as trellises, for visual interest.

Section. 5.11.4. Multi-family dwellings.

Multi-family dwellings in the RML, CC, NC, MXB, MX7 and SC districts must meet the following conditions

A. Multi-family units in RML, CC, NC, MX, and SC require 700 square feet for a one bedroom and 200 square feet for each additional bedroom.

B. Building Modulation and Articulation. All multi-family buildings shall provide a combination of volumetric and massing modulation and articulations to prevent the construction of ‘big boxes’, but rather buildings that harmonize their architectural quality in a stylistically pleasant manner. All buildings shall incorporate the following combined elements from the articulation criteria identified below.

1. A minimum of three of the following volumetric elements shall be provided:

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- 5800
- 5801 a. Pitched roof forms, minimum pitch of 4/12, whose sum covers greater than 30% of the
- 5802 overall roof area;
- 5803
- 5804 b. Architectural roof overhangs four feet or greater in depth or cornices 12 inches or greater in
- 5805 height;
- 5806
- 5807 c. Arcades. Arcades may be used as a means of sheltering pedestrian areas, and where
- 5808 provided, shall connect to entrances;
- 5809
- 5810 d. Accent elements such as tower elements, porticos, cupolas, or domes; or
- 5811
- 5812 e. A building with frontage 90 feet or less in length shall provide the following minimum
- 5813 massing articulations:
- 5814 i. A minimum of fifty percent (50%) of the cumulative frontage of each façade shall be
- 5815 setback a minimum of five feet from the primary façade and shall be distributed
- 5816 throughout the building frontage and shall not be provided as a single aggregated
- 5817 setback; and
- 5818 ii. A minimum of twenty percent (20%) of each frontage of each facade shall be setback
- 5819 a minimum of eight feet from the primary façade.
- 5820
- 5821 2. A minimum of four of the following architectural elements shall be provided:
- 5822
- 5823 a. Stoops on the ground floor and balconies on all floors above the ground floor;
- 5824
- 5825 b. Porches on the ground floor;
- 5826
- 5827 c. Pilasters, string courses, character lines, or other such means of subdividing the facade;
- 5828
- 5829 d. Structural or ornamental details clearly distinct from the primary wall surface, e.g., lintels,
- 5830 sills, door and window surrounds, decorative panels, etc.;
- 5831
- 5832 e. Decorative planters or planting areas a minimum of five feet in width, integrated into the
- 5833 building design; or
- 5834
- 5835 f. Masonry in at least two contrasting tones or textures, accomplished by a change in material
- 5836 or coursing such as brick, natural stone, brick or stone veneer, glass, masonry stucco,
- 5837 decorative concrete block, decorative concrete panels, tile glazing and framing systems, split
- 5838 face or fluted concrete masonry, factory glazed concrete masonry units, or architectural pre-
- 5839 cast concrete.
- 5840

Section. 5.11.5. Vehicle Repair, Minor.

Vehicle Repair, Minor in the C and CC districts must meet the following conditions:

- A. The number of cars being kept on site, not in a garage bay, shall be limited to three.

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- B. All cars kept on site for repairs must be visually screened from the right-of-way and adjacent properties.
- C. All repair work shall be performed within the garage.
- D. No outside storage of materials or chemicals, all installation to occur within garage.
- E. Hours of operation for repair work shall be limited from 7 a.m. to 8 p.m. when adjacent to any residential development.

Section. 5.11.6. Outdoor Screened Storage.

Outdoor Screened Storage in the CC district must meet the following conditions:

- A. The screening must consist of opaque fence or wall. Chain-link fencing (with or without slats) is prohibited for screening.
- B. The minimum height of the screening shall be 6 feet.
- C. The height of the screening shall be tall enough to screen items being stored.
- D. All perimeter landscaping shall be on the outside of the screening.
- E. The screened area must be used in conjunction with principal use.
- F. The area used for storage must be an improved impervious surface such as asphalt or concrete.
- G. No vehicular access to the storage area shall be allowed from a local street.

Section. 5.11.7. Laboratory – Medical, Research, Testing, and Development.

Medical, Research, Testing or Development Laboratory Facilities in the NC district must meet the following conditions:

- A. The laboratory shall not produce any exterior impacts such as sound, smoke, or odor.
- B. No outside storage of materials shall be permitted.

Section. 5.11.8. Sporting Facilities, Indoor and Outdoor.

Sporting Facilities, Indoor and Outdoor in the A district must be in conjunction with an agricultural use such as riding stadiums etc.

Section. 5.11.9. Boat Sales

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Boat Sales in the SC district may only be permitted on sites with water frontage and direct access to Caloosahatchee River.

Section 5.11.10. Home based businesses

Home occupations shall only be allowed as an accessory use to a single-family residential use and must meet the following conditions:

- A. All home occupations operated in or from a residence shall comply with federal, state, and county rules and regulations, city license regulations specified herein and any other applicable ordinances of the City of Cape Coral.
- B. No condition shall be permitted which tends to cause or increase the fire hazard to the residence, such as storage of paints or other flammable materials in excess of normal family use.
- C. No storage of materials or supplies shall be allowed outside the structure nor shall any indoor display of materials be visible from the outside of the structure.
- D. The appearance of the structure shall in no way be altered for the conduct of the home occupation within the structure nor shall the conduct be such that the structure may be recognized as serving a non-residential use either by color, materials, construction, lighting, signs, sounds, noises, vibrations, audible or visible interference in any radio or television receiver off the premises, or cause fluctuations in the electric voltage line off the premises.
- E. No business operated under a fictitious name shall be issued a license to operate under this Section.
- F. Frontage and access shall be from arterial street.
- G. No driveway with ingress or egress to a local street shall be utilized.
- H. Hours of operation shall be 7:00 A.M. until 7:00 p.m.
- I. Employees and customers shall be allowed as long as adequate parking is provided on-site.
- J. No parking shall be allowed on any surrounding parcels.

Section. 5.11.11. Self-Storage Facility.

Self-storage facilities in the I, C, and CC districts must meet the following conditions:

- A. The facility must be designed so as to screen the interior of the development from all property lines. Screening features may consist of a free-standing wall, wall of a building, or a combination of the two. Free-standing walls used for screening shall be eight feet in height measured from grade.
 - 1. The following materials, either singly or in any combination, are the only materials that may be used to form the wall:

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a. Concrete block coated with stucco;

b. Textured concrete block;

c. Stone;

d. Brick; or

e. Formed, decorative, or precast concrete.

2. If the wall of a building is used to meet the opaque feature requirement, such wall shall be surfaced with stucco, brick, stone, textured concrete masonry units, or other concrete surface. Untreated concrete block is not an acceptable finished material. Building walls used as a screening feature shall not have doors or windows.

- B. A landscaped area with a minimum width of 10 feet shall be provided around the perimeter of the site. Perimeter landscaping shall consist of a minimum of three canopy trees per 100 feet, three accent trees per 100 feet, and 33 shrubs per 100 feet. Palms trees cannot be used to meet the minimum planting requirement of this section. All shrubs shall be installed at a minimum height of 32 inches and be in a minimum seven-gallon container at the time of planting.

Section. 5.11.12. Vehicle fueling stations.

Vehicle fueling stations in the C, N, and SC (along primary streets) districts must meet the following conditions:

A. General:

1. All buildings, including pump islands, shall have a 25' setback from all property lines.
2. In no case shall a lot have less than 100 feet of street frontage.
3. Underground storage is required for all receptacles for combustible materials in excess of 55 gallons. Such storage shall comply with all building and fire codes and Environmental Protection Agency standards.
4. The accumulation and storage of waste petroleum products is forbidden, unless in compliance with Environmental Protection Agency standards.
5. Primary services and sales permissible include fueling stations and electric charging stations, and include only the following accessory uses:
 - a. Car wash services;
 - b. Sale of convenience goods; and

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- 5984 c. Accessory fast food services without a drive-through.
5985
5986 6. Uses permissible at a gas station do not include body work, straightening of body parts, painting,
5987 welding (other than minor repairs), or other work involving noise, glare, fumes, smoke, or other
5988 characteristics to an extent greater than normally found in vehicle fueling stations. A vehicle
5989 fueling station is not a body shop.
5990
5991 7. Outside materials storage is not permissible.
5992
5993 8. Lighting at a gas station shall be designed and installed so as to prevent glare or excessive light
5994 above 0.1 foot-candles on adjacent property. No source of illumination shall be allowed if such
5995 source of illumination, unshielded, would be visible from a residentially-zoned district to the
5996 extent that it interferes with the residential use of that area.
5997
5998 9. The minimum size parcel shall be 1.25 acres.
5999
6000 10. An eight-foot tall opaque wall constructed of concrete block coated with stucco, textured
6001 concrete block, stone, brick, or concrete (formed, decorative or precast) shall be constructed
6002 between any residential properties and a gas station. The wall shall be constructed within the gas
6003 station property, seven and one-half feet from the property line shared by the gas station and any
6004 adjacent residential property. The wall shall not be within a sight triangle.
6005
6006 a. The residential side of the wall shall be landscaped with shrubs (seven-gallon and 32 inches
6007 at planting) which shall be maintained at a mature height between six and eight feet and 80
6008 percent opacity.
6009
6010 11. Stormwater runoff from the fueling and storage tank loading areas shall be directed to an
6011 oil/gas/water separator prior to entering the surface water treatment area for the project.
6012
6013 B. Appearance:
6014
6015 1. All structures on the site shall have a unified architectural theme.
6016
6017 2. Gas station roofs shall be pitched a minimum of 4:12.
6018
6019 3. A minimum of 12-inch overhangs shall be provided
6020
6021 4. Roof and exterior wall surfaces, with the exception of glass areas, shall be nonreflective. Any glass
6022 coating shall not reflect outward.
6023
6024 5. The use of flat steel or metal panels for the exterior walls of the gas station shall be prohibited.
6025
6026 6. The rear and sides of buildings shall be finished with material that in texture and color resembles
6027 the front of the building.
6028

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- 6029 7. Glass windows and doors must make up at least 25 percent of the front elevation and 15 percent
6030 of the side elevations at eye level.
6031
- 6032 8. Any canopy shall be restricted to a clearance of 14 feet in height and shall be consistent with the
6033 primary structure design. The canopy columns and roof shall be architecturally finished to match
6034 the building.
6035
- 6036 9. The commercial advertising on the canopy shall be limited to 10 percent of the exterior area of
6037 the canopy and backlighting shall not be permitted on the canopy.
6038
- 6039 10. Perimeter walls, if utilized, shall be architecturally compatible with the principal structure.
6040

6041 C. Landscaping:
6042

- 6043 1. Front yard buffer. An enhanced front yard buffer shall be required for automobile service
6044 stations to limit the visual impact of the use. The following requirements shall be utilized:
6045
- 6046 2. Area to be landscaped. A strip of land at least 10 feet in depth, abutting the right-of-way and
6047 extending the length of the property except the entrance and exit drives, shall be landscaped.
6048
- 6049 3. Minimum tree requirements. Palm clusters on the ends of landscape buffers parallel to the gas
6050 pump canopy. The palm clusters shall consist of three palms with a minimum of 13 feet of gray
6051 wood, at planting. One cluster shall be provided for every 30 feet of road frontage;
6052
- 6053 4. Landscape accents. The use of landscape accents, such as planters and window boxes, shall be
6054 incorporated into the overall landscape design of the building and the site;
6055
- 6056 5. Other materials. The remainder of the required landscaped area shall be landscaped with grass,
6057 ground cover, or other approved landscaping treatment.
6058

6059 D. Vehicle Fueling Stations in the SC zoning district shall only be allowed with frontage along Del Prado
6060 Boulevard.
6061
6062
6063

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CHAPTER 1. PARKING, LOADING, AND DRIVEWAY REQUIREMENTS

Section 6.1.1. Purpose and applicability

Section 6.1.2. Standards for parking and vehicular use areas

Section 6.1.3. Parking, driveway, and vehicular use areas: provision, location, and setbacks

Section 6.1.4. Off-street loading facilities

Section 6.1.5. Required visibility triangles

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CHAPTER 2. TRUCK AND VEHICLE PARKING

Section 6.2.1. Parking regulations for Single-family residential zoning districts

Section 6.2.2. Parking regulations for property zoned multi-family residential

Section 6.2.3. Parking regulations for property zoned industrial and agricultural

Section 6.2.4. Hotel and motel parking provisions

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Section 6.2.6. Vacant lots

Section 6.2.7. Vehicles and trailers for sale

Section 6.2.8. Exemptions

Section 6.2.9. Authority to signpost designated areas

CHAPTER 1. PARKING, LOADING, AND DRIVEWAY REQUIREMENTS.

Section. 6.1.1. Purpose and applicability.

The purpose of this Chapter is to ensure that required off-street space is provided to allow for loading, unloading, and parking on private property by motor vehicles, bicycles, and other allowed vehicles. It is further intended that the design of off-street parking areas ensure safe and efficient traffic circulation, with consideration given to the surrounding street plan, pedestrian movements, and safety. All development and redevelopment shall provide off-street parking in compliance with the standards set forth in this Chapter and the Engineering Design Standards.

Section. 6.1.2. Standards for parking and vehicular use areas.

Parking spaces and drive aisles shall conform to standard designs found in the City of Cape Coral Engineering and Design Standards.

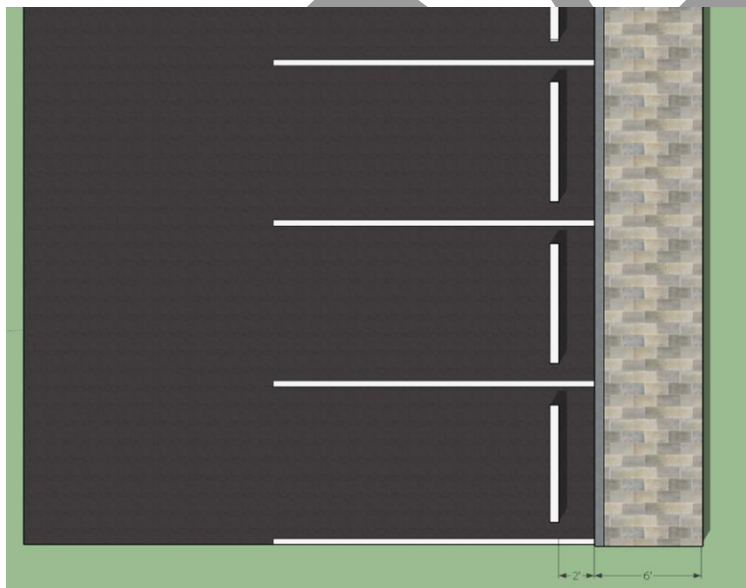
Section. 6.1.3. Parking, driveway, and vehicular use areas: provision, location, and setbacks.

Off-street parking facilities required by this article shall be fully within the property lines of the parcel they are intended to serve unless an alternative location is approved as provided in this Chapter.

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- A. Setbacks and buffering from property lines. Landscape buffers required by Article 6 shall be maintained along the perimeter of parking lots.
- B. Driveways. All driveways shall be designed and constructed per the requirements set forth in the Engineering and Design Standards of Cape Coral.
- C. Pedestrian Safety. All off-street parking facilities, including drive aisles, travel lanes, and driveways shall be arranged to minimize hazards to pedestrian movement in the immediate area or encroach upon fire lanes, walkways, and visibility triangles. Pedestrians must be protected from exiting a building into vehicular traffic in an emergency. The applicant shall provide a walkway or a protected area with a minimum width of the doorway plus five feet beyond the swing of the door. All exit discharges from buildings shall be protected by permanent means to ensure pedestrian areas are protected from vehicular encroachment.
- D. Pedestrian Safety Zones. Within parking areas over 100 spaces for commercial uses, paved pedestrian walkways at least six feet in width shall be provided at 200-foot intervals. Such walkways may be interrupted by necessary drive aisles, but shall include adequate wheel chair ramps, if necessary. Curbs or wheel stops shall be so placed to prevent any portion of the vehicle to encroach upon the pedestrian safety zone. Diagram 6.1.3. illustrates a pedestrian safety zone.

Diagram 6.1.3. Pedestrian Safety Zone



Section. 6.1.4. Off-street loading facilities.

Appropriate and adequate loading facilities shall be required for businesses which receive regular deliveries.

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A. Design and location.

1. Loading spaces may not be blocked by parking spaces.
2. Design of the space shall be such that the delivery vehicles can maneuver without damaging landscaped areas.
3. Loading spaces may be shared by adjacent properties when delivery schedules do not overlap and an access agreement has been completed.
4. Loading zones may not be placed where they obstruct required fire lanes and access to hydrants.
5. Loading zones shall be in a place which ensures convenient and safe entry and exit for the users of the loading zone, and the convenience and safety of pedestrians and motorists using the development.

Section. 6.1.5. Required visibility triangles.

As an aid to allow for safe operation of vehicles, pedestrians, and cyclists in the proximity of intersecting streets, driveways, alleys, and bicycle paths there shall be limitations on the height of fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and other fixtures as visually depicted in the Cape Coral Engineering and Design Standards and as follows:

- A. All landscaping and signs within the visibility triangle shall provide unobstructed visibility between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard.
- B. The property owner shall be responsible for maintaining all landscaping within the visibility triangle.
- C. Landscaping, except required turf and ground cover, shall not be closer than five feet from the edge of any roadway and three feet from the edge of any alley or pavement.
- D. It shall be unlawful for any person to plant or cause to be planted any tree or shrub or to place any structure in the public right-of-way without the necessary permit.
- E. The elevation grades of the public right-of-way adjacent to private property shall not be altered.
- F. The Community Development Director or Public Works Director shall make the final determination regarding visibility triangles.

Section. 6.1.6. Common driveways, shared parking, and off-site parking.

- A. Common driveways shall be encouraged and may be required to reduce the number of curb cuts along a right-of-way. Driveways shall be in accordance with the Engineering Design Standards. Driveway access to State and County maintained roadways are regulated by FDOT or Lee County

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and require separate permits from the respective agency prior to commencement of construction. Approval of a common driveway will require submittal of a notarized shared access agreement and easement, acceptable to the City, which shall be recorded against the title for each property involved.

- B. Off-site parking and shared parking. In an instance where a business is unable to provide adequate parking on-site, off-site parking may be approved by the Director. Shared parking agreements and off-site parking agreements shall be reviewed as often as is appropriate to ensure compliance and adequacy of all provisions.

1. Approval of off-site parking shall be dependent upon:

- a. Safe and convenient access to the off-site parking from the business which will be utilizing the off-site parking;
- b. Proof of ownership of the parking lot by the business or a recorded parking agreement recorded against the title of the property to utilize the parking, which may not be eliminated or modified without concurrence by the City;
- c. Evidence that the parking will be available to the business during the times when the parking will be needed; and
- d. Appropriate paving, marking, and lighting of the off-site parking.

2. In addition to the above requirements, to qualify for shared parking approval one of the following must apply:

- a. It can be proven that the uses in question have peak parking demands during differing times of the day or days of the week; or
- b. A finding is made that there will be a lower demand for parking due to a high proportion of multi-purpose visits. The applicant shall provide documentation to show that the proposed parking for the multiple uses will be adequate. This documentation shall account for all the potential uses allowed in the zoning district on the properties to be served by the shared parking.

- C. Proximity to dedicated city parking areas. Any development within 250 feet, excluding alleys and walkways, of a dedicated city parking area may utilize that area to satisfy off-street parking requirement, provided a sufficient number of improved spaces exist in the city parking area to accommodate the number of spaces otherwise required by this ordinance for such development. If a sufficient number of improved parking spaces do not exist at the time of application, the owner or developer may improve the dedicated city parking area to the extent necessary to provide such sufficient number of improved parking spaces in accordance with the City of Cape Coral Engineering Design Standards. Once the dedicated city parking area has been properly improved and inspected,

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the city shall be responsible for all maintenance of the public parking area.

Section. 6.1.7. Amount of required parking.

A. Generally.

1. The City shall not approve the construction of a parking lot with more than 110 percent of the parking spaces required in Table 6.1.7.A. This shall not apply to development that have a minimum off-street parking requirement of 50 spaces or less.
2. Accessible parking spaces shall meet ADA requirements.
3. Bicycle parking. Permanently placed bicycle parking shall be provide in accordance with Subsection 6.1.7.B and Table 6.1.7.C.
4. Opportunities for reduction in parking requirements. A developer may request a reduction in parking during the site plan process by using the following methods:
 - a. If the Institute of Transportation Engineers (ITE) Reference Manual entitled Parking Generation allows a lesser number of parking spaces for the proposed use or a use of similar characteristics, then the number of parking spaces required for a development may be reduced.
 - b. A reduction in the required number of spaces may be allowed if the developer provides the city with credible evidence that the parking needs are actually less than those reflected in the Table of Parking Standards or that the need for off-street parking spaces would be met through alternative means. Such credible evidence may include parking generation studies conducted within the City of Cape Coral or other similarly sized communities.

TABLE 6.1.7.A. Required Number of Parking Spaces for Uses.

Uses	Required Parking Spaces
Residential Uses	
Assisted Living Facility (ALF)	One space per four beds plus one space per employee on the largest shift
Community residential facility or home	A minimum of two spaces for up to six residents with one space for every four additional residents
Daycare Center (adult or child, in home or commercial)	A minimum of two spaces for up to five children with one space for every 10 additional children
Dormitories	One space for the first three residents plus one space per employee based on the largest shift
Model home	Three spaces per model home
Residential—mixed-use residential	Sum of unit type plus uses

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Residential—multi-family residential	1.5 spaces for one-bedroom units
	Two spaces for dwelling units with two or more bedrooms
	Developments 10 units or greater shall provide one space for every five units for guest parking
Residential—single-family-detached residential	Two spaces, including space in garage if provided
Residential, Duplex	Two spaces per dwelling unit, including space in garages
Residential—Single-family attached	Two spaces per dwelling
Public and Institutional Uses	
Animal shelter	One space per 400 sq. ft. of gross floor area
Community centers	One space per 250 sq. ft. of gross floor area
Cultural and civic facilities—libraries, museums	One space per 300 sq. ft. of gross floor area
Elementary and middle school educational facility—public or private	One space per classroom plus one space per employee
High school educational facilities—public or private	One space per four students of design capacity plus one space per classroom
Secondary educational facilities—technical, vocational, specialty—non-public	One space per 200 sq. ft. of gross floor area
Government facilities, including administrative, support and service	One space per 300 sq. ft. of gross floor area
Hospital—private, public	One space per 200 sq. ft. of gross floor area
Outdoor Amphitheater	1/4 seats, or 1/80 square feet of seating area ADD
Public parks and recreational facilities	3/acre of land designated for passive recreation + 1/2,000 square feet of playground or picnic area ADD
Sewage lift or pumping station	One space per facility
Solid waste transfer station	One space per employee on largest shift plus one space per facility vehicle
Utilities and related facilities, city or other	One space for unmanned facilities; One space per employee on largest shift at manned facilities
Vehicle Related Commercial Uses	
Car wash	One space per employee on largest shift

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Rental—automobile, truck, and other vehicles	One space per 400 sq. ft. of gross floor area
Gas stations	One space per 300 sq. ft. of gross floor area
Vehicle major or minor repair and parts—mechanical, service, or body (new or used)	One space per 400 sq. ft. of gross floor area plus one space per bay
Vehicle sales—new or used automobiles	One space per 400 sq. ft. of gross floor area
Recreation, Entertainment Uses	
Adult Entertainment Establishment	One space per 100 sq. ft. of gross floor area
Marinas	One space for every two boat slips
Golf course	36 spaces per 9 holes plus one space per 200 sq. ft. of gross floor area
Driving range	One space for every two tees
Golf, miniature	One space per hole
Gun, pistol range, gun clubs, archery clubs—indoor	One space per 250 sq. ft. of gross floor area
Sports fields, basketball courts, racket ball courts, sporting activities—indoor	One space per four seats
Sports fields, basketball courts, racket ball courts, sporting activities—outdoor	20 spaces per field
Indoor Commercial Entertainment	One space per 250 sq. ft. of gross floor area
Restaurant, Food and Beverage Service Uses*	
Bar/lounge	One space per 100 sq. ft. of gross floor area
Brewpub	One space per 100 sq. ft. of gross floor area
Catering Service, no public interface	One space per 400 sq. ft. of gross floor area
Nightclub, Discotheque, Club, Cabarets.	One space per 100 sq. ft. of gross floor area
Restaurant, sit down	One space per 100 sq. ft. of gross floor area plus one space for every four outdoor seats
Restaurant, fast food	One space per 100 sq. ft. of gross floor area
Micro-Brewery or Distillery	One space per employee on the largest shift plus one space per 100 sq. ft. of tasting room area
Places of Assembly Uses*	
Banquet hall	One space per 100 sq. ft. of gross floor area
Place of religious assembly	One space for every four seats

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Private clubs, not public	One space per 100 sq. ft. of gross floor area
Theater (movie, performing arts)	One space for every four seats
Commercial Uses*	
All Retail Stores, other than those listed below	One space per 300 sq. ft. of gross floor area
Wholesale	One space per 400 sq. ft. of gross floor area
Retail—big box, club membership, department, home improvement	One space per 400 sq. ft. of gross floor area
Short Term Lodging	
Camp grounds, RV parks	One space per site plus one space for every 10 additional sites
Hotels, Motels, Resort, Lodging	One space per room plus one space per 400 sq. ft. of gross floor area for all other uses
Transient Housing—shelters	One space for every five beds plus one space for every employee or volunteer
Vacation Rentals	One space per bedroom with a minimum of two spaces
Office Uses*	
Call center	One space per 300 sq. ft. of gross floor area
Office—business, sales, professional, semi-professional services	One space per 300 sq. ft. of gross floor area
Office—medical office/medical clinic	One space per 300 sq. ft. of gross floor area
Service Uses*	
Animal grooming and pet sitting—indoor	One space per 300 sq. ft. of gross floor area
Animal Hospital/Veterinarian clinic	One space per 300 sq. ft. of gross floor area
Animal kennel, boarding	One space per 300 sq. ft. of gross floor area
Blood banks, diagnostic medical treatment centers	One space per 300 sq. ft. of gross floor area
Check cashing, bill payments	One space per 300 sq. ft. of gross floor area
Copy, printing center	One space per 300 sq. ft. of gross floor area
Cosmetic Surgery, beauty clinics	One space per 300 sq. ft. of gross floor area
Customer service center	One space per 300 sq. ft. of gross floor area
Dry cleaning	One space per 300 sq. ft. of gross floor area
Financial institution - banks, credit unions, investment brokerage establishments	One space per 300 sq. ft. of gross floor area
Health club, fitness club	One space per 300 sq. ft. of gross floor area

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Laundromat, self-service	1 per 3 machines and One space per 300 sq. ft. of gross floor area
Massage Therapy, body wrapping	One space per 300 sq. ft. of gross floor area
Package shipping, mail service	One space per 300 sq. ft. of gross floor area
Personal care services	One space per 300 sq. ft. of gross floor area
Repair and service shop—general merchandise	One space per 300 sq. ft. of gross floor area
Self-service storage facility	One space per 10,000 sq. ft. with a minimum of five spaces
Studios—photographic, and instructional	One space per 300 sq. ft. of gross floor area
Tattoo parlor, body piercing	One space per 300 sq. ft. of gross floor area
Other Uses	
Cemetery, mausoleums, crematory	One space for every four seats in an assembly area
Funeral Homes	One space for every four seats in an assembly area
Radio and transmitting station	One space per 400 sq. ft. of gross floor area
Wireless Antennas and support services	One space per facility
Industrial Uses	
Dry cleaning—commercial laundry plant	One space per 1,000 sq. ft. of gross floor area
Equipment and tool rental	One space per 350 sq. ft. of gross floor area plus one space per 1,000 sq. ft. of outdoor rental area
Fireworks, retail	One space per 300 sq. ft. of gross floor area
Flex Space	One space per 300 sq. ft. of gross floor area
Industrial uses—heavy	One space per 350 sq. ft. of gross floor area plus one space for every company vehicle
Industrial uses—light	One space per 350 sq. ft. of gross floor area plus one space for every company vehicle
Laboratory—medical, research, testing	One space per 300 sq. ft. of gross floor area
Mining/extraction, rock quarry	One space per employee
Outdoor Storage, open air storage	One space per employee
Recycling facility, Refuse disposal	1/employee plus 3
Studio for movie, television, music production	One space per 200 sq. ft. of gross floor area
Warehouse	One space per 1,000 sq. ft. of gross floor area
Agricultural Uses	

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Community Garden	Three spaces per acre of gardens
Greenhouses—nurseries, retail	One space per employee plus one space per 300 sq. ft. of gross floor area plus one space per 600 sq. ft. of outdoor sales area
Outdoor storage—agriculture	1/employee plus work vehicles?
Farmer's market	One space per vendor plus one space per 350 sq. ft. of vendor area
Animal Boarding Stables	One space for every six animals boarded
* See below	
*Multiple Occupancy (3 or more units)	One space per 200 sq. ft. of gross floor area

For facilities having bench or booth seating, one seat shall be considered 24 linear inches of a bench or booth.

Table 6.1.7.B. South Cape Parking Requirements.

TABLE SC-5 MINIMUM PARKING SOUTH CAPE DOWNTOWN DISTRICT				
Applicable Lots	Lot Frontage/Lot Area			Lot Area
	≤75 ft.	>75 ft. but <125 ft.	≥125 ft. but <60,000 sq. ft.	≥60,000 sq. ft.
	Minimum Parking (# spaces) (a)			
Residential	1 per unit	1 per unit	1 per unit	1 per unit
Non-residential - restaurant/bar/brewpub(d)	1/500 sq. ft.	1/400 sq. ft.	1/100 sq. ft.	1/100 sq. ft.
Non-residential - hotel	0.75 per room	0.75 per room	0.75 per room	0.75 per room
Non-residential - other	1/500 sq. ft.	1/400 sq. ft.	1/400 sq. ft.	1/400 sq. ft.
Parking required on site - residential and non-residential (b)	50%(c)	50%	75%	75%
(a) For parking area sites, minimum parking shall be as provided, less parking credits in accordance with § 6.1.8.J.1.b				
(b) Satellite parking shall be provided in accordance with § 6.1.8.K.				
(c) Lots with lot frontage less than or equal to 50 feet shall not be required to provide on-site parking. Satellite parking shall be provided in accordance with § 6.1.8.K.				
(d) The minimum parking standard shall not be applied to the area(s) of the building devoted to brewing, bottling, and kegging activities.				

B. Bicycle parking. Bicycle parking shall be required for all developments of 20,000 square feet or more, in accordance with Table 6.1.7.B. Bicycle parking shall be adjacent to entrances or in a shaded or covered area when one is available. A parking space shall consist of a place for a bike to be secured in a standing position.

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Table 6.1.7.C. Bicycle Parking Requirements.

Square Footage of Development	Number of Bicycle Parking Spaces
20,000-50,000	5 spaces
50,001-200,000	10 spaces
200,001 or larger	15 spaces
Multi-family Developments with 16 or more units	1 space/10 units

- C. Electric vehicle charging stations. Charging stations for electric vehicles shall be required for all development sites of 200,000 square feet of gross floor area or more. One charging station shall be required for the initial 200,000 square feet of development and an additional charging station shall be provided for each additional 20,000 square feet over that.

Section. 6.1.8. Miscellaneous parking requirements.

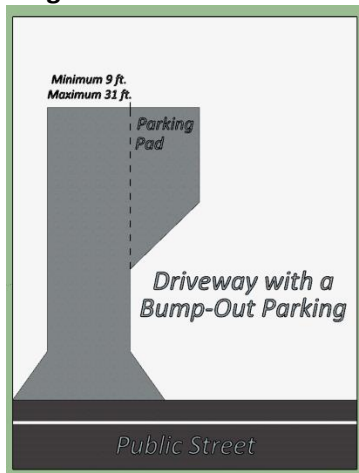
- A. Access to buildings. Parking shall not interfere with ingress-egress doors for stairwells, transformer rooms, elevator machine rooms, trash rooms, or any other use requiring clear access aisles for services.
- B. Marking and identification. All parking and loading spaces other than for single-family detached and duplex dwellings, shall be marked in accordance with the Engineering Design Standards. Off-street parking facilities not clearly evident from a street or alley shall be identified as to location and purpose.
- C. Use of spaces. All off-street parking facilities shall be used solely for the parking of vehicles in operating condition. No automotive repair work except emergency service, no storage of merchandise, and no motor vehicles which are being offered for sale by a business in the development shall be permitted on or within any required off-street parking area.
- D. Surfacing. All off-street parking (spaces and aisles) and drives connecting such areas with the street, including spaces required for serving single-family detached residences or duplexes, shall be surfaced in accordance with the Engineering Design Standards unless an alternative landscaped area is approved for occasional parking as part of a development approval. All parking surfaces shall be maintained in a condition that is safe and free of potholes.
- E. Unpaved parking. Clearly identified, non-paved parking areas may be permitted, only in accordance with this Subsection. Unpaved parking, which is graded and covered with sod to provide a surface that is durable, stable, and will also assist in managing stormwater, dust, and erosion may be provided for up to 50% of the off-street parking requirements for the following uses:
1. Agriculture or farming uses;

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2. Cemeteries;
3. Funeral homes, mortuaries, and crematoria;
4. Places of worship;
5. Religious facilities; or
6. Parks and recreation facilities owned by a governmental entity.

F. Parking on the unpaved areas shall be prohibited on all parcels other than those specifically allowed by this code to utilize grass parking. Where parking occurs on unpaved areas, a violation may be issued. Resolution of the violation may include providing additional parking spaces, not to exceed the allowed pervious surface requirement for that use. Diagram 6.1.8.A. below, illustrates how additional parking may be added through a bump-out at a residential dwelling.

Diagram 6.1.8.A Residential drive bump-out.



G. Off-street circulation and maneuvering.

1. Off-street parking facilities for multi-family, industrial, or commercial developments shall provide for on-site vehicle circulation and maneuvering in accordance with the Engineering Design Standards. Backing into the street right-of-way shall not be permitted for any uses other than single-family detached residences on a local street.
2. Single-family detached residences which are on a right-of-way classified as a collector or higher classified roadway, and all duplex residences shall be required to install a circular driveway to eliminate the necessity to back into the roadway. See diagrams 6.1.8.B. and 6.1.8.C. for circular driveway examples.

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Diagram 6.1.8.B. Single-family detached circular drive.

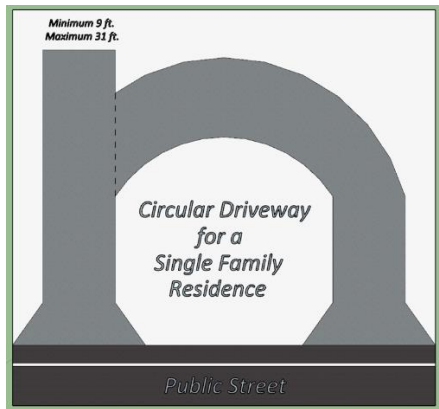
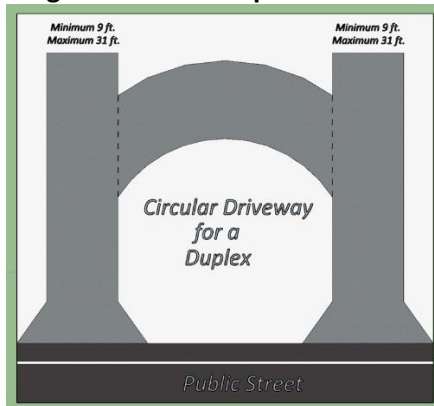


Diagram 6.1.8.C. Duplex circular drive.



- H. Drainage. Design and construction of all parking areas shall conform to the requirements of the City of Cape Coral Engineering Design Standards and all applicable South Florida Water Management District requirements for stormwater management. All design and construction shall be such that runoff from the property is intercepted and prevented from entering onto adjoining properties or right-of-way(s) prior to treatment. The developer shall be responsible for obtaining all required permits.
- I. Parking along alleys. Parking on sites abutting alleys is allowed provided the following conditions are met:
1. The area of the site abutting the alley is needed to meet the minimum parking requirement for the site.
 2. The alley is improved or will be improved to allow for the movement of vehicles in the alley along the site.
 3. Vehicles can be parked in their entirety on the site. No part of any parked vehicle may extend into the alley right-of-way.

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4. All parking spaces shall be striped consistent with those standards appearing in the City Engineering and Design Standards.

J. Supplemental parking requirements within the South Cape District.

1. Development may count on-street parking within 500 feet of the property to meet the minimum required off-street parking spaces.
2. As of December 1, 2005, sites within 25 feet, excluding alleys and walkways, of any of those dedicated city parking areas identified in § 6.1.8.J.1.a, below shall be considered "parking area sites". For parking area sites, the following parking and PILOP regulations shall apply:
 - a. Each of the following dedicated city parking areas in the Cape Coral CRA is hereby assigned a parking allocation factor as provided below:

Table 6.1.8.A. Dedicated City Parking Area within South Cape.

DEDICATED CITY PARKING AREA			
Dedicated City Parking Area	Surrounding Blocks and Lots		Parking Allocation Factor
	Lots	Block	
Parking Area 1	1 through 24	62	0.000655
Parking Area 2	1 through 17	63A	0.001040
Parking Area 4	1 through 30	63	0.001515
Parking Area 5	1 through 61	64	0.001501
Parking Area 6	1 through 34	356	0.001572
	1 through 30	357	
Parking Area 7	11 through 14	56A	0.001330
	1 through 11	56B	
	1 through 12	56C	
	1 through 10	G	

- b. For purposes of this subsection, when a "parking credit" must be calculated for a parking area site, such parking credit shall be calculated by multiplying the area of the site (in square feet) by the parking allocation factor related to the dedicated city parking area upon which the site is located. This credit shall be deducted from the minimum parking requirements.
- c. When the area of a parking area site changes, the following shall apply:
 - i. In the event the area of a parking area site is increased as the result of the acquisition of property that was not a part of a parking area site as of December 1, 2005, the increase in area that results from such acquisition shall, for purposes of this subsection, be treated in the same manner as property, no part of which comprised a parking area site.
 - ii. In the event the area of a parking area site is increased as the result of the acquisition of property that was a part of a parking area site as of December 1, 2005, any PILOP fees previously paid as the result of the use(s) or structure(s) on the conveyed property

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shall be treated in the same manner as any PILOP fees, if any, previously paid by the receiving site provided that the minimum total parking requirements for the conveying site decrease as the result of the conveyance of property. If the minimum total parking requirements for the conveying site do not decrease as the result of the transfer, then any PILOP fees previously paid in regard to the conveying property shall continue to be applied solely to the conveying property and shall not apply toward the parking requirements of the enlarged (receiving) site.

iii. In the event the area of a parking area site is decreased as the result of the conveyance of property that was a part of a parking area site as of December 1, 2005, regardless of whether such conveyance is to another parking area site or to a property that is not a parking area site, then any PILOP fees previously paid in regard to the conveying property shall continue to be applied solely to the conveying property and shall not apply toward the parking requirements of the receiving site unless the minimum total parking requirements for the conveying site decrease as the result of the transfer. If the minimum total parking requirements for the conveying site decrease as the result of the transfer, and the conveying site had previously paid PILOP fees pursuant to this subsection, then any such PILOP fees that are unnecessary to defray the decreased total parking requirements of the conveying site shall be applied toward the parking requirements of the receiving site.

d. A parking area site is altered, for purposes of this subsection, when any use located on the site is changed, any structure located on the site is modified, or the land area of the site is changed. Although a parking area site shall not be required to provide on-site parking, when such site is altered so that the minimum total parking requirement for the site, pursuant to Table 6.1.7.B contained in § 6.1.7.A. is increased, the parking requirement for the site shall be determined in accordance with the following:

i. Parking area sites that are undeveloped as of December 1, 2005:

(1) A parking area site that is undeveloped as of December 1, 2005, the area of which has not changed and which is being initially developed after December 1, 2005, shall be required to provide the minimum parking that would be required pursuant to Table 6.1.7.B contained in § 6.1.7.A. less a parking credit calculated pursuant to § 6.1.8.J.1.b. The site would need to meet the aforesaid parking requirement prior to receiving a certificate of occupancy (for residential uses) or a certificate of use (for non-residential uses). If the land area of the parking area site increases prior to the initial development of the site, then the requirements of this subsection shall apply to the expanded portion of the site (and any structures thereon) as applicable based on factors such as whether it was previously developed or had previously paid PILOP fees.

(2) After such a parking area site has been initially developed pursuant to this subsection, any further alteration of the site that would result in an increase to the minimum parking requirement for the site, area of the site, shall require that the site provide the minimum parking that would be required pursuant to Table 6.1.7.B contained in § 6.1.7.A. less the parking credit calculated pursuant to § 6.1.8.J.1.b

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and any PILOP fee(s) previously paid to offset the parking requirement of the site or any part thereof.

(3) After the initial development of such a site, if the area of the site increases, any further alteration of the site that would result in an increase to the minimum parking requirement for the site shall require that the site provide the minimum parking that would be required pursuant to Table 6.1.7.B. contained in § 6.1.7.A. less a parking credit (to which the site would be entitled based on its land area at the time of such further alteration) and any PILOP fee(s) previously paid to offset the parking requirement of the site, including any PILOP fee(s) paid with respect to the expanded area of the site, in accordance with § 6.1.8.J.1.c.

(4) Alternatively, if, after the initial development of such a site, the area of the site decreases, any further alteration of the site that would result in an increase to the minimum parking requirement for the site shall require that the site provide the minimum parking that would be required pursuant to Table 6.1.7.B. less a parking credit and any PILOP fee(s) previously paid to offset the parking requirement of any use(s) or structure(s) located on the area of the site remaining after the decrease(s) in area, in accordance with § 6.1.8.J.1.c.

ii. With respect to parking area sites that are developed and occupied as of December 1, 2005, the following shall apply:

(1) The first time such a site is altered after December 1, 2005, if the alteration would result in an increase in the minimum parking requirement for the site of more than 25% over the amount required for the site for the use(s) and structure(s) located on the site as of December 1, 2005, as reflected in the certificate(s) of use in effect for such site as of that date, the site shall be required to provide the minimum parking that would be required pursuant to Table 6.1.7.B. contained in § 6.1.7.A.. less a parking credit calculated as provided in 6.1.8.J.1.b.

(2) Alternatively, if such an alteration of the site would result in an increase in the minimum parking requirement for the site of not more than 25% over the amount required for the site for the use(s) and structure(s) on the site as of December 1, 2005, as reflected in the certificate(s) of use in effect for such site as of that date, then the alteration of such site shall require the site to provide the minimum parking required for the site (pursuant to Table 6.1.7.B.) less the amount attributed to the site for the use(s) and structure(s) on the site as of December 1, 2005, as reflected in the certificate(s) of use in effect for the site as of that date. Further alterations to the site that do not, either singularly or cumulatively, increase the minimum parking requirement for the site by more than 25% over the amount required for the site for the use(s) and structure(s) on the site as of December 1, 2005, as reflected in the certificate(s) of use in effect for such site as of that date, shall require the site to provide the minimum parking required for the site (pursuant to Table 6.1.7.B.) less the amount attributed to the site for the use(s) and structure(s) on the site as of December 1, 2005, as reflected in the certificate(s) of use in effect for the site as of that date and any PILOP fee(s) previously paid to offset

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the parking requirement of the site or any part thereof including, for sites that have increased or decreased in area any PILOP fee(s) applicable pursuant to § 6.1.8.J.1.c.

- (3) If further alterations to a site, cumulatively, increase the parking requirement for the site by more than 25% over the amount required for the site for the use(s) and structure(s) on the site as of December 1, 2005, as reflected in the certificate(s) of use as of that date (or, for residential uses, the residential occupancy in effect for such site as of that date), then the alteration of such site that would result in the increase by more than 25% shall require the site to provide the minimum parking required for the site (pursuant to Table SC-5) less a parking credit calculated as provided in § 6.1.8.J.1.b, based on the area of the site at the time of the alteration that would result in the more than 25% increase, and any PILOP fee(s) previously paid to offset the parking requirement of the site or any part thereof including, for sites that have increased or decreased in area, any PILOP fee(s) applicable pursuant to § 6.1.8.J.1.c.

- iii. With respect to parking area sites that are developed and unoccupied as of December 1, 2005, the following shall apply: The first time such a site is occupied following December 1, 2005, the site shall be required to provide the minimum parking that would be required pursuant to Table 6.1.7.B. contained in § 6.1.7.A. less a parking credit calculated by multiplying the area of the site (in square feet) by the parking allocation factor related to the dedicated city parking area upon which the site is located. The site would need to meet the aforesaid parking requirement prior to receiving, for non-residential uses, a certificate of use and, for residential uses, prior to any residential occupation of the structure. If the land area of the parking area site increases following December 1, 2005, but prior to the occupancy of the site, then the requirements of this subsection shall apply to the expanded portion of the site (and any structures thereon) as applicable based on factors such as whether it was previously developed or had previously paid PILOP fees.

- iv. If the structure(s) on any parking area site are demolished, razed, or relocated to a site other than a parking area site, then any subsequent redevelopment of such parking area site shall require the site to provide the minimum parking required for the site (pursuant to Table 6.1.7.B.) less a parking credit calculated as provided in § 6.1.8.J.1.b, based on the area of the site at the time of the redevelopment, and any PILOP fee(s) previously paid to offset the parking requirement of the site or any part thereof including, for sites that have increased or decreased in area, any PILOP fee(s) applicable pursuant to § 6.1.8.J.1.c. After such redevelopment is completed, any alteration(s) to the site shall be treated, for purposes of determining the parking requirements of the site, in the same manner as alteration(s) of any other developed parking area site under this subsection.

- e. With respect to each dedicated city parking area located in the Cape Coral CRA. the City Council shall, by resolution, identify all sites that would be parking area sites regulated by this subsection and also, for all such sites that are developed as of December 1, 2005, identify the minimum parking requirement for the use(s) or structure(s) on the site as of December 1, 2005, as though such sites were within the South Cape Downtown District.

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K. Satellite parking within the South Cape District. For purposes of this subsection, a satellite parking arrangement exists when the minimum total parking (excluding on-site parking) required for a site is to be provided on a site at a location different from the site which will be served by the parking as required in § 6.1.7.A. When all or part of the minimum total parking (excluding on-site parking) required for a site is to be satisfied by one or more satellite parking arrangements, such satellite parking arrangements shall comply with the requirements of this subsection as follows:

1. Except as otherwise provided herein, satellite parking shall be located not more than 1,320 feet from a public entrance to the principal building which contains the use associated with such satellite parking, except that no satellite off-street parking area shall be located on parkway or primary street designations or across Del Prado Boulevard or Cape Coral Parkway from the use it is serving. When the site that contains the use(s) to be served by the satellite parking offers valet parking at all times that such use(s) are open to the public so that valets will transport the vehicles of patrons of such use(s) to the satellite parking site(s) and such valet service is documented in an agreement entered into by the city and the owners of the property to be served by the satellite parking and the property offering the satellite parking, then the satellite parking site(s) may be more than 1,320 feet from a public entrance to the principal building containing the use served by such valet parking.

The aforesaid agreement shall be in addition to the agreement required by § 6.1.8.K.1.4. and shall be recorded in the public records of Lee County at the sole expense of the owner(s) of the property to be served by the valet parking. Upon request by the owner of the property to be served by a proposed satellite parking location, the City may allow satellite parking that does not include valet parking to be located more than 1,320 feet from a public entrance to the principal building which contains the use associated with the proposed satellite parking or to be across Del Prado Boulevard or Cape Coral Parkway from the use it is serving, if the City finds that the proposed satellite parking would not be detrimental to the public health, safety, and welfare of the persons utilizing it. Factors which shall be considered by the City in making this determination include, but are not limited to, the following: the proximity of the proposed satellite parking to a signalized intersection, the availability of pedestrian crosswalks or other pedestrian-oriented features at any intersections and any other locations between the proposed satellite parking and the use(s) to be served by it, whether the satellite parking is to be utilized by employees only or by patrons of the use(s) to be served, and the availability of any complementary or supplementary services to such parking, such as trolley or tram systems that would provide transportation for the public to and from the satellite off-street parking area and the use(s) to be served. If the City approves satellite parking at a distance of more than 1,320 feet or across Del Prado Boulevard or Cape Coral Parkway, the City may impose conditions on such satellite parking that would be reasonably designed to mitigate any negative effects from such approval. Examples of such conditions include the requirement that a satellite off-street parking area be clearly identified for only employee parking, the requirement that a pedestrian walkway between the off-street parking area and the use(s) it serves be covered so as to protect pedestrians from the elements, and that any supplementary or complementary services be continued so long as the satellite parking is being used.

2. The satellite off-street parking area and the site which contains the use associated with such satellite parking shall be shown on a site plan, development plan, or other equivalent plan. The submitted plan shall show the pedestrian connection(s) between the two sites and shall

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demonstrate that all pedestrian connections have sidewalks, or other paved walkways, dedicated solely to pedestrians. In addition, the plan shall demonstrate that the distance between the sites is not more than 1,320 feet when measured from a public entrance to the principal building (on the site to be served by the satellite parking) to the closest point on the proposed satellite parking site.

3. Satellite parking spaces on the off-site lot shall only be counted if they are above and beyond the minimum parking requirement for uses on the off-site lot.
4. The owner of the off-site lot of land (and, the owner of the land intended to be served by such off-site parking, if different than the owner of the lot to be used for parking) shall enter into an agreement with the city, which shall be recorded in the public records of Lee County, Florida, at the expense of the owner of the land intended to be served by the off-site parking.
5. The satellite off-street parking area shall never be sold or transferred except in conjunction with the sale of the lot served by the off-site parking facilities unless:
 - a. The lot to be sold or transferred will continue to be used as provided in the off-site parking agreement and the new owner or transferee executes a consent to assume and to be bound by the obligations of the owner of the lot used for parking as provided in the agreement;
 - b. A different lot complying with the all provisions of the City of Cape Coal Code of Ordinances and Land Use and Development Regulations and subject to a recorded off-site parking agreement as specified herein is substituted for the lot of land subject to the off-site parking agreement; or
 - c. The lot being served by the off-site parking no longer requires the parking as evidenced by a written statement executed by the parties executing the off-site parking agreement and as approved by the City. The aforesaid statement shall be recorded in the public records of Lee County at the expense of the owner of the lot formerly being served by the off-site lot.

CHAPTER 2. TRUCK AND VEHICLE PARKING

Section 6.2.1 Parking regulations for single-family residential zoning districts (R-1, RE, A).

- A. It shall be unlawful for any owner, agent, operator, or person in charge of a commercial vehicle or trailer to park, store, or keep such vehicle or trailer on the pavement or in the swale of any public street within any single-family residential district in the city. Furthermore, it shall be unlawful for any owner of privately owned real property in any residential district in the city to park on, cause to be parked on, or allow to be parked on such property any commercial vehicle or trailer, except as otherwise provided herein.
- B. The prohibitions of § 6.2.1.A shall not apply to the following:
 1. Temporary parking of any commercial vehicle or trailer on private property or in the adjoining swale of any public street in a residential district where construction for which a current and valid permit has been issued by the city is underway on the property and the permit is properly

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displayed on the premises. Provided that such trailer or commercial vehicle is only on the real property at the time the construction is actually physically occurring. Nothing in this subsection is intended to require a permit where none is otherwise required or to allow a trailer or commercial vehicle to be parked on private property or in the adjoining swale of any public street within a residential district when construction is not actually physically occurring on the private property.

2. Deliveries by tradespeople or the use of commercial vehicles or trailers in making service calls.

3. Temporary parking of a commercial vehicle or recreational vehicle while such vehicle is being used by the operator for travel to and from the residential property for personal reasons of a temporary nature such as for a meal or to visit or serve an ill person. Such temporary parking shall not, however, exceed a total of two hours duration during any 24-hour time period.

4. Emergency parking of a disabled commercial vehicle, recreational vehicle, or trailer. However, any such commercial vehicle, recreational vehicle, boat, or trailer shall be removed from the residential district within 24 hours by wrecker towing or other available means regardless of the nature of the emergency.

C. Notwithstanding the prohibitions in § 6.2.1.A, any combination of the following motor vehicles or trailers may be parked in single-family residential districts, on a parcel improved with a single-family residence:

1. Any light van, sports utility vehicle (SUV), pickup truck, jeep, motorcycle, automobile, or similar type of motor vehicle which is not a commercial vehicle. Furthermore, light vans, sports utility vehicles (SUVs), pickup trucks, jeeps, motorcycles, automobiles, or similar types of motor vehicles which would otherwise be considered to be "commercial vehicles" only because commercial lettering has been affixed to them may be parked outside of a permitted garage or carport provided that all commercial lettering has been concealed by a cover of a type that is applied directly to the surface of the motor vehicle or attached to the vehicle in such a manner that the vehicle can be safely driven on the public streets with the cover in place. If more than one such cover is attached to or is located on a vehicle, then all of such covers on or attached to such vehicle shall be the same color. For purposes of this section, covers located so as to impair the vision of the driver of the vehicle or insecurely mounted so as to present a danger of falling off the vehicle while it is being driven shall be presumed to be insufficient to bring the commercial vehicle within the exemption provided by this subsection. Furthermore, this exemption shall not apply to any motor vehicle that is considered to be a "commercial vehicle" under this section by virtue of the nature of its vehicle type and not solely because commercial lettering has been affixed to it regardless of whether such vehicle or any lettering affixed to it has been covered in part or in full of such vehicle is parked outside of the confines of a permitted garage or carport.

2. Any trailer or motor vehicle described in § 6.2.1.G which is a commercial vehicle, provided that:

a. The commercial vehicle or trailer is parked in a permitted garage or carport;

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- b. When parked in a garage or carport, no part of such commercial vehicle or trailer may project horizontally beyond the roofline of the garage or carport; and
- c. When parked in a carport, such commercial vehicle or trailer is screened on three sides.
- D. No vehicle for human habitation shall be kept or parked on premises zoned for residential purposes or on adjoining public rights-of-way, except when parked entirely within the confines of a garage or carport or in accordance with the following:
1. Non-resident. Vehicles for human habitation when used for transportation of visitors to this city to visit friends or members of the visitors' family residing in this city may, upon obtaining a permit (for which a charge shall not be made) from the Police Department, be parked upon the premises of the visited family for a period not exceeding ten days. The permit shall be affixed to the vehicle in a conspicuous place on the street side thereof. The City may, for good cause shown, authorize the issuance of a second consecutive free permit not to exceed ten days. An additional permit for the parking of such vehicle will not be issued until after the expiration of 15 days after termination of the last prior permit. For purposes of this section, a person who owns or leases property in the City of Cape Coral shall not be deemed to be a "non-resident" when he or she parks a vehicle for human habitation on property that he or she owns or leases even if such person does not "reside" on the subject property.
 2. Resident. When a vehicle for human habitation is owned or leased by the person who also owns or leases the residential property on which such vehicle is to be parked, such vehicle for human habitation may be parked upon the premises of the resident for a period not exceeding 72 hours for loading and cleaning provided that a permit is first obtained from the City Police Department. A vehicle for human habitation may be parked upon the premises of the resident for unloading after a trip for a period of 72 hours provided that a permit is first obtained from the Police Department. There shall be a minimum of a 48-hour interval between the expiration of one permit and the issuance of another. The permit for each such period shall be affixed to the vehicle in a conspicuous place on the street side thereof. The city shall not charge a fee for the permits to park a vehicle for human habitation upon the premises of the resident as required by this section.
 3. Pop-up campers. A pop-up camper may be parked, only in a closed or folded condition, in the rear yard of a residential lot improved with a principal residential building. For purposes of this paragraph, a "pop-up camper" shall consist of a non-motorized trailer which includes, or on which is mounted, a tent-like enclosure (but such enclosure may be made of canvas or similar material, solid materials, or any combination thereof) to be used for camping purposes, which enclosure opens or expands or unfolds to accommodate temporary occupancy and which closes or folds up into itself in such a way as to be unusable for occupancy and to be no more than 55 inches in height when measured from ground level.
- E. Parking of passenger cars or sports utility vehicles (SUVs) with commercial advertising signs setting forth the name of the business, its address, business telephone number, and type of business (e.g., realtor, painter, etc.) thereon in residential areas outside the confines of a garage or carport is permitted so long as the home (residential) address is not shown thereon.

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F. The following are exempt from the provisions of this section:

1. Commercial vehicles or trailers in actual use or moving directly to or from the location of actual use, which are owned or leased by:
 - a. The city for the accomplishment of a municipal purpose;
 - b. A contractor or subcontractor under agreement with the city to accomplish a municipal purpose; or
 - c. A public utility operating within the city, or a contractor or subcontractor under agreement with such public utility; for the installation, maintenance, adjustment, or repair of or to a public utility facility.

However, no towing company, or other business entity, or any of its officers, employees, and agents shall be exempt from the provisions of this ordinance solely because the towing company or other business entity has been employed by the city to provide towing or other services.

2. Commercial vehicles owned by or leased by governmental entities, including the city, Lee County, or the State of Florida which are parked in residential districts on a parcel improved with a permitted structure when such vehicles are lawfully in the possession of an authorized agent or employee of the governmental entity. This category shall include police or sheriff's vehicles which are permitted to be driven to residences of authorized employee(s) of such law enforcement entities.

G. In applying the terms of this section, the following rules of construction shall apply:

1. Any motor vehicle or trailer which is partially built or in the process of conversion shall be included under the most stringent definition that can be applied.
2. In case of doubt as to the proper classification of a specific vehicle, a determination by the state's Department of Highway Safety and Motor Vehicles shall be controlling. The body description and classification on the motor vehicle certificate of title shall be *prima facie* evidence of such determination.

Section 6.2.2 Parking regulations for property zoned multi-family residential.

The restrictions for multi-family residential shall be the same as for single-family residential except that the prohibitions contained in § 6.2.1.A shall not apply to the following commercial vehicles when parked on properties zoned multi-family residential:

- A. Pickup trucks from which the cargo boxes have been removed;
- B. Pickup trucks or light vans containing commercial rack(s) regardless of whether such rack(s) are visible from the street or from abutting residential property; and

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- C. Light vans, sports utility vehicles (SUVs), pickup trucks, jeeps, motorcycles, automobiles, or similar types of motor vehicles which would otherwise be considered to be "commercial vehicles" only because commercial lettering has been affixed to them.

Section 6.2.3 Parking regulations for property zoned industrial and agricultural.

Property zoned industrial and agricultural shall have no restrictions placed upon it as to the parking of trucks or unoccupied vehicles for human habitation, except as otherwise regulated within a recreational vehicle park, or as a condition of special exception or a planned unit development.

Section 6.2.4 Hotel and motel parking provisions.

Hotels and motels are considered business enterprises, therefore, trucks, trailers, buses, and other commercial vehicles, as well as vehicles for human habitation may be parked on the premises of such businesses. Such vehicles must not be parked in streets, alleys, or other rights-of-way.

Section 6.2.5 Boats and boat trailers.

It shall be unlawful for any person to park, store, keep, maintain, or permit to be parked, stored, kept, or maintained in front or side yard of a single or multi-family residence, or on a vacant lot in a residential area, any boat or empty boat trailer. A boat, a boat on a trailer, or an empty boat trailer may be parked on the rear yard provided the same is not allowed to fall into a state of disrepair. If grass or weeds are allowed to grow around or under it to a height exceeding 12 inches, then it may be declared a nuisance and the owner charged accordingly. An empty boat trailer may be parked at a launching site during the period of time that the boat is launched therefrom for a single voyage and while in the process of loading or unloading the boat or trailer. A boat, empty boat trailer, or a boat on a trailer may be parked entirely within the confines of a garage or carport meeting the requirements of this ordinance.

Section 6.2.6 Vacant lots.

It shall be unlawful for any person to park, store, keep, maintain at any time, or permit to be parked, stored, kept, or maintained at any time on any unimproved property in any zoning district any motor vehicle, boat, or trailer of any kind, type, or description, including any boat and trailer in combination, except that this prohibition shall not apply to any unimproved property on which temporary parking of such motor vehicles, boats, or trailers has been authorized by the property owner(s), in writing, and approved by the City in association with a special event that has been approved by the City. Throughout this subsection, the term **TRAILER** shall be deemed to mean and include both a boat mounted on a trailer and the trailer itself.

- A. In the event a motor vehicle, boat, or trailer is parked, stored, kept, or maintained on an unimproved property in any zoning district at any time, a City Code Enforcement Officer shall place a written notice of violation on the vehicle, boat, or trailer indicating that it is in violation of this section and that it must be removed within three calendar days from the date of the notice or it will be subject to removal by the city. The Code Enforcement Officer shall make every reasonable attempt to ascertain the owner of the vehicle, boat, or trailer and the owner of the real property, and shall notify such owner(s) with a written notice delivered by mail or personal service at their current address, last known address, or the address appearing on the certificate of title for the

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vehicle, boat, or trailer. The notice placed on the vehicle, boat, or trailer and all notices provided to the owners or apparent owners of the vehicle, boat, trailer, and the land shall advise of the possible appeal provided for in the following subsection B.

- B. Within the three-calendar day period specified in the aforesaid notice, the owner of the vehicle, boat, trailer, or the owner of the real property may appeal to a Special Master utilized by the city to conduct hearings concerning violations involving vehicle(s), boat(s), or trailers) parked, stored, kept, or otherwise maintained on vacant real property. The appeal shall be filed at the office of the City Manager, must attach a copy of the notice of violation appealed, and must include the name of the person filing the appeal and an address at which such person may be served notice of the hearing on the appeal. The hearing on the appeal shall be conducted the same as a code enforcement hearing for a case initiated by a Code Enforcement Officer pursuant to §§ 2-85 through 2-92 of the Code of Ordinances of the City of Cape Coral, Florida. The Special Master shall determine the validity of the violation and may for good cause extend the time for compliance or removal. If such an appeal is instituted, no removal of the vehicle, boat, or trailer shall be required until the appeal has been dismissed or finally determined by the Special Master with a finding of a violation.

- C. If no appeal is made or if an appeal is made but dismissed and the vehicle, boat, or trailer remains in violation after the three calendar day period, or if an appeal is resolved with a finding of a violation and the vehicle, boat, or trailer is not removed within whatever time period is allowed by the Special Master, the City Code Enforcement Manager shall cause such vehicle, boat, or trailer to be towed from the property and thereafter stored and disposed of in accordance with applicable state law or city ordinance. The Special Master may also assess fines and costs; the same as for any code enforcement violation.

The city shall not be responsible for the towing charges resulting from the removal of the vehicle, boat, or trailer from the property. Instead, the owner(s) of the vehicle, boat or trailer shall be responsible for all such charges.

- D. The authorization in this section for the towing of vehicles, boats, or trailers parked, kept, stored, or otherwise maintained on unimproved property shall be construed as supplementary to any other means of enforcement available to the city and shall not be construed so as to negate the authority of the code enforcement Special Master to hear and adjudicate appropriate cases.

- E. The City Manager shall at least annually recruit qualified persons to serve as Special Masters. The City Council shall, on an annual basis, appoint at least one qualified person to serve as the Special Master and at least one qualified person to serve as an alternate Special Master in the event the Special Master is unable to attend a meeting. Applicants for the Special Master position must be attorneys. The appointment(s) shall be in the sole discretion of the City Council. However, any person appointed to the position of Special Master pursuant to this section must be an attorney duly licensed by the Florida Bar Association to practice law in the State of Florida.

- F. Each Special Master shall serve for a term of one year though Special Masters may be reappointed for consecutive one-year terms. Although appointed for one-year terms, Special Masters shall be subject to removal, with or without cause, from their positions at any time during their term by the City Council in its sole discretion. Special masters shall not be considered to be city employees

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though, if authorized by the City Council, they may receive compensation for their service and also may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the City Council.

G. The Special Master shall convene hearings concerning appeals of alleged violations of this section within a reasonable time from the date the appeal request is made. Minutes shall be kept of all hearings by the Special Master and all hearings and proceedings shall be open to the public. The City Manager shall provide clerical and administrative personnel as may be reasonably required by the Special Master for the proper performance of his or her duties.

H. The Special Master shall proceed to hear the cases on the agenda for that day. If the alleged violator has been duly notified of the hearing, the hearing may proceed in the absence of the named violator. All testimony shall be under oath or affirmation and shall be recorded.

The Special Master shall take testimony from the Code Enforcement Officer, the alleged violator, and any other witnesses who have personal knowledge concerning the alleged violation. Documentary evidence may be presented in support, of or in defense of the charge. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Florida. Hearsay evidence may be introduced and used for supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding by the Special Master unless it would be admissible over objections in a civil action. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern said proceedings.

I. In order to render an order finding the alleged violator guilty and denying the appeal, the Special Master must find that a preponderance of the evidence indicates that the named violator was responsible for the violation as alleged.

J. At the conclusion of the hearing, the Special Master shall issue an order containing findings of fact, based on evidence of record, and conclusions of law.

Section 6.2.7 Vehicles and trailers for sale.

It shall be unlawful for any person to park, store, keep, maintain at any time, or permit to be parked, stored, kept, or maintained on any unimproved property in any zoning district, or outside of a completely enclosed building on any improved property in a W, C, CC, P or I zoning district, any motor vehicle or trailer of any kind, type, or description, including any boat mounted on a trailer, which is being displayed for sale, hire, or rental except as provided in subsections I., J. and K. below. Throughout this subsection, the term "trailer" shall be deemed to mean and include both a boat mounted on a trailer and the trailer itself.

A. In the event a motor vehicle or trailer is displayed for sale, hire, or rental in violation of this subsection .8, City Code Enforcement Officer(s), law enforcement officer(s), or such other city employee(s) as may be designated by the City, are authorized to cause such vehicle or trailer to be immobilized or towed from the property to a garage or other place of safety, and thereafter disposed of in accordance with applicable state law or city ordinance. The city shall not be

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responsible for the towing charges resulting from the removal of the vehicle from the property. Instead, the owner(s) of the vehicle shall be responsible for all such charges. Immobilization and towing shall be accomplished in accordance with the following subsections B. through H.

- B. A motor vehicle or trailer parked in violation of this section may be immobilized with a "wheel lock," "boot," or other suitable device as long as a notice of violation is placed by the Code Enforcement Officer on the vehicle or trailer indicating all of the following:
1. That the vehicle or trailer is in violation of this section and that it must be removed from the property within ten calendar days from the date of the notice or it will be subject to removal by the city;
 2. That the notice of violation may be appealed as provided in the following subsection D.;
 3. That the wheel lock, boot, or other immobilization device will be removed from the vehicle or trailer upon the posting with the city of a \$200 bond, in the form of cash, certified check, or surety bond; and
 4. The name of the city official or department with which such bond must be posted and the street address thereof.
- C. The Code Enforcement Officer shall make every reasonable attempt to ascertain the owner of the motor vehicle or trailer and the owner of the real property on which it is unlawfully parked, and to provide such owner(s) with a copy of the written notice of violation placed on the vehicle or trailer, such copy to be delivered by mail or personal service at their current address, last known address, or the address appearing on the certificate of title for the vehicle.
- D. Within the ten-calendar day period specified in the aforesaid notice, the owner of the vehicle or trailer or the owner of the real property may appeal to a Special Master appointed under § 6.2.6.E. of this chapter. The appeal shall be filed at the office of the City Manager, must attach a copy of the notice of violation appealed, and must include the name of the person filing the appeal and an address at which such person may be served notice of the hearing on the appeal. The hearing on the appeal shall be conducted the same as a code enforcement hearing for a case initiated by a Code Enforcement Officer pursuant to §§ 2-85 through 2-92 of the Code of Ordinances of the City of Cape Coral, Florida. The Special Master shall determine the validity of the violation and may for good cause extend the time for compliance or removal. If such an appeal is instituted, no removal of the vehicle or trailer shall be required until after said appeal has been dismissed or finally determined by the Special Master with a finding of a violation of this subsection .8.
- E. If no appeal is made or if an appeal is made but dismissed and the vehicle or trailer remains in violation after the ten calendar day period, or if an appeal is resolved with a finding of a violation of this subsection and the vehicle or trailer is not removed within whatever time period is allowed by the Special Master, the City Code Enforcement Manager shall cause such vehicle to be towed from the property and thereafter stored and disposed of in accordance with applicable state law or city ordinance. The Special Master may also assess fines and costs, the same as for any code enforcement violation.

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The city shall not be responsible for the towing charges resulting from the removal of the vehicle from the property. Instead, the owner(s) of the vehicle shall be responsible for all such charges.

- F. The authorization in this subsection .8 for the towing of vehicles and trailers unlawfully displayed for sale, hire, or rental shall be construed as supplementary to any other means of enforcement available to the city and shall not be construed so as to negate the authority of the Code Enforcement Special Master to hear and adjudicate appropriate cases.
- G. The provisions of § 6.2.6.E. through J. above, regarding Special Masters and Special Master hearings, shall apply equally with regard to this § 6.2.7.
- H. Code Enforcement Officer shall be notified, and the wheel lock, boot or other immobilization device shall, as soon as practicable, be removed from the vehicle or trailer. If no appeal of the violation is timely filed, or if an appeal is filed and is dismissed, the bond shall be forfeited to the city to cover the cost of inspection, notice of violation, and immobilization of the vehicle or trailer. If an appeal is filed and ultimately results in a finding by the Special Master that no violation of this subsection .8 occurred, the bond shall be returned to the person who posted it. If an appeal is filed and ultimately results in a finding by the Special Master that a violation of this subsection .8 occurred, the bond shall be applied to any fines and costs assessed against the violator by the Special Master.
- I. If a motor vehicle being displayed for sale, hire, or rental is parked by the owner outside of a completely enclosed building in a designated parking space on any improved property in a W, C, CC, P or I zoning district, while the owner of the vehicle is attending or participating in activities or is being treated or served by or is shopping at a facility located on such property, the motor vehicle and its owner shall not be in violation of this subsection .8. However, the leaving of any such vehicle on the same property for a period of eight consecutive hours shall create a rebuttable presumption that the owner is not attending or participating in activities or is being treated or served by or is shopping at a facility located on such property and that the motor vehicle and its owner are in violation of this subsection .7.
- J. This subsection .7 shall not apply to any motor vehicle or trailer offered for sale on property developed and used for a licensed business which includes the sale of such vehicles or trailers or to any motor vehicle or trailer while it is being repaired on property developed and used for a licensed business which includes the repair of such vehicles or trailers.
- K. This subsection .7 shall not apply to motor vehicles or trailers offered for sale on any property pursuant to a City Council special event approval.

Section 6.2.8 Exemptions.

- A. The provisions of this section shall not apply to vehicles parked on the premises of churches, clinics, schools, child care facilities, assisted living facilities, public libraries, public buildings, public and club swimming pools, private clubs, golf courses, utilities, hotels and motels, and parks and recreational areas, while the persons transported thereby are attending or participating in activities or being treated or served thereat, nor to buses, trucks or trailers parked at any time in a space prepared or designated therefor on said premises, if such vehicles are used or operated by or for the operation

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of the places or institutions designated, except that such vehicles cannot be used for residential purposes.

B. The provisions of this section shall not apply to vehicles parked on unimproved or vacant lots within the boundaries of the South Cape zoning district, provided the following requirements are met:

1. The unimproved or vacant property must be zoned for commercial use and must be immediately adjacent to the business premises for which parking is being provided. For purposes of this section, the phrase **IMMEDIATELY ADJACENT** shall mean sharing all or part of a property line with the business premises or directly across a street or alley from the business premises, provided that the width of such street or alley is 50 feet or less and provided that all or part of the unimproved or vacant property lies within an extension of the property lines of the business premises across the street or alley.
2. If the vacant property which will be utilized for parking is not owned by the same person or entity as the developed commercial property it is intended to serve, the owner of the developed commercial property must have a bona fide lease for the adjacent vacant or unimproved property.
3. Parking on the vacant or unimproved property shall be limited to only patrons of the adjacent business and only during the hours that such business is in operation. The vacant or unimproved property shall be posted with a sign that states the foregoing two restrictions.

Section 6.2.9 Authority to signpost designated areas.

The City Manager shall have the authority to post signs designating areas of regulated or restricted parking as provided by F.S. §§ 316.006 and 316.008 (1973) or other applicable laws.



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- Section 7.1.3.** Compliance with Codes and Ordinances
- Section 7.1.4.** Substitution
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- Section 7.1.6.** Definitions

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CHAPTER 1. GENERAL PROVISIONS

Section 7.1.1. Purpose and Intent

It is the purpose of this Article to promote the public health, safety, and general welfare through reasonable, consistent, and non-discriminatory sign standards. The sign regulations in this Article are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the adverse secondary effects of signs. The sign regulations are especially intended to address the secondary effects that may adversely impact aesthetics and traffic and pedestrian safety. The sign regulations are designed to serve substantial governmental interests and, in some cases, compelling governmental interests, such as traffic safety and warning signs of threats to bodily injury or death. This Article is not intended to extend its regulatory regime to objects that are not traditionally considered signs for purpose of government regulation.

In order to preserve and promote the City as a desirable community in which to live, visit, work, play, and do business, a pleasing, visually attractive, and safe environment is of foremost importance. The regulation of signs within the City is a highly contributive means by which to achieve this desired end.

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Further it continues to be the purpose of this Article to promote optimum conditions for serving sign owners' needs and respecting their rights to identification while balancing the aesthetic and safety interests of the community. The regulation of signs within the City is necessary and in the public interest, and these regulations have been prepared with the intent of enhancing the visual environment of the City and promoting its continued well-being, and are intended more specifically to:

- A. Aesthetics. To maintain and enhance the beauty, unique character, aesthetic environment, and quality of the City, that will attract commerce, businesses, economic development, residents, and visitors; to preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all zoning districts of the City; to regulate the appearance and design of signs in a manner that promotes and enhances the beautification of the City and that complements the natural surroundings in recognition of the City's reliance on its natural surroundings and beautification efforts in retaining economic advantage for its community; and to assure that the benefits derived from the expenditure of public funds for the improvement and beautification of streets, sidewalks, public parks, public rights-of-way, and other public places and spaces, are protected by exercising reasonable controls over the physical characteristics and structural design of signs.
- B. Traffic and Pedestrian Safety. To maintain and improve traffic and pedestrian safety through properly located signs; to regulate signs in a manner so as to not interfere with, obstruct the vision of, or distract motorists, bicyclists, or pedestrians; to allow for traffic control devices consistent with national standards and whose purpose is to promote roadway safety and efficiency by providing for the orderly movement of road users on streets and roadways, and that notify users of regulations and provide warning and guidance necessary for the safe, uniform, and efficient operation of all elements of the traffic stream.
- C. Economic Development. To promote economic development and the value of nonresidential properties, through sensitivity to surrounding land uses and maintaining an attractive community appearance.
- D. Effective Communication. To encourage signs which are clear and legible; and to encourage the effective use of signs as a means of communication.
- E. Identification of Goods and Services. To aid the public and private sectors in identifying the location of goods and services.
- F. Compatibility with Surroundings. To allow signs that are compatible with their surroundings and aid orientation, while precluding the placement of signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs; to preclude signs from conflicting with the principal permitted use of the site and adjoining sites; and to minimize the possible adverse effect of signs on nearby public and private property.
- G. Reduction of Visual Clutter. To reduce visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of signs which compete for the attention of pedestrian and vehicular traffic.

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- H. Zoning District Considerations. To encourage and allow signs that are appropriate to the zoning district in which they are located.
- I. Scale, Integration, and Design. To establish sign size in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains; to foster the integration of signage with architectural and landscape designs; to provide flexibility and encourage variety in signage, and to relate signage to the basic principles of good design; and to promote the use of signs that positively contribute to the aesthetics of the community, are appropriate in scale to the surrounding buildings and landscape, and advance the City's goals of quality development.
- J. Maintenance and Safety. Except to the extent expressly preempted by state or federal law, to ensure that signs are constructed, installed, and maintained in a safe and satisfactory manner, and to protect the public from unsafe signs.
- K. Property Values. To protect property values by precluding, to the maximum extent possible, sign types that create a nuisance to the occupancy or use of other properties because of their physical characteristics such as their size (area), height, number, illumination, and movement; and to protect property values by ensuring that the number of signs are in harmony with buildings, neighborhoods, and conforming signs in the area.
- L. Enforcement. To enable the fair and consistent enforcement of these sign regulations; and to provide standards regarding the non-communicative aspects of signs, which are consistent with local, county, state, and federal law.

Section 7.1.2. Scope

This article shall control the regulation of signs and other outdoor displays. If any part of this article conflicts with any other codes adopted by the city, the most restrictive provision shall apply.

Section 7.1.3. Compliance with Codes and Ordinances

No sign shall be erected or maintained in the city, except in accordance with the provisions of this article. All signs erected, installed, or located in the City of Cape Coral shall conform to all requirements of the National Electrical Code, as revised, the Florida Building Code, this article, and other applicable law.

Section 7.1.4. Substitution (SAME)

It is not the purpose of this article to regulate or control the copy, content, or viewpoint of signs. Nor is it the intent of this article to afford greater protection to commercial speech than to non-commercial speech. Any sign, display, or device allowed under this article may contain, in lieu of any other copy, any otherwise lawful non-commercial message that complies with all other requirements of this article. The non-commercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to non-commercial or from one non-commercial message to another, as frequently as desired by the sign's owner, if the sign is not prohibited and the sign continues to comply with all requirements of this article.

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Section 7.1.5. Severability (SAME)

- A. Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article.
- B. Severability where less speech results. This subsection shall not be interpreted to limit the effect of Section 7.1.5.A above, or any other applicable severability provisions in the code or any adopting ordinance. The City Council specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the city, whether by subjecting currently exempt signs to permitting or by some other means.
- C. Severability of provisions pertaining to prohibited signs. This subsection shall not be interpreted to limit the effect of Section 7.1.5.A above, or any other applicable severability provisions in the code or any adopting ordinance. The City Council specifically intends that severability shall be applied to Section 7.2.1 of this article, "Prohibited signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.
- D. Severability of prohibition on off-premises signs and commercial signs. This subsection shall not be interpreted to limit the effect of Section 7.1.5.A above, or any other applicable severability provisions in the code or any adopting ordinance. If any, or all, of this article or any other provision of the code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the City Council specifically intends that that declaration shall not affect the prohibition of off-site signs in Section 7.2.1 of this article.

Section 7.1.6. Definitions

Article 13 of this code contains definitions as they relate to this article.

Chapter 2. Administration

Section 7.2.1. Prohibited Signs

The following signs are prohibited:

- A. Abandoned signs;
- B. Animated signs, except electronic message centers, electronic laser, video, or digital display signs in which the messages change at intervals of eight seconds or greater in duration, provided such signs comply with the requirements of Section 7.4.3;
- C. Back Lit Awning Signs;

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- 184 D. Unless allowed under Section 7.2.2 of this article, signs on public property, rights-of-way, or attached
185 to trees or utility poles, other than by or with the permission of the owner of the public property or
186 right-of-way;
187
- 188 E. Signs attached to fences on improved, non-residential property; however, this prohibition shall not
189 extend to signs attached to recreational fences around activity fields, playgrounds, or playing fields
190 (such as football fields, baseball diamonds, etc.) in public parks owned and operated by one or more
191 governmental entities and where the signs:
192
- 193 1. Are only visible from inside the park, or
194
- 195 2. If visible from outside the park, face the inside of the park;
196
- 197 F. Figure structured signs;
198
- 199 G. Obscene signs;
200
- 201 H. Off-site signs;
202
- 203 I. Parasite signs;
204
- 205 J. Projected image signs;
206
- 207 K. Portable signs;
208
- 209 L. Roof signs;
210
- 211 M. Special event signs, except with special event permit; and
212
- 213 N. Vehicle signs.
214

Section 7.2.2. Signs in the Public Right of Way (SAME)

- 217 A. Signs allowed in the public right-of-way. No signs shall be erected, installed, or located in the public
218 right-of-way or shall project over the public right-of-way, except permanent signs of the following
219 type(s):
220
- 221 1. Public signs erected by or on behalf of a governmental body to post legal notices, identify public
222 property, convey public information, announce public events, and direct or regulate pedestrian
223 or vehicular traffic.
224
- 225 2. Signs that are placed within or on structures that are public service related, including bus stop
226 signs, bench/shelter signs, and other informational signs. These structures shall be erected by or
227 on behalf of a public transit or communications company or the city. These structures and the
228 character, size, content, nature, and design of signs on such structures shall be approved by the
229 city through a contract or other agreement approved by the City Council prior to the erection of

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such structures or the installation of such signs. If such structures cannot be in the public right-of-way as the result of safety factors, right-of-way constraints, or other factors or if it is more practicable to locate such structures on a site other than public right-of-way, the structure may be placed on private property, provided that prior written consent is obtained from the property owner.

3. Informational signs of a public utility regarding its poles, lines, pipes, or facilities.

4. Development identification signs in conformity with 7.4.2

5. Directional signs in conformity with 7.4.2

6. Non-commercial signs in conformity with 7.4.2

- B. Removal and forfeiture of unauthorized sign in the public right-of-way. The city shall have the right to remove from the public right-of-way any sign which is erected, installed, or located in such public right-of-way and which does not conform to the requirements of this article. Such signs shall be deemed to have been forfeited to the city and the city shall have the right to dispose of such signs as it sees fit. In addition to other remedies, the city shall have the right to recover from the owner of such sign or the person responsible for placing the sign in the public right-of-way all costs associated with the removal or disposal of the sign.

Section 7.2.3. Activities Exempt from Permitting (OLD – SEPARATED OUT)

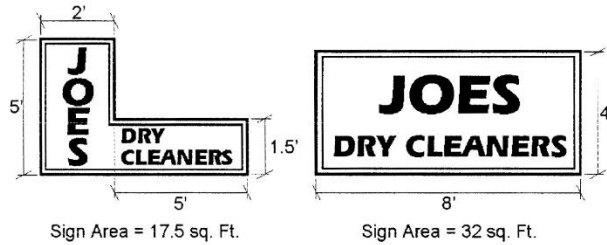
The following types of activities are exempt from the permitting requirements of this article:

- A. Changing the advertising copy, announcement, or message on a marquee or changeable copy sign board so designed to alter such copy; subject to any restrictions in this article, including frequency limitations;
- B. Cleaning, painting, or electrical or comparable general maintenance or repair of a sign that does not alter any regulated feature of such sign; and
- C. Changing the message or locating official public notices or traffic control signs.

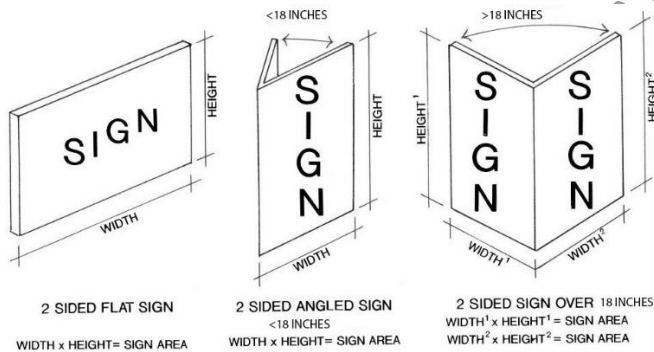
Section 7.2.4. Requirements Applicable to All Signs (SAME)

- A. Computation of sign area. The area of a sign shall be measured from the outside edges of the sign or the sign frame, whichever is greater, excluding the area of the supporting structures provided that the supporting structures are not used for advertising purposes and are of an area equal to or less than the permitted sign area. Supporting framework and bracing which are incidental to the display itself shall not be included in the computation of the area unless, by the nature of their design, they form a continuation of the sign.

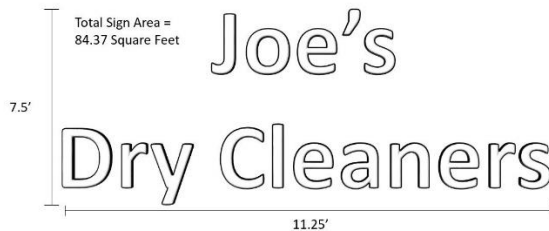
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1. The area of a multi-faced sign shall be computed on one face in the same manner as the sign area of an individual sign, provided that the faces of the sign are not separated at any point by more than 18 inches. If the faces of a multi-faced sign are separated at any point by more than 18 inches, then each face constitutes a separate sign.



2. Where individual characters are used without a supporting panel (channel letters), the overall dimensions from the beginning of the first character to the end of the last character in the longest line and from the top of the uppermost character to the bottom of the lowermost character shall be regarded as the extreme dimensions in calculating the overall sign area of the sign.



- B. Computation of height. The vertical height of a freestanding sign shall be computed from the established mean grade of the development site to the highest component of the sign or supporting framework, whichever is higher. The maximum vertical height of a building mounted sign shall not exceed the roof line of the structure.
- C. Location of signs on property.

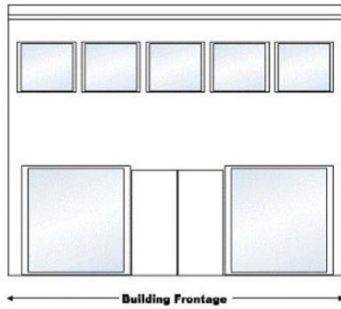
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1. Setbacks. The distance of a sign from a property line, right-of-way, or other point shall be computed by measuring a perpendicular line from the foremost part of the sign to the ground and then measuring from that point to the nearest point of the property line, right-of-way, etc.
 2. Distance between freestanding signs. A minimum distance of 25 feet shall be maintained between freestanding signs regardless of whether such signs are on one site or whether they are located on adjacent sites.
 3. Location. No sign may project beyond the property line(s) of the property on which the sign is located, except that sign(s) may be flush-mounted to the walls of buildings which are constructed with a zero setback from the property line. Except as otherwise provided herein, signs shall be located on the same site on which the advertised goods or services are available. No part of any banner, sign, flag, or flagpole shall be hung, attached, or erected in any manner as to project into the right-of-way.
 4. Freestanding signs are prohibited in the 6' perimeter utility easement.
- D. Illumination. Signs may be illuminated by any method not prohibited by this article provided that any light source shall be shielded in such a manner as to prevent direct rays of light from being cast into an occupied residence, hotel or motel room, a commercial business, at any pedestrian traveling upon a street or sidewalk, or any vehicle traveling upon a public street.

Section 7.2.5. Maximum Total Sign Area Per Site

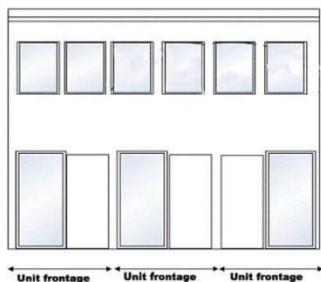
- A. Residential uses in residential zoning districts. Except for signs identified as permitted, no signs are allowed on sites containing residential uses in residential zoning districts. Any sign on a residential site in a residential zoning district shall comply with the provisions for such sign(s).
- B. Non-residential uses in all zoning districts. Except as otherwise provided in this chapter, the number of building signs located on property lawfully used for non-residential purposes shall not be limited so long as the cumulative total sign area (in square feet) of all such signs, except exempt signs, does not exceed the building sign allowance for the property. The allowable building sign area (in square feet) of all signs, except exempt signs, erected, installed, or located on a site lawfully containing a non-residential use in any zoning district shall be computed as follows:
 1. Building mounted signs.
 - a. If a building contains more than one floor or story, the dimension of the primary side of the building shall be determined by measuring (in linear feet) the overall width of the first floor or story of the building on the side that faces the front lot line and the sign allowance for each business establishment or other entity occupying the building shall be shared by such business establishments or other entities as determined by the property owner based on the frontage of the building.

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Structural Building Frontage Single Unit

- b. If a building contains more than one business establishment or other entity, but the exterior of the building has not been subdivided into units, the sign allowance for each business establishment or other entity occupying the building shall be shared by such business establishments or other entities as determined by the property owner based on the frontage of the building.
- c. If all or part of the exterior of a building has been subdivided into two or more fully enclosed units capable of containing one or more business establishments or other entities (such as a multiple unit shopping center), the front dimension of each such unit shall be considered the building frontage of the unit and the sign allowance for each business establishment or other entity occupying such unit shall be shared among the business establishments or other entities occupying such unit in the manner prescribed by the property owner. Any remaining part of the exterior of the building which has not been subdivided into fully enclosed units shall be treated the same as a building which has not been subdivided into units.



Structural Building Frontage Multiple Unit Building

- d. If a single business establishment or other entity occupies more than one consecutive fully enclosed unit, the building frontage of such business or other entity shall be the total linear dimension of building frontage of all such units combined.
- e. The allowable signage to be mounted on a building shall be based on the building frontage of a business or other entity as follows:

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Linear Feet of Structural Frontage	Square Feet/Linear Feet of Structural Frontage	Maximum
≤100 Linear Feet	2 Square Feet	100 Square Feet
>100 Linear Feet to ≤300 Linear Feet	1 Square Foot	200 Square Feet
>300 Linear Feet	.75 Square Feet	300 Square Feet
In the event a building is located on a lot that does not abut a public street, the frontage shall be measured along the publicly dedicated parking lot or platted alley that the lot fronts		

f. In addition to the sign area otherwise allowed in this section, business establishments or other entities which meet the following criteria shall be allowed additional sign area for building-mounted signs as follows:

- i. Businesses or other entities fronting on more than one platted street shall be permitted an additional sign area allowance of one-half square foot per linear foot of building frontage on such additional street up to a maximum of 50 square feet per street. Such additional sign area allowance for a second street shall be added to the building-mounted sign area allowance resulting from the building frontage calculation. If a business or other entity fronts on three or four streets, then the additional sign allowance resulting from frontage on the third and/or fourth streets shall be used on the building face actually abutting the third and/or fourth streets. For purposes of this article, when a business or other entity fronts three or four streets, the side(s) of the business establishment or other entity shall be deemed to be fronting on the second and, if applicable, the fourth streets and the rear of the business establishment or other entity shall be deemed to front on the third street.
- ii. Businesses or other entities whose side or rear building frontages abut a public alley, public parking area, or mall parking area shall be permitted an additional allowance of one-half square foot per linear foot of such side or rear building frontage up to a maximum of 50 square feet. Such additional allowance shall only be used on the side or rear of the building which actually abuts the public alley, public parking area, or mall parking area.

C. Freestanding signs.

1. Individual business or entity sites.

- a. Except as otherwise provided in Section 7.4.3 of this article, "Gasoline pricing signs," no site shall have more than two freestanding signs.
- b. The allowable freestanding sign area (in square feet), the maximum number of freestanding signs, and the maximum height of freestanding signs erected, located, or placed on lawfully

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existing non-residential uses in all zoning districts shall be based on the street frontage of the site.

- c. When only one freestanding sign is permitted, the sign shall provide architectural design features, including colors or materials or both consistent with those used in the design of the building to which the sign is accessory. These features shall apply to the sign frame and supporting materials, not to the sign panel or panels that provide the actual advertising area.
- d. When two freestanding signs are permitted, signs must be similar in design, color and materials.
- e. For all individual non-residential use sites, the following maximum freestanding sign(s) number, maximum freestanding sign area, and height limitations shall apply:

Freestanding Signs	Individual businesses or entities	Individual businesses or entities in Preserve Zoning Districts	Individual businesses or entities on Pine Island Road (SR 78), Veterans Parkway, US 41, and Burnt Store Road
Sign are based on street frontage (linear feet)			
100 feet or less	30 square feet	24 square feet	36 square feet
101-200 feet	40 square feet	24 square feet	48 square feet
201-300 feet	52 square feet	24 square feet	60 square feet
301+ feet	65 square feet	24 square feet	75 square feet
Height (feet):	20	20	25
Maximum Number:			
Site with less than 500 linear feet abutting a single street	1	1	1
Site with 500 or more linear feet abutting a single street	2	1	2
1. When more than one freestanding sign is permitted on the same site, signs must be spaced a minimum of 300 feet apart.			

2. Multiple business or entity sites.

- a. When only one freestanding sign is permitted, the sign shall provide architectural design features, including colors and/or materials consistent with those used in the design of the building the sign is accessory to. These features shall apply to the sign frame and supporting materials, not to the sign panel or panels that provide the actual advertising area.

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- b. On sites that are approved through a Planned Unit Development which contain commercial, professional, industrial, mixed use, or agricultural uses together with residential properties as part of the same Planned Unit Development, and the residential uses front the road on which the development faces with non-residential uses located inside the development not visible from the road, the Director, may allow signs that are used to direct motorists to facilitate finding the non-residential component of the development. The Director, shall take into consideration factors that include:
- (i) The location of the non-residential uses within the development;
 - (ii) The location of permitted signage for the non-residential uses within the development; and
 - (iii) Roadway conditions.
- c. Although the distribution of freestanding signage among the tenants or occupants of a multiple business or entity site shall be the responsibility of the real property site owner, the following limitations concerning maximum number, sign area, and height of freestanding signs shall apply to all multiple business or entity sites containing non-residential uses:

Freestanding Signs	Multiple business or entity sites	Multiple business or entity sites in Preservation Zoning Districts	Multiple business or entity sites on Pine Island Road (SR 78), Veterans Parkway, US 41, and Burnt Store Road
Sign are based on street frontage (linear feet)			
100 feet or less	50 square feet	24 square feet	60 square feet
101-200 feet	64 square feet	24 square feet	75 square feet
201-300 feet	80 square feet	24 square feet	100 square feet
301+ feet	100 square feet	24 square feet	150 square feet
Height (feet):	20	20	25
Maximum Number:			
Site with less than 500 linear feet abutting a single street	1	1	1
Site with 500 or more linear feet abutting a single street	2	1	2
1. When more than one freestanding sign is permitted on the same site, signs must be spaced a minimum of 300 feet apart. 2. In the event the depth of the property is at least three times the length of the street frontage (linear feet), an additional 25% of sign area is allowed.			

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Section 7.2.6. Sign Permits

- A. Required. Except as otherwise required, no sign shall be located, placed, erected, constructed, altered, extended, or displayed without first obtaining a sign permit and meeting all requirements of the Florida Building Code. In the event a sign is located, installed, or maintained upon real property without any required permits, after the expiration or lapse of a sign permit, after the closure of a business, or otherwise in violation of the requirements of this article, the owner of the real property shall be deemed to be responsible for the prompt removal of such sign and shall be responsible for and subject to all fines or penalties which shall result from such violation.
- B. Procedure. The procedure for obtaining a sign permit shall in conformance with application requirements in Article 3.1.
1. Upon request by the Department, the applicant shall provide such supplementary information as may be specifically requested by the Department to determine compliance with this article.
 2. The Department shall review the application, plans, and specifications to determine whether the proposed sign conforms to all applicable requirements of this article and, based on such review, shall either approve or deny the application for the sign permit.
 - a. Sign permit applications which include a request for a deviation to this article, pursuant to Section 7.2.8 of this article, shall either be approved or denied. However, if the applicant has applied for a building permit or certificate of use for the non-residential use at the subject site or for an electrical permit for the illumination of a sign, no sign permit shall be issued by the city until after the requested building or electrical permit or certificate of use has been issued by the city.
 - b. In no event shall the issuance of a sign permit following the issuance of a building permit, but prior to the completion of the construction project, result in an increase in the sign(s) allowed under this article based on the structure as it is eventually completed. In other words, if the city issues sign permit(s) following the issuance of a building permit, but before the construction of the building or structure is completed, and one or more sign(s) are installed or erected pursuant to such sign permit, but then the building plans are modified in such a way as to reduce the number, size, etc. of the sign(s) which would be allowed under this article, then the property owner shall be required to bring such sign(s) into compliance with the provisions of this article and to obtain a valid sign permit for such sign(s).
- C. Submission requirements. No request for a sign permit shall be considered complete until all required documents and fees are received.
- D. Plans and specifications. Plans and specifications for any proposed sign shall be drawn to scale and shall include the following:
1. Dimensions and elevations, including the message of the sign;
 2. Parcel frontage on all street rights-of-way for freestanding signs only;

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- 484
- 485 3. Linear dimension(s) of the subject building or unit located adjacent to all public rights-of-way such
- 486 as streets, alleys, and public parking lots for freestanding signs only;
- 487
- 488 4. Maximum height of the sign, as measured in accordance with this article;
- 489
- 490 5. Location of the sign in relation to property lines, public rights-of-way, easements, buildings, and
- 491 other signs on the property;
- 492
- 493 6. Dimensions and anchoring of the sign's supporting members;
- 494
- 495 7. For illuminated signs, the type, location, and direction of illumination sources;
- 496
- 497 8. Construction and electrical specifications, enabling determination that the sign meets all
- 498 applicable structural and electrical requirements of the building code; and
- 499
- 500 9. Number, type, location, and surface area of all existing signs on the same property and/or building
- 501 on which the sign is to be located, except that in the event all or part of the exterior of a building
- 502 has been subdivided into two or more fully enclosed units capable of containing one or more
- 503 business or entity establishments, such as a multiple unit shopping center, the number, type,
- 504 location, and surface area of all building mounted signs on the unit for which the proposed sign is
- 505 sought and all freestanding signs on the property shall be included.
- 506
- 507 E. Deviations. If a deviation to any requirements of this article is necessary, a request for a deviation
- 508 shall be included with the initial application for a sign permit pursuant to Section 7.2.8 of this article.
- 509
- 510 F. Lapse. A sign permit shall lapse automatically if the business tax receipt for the premises lapses, is
- 511 revoked, or is not renewed. A sign permit shall also lapse if the business activity on the premises is
- 512 discontinued for a period of 30 days and is not renewed within 30 days from the date a written notice
- 513 is sent from the city to the last permittee that the sign permit will lapse if such activity is not resumed.
- 514 A sign permit shall also lapse if the sign for which it is issued either is not erected and/or placed within
- 515 180 days following the issuance of the sign permit or is removed for a period of 60 days. Once a sign
- 516 permit has lapsed, it shall be considered void and a new application and review process shall be
- 517 necessary to have such a permit reissued.
- 518
- 519 G. Identification. All signs requiring a permit shall have the permit number permanently imprinted or
- 520 otherwise placed in the lower right-hand corner of the sign.
- 521
- 522 H. Removal. The permittee and/or the site owner shall be responsible for the removal of a sign once the
- 523 sign permit has expired or lapsed, without an application for a new permit, or the purpose in
- 524 displaying the sign has ended.
- 525

Section 7.2.7. Non-Conforming Signs.

- 526
- 527
- 528 A. Non-conforming sign compliance. All signs lawfully erected prior to October 1, 2013 that do not
- 529 comply with the requirements of this article shall be considered non-conforming signs. All non-

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conforming signs shall be removed or brought into conformity with this article no later than January 1, 2024. The owners of the real property on which such non-conforming signs exist shall be responsible for ensuring that such signs are removed or brought into conformity. Non-conforming signs shall not be altered, replaced, or repaired if such alteration, replacement, or repair would constitute more than 50% of the replacement value of the non-conforming sign. All other signs that were not lawfully erected prior to October 1, 2013 that do not comply with the requirements of this article shall be removed no later than December 31, 2013.

- B. Effect of annexation on sign compliance. Any sign that was lawfully erected on property that was located outside of the jurisdiction of the city at the time the sign was erected but which was annexed into the city prior to October 1, 2013 and that does not comply with the requirements of this article shall be considered a non-conforming sign and shall be removed or brought into conformity with this article no later than January 1, 2024. Any sign that was or is lawfully erected on property that was located outside of the jurisdiction of the city at the time the sign is erected but which was annexed into the city on or after October 1, 2013 and that does not comply with the requirements of this article, shall be considered a non-conforming sign and shall be removed or brought into conformity with this article no later than ten years from the effective date of the annexation.
- C. Restrictions on permitting certain non-conforming signs. Sign permits will not be issued for the alteration, replacement, or repair of a non-conforming sign if such alteration, replacement, or repair constitutes more than 50% of the replacement value of the existing non-conforming sign. Changing the information on the face of an existing non-conforming sign shall not be deemed an action increasing the degree or extent of the non-conformity to constitute a violation of this article. Any other alteration to an existing non-conforming sign will be required to conform to this article.
- D. Exceptions. A sign which is erected, located, or installed prior to the adoption of this ordinance and which was approved by a dimensional variance from the Board of Zoning Adjustment and Appeals or the City Council shall retain such variance approval. A sign which is erected, located, or installed prior to the adoption of this ordinance and which was approved by a deviation from the Director shall retain such deviation approval. However, any sign which has been approved by such a dimensional variance or deviation and is then changed to conform to this article shall forfeit the sign variance or deviation.

Section 7.2.8. Sign Deviations.

- A. Deviations. A deviation may be granted from the strict application of the regulations in this chapter which apply to:
1. Allow a 25% increase in allowable sign area;
 2. Allow a 25% increase in allowable sign height;
 3. Allow for decrease in minimum distance between freestanding signs; or
 4. Allow an additional freestanding sign.

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- 575 B. Requests for deviations shall be initiated by the applicant in the application for sign permit approval
576 and shall be accompanied by documentation including, but not limited to, sample detail drawings,
577 schematic architectural drawings, site plans, elevations, and perspectives which shall graphically
578 demonstrate the proposed deviation(s) and illustrate how each deviation would operate to the
579 benefit, or at least not to the detriment, of the public interest. Deviations from the provisions of this
580 article may be approved by the Director provided that such deviation will not be contrary to the public
581 interest and in harmony with the general intent and purpose of this article and where one or both of
582 the following criteria are satisfied:
583
- 584 1. Conditions exist that are not the result of the applicant and which are such that a literal
585 enforcement of the regulations involved would result in unnecessary or undue hardship; or
586
 - 587 2. There is something unique about the building or site configuration that would cause the signage
588 permitted by this article to be ineffective in identifying a use or structure that would otherwise
589 be entitled to a sign.
590
- 591 C. Subject to the standards and criteria stated above, the Director shall approve only the minimum
592 deviation from the provisions of this article necessary to avoid the undue hardship or to cause the
593 signage for the site to be effective in identifying the use or structure located on the site. However, no
594 deviation shall be approved that would have the effect of allowing a type or category of sign that
595 would otherwise be prohibited by this article.
596
- 597 D. Any person aggrieved by the decision of the Director concerning a deviation from the provisions of
598 this article may appeal such decision to the Hearing Examiner in accordance with Article 3.1.14.B
599
- 600 E. The Hearing Examiner may reverse or affirm, wholly or partly, or may modify the decision appealed
601 from and shall make any order, requirement, decision, or determination that in its opinion ought to
602 be made in the case before it within 60 days of the filing of a notice of appeal. To this end, the Hearing
603 Examiner shall have all the powers of the authority from whom the appeal is taken. The Hearing
604 Examiner's powers on appeal also shall be limited to the powers of the authority from whom the
605 appeal is taken so that the Hearing Examiner shall have the power to approve only the minimum
606 deviation from the provisions of this article necessary to avoid the undue hardship or to cause the
607 signage for the site to be effective in identifying the use or structure located on the site. Neither the
608 variance procedures nor variances themselves shall be available for increasing the number of signs or
609 the sign area to be allowed for a site.
610
- 611 F. Appeals from the decision of the Hearing Examiner shall be in accordance with the procedures
612 identified in Article 3.1.14.C
613

Section 7.2.9. Maintenance of Signs.

A. Maintenance Required.

617
618 It is unlawful for any owner of record, lessor, lessee, manager, or other person having lawful
619 possession or control over a building, structure, or parcel of land to fail to maintain any signs on the
620 building, structure, or parcel in compliance with this chapter. Failure to maintain a sign constitutes a

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violation of this chapter and shall be subject to enforcement under the enforcement provisions of Chapter 1.6.

All signs, if in existence prior to adoption of this chapter, shall be maintained and kept in good repair and in a safe condition. Maintenance of a sign shall include, but is not limited to, periodic cleaning, replacement of flickering, burned out or broken light bulbs or fixtures, repair or replacement of any faded, peeled, cracked, or otherwise damaged or broken parts of a sign, and any other activity necessary to restore the sign so that it continues to comply with the requirements and contents of the sign permit issued for its installation, if required, and the provisions of this chapter.

B. Removal.

1. Every person maintaining a sign must, upon vacating the premises where a sign is maintained, remove or cause to be removed said sign within 180 days from the date of vacating the premises. When the Director determines that said sign has not been removed within said period, the Director shall remedy and enforce said violation in accordance with the enforcement provisions of this chapter.
2. Any vacant or unused sign support structures, angle irons, sign poles, or other remnants of old signs which are currently not in use, or are not proposed for immediate reuse by a sign permit application for a permitted sign, shall be removed.
3. The Director shall have the authority to require the repair, maintenance, or removal of any sign or sign structure which has become dilapidated or represents a hazard to the safety, health, or welfare of the public, at the cost of the sign and/or property owner.
4. Any sign posted in violation of this chapter on public property or on public rights-of-way shall be subject to summary removal by the City.
5. Any person responsible for any sign posting made in violation of this chapter shall be liable to the City for the costs incurred by the City in removal thereof and, in event of failure to pay, for billing and collection charges, including interest and reasonable attorneys' fees.

Chapter 7.3 Temporary Signs.

- A. Temporary signs, identified in this chapter as not requiring a sign permit, unless indicated below, must otherwise meet all the applicable requirements of this section and this article. Any temporary sign not meeting these requirements, in any way, including quantity, shall be treated as a non-exempt sign subject to permitting. The area of temporary signs displayed on a site shall not be included in the calculation of the total signage on such site.

B. A-Frame Signs	
Applicable Zoning District/Use	Non-Residential Zoning Districts and lawfully existing Non-Residential Uses in Residential Zoning Districts
Sign permit required	No

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Number of signs	1 per business, as identified by business tax receipt
Maximum Area	An A-frame sign shall not have a copy area wider than 24 inches by 36 inches
Maximum Height	3 feet 6 inches
Location	No A-frame sign shall block accessibility or be placed in any public right-of-way, exit, loading zone, bicycle rack, wheelchair ramp, sidewalk ramp, in designated parking spaces, in landscape areas, traffic triangles, or sidewalks.
Duration	None
Materials	An A-frame shall be constructed of materials that are durable and weather resistant, including wood, steel, fiberglass, plastic, or aluminum. Construction of the sign shall be of professional quality. Signs may consist of a framed chalkboard, whiteboard, tack board, or material that allows changeable copy. An A-frame sign shall be constructed to be able to withstand wind and other unpredictable weather elements, including thunderstorm activity. The sign face and the sign frame shall not contain glitter, florescent materials, streamers, balloons, or reflective materials.
Other	1. No A-frame sign shall be permanently anchored or secured to any surface. 2. Signs shall be brought indoors at the close of each business day.

C. Banners

Applicable Zoning District/Use	Non-Residential Zoning Districts and lawfully existing Non-Residential Uses in Residential Zoning Districts
Sign permit required	Yes
Number of signs	1
Location	Except as provided for banners permitted in conjunction with temporary satellite sales events or special events that are located on unimproved property or with events that are in lawfully permitted structures other than buildings (such as tents), no banner shall be attached to, placed on, displayed from, or mounted on any object other than a building, including but not limited to, trees or other vegetation, vehicles, trailers, utility poles, freestanding signs, or stakes. Each end of a displayed banner shall be secured to the building at which the banner is displayed.
Duration	10 consecutive days
Other	1. All banners displayed on a site shall be securely installed in a manner which will not impede the visibility of the motoring or pedestrian traffic. 2. At least 28 days must elapse from the expiration of one permit prior to the issuance of another permit for the display of a banner at a site.

D. Sign(s) associated with on-site construction projects

Applicable Zoning District/Use	Single-Family Zoning Districts	All other zoning districts; site less than one acre	All other zoning districts; site one acre or more
Active building permit required	Yes, except as provided in B. of "Duration" herein		

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Sign Permit Required	No		
Number of Signs	3 per site	3 per site	6 per acre
Maximum Area	16 square feet for sites less than one acre; 32 square feet for sites one acre or more	16 square feet	32 square feet
Maximum Height	8 feet		
Location	Shall not be in the right-of-way		
Duration	<ol style="list-style-type: none"> Each sign associated with on-site construction projects that require a building permit shall be removed upon: Expiration of the building permit for the on-site construction; or No later than 10 days after issuance of the certificate of occupancy for the on-site building; whichever date is earlier. Each sign associated with incidental projects or work that does not require a building permit shall be removed upon the completion of the work performed or within 30 days, whichever occurs first. 		

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E. Feather Banners	
Applicable Zoning District/Use	Permitted only conjunction with an approved and active Model Home Use
Sign permit required	No
Number of signs	A model home on a single site with one model home may display 4 feather banners and 1 banner on the model home site. Corner-lot model home sites shall be allowed a total of 4 feather banners with no more than 2 per side. For model home sites with two or more model homes approved through a single development application, one model will be allowed to have a freestanding sign, but will not be permitted to have more than 1 feather banner or banner for that individual development site. The additional model homes regulated by the special exception shall be allowed to have 4 feather banners on each model home site.
Maximum Width	3 feet
Maximum Height	15 feet from ground level including support portion of the banner.
Materials	The sign face of the feather banner shall be nylon, polyester, vinyl, or canvas. Neither the sign face nor the sign frame shall contain glitter, florescent materials, metal, or reflective materials.
Duration	Life of the active Special Exception or until converted to new use. Feather banner or banner signs shall only be displayed on the approved special exception home property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Sunday. When the model home is not open, all feather banners and banners shall be removed and stored inside the model home.
Other	All banners and feather banners shall be maintained in good condition and shall not become faded, torn, or in other similar forms of poor condition.

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F. Inflatable Objects	
Applicable Zoning District/Use	All districts

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Size	2 feet or less in width, diameter, and height	More than 2 feet in width, diameter, or height
Sign Permit Required	No	Yes
Number of Signs	4	2
Maximum Height when measured from ground	30 Feet	30 Feet
Location	No less than 10 feet from right-of-way	
Duration	Not limited	Maximum 10-day duration; minimum 28 days required between permits
Other	<ol style="list-style-type: none"> 1. Inflatable objects that are 2 feet or less in width, diameter, and height and that contain no commercial message may be located or displayed on a site without obtaining a permit. 2. Inflatable objects that are greater than 2 feet in width, diameter, or height or that contain a commercial message may be located or displayed on a site provided that a permit is obtained. 3. Inflatable objects shall be erected using approved tie-down methods. 4. No inflatable object shall be displayed in a parking space necessary for the site to meet its minimum parking requirements. 5. Except for multiple business or entity sites, the display of inflatable object(s) on a site shall not exceed a period of 10 consecutive days. 6. On multiple business or entity sites, each use located on the site shall be treated as if it were a single business or entity site. 7. The area of the inflatable object(s) displayed on a site shall not be included in the calculation of the total signage on such site. 8. Inflatable objects shall not be placed on the roof of a structure. 	

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G. Signs located on properties for sale/lease			
Applicable Zoning District/Use	All Districts		
Linear Frontage	Less than 200 linear feet of street frontage	200 to 600 linear feet of street frontage	Greater than 600 linear feet of street frontage
Sign Permit Required	No		
Number of Signs	1 per parcel or per individually owned unit, plus 1 per lot or individually owned unit for golf course or waterway frontage. A maximum of 4 sign blades may be attached to the sign and support structure.	1 per parcel or per individually owned unit, for each public street abutting property, plus 1 per lot or individually owned unit for golf course or waterway frontage. A maximum of 4 sign blades may be attached to the sign and support structure.	
Maximum Area	4 square feet	16 square feet for whole property or if individually owned,	32 sq. ft. for whole property or if individually owned,

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		and in lieu of other signage, then one 4 square foot sign per unit	and in lieu of other signage, then one 4 square foot sign per unit
Maximum Height	6 feet	6 feet	6 feet
Location	Shall not be in the right-of-way		
Duration	Removed no more than 10 days after close of sale, lease, or rental		

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H. Open House Signs			
Applicable Zoning District/Use	All residential zoning districts		
Type of Sign	On-Site Signs	On-Site Flag Standards	Temporary Directional Signs
Certificate of Occupancy	Yes		
Sign Permit Required	No		
Number of Signs	1	2	2
Maximum Area	4 square feet	4 square feet	4 square feet
Maximum Height	2 feet	4 feet	2 feet
Location	Shall not be in right-of-way		
Duration	Hours of Open House		
Other	Open house signs that meet the definition of feather banner are prohibited.		

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I. Election Signs		
Applicable Zoning District/Use	Residential uses in residential districts and model home sites in any district	Non-residential districts and legal, non-residential uses in residential districts
Sign Permit Required	No	
Number of Signs	1 per 10 linear feet of street frontage	1 per 20 linear feet of street frontage
Maximum Area	4 square feet	16 square feet
Maximum Height	5 feet	10 feet
Location	Shall not be in right-of-way	
Duration	30 days prior to primary or 90 days prior to general election until 10 days after election addressing issue	
Additional Requirements	None	Prior to placement, the owner of the election signs shall provide a list of locations of the signs, and written permission from each property owner or his or her authorized agent for placement of the signs
Other	If an election sign does not conform to the conditions and regulations applicable to residential signs or non-commercial signs for the site at which	

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	the sign is located or if the one "residential sign" or "non-commercial sign" allowed as exempt (reference) is already located on the site at which the aforesaid election sign is located, then any such election sign displayed on a site outside of the aforesaid time period or the excess election signs shall no longer be deemed to be an "exempt" sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.
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J. Temporary Directional Signs	
Applicable Zoning District/Use	All districts
Sign Permit Required	No
Number of signs	2
Maximum Area	4 square feet
Maximum Height	4 feet
Location	Shall not be in right-of-way
Duration	48 hours prior to event until 24 hours after event
Other	Temporary directional signs shall only be located on private property (upon the permission of the private property owner).

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K. Signs on properties containing temporary office structures		
Applicable Zoning District/Use	Residential Zoning Districts	All Non-Residential Districts
Sign Permit Required	Yes	Yes
Number of signs per site	2	2
Maximum Area	18 square feet if building within 100 feet of property line; 32 square feet if building 100 feet or more from property line	See allowed building mounted signage as provided in § 7.15.2.A of this article
Location	Attached to temporary office structure	
Duration	From legal occupancy of structure to not more than 10 days after vacancy	

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Chapter 7.4 Permanent Signs

Section 7.4.1. Permanent Signs - Residential

A. Sign Type		Regulations	Other Requirements
Residential Signs			
Single Family	Maximum Number	1	
	Area (Max Sq. Ft.)	4	
	Height	5	
	Permit Required	No	
Multi-Family 2-6 Units in RMM and RML	Maximum Number	1/Street Frontage not to exceed 2	
	Area (Max Sq. Ft.)	16/sign	
	Height	10	
	Permit Required	No	
Multi-Family Greater Than 7 Units in RMM and RML	Maximum Number	1/Street Frontage not to exceed 2	
	Area (Max Sq. Ft.)	24/sign	
	Height	10	
	Permit Required	No	
Directional Signs	Maximum Number	1	A permanent directional sign may be located or installed on private property by the property owner or within the public right-of-way by a private business on behalf of the City of Cape Coral if necessary to direct the public to a hidden or difficult to access location.
	Height/Width	54"/56"	
	Height	24" to the bottom of the sign from ground.	
	Permit Required	No	
Flags	Maximum Number	N/A	Flags that bear no commercial message. Flags bearing commercial messages shall require a permit and shall be calculated in the sign area located on the site. Flags bearing an
	Area (Max Sq. Ft.)	N/A	
	Height	N/A	
	Permit Required	No	

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			incidental sign message shall be treated in the same manner as incidental signs.
Incidental Signs			
Single Family	Maximum Number		
	Area (Max Sq. Ft.)		
	Height		
	Permit Required		
Multi-Family 2-6 Units in RMM/RML	Maximum Number	3	In the event a sign which would otherwise be deemed to be an incidental sign is displayed on a site, but does not conform to the conditions and regulations applicable to incidental signs for the site at which the sign is located, such sign shall no longer be deemed to be an exempt sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.
	Area (Max Sq. Ft.)	6	
	Height	N/A	
	Permit Required	No	
Multi-Family Greater Than 7 Units in RMM/RML	Maximum Number	3	In the event a sign which would otherwise be deemed to be an incidental sign is displayed on a site, but does not conform to the conditions and regulations applicable to incidental signs for the site at which the sign is located, such sign shall no longer be deemed to be an exempt sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.
	Area (Max Sq. Ft.)	6	
	Height	N/A	
	Permit Required	No	
Interior Signs	Maximum Number	N/A	
	Area	N/A	
	Height	N/A	
	Permit Required	No	
Handheld Signs	Maximum Number	N/A	

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	Area	N/A	Hand held signs or signs worn as part of a costume or item of clothing that do not contain a commercial message. For the purposes of this article, all signs on non-residential property shall be presumed commercial; however, the presumption shall be considered rebuttable and may be overcome if a reasonable person could logically conclude that the presumption is invalid. Nothing in this provision shall be construed to exempt persons who display such signs from other legal requirements, including, but not limited to, those relating to traffic, privacy, and trespass.
	Height	N/A	
	Permit Required	No	
Non-Commercial Signs in Traditional Public Forum/Rights of Way	Maximum Number	1	The sign must be hand-held or worn as an item of clothing; The sign must not be affixed to the ground or otherwise rendered freestanding; and The sign must not be displayed on a median of a divided roadway and must not unreasonably obstruct or interfere with the normal flow of vehicle and pedestrian traffic.
	Area	N/A	
	Height	N/A	
	Permit Required	No	

Section 7.4.2. Permanent Signs - Non-Residential

Sign Requirements Non-Residential Zoning Districts and Lawfully Existing Non-Residential Uses in Residential Zoning Districts

Sign Type	Regulations		Other Requirements
Awning Signs	Maximum Number	N/A	
	Area (Max Sq. Ft.)	8	

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	Height	N/A	
	Permit Required	No	
Building Signs	Maximum Number	Article 7.2.5	
	Area	Article 7.2.5	
	Height	Article 7.2.5	
	Permit Required	Yes	
Development Identification Signs	Maximum Number	1 (See other requirements)	<p>Boulevard entrances. At residential subdivision or residential development entrances which contain a median strip separating the entrance and exit lanes, either one freestanding sign may be in the median strip of the entrance or two single-faced signs equal in size may be located on each side of the entrance.</p> <p>Non-boulevard entrances. At subdivision or residential development entrances which do not contain a median strip separating the entrance and exit lanes, either one double-faced sign facing perpendicular to the street or two single-faced signs equal in size and located on each side of the entrance may be erected or located.</p> <p>Location. Except when allowed in the entrance median strip, development signs shall be located on private or commonly owned property and shall be set back a minimum of 15 feet from the edge of the entrance way pavement. A development sign may incorporate or be incorporated into landscaping, or into accessory entrance structural features including, but not limited to, a fountain or wall.</p>
	Area (Max Sq. Ft.)	32 Sq. Ft.	
	Height	10 Ft.	
	Permit Required	Yes	

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			Development signs may be illuminated only by means of exterior lights which are shielded so that light does not interfere with vehicular or pedestrian traffic.
Directional Signs	Maximum Number	1	A permanent directional sign may be located or installed on private property by the property owner or within the public right-of-way by a private business on behalf of the City of Cape Coral if necessary to direct the public to a hidden or difficult to access location.
	Height/Width	54"/56"	
	Height	24" to the bottom of the sign from ground.	
	Permit Required	No	
Electronic Message Centers	Maximum Number	Article 7.2.5	See Section 7.4.3.2 Miscellaneous Signs
	Area	Article 7.2.5	
	Height	Article 7.2.5	
	Permit Required	Yes	
Fascia Signs in South Cape (SC) Zoning District	Maximum Number	N/A	In the South Cape zoning district only, projecting signs may occur forward of the build-to zone or the minimum setback, as applicable, but shall not extend forward of the property line and may encroach into the easement if approved by the Director of the Department of Community Development. The City may require the property owner to enter into a formal easement agreement in a form acceptable to the City Attorney.
	Area	N/A	
	Height	N/A	
	Permit Required	Yes	
Flags	Maximum Number		Flags that bear no commercial message. Flags bearing commercial messages shall require a permit and shall be calculated in the sign area located on the site. Flags bearing an incidental sign message shall be treated in the same manner as incidental signs.
	Area		
	Height		
	Permit Required		
Freestanding Signs	Maximum Number	Article 7.2.5	Not incidental or residential.
	Area	Article 7.2.5	

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	Height	Article 7.2.5	
	Permit Required	Yes	
Gasoline Pricing Signs	Permit Required	Yes	See Section 7.4.3.A Miscellaneous Signs
Incidental Signs	Maximum Number	N/A	In the event a sign which would otherwise be deemed to be an incidental sign is displayed on a site, but does not conform to the conditions and regulations applicable to incidental signs for the site at which the sign is located, such sign shall no longer be deemed to be an exempt sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.
	Area (Max Sq. Ft.)	6	
	Height	6	
	Permit Required	No	
Integral Signs	Maximum Number	N/A	
	Area	N/A	
	Height	N/A	
	Permit Required	Yes	
Interior Signs	Maximum Number	N/A	
	Area	N/A	
	Height	N/A	
	Permit Required	No	
Marquee Signs in South Cape (SC) only	Maximum Number	N/A	Projecting signs may occur forward of the build-to zone or the minimum setback, as applicable, but shall not extend forward of the property line and may encroach into the easement if approved by the Director of the Department of Community Development. The City may require the property owner to enter into a formal easement agreement in a form acceptable to the City Attorney.
	Area	N/A	
	Height	N/A	
	Permit Required	Yes	
Memorial Signs	Maximum Number	N/A	
	Area	N/A	

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	Height	N/A	
	Permit Required	No	
Menu Board(s)/Pre-Sale Board(s)	Maximum Number	Menu Board 1/Drive-Through Pre-Sale Board 1/Drive Through	
	Area	32 Sq. Ft./12 Sq. ft.	
	Height	N/A	
	Permit Required	Yes	
Model Home Signs	Maximum Number	1	Both sides of sign can be used for advertising. Must be on a site with an approved special exception or conditional use for a model home.
	Area	32 Sq. Ft.	
	Height	10 Ft.	
	Permit Required	Yes	
Non-Commercial Signs	Maximum Number	1	May be freestanding or building sign.
	Area	4	
	Height	5	
	Permit Required	No	
Handheld Signs	Maximum Number	N/A	Hand held signs or signs worn as part of a costume or item of clothing that do not contain a commercial message. For the purposes of this article, all signs on non-residential property shall be presumed commercial; however, the presumption shall be considered rebuttable and may be overcome if a reasonable person could logically conclude that the presumption is invalid. Nothing in this provision shall be construed to exempt persons who display such signs from other legal requirements, including, but not limited to, those relating to traffic, privacy, and trespass.
	Area	N/A	
	Height	N/A	
	Permit Required	N/A	

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Non-Commercial Signs in Traditional Public Forum/Rights of Way	Maximum Number	1	The sign must be hand-held or worn as an item of clothing; The sign must not be affixed to the ground or otherwise rendered freestanding; and The sign must not be displayed on a median of a divided roadway and must not unreasonably obstruct or interfere with the normal flow of vehicle and pedestrian traffic.
Name Plate Signs	Maximum Number	1/Building Entrance	Must be attached to building.
	Area	2 Sq. Ft.	
	Height	N/A	
	Permit Required	No	
Suspended Signs	Maximum Number	1/Business Entrance	
	Area	4 Sq. Ft.	
	Height	8 Feet of minimum vertical clearance from any sidewalk, private drive, parking area, or public street.	
	Permit Required	No	
Window/Door Signs	Maximum Number	See Other Regulations.	On each side of a building, no more than 50% of the total glazed area of windows and doors on the first floor of that side of the building may contain a window/door sign or signs. If a window/door sign or signs cover more than 50% of the glazed area of the first-floor windows and doors on the side of the building where the window/door signs are located, the window/door sign or signs are no longer exempt. Any window/door sign or signs located above the first floor of a building shall not be
	Area	See Other Regulations.	
	Height	N/A	
	Permit Required	No	

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			deemed an exempt sign and shall require a permit.
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ARTICLE 7 – SIGN REGULATIONS**

Section 7.4.3. Miscellaneous Signs

A. Gasoline Pricing Signs

In addition to any other signage allowed herein, automobile service stations and other commercial uses lawfully containing fuel pumps for the sale of fuel to the public shall be allowed an additional 24 square feet of signage to advertise gasoline pricing provided that the gasoline pricing sign(s) shall be incorporated into a freestanding sign or located flat on the building or canopy.

Those sites located at the intersection of two platted streets shall be permitted one additional freestanding sign to be placed on the second platted street for the sole purpose of displaying gasoline prices. The second sign shall not exceed a total of 24 square feet of which a maximum of 25% may be utilized for the business name or logo.

B. Electronic Message Center or Sign (EMC). Electronic message center or sign shall meet the following criteria:

1. The brightness or intensity of the sign shall be factory set not to exceed 5,000 nits (or 464.52 lumens per square foot) between sunset and sunrise.
2. If the electronic message sign is a text-only message displays, then the text may move along the face of the sign, but the text shall not exceed 12 inches in height.
3. Only one electronic message sign shall be allowed per site.
4. An electronic message sign shall not be installed on a non-conforming sign.
5. Minimum display time is 8 seconds.

All electronic message center or sign not meeting these criteria are prohibited under § 7.2.2 of this article.

**City of Cape Coral, Florida
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Article 8 – Nonconformities and Lawfully Existing Uses**

CHAPTER 1. GENERAL APPLICABILITY

Section 8.1.1. Purpose

Section 8.1.2. Definitions

CHAPTER 2. NONCONFORMING LOTS OF RECORD

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Section 8.2.2. Residential development on nonconforming lots of record

CHAPTER 3. NONCONFORMING STRUCTURES

Section 8.3.1. Continuation of nonconforming structures

Section 8.3.2. Destruction of nonconforming structures

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CHAPTER 5. NONCONFORMING USES

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Section 8.5.2. Extension or expansion of nonconforming use

Section 8.5.3. Discontinuance of nonconforming use

Section 8.5.4. Permitted improvements of nonconforming uses

CHAPTER 6. NONCONFORMITIES RESULTING FROM COMPREHENSIVE PLAN CHANGES

Section 8.6.1. Nonconformities created by comprehensive plan amendments

CHAPTER 7. EMINENT DOMAIN

Section 8.7.1. Nonconformities created by Eminent Domain

Chapter 1. GENERAL APPLICABILITY

Section 8.1.1. Purpose.

The purpose of this Article is to provide for the continuation, modification, or elimination of nonconforming uses, structures, and signs in accordance with the standards and conditions in this Article. While nonconformities may continue, the provisions of this Article are designed to encourage the improvement or elimination of nonconformities in order to better achieve the purposes of these regulations.

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Article 8 – Nonconformities and Lawfully Existing Uses

Section 8.1.2. Definitions.

The terms “Nonconforming,” “Nonconforming, Legally,” “Nonconforming Lots of Record,” “Nonconforming Sign,” “Nonconforming Structure,” and “Nonconforming Use” are defined in Article 11 of this Code and are incorporated by reference for purposes of applying the standards and requirements of this Article.

Chapter 2. NONCONFORMING LOTS OF RECORD

Section 8.2.1. General.

The majority of the City was platted in the Cape Coral Subdivision (Units 1 – 98) with 5,000 square foot lots, with two adjoining lots combined as a 10,000-square foot “Parcel” to construct a single-family residence. A 10,000-square foot parcel is the minimum lot size required for subdivision or development of a single-family residence or a two-family dwelling (LDC Article 4. Section 4.3 Zoning District Development Standards). Platted lots with less than 5,000 square feet and parcels less than 10,000 square feet are defined as nonconforming lots of record or parcels, respectively.

Section 8.2.2 Residential development on nonconforming lots of record.

Residential development on nonconforming lots of record may be permitted subject to the following requirements:

- A. Development of single-family residences under this provision is limited to the R-1 and RML zoning districts.
- B. Development of single-family residences defined as “Micro cottages” may be permitted on lots of record in the RML zoning district provided such lots are 5,000 square feet or more in area.
- C. Development of two-family residences under this provision is limited to the RML zoning district.
- D. Development of single-family or two-family residences is permitted on nonconforming lots of record and parcels less than 10,000 square feet in area, without a variance, provided that:
 1. Such lots or parcels are larger than 7,500 square feet in area; and
 2. The proposed development meets all requirements of this Code for setbacks, maximum building height, and off street parking.
- E. The nonconforming lots of record or parcels less than 10,000 square feet in area have not been subdivided or their boundaries altered through the “lot split and combine” process.

Chapter 3. NONCONFORMING STRUCTURES

Section 8.3.1. Continuation of nonconforming structures.

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Except as may be provided for elsewhere in these regulations, a non-conforming structure may be continued subject to the standards and conditions of this Chapter.

Section 8.3.2. Destruction of nonconforming structures.

A. Except for residential structures as identified in subsection B, below, a nonconforming structure that is damaged or destroyed to an extent exceeding 50 percent of the fair market value of the structure and improvements at the time of its destruction, shall not be reconstructed except in conformity with these regulations.

B. Nonconforming residential structures (including accessory structures) in residential zoning districts may be reconstructed if damaged or destroyed to any extent, (less than 50%) if such reconstruction does not increase the extent of the nonconformity(ies) existing prior to destruction and the footprint of the structure is not enlarged or changed.

Section 8.3.3. Alterations to nonconforming structures.

A structure that is nonconforming in any way, shall not be altered or enlarged in a way that increases the extent of any nonconformity. Normal maintenance and repair is permitted. Alterations and additions which do not increase the nonconformity may be permitted.

Chapter 4. NONCONFORMING SIGNS

Section 8.4.1. Requirements for nonconforming signs.

All signs with approved sign permits but which are not in conformance with the sign requirements of Article 7, may continue as nonconforming signs, subject to the standards and conditions of Article 7.

Chapter 5. NONCONFORMING USES

Section 8.5.1. Continuation of nonconforming uses.

Except as may be provided for elsewhere in these regulations, a non-conforming use may be continued subject to the standards and conditions of this Chapter.

Section 8.5.2. Extension or expansion of nonconforming use.

A nonconforming use shall not be enlarged or expanded, except for nonconformities created by amendments to the comprehensive plan, as described in Chapter 6 of this Article.

Section 8.5.3. - Discontinuance of nonconforming use.

Whenever a nonconforming use of property has been discontinued for a period of one year or more, such non-conforming use shall not thereafter be re-established, and the future use of the property shall be in conformity with the provisions of these regulations.

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Section 8.5.4. Permitted improvements of nonconforming uses.

Renovations, repairs, or changes to nonconforming uses may be permitted, subject to the following requirements:

- A. The nonconforming use is in a nonresidential zoning district;
- B. The total cost of the improvements is less than 50 percent of the fair market value of the structure and improvements; and
- C. The nonconforming use and associated site shall be brought into compliance with the following provisions of Article 5, Development Standards, to the maximum extent practicable, as determined by the Community Development Director:
 1. Landscaping;
 2. Sanitation;
 3. Signs;
 4. Lighting;
 5. Stormwater;
 6. Screening;
 7. Noise Attenuation; and
 8. Parking.

Chapter 6. NONCONFORMITIES RESULTING FROM COMPREHENSIVE PLAN CHANGES.

Section 8.6.1. Nonconformities created by comprehensive plan amendments.

- A. When an existing single-family or duplex dwelling becomes non-conforming as the result of an amendment to the Comprehensive Plan, including future land use map amendments, which amendment was not the result of an application or other action by the property owner, the principal single-family or duplex dwelling, as well as accessory structures, such as detached garages, sheds, and gazebos may be repaired, altered, enlarged, or replaced to the same extent as if the amendment to the Comprehensive Plan had not occurred for as long as the property owner who owned the property at the time the amendment was adopted continues to own the property on which the dwelling is located.
- B. For the purposes of this exception, a single-family or duplex dwelling shall be deemed to be "existing" if, prior to the effective date of the amendment referred to above, the dwelling was either constructed or an active application for a building permit to construct the dwelling was pending with or issued by

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Article 8 – Nonconformities and Lawfully Existing Uses

the city. This exception applies only when the effect of a Comprehensive Plan amendment would render the principal single-family or duplex dwelling structure becoming non-conforming as the result of an amendment, and does not apply when the effect of an amendment would render accessory structures including sheds and gazebos, non-conforming while the principal dwelling remains conforming. This exception does not apply either to conjoined residential dwellings or to multi-family residential dwellings, regardless of number.

- C. In the event the property owner who owned the real property containing the single- family or duplex dwelling use at the time the Comprehensive Plan amendment was adopted conveys or otherwise transfers ownership of the real property, subsequent to the adoption of the amendment, to another person or entity, then this exception shall terminate and the dwelling shall be subject to the limitations identified by Chapters 4 and 5 of this Article, that apply to non-conforming structures generally and, prior to the conveyance or other transfer of property ownership, the property owner shall notify in writing the person or entity to whom ownership is being transferred of the change in the status of the property. The failure of a property owner to provide notice as required herein of the change in the status of the property shall not affect the change in the status of the property.

Chapter 7. EMINENT DOMAIN.

Section 8.7.1. Nonconformities created by eminent domain.

Any structure, use, or lot made nonconforming as a direct result of eminent domain proceedings instituted by the City of Cape Coral or other condemning authority, or through a voluntary conveyance by such lot owner in lieu of formal eminent domain proceedings, which lot or parcel, except for such eminent domain or voluntary conveyance, would be an otherwise conforming lot or parcel, shall be deemed to be a conforming lot or parcel for all purposes under the City of Cape Coral Land Development Code, without the necessity for a variance from any land development ordinance. This subsection shall not apply to any lot or parcel which is reduced in size by more than 25 percent by such action.

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ARTICLE 9 – FLOODPLAIN MANAGEMENT**

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- Section 9.1.4.** Coordination with the Florida Building Code
- Section 9.1.5.** Warning
- Section 9.1.6.** Disclaimer of liability
- Section 9.1.7.** Applicability
- Section 9.1.8.** Basis for establishing flood hazard areas
- Section 9.1.9.** Submission of additional data to establish flood hazard areas
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Section 9.8.13. Tanks

Section 9.8.14. Other Development

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CHAPTER 1: ADMINISTRATION

Section 9.1.1. Title.

These regulations shall be known as the Floodplain Management Ordinance of the City of Cape Coral.

Section 9.1.2. Scope.

The provisions of this Article shall apply to all development that is wholly within or partially within any flood hazard area, including the subdivision of land; filling, grading, other site improvements, and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation, or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other action or activity defined as development.

Section 9.1.3. Purpose and Intent.

The purposes of this Article and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- A. Minimize unnecessary disruption of commerce, access, and public service during times of flooding;
- B. Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- C. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
- D. Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- E. Minimize damage to public and private facilities and utilities;
- F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- G. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- H. Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

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Section 9.1.4. Coordination with the Florida Building Code.

This Article is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

Section 9.1.5. Warning.

The degree of flood protection required by this Article and the Florida Building Code is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside of mapped special flood hazard areas or that uses permitted within such flood hazard areas will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this city to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this Article.

Section 9.1.6. Disclaimer of liability.

This Article shall not create liability on the part of the City of Cape Coral or by any officer or employee thereof for any flood damage that results from reliance on this Article or any administrative decision lawfully made thereunder.

Section 9.1.7. Applicability.

- A. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
- B. This Article shall apply to all development in flood hazard areas within the City of Cape Coral, as established in § 9.1.8. of this Article.

Section 9.1.8. Basis for establishing flood hazard areas.

The Flood Insurance Study for Lee County, FL and Incorporated Areas dated August 28, 2008, the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions are adopted by reference as a part of this Article and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Clerk's office, City of Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida.

Section 9.1.9. Submission of additional data to establish flood hazard areas.

To establish flood hazard areas and base flood elevations pursuant to § 9.1.8 of this Article, the Floodplain Administrator may require submission of additional data. Additional data may be required where field surveyed topography prepared by a Florida licensed professional surveyor or digital

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topography accepted by the city indicates that ground elevations:

- A. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this Article and, as applicable, the requirements of the Florida Building Code: or
- B. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

Section 9.1.10. Other laws.

The provisions of this Article shall not be deemed to nullify any provisions of local state or federal law.

Section 9.1.11. Abrogation and greater restrictions.

This Article supersedes any regulation in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing regulations, including land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this Article and any other regulation, the more restrictive shall govern. This Article shall not impair any deed restriction, covenant, or easement but any land that is subject to such interests shall also be governed by this Article.

Section 9.1.12. Interpretation.

In the interpretation and application of this Article, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

CHAPTER 2. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.

Section 9.2.1. Designation.

The Director of the Department of Community Development is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

Section 9.2.2. General.

The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this Article. The Floodplain Administrator shall have the authority to render interpretations of this Article consistent with the intent and purpose of this Article and may establish policies and procedures in order

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to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this Article without the granting of a variance pursuant to § 9.6.1. of this Article.

Section 9.2.3. Applications and permits.

The Floodplain Administrator, in coordination with other pertinent offices of the city, shall:

- A. Review applications and plans to determine whether proposed new development will be located in flood hazard areas.
- B. Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this Article.
- C. Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation.
- D. Provide available flood elevation and flood hazard information.
- E. Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant.
- F. Review applications to determine whether proposed development will be reasonably safe from flooding.
- G. Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures, and facilities exempt from the Florida Building Code, when compliance with this Article is demonstrated, or disapprove the same in the event of noncompliance.
- H. Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this Article.

Section 9.2.4. Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- A. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or

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structure shall be the market value before the damage occurred and before any repairs are made.

- B. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
- C. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of substantial improvement.
- D. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this Article is required.

Section 9.2.5. Modifications of the strict application of the requirements of the Florida Building Code.

The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to § 9.6.1. of this Article.

Section 9.2.6. Notices and orders.

The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this Article.

Section 9.2.7. Inspections.

The Floodplain Administrator shall make the required inspections as specified in this Article for development that is not subject to the Florida Building Code, including buildings, structures, and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

Section 9.2.8. Other duties of the Floodplain Administrator.

The Floodplain Administrator shall have other duties, including:

- A. Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § 9.2.4. of this Article.
- B. Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- C. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit

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applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six months of such data becoming available.

- D. Review required design certifications and documentation of elevations specified by this Article and the Florida Building Code and this Article to determine that such certifications and documentations are complete.
- E. Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Cape Coral are modified.
- F. Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

Section 9.2.9 Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this Article and the flood resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this Article; notifications to adjacent communities, FEMA and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this Article and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at the City Clerk's office, City of Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida.

CHAPTER 3. PERMITS

Section 9.3.1. Permits required.

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this Article, including buildings, structures, and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator and the Building Official, if applicable, and shall obtain the required permit(s) and approvals). No such permit or approval shall be issued until compliance with the requirements of this Article and all other applicable codes and regulations has been satisfied.

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Section 9.3.2. Floodplain development permits or approvals.

Floodplain development permits or approvals shall be issued pursuant to this Article for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures, and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

Section 9.3.3. Buildings, structures, and facilities exempt from the Florida Building Code.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures, and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this Article:

- A. Nonresidential farm buildings on farms, as provided in section F.S. § 604.50.
- B. Temporary buildings or sheds used exclusively for construction purposes.
- C. Mobile or modular structures used as temporary offices.
- D. Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- E. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida, As used in this paragraph, the term **CHICKEE** means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- F. Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- G. Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
- H. Structures identified in section F.S. § 553.73(10)(k) are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

Section 9.3.4. Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the city. The information provided shall:

- A. Identify and describe the development to be covered by the permit or approval.

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- B. Describe the land on which the proposed development is to be conducted by legal description, street address, or similar description that will readily identify and definitively locate the site.
- C. Indicate the use and occupancy for which the proposed development is intended.
- D. Be accompanied by a site plan or construction documents as specified in § 9.4 of this Article.
- E. State the valuation of the proposed work.
- F. Be signed by the applicant or the applicant's authorized agent.
- G. Give such other data and information as required by the Floodplain Administrator.

Section 9.3.5. Validity of permit or approval.

The issuance of a floodplain development permit or approval pursuant to this Article shall not be construed to be a permit for, or approval of, any violation of this Article, the Florida Building Codes, or any other regulation of the City of Cape Coral. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

Section 9.3.6. Expiration.

A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

Section 9.3.7. Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error; on the basis of incorrect, inaccurate, or incomplete information; or in violation of this Article or any other regulation or requirement of the City of Cape Coral.

Section 9.3.8. Other permits required.

Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including the following:

- A. The South Florida Water Management District; F.S. § 373.036.
- B. Florida Department of Health for onsite sewage treatment and disposal systems; F.S. § 381.0065 and Chapter 64E-6, F.A.C.

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- C. Florida Department of Environmental Protection for construction, reconstruction, changes, or physical activities for shore protection or other activities seaward of the coastal construction control line; F.S. § 161.141.
- D. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. § 161.055.
- E. Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- F. Federal permits and approvals.

CHAPTER 4. SITE PLANS AND CONSTRUCTION DOCUMENTS.

Section 9.4.1. Information for development in flood hazard areas.

- A. The site plan or construction documents for any development subject to the requirements of this Article shall be drawn to scale and shall include, as applicable to the proposed development:
 - 1. Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development;
 - 2. Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with § 9.4.2.(B) or (C) of this Article;
 - 3. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than five acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with § 9.4.2.(A) of this Article;
 - 4. Location of the proposed activity, and structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide;
 - 5. Location, extent, amount, and proposed final grades of any filling, grading, or excavation;
 - 6. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose;
 - 7. Delineation of the coastal construction control line or notation that the site is seaward of the coastal construction control line, if applicable;
 - 8. Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is

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approved by the Florida Department of Environmental Protection; and

9. Existing and proposed alignment of any proposed alteration of a watercourse.

- B. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this Article but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this Article.

Section 9.4.2. Information in flood hazard areas without base flood elevations (approximate Zone A).

Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:

- A. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
- B. Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- C. Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
1. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
 2. Specify that the base flood elevation is two feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two feet; and
- D. Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

Section 9.4.3. Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- A. For development activities in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in

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base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in § 9.4.4. of this Article and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

- B. For development activities in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one foot at any point within the City of Cape Coral. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- C. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in § 9.4.4. of this Article.
- D. For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.

Section 9.4.4. Submission of additional data.

When additional hydrologic, hydraulic, or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

CHAPTER 5. INSPECTIONS.

Section 9.5.1. General.

Development for which a floodplain development permit or approval is required shall be subject to inspection.

Section 9.5.2. Development other than buildings and structures.

The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this Article and the conditions of issued floodplain development permits or approvals.

Section 9.5.3. Buildings, structures and facilities exempt from the Florida Building Code.

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The Floodplain Administrator shall inspect buildings, structures, and facilities exempt from the Florida Building Code to determine compliance with the requirements of this Article and the conditions of issued floodplain development permits or approvals.

Section 9.5.4. Buildings, structures, and facilities exempt from the Florida Building Code, lowest floor inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure, or facility exempt from the Florida Building Code shall submit to the Floodplain Administrator:

- A. If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
- B. If the elevation used to determine the required elevation of the lowest floor was determined in accordance with § 9.4.2.(C)(2) of this Article, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner.

Section 9.5.5. Buildings, structures, and facilities exempt from the Florida Building Code, final inspection.

As part of the final inspection, the owner shall submit a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in § 9.5.4. of this Article.

Section 9.5.6. Manufactured homes.

The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this Article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted.

CHAPTER 6. VARIANCES AND APPEALS.

Section 9.6.1. Variances.

The Cape Coral Hearing Examiner shall hear and decide on requests for requests for variances from the strict application of this Article. Pursuant to F.S. § 553.73(5), the Cape Coral Hearing Examiner shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

Section 9.6.2. Appeals.

The Cape Coral Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any

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requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this Article. Any person aggrieved by the decision of Cape Coral Hearing Examiner may appeal such decision to the Cape Coral City Council, as provided by Article 2 of the Land Development Code.

Section 9.6.3. Limitations on authority to grant variances.

The Cape Coral Hearing Examiner shall base his or her decisions on variances on technical justifications submitted by applicants, the considerations for issuance in § 9.6.7. of this Article, the conditions of issuance set forth in § 9.6.8. of this Article, and the comments and recommendations of the Floodplain Administrator and the Building Official. The Cape Coral Hearing Examiner has the right to attach such conditions as deemed necessary to further the purposes and objectives of this Article.

Section 9.6.4. Restrictions in floodways.

A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in § 9.4.3. of this Article.

Section 9.6.5. Historic buildings.

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

Section 9.6.6. Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this Article, provided the variance meets the requirements of § 9.6.4., is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

Section 9.6.7. Considerations for issuance of variances.

In reviewing requests for variances, the Cape Coral Hearing Examiner shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this Article, and the following:

- A. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;

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- B. The danger to life and property due to flooding or erosion damage;
- C. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- D. The importance of the services provided by the proposed development to the City of Cape Coral;
- E. The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- F. The compatibility of the proposed development with existing and anticipated development;
- G. The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- H. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- I. The expected heights, velocity, duration, rate of rise, and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- J. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

Section 9.6.8. Conditions for issuance of variances.

Variances shall be issued only upon:

- A. Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this Article or the required elevation standards;
- B. Determination by the Cape Coral Hearing Examiner that:
 - 1. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements, or inconvenience do not constitute hardship;
 - 2. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws and ordinances; and
 - 3. The variance is the minimum necessary, considering the flood hazard, to afford relief;
- C. Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected

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parcel of land; and

- D. If the request is for a variance to allow construction of the lowest floor of a new building or substantial improvement of a building below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

Chapter 7. VIOLATIONS.

Section 9.7.1. Violations.

Any development that is not within the scope of the Florida Building Code but that is regulated by this Article that is performed without an issued permit, that is in conflict with an issued permit or that does not fully comply with this Article, shall be deemed a violation of this Article. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this Article or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

Section 9.7.2. Authority.

For development that is not within the scope of the Florida Building Code but regulated by this Article and determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

Section 9.7.3. Unlawful continuance.

Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

CHAPTER 8. FLOOD RESISTANT DEVELOPMENT

Section 9.8.1. Design and construction of buildings, structures, and facilities exempt from the Florida Building Code.

Pursuant to § 9.3.3. of this Article, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures, and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of § 9.8.14. of this Article.

Section 9.8.2. Buildings and structures seaward of the coastal construction control line.

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If extending, in whole or in part, seaward of the coastal construction control line and also, in whole or in part, in a flood hazard area:

- A. Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building Section 3109 and Section 1612 or Florida Building Code, Residential Section R322; and
- B. Minor structures and non-habitable major structures as defined in F.S. § 161.54, shall be designed and constructed to comply with the intent and applicable provisions of this Article and ASCE 24.

Section 9.8.3. Subdivision Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- B. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

Section 9.8.4. Subdivision plats.

Where any portion of proposed subdivisions lies within a flood hazard area, the following shall be required:

- A. Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;
- B. Where the subdivision has more than 50 lots or is larger than five acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with § 9.4.2. of this Article; and
- C. Compliance with the site improvement and utilities requirements of § 9.8.5., 9.8.6., 9.8.7., 9.8.8., 9.8.9., and 9.8.10. of this Article.

Section 9.8.5. Minimum requirements for site improvements, utilities, and limitations.

All proposed new development shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

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B. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

Section 9.8.6. Sanitary sewage facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

Section 9.8.7. Water supply facilities.

All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

Section 9.8.8. Limitations on sites in regulatory floodways.

No development, including site improvements and land disturbing activity involving fill or regrading shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in § 9.4.3. of this Article demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

Section 9.8.9. Limitations on placement of fill.

Subject to the limitations of this Article, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.

Section 9.8.10. Limitations on sites in coastal high hazard areas (Zone V).

In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by § 9.4.3.(D) of this Article demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with § 9.8.14.(H) of this Article.

Section 9.8.11. Manufactured homes.

A. General. All manufactured homes installed in flood hazard areas shall be installed by an installer that

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is licensed pursuant to F.S. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this Article. If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive of the applicable requirements.

B. Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:

1. In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and this Article; and

2. In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and this Article.

C. Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring include use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

D. Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with one of the following requirements, as applicable:

1. General elevation requirement. Unless subject to the requirements of § 9.8.11.D.2. of this Article, all manufactured homes that are placed, replaced, or substantially improved on sites: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred substantial damage as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V);

2. Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to § 9.8.11.D.1. of this Article, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

a. Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V); or

b. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

E. Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements

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of the Florida Building Code, Residential Section R322 for such enclosed areas, as applicable to the flood hazard area.

- F. Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall comply with the requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard area.

Section 9.8.12. Recreational vehicles and park trailers.

- A. Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

1. Be on the site for fewer than 180 consecutive days; and
2. Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks, and porches.

- B. Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in § 9.8.12.A. of this Article for temporary placement shall meet the requirements of § 9.8.11. of this Article for manufactured homes.

Section 9.8.13. Tanks.

- A. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

- B. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of § 9.8.13.C. of this Article shall:

1. Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris; and

2. Not be permitted in coastal high hazard areas (Zone V).

- C. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

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D. Tank inlets and vents. Tank inlets, fill openings, outlets, and vents shall be:

1. At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

Section 9.8.14. Other development.

A. General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this Article or the Florida Building Code, shall:

1. Be located and constructed to minimize flood damage;
2. Meet the limitations of § 9.8.8. of this Article if located in a regulated floodway;
3. Be anchored to prevent flotation, collapse, or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
4. Be constructed of flood damage- resistant materials; and
5. Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

B. Fences in regulated floodways. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of § 9.8.8. of this Article.

C. Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of § 9.8.8. of this Article.

D. Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings, and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways, shall meet the limitations of § 9.8.8. of this Article. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of § 9.4.3.C. of this Article.

E. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios, and similar nonstructural uses in coastal high hazard areas (Zone V).

In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks,

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walkways, patios, and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

1. Structurally independent of the foundation system of the building or structure;
2. Frangible and not reinforced, to minimize debris during flooding that is capable of causing significant damage to any structure; and
3. Have a maximum slab thickness of not more than four inches.

F. Decks and patios in coastal high hazard areas (Zone V). In addition to the requirements of the Florida Building Code, in coastal high hazard areas decks and patios shall be located, designed, and constructed in compliance with the following:

1. A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck;
2. A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures;
3. A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures; and
4. A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

G. Other development in coastal high hazard areas (Zone V).

In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state, or local authority; if located outside the footprint of and not structurally attached to buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

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- 1059 1. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
1060
1061 2. Solid fences, privacy walls, and fences prone to trapping debris, unless designed and constructed
1062 to fail under flood conditions less than the design flood or otherwise function to avoid obstruction
1063 of floodwaters; and
1064
1065 3. On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or
1066 mound systems.
1067
1068 H. Nonstructural fill in coastal high hazard areas (Zone V).
1069
1070 1. Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for
1071 landscaping and for drainage purposes under and around buildings.
1072
1073 2. Nonstructural fill with finished slopes that are steeper than one unit vertical to five units
1074 horizontal shall be permitted only if an analysis prepared by a qualified registered design
1075 professional demonstrates no harmful diversion of floodwaters or wave runup and wave
1076 reflection that would increase damage to adjacent buildings and structures.
1077
1078 3. Where authorized by the Florida Department of Environmental Protection or applicable local
1079 approval, sand dune construction and restoration of sand dunes under or around elevated
1080 buildings are permitted without additional engineering analysis or certification of the diversion of
1081 floodwater or wave runup and wave reflection if the scale and location of the dune work is
1082 consistent with local beach-dune morphology and the vertical clearance is maintained between
1083 the top of the sand dune and the lowest horizontal structural member of the building.
1084

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Chapter 1. Subdivisions

Section 10.1.1. Purpose and Intent

The purpose and intent of this Article is to establish the procedures for review and approval of proposed subdivisions and plats within the City of Cape Coral in accordance with Chapter 177 Part 1 of the Florida Statutes, the City of Cape Coral Technical Requirements for Plat Approval, and this Code.

Section 10.1.2 Applicability and Process.

A. Applicability. This Section shall apply to any subdivision or re-subdivision of land in the City.

1. No subdivision shall be platted or recorded, no lot shall be sold, and no building or development permit be issued unless the subdivision meets all applicable laws of the state, this code, and has been approved by the City in accordance with the requirements of this Article.
2. This section shall not apply to any land forming part of a subdivision created and recorded prior to effective date of the ordinance from which this article is derived, but it shall apply to any re-subdividing (replats) of previously approved subdivisions and all new subdivisions.
3. It is not intended by the provisions of these regulations to repeal, abrogate, annul, or in any way impair or interfere with private restrictions placed upon property by deed, covenant, or private agreement, except that where this article imposes higher standards than imposed by such deeds, covenants, or private agreements then the provisions of this article shall apply. The City shall not be responsible for enforcement of such deeds, covenants, or agreements.

B. Unless otherwise exempt from this Section or approved as a lot split, all subdivision of land is subject to a three-step review process consisting of:

1. Preliminary Subdivision Plan (PSP) approval;
2. Subdivision Construction Plan (SCP) approval; and
3. Plat approval and recording.

C. PSP approval is optional for lot splits and those projects in compliance with zoning regulations. SCP approval is required prior to Plat approval.

Section 10.1.3 General Requirements.

A. All division of land in the City shall occur only as a new subdivision plat, a replat, or a lot split. The requirements for lot splits are set forth in Article 3, Chapter 3, Section 3.3.4.

B. 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 Article 3, Chapter 3, Section 4.

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- 47
- 48 C. A PSP depicts the proposed subdivision layout and the preliminary design of any required
- 49 improvements which may include off-site improvements. A Preliminary Subdivision Plan is an
- 50 administrative approval, pursuant to Article 3 of this Code.
- 51
- 52 D. Following PSP approval, applicants may then seek approval of the SCP and Plat.
- 53
- 54 E. The SCP shall depict the detailed engineering and construction plans to develop a subdivision and all
- 55 required improvements, in accordance with the approved PSP.
- 56
- 57 F. Subdivisions may be approved for phased development. Phasing must be shown on the PSP.
- 58
- 59 G. An application for Plat review shall not be submitted prior to application for SCP approval. The
- 60 applications may be submitted concurrently.
- 61
- 62 H. Electronic file. In addition to any hard copies that may be required all PSPs, SCPs, and Plats shall
- 63 submitted as electronic files in a format acceptable to the City.
- 64
- 65 I. No plat or replat of any subdivision shall be recorded in the office of the Lee County Clerk until the
- 66 plat has been duly approved by City Council in the manner prescribed herein.
- 67
- 68 J. All plats approved by the City Council shall be recorded by the developer at the Lee County Clerk of
- 69 Circuit Court within 20 business days of receiving the approved plat from the City.
- 70
- 71 K. Employment of engineers, surveyors, and other design consultants. A professional engineer licensed
- 72 in the State of Florida shall prepare the respective plans to be included in all applications for approval.
- 73 The engineer shall design all required improvements such as streets, drainage systems, water and
- 74 sewage facilities, etc. Plats shall be prepared by a professional surveyor and mapper licensed in the
- 75 State of Florida. All plans, drawings, reports, and calculations shall be prepared, signed, and sealed by
- 76 the appropriate licensed professional, such as engineers, architects, landscape architects, land
- 77 surveyors, and attorneys registered in the state. Other specialized consultants, such as environmental
- 78 consultants, structural engineers, archaeologists, etc., may be required to assist in the preparation of
- 79 the plans, drawings, reports, and other documents required as application submittals.
- 80
- 81 L. It shall be unlawful for the owner or agent of the owner of any land in the City to transfer, sell, or
- 82 convey land by reference to, exhibition of, or other use of a plat of a subdivision of such land without
- 83 having recorded an approved plat with the Lee County Clerk as required herein. If such unlawful use
- 84 is made of a plat before it is properly approved and recorded, the owner or agent shall be guilty of a
- 85 misdemeanor of the first degree, punishable as provided in Florida Statutes 665.083 or Florida
- 86 Statutes 775.082. Provided, however, that nothing herein shall affect the validity of transfers on sales
- 87 of interests in property.
- 88

89 **Section 10.1.4 Preliminary Subdivision Plan Approval.**

90

- 91 A. Purpose and intent. The purpose of Preliminary Subdivision Plan approval is to help prevent
- 92 unnecessary and costly revisions during the Subdivision Construction Plan and Plat preparation stage

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of the subdivision development process. The Preliminary Subdivision Plan depicts the proposed subdivision layout and preliminary design of the proposed improvements in sufficient detail in order that it may be evaluated and granted preliminary approval pursuant to this Code.

B. Review Process.

1. Applications for a Preliminary Subdivision Plan approval are reviewed in the same manner as administrative approvals, as established in Article 3 of this Code.

2. All applications must be prepared by a Florida registered professional engineer and shall be submitted on forms provided by the Director.

C. Expiration. The PSP approval shall expire and be of no further force and effect if a completed application for SCP approval is not filed within two years of PSP approval. After expiration of two years, the applicant will be required to re-submit the PSP for review and approval as set forth in this Article. Applicants may apply for an extension prior to the expiration date. The applicant shall demonstrate good cause for the extension. The Community Development Director may extend the approval period up to twelve (12) months if the applicant has progressed in good faith toward the implementation of the subdivision. Subdivisions approved in conjunction with a PUD shall be governed by the Master Concept Plan (MCP)(and any, phasing, conditions, or requirements of the PUD.

Section 10.1.5 Subdivision Construction Plan Approval.

A. Application required. The applicant shall submit Subdivision Construction Plans for the required subdivision improvements in compliance with the PSP approval or a PUD MCP. No construction shall commence until the applicant has received requisite design approvals, permits, and complied with applicable provisions of this article.

B. Timing. Applications for SCP approval must be submitted within two years of City approval of the PSP. Applications for approval of subsequent phases, if any, shall occur within twelve (12) months of the issuance of a certification of completion of the previous phase. Failure to submit for SCP approval within a specified amount of time shall require reapplication under the PSP requirements of this Article. Applicants may not apply for SCP approval for any portion of the subdivision that is not to be constructed within the following twelve (24) months. Failure to make application for SCP approval within required time periods may result in revocation of a Preliminary Subdivision Plan, unless the applicant has applied for an extension from the Community Development Director prior to the lapse. The request for the extension must be made prior to the expiration date. The applicant shall demonstrate good cause for the extension. The Community Development Director may extend the prescribed time period up to twelve (12) months if the applicant has progressed in good faith toward the implementation of the PSP.

C. Review Process. Application review and approval follows the administrative review procedure as established in Sections 3.1.4 through 3.1.8 of Article 3. Specifically, SCP's are reviewed in accordance with Section 3.3.7.

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- 139 D. Approval of the SCP. Upon approval of the SCP the developer may proceed with construction in
140 accordance with Section 3.3.7. or the developer may complete the Plat review process for recording
141 the Plat.
142
- 143 E. When the developer elects to install the subdivision improvements prior to recording of the plat, a
144 Certificate of Completion for the improvements must be obtained in accordance with Section 3.3.7.,
145 prior recoding the plat. The final plat shall not be scheduled for City Council approval prior to receipt
146 of the Certificate of Completion.
147
- 148 F. When the developer intends to record the plat prior to installation of the required improvements the
149 developer shall provide assurance of completion of the improvements as approved in the SCP.
150
- 151 1. Assurance of completion of improvements. Assurance of completion of the subdivision
152 improvements as specified below will be required for all on and off-site improvements, required
153 to support the subdivision. Assurance of completion of the improvements will be required prior
154 to scheduling the plat for City Council approval. Those subdivision improvements that have been
155 constructed, inspected, and approved by the Development Services Manager through the issuance
156 of a Certificate of Completion may be excluded from the financial assurance provided.
157
- 158 2. Surety or cash performance bond. Security in the form of a surety or cash performance bond must
159 be posted with the Community Development Department and made payable to the City in an
160 amount equal to 110 percent of the full cost of installing the required improvements approved by
161 the City. If the proposed improvement will not be constructed within one year of issuance of the
162 subdivision infrastructure permit, the amount of the surety or cash performance bond must be
163 increased by ten percent compounded for each year of the life of the surety or bond. Alternatively,
164 the surety or cash performance bond may be renewed annually at 110 percent of the cost of
165 completing the remaining required improvements if approved by the Director. Prior to
166 acceptance, bonds must be reviewed and approved by the City Attorney's Office. Surety
167 instruments will be reviewed and approved in accord with the provisions set forth in City of Cape
168 Coral Technical Requirements for Plat Approval.
169
- 170 3. Other types of security. The Director may accept letters of credit or escrow account agreements
171 or other forms of security provided that the reasons for not obtaining the bond are stated and
172 the City Attorney approves the document. Review and approval of surety instruments will be in
173 accord with the guidelines set forth in City of Cape Coral Technical Requirements for Plat
174 Approval.
175
- 176 G. Engineers Opinion of Probable Construction Costs. Cost opinions prepared to determine the amount
177 of the financial surety shall be prepared in accordance with Article 3 of this Code and shall also include
178 the cost of setting all permanent control points (PCPs) required by Section 10.1.7. of this Code.
179
- 180 H. Phasing. The SCP may contain phases as provided on the PSP or MCP. Each phase of a subdivision
181 shall install all required improvements to support that phase and provide continuation of
182 improvements as may be required from previous phases and for future phases. No phase shall be
183 approved if it is dependent on a future unconstructed phase of the subdivision.
184

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I. Applicant's failure to complete required improvements.

1. Failure of applicant to complete required improvements. When a plat has been recorded and the applicant fails to complete the required improvements as required by this article, the City shall require the completion of the required improvements under the financial assurance provided by the Developer. In such case, the City shall call upon the financial surety to secure satisfactory completion of the required improvements. Legal notice of such action shall be deemed to have been duly served upon demand of the Director via certified mail return receipt requested.
2. In cases where plat has not been recorded. Where an applicant has elected to install the required improvements prior to recording of the plat and fails to complete such improvements within the time limitations of this article, all approvals of the subdivision shall be null and void. No reference shall be made to the plat with respect to the sale of lots or issuance of building permits, unless and until the Developer submits a new application for SCP and Plat approval.

Section 10.1.6 Plat Approval.

- A. Plat approval procedures. Plats must be prepared in accordance with Chapter 177 Part 1 of the Florida Statutes, and the City of Cape Coral Technical **Requirements** for Plat Approval, which are hereby incorporated by reference. The preliminary plat must be submitted during the SCP review. SCP approval will not be granted prior to approval of the preliminary plat. The Final Plat shall incorporate all changes or modifications resulting from the review of the SCP and any remaining conditions or requirements of the PSP or MCP approval.
- B. Review Process. Application review and approval follows the administrative review procedure as established in Article 3 of this Code.
- C. Supplemental information required for plat review.
 1. Operation and maintenance covenants. Where applicable, a copy of the covenants used for the maintenance and operation of the infrastructure improvements required by this Code including private streets and adjacent drainage, drainage and storm water management systems, utilities, public water and sewage systems, on-site bikeways, on-site pedestrian ways, open space, parks, recreation areas, and buffers. These documents must meet the criteria set forth in the City of Cape Coral Technical **Requirements** for Plat Approval.
 2. Articles of incorporation and bylaws or other legal documents for assignment of maintenance. The developer must submit a copy of the legal documents creating the legal mechanism to ensure that the drainage system, on-site bikeways, on-site pedestrian ways, roadways and rights-of-way are continuously maintained. These documents must meet the requirements set forth in the City of Cape Coral Technical **Requirements** for Plat Approval.
- D. After the final plat has been approved and certified by the Community Development Director, the City Surveyor, and the City Attorney that it complies with all applicable requirements of this Code, the Director shall schedule the Plat for acceptance by City Council. The plat will be scheduled as a consent agenda item on an upcoming City Council meeting. Upon City Council approval and acceptance of the

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plat, the Mayor and City Clerk shall indicate such approval on the final plat by signing the certificate of approval for recording. The Director will notify the developer when the approved Plat has been signed and ready for recording.

E. Revisions after final plat approval by City Council and prior to recordation.

1. Recording information for the property or home owner's association documents may be added to the plat at the time of recording of the documents.

2. Any other changes, erasures, modifications, or revisions to an approved plat prior to recordation may only be made by the Community Development Director to correct scrivener's errors. No such request shall be considered unless made by the preparer of the plat.

3. No other changes, erasures, modifications, or revisions may be made to an approved final plat prior to recordation unless a new application and fee are submitted for review and approval.

F. Approval of the Plat by the City shall not constitute acceptance by the City of the dedication of any public street, other public way, easement, or improvement or the responsibility to construct or maintain any improvements unless so indicated in the dedication on the plat.

G. Recording. The approved plat shall be recorded with Lee County Clerk of Circuit Court within twenty (20) days of receiving the approved plat from the City. After recordation of the plat, the developer shall provide to the Community Development Director a full size certified copy of the recorded plat.

H. Building permits. No building permits for residential or residential accessory structures shall be issued until the final plat has been recorded and all subdivision improvements have either been completed or sufficient assurance of completion has been reviewed and approved by the City Attorney.

I. Phasing. The applicant may construct the proposed development and record plats for any phase approved on the PSP or MCP. The phases shall have been specified on the approved Preliminary Subdivision Plan and shall be of such a size and design that all phases completed at any time can exist independently as a subdivision in complete conformity with the requirements of this article. Any change in the sequence of phases must receive prior approval by the Development Services Manager. If PSP or MCP is phased, the applicant shall have the option of platting one or more of the development phases in a single plat in conformity with all the procedures and requirements of this article.

Section 10.1.7 Minimum Design Standards.

A. Monumentation. Monuments must be installed in accordance with F.S. Ch. 177.091(9).

1. Permanent reference monuments. Permanent reference monuments (PRMs) must be placed on the boundary of all subdivisions as required by F.S. Ch. 177, as amended, and approved by a licensed, registered state professional surveyor and mapper.

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2. Monuments must be set in the ground so that the top is flush or no more than one-half foot below the existing ground. Subsurface PRMs must be exposed for inspection when a plat is submitted for review. If development of the subdivision occurs after a plat is reviewed, the PRMs must be raised or lowered to be flush or no more than one-half foot below the finished ground. Subsurface PRMs must be exposed for inspection at the time of final inspection of the development.

- B. Permanent control points. Permanent control points (PCPs) must be installed in accordance with F.S. Ch. 177. When a plat is recorded prior to construction of the subdivision improvements, the PCPs must be set following completion of construction. The surveyor must certify that the PCPs have been set and must record the certification in the official record books of the County.

- C. Streets.

1. The widths and locations of all public or private streets in a proposed subdivision shall Conform to the City of Cape Coral Engineering Design Standards.

2. Street extensions.

- a. The street layout of the proposed subdivision shall provide for the continuation or projection of streets already existing in areas adjacent to the area being subdivided unless such continuation or extension is for specific reasons of topography or design.

- b. Where it is necessary for public safety to provide street access to adjoining properties, proposed streets shall be extended by dedication to the boundaries of such properties. Where it is determined necessary for public safety, dead-end streets shall be provided with a temporary turnaround having a radius as specified in the City of Cape Coral Engineering Design Standards.

- c. The street system for the proposed subdivision shall provide for extending existing streets at the same or greater width, but in no case, shall a street extension be of less width than the minimum width required by the City of Cape Coral Engineering Design Standards for a street in its category.

3. Dedication of right-of-way for new streets.

- a. The dedication of rights-of-way for new streets, measured from lot line to lot line, shall meet the standards specified in the City of Cape Coral Engineering Design Standards.

- b. Dedication of one-half of the rights-of-way for proposed streets along the boundaries of land proposed for subdivision shall be prohibited.

4. Dedication of right-of-way for existing streets.

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- 321 a. Subdivisions platted along existing streets shall dedicate additional rights-of-way if
322 necessary to meet the minimum street width requirements for new streets set forth in the
323 City of Cape Coral Engineering Design Standards.
324
- 325 b. The entire minimum right-of-way width shall be dedicated where the subdivision is on
326 both sides of an existing street. When the subdivision is located on only one side of an
327 existing street, one-half of the required right-of-way width, measured from the center line
328 of the existing right-of-way or street, as appropriate, shall be dedicated.
329
- 330 5. Intersections. Intersections shall be designed and spaced as set forth in the City of Cape Coral
331 Engineering Design Standards.
332
- 333 6. Curves in streets; horizontal and vertical. All curves in streets shall be designed and
334 constructed as set forth in the City of Cape Coral Engineering Design Standards.
335
- 336 7. Street grades and elevations. Street grades and elevations shall conform to the City of Cape
337 Coral Engineering Design Standards.
338
- 339 8. Frontage access streets. Where the proposed subdivision abuts upon or contains an existing
340 or proposed arterial street or highway on which traffic volumes and vehicular speeds warrant
341 special safety considerations, the City shall require that frontage access streets be provided in
342 order that no lots will front on such existing or proposed arterial street or highway.
343
- 344 9. Street jogs. Street jogs must be as set forth in the City of Cape Coral Engineering Design
345 Standards.
346
- 347 10. Dead-end streets (cul-de-sacs). Cul-de-sacs or dead-end streets must be designed to conform
348 to the City of Cape Coral Engineering Design Standards.
349
- 350 11. Street names. Proposed streets which are in alignment with other already existing and named
351 streets shall bear the names of such existing streets. The name of a proposed street which is
352 not in alignment with an existing street shall not duplicate the name of any existing street.
353
- 354 12. Alleys. Alleys may be provided to give access to the rear of all lots used for commercial and
355 industrial purposes. Alleys shall not be provided in residential blocks except in the SC district
356 or in cases where the developer produces evidence of the need for alleys which is satisfactory
357 to the City.
358
- 359 D. Blocks. Block lengths shall not exceed 1,200 feet or be less than 400 feet, except as approved by
360 the Director.
361
- 362 E. Lots.
363
- 364 1. Arrangement. Each lot in a subdivision shall be at right angles to straight street lines and radial
365 to curved street lines.
366

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2. Dimension and area regulations. Dimension and area regulations for all lots proposed within the subdivision, including the size, shape, width, depth, area, building setback lines, corner lot regulations, yard requirements, off-street parking areas, and minimum lot frontage on public streets shall comply with the zoning district requirements in which the proposed subdivision is located.

F. Utility and drainage easements.

1. Utility planning and coordination. To ensure that adequate and properly designed utility easements are provided, developers shall consult with City staff and other appropriate personnel of public utility authorities providing gas, electricity, telephone, water, sewer, or other services of a similar nature before and during the planning and preparation of a Preliminary Subdivision Plan.
2. Width and location. A 10' public utility easement shall be provided across the front of all lots or parcels and shall be provided along each side of any street right of way or access easement. Where necessary or advisable in the opinion of the City, similar easements shall be provided alongside lot lines or across lots. Easement design should provide clear and orderly alignments from one block to the next and from one development to the next. The easement system should be continuous and well aligned to permit the efficient installation of utility service lines.
3. Underground wiring and installation. Developers shall contact overhead public utility authorities in the early stages of subdivision planning to determine the procedures for negotiating contracts for all underground utility service.
4. Storm drainage. Drainage easements shall be sized appropriately for the installation and maintenance of drainage improvements necessary for proper drainage within or through a subdivision.

G. Street lights. As established in the City of Cape Coral Engineering Design Standards.

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CHAPTER 1. GENERAL PROVISIONS

Section 11.1. Purpose and Intent

- A. This chapter is intended to define terms used in the Land Development Code (LDC) and provide clarity in the LDC.
- B. Unless the context clearly indicates a different meaning, the following definitions shall be used to interpret the provisions of the LDC.
- C. Words whose meanings are self-evident as used in this Code are not defined here. Undefined terms that are commonly used may be defined using a dictionary. Words used in the present tense shall include the future; the singular includes the plural, and vice versa.
- D. Certain definitions may not be in alphabetical order and may be organized according to a common term or subject heading.
- E. The definitions in the Article may be different from the definitions used in the City of Cape Coral Code of Ordinances.

CHAPTER 2. GENERAL DEFINITIONS

Abandoned Structure, is any structure which has ceased to be used for its designed and intended purpose.

Abandonment, is the relinquishment or cessation of the use of property by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property. Often in reference to an easement or a right-of-way.

Acre, is a land area of 43,560 square feet.

Access, is the place, means, or way by which vehicles or pedestrians obtain ingress and egress to a property or use.

Access Drive, is a driving surface leading from a right-of-way to a parking area.

Accessory Dwelling Unit (ADU), is a separate housekeeping unit from the with a separate entrance, kitchen, sleeping area, and full bathroom facilities, which is an attached or detached extension to an existing single-family structure.

Accessory Building or Structure, a subordinate building or structure, the use of which is customarily incidental the main building or to the main use of the land and which is on the same site as the main building or use.

Accessory Use, is a use that is incidental to and subordinate to the main building or use of land and that is on the same lot and under the same ownership in all respects.

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Addition, any construction that increases the size of a building in terms of site coverage, height, length, width, or gross floor area.

Adjoining or Abutting, means two properties share at least one common point or property line.

Adjacent, means two properties that are separated by a public right of way, canal, or alley.

Adult Day Care Center means any building or buildings, operated for profit or not, which provides daytime, basic care services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.

~~Adult Entertainment Establishment or Use, is a use which is distinguished or characterized by an emphasis on materials depicting, describing or relating to specified sexual activities or specified anatomical areas either by observation or participation by the patrons or employees of that use. Specified uses are found in F.S. Ch. 847.001 and include, adult bookstores, adult theaters, unlicensed massage establishments, and adult special cabarets.~~

Affordable Housing, is housing with a sale or rental cost, including taxes and utilities, of 30 percent or less of the total monthly household income of low income households.

Agricultural Building, Structures intended primarily or exclusively for support of an agricultural function, including barns, silos, water towers, windmills, and greenhouses.

Agricultural Land, land used actively for the production of food, fiber, or livestock.

Agricultural Uses, means farming, including plowing, tillage, cropping, seeding, cultivating, or harvesting for the production of food and fiber products (except commercial logging and timber harvesting operations); the grazing or raising of livestock (except in feed yards); aquaculture; sod production; orchards or groves; Christmas trees; nurseries; and the cultivation of products as part of a recognized commercial enterprise.

Alley, a right-of-way that affords a secondary means of vehicular access to abutting properties.

Alteration, means any enlargement, addition, relocation, remodel, change in number of units, development, or change to a facility, other than painting and other changes to finishes.

Ambient, is the surrounding level of light, noise, air, or odor.

Amplified Sound, means sound augmented by any electronic or other means that increases the sound level or volume. Public background sound or amplified sound caused by the police or fire departments of the city in the performance of their official duties shall not be considered amplified sound.

Animal Kennel, An establishment where more than four dogs or cats (except litters of animals of not more than six months of age) are kept, raised, cared for or boarded, for a fee.

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Animal Shelter, any place so designed to provide for the temporary accommodation of five or more stray common household pets until appropriate disposition of such animals can be made.

Arbor, is a n structure on which plants and vines can grow.

Arcade, Architectural, means a succession of arches supported by columns or piers, or a covered walkway enclosed by a line of arches on one or both sides.



Architectural Feature, any prominent or characteristic part of a building, including windows, columns, awnings, marquee, façade, or fascia.

Art, Public, is any visual work of art displayed open to the public view on public or private property which does not contain characteristics of an advertisement for a business.

Assisted Living Facility (ALF) or Nursing Home, means any building, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

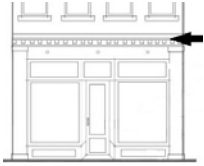
Auditorium or Assembly Hall, a building with facilities to accommodate groups of people.

Awning, a roof-like cover, often of fabric, metal, or glass designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure over a window, walk, door.



Banding, means a projection of masonry or similar material around a building or part of a building, which is attached to the building.

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Bar, is an area or establishment primarily devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Basement, the portion of a building having its floor subgrade (below ground level) on all sides.

Bathroom, is a room in a building containing, at a minimum, a toilet and a sink.

Bed and Breakfast, means a transient lodging establishment, generally in a single-family dwelling or detached guesthouses, primarily engaged in providing overnight or otherwise temporary lodging for the general public and may provide meals for compensation.

Berm, A mound or earthen ridge placed above natural or existing grade for the purpose of shielding, screening, mitigating impacts from or otherwise separating areas of dissimilar use, to provide visual interest, accommodate landscape improvements, or control the direction and flow of water.

Best Management Practices (BMP), is the combination of conservation measures, structures, or management practices that reduces or avoids adverse impacts of development on adjoining site's land, water or waterways, and waterbodies.

Bike Lane, is a corridor expressly reserved for bicycles.

Bio-Retention Area, A shallow planted depression designed to retain or detain stormwater before infiltration or discharge. Plants used in bio-retention areas must be able to survive without fertilizer or other artificial means.

Block, is land typically surrounded by streets or other transportation or utility rights-of-way, or by physical barriers such as bodies of water or public open spaces. Block may also mean a group of parcels within a geographic area.

Boat, is a vessel designed for operation as a watercraft propelled by oars, sails, or internal combustion engine(s). A boat shall not be considered as a recreational vehicle even though may have facilities for temporary living quarters.

Borrow Pit, are excavations created by the surface mining of rock, unconsolidated geologic deposits, or soil to provide material (borrow) for fill elsewhere.

Brewery, is a facility with a capacity to manufacture more than 5,000 barrels of beer or other similar beverages a year.

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Brewpub, A restaurant or bar with facilities that produces beer or wine for on-site consumption and retail sale to restaurant, bar, or nightclub patrons. Nonalcoholic beverages may also be produced for on-site consumption and retail sale. A brewpub differs from an artisan brewery in that a greater percentage of beer or wine produced at a brewpub is generally consumed on the premises.

Buffer, means open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically and visually separate one use or property from another.

Build-to Line, locations where a proposed development shall locate the linear footage of the building's edge, thus ensuring a uniform (or more or less even) building façade line on the street. Build-to lines may correspond to the property line or may be offset from the property line.

Buildable Area, is that portion of a lot exclusive of the required setbacks or open spaces upon which improvements are permitted.

Building, Attached, is a building which has at least part of a wall in common with another building, or which is connected to another building by a roof.

Building Rear, means a building wall that does not face a public street, a private access way, or a common open space. A building may have more than one building rear.

Building Front, means a building wall that faces a public street, a private street, or a common open space. A building may have more than one building front.

Building, Primary or Principal, is a building in which the primary use of the lot, on which the building is located, is conducted.

Bulkhead, means a shoreline stabilization structure including riprap or a seawall.

Business Front Foot, means the lineal distance of the building space occupied by the particular business measured on a straight-line parallel to the street. If a building fronts on two (2) or more streets, the property owner shall be given the option of selecting one (1) street frontage for the purpose of computing allowable sign area. Where a business does not parallel a street, the front foot shall be measured along the exterior of the building space occupied by the particular business.

By-right, refers to uses that are permitted without special conditions or a public hearing.

Canopy, a roof-like structure serving the purpose of protecting pedestrians from rain and sun, which may project from a building or be free standing.



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Caliper – Palm, the diameter of the palm trunk taken at the widest portion, measured between one foot and three feet from the ground.

Caliper – Tree, the measurement of the average of the largest diameter of a tree, and that perpendicular to it, measured 12 inches above the ground.

Cemetery, is land used or dedicated to the burial of the dead, including crematoriums, mausoleums, necessary sales, and maintenance facilities. Mortuaries shall be included when operated within the boundary of such cemetery.

Certificate of Completion. Documentation that a structure, system(what kind of system?), site development or subdivision infrastructure is complete and for certain types of permits is released for use and may be connected to a utility system.

Certificate of Occupancy, is the official certification that a premises may be used or occupied pursuant to the State Building Codes.

Childcare Facility, includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether operated for profit.

Civic Building, is a building specifically designed for a civic function. Buildings and structures for public or private assembly, including places of worship and schools, shall be considered civic buildings.

Clearing of Vegetation, means removal of plants and or topsoil and vegetative materials in preparation for development, but not including mowing and cutting of brush for maintenance, the removal of dead or diseased plants or the removal of a single tree on a developed parcel.

Clear Trunk – Palm, A measurement from the soil line to a point on the trunk where the trunk caliper begins to taper abruptly, as per "Grades and Standards for Nursery Plants" published by the State Department of Agriculture and Consumer Services, Part 2.

Colonnade, a series of columns that are set at regular intervals and that support the base of an overhead structure.

Community Center, A building to be used as a place of meeting or social recreation that is open to the public. Community centers may also include areas of outdoor recreation such as playgrounds or athletic courts.

Community Garden, is a private or public facility for cultivation of fruits, flowers, vegetables, or ornamental plants by more than one person or family.

Community Residential Home, means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health

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Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

Concurrency, necessary public facilities and services to main the adopted level of service standards are available when the impacts of a development occur.

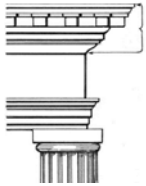
Conditional Use, are uses which are generally appropriate in a zoning district but have certain additional requirements to ensure the use is compatible. Conditional uses may be approved administratively as long as the required conditions are met and maintained.

Continuing Care Facility, is a center which provides independent household units as well as assisted living units to allow a resident to age within one facility or community.

Construction Staging Area, An area used on a temporary basis for the storage of materials and supplies used in the construction of a project for a limited period of time.

Convenience Store, is any retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood, with or without sale of fuel.

Cornice, means a horizontal, ornamental molding that crowns a building or element of a building such as a window or doorway.



Corrugated Metal,

Craft Brewery, Distillery, or Winery, is a use that brews beer, distills spirituous beverages, or produces wine and similar beverages on a small scale and whose annual production of beer is capped by the City of Cape Coral in contrast to a full-fledged brewery that may produce an unlimited volume of beer. These establishments may include a tasting room and retail space to sell beer produced on the premises, as well as beer, spirits and wine produced elsewhere, along with related retail items and food.

Crime Prevention Through Environmental Design (CPTED), is a multi-disciplinary approach to deterring criminal behavior through the design of the built environment. Specifically, altering the physical design of the communities in which humans reside and congregate in order to deter criminal activity is the main goal of CPTED.

Cul-de-sac, is a dead-end street terminated at the closed end by a circular vehicular turn-around.

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Cultural and Civic Facilities, Facilities of historic educational or cultural interest such as botanical gardens, aquariums, libraries, art galleries, or museums.

Cupola, an ornamental structure placed above a larger roof.



Deck, is an open and roofless platform that adjoins a house and is supported by a means other than the principal structure.

Density, the number of dwelling units permitted per acre of land.

Developer, is the person who is improving a parcel of land and who may or may not be the owner of that property.

Development, is any human-caused change to improved or unimproved real estate that requires a permit or approval from any agency of the city or county, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of materials.

Development Approval, is any written authorization from the city which authorizes the commencement of a development.

Diameter at Breast Height (DBH), Diameter of the tree when measured four and one-half feet above the ground.

Distribution Line, The electric lines that deliver medium voltage electricity from the substation to an overhead or underground transformer that ultimately serves the consumer.

Divider Median, A landscaped strip between abutting rows of parking spaces.

Dock, any structure, otherwise known as a pier, wharf, or loading platform, extending into the water from a seawall or bank and which may provide berthing for marine vessels.

Dormitory, is a building intended or used principally for sleeping accommodations where such building is related to an educational or public institution, including religious institutions.

Dumpster Enclosure, the covered containers supplied by the city refuse collection franchisee that are designed and intended to be mechanically dumped into a packer-type sanitation vehicle, regardless of whether such containers are used for the collection and/or disposal of solid waste or other refuse or for the collection and/or disposal of recycling materials, as well as covered containers that are designed and intended to be used for compaction of materials such as cardboard boxes

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Dwelling Unit, A room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure. Dwelling Units must contain at a minimum one sleeping room, one bathroom, and one kitchen, but shall not contain more than one kitchen, or other indoor portion of the structure with a functioning range or oven. The term Dwelling Unit shall not include rooms in hotels, motels or institutional facilities, one or more rooms constituting all or part of a dwelling which are used as living quarters for one family and contain a bathroom and kitchen facilities.

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Dwelling, Duplex, is a structure designed to accommodate two dwelling units, each of which has direct access to the outside.

Dwelling, Multifamily, is a building containing three or more individual dwellings with separate cooking and toilet facilities for each dwelling.

Dwelling, Single-Family Detached, is a dwelling unit owned in fee simple and on an individual lot which is not attached to any other dwelling unit by any means.

Dwelling, Single-Family Attached, means a single structure consisting of three or more dwelling units having one or more walls abutting with another dwelling and designed to have all exits open directly to the outside. Each dwelling unit is on a lot with individual ownership.

Easement, a grant by a property owner to the use of land by the public, a corporation, or persons for specific purposes as the construction of utilities, drainage ways, and roadways.

Eave, is the projecting lower edges of a roof overhanging the wall of a building.

Encroachment, is where a structure exists within a required setback, or an area that is designated to have no structures.

Entertainment, Indoor, means active or passive uses conducted within an enclosed building, these include but are not limited to: motion picture theaters, concert or music halls, billiards, arcades, and bowling.

Entertainment, Outdoor, means active or passive uses conducted in open or partially enclosed or screened entertainment complex. Typical uses include but are not limited to: sports arenas, motor vehicle or animal racing facilities, and outdoor amusement parks.

Erosion, is the removal of soil through water or wind action.

Essential Services, the erection, construction, alteration or maintenance (by a public or private utility company for the purpose of furnishing adequate services for the public health, safety, or general welfare) of electrical and communication cables, poles and wires, water and sewer collection, transmission, or distribution mains, drains and pipes, including fire hydrants. This definition shall not be interpreted to include buildings, structures, or uses listed as essential service facilities.

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Essential Service Facilities, buildings or above ground structures (exceeding 27 cubic feet in volume) required to provide essential services including electricity; telephone, cable TV, gas, water, sewage, solid waste, and resource recovery.

Excavating or Filling, defined as the removal or placement of more than 100 cubic yards of earth or the alteration of the elevation of more than 1,250 square feet of land area more than two feet.

Excavation, An operation utilizing any tools, equipment or explosives for the purpose of moving, removing or otherwise displacing or distributing earth, rock or other materials in or on the ground or wrecking, razing, rending, moving or removing any structure or mass of material.

Exotic, means a species introduced to Florida, purposefully or accidentally, from a natural range outside of Florida.

Façade, is the exterior elevation of a structure or building as viewed from a single vantage point.
Family, any number of persons living together as a single housekeeping unit.

Family Day Care Home, an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. Household children under 13 years of age, when on the premises of the family day care home or on a field trip with children enrolled in child care, shall be included in the overall capacity of the licensed home.

Farmer's Market, is an occasional or periodic outdoor market where groups of individual sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages.

Fence, a structure used for enclosing land areas constructed of pickets, boards, rails, chain link, or concrete products which are generally supported by posts and provide privacy, land separation, containment of domestic animals, and restriction of passage.

Fence, Decorative, means an open mesh fence no higher than two feet, other than chain link or barbed wire, intended to decorate, accent, or frame a feature of the landscape. Ornamental fences are often used to identify a lot corner or lot line, or frame a driveway, walkway, or planting bed.
Filling, see Excavating or Filling.

Flea Market, the sale of used merchandise customarily involving tables or space lease or rented to vendors.

Flex Space, is commercial space, typically office, workshop, and loading bay area that allows businesses to utilize the space in the manner necessary for their work, most typically light industrial uses. Uses not allowed in flex space include self-storage or general retail stores.

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Floor, is the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

Floor Area Ratio (FAR), is the ratio of the proposed amount of commercial or industrial floor area to the total land area shown for non-residential uses on the site.

Floor Area, Gross, the total area of a building measured by taking the outside dimensions of the building each floor level intended for occupancy and storage.

Florida Building Code, the family of codes adopted by the Florida Building Commission.

Florida Friendly Landscaping, is a program developed through the University of Florida which encourages the use of low-maintenance plants and environmentally sustainable practices. A list of Florida Friendly plants can be found in Appendix 5.6.1.B.

Florida Native, Any plant recognized as occurring naturally in the State of Florida prior to the 1500s, as identified in **Atlas of Florida Vascular Plants by Wunderlin**, R.P., and B. F. Hansen. 2008. (<http://www.plantatlas.usf.edu/>). Institute for Systematic Botany, University of South Florida, Tampa, or other scientific documentation recognized by the city.

Food Truck, is a temporary food service establishment that is vehicle mounted and/or designed to be readily movable.

Footcandle, is the unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one foot square from a distance of one foot.

Frontage, is the face of a building most nearly parallel with the public right-of-way line.

Frontage Road, is a residential or nonresidential street parallel and adjacent to a major thoroughfare and which provides access to abutting properties with protection from through traffic.

Garage, an enclosed area that is accessory to the primary residential structure and is designed primarily for the parking and storage of motor vehicles.

Garage Sale, means the noncommercial sale of privately owned items from residential premises.

Gazebo, a freestanding, roofed structure usually open on the sides.

Glare, is lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

Grade, the average level of the finished surface of the ground adjacent to the exterior walls of the building.

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Greenhouse, is a building or structure constructed chiefly of glass, glasslike or translucent material, cloth, or lath, which is devoted to the protection or cultivation of flowers or other plants.

Green Roof, a building roof that is partially or completely covered with vegetation and a growing medium, planted over a waterproofing membrane. It may also include additional layers such as a root barrier and drainage and irrigation systems.

Groundcover, any low growing plant, 24 inches in height or less, that can be used to cover areas where sod or turf is not desired or will not grow.

Group Home, a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

Habitat, means the physical location or type of environment in which an organism or biological population lives or occurs.

Hardscape, tangible objects and features other than plant materials, including, but not limited to, steps and ramps, fountains and pools, fences, screens, dividers and walls, overhead structures (i.e. trellis), decks, retaining walls, play equipment, benches and planters, drainage structures, lighting, pavement, curbs, and site furnishings.

Hearing Examiner, is a person appointed to conduct public hearings and take action in action proceedings as specified by this code.

Hedge, is any group of shrubs planted in line or in groups that form a compact, dense, living barrier that protects, shields, separates, or demarcates an area from view; any similar plant material, or similar plant material in conjunction with a structure.

Height, the vertical distance measured from the lowest finished floor elevation to the lowest point of the highest horizontal eave or to the highest point of the highest parapet wall, whichever is higher.

Helistop, A heliport, but without ancillary facilities such as parking, waiting room, fueling and maintenance equipment.

Heritage Tree, is a Florida native canopy tree with a 20-inch caliper DBH or larger.

Home Occupation, is an occupation for monetary gain or support conducted by members of a family residing on residential premises, and conducted entirely within the dwelling, provided that no article is sold or offered for sale except such as may be produced or acquired by members of the immediate family residing on the premises. Home occupations shall not be construed to include barbershops, beauty shops, tearooms, restaurants, dress shops, commercial kennels, real estate offices, dance

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studios, astrologists/palmists and the like, band instrument instructors, photographic studios, and child care facility for more than five children.

Hospital, is an institution, licensed by the state department of health, providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions, and including as an integral part of the institution, related facilities such as laboratories, outpatient facilities, or training facilities.

Hotel, is an establishment providing, for a fee, sleeping accommodations and customary lodging services, including maid service, the furnishing and upkeep of furniture and bed linens, and telephone and desk service. Related ancillary uses may include but shall not be limited to conference and meeting rooms, restaurants, bars, and recreational facilities.

Household, is the person or persons occupying a dwelling unit.

Impervious Surface, is any material that substantially reduces or prevents the infiltration of stormwater into the ground. This shall include graveled driveways and parking areas.

Industry, Heavy, is manufacturing or other enterprises with significant external effects, or which pose significant risks due to the involvement of explosives, radioactive materials, poisons, pesticides, herbicides, or other hazardous materials in the manufacturing or other process.

Industry, Light, includes research and development activities, the manufacturing, compounding, processing, packaging, storage, assembly, or treatment of finished or semi-finished products from previously prepared materials, which activities are conducted wholly within an enclosed building. Finished or semi-finished products may be temporarily stored outdoors pending shipment.

Infrastructure, means facilities and services needed to sustain industry, residential, commercial, and all other land-use activities, including water, sewer lines, and other utilities, streets and roads, communications, and public facilities such as fire stations, parks, schools, etc.

Intensity, is the number of square feet of development per acre, or floor area ratio, by land use type with respect to non-residential land uses.

Invasive Species, means a species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

Kitchen, an indoor portion of a structure specifically designed and equipped for the preparation, service and storage of food. The kitchen shall be provided with, at a minimum, a functioning sink, range, oven, and refrigerator.

Laboratory, Research, is a building or group of buildings in which facilities for scientific research, investigation, testing, or experimentation are. This does not include facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

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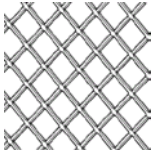
Land Development Regulations, means the city's zoning, subdivision, building, and other regulations controlling the development of land.

Landscape Plan, is a plan associated with a subdivision master concept plan, or site development plan, indicating the placement of landscape materials, including specifications, species, quantities, and method of installation.

Landscaped Area, is an area set aside from structures and parking which is developed with natural materials (i.e. grass, trees, shrubs, vines, hedges, bedding plants, rock) and decorative features, including paving materials, walls, fences, and outdoor furniture.

Landscaping, is the finishing and adornment of unpaved yard areas. Materials and treatment generally include naturally growing elements such as grass, trees, shrubs, and flowers. This treatment may also include the use of logs, rocks, fountains, water features, and contouring of the earth.

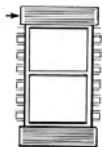
Lattice, is an ornamental criss-crossed framework, an arrangement of crossing laths or other thin strips of material which allows light and air to pass between the openings.



Light Pollution, means any adverse effect of artificial light including, but not limited to, glare, light trespass, skyglow, energy waste, and impacts on the nocturnal environment.

Lighting, Fully Shielded/Cutoff, means any outdoor light fixture shielded in such a manner that all light emitted by the fixture is projected below the horizontal as determined by a photometric test or certified by the manufacturer.

Lintel, means a horizontal support of timber, stone, concrete, or steel across the top of a door or window.



Loading Space, is an off-street space, having a minimum width of 10 feet, length of 30 feet, and height clearance of 14 feet, on the same lot with a building or group of buildings for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

Local Planning Agency, is the City of Cape Coral Planning and Zoning Commission when reviewing matters related to the Comprehensive Land Use Plan as specified in F.S. Chapter 160.

Lot or Lot of Record, is a lot or tract that is part of a recorded subdivision that has been recorded with the county clerk of courts office containing property tax records.

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Lot Coverage, refer to Section 1-112 of the Land Development Code.

Lot, Corner, A lot which abuts on two or more intersecting streets at their intersection, but is not to include wing streets at cul-de-sac locations; wing streets at locations where road angles or turns and the wing street is less than 120 feet in length.

Lot Depth, refer to Section 1-112 of the Land Development Code.

Lot, Double Frontage, is a lot having frontage on two nonintersecting streets, as distinguished from a corner lot.

Lot, Flag, is a lot not meeting minimum lot frontage requirements at the street and where access to a right-of-way is provided by means of a long, narrow driveway between abutting lots.

Lot Lines, are the property lines bounding the lot.

Lot Width, refer to Section 1-112 of the Land Development Code.

Low Impact Development (LID), refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration, or use of stormwater in order to protect water quality and associated aquatic habitat.

Lowest Floor, the lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24.

Lumen, is the unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire. One footcandle is equal to one lumen per square foot.

Maintain, means in a condition or state of equivalent quality to that which was approved or required by the city.

Manufacturing, Heavy, is the manufacturing of products from raw or unprocessed materials, where the finished product may be combustible or explosive. This category shall also include any establishment or facility using large unscreened outdoor structures such as conveyor belt systems, cooling towers, cranes, storage silos, or similar equipment, that cannot be integrated into the building design, or engaging in largescale outdoor storage. Any industrial use that generates noise, odor, vibration, illumination, or particulate that may be offensive or obnoxious adjacent land uses, or requires a significant amount of on-site hazardous chemical storage shall be classified under this land use. This use shall include any packaging of the product being manufactured on-site.

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Manufacturing, Light, is the indoor processing or fabrication of certain materials or products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emission which will disturb or endanger neighboring properties.

Marina, a waterfront establishment whose business is offering the sale or rental of boats and marine sporting equipment and the servicing, repair, or storage of similar items. Such establishments may also provide slip rental, gasoline, sanitary pumpout service and food and drink accommodations.

Marine Improvement, means a whole, constructed marine structure including, but not limited to, dock, boat lift, mooring posts, walkways, and other interconnecting parts. A boat canopy, its supports, and its frame shall not be considered to be a part of the marine improvement to which they are attached.

Master Concept Plan, is a general graphic depiction of the layout and/or design of a land development project, which shall include written and quantitative information as required by the city, including a phasing plan, but to be distinguished from a "site development plan," as defined herein.

Medical Marijuana Dispensary, is a facility where marijuana is made available for sale for medical purposes. This also includes establishments from which marijuana is delivered to patients who cannot obtain it from a dispensary, due to physical or mental disability, for medical purposes.

Mixed-Use Development, is a project which integrates residential and non-residential uses.

Mixed-Use Building, A building containing residential and non-residential uses permitted in the zoning district.

Mixed-Use Zoning Districts, includes the following zoning districts: Commercial Corridor (CC), Neighborhood Commercial (NC), Mixed Use (MX), Mixed Use Seven Islands (MX7), Mixed Use Bimini (MXB), South Cape (SC), and Planned Unit Developments (PUD).

Model Home, is an unoccupied dwelling constructed upon a model home lot zoned for residential use and on one of four contiguous lots from the arterial or collector roadway, with each lot under the ownership of one or more builders intending to use the lots as model home sites or ancillary parking, for display purposes, price quoting and consummation of sales contracts.

Modular Structure, is a structure not built on-site but may be assembled on-site, which is placed on a permanent foundation and meets the state building code standards.

Mulch, is any material such as wood chips, leaves, bark, straw, or other materials left loose and applied to the soil surface to reduce evaporation.

Native Species, A plant or animal that originally occurred in an area.

Natural Area, is land and water that has substantially retained its natural character or land and water that, although altered in character, is important as habitats for plant, animal, or marine life, for the

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study of its natural, historical, scientific, or paleontological features, or for the enjoyment of its natural features.

Nonconforming, is when an existing lot, structure, building, sign, development, or use of an existing lot or structure does not conform to one or more of the regulations currently applicable to the district in which the lot, structure, building, sign, development, or use is located.

Non-domestic animals, farm animals including, but not limited to, horses, cattle, mules, goats, sheep, swine and poultry.

Nonresidential Use, means a use that does not include dwelling units. Nonresidential uses include: commercial, industrial, public, park, institutional, agricultural uses without a residence, and parts of mixed-use developments not containing residential dwelling units. This includes hotels, motels, RV parks, and campgrounds.

Nonresidential zoning districts, includes the following zoning districts: Commercial (C), Professional Office (P), Industrial (I), Institutional (INST), and Preservation (PV).

Nuisance, is a thing, condition, or conduct that endangers health and safety, or unreasonably offends the senses, or obstructs the free use and comfortable enjoyment of property, or essentially interferes with the comfortable enjoyment of life.

Occupancy, means the residing of an individual overnight in a dwelling unit or the installation, storage, or use of equipment, merchandise, or machinery in any public, commercial, or industrial building.

Occupancy, Change of, means the discontinuance of an existing use and the substitution of a use of a different kind or class in that same space.

On-Site Sewage System, is a sewage-treatment system that includes a settling tank through which liquid sewage flows and in which solid sewage settles and is decomposed by bacteria in the absence of oxygen.

Open Space, Land and water areas retained for use as an active or passive recreation areas or for resource protection in an essentially undeveloped state.

Ornamental Grass, A self-supporting, non-woody, perennial species of the plant family, Poaceae, Juncaceae, or Cyperaceae, that is not mowed but is allowed to grow to its full potential and is used in the landscape in the same way as a shrub.

Ornamental Wall, a wall that that is not used in the support of a building.

Outdoor Lighting, means lighting equipment installed within the property line and outside the building envelopes, whether attached to poles, building structures, the earth, or any other location; and any associated lighting control equipment.

Outdoor Storage, means the storage of any material for a period greater than 48 hours, including items for sale, lease, processing, and repair (including vehicles) not in an enclosed building.

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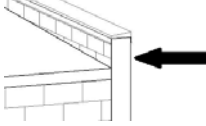
Outdoor Screened Storage, the keeping of any goods or products within a structure not defined as a building, or within a completely fenced or walled in area. The goods shall be screened by the structure, wall or fence so as not to be seen from any other property.

Outdoor Venue, means a commercial establishment which offers entertainment outside of a building, including music.

Outdoor Entertainment Event, means a temporary, outdoor event utilizing amplified sound equipment, not associated with an established outdoor venue.

Owner-occupied, means a vacation rental that is the primary and permanent residence of the owner of the property.

Parapet, is that portion of the facade which extends above the roof immediately adjacent thereto.



Parcel, means a contiguous land under one ownership.

Parking, Off-Street, is space designed for the parking of automobiles on premises other than streets.

Parking, On-Street, is the storage space for an automobile that is within the street right-of-way.

Parking, Satellite, is off-street parking spaces that are not on the same lot as the principal use.

Parking, Shared, means joint use of a parking area by more than one use.

Paved, means ground covered with stone, brick, concrete, asphalt, or other substantial matter making a firm, smooth, and level surface.

Paver, is a grid block designed for use as a driving or parking surface, installed with cavities (either the kind in which grass can be planted or between the blocks) to minimize impervious surface and reduce runoff.

Pedestrian-Friendly/Oriented, means the density, layout, and infrastructure that encourages walking and biking within a subdivision or development, including limited setbacks, front porches, sidewalks, and bikepaths.

Pergola, is a structure, either freestanding or attached to a façade, usually consisting of parallel colonnades supporting an open roof of girders and cross rafters built as an outdoor element for partial shade.

Permit, Conditional Use, a use that is permitted if all specified conditions have been adhered to.

Person, means individuals, partnerships, associations, and corporations.

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Personal Services Establishment, is an establishment which offers specialized services purchased frequently by the consumer. Included are barbershops, beauty shops, chiropractic, dance studios, and massage clinics, garment repair, tailoring, shoe repair, pet grooming, indoor pet sitting, and beauty clinics, fitness centers, laundromats, drycleaners, photography and instructional studios, tattoo and piercing studio, martial arts studios, and other similar establishments. These uses may include accessory retail sales of products related to the services provided.

Pervious Surface, is any surface which allows a minimum of 80 percent precipitation from any source to infiltrate directly into the ground.

Pilaster, a rectangular column, especially one projecting from a wall.



Place of Religious Assembly, a use within a permanent building that provides regular organized worship and related incidental activities, except primary or secondary schools and day care facilities.

Planned Unit Development (PUD), is an area of land zoned and improved as a development for which the otherwise applicable use and development requirements to allow for more flexible planning in conformance with the development approval process and developed in accordance with the provisions of this ordinance.

Point of Intersection, the point where two rights-of-way would meet if they were extended straight rather than curving to create a rounded corner at an intersection.

Porch, is a covered but unenclosed projection from the main wall of a building that may or may not use columns or other ground supports for structural purposes and is not used for livable space.



Portico, means a structure consisting of a roof supported by columns at regular intervals, typically attached as a porch to a building.



Premises, is a distinct unit or parcel of land including the appurtenances thereon.

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Primary Frontage, is any portion of a property that faces any public Right-of-Way defined as a Boulevard, a Parkway, or fronting Pine Island Road.

Private Property, property that is owned, leased, operated, maintained or controlled by one or more individuals or entities other than the city.

Professional Services,

Public Art or Sculpture, Any visual work of art displayed for two weeks or more in an open city-owned area, on the exterior of any city-owned facility, within any city-owned facility in areas designated as public area, lobbies, or public assembly areas, or on non-city property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the city.

Public Notice, means notice to the public of a public hearing or opportunity for the public to present their views to an official representative or board of a public agency concerning an official action pending before the agency as required by state law.

Public Parks and Recreational Facilities, means natural or landscaped areas, buildings, or structures, provided by a government, to meet the active or passive recreational needs of people.

Public Safety Facility, is a government facility for public safety and emergency services, including facilities that provides police or fire protection and related administrative facilities and training facilities.

Rain Sensor, A calibrated device that is designed to measure rainfall and override the irrigation cycle of the irrigation system when a pre-determined amount of rainfall has occurred.

Redevelopment, is any proposed expansion, addition, or major facade change to an existing building, structure, or parking facility.

Reflecting Pool, is a shallow (less than 18" deep) pool designed as a feature of a garden, often associated with seating and/or statues

Religious Institution, A religious assembly that may also include related facilities such as a rectory, convent, private school, licensed child or adult daycare, recreational facilities, or any combination thereof.

Residential Use, means a structure or part of a structure containing dwelling units, including single-family, duplexes, multi-family dwellings, boarding or rooming houses. Residences do not include transient accommodations such as transient hotels, motels, tourist cabins, RV parks, or, in a mixed-use structure, that part of the structure used for any nonresidential uses.

Residential Zoning Districts, includes the following districts: Single-Family Residential (R-1), Multi-Family Low Residential (RML), Multi-Family Residential Medium (RMM), Residential Estate (RE), and Agriculture (A).

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Resort, is a facility principally for the accommodation or short-term residence of transient guests or vacationers, but where the primary attraction is generally recreational features or activities.

Retail Sales Establishment, is an establishment selling goods directly to the consumer. Retaining Wall, is a man-made barrier constructed for the purpose of stabilizing soil, slowing erosion, or terracing a parcel or site.

Right-of-way, is a strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, parking strips, sidewalks, lighting, drainage facilities, and canals.

Riparian Buffer, is a vegetated buffer strip along a watercourse that filters stormwater and provides wildlife habitat.

Roadside Fruit and Vegetable Stand, A temporary building or structure, built in accordance with all applicable Building Code requirements, which is designed, used or intended to be used for the purpose of display and retail sales of farm products, such as fruits, vegetables, food products and flowers.

Roof Line (Deck Line), means the highest continuous horizontal line of a roof on a sloping roof, the roof line is the principal ridge line or the highest line common to one (1) or more principal slopes of the roof. On a flat roof, the roof line is the highest continuous line of a roof or parapet, whichever is higher.

Photovoltaic Solar System: A system which uses one (1) or more photovoltaic panel(s) installed on the surface of a roof, parallel to a sloped roof or surface or rack-mounted on a flat roof, to convert sunlight into electricity.

Runoff, is stormwater leaving a site due to the force of gravity.

School, is an institution for the teaching of children or adults including primary and secondary schools, colleges, professional, dance, business, trade, art, and similar facilities.

Screened, means obscured from public view.

Seating Capacity, is the actual number of seats available for use based upon the number of seats or one seat per 24 inches of bench or pew length. For other areas where seats are not fixed, the seating capacity shall be determined as indicated by the Florida Building Code.

Seawall, a wall built along a shoreline.

Self-Service Storage Facility, is a building used for the storage of personal property where individual owners control individual storage spaces.

Septic Tank, see on-site sewage system.

Setback, is the minimum horizontal distance between a structure and a property line.

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Sexually Oriented Business. See definition for, ‘Sexually Oriented Business’ ,contained in, § 12-62, of the City of Cape Coral Code of Ordinances, which definition is incorporated herein in its entirety by reference.

Shed, an accessory structure, attached or detached from the primary structure, which is used primarily for storage and not intended for human occupancy. A shed shall not include storage containers or shipping containers.

Shopping Center, A group of retail and other commercial businesses that are within a development.

Shrub, a woody plant that produces multiples stems or trunks rather than a single tree-like stem.
Sidewalk, is an improved pedestrian surface that is typically in a right-of-way.

Sill, means a shelf or slab of stone, wood, or metal at the foot of a window or doorway.

Site Development Plan, is the 100% detailed set of construction plans for installation of land development improvements for a site which must be approved prior to the release of a site development permit.

Slope, is the degree of deviation of a surface from the horizontal, usually expressed in percent, degrees, or rise over run.

Socially-Active Open Space, is open space with a minimum width of 30 feet that is created and designed for year-round active use by the public in the form of active lawn areas, plazas, squares, courtyards, and gardens. Amenities are logically arranged and typically include paths, formal or informal planting areas, and furnishings. ▾

Sod, is the grass-covered surface of the ground and the soil below the surface only to the depth of the roots of the grass.

Solar Photovoltaic (PV) Arrays, is a device or combination of devices or structures that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes significantly to a structure’s energy supply

Sound Amplification Device, means equipment designed to increase the volume of sound created by a separate source such as a musical instrument or a human voice. The term does not include a standard radio, DVD player or similar device, but does include “stand alone” amplified microphone systems.

Special Event, a preplanned single gathering, event or series of related consecutive gatherings or events of an entertainment, cultural, recreational, educational, political, religious, or sporting nature, or any nature, that is sponsored by an individual or entity and is open to the public in general.

Special Exception, A use which is essential to or would promote the public health, safety, or welfare in one or more districts, but which would impair the integrity and character of the district in which it is located, or in adjoining districts unless restrictions or conditions on location, size, extent and character of performance are imposed in addition to those imposed in this ordinance.

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Commercial Recreation, Indoor, is an indoor facility, with or without seating for spectators, and providing accommodations for a variety of individual, organized, or franchised sports, including basketball, ice hockey, wrestling, soccer, tennis, volleyball, racquetball, or handball. Such facility may also provide other regular organized or franchised events, health and fitness club facilities, swimming pool, snack bar, restaurant, retail sales of related sports, health or fitness items, and other support facilities.

Commercial Recreation, Outdoor, means a recreational land use conducted outside of a building, including athletic fields; skateboard park; swimming, tennis, handball, basketball courts; batting cages.

Stoop, means a small staircase ending in a platform and leading to the entrance of a building.



Stormwater, is the flow of water or the water itself which results from precipitation.

Streetscape, is the visual image of a street, including the combination of buildings, parking, signs, and other hardscape and street furniture

Structure, anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground including but not limited to fences, signs, kiosks, or similar uses.

Subdivision, is the division of land into two or more lots or a development consisting of multiple subdivided lots.

Subdivision Construction Plan, is the 100% detailed set of construction plans for installation of land development improvements of a subdivision which must be approved prior to the release of a subdivision infrastructure permit.

Subdivision Plat, is the schematic representation of land divided or to be divided.

Subdivision Plat, Final, is the plat to be given final approval which includes all changes, additional information, and requirements imposed by the city. The final plat is recorded in the county clerk of courts.

Substantial Renovation, means repair or changes worth 50%, or more, of the fair market value of the structure and improvements, not including the land.

Swimming Pool, is a structure, whether above or below grade level, designed to hold water more than 30 inches deep to be used for recreational purposes.

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Temporary Storage Container, is a standardized, reusable vessel that is designed and constructed for the primary purpose of packing, shipping, and transportation of goods or freight and are designed or capable of being mounted or moved on a truck, train, or ship.

Temporary Use, is a use of land, buildings or structures that are established for a fixed period of time with the intent to discontinue the use upon the expiration of such time.

Tower, is a structure which is designed for the purpose of supporting one or more antennas or wireless telecommunication facilities. The term "Tower" shall not include amateur radio antennas, structure-mounted and pole-mounted wireless telecommunication facilities.

Transient Occupants, means any person, or guest or invitee of such person, who occupies or is in actual or apparent control or possession of residential property registered as a vacation rental. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of the vacation rental is a transient occupant.

Tree, is a self-supporting plant having at least one well-defined woody stem or trunk and normally attaining a mature height of at least 15 feet, with an average mature spread of at least 15 feet.

Tree, Accent, is a smaller tree whose mature height can be expected to range between 15 feet and 30 feet and which has an expected crown spread range between 15 feet and 25 feet.

Tree, Canopy, is a larger tree species that normally achieves an overall height and spread at maturity of 30 feet or more.

Tree, Palm, is an unbranched, evergreen tree that grows in tropical regions and has a straight, tall trunk and many large leaves at the top of the trunk.

Trellis, a vertical panel of lattice designed to support vine plants.

Utility Line, an underground conduit and related facilities, including pipe or cable, by which a person furnishes material or service.

Utilities, Incidental Activities or Facilities, means the construction or placement of public utilities or other infrastructure on a permanent or temporary basis. Examples of "incidental utility activities" include drainage improvements, stormwater retention or detention features, valves, hydrants, street improvements, temporary boat launches for water quality sampling, extension of water and sewer lines, and small-scale lift stations that are not enclosed in a structure (125 cubic feet or less).

Utilities, Major Public Facilities, is any public service improvement or structure developed by or for a public agency that is not defined as an incidental public facility, including but not limited to electrical substations, sewer and water treatment plants, water reservoirs, trunk lines, regional stormwater detention facilities, new or expanded public buildings designed for human occupancy that increase traffic within a neighborhood, and active park improvements such as ball fields or restroom facilities.

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Utilities, Private, means utilities that are not subject to city acceptance for operation or maintenance. For purposes of this code, private utilities include natural gas lines, power lines, telephone lines, cable television lines, and other communication lines, their appurtenances and any component part(s) thereof, and the utility companies' operation, maintenance, repair, and replacement of same.

Vacation Rental, means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is rented to transient occupants more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to transient occupants, and also a transient public lodging establishment and non-transient lodging establishment as defined in F.S. § 509.013, but that is not a timeshare project.

Variable Message Board, means a portable electronic device which may be used for providing information to motorists about construction schedules, alternate routes, expected delays, detours, and any other public message for the health, safety, or welfare of the traveling public and residents. Use limited to government agencies.

Variance, a departure from the terms of this ordinance pertaining to height, width, depth, or area of structures, sizes of yards, parking space, or sign requirements where such departure will not be contrary to the public interest and where, owing to conditions peculiar to the property because of its size, shape, or topography, and not as a result of the actions of the applicant, the literal enforcement of this ordinance would result in unnecessary and undue hardship.

Vehicle Fueling Station, means any place where motor vehicle fuel is sold and dispensed, accessory activities may include the retail sale of convenience items or a car wash.

Vehicle Repair Service Establishment, is a building or structure used for the repair and maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles.

Vested Property Rights, means the right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan or an approved phased development plan for a specified time, regardless of changes in this ordinance.

Vehicle Sales, [The sale of motorized vehicles such as cars, trucks, vans, and motorcycles.](#)

Vicinity Map, is a drawing or diagram, to the appropriate scale to show the location of the proposed development in relation to abutting properties, major streets, and other known landmarks.

Visibility Triangle, is a triangular area at the intersection of two streets, or a street and a driveway; two sides of which are measured from the point of intersection for a distance specified. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides.

Wall, is an upright structure, with a continuous footer, constructed of building material, such as masonry, wood, or plaster serving to enclose, divide, or protect an area.

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Wetlands, are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes: (a) have a predominance of hydric soils; (b) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (c) under normal circumstances support a prevalence of such vegetation.

Yard, the open space surrounding the principal building on any lot, unoccupied and unobstructed by a portion of that building from the ground to the sky except where specifically permitted by this ordinance.

CHAPTER 3. FLOODPLAIN MANAGEMENT DEFINITIONS

This section defines terms that are related to the Article 8 "Floodplain Management".

Alteration of a Watercourse, a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard, or change the direction or velocity of the riverine flow of water during conditions of the base flood.

ASCE 24, a standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. **ASCE 24** is developed and published by the American Society of Civil Engineers, Reston, VA.

Base Flood, a flood having a 1% chance of being equaled or exceeded in any given year. The base flood is commonly referred to as the "100-year flood" or the "1%-annual chance flood."

Base Flood Elevation, the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

Best Management Practices (BMP), is the combination of conservation measures, structures, or management practices that reduces or avoids adverse impacts of development on adjoining sites land, water or waterways, and waterbodies.

Coastal Construction Control Line, the line established by the State of Florida pursuant to F.S. § 161.053, and recorded in the official records of the city, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal High Hazard Area, a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1 V30, VE, or V.

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1122 Design Flood, the flood associated with the greater of the following two areas; an area with a floodplain
1123 subject to a 1% or greater chance of flooding in any year, or an area designated as a flood hazard area
1124 on the City flood hazard map or otherwise legally designated.
1125

1126 Design Flood Elevation, the elevation of the "design flood," including wave height, relative to the datum
1127 specified on the city's legally designated flood hazard map. In areas designated as Zone AO, the design
1128 flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the
1129 depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the
1130 depth number is not specified on the map, the depth number shall be taken as being equal to two feet.
1131

1132 Existing Building and Existing Structure, any buildings and structures for which the "start of
1133 construction" commenced before August 17, 1981.
1134

1135 Existing Manufactured Home Park or Subdivision, a manufactured home park or subdivision for which
1136 the construction of facilities for servicing the lots on which the manufactured homes are to be affixed
1137 (including, at a minimum, the installation of utilities, the construction of streets, and either final site
1138 grading or the pouring of concrete pads) is completed before August 17, 1981.
1139

1140 Expansion to an Existing Manufactured Home Park or Subdivision, the preparation of additional sites by
1141 the construction of facilities for servicing the lots on which the manufactured homes are to be affixed
1142 (including the installation of utilities, the construction of streets, and either final site grading or the
1143 pouring of concrete pads).
1144

1145 Federal Emergency Management Agency (FEMA), the federal agency that, in addition to carrying out
1146 other functions, administers the National Flood Insurance Program.
1147

1148 Flood or Flooding, a general and temporary condition of partial or complete inundation of normally dry
1149 land from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of
1150 surface waters from any source.
1151

1152 Flood Damage Resistant Materials, any construction material capable of withstanding direct and
1153 prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic
1154 repair.
1155

1156 Floodplain, is the land area susceptible to inundation by water as a result of a flood.
1157

1158 Floodway Encroachment, is any fill, structure, building, accessory use, use, or development in the
1159 floodway.
1160

1161 Flood Hazard Area, The greater of the following two areas; the area within a floodplain subject to a 1%
1162 or greater chance of flooding in any year, or the area designated as a flood hazard area on the city's
1163 flood hazard map, or otherwise legally designated.
1164

1165 Floodplain Administrator, the office or position designated and charged with the administration and
1166 enforcement of this Article (may be referred to as the Floodplain Manager).
1167

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1168 Floodplain Development or Approval, an official document or certificate issued by the city or other
1169 evidence of approval or concurrence, which authorizes performance of specific development activities
1170 that are located in flood hazard areas and that are determined to be compliant with this Article.
1171
1172 Floodway, the channel of a river or other riverine watercourse and the adjacent land areas that must
1173 be reserved in order to discharge the base flood without cumulatively increasing the water surface
1174 elevation more than one foot.
1175
1176 Floodway Encroachment Analysis, an engineering analysis of the impact that a proposed encroachment
1177 into a floodway is expected to have on the floodway boundaries and base flood elevations; the
1178 evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering
1179 methods and models.
1180
1181 Functionally Dependent Use, A use which cannot perform its intended purpose unless it is located or
1182 carried out in close proximity to water, including only docking facilities, port facilities that are necessary
1183 for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the
1184 term does not include long term storage or related manufacturing facilities.
1185
1186 Highest Adjacent Grade, The highest natural elevation of the ground surface prior to construction next
1187 to the proposed walls or foundation of a structure.
1188
1189 Historic Structure, Any structure that is determined eligible for the exception to the flood hazard area
1190 requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings.
1191
1192 Letter of Map Change, (LOMC) An official determination issued by FEMA that amends or revises an
1193 effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:
1194
1195 Letter of Map Amendment (LOMA): An amendment based on technical data showing that a
1196 property was incorrectly included in a designated special flood hazard area. A LOMA amends the
1197 current effective Flood Insurance Rate Map and establishes that a specific property, portion of a
1198 property, or structure is not located in a special flood hazard area.
1199
1200 Letter of Map Revision (LOMR): A revision based on technical data that may show changes to
1201 flood zones, flood elevations, special flood hazard area boundaries and floodway delineations,
1202 and other planimetric features.
1203
1204 Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land
1205 has been elevated by fill above the base flood elevation and is, therefore, no longer located within
1206 the special flood hazard area. In order to qualify for this determination, the fill must have been
1207 permitted and placed in accordance with the City floodplain management regulations.
1208
1209 Letter of Map Revision, Conditional (CLOMR): A formal review and comment as to whether a
1210 proposed flood protection project or other project complies with the minimum NFIP requirements
1211 for such projects with respect to delineation of special flood hazard areas. A CLOMR does not
1212 revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and

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approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Lowest Floor, The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24.

Manufactured Home, A structure, transportable in one or more sections, which is eight feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term Manufactured Home does not include a "recreational vehicle" or "park trailer." The term Manufactured Home shall also include the term "mobile home" as provided in Article 11. Definitions.

Manufactured Home Park or Subdivision, A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value, the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this Article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, actual cash value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the property appraiser.

New Construction, For the purposes of administration of this Article and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after August 17, 1981 and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision, A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 17, 1981.

Park Trailer, A transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.

Recreational Vehicle, A vehicle, including a park trailer, which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;

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3. Designed to be self-propelled or permanently towable by a light duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Sand Dunes, Naturally, occurring accumulations of sand in ridges or mounds landward of the beach.

Special Flood Hazard Area, An area in the floodplain subject to a 1% or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1 A30, AE, A99, AH, V1 V30, VE or V.

Start of Construction, the date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual Start of Construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Substantial Damage, Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50% of the market value of the building or structure before the damage occurred.

Substantial Improvement, Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a five-year period, the cumulative cost of which equals or exceeds 50% of the market value of the building or structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first improvement or repair of that building or structure subsequent to August 17, 1981. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; and
2. Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

CHAPTER 4. MARINE IMPROVEMENT DEFINITIONS

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1305 This section defines terms that are related to the Article 5, Chapter 5 “Marine Improvements”.

1306

1307 Adjacent Parcel, is any waterfront parcel that is not an end parcel, but that abuts an end parcel or a corner

1308 parcel.

1309

1310 Boat Canopy, a removable protective cover installed to cover a boat located in the principal mooring

1311 area of a dock or over a boat lift; a boat canopy designed and intended for the purpose of protecting a

1312 marine vessel from damage from the elements and is fastened to, erected on, or installed on a

1313 marine improvement. Covers that protect marine vessels from the elements, but that fasten only to

1314 the marine vessel and not, in any way, to a marine improvement shall not be deemed to be boat

1315 canopies.

1316

1317 Boat slip, is a space designed for the mooring of a single watercraft. Such spaces may extend from a

1318 dock or shoreline or be created from a cut-in.

1319

1320 Boathouse, is an accessory structure either wholly or partially over a body of water and designed to

1321 provide shelter for water craft or for marine-related equipment.

1322

1323 Canal End Line, is a line or lines drawn from the farthest point where the canal meets land perpendicular

1324 to the sides of the canal, or to the sides of the canal as extended if necessary. If the side of a canal

1325 curves near its end point, such canal side shall be extended from the point immediately preceding where

1326 it begins to curve. See Diagram 5.5.4.A.

1327

1328 Canal Width, the width of the canal measured from seawall to seawall using the City’s Geographic

1329 Information Systems (GIS).

1330

1331 Captain’s Walk, a walkway that is parallel to the seawall with a maximum width of six feet.

1332

1333 Centerline of the Marine Improvement Area, means a line extended from the center of the parcel’s

1334 water frontage line to the center of the offset line of the parcel’s marine improvement area. See

1335 Diagram 5.5.4.F.

1336

1337 Channel or Canal, is an open conduit, either naturally or artificially created, which periodically or

1338 continuously contains moving water, or which forms a connecting link between two bodies of water.

1339

1340 Corner Parcel, is a parcel that either touches or is on both sides of an interior corner of a lake, basin, or

1341 canal.

1342

1343 Corner, Waterway, is the meeting of two sides which create an angle less than 180 degrees.

1344

1345 Cut-In Boat Slip, is a place for a boat to moor, created within a parcel through excavation or removal of

1346 soil and rock material and construction of a seawall around that area.

1347

1348 End Parcel, a waterfront parcel where any part of the parcel abuts or includes within its boundaries any

1349 part of the canal end line or any part of an extension of a side line between the side line and the canal

1350 end line.

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1351
1352 Fender Post, is a post inserted into the canal bottom and fastened to the dock or seawall to prevent
1353 damage to the vessel when tied alongside the dock or seawall.
1354
1355 Marine Improvement, means a whole, constructed marine structure including, but not limited to,
1356 dock, boat lift, mooring posts, walkways, and other interconnecting parts. A boat canopy, its supports,
1357 and its frame shall not be considered to be a part of the marine improvement to which they are
1358 attached.
1359
1360 Marine Improvement Area, is that area enclosed by the water frontage line, the offset line, and lines
1361 connecting the ends of the offset line to corresponding offset points. This establishes the construction
1362 envelope for marine improvements See Diagram 5.5.4.E.
1363
1364 Mean Water Level, in regard to fresh water waterways, the elevation established at the downstream
1365 weir, and, in regard to saltwater waterways, the mean high water of +013 feet National Geodetic
1366 Vertical Datum of 1929 (NGVD-29).
1367
1368 Mooring Piles, posts, meant for tethering a watercraft to, which are anchored into the floor of a
1369 waterbody.
1370
1371 Navigable Channel, means that portion of the waterway width in which no marine improvement may
1372 lawfully be constructed. The access width of the waterway shall be calculated by subtracting from the
1373 calculated waterway width twice the maximum distance that a marine improvement located along one
1374 side of the waterway could lawfully project.
1375
1376 Offset Point, means the distance from the property line where a marine improvement may be built. See
1377 Diagram 5.5.4.C.
1378
1379 Outside Corner parcel, means a parcel of land which projects into one or more waterways so as to have
1380 two or more sides abutting such waterway(s).
1381
1382 Quay, a modified seawall where a boat can dock parallel to the shore.
1383
1384 Water Frontage Line, means the line at which a waterfront parcel abuts the waterway. If the
1385 waterfront parcel has a seawall, the seawall face shall be deemed the water frontage line for the
1386 parcel. For waterfront parcels that have a property line, but no seawall, abutting the waterway, such
1387 property line shall be deemed the water frontage line. See Diagram 5.5.4.A.
1388
1389 Waterfront Parcel, means a parcel which abuts a waterbody.
1390
1391 Waterway, is any man-made or natural body of water, including, canals, lakes, and basins, within the
1392 City of Cape Coral.
1393
1394 Waterway Access Ratio, means shall be calculated by dividing the waterway access width by the
1395 calculated width of the waterway. See 5.5.4.B.
1396

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Waterway Center Point (WCP), is a point on the centerline of the canal 40 feet from the water's end. See Diagram 5.5.4.B.

Watercourse, is a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

Watercraft, is a boat, houseboat, canoe, raft, surfboard, or other apparatus designed for use on water, including motors or engines designed to propel such craft or apparatus.

Watercraft, Personal, is a recreational watercraft that a rider sits or stands on rather than inside, as one would a boat.

CHAPTER 5. TRUCK AND VEHICLE PARKING DEFINITIONS

This chapter defines terms that are used in Article xx – Truck and Vehicle Parking.

Single-Family Residential, property zoned R-1 and RE, and AI, RML or RMM when used for single-family residential purposes.

Multi-Family Residential, property zoned RML and RMM when used for multi-family residential purposes.

Industrial and Agricultural, include property zoned I and A when not used for single-family residential purposes.

Commercial and Professional, shall include property zoned C, CC, INST, P-1, NC, MX, MXB, MX SI, and SC.

Commercial Lettering, letters, numbers, symbols, or combinations thereof which advertise a trade, business, industry, or other activity for profit or a product, commodity, or service. The term shall not include bumper stickers affixed to bumpers only or the decal or plate commonly applied to a motor vehicle by a motor vehicle dealer.

Commercial Rack, any frame, device, or other apparatus that is designed and constructed for the primary purpose of carrying tools, building materials, or merchandise. Racks designed and constructed for carrying luggage or sporting equipment, such as kayaks, canoes, or bicycles, shall not be considered to be Commercial Racks so long as they are used for the purpose of carrying the aforesaid items. Furthermore, a rack designed and constructed for carrying a ladder (a "ladder rack") that is attached to a motor vehicle shall not be considered to be a Commercial Rack, provided the ladder rack is not wider than the vehicle to which it is attached and no part of such ladder rack extends more than 16 inches above the cab of the vehicle or extends beyond the tailgate of the vehicle.

Commercial Vehicle, an agricultural, construction, or industrial motor vehicle or any bus, step van, truck, or truck tractor. The term shall include any motor vehicle (including automobiles) upon which commercial lettering, as defined herein, has been affixed. The term shall also include a pickup truck from which the cargo box has been removed. Any motor vehicle with one or more tools (including a

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ladder), building materials, or merchandise visible from the street or abutting residential property, or a "commercial rack" that is visible from the street or abutting residential property shall be deemed a commercial vehicle. A passenger automobile or sports utility vehicle (SUV) containing commercial lettering shall not be considered a commercial vehicle for purposes of this section so long as the commercial lettering on the vehicle does not contain any reference to the residential address at which the automobile is parked.

Light Van, any motor vehicle having a generally rectangular bulk, which is licensed and registered for operation upon public highways and which has a carrying capacity of no more than one ton or no more than nine passengers.

Owner, when used in relation to a motor vehicle or trailer, any person to whom a motor vehicle or trailer is registered according to the certificate of title for the motor vehicle or trailer and, if the motor vehicle or trailer is under lease, rental agreement, or on loan under any type of arrangement, gratuitous or otherwise, shall include the person having possession or control of the vehicle. When used in relation to privately real property in a residential zoning district, the term shall mean the owner according to the latest ad valorem tax records of the county and, if the privately property is under lease, rental agreement, agreement for deed, or similar land contract shall include the person in possession and control of the property.

Pickup Truck, any motor vehicle designed primarily for the transportation of property within a permanently attached open cargo box and having a gross motor vehicle weight of no more than 17,500 pounds, a height of no more than 82 inches (measured from the ground to the vehicle's highest point excluding antennae), no more than six wheels, and no more than two sides.

Screening, a visual barrier consisting of permanent, dense vegetation, or other permitted structure at least equal in height to the recreational vehicle, boat, or boat trailer but which does not violate any height limitation for barriers in the applicable zoning district.

Trailer, any vehicle without motive power designed for carrying persons or property on its own structure and to be drawn by a motor vehicle regardless of hitch type.

Trailer, Boat, a trailer that is designed and constructed by the manufacturer for the primary purpose of carrying and launching a boat.

Truck, any motor vehicle, other than a pickup truck or light van, designed primarily for the transportation of property or cargo.

Vehicle for Human Habitation, a house car, camp car, camper, house trailer, or any vehicle by whatever name known, school bus, or other bus designed or adaptable for human habitation, whether such vehicle moves by its own power or by power supplied by a separate vehicle.

CHAPTER 6. SIGN DEFINITIONS

This chapter defines terms that are used in Article 7 - Signs.

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1489 Banner, is any sign having the characters, letters, illustrations, or ornamentations applied to cloth, paper,
1490 or fabric of any kind with only such material for foundation. The word "banner" shall also include pennant
1491 or any animated, rotating, or fluttering device, with or without lettering or design, and manufactured and
1492 placed for the purpose of attracting attention.
1493

1494 Feather Flag, is a vertical flag used for identifying a secondary model home contiguous to the primary
1495 model home site.
1496

1497 Flag, is a piece of fabric with a color or pattern that represents some country, state, county, city, party,
1498 organization, or business activity.
1499

1500 Flashing Sign, is any sign with a light or lights which flash, blink, operating on and off intermittently, change
1501 in intensity, or otherwise create the illusion of flashing or movement.
1502

1503 Flat or Wall Sign, is any sign erected parallel to the facade or on the outside wall of any building and
1504 supported throughout its length by the wall of the building or incorporated into the structure or
1505 architecture.
1506

1507 Mural, is any picture, scene, or diagram painted on any exterior wall or fence not interpreted by the
1508 Director to be advertising. Murals determined to be advertising shall be considered a sign and shall be
1509 included in the calculations of allowable sign area.
1510

1511 Sign, is any display of banners and flags, characters, letters, illustrations or any ornamentations, or the
1512 complete structure on which any such characters, letters, illustrations, or ornamentations are stated or
1513 applied (except buildings to which the sign may be attached); used for identification, directional purposes,
1514 advertising, or promotional purposes.
1515

1516 Sign, A-Frame, is a moveable sign not secured or attached to the ground as required by this Code. Menu
1517 boards are permitted on sidewalks within commercial shopping centers and in front of the business it
1518 applies to, and which do not obstruct the walkway and are not placed in the landscaping.
1519

1520 Sign, Abandoned, is a sign which advertises a business that is no longer licensed or is no longer doing
1521 business at that location.
1522

1523 Sign, Add-on, is any additional sign area added to a previously permitted and/or conforming sign.
1524

1525 Sign, Advertising, is any form of printed message intended to aid, directly or indirectly, in the sale, use,
1526 or promotion of a product, commodity, service, activity, or entertainment.
1527

1528 Sign, Animated, is a sign with action or motion using electrical energy, electronic or manufactured
1529 sources of supply, or wind actuated elements, including rotating, revolving, or flashing signs against
1530 which it is placed, excluding the necessary supports or uprights on which such sign is placed.
1531

1532 Sign Area, is the height multiplied by the length. Height shall be measured from the top of the highest
1533 letter to the bottom of the lowest and length shall be measured from the point of the lettering furthest
1534 to the left to the point of the lettering furthest to the right. Any logo shall be measured in the same

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fashion and will count as part of the sign face area. When the lettering and logo are contained within a frame or outline, the sign area shall be the area inside the frame or outline. For double-faced signs, only one side shall be measured for the area.

Sign, Bench, is a sign on any part of the surface of a bench or seat placed adjacent to a public street.

Sign, Building Identification, is a sign on a building with a main entry that depicts only the name of the building. Building identification signs on the exterior of a building or behind a glass enclosure, window, glass facade, or any other transparent surface material, and visible from the outside of the building are considered signs.

Sign, Changeable Copy, means a sign which has message characters that are not permanently attached to the sign, but which are attached to permit numerous changes of the message.

Sign, Construction, is a temporary sign erected on the premises on which construction is taking place, during the period of such construction, identifying those engaged in construction on any building site. This includes the builder, contractor, developer, architect, engineer, financing entity, or other persons or artisans involved in construction.

Sign, Development, is a temporary sign advertising the sale or rental of structures under construction upon land which is under development.

Sign, Directional, a sign whose message is exclusively limited to guiding the circulation of motorists or pedestrians on the site.

Sign, Directory, is a sign which lists only the names of individuals or businesses within a building, or contiguous buildings on one premises.

Sign, Double-Faced, is a sign with two identical display areas against each other or where the interior angle formed by the display areas is 60 degrees or less, where one face is designed to be seen from one direction and the other side from another direction.

Sign, Façade, see "wall sign."

Sign Face, is that portion of the sign, excluding the supporting structure, where copy, font, visual depictions, or otherwise can be placed.

Sign, Free Standing, includes ground signs, pole signs, and monument signs which are supported by one or more columns, uprights, or braces anchored into the ground independent of support from any building.

Sign, Fuel Pump Valance, is any permanent sign attached to the top of a fuel pump.

Sign, Garage Sale, is any sign pertaining to the sale of personal property in, at or upon any residentially zoned property located in the City, to include yard sales, moving sales, and the like. Garage sales shall include all such sales and include the advertising of the holding of any such sale, of the offering to make any sale, whether made under any other name such as lawn sale, yard sale, moving sale, front yard sale,

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1581 back yard sale, home sale, attic sale, rummage sale, patio sale, flea market sale, or any similar designation.
1582 Limited to five square feet in area. See "Residential Transitory Sign".
1583

1584 Sign, Ground, see Sign, Monument.
1585

1586 Sign Height, means the vertical distance to the highest point of a sign. Freestanding signs shall be
1587 measured from the crown of the nearest abutting street or sidewalk.
1588

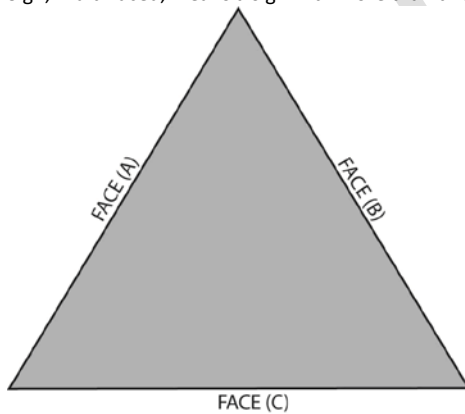
1589 Sign, Identification, is a sign which contains no advertising and the message of which is limited to
1590 conveying street numbers, the name, address, and numbers of the premises, or the name of the owner
1591 or occupant of the premises.
1592

1593 Sign, Illuminated, is a sign in which a source of light is used to make the message readable. This shall
1594 include internally and externally lighted signs.
1595

1596 Sign, Instructional, is a sign conveying instructions with respect to the premises on which it is maintained,
1597 such as, but not limited to, "exit," "entrance," "parking," or similar instructions.
1598

1599 Sign, Monument, is a freestanding sign supported primarily by an internal structural framework or
1600 integrated into landscaping or other solid structural features other than support poles.
1601

1602 Sign, Multi-faced, means a sign with more than two (2) faces.



$$\begin{aligned} \text{TOTAL SIGN AREA} &= \\ \text{FACE (A)} + \text{FACE (B)} + \text{FACE (C)} \end{aligned}$$

1603 Sign, Neighborhood, means signs designating separate and distinct neighborhoods which may be part of
1604 a larger subdivision or have distinct characteristics which are unlike those in adjoining areas.
1605
1606

1607 Sign, Nonconforming, is any sign which does not comply with the regulations of this sign code, or
1608 subsequent amendments.

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1609
1610 Sign, Off-Premises, is a sign identifying, advertising or directing the public to a business, merchandise,
1611 service institution, residential area, entertainment, or activity which is located, sold, rented, based,
1612 produced, manufactured, furnished, or taking place at a location other than on the property on which the
1613 sign is located.
1614
1615 Sign, On-Premises, is any structure, device, display board, screen, surface, or wall, characters, letters, or
1616 illustrations placed thereto, thereon, or there under by any method or means whatsoever where the
1617 matter displayed is used for advertising on the premises, a product or service, actually or actively offered
1618 for sale or rent thereon or therein.
1619
1620 Sign, Painted, is any sign painted on any surface, including the roof of any building, visible from any public
1621 right-of-way.
1622
1623 Sign, Pole, is a freestanding sign that is affixed, attached, or erected on a pole that is not itself an integral
1624 part of or attached to a building or structure.
1625
1626 Sign, Political, means any temporary sign announcing or supporting political candidates or issues in
1627 connection with any local, county, state, or national election.
1628
1629 Sign, Portable, is any sign that is designed to be transported, including but not limited to signs: with wheels
1630 removed; with chassis or support constructed without wheels; designed to be transported by trailer or
1631 wheels; attached temporarily or permanently to the ground, structure, or other signs; menu and sandwich
1632 boards, searchlight stands; and tethered inflatable signs.
1633
1634 Sign, Projecting Blade, is any sign hung or projecting perpendicular to the building. Maximum allowable
1635 area is four square feet.
1636
1637 Sign, Projecting, is a sign projecting at an angle from the outside wall or walls of any building which is
1638 supported by only one rigid support, irrespective of the number of guy wires used in connection
1639 therewith.
1640
1641 Sign, Public, is a sign placed under the authority of duly authorized government officials, including traffic
1642 signs, legal notices, public safety signs, or signs placed by such authorized official for the public health,
1643 safety, welfare, or convenience.
1644
1645 Sign, Real Estate, is any sign installed by the owner or his agent on a temporary basis, advertising the real
1646 property upon which the sign is located for rent, sale, or lease.
1647
1648 Sign, Residential Transitory, means specific types of temporary signs which may be displayed for three
1649 consecutive days only. These signs are intended to facilitate garage sales, estate sales, moving sales, yard
1650 sales, neighborhood meetings, HOA meetings and the like. See "Garage Sale Sign" and "Estate Sale Sign".
1651
1652 Sign, Revolving, see Animated Sign
1653

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1654 Sign, Roof, is any outdoor advertising display sign, installed, constructed, or maintained above the roof
1655 line of any building.
1656
1657 Sign, Sandwich, see A-Frame Sign
1658
1659 Sign, Rotating, see Animated Sign
1660
1661 Sign, Snipe, is any sign of any size, made of any material, including but not limited to paper, cardboard,
1662 wood, and metal, when such sign is tacked, nailed, posted, pasted, glued or otherwise attached to trees,
1663 poles, fences or other objects, and the advertising matter appearing thereon is not applicable to the
1664 premises upon which said sign is located.
1665
1666 Sign, Special Event, is any temporary sign announcing special events.
1667
1668 Sign, Swinging, is any sign that swings freely from or on supports regardless of the guy wires used in
1669 connection therewith.
1670
1671 Sign, Temporary, is a sign that advertises for a specific limited period of time, political candidates, parties,
1672 or issues, a building under construction, business grand opening, other special events and model homes.
1673 Sign, Time and Temperature, is a display containing illuminated numerals flashing alternatively to show
1674 the time and temperature.
1675
1676 Sign, Trailer, is any sign installed on a frame or structure with wheels other than a motor vehicle.
1677 Sign, Under Canopy, is any sign hung under a canopy perpendicular to the building. No permit required.
1678 Maximum area is four square feet.
1679
1680 Sign, V-Shaped, is any sign which has two faces which are not parallel. The area of each of the two faces
1681 will be added together to calculate the allowable area for the sign face dimension. A V-shaped sign is not
1682 a double-faced sign.
1683
1684 Sign, Vehicle, is a sign affixed to or painted on a transportation vehicle or trailer for the purpose of
1685 identification or advertisement. Vehicle signs shall not include political signs, bumper stickers, or signs
1686 required by law, ordinance, or regulations.
1687
1688 Sign, Wall (Facade Sign), is any sign installed parallel to or flush against the outside facade of a building.
1689 Such signs, and logos located on the exterior of a building or behind a glass enclosure, window, glass
1690 facade, or any other transparent surface material, and visible from the outside of the building, are
1691 considered wall signs and are calculated as part of the total facade signage permitted. Such signs must
1692 conform to the Sign Code. See Building Identification signs.
1693
1694 Sign, Window, is any sign which is attached or painted, either permanently or temporarily, on the interior
1695 or exterior of a window, glass door, glass wall, or which is placed within 12 inches of the window, glass
1696 door, or glass wall and is intended to be viewed from the outside.

Chapter 7. Wireless Telecommunications Definitions

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ARTICLE 11 – DEFINITIONS**

1700 This chapter defines terms related to requirements in Article 5, Chapter 12. Wireless
1701 Telecommunication.

1702

1703 Alternate Tower Structure, means man-made trees, clock towers, bell steeples, light poles, and similar
1704 alternative-design mounting structures that camouflage or conceal the presence of antennas or
1705 towers.

1706

1707 Antenna, means any exterior transmitting or receiving device mounted on a tower, building, or
1708 structure and used in communications that radiates or captures electromagnetic waves, digital
1709 signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications
1710 signals, or other communication signals.

1711

1712 Antenna Support Structure, is any building or other structure, other than a tower, which may be used
1713 for location of wireless telecommunications facilities.

1714

1715 Camouflaged, means any wireless communications facility which is designed to blend into the
1716 surrounding environment or that camouflages or conceals the presence of the tower or wireless
1717 telecommunication facility to the extent that the average person would be unaware of its nature as a
1718 tower, antenna, or wireless telecommunications facility. Examples of camouflaged facilities include, but
1719 are not limited to, man-made trees, clock towers, bell steeples, flag poles, light poles, and similar
1720 alternative-design mounting structures. Examples of camouflaged antennas include, but are not limited
1721 to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the
1722 existing structure, and antennas integrated into architectural elements.

1723

1724 Co-location, is the act of erecting antenna(s) of a wireless service provider on a tower or an existing
1725 antenna support structure already supporting an antenna.

1726

1727 Designed Service Study, is a study of the configuration and manner of deployment of wireless services
1728 the wireless provider has designed for an area as part of its network that demonstrates whether or not
1729 existing towers or tall structures in the search can be utilized for co-location.

1730

1731 FAA, means the Federal Aviation Administration.

1732

1733 FCC, means the Federal Communications Commission

1734

1735 Monopole, is a style of free-standing tower that is composed of a single shaft, usually composed of two
1736 or more hollow sections that are in turn attached to a foundation, with external antennas. This type of
1737 tower is designed to support itself without use of guy wires or other stabilization devices.

1738

1739 Pole-Mounted, means an antenna attached to or upon an electric transmission or distribution pole, a
1740 streetlight, a traffic signal or similar facility within the public right-of-way or a utility easement. A utility
1741 pole-mounted facility shall not be considered a wireless telecommunication facility.

1742

1743 Structure-Mounted, means a wireless telecommunications facility, tower or antenna which is mounted
1744 to an existing building or structure not otherwise meant to support a wireless telecommunication
1745 facility, tower or antenna.

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1746
1747
1748 Wireless Communication, is the transmission and reception of voice, data or video transmission via radio
1749 frequency (RF) signals through electromagnetic energy.
1750
1751 Wireless Communication Facility (WCF), is any cables, wires, lines, wave guides, antennas, and other
1752 equipment associated with the transmission or reception of telecommunications installed upon a tower
1753 or antenna support structure, including ground-based equipment in direct support of such transmission
1754 or reception. However, the term “Wireless communication facility” shall not include amateur radio
1755 antennas.
1756

DRAFT

CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 12 - BUILDING CODE AND ENGINEERING DESIGN STANDARDS

Sections:

- Section 12.1.** Purpose, applicability, and definitions
- Section 12.2.** 2010 Florida Building Code, Building
- Section 12.3.** 2010 Florida Building Code, Existing Building
- Section 12.4.** International Property Maintenance Code, 2012 Edition

Chapter 1. Adoption of codes: Florida Building Code, the National Electrical Code, International Property Maintenance Code, and Engineering Design Standards.

Section 12.1. Purpose, applicability, and definitions.

The following building codes are hereby adopted, incorporated herein by reference as fully as if set out at length herein, and shall govern all construction, erection, alteration, repair, and demolition of all buildings or other structures within the corporate limits of the city; and any appurtenances attached thereto, except those portions of the adopted codes that are hereinafter deleted, modified, or amended:

- A. 2017 Florida Building Code. The family of codes adopted by the Florida Building Commission, except as deleted, modified, or amended as indicated in Sections 11.2 and 11.3., below.
- B. National Electrical Code, 2014 Edition.
- C. International Property Maintenance Code, 2012 Edition, except as deleted, modified, or amended as indicated in Section 11.4., below.
- D. City of Cape Coral Engineering Design Standards, 2002, as amended.

Section 12.2. 2010 Florida Building Code, Building.

Amendments to adopted code. All sections of the 2017 Florida Building Code, Building are in effect except as amended as shown below:

- A. Section 107. Submittal Documents.

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R, Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Section 105-14 and Section 107.6. shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

- B. Section 115. Stop Work Orders.

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115.1 Authority. Whenever the building official 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 building official is authorized to issue a stop work order. In addition, the building official 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.

115.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, all work on the construction site shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

115.3 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.

C. Section 117. Variances in Flood Hazard Areas.

117.1 Flood hazard areas. Pursuant to F.S. § 553.73, the variance procedures adopted in the City of Cape Coral Floodplain Management Ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the Florida Building Code, Building.

D. Section 612. Flood Loads.

SUBSTANTIAL IMPROVEMENT. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first improvement or repair of that building or structure subsequent to August 17, 1981. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Section 12.3 - 2010 Florida Building Code, Existing Building.

All sections of 2010 Florida Building Code, Existing Building are in effect except as amended as shown below:

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A. Section 202. General Definitions

SUBSTANTIAL IMPROVEMENT. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first improvement or repair of that building or structure subsequent to August 17, 1981. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Section 12.4. International Property Maintenance Code, 2012 Edition.

The International Property Maintenance Code, 2012 Edition, a copy of which is on file in the City Clerk's office, as published by the International Code Council, Inc., is adopted by reference as if totally copied herein, with revisions to sections as follows:

- A. Section 101.1. Insert: City of Cape Coral, Florida.
- B. Section 103.1. Delete the words "department of property maintenance inspection is hereby created", and insert in its place the words "City of Cape Coral Code Enforcement Department has been heretofore created". Further, wherever the words "department of property maintenance inspection" or "code official" may appear, substitute the words "City of Cape Coral Code Enforcement Department" and the words "Code Enforcement Manager, or the Manager's designee", respectively.
- C. Section 103.5. Insert: Fees to be amended, if applicable, at a later date.
- D. Section 106.3. Insert at end of such section: The City of Cape Coral Code Enforcement Department may, in addition or alternatively, to pursuing any such criminal or civil penalties of seeking injunctive relief, bring violations for prosecution before the Code Enforcement Special Magistrate, in accordance with §§ 2-81 through 2-96 of the City of Cape Coral Code of Ordinances.
- E. Section 111. Delete.
- F. Section 302.4. Insert: twelve (12) inches in height.
- G. Section 304.14. Insert: January to December.

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- 137
138 H. Section 602.3. Insert: September to May.
139
140 I. Section 602.4. Insert: September to May.
141
142 J. All references to the building official in the International Property Maintenance Code, 2012
143 Edition, shall be construed as meaning the Department of Community Development Director or
144 the Director's designee. All references in the International Property Maintenance Code, 2012
145 Edition to building, plumbing, mechanical, fuel gas, electric, fire safety or other codes or standards
146 shall be construed to mean the 2010 Florida Building Code, National Electrical Code, 2008 Edition,
147 and the Florida Fire Prevention Code, as applicable.
148
-

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

Section 13.1.1 Reasonable Accommodations

A. Purpose, Intent, and Applicability

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

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

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

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

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- 47
- 48 c. Name and mailing address of subject property owner;
- 49
- 50 d. Description of reasonable accommodation requested;
- 51
- 52 e. Description of the specific regulation(s) or procedure(s) from which accommodation is
- 53 sought;
- 54
- 55 f. Reasons the reasonable accommodation may be necessary for the individual(s) with
- 56 disabilities to use and enjoy the housing or other service;
- 57
- 58 g. Name and contact information for applicant's authorized representative, if applicable; and
- 59
- 60 h. Signature of applicant, or authorized representative.
- 61
- 62 5. Fees. There shall be no fee imposed by the City in connection with a request for reasonable
- 63 accommodation under this Section or an appeal of a determination on such request to the City
- 64 Council, and the City shall have no obligation to pay a requesting party's (or an appealing party,
- 65 as applicable) attorneys' fees or costs in connection with the request, or an appeal
- 66
- 67 C. Medical information confidentiality. Should the information provided by the disabled person to the
- 68 City include medical information or records including records indicating the medical condition,
- 69 diagnosis or medical history of the disabled person, such individual may at the time of submitting such
- 70 medical information, request that the City, to the extent allowed by law, treat such medical
- 71 information as confidential information of the disabled person. The City shall thereafter endeavor to
- 72 provide written notice to the disabled person, or their representative, of any request received by the
- 73 City for disclosure of the medical information or documentation which the disabled person has
- 74 previously requested be treated as confidential by the City. The City will cooperate with the disabled
- 75 person, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure
- 76 of such medical information or documentation, but the City shall have no obligation to initiate,
- 77 prosecute, or pursue any such action, or to incur any legal or other expense (whether by retention of
- 78 outside counsel or allocation of internal resources) in connection therewith, and may comply with any
- 79 judicial order without prior notice to the disabled person.
- 80
- 81 D. Determination process. The City Manager shall have the authority to consider and act on requests for
- 82 reasonable accommodation. When a reasonable accommodation request form has been completed
- 83 and submitted to the Department of Community Development, it shall be referred to the City
- 84 Manager for review and consideration.
- 85
- 86 1. The City Manager shall issue a written determination within 45 days of the date of receipt of a
- 87 completed application, except as provided in paragraph C. below, and may, in accordance with
- 88 federal law; (1) grant the accommodation request, (2) grant a portion of the request and deny a
- 89 portion of the request or impose conditions upon the grant of the request, or (3) deny the request
- 90 in accordance with federal law. If the request is denied, the determination shall state the grounds
- 91 therefore. All written determinations shall give notice of the right to appeal.
- 92

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2. The notice of determination shall be sent to the requesting party (i.e., the disabled individual or authorized representative) by certified mail, return receipt requested.

3. If reasonably necessary to reach a determination on the request for reasonable accommodation, the City Manager, may, prior to the end of said 45-day period, request additional information from the requesting party, specifying in detail what information is required. Such additional information may include, additional medical information from the requesting party. The requesting party shall have 15 days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the 45-day period to issue a written determination shall no longer be applicable, and the City Manager, shall issue a written determination within 30 days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said 15-day period, the City Manager shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned or withdrawn and no further action by the City with regard to said reasonable accommodation request shall be required.

E. Criteria for determination. In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA or ADA. For purposes of this Section, the disabled individual must demonstrate to the City:

1. (i) A physical or mental impairment which substantially limits one or more major life activities; (ii) a record of having such impairment; or (iii) that they are regarded as having such impairment; and
2. That the proposed accommodation being sought is reasonable and necessary to afford handicapped or disabled persons equal opportunity to use and enjoy housing.

F. Required findings. A request for reasonable accommodation pursuant to this Section shall be approved, with or without conditions, if the City Manager finds based upon all of the evidence presented, that all of the following findings are made:

1. The property or dwelling that is the subject of the request for reasonable accommodation will be occupied by a disabled person;
2. The requested accommodation is necessary to provide a disabled person with an equal opportunity to use and enjoy a dwelling;
3. The requested accommodation will not impose an undue financial or administrative burden on the City; and
4. The requested modification will not require a fundamental alteration in the nature of a City program or law.

G. Conditions of approval. In granting a request for reasonable accommodation, the City Manager may impose conditions of approval deemed reasonable and necessary to ensure that the reasonable

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ARTICLE 13 - REASONABLE ACCOMMODATION & DISPUTE RESOLUTION

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

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

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

Section 13.2 Dispute Resolution

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

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

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

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

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

4. DEVELOPMENT PERMIT.

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

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

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

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6. PARTICIPANT.

a. A person with a legal or equitable interest in land contiguous to the owner's property and who has been accepted by the Special Magistrate as a participant in the proceeding; or

b. A substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantial nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding, including a public hearing, and who has been accepted by the Special Magistrate as a participant in the proceeding.

7. PARTY or PARTIES. The owner, the city, and any other governmental entity made a party to the proceeding by the Special Magistrate.

8. PERSON. Individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

9. RIPENESS DECISION. A written decision that describes the use or uses available on the subject real property.

10. SPECIAL MAGISTRATE PROCEEDING. Any combination of facilitation sessions, formal or informal hearings, of a public nature authorized under the Florida Land Use and Environmental Dispute Resolution Act.

C. Pre-hearing procedures.

1. Unless the parties agree in writing to extend the time for performing any act under these guidelines, including the overall 165-day time period, a Special Magistrate proceeding may not continue longer than 165 days from the date the owner files the request for relief.

2. Any copy which must be furnished to the Special Magistrate, a party or a participant may be sent by regular mail, postage prepaid, or by hand delivery to the recipient's last known address. The burden of proving a copy has been furnished is on the person responsible for furnishing it.

3. Except for, an owner's request for relief, any document which must be submitted or any copy which must be furnished, may be submitted or furnished by facsimile transmission. Facsimile documents shall be deemed submitted or furnished on the date transmitted as shown on the recipient's copy, if the copy is complete.

4. Filing means that the signed original must be received by the office that is to receive the document by the date specified. Any document received after 5:00 p.m. shall be deemed filed as of 8:00 a.m. the next regular business day.

D. Standards of conduct.

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1. The Special Magistrate holds a position of trust and should adhere to the highest standards of personal integrity, impartiality, and competence. The Special Magistrate should be honest and unbiased, act in good faith, be diligent, and avoid any conflict of interest or the appearance of a conflict of interest. The Special Magistrate should disclose any facts or circumstances that may give rise to justifiable doubts as to impartiality or independence.

2. The standards of conduct for parties and participants may be adopted by the City Council by resolution and shall govern the proceedings unless waived or altered in the Special Magistrate contract.

E. Administrative appeals and judicial review.

1. A petition by the owner for judicial review of the development order or enforcement action or a formal administrative hearing pursuant to F.S. §§ 120.569 and 120.57, if applicable, shall waive all rights to a Special Magistrate proceeding.

2. A request for relief through a Special Magistrate proceeding shall toll the time for filing a petition for judicial review of the development order or enforcement action, or a formal administrative hearing pursuant to F.S. §§ 120.569 and 120.57, if applicable.

3. Invoking the procedures for a Special Magistrate proceeding is not a pre-condition for judicial review of the development order or enforcement action or a formal administrative hearing pursuant to F.S. §§ 120.569 and 120.57.

F. Pre-initiation meeting. Prior to filing a formal request for relief under this ordinance, the owner may request by letter an informal meeting with the City Manager to discuss alternatives to the filing of the Special Magistrate proceeding. The City Manager shall conduct such a meeting as expeditiously as possible and shall include technical staff familiar with the regulations at issue.

G. Request for relief. Any owner who believes a development order of or an enforcement action by the city is unreasonable or unfairly burdens the use of the owner's real property may file a request for relief in accordance with the requirements of this ordinance. Request for relief forms shall be maintained by the City Department of Community Development and shall be available during business hours to members of the public.

H. Time for filing. A request for relief must be filed within 30 days after:

1. Receipt of the development order or enforcement action; or

2. If a city administrative appeal is available in the case of a particular development order or enforcement action, the later of the conclusion of such administrative appeal or the expiration of four months after the initiation of such appeal. Before initiating a Special Magistrate proceeding to review a city development order or enforcement action, the owner must exhaust all nonjudicial city administrative appeals so long as such appeals take no longer than four months. Once nonjudicial local administrative appeals have been exhausted and the development order or enforcement action is final, or, if the owner has pursued administrative

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

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

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

J. Filing of request for relief.

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

K. Notice of filing.

1. Concurrently with the forwarding of the request for relief to the Special Magistrate, the city shall serve, by U.S. Mail or hand delivery, a notice of the filing of the request for relief to the following:
 - a. Owners of real property contiguous to the applicant's property at the address shown on the latest Lee County tax roll; and
 - b. Any substantially affected person who submitted oral or written testimony of a substantive nature which stated with particularity an objection to or support for any development order

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or enforcement action at issue. However, notice under this paragraph is required to be provided to such a substantially affected person only if that person requested in writing or at a public hearing expressed a desire to be placed on a mailing list to receive notice of any subsequent proceeding on the development order or enforcement action at issue. The city shall maintain in its files relating to particular development orders a mailing list of persons who have presented oral or written testimony and who have requested notice.

2. The notice of the filing of the request for relief need not contain any attachments or supporting documentation which may have accompanied the request for relief. However, in lieu of providing a complete copy of the request for relief, the notice of filing shall contain any information necessary for the recipient to secure a complete copy of the request for relief. The cost of preparing and serving copies of the request for relief on qualifying participants shall be borne equally by the parties.

3. Any failure to notice potential participants shall be cured by posting of notice of the Special Magistrate proceeding in a location established by the City Council for that purpose.

L. Special Magistrate.

1. Qualifications and restrictions. A Special Magistrate need not be a lawyer or a mediator certified by the Florida Supreme Court. However, in order to serve as a Special Magistrate in a proceeding pursuant to this ordinance, a person must:

a. Be a resident of the State of Florida;

b. Possess experience and expertise in mediation; and

c. Possess experience and expertise in at least one of the following disciplines and a working familiarity with the others:

i. Land use and environmental permitting;

ii. Land planning;

iii. Land economics; and

iv. Local and state government organization and powers, and the law governing the same.

2. Special Magistrate selection.

a. The City Council shall at least annually recruit qualified persons to serve as Special Magistrates and shall, on an annual basis, appoint at least three qualified persons to serve as "pre-approved" Special Magistrates.

b. The city shall include in the request for relief form provided to the owner a pre-approved list of Special Magistrates and instructions for objecting to any person named on the list.

c. The parties may mutually agree on a Special Magistrate. In instances in which the city has been joined by a Special Magistrate pursuant to subsection (11) of the Act, the city shall not unreasonably refuse to abide by the choice of a Special Magistrate by the original parties.

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3. Selection from pre-approved list.

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

M. Special Magistrate agreement.

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

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- d. The Special Magistrate may require in any agreement that the parties, where not otherwise prohibited by law, provide a deposit of funds to secure payment of the Special Magistrate's fees and expenses;
- e. Payment of costs, including, but not limited to the costs of providing notice and effecting service, and payment of fees and expenses for the Special Magistrate;
- f. Establish rules for the conduct of the proceeding, including but not limited to standards of conduct for the Special Magistrate, parties, and participants, and the enforceability of subpoenas in circuit court;
- g. Identify factual issues to be addressed in the proceeding or specify procedures for resolving factual issues, including, but not limited to, stipulation;
- h. Provide for the exchange of information by the parties prior to the mediation or hearing;
- i. Identify participants known to the parties who should be notified of the proceeding;
- j. Provide whether the time for performance of any act is varied; and
- k. Address such other issues as the parties may decide will assist in settlement of the dispute.

N. Conduct of the Special Magistrate proceeding.

- 1. Request to participate in proceedings. Within 21 days after receipt of the request for relief, any owner of land contiguous to the owner's property and any substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the development order or enforcement action at issue may request from the Special Magistrate permission to participate in the proceeding. Such persons may be permitted to participate in the hearing to the extent allowed under the Act.
- 2. Filing of response.
 - a. No more than 15 days after the filing of a request for relief, the City shall file a response to the request for relief on behalf of the city. A copy shall be furnished to the owner and any person who has requested to participate in the proceeding. The cost of preparing and filing the response to the request for relief shall be borne by the city.
 - b. The response to the request for relief shall set forth in reasonable detail the position of the city regarding the matters raised by the owner. The response shall include a brief statement explaining the public purpose of the regulations on which the development order or enforcement action is based.
- 3. Sufficiency hearing; request to be dropped as a party.

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a. The response to the request for relief may include a request that the Special Magistrate dismiss the owner's request for relief for any failure to include the information required in subsection .7 above. The Special Magistrate may conduct a hearing on the issue of such dismissal of the request for relief. If the Special Magistrate dismisses the owner's request for relief, the Special Magistrate shall allow the owner a reasonable time within which to file an amended request for relief. Failure to file an adequate amended request for relief within the time specified by the Special Magistrate shall result in a dismissal with prejudice as to this proceeding.

b. Any party may request, in its response or otherwise, to be dropped from the proceeding. The request must set forth facts and circumstances to aid the Special Magistrate in deciding the request. The Special Magistrate may conduct a hearing at any time on any request to be dropped as a party. All such requests must be disposed of prior to a hearing on the substance of the owner's request for relief. If the Special Magistrate denies a party's request to be dropped, that party shall participate in the proceeding.

O. Notice and timing of Special Magistrate proceeding.

1. As required under the Act, the Special Magistrate shall timely convene a Special Magistrate proceeding on the request for relief.

2. The Special Magistrate's expenses in providing notice shall be borne equally by the parties unless otherwise established in the Special Magistrate agreement.

3. Notice to all parties and other persons who have requested such notice shall contain a reference number and date of filing of the request for relief and instructions for obtaining further information regarding the request for relief.

P. Subpoena powers of the Special Magistrate.

1. A subpoena issued by a Special Magistrate may require the witness to bring a document or thing.

2. A party requesting the subpoena of a nonparty witness shall make such request in writing to the Special Magistrate.

3. The Special Magistrate shall only subpoena a witness that the Special Magistrate believes will aid in the disposition of the matter.

4. Parties subpoenaing witnesses shall be responsible for paying fees and mileage in the amount as provided under Florida law for witnesses in civil cases.

5. The Special Magistrate shall provide notice of any witnesses subpoenaed to any party requesting such notice.

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6. Service of subpoenas shall be made in the manner provided by the Florida Rules of Civil Procedure.

7. The witnesses of either party that are present for the hearing or are on standby or available on call are not to be excused by either party without the concurrence of the other party or of the Special Magistrate.

Q. Special Magistrate proceedings.

1. Consolidation.

a. Separate matters which involve similar issues or identical parties may be consolidated if the parties agree and it appears that consolidation would promote the speedy, efficient, and inexpensive resolution of the matters.

b. If such separate matters are pending before different Special Magistrates, the parties may decide which Special Magistrate will conduct the consolidated proceeding. If the parties cannot agree on one or more Special Magistrates to conduct the proceeding, the proceedings shall not be consolidated.

2. Conduct of the proceeding.

a. A party or participant may be represented by an attorney or other person at any phase of the proceeding, but such representation is not required.

b. At the mediation, each party shall be represented by a person with authority to bind that party to a settlement, or to recommend a settlement directly to the persons with authority to bind the party. The Special Magistrate may ask a representative to provide assurances of such authority.

3. Order of the proceeding.

a. In keeping with the overriding intent of the Legislature that the Special Magistrate proceeding be a flexible, problem-solving procedure which results in a voluntary settlement, the Special Magistrate may conduct the phases of the proceeding in any sequence and on separate days.

b. The proceeding shall be open to the public and shall be held in a location accessible to the public, including the physically handicapped.

c. The proceeding shall be conducted under the direction and supervision of the Special Magistrate. The Special Magistrate shall determine the order of presentation of issues and information unless otherwise set forth in the Special Magistrate agreement. The Special Magistrate shall decide questions of procedure in a manner which provides reasonable due process.

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d. Prior to any other portion of the proceeding, the Special Magistrate shall conduct a hearing on any request to dismiss the request for relief.

e. At any time after commencement of the information-gathering hearing, the Special Magistrate may recess the hearing to recommence mediation and facilitation.

f. After the hearing, the Special Magistrate may re-convene the parties to present a written recommendation, in draft or final form, and seek to re-commence negotiations.

4. Mediation phase.

a. The Special Magistrate's first responsibility is to facilitate a resolution of the dispute and arrive at a settlement acceptable to the parties. It may involve a modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties.

b. The Special Magistrate shall, among other things, suggest alternatives, analyze issues, question perceptions, use logic, stimulate and facilitate negotiations between the parties, and keep order. The Special Magistrate at all times shall promote conciliation, cooperation, compromise, and settlement of the dispute within the bounds established by law.

c. As alternatives, if variances, and other types of adjustments to the development order or enforcement action are presented, the Special Magistrate shall afford participants an opportunity to address the impacts of such alternatives on their substantial interests.

d. At any time after commencement of the presentation of evidence in the hearing, the Special Magistrate may recess the hearing and presentation of evidence to recommence a facilitation session.

5. Information-gathering hearing.

a. Within five days of receipt of the request for relief, the Special Magistrate shall provide written notice of the place, date, and time of the hearing to all parties, and to all person who have requested such notice. The hearing must be held within 45 days of the Special Magistrate's receipt of the request for relief. The parties may agree to extend the date for the hearing.

b. The hearing must be held in the City of Cape Coral. The Special Magistrate's decision on the specific place of the mediation and hearing shall be final.

c. The Special Magistrate shall hear from anyone with information necessary to understand the matter. The Special Magistrate may question anyone presenting information at the hearing, but will give all parties an opportunity for follow-up questions.

d. The Special Magistrate shall weigh all information offered at the hearing. Information shall not be subject to the rules of evidence, but the criteria for determining and the

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determination of verification and authentication are within the Special Magistrate's discretion.

e. At any time, the Special Magistrate may require any party to provide additional information in the interest of gaining a complete understanding of the request for relief.

f. Each party may record the hearing at its own expense. The Special Magistrate may record the hearing to assist in preparing a recommendation as required by § 8.13.11. If the Special Magistrate makes such a recording, it will be forwarded to the city with the recommendation, but will be subject to the restrictions on information contained in § 8.13.10H.

g. Any documents or tangible materials presented to the Special Magistrate at hearing shall be submitted to the Mayor of the Cape Coral City Council with the Special Magistrate's recommendation. Any notes or drafts produced by the Special Magistrate and not intended to record information in a permanent form shall remain the property of the Special Magistrate.

h. If a party fails to appear at the hearing after notice, the Special Magistrate may proceed without that party or may adjourn the hearing to another day, giving notice to the absent party.

i. Information may be given and parties, participants, or their representatives may participate by telephone, videotape, or other communications medium unless otherwise agreed in a Special Magistrate agreement.

6. Witnesses and materials.

a. Each party must assure attendance at the hearing by those persons qualified by training or experience to address issues raised by the request for relief, by the response, or by the Special Magistrate, or to address alternatives, variances, and other types of modifications to the development order or enforcement action.

b. The Special Magistrate may issue a subpoena for any nonparty witness in the state who will aid in the disposition of the matter. A subpoena issued by a Special Magistrate may require the witness to bring a specified document or thing.

c. The Special Magistrate may require and receive documents and other tangible materials from any party or participant. All parties and participants shall have the opportunity to examine and respond to such submissions.

d. The Special Magistrate may weight the credibility of witnesses.

e. Although an attorney is not required, any person compelled to appear or furnish documents or tangible materials, or who appears voluntarily, may be represented and advised by legal counsel at his or her own expense.

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7. Access to the property.

a. A request for relief constitutes a consent by the owner for the Special Magistrate and parties or representatives to have reasonable access to the owner's land.

b. The owner may grant access to the land to participants.

8. Offer to compromise.

a. As provided by law:

i. All actions or statements of the Special Magistrate, the parties, and all participants are evidence of an offer to compromise and are inadmissible in any judicial or administrative proceeding.

ii. The proceeding may not be made known by a party or participant to any judicial or administrative tribunal, or be construed for any purpose as an admission against interest.

b. A party or participant is not bound by anything said or done during the proceeding unless a written settlement is reached, in which case only the terms of the written settlement shall be binding.

c. The Special Magistrate may not be called to appear before the City Council with respect to any aspect of the proceeding, nor may the Special Magistrate be compelled to furnish notes or drafts.

R. Settlement.

1. The owner and the city may enter into a settlement agreement or other agreement as to the permissible use of the owner's land prior to the Special Magistrate filing a recommendation under § 8.13.11.

2. A settlement agreement or other agreement as to the permissible use of the owner's land may be executed subject to approval by the City Council. Any such agreement will not bind any party until duly approved and executed by all parties to the agreement.

S. Post-hearing procedures.

1. Special Magistrate's recommendation.

a. The Special Magistrate shall file a recommendation with the Mayor within 14 days after the conclusion of the hearing. The Special Magistrate shall also furnish a copy of the recommendation to all parties and participants.

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

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

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1. The Special Magistrate's recommendation is advisory and not binding on the owner or the City Council.
2. A Special Magistrate's recommendation constitutes data which shall be considered with respect to any pertinent amendment to the Comprehensive Plan.
3. A Special Magistrate's determination that the development order or enforcement action, by itself or in conjunction with actions of the city or another governmental entity, is unreasonable or unfairly burdens the owner's land may serve as an indication of sufficient hardship to support modifications, variances, or special exception to the application of statutes, rules, regulations, or ordinances to the subject property as otherwise authorized by applicable rules and regulations.

U. Disposition of Special Magistrate's recommendation.

1. Within 45 days of receipt of the Special Magistrate's recommendation, the City Council shall:
 - a. Accept the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations;
 - b. Modify the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations; and
 - c. Reject the recommendation as submitted. Failure to act within 45 days of receipt of the recommendation shall be deemed a rejection, unless the owner and the city agree to an extension of time.
2. If the City Council adopts a recommendation to grant a modification, variance, or special exception to the application of ordinances or regulations as they otherwise would apply to the land, the owner shall not be required to duplicate processes in which the owner previously has participated in order to effectuate the modification, variance, or special exception.
3. If the Special Magistrate recommends relief or other action in conjunction with another governmental entity, the City Manager and/or his or her designee shall confer with appropriate staff from the other entities to review the recommendation and determine whether a joint staff recommendation can be made to the heads of the respective governmental entities.
4. Within 15 days after final action on the Special Magistrate's recommendation by the City Council, the City Clerk shall send a copy of the order or other document memorializing final action to the Florida Department of Legal Affairs.
5. Within ten days of final action on the recommendation, the owner shall notify the City Manager in writing whether the owner accepts the decision on the recommendation.
6. If the City Council accepts the recommendation or modifies it and the owner rejects the acceptance or modification, or if the City Council rejects the recommendation, the City Council shall issue a written decision that describes as specifically as possible the use or uses available

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

on the owner's land. The decision shall be issued within 30 days of final action on the recommendation.

7. After the City Council has acted on the Special Magistrate's recommendation and a written decision has been issued describing the use or uses available on the owner's land, or if the City Council has not acted within 45 days, the owner may seek a formal adjudication on the development order or enforcement action as otherwise authorized by law.

Item Number:	12.A.
Meeting Date:	6/6/2018
Item Type:	DATE AND TIME OF NEXT MEETING

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Planning and Zoning Meeting July 11, 2018, 9:00 a.m. in Council Chambers with Workshop to follow.

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:

WHAT THE ORDINANCE ACCOMPLISHES:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION: