CAPE CORAL, FLORIDA
Instruction Sheet
2016 S-35 Supplement

REMOVE OLD PAGES	INSERT NEW PAGES
Title Page	Title Page
CHAPTER 2: ADMINISTRATION	
85, 86	85, 86
CHAPTER 5: BUILDING	
3, 4	3, 4
CHAPTER 10: LAND, WATERWAY USE RESTRICTIONS	
5 through 8	5 through 8
PARALLEL REFERENCES	
4A, 4B 7 through 8B 13 through 16 31, 32	4A, 4B 7 through 8B 13 through 16 31, 32
INDEX	
49, 50	49. 50

CITY OF CAPE CORAL, FLORIDA

CODE OF ORDINANCES

2016 S-35 Supplement contains:
Local legislation current through Ordinances passed 6-6-2016

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is so notified unless the member requests a hearing before the City Council within seven days of notification. If a hearing is requested the forfeiture shall be effective only on an affirmative vote of the City Council after the hearing.

(b) All member of boards, commissions, task forces and other bodies appointed by the City Council shall forfeit that office for cause if the member:

(1) Lacks any time during the term of office any qualification for the office;

(2) Violates any express prohibition of the office as imposed by the City Council or law;

(3) Is convicted of a felony; or

(4) Is guilty of habitual public drunkenness, corruption, incompetence or some other substantial shortcoming which renders the appointee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his or her no longer holding the office.

(c) The forfeiture shall be effective only upon an affirmative vote of the City Council following notification to the appointee that the City Council is considering the action and notification to the appointee of the specific matters to be considered by the City Council, and a hearing before the City Council if requested by the appointee.

(d) The City Council may suspend any appointee pending a final determination of forfeiture.

(Ord. 52-83, 9-19-1983)

§ 2-59 Annual review of boards, task forces, committees and commissions.

(a) On or before July 1 of each even-numbered year, the City Council shall conduct an annual review of the benefits derived from the continued existence of the boards, task forces, committees and commissions, designated in subsection (b) below, created by ordinance, resolution or otherwise by the City Council. Upon finding that there are substantial benefits derived from the continued existence of the board, task force, committee or commission, the City Council shall adopt a resolution continuing the existence and functions of the board, task force, committee or commission. Any board, task force, committee or commission for which no resolution is adopted shall automatically be abolished and, if it was created by ordinance or resolution, the ordinance or resolution creating and establishing it shall automatically be repealed as of August 1 of that year.

(b) The following boards, task forces, committees and commissions are subject to the review requirements of this section:

(1) Parks and Recreation Advisory Board;

(2) Transportation Advisory Commission;

(3) Golf Course Advisory Board; and

(4) Minority Issues/citizens Advisory Committee.

(Ord. 60-86, 9-11-1986; Ord. 69-91, 9-10-1991; Ord. 128-00, 1-16-2001)

§ 2-60 Limitation on offices held.

(a) *Applicability.* Members of all advisory boards, commissions and appeal boards serving the city shall hold no other office on any other board, commission, appeal board or the City Council. This regulation is meant to and shall apply to all appointed offices within the city; with the exception of those persons serving on comprehensive task forces, said task force members being permitted to sit on two or more task forces but not to sit on other bodies. Alternate membership shall classify a person as a member for purposes of this section.

(b) *Waiver.* The single office limitation imposed by this section may be waived in regard to specific individuals by a two-thirds vote of the City Council.

(Ord. 72-92, 11-9-1992; Ord. 37-93, 7-12-1993)

(c) *Terms of office.* Deleted by Ord. 1-99, 1-25-1999.

DIVISION 2. EX PARTE COMMUNICATIONS

§§ 2-61 through 2-69 Reserved.

§ 2-70 Definitions.

For purposes of this division, the following words and phrases shall have the meanings indicated below, unless the context in which the word or phrase is used clearly indicates that another meaning is intended.

EX PARTE COMMUNICATION. Any communication, written, oral or by way of any electronic or other medium or process, to an official regarding any quasi-judicial matter which is made outside of an advertised hearing on the matter.

OFFICIAL. Any member of the City Council, the city's Contractor's Regulatory Board/housing Board of Adjustment and Appeals, the city's Fire Prevention Code Board of Adjustment and Appeals, the city's Planning and Zoning Commission, the municipal General Employees Pension Trust Fund Board of Trustees, the Municipal Firefighters Pension Trust Fund Board of Trustees or the municipal Police Officers' Pension Trust Fund Board of Trustees; any member of a grievance committee appointed pursuant to a personnel policy adopted by the City Council; the Hearing Examiner; and any city hearing officer or special master.

QUASI-JUDICIAL MATTER. Any matter with regard to which an individual official or a board, commission or committee of officials is required to ascertain facts based on evidence presented at an advertised hearing and draw conclusions from the facts to determine the personal or property rights of any party, including, but not limited to, rezonings of individual parcels of land under one ownership or of multiple parcels under separate ownership totaling less than ten acres in size; applications for special exceptions, variances or planned development project approvals; disciplinary actions and license or permit revocation actions; code enforcement proceedings; appeals of administrative decisions; and appeals of quasi-judicial decisions.

(Ord. 8-00, 2-14-2000; Ord. 25-16, 6-6-2016)

§ 2-71 Access to officials; procedure for disclosure of ex parte communications.

(a) *Access permitted.* Any person not otherwise prohibited by statute, charter provision or ordinance may discuss with any official the merits of any quasi-judicial matter on which action may be taken by the official, or by any board, commission or committee of which the official is a member, as long as the following process is observed:

(1) The substance of any ex parte communication with an official which relates to a quasi-judicial matter pending before the official shall not be presumed prejudicial to the action taken with regard to the matter if the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record of the hearing on the matter;

(2) An official may read a written communication from any person. However, a written communication that relates to a quasi-judicial matter pending before a local public official shall not be presumed prejudicial to the action taken with regard to the matter if the written communication is made a part of the record of the hearing on the matter; and

(3) a. An official may conduct investigations and site visits and may receive communications from experts regarding a quasi-judicial matter pending before the official.

b. Those activities shall not be presumed prejudicial to the action taken with regard to the matter if the occurrence of the investigation, site visit or communication is made a part of the record of the hearing on the matter and the official discloses at the hearing any fact, circumstance or opinion learned through the occurrence which influences the official's vote.

(b) *Disclosure.* In order to remove any presumption of prejudice, a disclosure made pursuant to subsections (a)(1), (a)(2) and (a)(3) above, must be made before or during the public meeting at which a vote is taken on those matters, and persons who have opinions contrary to those expressed in the ex parte communication must be given a reasonable opportunity to refute or respond to the communication.

(c) *Failure to comply.* Failure of any official to comply with this section does not amount to a violation of F.S. Chapter 112, Part III, "Code of Ethics for Public Officers and Employees".

(Ord. 8-00, 2-14-2000)

ARTICLE I: IN GENERAL

Section

§ 5-1 Fire limits.

The fire limits of this city shall be and include all that property within this city which is classified an industrial district.
(Ord. 20-00, § 1, 4-10-2000)

§ 5-2 Fire districts.

(a) *Declaration of intent.* It is hereby declared by the Cape Coral City Council that the establishment of fire districts in certain sections of the city, as defined herein, will benefit the health, safety and welfare of the citizens of Cape Coral by providing improved fire protection.

(b) *Establishment of fire districts.* There is hereby established the following several districts within the City of Cape Coral: All property now or hereafter lying in the Industrial (I-1) Zoning District and any property lying in any other district designated industrial.
(Ord. 33-92, 6-22-1992; Ord. 20-00, § 1, 4-10-2000)

(c) *Building standards in fire districts.* All construction in fire districts, as herein defined, shall comply with the construction standards as set forth in the Florida Building Code, as amended from time to time, save and except those portions deleted, modified, amended or in conflict with the Cape Coral City Code or these sections.
(Ord. 39-03, 4-28-2003)

§ 5-3 Contractor's responsibility relative to construction refuse.

Upon the commencement of construction, the contractor, as defined in F.S. § 489.105(3), as amended, or the owner of the property when acting as his or her own contractor pursuant to F.S. § 489.103(7), as amended, assumes the responsibility for the proper handling and disposition of refuse as more fully set forth in Chapter 9, Health and Sanitation.
(Ord. 101-88, 10-3-1988; Ord. 14-07, § 1, 3-26-2007)

§ 5-4 Schedule of fees to be collected by Department of Community Development.

(a) The following fees are authorized to be collected by the Department of Community Development.

(1) *Zoning fees.*

a. Administrative fees - Certificate of use:

1. Application: $55;
2. Issue: $55;
3. First reinspection: $25;
4. Second and subsequent reinspection: $50;

5. Letter of map amendment: $25; and

6. Letter of map revision: $25.

b. Project monitoring (special conditions):

1. First reinspection: $25; and

2. Second and subsequent reinspection: $50.

c. Advisory meeting: preliminary conference with Department of Community Development: no fee.

d. Administrative review:

1. PDP: $2,525;*

2. PDP (with subdivision of land): $2,815;* and

3. Zoning amendment: $1,450.*

*Plus $55 for each acre or portion thereof in excess of ten acres, up to a maximum filing fee of $3,625 for a PDP without subdivision of land or $3,915 for a PDP with subdivision of land. Zoning amendments are excluded from the $3,625/$3,915 cap.

e. Public hearings:

1. PDP: $665;

2. PDP with subdivision: $1,415;

3. Zoning amendment: $600;**

4. Zoning amendment within PDP: $1,165;

5. Vacation of right-of-way: $500;

6. Vacation of plat: $775;

7. Vacation of plat within PDP: $880;

8. Variance/deviation within PDP: $1,250;

9. Special exception use within PDP: $1,365;

10. Borrow pit within PDP: $1,725;

11. Future land use amendment: $1,225;**

12. D.R.I. application: $3,740; plus $6.60 per acre;

13. Excavation/borrow pit: $1,800;

14. Annexation petition: $500;** and

15. Miscellaneous (appeals from alleged errors in any requirement, order, decision or determination made in the administration of the land use regulations): $260.

f. Applications/Appeals to Hearing Examiner:

1. Variance/deviation (not a part of a PDP): $455;

2. Variance/deviation (single-family residential): $150;

3. Special exception use (not a part of a PDP): $535;**

4. Continuance of any application is subject to an additional fee of 25%. City Council may waive this fee for just cause.

**Plus $220 for each acre or portion thereof in excess of three acres, up to 20 acres, plus $22 per acre or portion thereof in excess of 20 acres.

g. In addition to above fees, all required advertising costs to be paid by applicant.

h. Temporary off-site vehicle sales permit: $115.50.

(Ord. 125-00, 01-16-2001; Ord. 39-03, 4-28-2003; Ord. 23-09, 5-18-2009; Ord. 25-16, 6-6-2016)

(2) *Site development review fees.*

a. Site plan review: $2,175; plus $50 per acre or portion thereof in excess of one acre;

b. Site plan amendment: $625;

c. Site plan minor change: $100;

d. Site plan limited review: $300;

e. Storm water fee.

1. Storm water retention plans review and related inspections for commercial, industrial, professional and multi-family zones (other than duplexes): $397.

2. Revisions: $51.

3. Surface water miscellaneous: $40.

(3) *Other fees and permits.*

a. *Protected species fees (at request of applicant).*

1. Protected species inspection fee: $167.

2. Burrowing owl burrow stake-out: $12.

ARTICLE II: WATERWAY REGULATIONS

Section

§ 10-7 Applicability.

The provisions of this article shall apply to all waters and canals within the municipal limits of the City of Cape Coral.
(Ord. 17-00, 3-27-2000)

§ 10-8 Purpose.

The primary purpose of waterway regulations is public safety, particularly boating and water safety. The purpose for regulating watercraft speed in the salt and brackish water canals and waterways of the City of Cape Coral is manatee protection. The purpose of regulating watercraft in stormwater retention-detention basins is protection of water quality.
(Ord. 17-00, 3-27-2000)

§ 10-9 Definitions.

For purposes of this article, the words and phrases herein defined, unless the context clearly indicates otherwise, shall have the meanings established below.

IDLE SPEED. The minimum speed that will maintain the steerage way of a vessel. At ***IDLE SPEED***, the vessel shall not be emitting a wake.

OPERATE. To be in the actual physical control of a vessel upon the waters of the city or to exercise control over or steer a vessel being towed by another vessel upon the waters of the city.

PERSONAL WATERCRAFT. A small Class A-1 or A-2 vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power, and which is designed to be operated by a person sitting, standing or kneeling on, or being towed, behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

SALT OR BRACKISH WATER. All associated and navigable tributaries of the Caloosahatchee River, Pine Island Sound and Charlotte Harbor, including any lakes, creeks, coves, bends, backwaters and boat basins, as well as any waterways that connect to the Caloosahatchee River, Pine Island Sound (including, but not limited to, Matlacha Pass) or Charlotte Harbor via a boat lift or boat lock.
(Ord. 116-03, 11-17-2003)

SLOW SPEED. A through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating on a plane or is in the process of coming off plane and settling into the water is not proceeding at slow speed. A boat that produces no wake or minimum wake and is completely off plane is proceeding at ***SLOW SPEED***. It shall also mean no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently annoying, molesting, harassing, disturbing, colliding with, injuring or

harming manatees and which comports with the duty of all persons to use due care under the circumstances.

VESSEL. Includes every description of watercraft, barge and air boat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
(Ord. 17-00, 3-27-2000)

§ 10-10 Designated speed zones.

(a) *General.* The City Council finds that the public health, safety and welfare of the citizens of the city and others, as well as the regulations contained in the Florida Manatee Sanctuary Act, require designation of areas within which the operation of vessels may be regulated or prohibited.

(b) *Idle speed zones.* It is unlawful and prohibited for any person to operate a motorized vessel at a speed greater than idle speed in any idle speed zone. The following areas are hereby designated as idle speed zones:

(1) Any area which has been duly designated as a manatee sanctuary area or posted as an idle speed zone;

(2) Any canal;

(3) Within 500 feet of any boat ramp; or

(4) Any other area designated and posted by the city as an idle speed zone.

(c) *Slow speed zones.* It is unlawful and prohibited for any person to operate a motorized vessel at a speed greater than slow speed in any slow speed zone. The following areas are hereby designated as slow speed zones:

(1) Any salt or brackish water body in the City of Cape Coral, including, but not limited to, all basins, lakes, harbors and bays; or

(2) Any area which has been duly designated as a manatee sanctuary area and posted as a slow speed zone; or

(3) Any other area designated and posted by the city as a slow speed zone.
(Ord. 17-00, 3-27-2000)

§ 10-11 Nighttime speed restrictions in freshwater basins, lakes, harbors and bays.

Between the hours of 9:00 p.m. and 7:30 a.m., no boat or watercraft shall be operated at a speed greater than "slow speed" in any freshwater basin, lake, harbor or bay.
(Ord. 17-00, 3-27-2000)

§ 10-12 Water skiing/personal watercraft restrictions.

(a) Water skiing in the waterways of the city shall be subject to the following restrictions.

(1) Water skiing shall be permitted only in freshwater basins, lakes, harbors or bays that are not posted as idle or slow speed zones.

(2) Water skiing shall be permitted only between the hours of 9:00 a.m. and dusk.

(b) Use of personal watercraft in the waterways of the city shall be subject to the following restrictions.

(1) Use of personal watercraft shall be permitted only between the hours of 9:00 a.m. and dusk.

(2) Operators must comply with any designated or posted idle-slow speed zones.

(3) Operators are subject to the speed restrictions contained in § 10-10(b) and(c) above.

(4) No personal watercraft shall be operated on any stormwater retention-detention basin.
(Ord. 17-00, 3-27-2000)

§ 10-13 Reckless operation of vessel.

It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, inner tube or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injury to, any person.
(Ord. 17-00, 3-27-2000)

§ 10-14 Careless operation of vessel.

Any person operating a vessel upon the waters in the city shall do so in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions and all other attendant circumstances so as not to endanger the life, limb or property of any person. The failure to operate a vessel in the manner described herein constitutes careless operation.
(Ord. 17-00, 3-27-2000)

§ 10-15 Penalties for violation.

Any person found guilty of violating any of the provisions of this article shall be punished by a fine not exceeding $500 or imprisonment for a term not exceeding 60 days or by both a fine and imprisonment.
(Ord. 17-00, 3-27-2000)

§ 10-15.1 Manatee protection areas.

(a) *Findings.* Based on the scientific studies, data and analysis presented at public hearings and made a part of the record of the proceedings for adoption of this article, the City Council finds that manatees are frequently sighted in and inhabit the manatee protection areas established pursuant to subsection (c), below, on a periodic or continuous basis. The City Council further finds that the adoption of this article regulating motorboat speed and operation will increase the protection of manatees from harmful collisions with motorboats, as hereinafter defined, within said protection areas.

(b) *Definitions.* For the purposes of this section, the following terms, phrases, words and derivations shall have the meanings set forth herein:

AREA OF REGULATED WATER ACTIVITY shall mean an area of city waters, designated pursuant to article II, III or IV of this chapter that warrants additional regulation in order to prevent injury or loss of life, or the natural environment.

CITY WATERS shall mean all public navigable waters, creeks, bayous, canals and channels, whether natural or manmade, located within the City of Cape Coral, including all public waters within the jurisdiction of the city.

INTRACOASTAL WATERWAY shall mean that portion of the Florida Intracoastal Waterway (as defined in F.S. § 327.02) located within the jurisdictional boundaries of the City of Cape Coral, Florida, or Lee County, Florida.

MANATEE shall mean the West Indian manatee or sea cow.

MANATEE PROTECTION AREA shall mean an area of city waters, designated pursuant to this chapter, that, according to best available scientific information, manatees inhabit on a regular basis.

OPERATE shall have the meaning set forth in F.S. § 327.02, as amended, or its successor provision.

PERSON shall mean any individual, partnership, firm, corporation, association or other entity.

PERSONAL WATERCRAFT shall have the meaning set forth in F.S. § 327.02, as amended, or its successor provision.

REGULATORY MARKER shall mean a device used to alert the mariner to various regulatory matters such as horsepower, speed, wake, or entry restrictions in conformity with the Uniform State Waterway Marking System and the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations.

SLOW SPEED or ***SLOW SPEED MINIMUM WAKE*** may be used interchangeably and shall have the meaning set forth in Section 68C-22.002(4) of the Florida Administrative Code, as amended, or its successor provision.

VESSEL shall have the meaning set forth in F.S. § 327.02, as amended, or its successor provision.

WATERCOURSE MAP or ***WATERCOURSE MAPS*** shall mean one or more of the maps established pursuant to this section.

(c) *Manatee protection areas established.* The city hereby establishes the areas of regulated water activity identified below for the purpose of protecting manatees, in which no owner, operator or person in command of any vessel shall permit said vessel to be operated or operate said vessel

in violation of the restrictions set forth in this section. The boundaries of the areas of regulated water activity established herein shall be as depicted and delineated in the manatee protection watercourse map attached to Ord. 19-16 and incorporated as Exhibit "A".

(1) *Slow speed zone for manatee protection purposes.* The following area is designated as a slow speed zone for manatee protection purposes:

North Spreader Waterway manatee protection area. All water north of SW Pine Island Road, west of Burnt Store Road, south of NW 40th Lane, and east of the western most banks of the North Spreader Canal as depicted and delineated in the manatee protection watercourse map attached to Ord. 19-16 as Exhibit "A".

(2) Any owner, operator or person in command of a vessel who permits operation of such vessel in excess of slow speed in the above-designated slow speed zone, unless exempt pursuant to (g), below, shall be guilty of a violation of this article.

(3) The City Manager, or the City Manager's designee, shall coordinate marking of areas of regulated water activities identified herein (excluding the state manatee protection restrictions [Lee County Manatee Protection Zones]). In the interest of safety, new permanent markers and signage shall be placed on existing pilings, bridges and waterfront structures, whenever possible. The installation of new pilings in channels and waterways shall be limited to the minimum number necessary to achieve the purposes of this section in accordance with applicable law. Tethered buoys shall be placed where appropriate.

(d) *Enforcement.* The provisions of this section shall be primarily enforced by the City of Cape Coral Police Department. In addition, the provisions of the section may be enforced by members of all duly authorized state, county, and municipal law enforcement agencies within Lee County, and to the extent authorized pursuant to F.S. Part II of Chapter 162, by designated City of Cape Coral Code Compliance Officers. Violations of this section shall be prosecuted in accordance with applicable provisions of F.S. § 327.73, as amended, or its successor provisions. Violations of this section may also be prosecuted pursuant to F.S. Part II of Chapter 162, as amended, or its successor provisions, so long as the penalties imposed do not exceed the limitations set forth in F.S. § 327.73.

(e) *Review.* The city shall review the provisions of this article every other year, beginning in February 2017, to ensure areas of city waters are adequately categorized and manatees are appropriately protected. Additionally, in the event that a manatee death occurs as a result of boating activity in city waters, city staff shall assist federal, state, and county agencies to identify the nature and location of the activity that caused such death, and shall schedule for consideration amendments to this article to impose such additional restrictions as may prevent future manatee deaths under similar circumstances.

(f) *Education and awareness programs.* The City Manager, or the City Manager's designee, shall continue the educational program(s) to promote manatee protection awareness. At a minimum, the program shall include informational signs at city boat ramps and the use of various print and broadcast media, and should invite the assistance and participation of boating and conservation groups.

(g) *Exemptions.*

(1) The operators of vessels owned or leased by the Federal government, the State of Florida, the Lee County Sheriff's Office, Lee County government, and the City of Cape Coral shall be exempt from the provisions of this section while performing their official duties.

(2) Any vessel that is operating under emergency conditions shall be exempt from this section.

(Ord. 19-16, 4-25-2016)

Code Comparative Table

CODE USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 2-24(.31)	82-01	rdimpfee	10-9-2001
Sec. 2-24(.31)	75-05	rdimpfeeexemperedits	5-31-2005
Sec. 2-24(.32)	75-05	rdimpfeerevstructure	5-31-2005
Sec. 2-24(.42 through .46)	15-09	shellbuildingimpactfeedeferrals	4-20-2009
Sec. 2-24.48	3-12	courtcostscrimjustedandtrng	3-12-2012
Sec. 2-24.49	3-12	crimjusteductrngfund	3-12-2012
Sec. 2-25.3	43-10	operrulesregsprocadminauthempl	4-26-2010
Sec. 2-25.4	76-13	emplypracdef	2-24-2014
Sec. 2-26.8	80-10	employmentofrelatives	11-15-2010
Sec. 2-27.1	76-13	emplyanncemnts	2-24-2014
Sec. 2-27.3	76-13	eligibilitylists	2-24-2014
Sec. 2-27.4	76.13	newempls	2-24-2014
Sec. 2-27.5	27-08	restrictionsonhiring	3-17-2008
Sec. 2-31.3	58-11	reasonsfordiscipline	9-26-2011
Sec. 2-35.5	48-10	annualleave	6-14-2010
Sec. 2-36.4	43-10	classaddlregfulltimepos	4-26-2010
Sec. 2-37.12	32-15	temptrsfpay	8-3-2015
Sec. 2-38.1	58-13	employeebenefits	9-30-2013
Sec. 2-43 through 2-56	75-05	travel	11-1-1999
Sec. 2-43 through 2-56	78-05	travel	5-31-2005
Sec. 2-59	128-00	bdchanges	1-16-2001
Sec. 2-70	25-16	hearingexaminer	6-6-2016
Sec. 2-70 through 2-72	8-00	exparte	2-14-2000
Sec. 2-72	70-05	expartelandusematters	11-7-2005
Sec. 2-81 through 2-93	40-05	codespclmagistrate	3-21-2005
Sec. 2-81	169-06	occlic-localbustax	12-11-2006
Sec. 2-82	71-99	codeenf	1-18-2000
Sec. 2-82	55-07	codedefinitions	4-30-2007
Sec. 2-82.1	38-03	codeenf-licensinginves=code officer	4-28-2003

CODE USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 5-1 thru 5-8	39-03	bldg-fire-constr.utility connect	4-28-2003
Sec. 5-2 thru 5-4	99-00	fees	9-25-2000
Sec. 5-3	77-00	rowvac	8-28-2000
Sec. 5-3	125-00	outdoor	1-16-2001
Sec. 5-3	14-07	contrresprefuse	3-26-2007
Sec. 5-4	28-04	bldgdeptfees	3-8-2004
Sec. 5-4	23-09	bldgdeptfees	5-18-2009
Sec. 5-4	25-16	hearingexaminer	6-6-2016
Sec. 5-7	128-02	undergroundutilities	4-14-2003
Sec. 5-8	51-04	undergroundutilities	5-24-2004
Sec. 5-9	51-05	spotdredging	4-4-2005
Sec. 5-20 thru 5-26	39-03	swimmingpools-bldg-code	4-28-2003
Sec. 5-32	99-00	fees	9-25-2000
Sec. 5-33	103-01	engdesign	5-6-2002
Sec. 5-93	16-04	conveyancecityprop-seawalls	2-9-2004
Sec. 6-1 thru 6-10.1	70-13	contconstregbd	12-16-2013
Sec. 6-11 - 6-23	143-07	unlicensedcontracting	12-3-2007
Sec. 6-3	89-00	ownrbldr	9-11-2000
Sec. 6-4	33-00	speccont	5-8-2000
Sec. 6-4	37-01	aluminum	4-23-2001
Sec. 6-4	65-01	marcite	8-27-2001
Sec. 6-4	91-07	aluminumstructural	7-30-2007
Sec. 6-4	61-09	definitions	11-30-2009
Sec. 6-4.1	61-09	registeredcontractors	11-30-2009
Sec. 6-4.2	61-09	specialtycontractors	11-30-2009
Sec. 6-4.3	61-09	LeeCountyspecialtycontractors	11-30-2009
Sec. 6-9	81-02	CityClerk-Licensing-Compints	8-26-2002
Sec. 6-10	81-02	CityClerk-Licensing-ProhActs-Penltys	8-26-2002
Sec. 6-17	81-02	CityClerk-Licensing-Enforcement	8-26-2002
Sec. 6-17	11-15	CityClerk-Licensing-Enforcement	3-23-2015
Sec. 7-1	72-03	tax-addtl homestead exem	8-18-2003
Sec. 7-1	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-2	72-03	definitions-homestead	8-18-2003

CODE USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 7-2	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-3	72-03	addtl-qualifying-homestead	8-18-2003
Sec. 7-3	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-4	72-03	appl-city taxes-homestead	8-18-2003
Sec. 7-4	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-5	72-03	inc adj annually-homestead	8-18-2003
Sec. 7-5	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-6	72-03	taxpayerresp-homestead	8-18-2003
Sec. 7-6	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-7	72-03	noticepropapp-homestead	8-18-2003
Sec. 7-7	62-07	tax/addtl homestead exem	5-21-2007
Sec. 7-10 - 7-15	28-13	publicservicetax	4-29-2013
Sec. 8-9 - 8-13	118-06	repealsfireprotreplaces	11-20-2006
Sec. 8-9, 8-10	44-15	firedept	9-21-2015
Sec. 8-10	6-09	firepreventioncode	2-23-2009
Sec. 8-10	32-12	firepreventioncode	1-28-2013
Sec. 8-10	52-15	firepreventioncode	11-23-2015
Sec. 8-11	32-12	firepreventioncodehearingappeal	1-28-2013
Sec. 8-11	52-15	firepreventioncodehearingappeal	11-23-2015
Sec. 8-13	99-00	fees	9-25-2000
Sec. 8-13	44-15	firedept	9-21-2015
Sec. 8-13.1	128-00	bdchanges	1-16-2001
Sec. 8-16	151-05	fireworksdefinitions	12-5-2005
Sec. 8-17	151-05	fireworkspenalties	12-5-2005
Sec. 8-18	151-05	fireworksstorage	12-5-2005
Sec. 8-19	183-06	fireworkspermits	1-22-2007
Sec. 8-20	151-05	fireworkspermits	12-5-2005
Sec. 8-20	73-06	fireworkpermits	5-30-2006
Sec. 8-21	151-05	fireworksfinanresp	12-5-2005
Sec. 8-25 - 8-33	30-11	emergencymgmt	6-6-2011
Sec. 8-35 - 8-57	41-13	fireprotectionassessments	7-15-2013

Code Comparative Table

CODE USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 9-14	60-02	carportjunk-Definitions	6-3-2002
Sec. 9-15	03-07	litteringpenalty	2-5-2007
Sec. 9-16	60-02	carportjunk-Prohibited Cond.	6-3-2002
Secs. 9-14 thru 9-16	69-09	litteringgenerally	1-25-2010
Sec. 9-19	48-11	litteringrightofentryrepealed	9-12-2011
Secs. 9-31 thru 9-34	69--09	litteringabatementrepealed	1-25-2010
Sec. 9-42	128-07	nuisanceprivproperty	10-15-2007
Sec. 9-42	69-09	nuisanceprivproperty	1-25-2010
Sec. 9-43	128-07	nuisancegrassesweeds	10-15-2007
Sec. 9-43	69-09	nuisancegrassesweeds	1-25-2010
Sec. 9-44 thru 9-53	128-07	reserved	10-15-2007
Sec. 9-54	9-00	pepper	2-14-2000
Sec. 9-64—9-65	14-07	dispofgarbagepurpdef	3-26-2007
Sec. 9-65—9-68	172-06	dispofgarbage	1-22-2007
Sec. 9-67	76-10	resdwellingrectclescollection	9-13-2010
Sec. 9-68	15-12	containerizedcollection	9-10-2012
Sec. 9-69	14-07	onsiterefusepermit	3-26-2007
Sec. 9-71	64-01	reserved	8-13-2001
Sec. 9-75.9 thru 9.75.30	64-01	solidwasteserviceassessments	8-13-2001
Sec. 9-77	44-15	firedept	9-21-2015
Sec. 9-79	54-00	hazfees2	7-31-2000
Sec. 9-81	111-03	lotmowing	10-27-2003
Sec. 9-81	41-09	lotmowing	7-20-2009
Sec. 9-82	111-03	lotmowinguser fee	10-27-2003
Sec. 9-83	111-03	lot mowing bills	10-27-2003
Sec. 9-84	111-03	lot mowing delinquent fees	10-27-2003
Sec. 9-89	111-03	lot mowing prepay-record lien	10-27-2003
Sec. 9-90	111-03	lot mowing-release of lien	10-27-2003
Sec. 9-100 thru 9-111	86-10	use of fertilizer	11-29-2010
Sec. 10-5	169-06	occlic-localbustax	12-11-2006
Sec. 10-7 thru 10-15	17-00	boat	3-27-2000

CODE USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 10-9	116-03	waterway-salt-brackish restr	11-17-2003
Sec. 10-15.1	19-16	manatee protection areas	4-25-2016
Sec. 10-16	104-03	title-vessel exclusion	10-20-2003
Sec. 10-17	104-03	purp-authority-vessel exclusion	10-20-2003
Sec. 10-18	104-03	definitions-vessel exclusion	10-20-2003
Sec. 10-19	104-03	enforcement-vessel exclusion	10-20-2003
Sec. 10-20	104-03	means of enf - vessel eclusion	10-20-2003
Sec. 10-21	104-03	careful-prudent operation-vessel ex	10-20-2003
Sec. 10-22	104-03	prohibited activity-vessel exclusion	10-20-2003
Sec. 10-23	104-03	proc desig areas-vessel exclusion	10-20-2003

REFERENCES TO FLORIDA STATUTES

F.S. Reference	*Code Section*
1.01	1-2
50	2-85
50.041	2-85
50.051	2-85
55.03(1)	2-24.46, 9-42, 9-43
92.50	2-121.8, 2-122.8
112	2-71
112.3143	2-121.3, 2-122.3, 2-123.3
119 and 286	26-11
121	2-121.18, 2-122.18
153.67	19-17
159.17	19-17
162	1-14, 6-17, 8-17, 9-75
Part II of Chapter 162	10-15.1
162.01—162.13	2-81
162.21	1-14
Part III of Chapter 163	27-1, 27-2
163.340	27-2
163.357	27-1
165.19	1-14
166	22-1, 2-24.21, 17-28
166-041	7-1
166.021	8-37, 9-75.11, 12-60
166.021(3)(a)	8-37, 9-75.11
166.021(3)(b)	8-37, 9-75.11
166.021(3)(c)	8-37, 9-75.11
166.021(3)(d)	8-37, 9-75.11
166.041	8-37, 9-75.11, 21-2
166.0415	12-58
166.231	7-14
166.232	7-12, 7-14
166.233(3)	7-14
166.234	7-14, 7-15
173	5-89
175	2-122.5, 2-122.17, 2-122.19
175.01	2-122.4
175.261	2-122.13
185	2-121.4, 2-121.17, 2-121.9, 2-122.4
185.01	2-121.4
185.22	2-121.13
196-075	7-1

F.S. Reference	*Code Section*
197	9-81, 22-1
197.363	17-5, 19-108
197.3632	8-35, 9-75.9, 17-26, 22-3
197.3635	8-35, 9-75.9, 17-26, 22-3
202.195	25-8
203.012(3)	25-5
203.012(6)	25-3
203.012(7)	25-3
205	9-101, 11, 11-8
205.162	11-8
205.171	11-8
205.192	11-8
218.39	2-120.31
218.391	2-120.31
252.38(2), (3)	8-26
280	2-121.4, 2-122.4, 2-123.4
280.02	2-121.4, 2-122.4, 2-123.4
287.055	2-144
287.055(2)(a)	2-143
287.055(10)	2-144
316	12-80, 18-1
316.008	12-15, 12-20
316.008(4)	12-31
316.1955	12-27, 12-86
316.1957	12-27
316.1967(6)	12-86
316.2045	18-3
316.212	18-7
316.605	12-84
316.640	12-80, 12-85
316.640(3)(c)	12-28
318.14(9), (10)	2-24.48
318.18	12-86, 18-4
318.18(11)(d)	2-24.48
320.03	12-29
320.03(8)	12-31
327.02	10-15.1
327.73	10-15.1
327.73(11)(b)	2-24.48
334.03(19)	2-24.29
334.03(23)	2-24.24
334.03(24)	2-24.29
337.29(3)	25-2
337.401	25-2, 25-3, 25-5, 25-6
337.401(5)	25-5
337.403	25-7
337.403(1)(a)—(c)	25-7
337.404	25-7

F.S. Reference	*Code Section*
362.01	25-2
364.02(14)	25-3
376	9-80
380.04	19-38
380.06	23-2
381	9-1
395	2-121.8, 2-122.8
402.302(2)	12-88
402.302(8)	12-88
403.1835	19-117
403.703	9-75.9
440	2-120.10.5, 2-121.8, 2-122.8, 6-7.2, 8-21
455	6-10
468.381 *et seq.*	11-28
471	5-21
475	11-16, 16-3
475.01(1)(a)	11-30
482.1562(9)	9-101
489	6-9, 6-11, 6-13, 6-23, 12-13
489.103	6-3
489.105	6-4, 6-13
489.113(6)	6-4
489.117	6-7
489.127(1)(a)	6-14
489.127(1)(b)	6-14
489.127(1)(c)	6-14
489.127(1)(d)	6-14
489.127(1)(e)	6-14
489.127(1)(f)	6-14
489.127(1)(g)	6-14
489.127(1)(h)	6-14
489.127(1)(i)	6-14
489.127(1)(l)	6-14
489.131	6-10
489.131(7)	6-11
489.132(1)(a)	6-14
489.132(1)(b)	6-14
489.132(1)(c)	6-14
489.132(1)(d)	6-14
489.133	6-4
489.501 *et seq.*	6-4
489.505	12-13
489.518	12-13
489.529	12-13
489.530	12-13
513	22-3
517	2-153

F.S. Reference	*Code Section*
538	11-43
553.73	2-94
553.79	2-94
553.80	2-94
561	3
561 - 567	3-1
561.701 - 561.706	3-2
562	3
562-14(3)	3-2
562.15	3-9
562.45(2)	3-2
562.50	3-6
567	3
569	3
570.02	9-101
625 Part II	2-148
628.901	25-11
633	2-122.28
633.35	2-122.1
633.021(9)	6-4
633.208	8-11
705	2-82.1, 14-1/2-18
715.07	12-105, 12-112, 12-117
744	28-3
744.3045	28-3
768.28	25-11
775.08	12-11
775.082	1-14, 2-94, 6-23, 2-121.22, 2-122.22
775.083	1-14, 2-94, 6-23, 2-121.22, 2-122.22
775.21	12-89
790.251	2-31.3
791	8-17, 8-19
791.01	8-16, 8-18
791.015	8-18, 8-20
791.02	8-19
791.04	8-19
791.07	8-19
794	2-121.21, 2-122.21, 2-123.19
794.005 *et seq.*	12-67
794.011	12-89
794.011 *et seq.*	12-67
796 *et seq.*	12-67
800.02 *et seq.*	12-67
800.04	2-121.21, 2-122.21, 2-123.19, 12-89
812.14	19-22
823.14	9-108

Ord. No.	*Date Passed*	*Code Section*
41-10	4-12-2010	2-121.1, 2-121.3 through 2-121.6, 2-121.8, 2-121.10, 2-121.15 through 2-121.19, 2-121.21, 2-121.24, 2-121.27, 2-121.28
43-10	4-26-2010	2-2 through 2-4, 2-25.3, 2-36.4
48-10	6-14-2010	2-35.5
72-10	9-13-2010	4-31, 4-32
75-10	9-13-2010	4-1 through 4-30
76-10	9-13-2010	9-67
61-10	10-18-2010	2-123.1 through 2-123.7
80-10	11-15-2010	2-26.8
86-10	11-29-2010	9-100 through 9-111
89-10	12-13-2010	12-101 through 12-126
5-11	2-28-2011	2-24.25, 2-24.26
10-11	3-28-2011	2-1.2
11-11	3-28-2011	2-143, 2-144, 2-146, 2-148, 2-150
93-10	4-11-2011	19-38
94-10	4-11-2011	2-24.3
7-11	5-2-2011	4-32
13-11	5-2-2011	2-123.5
30-11	6-6-2011	8-25 through 8-33, 12-8
31-11	6-20-2011	11-16
41-11	8-8-2011	2-1.2
44-11	8-23-2011	2-24.3, 2-144, 17-2, 17-4, 19-1, 19-2, 19-8.2, 19-12, 19-42, 19-48, 19-55, 19-61, 19-67, 19-105, 19-107, 19-125, 19-130, 19-138, 19-152, 19-158
48-11	9-12-2011	9-19, 12-1 through 12-6
58-11	9-26-2011	2-31.3, 2-154, 12-7, 12-22, 12-1/2-4
72-11	11-14-2011	2-22, 2-24.3
1-12	2-6-2012	2-121.5
2-12	2-6-2012	2-122.5
3-12	3-12-2012	2-24.48, 2-24.49
9-12	4-9-2012	2-120.27
11-12	5-7-2012	19-87 through 19-94
14-12	6-11-2012	2-19
15-12	9-20-2012	9-68
22-12	10-22-2012	2-121.1
23-12	10-22-2012	2-122.1
26-12	11-5-2012	2-1.2
32-12	1-28-2013	8-10, 8-11

Ord. No.	*Date Passed*	*Code Section*
33-12	10-29-2012	27-1
7-13	3-25-2013	13-35
8-13	2-25-2013	19-38, 19-55
19-13	9-9-2013	2-121.6, 2-121.9
28-13	4-29-2013	7-10 through 7-15
41-13	7-15-2013	8-35 through 8-57
42-13	8-19-2013	2-120.44 through 2-120.48
48-13	9-9-2013	19-139
49-13	9-9-2013	2-123.1, 2-123.5, 2-123.6, 2-123.8, 2-123.9
51-13	9-9-2013	2-123.1, 2-123.4, 2-123.13
52-13	9-23-2013	2-121.1, 2-121.4, 2-121.15
53-13	9-9-2013	2-122.1, 2-122.4, 2-122.15
57-13	10-28-13	2-24.26
58-13	9-30-2013	2-38.1
70-13	12-16-2013	2-120.3 through 2-120.11, 6-1 through 6-10.1
76-13	2-24-2014	2-25.4, 2-27.1, 2-27.3, 2-27.4
2-14	2-24-2014	2-120.26
8-14	3-31-2014	Repealing 2-120.34 through 2-120.43
16-14	6-9-2014	2-122.3, 2-122.5, 2-122.6, 2-122.8, 2-122.9, 2-122.27
23-14	9-8-2014	TSO Table I
35-14	11-3-2014	28-1 through 28-4
42-14	12-8-2014	2-121.10
44-14	1-12-2015	2-120.46
2-15	1-26-2015	26-8, 26-11, 26-15
11-15	3-23-2015	6-17
12-15	4-7-2015	3-2
32-15	8-3-2015	2-37.12
33-15	8-31-2015	Repealing 19-143 through 19-149; amending 19-6, 19-8, 19-11, 19-16, 19-17, 19-20, 19-22, 19-24, 19-132, 19-149, 19-153
40-15	8-24-2015	Adding 18-1/2-1; repealing 18-1/2-21 through 18-1/2-46
44-15	9-21-2015	2-1.2, 8-9, 8-10, 8-13, 9-77
52-15	11-23-2015	8-10, 8-11
64-15	12-14-2015	Repealing 4-1 through 4-30; adding 4-1
65-15	1-25-2016	22-3; adding 22-12
2-16	1-25-2016	2-117 – 2-120.2
19-16	4-25-2016	Adding 10-15.1
25-16	6-6-2016	2-70, 5-4

CAPE CORAL, FLORIDA
Instruction Sheet
2016 S-35 Supplement

LAND USE AND DEVELOPMENT REGULATIONS

REMOVE OLD PAGES	INSERT NEW PAGES
Title Page	Title Page
9, 10	9, 10
49, 50	49, 50
52A through 52D	52A through 52D
55, 56	55, 56
59, 60	59, 60
63, 64	63, 64
67 through 70	67 through 70
75, 76	75, 76
81, 82	81, 82
105 through 106B	105 through 106B
106E through 108	106E through 108
115, 116	115, 116
116C, 116D	116C, 116D
116H.1, 116H.2	116H.1, 116H.2
116Q, 116R	116Q, 116R
116Y, 116Z	116Y, 116Z
116CC, 116DD	116CC, 116DD
147, 148	147, 148
155, 156	155, 156
212M, 212N	212M, 212N
227, 228	227, 228
249, 250	249, 250
254A, 254B	254A, 254B
267 through 280	267 through 280
283 through 286	283 through 286
301, 302	301, 302
316K through 316N	316K through 316N
316S through 318	316S through 318
318C through 318F	318C through 318F
325 through 328	325 through 328
341 through 342B	341 through 342B
347 through 354	347 through 354
369 through 390	369 through 390
401 through 406	401 through 406
411, 412	411, 412
429, 430	429, 430

REMOVE OLD PAGES	**INSERT NEW PAGES**
PARALLEL REFERENCES	
3 through 10B	3 through 10B
15, 16	15, 16
19, 20	19, 20
INDEX	
5, 6	5, 6
14A, 14B	14A, 14B
18A, 18B	18A, 18B
29, 30	29, 30

CITY OF CAPE CORAL, FLORIDA

LAND USE AND DEVELOPMENT REGULATIONS

2016 S-35 Supplement contains:
Local legislation current through Ordinances passed 6-6-2016

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maintained by the city's Department of Community Development - Planning Division. The map will be updated on a continuous basis following approval of zoning changes by City Council. The city's Information Technology Services Department will ensure that appropriate data back-up procedures are in place to ensure that the map can be recovered following any computer related failures or disasters such as fire, flood and the like. The electronic format of the map will be viewable via the Internet and paper copies can be produced on demand.
(Ord. 39-06, 5-15-2006)

.1 *Recording of amendments; currency of zoning district map.* Amendments to zoning on the Official Zoning District Map shall be consistent with the adopted Cape Coral Comprehensive Plan, including the Future Land Use Map and its accompanying text. Amendments shall be made on or after the effective date of such zoning change. The Director of the Department of Community Development shall ensure that amended zoning district boundaries are accurately placed on the zoning district map. The City Clerk shall keep records on file which identify the official action by which such map amendment was made, the date of such action, the land area affected and the date of posting.
(Ord. 39-06, 5-15-2006)

.2 *Unauthorized changes.* Substantial changes of the nature affecting the zoning of property is strictly prohibited and unlawful, unless in conformity with the requirements and procedures of this ordinance and/or applicable law.

.3 *Replacement of the Official Zoning District Map.* Should the map or any portion thereof become damaged, destroyed or lost, the City Council is authorized, by resolution, to replace said map or portion thereof, and the new map shall supersede the one replaced. The new map may correct drafting or other errors, but no replacement shall have the effect of changing the official zoning status of property unless the prior map has been totally destroyed. The City Clerk shall preserve any records relating to its adoption and amendment.
(Ord. 39-06, 5-15-2006)

.4 *Authorized changes for information purposes.* From time to time, for informational purposes only, it may be beneficial to add information, such as new streets, subdivisions, parcels, vacations of plats, landmarks or other information, which makes the official map more understandable. The City Council, by resolution, may authorize such changes, provided that no changes are authorized which have the effect of amending the official zoning status of property within the city.

§ 2.3 Interpretation of zoning district boundaries.

The following rules shall be used to interpret the exact location of the zoning district boundaries shown on the zoning district map:

.1 Where a zoning district boundary follows a street or railroad, the center line of the street or railroad right-of-way is the boundary of the zoning district;

.2 Where a zoning district boundary approximately follows a lot or property line, that line is the boundary of the zoning district;

.3 Where a zoning district boundary follows a stream, a lake, a canal, a slough, an inlet, or other body of water, its shoreline is the boundary of the zoning district;

.4 Where a zoning district boundary does not clearly follow any of the features mentioned above, its exact location on the ground shall be determined by measurement according to map scale;

.5 Where physical or cultural features existing on the ground vary from those on the Official Zoning District Map, the actual location on the ground shall govern; and

.6 In any case where the exact location of a zoning district boundary is not clear, the Director shall refuse to issue a building permit or certificate of use. The applicant may then appeal to the City Council for an interpretation and decision.
(Ord. 72-91, 9-23-1991)

§ 2.4 Application of district regulations; classification of uses.

.1 In all cases where the terms of this ordinance contradict the provisions of the Cape Coral Comprehensive Plan, including the Future Land Use Map, the provisions of the Comprehensive Plan shall govern.

.2 All existing and future structures and uses of real property within the City of Cape Coral, Florida, shall conform with all applicable provisions of this ordinance. Each zoning district is established to permit only those uses specifically listed as permitted except as hereinafter provided, and is intended for the protection of those uses.

.3 The Director shall classify all existing and future structures and uses of premises based on § 2.5, Land Use Classifications of the City of Cape Coral Land Use and Development Regulations, and the definitions set forth in Article XI, Definitions. In the event that a particular use is not listed anywhere in § 2.5 or in the applicable zoning district, the use is prohibited. Where uncertainties cannot be resolved, the question shall be directed to the Hearing Examiner, pursuant to the provisions and requirements of Article VIII, § 8.9, Appeals.
(Ord. 4-12, 2-27-2012; Ord. 24-16, 6-6-2016)

§ 2.5 Schedule of land use classifications.

.1 *Permitted uses.* Permitted uses include those uses which are permitted by right. Following the effective date of this ordinance, no structure or use shall be built, moved, used or occupied unless permitted by the zoning district in which the structure or land is located.

.2 *Special exception uses.* No use that is classified as a special exception use shall be established unless approval has been granted by the Hearing Examiner, pursuant to Article VIII, § 8.8, Special Exceptions.

.3 *Special exception uses not non-conforming uses.* Any use existing prior to the effective date of this ordinance, which is permitted as a special exception use in a district under the provisions of this ordinance, shall not be a non-conforming use, but shall, without further action, be a conforming use. Provided, however, such uses shall not be replaced or expanded in area or intensity without approval of a special exception, pursuant to Article VIII, § 8.8, Special Exceptions.

.4 When a number follows a use activity, it is a reference to the *North American Industry Classification System (NAICS) Manual* (1997 Ed.), which shall be utilized by the city as a reference in determining the land use classification of a specific use. In the event of any conflict between the Land Use and Development Regulations and the NAICS code, the city's Land Use and Development Regulations shall control.
(Ord. 53-91, 7-22-1991; Ord. 78-00, 8-28-2000; Ord. 157-06, 12-11-2006)

.5 *Land use classifications.* All uses of land within the City of Cape Coral, Florida, shall be classified in accordance with the provisions of this ordinance.

See table on following page.

Land Use Classifications	*NAICS*
Lime	32741
Gypsum products	32742
Cut stone and stone products	327991
Abrasive, asbestos, and miscellaneous non-metallic mineral products	327999
Textile mill products manufacturing	
Group I	
Broad woven fabric mills, cotton	31321
Broad woven fabric mills, man-made fiber and silk	31321
Narrow fabrics and other small wares mills; cotton, wool, silk, and man-made fiber	313221
Knitting mills	31519
Yarn mills	313112
Thread mills	313113
Lace goods	313249
Group II	
Broad woven fabric mills, wool (including dyeing and finishing)	313311
Dyeing and finishing textiles, except wool fabric and knit goods	313311
Group III	
Floor covering mills	31411
Felt goods, except woven felts and hats	31323
Paddings and upholstery filling	314999
Processed waste and recovered fibers and flock	314999
Tobacco manufacturing	
Cigarettes	312221
Cigars	312229
Tobacco (chewing and smoking) and snuff	312229
Tobacco stemming and redrying	31221
Transportation equipment manufacturing	
Group I	
Motor vehicle parts and accessories	336211
Aircraft engines and engine parts	336412
Aircraft parts and auxiliary equipment, not elsewhere classified	336413
Group II	
Boat building	336612

Land Use Classifications	*NAICS*
Group III	
Motorcycles, bicycles, and parts	336991
Transportation equipment, not elsewhere classified and excluding trailers	336999
Group IV	
Motor vehicles and passenger car bodies	336211
Truck and bus bodies	336211
Truck trailers	336212
Aircraft	336411
Ship building	336611
Railroad equipment	33651
Guided missiles and space vehicles	336414
Travel trailers and campers	336214
Tanks and tank components	336992
Car or boat trailers	336214

(Ord. 78-00, 8-28-2000; Ord. 125-06, § 1, 10-23-2006; Ord. 6-10, 5-24-2010; Ord. 1-13, 3-11-2013; Ord. 24-16, 6-6-2016)

b. If the repairs or alterations constitute more than 50% of the lot's (structure and improvements) fair market value, excluding land value, the entire site shall be brought into conformance with the City of Cape Coral Land Use and Development Regulations and the Cape Coral Comprehensive Plan; and
(Ord. 65-91, 8-26-1991; Ord. 44-06, 6-12-2006)

c. If the lot is enlarged, through acquisition, trade, or lease, the entire site shall be brought into conformance with the City of Cape Coral Land Use and Development Regulations and the Cape Coral Comprehensive Plan.
(Ord. 44-06, 6-12-2006)

d. See also subsection .5 below regarding the downtown zoning district(s).
(Ord. 15-12, 9-10-2012)

.5 *Non-conformities in the downtown zoning district(s).*

a. To implement the Downtown Community Redevelopment Plan, the City of Cape Coral created downtown zoning district(s) and made other modifications to this code. Any structure, use, or lot in one of the three downtown zoning districts which lawfully existed prior to the creation of the aforesaid zoning districts and does not conform with the new provisions for such zoning districts shall be deemed to be non-conforming and shall not be required to be altered to conform with these regulations. Such non-conforming structures, uses, or lots can be repaired, altered, enlarged, or replaced in accordance with the relevant requirements of subsections .2, .3 and .4 above, except that the one-year period in subsection .3 above shall be changed to six months, or, in the alternative, non-conforming structures (but not non-conforming uses or sites) may be repaired, altered, or enlarged in accordance with the requirements of subsection .5.b. below.

b. In order to provide incentives for redevelopment within the CRA, and in recognition of the overriding public purpose to be met through the improvement of properties within the CRA, non-conforming structures may be eligible to receive a "Non-conforming Structure Exception" (NCSE). NCSEs may be approved by the Hearing Examiner provided that the Hearing Examiner finds that such NCSE will not be contrary to the public interest, would have the effect of reducing the number of non-conforming features of the structure or site or of reducing the degree of non-conformity of one or more non-conforming feature(s) of the structure or site, and that the repair, alteration, or enlargement of the non-conforming structure (beyond that allowed in § 2.6.5.a. above) would enhance or further the purpose and intent of the South Cape Vision Plan and the redevelopment of the Downtown CRA.

c. The Hearing Examiner may approve an NCSE even though the approval of the NCSE would result in the creation of a new non-conformity on the site or in the enlargement or increase of a different non-conforming feature on the site so long as the Hearing Examiner determines that the overall effect of the repair, alteration, or enlargement of the non-conforming structure resulting from the NCSE would enhance or further the purpose and intent of the South Cape Vision Plan and the redevelopment of the Downtown CRA. Subject to the provisions of § 2.6.5.j., a project for which an NCSE is sought will be evaluated in terms of its impact on landscaping and on both on-site and off-site parking requirements, but shall not necessarily be required to comply with those requirements or pay any that otherwise would have been required to have been paid into the Downtown CRA Tree Fund or the Payment In Lieu of Parking (PILOP) Fund.

d. Although an NCSE may be approved for the expansion of a structure, whether designed for occupancy by a single tenant or by multiple tenants, no NCSE shall be approved that would result in the increase of the area occupied by a non-conforming use.

e. No property or any structure thereon shall be altered or modified pursuant to an NCSE if such alteration or modification would result in a violation of Article VI, Flood Damage Prevention, of the Land Use and Development Regulations or any technical code, including but not limited to, building codes or fire prevention codes, adopted by the city.

f. If a structure for which an NCSE has been approved is damaged more than 50% of its (structure and lot improvements) fair market value excluding land value, the structure shall not be restored except in conformance with the City of Cape Coral Land Use and Development Regulations and the Cape Coral Comprehensive Plan.

g. *Pre-application meeting.* As a prerequisite to submitting an application for an NCSE, a property owner, or person having the written consent of the property owner, shall meet with the Executive Director of the Community Redevelopment Agency. This meeting shall be informal with non-binding discussions, to include but not be limited to, the existing non-conformities and what effect the proposed revision(s) will have on non-conformities, the current structure, parking, setbacks, and extant architectural features.

h. *Application.*

(1) All applications for NCSEs shall be prepared on forms available at the city's Department of Community Development (DCD). The application form shall be submitted to the Department of Community Development and shall include, at a minimum the following:

(a) Legal description of the property for which the NCSE is requested;

(b) Name, address, and telephone number of the owner of the property for which the NCSE is requested;

(c) Name, address, and telephone number of the lessee(s) or other occupant(s) of the property for which the NCSE is requested, if different than the property owner;

(d) Identification of all uses located on and the area (in square feet) that each occupies on the property for which for NCSE is requested;

(e) Detailed dimensional and labeled drawings and floor plans depicting all modifications that are proposed to be made to the property for which the NCSE is requested and depicting the location of all buildings and other structures with setback distances from the property lines and roadways;

(f) Photographs of the property for which the NCSE is requested depicting the front, sides, and rear of the property;

(g) Elevations that graphically demonstrate the proposed alteration or enlargement of the property and of any non-conforming features of the property and that illustrate how the NCSE, if approved, would operate to the benefit, or at least not to the detriment, of the public interest, the CRA Master Plan, and the redevelopment of the CRA;

(h) Written confirmation from the Executive Director of the CRA that the requirement of a pre-application meeting has been satisfied;

(i) Signature of the applicant. Any application form that is signed by an individual other than the property owner shall be accompanied by a notarized statement of authorization by the property owner(s) consenting to the application for NCSE and agreeing to be responsible for the condition of the premises and for the completion of all work on the premises pursuant to an NCSE, if the applicant abandons the project or otherwise fails to complete the work In a timely manner; and

(j) A non-refundable application fee of $450 shall be submitted with the application.

(2) Because NCSEs may range from the simple, which would not require a site plan or amendment to a site plan, to the complex, which would require a site plan or an amendment to an existing site plan, the city may require information beyond that stated above. If the effect of the NCSE, if approved, would be so great as to require a new or amended site plan, then the city, in its sole discretion, shall require the applicant to provide all information required by § 4.4.10, Site Plan Review Application Requirements, of the City of Cape Coral Land Use and Development Regulations in addition to the information required above. Further, in that event, the applicant shall be required to pay to the city the fee applicable to applications for site plan review though the applicant would receive a credit for 50% of any application fee already paid in connection with the

request for the NCSE. In the event an applicant whose application requires a site plan review does not pay the fee for such review to the city within 30 days of written notification to do so, then the Director shall declare the application to be null and void. Once an application has been declared to be null and void, an applicant would need to file a new application together with the applicable fee(s) in order to receive consideration of the applicant's request for an NCSE.

i. Once the Director determines that an NCSE application is complete, and that the proper fee(s) have been submitted to the city, the Director shall distribute the NCSE application to all appropriate city departments, offices, and agencies, including the Executive Director of the Community Redevelopment Agency (CRA). The departments, offices, and agencies, including the Executive Director of the CRA shall review the application for compliance with the requirements of these regulations and submit comments to the Director. After receipt of the comments, the Director shall review the application and the comments and forward the application with a recommendation concerning the requested NCSE from the Department of Community Development to the Executive Director of the CRA who shall schedule the matter for hearing before the CRA Board as soon as practicable thereafter. Prior to the hearing before the CRA Board, the CRA Executive Director shall recommend to the CRA Board whether the CRA Board should approve, deny, or approve with modifications or conditions the application for an NCSE. The CRA Board shall review the application for an NCSE, the recommendation of DCD, and of its Executive Director, and recommend to the Hearing Examiner whether the application for an NCSE should be approved, denied, or approved with conditions or modifications. After the CRA Board has formed a recommendation concerning an NCSE application, the CRA Executive Director shall forward to the Director a copy of the CRA Board's recommendation.

j. The Director shall submit to the Hearing Examiner the NCSE application and all related materials including, but not limited to, the recommendations of the Director, of the CRA Executive Director, and of the CRA Board, for final action, at a public hearing. The Hearing Examiner, after holding a public hearing, shall approve, disapprove, or approve subject to modifications, safeguards, or conditions the NCSE application. Conditions that may be imposed include, but are not limited to, reasonable time limits within which the work to be performed pursuant to the NCSE shall be begun or completed or both, screening or buffering requirements, aesthetic or design requirements, and contributions to the Downtown CRA Tree Fund or the Payment In Lieu of Parking (PILOP) Fund or both. In the event the Hearing Examiner imposes a requirement of a contribution to either or both the Downtown CRA Tree Fund or the PILOP Fund, the amount of such contribution(s) shall not be required to be on a per tree or per parking space basis (as is generally required for contributions to such funds). Required contribution(s) to the Downtown CRA Tree Fund or the PILOP Fund may be for an amount less than, but in no event greater than, the amount the project may otherwise have been required to pay for the modifications to the premises that are the subject of the NCSE. The violation of any such condition or safeguard shall be deemed a violation of this section and shall be enforceable not only by revocation of the NCSE, but also by all other remedies available to the city, including, but not limited to all code enforcement procedures.

k. Any alteration, repairs, enlargement, or replacement for which a non-conforming structure exception is approved shall obtain a building permit, and other required permits, prior to the commencement of construction.

l. An NCSE shall be valid for two years from the date of the Hearing Examiner's approval, unless an extension is granted by the Hearing Examiner for good cause shown. An applicant who has obtained an NCSE, shall submit to the city an application for a building permit within 90 days of the NCSE approval. If an application for a building permit is not submitted within this 90-day time frame, the NCSE shall terminate unless an extension is granted by the Director, or the Director's designee, for good cause shown. To

receive an extension of time within which to apply for a building permit, the applicant must file the request for extension prior to the expiration of the 90-day time period to submit the application. No more than one extension shall be approved and the extension shall not be for a period longer than 90 days. Should the alteration, repair, enlargement, or replacement for which the NCSE was approved not be complete within two years from the date of the Hearing Examiner's approval of the NCSE application, the applicant may request, prior to the expiration of the NCSE, an extension from the Hearing Examiner stating the reasons why the work has not been completed. If the Hearing Examiner denies an extension, the NCSE and any related building permit shall terminate. If the Hearing Examiner denies an extension, then the project needs to be completed within the time frame remaining, if any, on the NCSE as approved or removed. Nothing in this section shall be construed to allow work on the premises to occur without first obtaining all building permits or other required permits.

m. *Appeal.* Any person aggrieved by the decision of the Hearing Examiner concerning the interpretation and application of this subsection .5 with respect to the alteration of a non-conforming structure may appeal such decision to the City Council provided that a written notice of appeal is filed within 30 days after the date of the action appealed from. The notice of appeal shall be considered filed when it is received by the Department of Community Development.
(Ord. 91-05, 11-14-2005; Ord. 44-06, 6-12-2006; Ord. 36-09, 8-3-2009; Ord. 15-12, 9-10-2012; Ord. 24-16, 6-6-2016)

.6 *Non-conforming structures, uses and lots created by eminent domain proceedings deemed conforming.* Any structure, use and lot which shall be made non-conforming after the effective date of this subsection 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 Use and Development Regulations, 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% by such action.
(Ord. 44-06, 6-12-2006)

§ 2.7 District regulations.

.1 *Single-Family Residential Districts (R-1A and R-1B).*

A. *Purpose and intent.* These districts are established to:

1. Encourage and protect single-family development at a variety of densities with varying dimensional requirements;

2. Permit other uses generally compatible with such residential uses; and

3. Otherwise implement this ordinance.

B. *Permitted uses (all districts).*

1. Entrance gates (applicable to private subdivisions with private rights-of-way);
(Ord. 3-97, 2-10-1997)

2. Essential service;

3. Essential service facilities - Group II - distribution electric substation only (see § 3.27);

4. Family day care home;

5. Home occupation;

6. Nature and wildlife preserves;

7. Parks - Group I; and

8. Single-family dwelling.
(Ord. 125-06, 10-23-2006)

C. *Special exception uses (all districts).*

1. Assisted living facility (minimum area three acres and PDP);
(Ord. 68-98, 11-30-1998)

2. Child care facility/preschool/ kindergarten;
(Ord. 3-97, 2-10-1997)

3. Country club;

4. Essential service facilities - Group I (except communication [wireless] towers);
(Ord. 81-04, 8-2-2004; Ord. 69-10, 10-18-2010)

.2 *R-3 Multi-Family Residential District.*

A. *Purpose and intent.* This district is established to:

1. Permit multi-family residential development;

2. Permit other uses generally compatible with such residential uses; and

3. Otherwise implement this ordinance.

B. *Permitted uses.*

1. Administrative office;

2. Duplex dwellings (see special regulations .2D.);

3. Entrance gates (applicable to private subdivisions with private rights-of-way); (Ord. 3-97, 2-10-1997)

4. Essential services;

5. Essential service facilities - Group II - distribution electric substation only (see § 3.27);

6. Family day care home;

7. Home occupations;

8. Multi-family dwellings;

9. Nature and wildlife preserves;

10. Parks - Group I;

11. Places of worship (one-acre minimum lot area);

12. Single-family dwellings; and

13. Conjoined residential structures. (Ord. 62-99, § 2, 1-31-2000; Ord. 125-06, 10-23-2006)

C. *Special exception uses.*

1. Assisted living facility; (Ord. 68-98, 11-30-1998)

2. Bed and breakfast establishment;

3. Boarding or rooming houses (see Art. III, § 3.3.5);

4. Child care facility/preschool/ kindergarten; (Ord. 3-97, 2-10-1997)

5. Club - country (40,000 square feet minimum lot area);

6. Commercial parking (see special regulations .2D.3.);

7. Day care center, adult;

8. Dormitory, fraternity house, or sorority house;

9. Essential service facilities - Group I (except communication [wireless] towers); (Ord. 81-04, 8-2-2004; Ord. 69-10, 10-18-2010)

10. Gate house, within a planned development project only;

11. Golf courses;

12. Governmental uses - Group II;

13. Hospice;

14. Large family child care home; (Ord. 98-03, 10-14-2003)

15. Lodging houses (see Art. III, § 3.3.4);

16. Model home sites (see special regulations .2D.2.);

17. Parks - Groups II and III;

18. Religious facility (minimum one acre);

19. Schools: nonprofit, private, public, or parochial - Group I; and

20. Social services - Groups III and IV.

D. *Special regulations.*

1. No structure may be converted from any other use to a residential dwelling unit unless all provisions of this ordinance regarding residential dwellings are complied with.

2. Model homes sites may be permitted as a special exception subject to the following requirements:

a. Minimum site area of 15,000 square feet for the first model home site and a minimum of 10,000 square feet for each additional adjoining model home site.

b. The parking lot for each model home site shall be set back a minimum of five feet from the side property line, and 15 feet from the rear property line. The setback areas shall contain at least a five-foot landscaped buffer to the adjoining rear and side properties.

c. No parking shall be allowed directly to the rear of a model home site on one building site.

d. Parking: five spaces on-site for the first model home site, three additional paved spaces on-site for each additional model.

e. Vehicle parking entrance(s) to the model homesite(s) shall be from the same street which faces front entrance to the model home site(s) unless this requirement conflicts with Department of Transportation Standards or *City of Cape Coral Engineering Design Standards*. On corner sites where the garage is on the side of the structure, the entrance to the parking area may be

located on the same side as the driveway to the garage.
(Ord. 54-91, 7-22-1991)

f. Time limit: five years maximum, unless conforms to all other provisions of this ordinance.

g. Deposit required:

A deposit of funds or other financial instruments payable to the City of Cape Coral is required as a construction conversion deposit to convert the property back to a residential or other permitted use when the structure is converted or sold. The amount of the deposit to be set forth as follows:

$5,000 for conversion of the parking lot; and

$1,500 per model home site if driveway is not installed.

The deposit shall be used by the city to remove any parking area not allowed in a residential zone or to convert the property to a model home site.

Such deposit shall be used when the model home site is abandoned as a model home site, or at the expiration of the model home time limit, or if the model is sold as a, residence or other permitted use and not converted to a residence or other permitted use, or if the structure is abandoned as a model home site for 30 consecutive days. Conversion of the model home site must be completed within 60 days of the expiration of the time limit for the model home site, or within 60 days of the structure being abandoned as a model home site, or prior to sale of the model for a residential or other permitted use.
(Ord. 54-91, 7-22-1991; Ord. 22-96, 5-6-1996)

Any funds and interest resulting from these funds shall be returned to the party who made the deposit upon conversion of the model home site to a residential or other permitted use if such conversion is done by parties other than the city. Should the city be required to perform the conversion, all unused monies, including interest accrued, shall be refunded to the party making the deposit.

h. Models may be open for business between 9:00 a.m. and 9:00 p.m. daily.

i. Outside lighting permitted, except from 10:00 p.m. to 7:00 a.m.

j. Security lighting: two security lights permitted, one at front and one at rear of building.

k. Model home sites must be used exclusively for the display and sale of model homes. No construction office or other real estate uses shall be permitted.

3. If commercial parking as a special exception use is approved by the Hearing Examiner, the following, as well as all other appropriate conditional requirements shall apply:
(Ord. 7-94, 2-28-1994)

a. The proposed parking on R-3 property shall be used only in connection with an existing use or structure located within a commercial (C-1), or professional (P-1) zoning district.
(Ord. 54-91, 7-22-1991)

b. A minimum of 10,000 square feet of land area shall be required for commercial parking proposed in the R-3 zoning district.
(Ord. 54-91, 7-22-1991)

c. The area within the R-3 zoning district proposed for commercial parking shall be composed of contiguous lots within that district and owned by the commercial or professional property owner or corporation served by the parking site.
(Ord. 54-91, 7-22-1991)

d. A minimum of 40% of the required parking spaces shall be located within a C-1 or P-1 zoning district. The number of required parking spaces shall be determined by Schedule B of § 5.1.
(Ord. 54-91, 7-22-1991)

e. The location of R-3 areas proposed for parking shall be immediately to the rear, or across any service alley, and within the extended side yard lot lines of the property that the parking is intended to serve.
(Ord. 54-91, 7-22-1991)

f. Driveways from the accessory parking in R-3 areas to residential streets shall not be permitted. However, commercial property fronting on Del Prado Boulevard or Santa Barbara Boulevard on one side and on a single-family residential district, as designated on the adopted Future Land Use Map,

TABLE R-3 *DIMENSIONAL REGULATIONS* *(R-3 District)*	
Developments with two units (each unit)	same as duplex
Developments with three or more units (each unit)	same as multi-family

(Ord. 28-00, § 1, 4-24-2000; Ord. 103-00, § 2, 10-23-2000)

(a) The following table shall be used to determine the maximum number of dwelling units permitted for parcels that are less than one acre in size:

Maximum Number Parcel	*Size of Units*
15,000 s.f. – less than 20,000 s.f.	6 units
20,000 s.f. – less than 25,000 s.f.	8 units
25,000 s.f. – less than 30,000 s.f.	10 units
30,000 s.f. – less than 35,000 s.f.	12 units
35,000 s.f. – less than 40,000 s.f.	14 units
40,000 s.f. – less than 43,560 s.f.	16 units

The following calculation shall be used to determine the maximum number of dwelling units (DU) permitted on a parcel that is one acre or greater in size:

(Parcel Area/43,560) x 16 = Maximum DU Permitted

In applying the foregoing calculation, the maximum dwelling units permitted shall be rounded to the nearest whole unit.
(Ord. 68-98, 11-30-1998)

(b) Single-family or duplex: Opened or enclosed pools or screen enclosures are permitted no closer than ten feet from any rear lot line. Open or enclosed pools or screen enclosures shall be placed at the rear of the structure and may not extend more than ten feet beyond the side of the structure or into the required setback Any part of a pool or screen enclosure covered by a roof or enclosed by side walls over six feet in height shall be covered by the limitations regarding location of the structure. The minimum distance requirement from a lot line shall be measured from the exterior of the screen enclosure for a screen enclosure or an enclosed pool and from the waterline of an unenclosed pool. In no instance shall any pool, pool enclosure, or screen enclosure be placed within a utility or drainage easement. (See Article III, § 3.10.)
(Ord 3-97, 2-10-1997; Ord. 103-00, § 2, 10-23-2000)

Multi-Family Use (other than duplex): Opened or enclosed pools or screen enclosures are permitted no closer than ten feet from any rear lot line. Pools or screen enclosures located elsewhere on the multi-family lots are subject to the limitations and regulations specified for structures in this schedule. The minimum distance requirement from a lot line shall be measured from the exterior of the screen enclosure for a screen enclosure or an enclosed pool and from the water line of an unenclosed pool. In no instance shall any pool, pool enclosure or screen enclosure be placed within a utility or drainage easement. (See also Article III, § 3.10.)
(Ord. 103-00, § 2,10-23-2000)

Conjoined Residential structure: Conjoined residential structures with two dwelling units shall comply with the requirements of this paragraph the same as duplexes; those with more than two dwelling units, the same as multi-family uses.
(Ord. 62-99, § 2, 1-31-2000; Ord. 103-00, § 2, 10-23-2000)

(c) The Hearing Examiner may approve variances to permit additional height where one additional foot is added to the required front and side yards for each additional one foot of building height, and all other criteria for approval of a variance are met.
(Ord. 103-00, § 2, 10-23-2000)

(d) All lots shall front on a street for a minimum distance of 50 feet except those lots which front on the turn-arounds of permanent dead-end streets shall be permitted to front on such turn-arounds for a minimum distance of 25 feet.
(Ord. 103-00, § 2, 10-23-2000)

(e) The ground floor area of each unit, exclusive of garages, storage areas, carports, breezeways, enclosed porches or terraces shall have a minimum of 650 square feet of living area except where Federal Emergency Management Agency regulations require a higher elevation. (See Article VI, § 6.5.3.)
(Ord. 103-00, § 2, 10-23-2000)

(f) See Art. III, §§ 3.7 and 3.8.2 for corner lots.
(Ord. 103-00, § 2, 10-23-2000)

(g) In a PDP, minimum yards are for separations between structures in the PDP and adjacent non-PDP properties. Within the project, zero-lot-line, clustering, and other lot dimensions may be approved provided that the area of the project is at least three acres and is developed through the PDP process. Structures built to side lot lines must then observe all underwriting standards including a minimum two hour fire-wall.
(Ord. 22-96, 5-6-1996; Ord. 62-99, § 2, 1-31-2000; Ord. 103-00, § 2, 10-23-2000)

(h) For conjoined residential structures, minimum lot area and minimum lot width requirements apply to the entire parcel on which the project is located; within the project, there is no, minimum lot area or minimum lot width required for each dwelling unit.

(Ord. 62-99, § 2, 1-31-2000; Ord. 103-00, § 2, 10-23-2000;Ord. 49-01, 6-4-2001; Ord. 70-08, 8-25-2008; Ord. 24-16, 6-6-2016)

.3 *RD Residential Development District.*

A. *Purpose and intent.* This district is established to:

1. Provide areas for single, duplex, and multi-family residential development at a variety of densities dependent on the size of the development;

2. Encourage the assembly of larger parcels for the development of higher density projects;

3. Permit other uses generally compatible with such residential uses; and

4. Otherwise implement this ordinance.

B. *Permitted uses.*

1. Administrative office;

2. Commercial parking (see special regulations D.4.);

3. Duplex dwelling (see special regulations D.);

4. Entrance gates (applicable to private subdivisions with private rights-of-way); (Ord. 3-97, 2-10-1997)

5. Essential services;

6. Essential service facilities - Group II - distribution electric substation only (see § 3.27);

7. Family day care home;

8. Home occupation;

9. Multi-family dwelling;

10. Nature and wildlife preserves;

11. Parks - Group I;

12. Places of worship (three-acre minimum lot area);

13. Single-family dwelling; and

14. Conjoined residential structures. (Ord. 62-99, § 3, 1-31-2000; Ord. 125-06, 10-23-2006)

(Agricultural or farming uses removed by motion of Council 4-10-1995)

C. *Special exception uses.*

1. Assisted living facility; (Ord. 68-98, 11-30-1998)

2. Bed and breakfast establishment;

3. Boarding or rooming house (see Art. III, § 3.3.5);

4. Childcare facility/preschool/ kindergarten; (Ord. 3-97, 2-10-1997)

5. Club - country (40,000 square feet minimum lot area);

6. Day care center, adult;

7. Dormitory, fraternity house, or sorority house (see Art. III, § 3.3.5);

8. Essential service facilities - Group I (except communication [wireless] towers); (Ord. 81-04, 8-2-2004; Ord. 69-10, 10-18-2010)

9. Gate house, within a planned development project only;

10. Golf course;

11. Governmental uses - Group II;

12. Guest/staff quarters, within a planned development project only (see special regulations D.3.); (Ord. 114-00, 12-4-2000)

13. Hospice;

14. Lodging houses (see Art. III, § 3.3.4);

15. Large family child care home;

16. Model homes (see special regulation D.2.);

17. Parks - Groups II and III;

18. Religious facility (three-acre minimum lot area);

19. Schools: nonprofit, private, public, or parochial - Groups I and II; and

20. Social services - Groups III and IV.

D. *Special regulations.*

1. No structure may be converted from any other use to residential dwelling unit unless all provisions of this ordinance regarding residential dwellings are complied with.

2. Model home site(s) may be permitted as a special exception, subject to the following requirements:

a. Minimum site area of 15,000 square feet for the first model home site and a minimum of 10,000 square feet for each additional model home site adjoining.

b. The parking lot for a model home site(s) shall be set back a minimum of five feet from the side property line and 15 feet from the rear property line. The set back area shall contain at least a five-foot landscaped buffer to the adjoining rear and side property lines.

c. No parking directly to the rear of the model home site(s) on one building site.

(d) Minimum yards are for separations between structures in the PDP and adjacent nonPDP properties. Within the project, zero-lot-line, clustering, and other lot dimensions may be approved provided that the area of the project is at least three acres and is developed through the PDP process. Structures built to side lot lines must then observe all underwriting standards including a minimum two-hour firewall.
(Ord. 22-96, 5-6-1996)
(e) All lots shall have a minimum width at the street line of 50 feet, except lots on turn-arounds of a permanent dead-end street must have a minimum width of 25 feet. (See *City of Cape Coral Engineering Design Standards* for access.)
(f) See Article III, §§ 3.7 and 3.8.2 for corner lot setbacks.
(g) Single-family and Duplex: Opened or enclosed pools or screen enclosures are permitted no closer than ten feet from the rear lot line. Open or enclosed pools or screen enclosures shall be placed at the rear of the duplex or single-family home and may not extend more than ten feet beyond the side of the structure or into the required setback Any part of a pool or screen enclosure covered by a roof or enclosed by side walls over six feet in height shall be covered by the limitations regarding location of the structure. The minimum distance required from a lot line shall be measured from the exterior of the screen enclosure for a screen enclosure or an enclosed pool and from the water line of an unenclosed pool. In no instance shall any pool, pool enclosure, or screen enclosure be placed within a utility or drainage easement. (See Article III, § 3.10)
(Ord 3-97, 2-10-1997; Ord. 103-00, § 3, 10-23-2000)
Multi-Family: Open or enclosed pools or screen enclosures are permitted no closer than ten feet from any rear lot line. Pools or screen enclosures located elsewhere on the multi-family lots are subject to the limitations and regulations specified for structures in this schedule. The minimum distance requirement from a lot line shall be measured from the exterior of the screen enclosure for a screen enclosure or an enclosed pool and from the waterline of unenclosed pools. In no instance shall any pool, pool enclosure, or screen enclosure be placed within the utility or drainage easement. (See Article III, Sec. 3.10)
(Ord. 3-97, 2-10-1997; Ord. 103-00, § 3, 10-23-2000)
(h) Minimum lot widths and depths are for areas adjacent to existing, non-project structures. Within the project, zero-lot-line, clustering, and other lot dimensions may be approved.
(Ord. 103-00, § 3, 10-23-2000)
(i) Building height may be increased to 35 feet on sites of at least 15,000 square feet.
(Ord. 68-98, 11-30-1998; Ord. 62-99, § 4, 1-31-2000; Ord. 103-00, § 3,10-23-2000)
(j) The Hearing Examiner may approve a variance to permit additional height where one additional foot is added to the required side and rear yards for each additional one foot of building height, and all other criteria for approval of a variance are met.
(Ord. 103-00, § 3, 10-23-2000)
(k) The ground floor area of a dwelling, exclusive of garages, storage areas, carports, breezeways, enclosed porches, or terraces shall have a minimum of 650 square feet of living area. Exceptions may be made where the Federal Emergency Management Agency requires higher elevations. (See Article VI, § 6.5(b)(5).)
(Ord. 103-00, § 3, 10-23-2000)
(l) A minimum of 1,800 square feet is required when adjacent to a river as defined by the U.S. Army Corps of Engineers. Minimum living area may be reduced to 1,400 square feet for lots on canals or lakes, on lots across the street from river front lots, and on lots adjacent to golf courses.
(Ord. 103-00, § 3, 10-23-2000)
(m) Living area must be increased 100 square feet for each bedroom over two per unit.
(Ord. 103-00, § 2, 10-23-2000)
(n) For conjoined residential structures, minimum lot area and minimum lot width requirements apply to the entire parcel on which the project is located; within the project, there is no minimum lot area or lot width required for each dwelling unit.

(Ord. 62-99, § 4, 1-31-2000; Ord. 103-00, § 3, 10-23-2000; Ord. 49-01, 6-4-2001; Ord. 70-08, 8-25-2008; Ord. 24-16, 6-6-2016)

.4 *RE Residential Estate District.*

A. *Purpose and intent.* This district is established to:

1. Provide areas to be used for single-family dwellings on plots of substantial size encompassing either previously unsubdivided lands or creating an estate district wherein a residential estate is not located within a block containing different residential zoning districts;

2. Permit the incidental keeping of some domestic animals for use by the occupants;

3. Permit, as an accessory to the permitted use, guest/staff quarters;

4. Permit other uses compatible with such residential uses; and

5. Otherwise implement this ordinance.

(Ord. 114-00, 12-4-2000)

B. *Permitted uses.*

1. Administrative office;
2. Entrance gate;
3. Essential services;
4. Essential service facilities - Group II - distribution electric substation only (see § 3.27);
5. Family day care, home;
6. Guest/staff quarters;

(Ord. 114-00, 12-4-2000)

7. Home occupations;
8. Nature and wildlife preserves;
9. Parks - Group I;
10. Places of worship (one-acre minimum);
11. Single-family dwelling; and
12. Stables, private (two acres minimum).

(Ord. 125-06, 10-23-2006)

C. *Special exception uses.*

1. Aircraft landing facilities, private;
2. Aviary;
3. Clubs - country, fraternal, or membership (no guns or skeet clubs);
4. Essential services facilities - Group I (except communication [wireless] towers); (Ord. 81-04, 8-2-2004; Ord. 69-10, 10-18-2010)
5. Gate house (only within a planned development project);
6. Golf course;
7. Government uses - Group II;
8. Model home sites (only within a planned development project and not within the Low Density Residential II Future Land Use Map classification);
9. Parks - Groups II and III;
10. Religious facilities (three acres minimum lot area); and
11. Schools: non-profit, private, public, parochial - Group I.

D. *Special regulations.*

1. Non-domestic animals in the Residential Estate (RE) zoning district.

a. *Purpose and intent.* It is the purpose and intent of this section to provide regulations pertaining to the housing, maintenance, number, and pasturing of non-domestic animals within specific and limited residential areas within the City of Cape Coral. Non-domestic animals regulated in this section are regulated for the purpose of being a pet or for household consumption, and shall not be used for any commercial purposes.

b. *Definition of non-domestic animals.* For the purposes of this section, non-domestic animals refer to farm animals including, but not limited to, horses, cattle, mules, goats, sheep, swine and poultry.

c. *Residential Estate.* For the purposes of this section, non-domestic animal regulations pertaining to the Residential Estate zoning district are applicable only for those Residential Estate properties within the Low Density Residential II Future Land Use Map classification, except for horses, foals, and yearlings, which are allowed within the zoning district regardless of the Future Land Use Map classification.

d. *Horses.* The keeping of horses, including foals and yearlings, is permitted within the Residential Estate zoning district. Any roofed structure for shelter of such animals shall be located at least 100 feet from any property line.

e. *Cattle, mules, goats, sheep, swine and poultry.* The keeping, raising and breeding of non-domestic animals, including, but not limited to cattle, mules, goats, sheep, swine, and poultry may be permitted in the Residential Estate as follows:

(1) 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.

(2) 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 (A) zoning districts.

(3) 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 the Residential Estate (RE) and Agricultural (A) zoning districts, under separate ownership.

(4) 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.

2. Model home site(s) may be permitted as a special exception, except for those Residential Estate properties within the Low Density Residential II Future Land Use Map classification, subject to the following requirements:

a. Minimum site area of 40,000 square feet for the first model home site and a minimum of 40,000 square fee for each additional mode home site adjoining.

b. The parking lot for a model home site(s) shall be set back a minimum of five feet from the side property line and 15 feet from the rear property line. The set back area shall contain at least a five-foot landscaped buffer to the adjoining rear and side property lines.

abandoned as a model home site, or at the expiration of the model home time limit, or if the model home site is sold as a residence or other permitted use and not converted to a residence or other permitted use, or if the structure is abandoned as a model home site for 30 consecutive days.

Conversion of the model home site must be completed within 60 days of the expiration of the time limit for the model home site, or within 60 days of the structure being abandoned as a model home site, or prior to sale of the home for a residential or other permitted use.

Any funds and interest resulting from these funds shall be returned to the party who made the deposit upon conversion of the model home site to a residential or other permitted use if such conversion is done by parties other than the city.

Should the city be required to perform the conversion, all unused monies, including interest accrued, shall be refunded to the party making the deposit.

h. Model home sites may be open for business between 9:00 a.m. and 9:00 p.m daily.

i. Outside lighting permitted, except from 10:00 p.m. to 7:00 a.m.

j. Security lighting: two security lights, one front and one rear of building.

k. Model home sites must be used exclusively for the display and sales of model homes. No construction office or other real estate uses permitted.

E. *Supplemental regulations*

1. Article III, § 3.1.2 (Accessory Uses);
2. Article III, § 3.9 (Fences);
3. Article III, § 3.10 (Pools);
4. Article III, § 3.12.1, .2, .3, .7, .8, .9 and .10 (Parking);
5. Article III, § 3.14 (Easements); and
6. See *City of Cape Coral Engineering Design Standards* (Access).

TABLE RX
DIMENSIONAL REGULATIONS

	Single-Family	***Duplexes (a)***	***Multi-Family (a)***
Minimum lot area	10,000 s.f.	10,000 s.f.	43,560 s.f. (one acre)
Maximum density	4.4.du/acre	8.7 du/acre(b)	20 du/acre (c)
Minimum yards (m)			
Front	25 ft.	25 ft.	25 ft.
Side	7.5 ft.	7.5 ft.	7.5 ft.
Rear	20 ft.	20 ft.	20 ft.
Minimum lot width (at building line)	80 ft.	80 ft.	160 ft.
Minimum lot depth	125 ft.	125 ft.	250 ft.
Maximum building height			
Feet	30 ft.	30 ft.	38 ft.(f)(j)
Minimum living area			
Waterfront	1,400 s.f.(g)	1,200 s.f./d.u.(g)(i)	1,100 s.f./d.u.(h)(i)
Non-waterfront	1,100 s.f.	1,100 s.f./d.u (g)(i)	1,100 s.f./d.u.(h)(j)
(Ord. 103-00, § 4, 10-23-2000)			

(a) Duplexes and multi-family developments require the use of TDR certificates. Densities may not be increased through special exceptions, variances or means other than TDRs.
(b) Development of a duplex dwelling on a 10,000 square foot lot requires the use of TDRs. Only one TDR per 10,000 square foot building lot may be used unless part of a larger multi-family development.
(c) Each 10,000 square feet of lot area is permitted one dwelling unit. Additional dwelling units may be added at a rate of one dwelling unit per one TDR up to the maximum allowed density. On sites less than three acres in area, the maximum allowed density is 16 dwelling units per acre. Maximum densities may be increased to 20 dwelling units per acre on sites of three acres or more. (e.g. a 16-dwelling unit development on a one-acre site would require the use of 12 TDRs; a 60-dwelling unit development on a three-acre site would require the use of 47 TDRs)
(d) Open or enclosed pools or screen enclosures are permitted no closer than 15 feet from any rear lot line. For single-family and duplex dwellings, unroofed pools, enclosed pools, or screen enclosures only with mesh screening shall be placed at the rear of the structure and may not extend more than ten feet beyond the side of the structure. Pools or screen enclosures located elsewhere on the multi-family lots are subject to the limitations and regulations specified for structures in this schedule. The minimum distance requirement from a lot line shall be measured from the exterior of the screen enclosure for a screen enclosure or an enclosed pool and from the waterline of an unenclosed pool In no instance shall any pool, pool enclosure or screen enclosure be placed within a utility or drainage easement or within the required side setback (See Article III, § 3.10.)
(e) All lots shall front on a street for a minimum distance of 50 feet except those lots which front on the turnarounds of permanent dead-end streets shall be permitted to front on such turnarounds for a minimum distance of 25 feet. (See *City of Cape Coral Engineering Design Standards* for access.)
(f) The Hearing Examiner may approve variances to permit additional height where one additional foot is added to the required front and side yards for each additional one foot of building height, and all other criteria for approval of a variance are met. In no instance may more than three stories be constructed within a height of 38 feet or less.
(g) The ground floor area of single-family, duplex or multi-family dwelling, exclusive of garages, storage areas, carports, breezeways, enclosed porches or terraces shall have a minimum of 650 square feet of living area per dwelling. Exceptions may be made where the Federal Emergency Management Agency requires higher elevations. (See Article VI, § 6.5.2E.)
(h) Add an additional 100 square feet for each bedroom over two.
(i) On waterfront properties, lot depths may be reduced to 125 feet for multi-family developments.
(j) On waterfront properties with 125 feet of lot depth, the building height of multi-family structures may not exceed 30 feet.
(Ord. No. 68-98, 11-30-1998)
(k) On waterfront properties with only 125 feet of lot depth, multi-family projects may be developed on one-half acre sites.
(l) See Article III, §§ 3.7 and 3.8 for corner lots.

(Ord. 103-00, 10-23-2000; Ord. 70-08, 8-25-2008; Ord. 24-16, 6-6-2016)

.6 *W-Places of Worship.*

A. *Purpose and intent.* This district is established to:

1. Permit areas for the development of places of worship;
2. Permit religious facilities;
3. Permit other uses ancillary to and associated with the principal use; and
4. Otherwise implement this ordinance.

B. *Permitted uses.*

1. Assisted living facility;
(Ord. 68-98, 11-30-1998)
2. Child care facility;
3. Daycare centers, adult;
4. Essential services;
5. Essential service facilities - Group I (see special regulations for communication [wireless] towers);
(Ord. 81-04, 8-2-2004; Ord. 69-10, 10-18-2010)
6. Essential service facilities - Group II - distribution electric substation only (see § 3.27);
7. Nature and wildlife preserves;
8. Places of worship: churches, synagogues, chapels, temples, and mosques;
9. Private park;
10. Religious facility;
11. Schools: parochial - Groups I and II; and
12. Social services - Groups III and IV.
(Ord. 125-06, 10-23-2006)

C. *Special regulations.*

1. Parking requirements (see Article V); and
2. Shall be located on land designated on the adopted Future Land Use Map as houses of worship ("W").

TABLE W *DIMENSIONAL REGULATIONS*	
Minimum lot area	1 acre
Minimum lot width	100 ft.
Minimum frontage	100 ft.
(Ord. 22-96, 5-6-1996)	

TABLE W *DIMENSIONAL REGULATIONS*	
Minimum yards (a)	
Front	50 ft.
Side	25 ft.
Rear	25 ft.
(a) When adjacent to a residential district, a five-foot properly maintained landscaped separation strip shall be provided along all side and rear lot lines. The non-residential use located on such a lot shall be permanently screened from the adjoining and contiguous residential properties by a visual buffer such as a fence, evergreen hedge, or other approved enclosures. Such screening shall be approved by the Director and shall be located within the required separation strip. (Ord. 107-07, 9-21-2009)	

3. Communication [wireless] towers:

a. *Definitions.*

ANTENNA. A transmitting or receiving device used for services that radiates or captures electromagnetic radio frequencies for the communication of voice, video or data.

ANTENNA SUPPORT STRUCTURE. Any building or other structure, other than a tower, which can be used for location of wireless telecommunications facilities (WTCF).

CO-LOCATION. Erecting antenna(s) of a wireless service provider on a tower or an existing antenna support structure already supporting an antenna.

DESIGNED SERVICE STUDY. A study of the configuration and manner of deployment of wireless services the wireless provider has designed for an area as part of its network that demonstrates whether or not existing towers or tall structures in the search can be utilized for co-location.

MONOPOLE. A style of free-standing tower that is composed of a single shaft, usually composed of two or more hollow sections that are in turn attached to a foundation, with external antennas. This type of tower is designed to support itself without use of guy wires or other stabilization devices.

POLE-MOUNTED. An antenna attached to or upon an electric transmission or distribution pole, a streetlight, a traffic signal or similar facility located within the public right-of-way or a utility easement. A utility pole-mounted facility shall not be considered a tower.

STEALTH OR CAMOUFLAGED FACILITY. Any antenna, tower or wireless telecommunications facility which is designed to blend into the surrounding environment or that camouflages or conceals the presence of the tower or wireless telecommunication facility to the extent that the average person would be unaware of its nature as a tower, antenna, or wireless telecommunications facility. Examples of stealth or camouflaged facilities include, but not limited to, man-made trees, clock towers, bell steeples, flag poles, light poles, and similar alternative-design mounting structures. Examples of stealth or camouflaged antennas include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, and antennas integrated into architectural elements.

STRUCTURE-MOUNTED. A wireless telecommunications facility, tower or antenna which is mounted to an existing building or structure not otherwise meant to support a wireless telecommunication facility, tower or antenna.

TOWER. 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.

WIRELESS TELECOMMUNICATIONS FACILITY (WTCF). Any cables, wires, lines, wave guides, antennas, and other equipment associated with the transmission or reception of telecommunications

installed upon a tower or antenna support structure, including ground-based equipment in direct support of such transmission or reception. However, the term ***WIRELESS TELECOMMUNICATION FACILITY*** shall not include amateur radio antennas.

b. An application for a communication tower shall contain adequate documentation that co-location on an existing approved tower, of any type, or on an existing building or structure, has been attempted and is not feasible. Such documentation shall include:

(1) 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.

(2) The designed service study analysis shall be based upon a search area radius of three-quarters of a mile minimum distance from the proposed location of the intended WTCF or tower, including areas lying outside the incorporated area of 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 WTCF or tower location and identifies all other alternatives in the area. Further information may be required by the city on the ability of the WTCF or tower to be accommodated on specific sites within three-quarters of a mile of the proposed WTCF or tower.

(3) 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 qualified and 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.

c. *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.

d. *Priority siting conditions.* Any new WTCF or tower shall be subject to a determination of the appropriate siting priority as indicated below. The priorities range from 1 to 4, with the preferred siting conditions found in Priority 1 and the least desirable siting conditions found in Priority 4. In the event that a proposed WTCF or tower cannot be sited to comply with the conditions in Priority 1, the development application shall demonstrate why a lower priority site is necessary.

(1) *Priority 1.* Pole-mounted WTCFs or the co-location of WTCFs on existing towers or antenna support structures

For purposes of this subsection, a commercially-zoned property shall be deemed to be adjacent to a residential future land use classification only when all or part of a property line of the commercially-zoned property abuts a residential future land use classification or when the property is separated from such future land use classification only by an alley, canal, basin, lake, or other waterway.
(Ord. 43-94, 8-8-1994; Ord. 51-97, 8-15-1997; Ord. 107-07, 9-21-2009)

Commercially-zoned properties that are entirely separated from a residential future land use classification by any public right-of-way (excluding alleys and canals, basins, lakes or any other waterway) shall not be deemed adjacent to such residential future land use classification.
(Ord. 43-94, 8-8-1994; Ord. 51-97, 8-15-1997)

As an alternative to the PDP required by this subsection, a commercial/professional use may be established, constructed, enlarged, or expanded on commercially-zoned properties located adjacent to a residential future land use classification provided that the city approves a site plan for such development, including the separation from any residential future land use classification with a Buffer E as provided in § 5.2.11.F. which is not interrupted for any driveway or other vehicular ingress/egress.
(Ord. 47-00, § 1, 8-14-2000; Ord. 107-07, 9-21-2009)

5. If a neighborhood storage facility is approved by the Hearing Examiner as a special exception use, such neighborhood storage facility shall comply not only with the conditions, if any, imposed by the Hearing Examiner, but also shall comply with the following special regulations:
(Ord. 81-00, 10-23-2000)

a. No activity other than loading, unloading, and storage of goods is allowed from any storage unit. Furthermore, no business may be operated from any storage unit.

b. No loading or unloading activity involving the movement of storage materials into or out of individual storage units shall be performed so as to be visible from the front of the building.

c. No hazardous materials shall be stored in a neighborhood storage facility.

d. A neighborhood storage facility shall be located on a site that is not less than one acre in size. If the existing or proposed development is a multiple use site, the land area devoted to the neighborhood storage use must equal or exceed one acre. For the purposes of this section, a multiple use site is defined as any development housing two or more tenants on one ownership parcel. In addition, this term shall include properties approved under any planned development project that includes neighborhood storage. For development projects involving uses including, but not limited to, neighborhood storage facilities, the one acre requirement shall include the neighborhood storage building footprint(s) and its associated parking area. For the purposes of this section, the parking area shall be defined as the square footage associated with the number of spaces required by the City of Cape Coral Land Use and Development Regulations for meeting the minimum parking requirements for the neighborhood storage use.

e. No outdoor storage of any kind shall occur or be allowed on a premises containing a neighborhood storage facility. All storage associated with a neighborhood storage facility shall be entirely confined within one or more enclosed buildings.

f. Predominant exterior building materials for a neighborhood storage facility may include, but are not limited to: stucco, brick, tinted, textured, concrete masonry units, thermal shield metal paneling or stone. Smooth faced concrete on a primary facade shall have a cementious exterior coating (the visual equivalent of stucco or some other decorative finish). Untreated concrete block is not an acceptable finished material for primary facades. Other

materials may be used if determined to be consistent with the intent of this section by the Director of the Department of Community Development.
(Ord.117-02, 12-9-2002)

g. All heating, air conditioning, or other mechanical equipment located on the premises of a neighborhood storage facility shall be shielded or screened from a public right-of-way so as to minimize the effects of such equipment on surrounding properties. All freestanding outdoor lighting located on the premises of a neighborhood storage facility shall be not more than 15 feet in height when measured from the ground and shall be shielded so as to minimize the effects of such lighting on surrounding properties.

h. All rooftop equipment shall be concealed from public view on all sides in a manner consistent with the architectural design of the building.

i. 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. Asphalt shingles are prohibited except for laminated 320# , 30 year, architectural grade or better.

j. All neighborhood storage facilities are required to have variations in rooflines and roof features that are consistent with the building's mass and scale. In addition, roofs shall include at least two of the following features:

(1) Decorative parapets;

(2) A three-dimensional cornice treatment, a minimum of 12 inches high;

(3) Varied roof lines with different roof heights and/or separate/distinct roof segments that fall at different horizontal planes above the cornice line;

(4) Overhanging eaves that extend at least three feet beyond the supporting walls, with a minimum fascia of six inches in height.

(5) Vertical variation in ridge line with a minimum change in elevation of two feet.

(6) Use of additional architectural roof styles or treatments determined to be consistent with the intent of this section by the Director of the Department of Community Development.

k. All exterior walls that are visible from adjoining property or from any public right-of-way shall have wall relief at intervals of not more than 50 linear feet. A break or offset of not less than two feet in the vertical plane of exterior walls shall be located at intervals that are not greater than 50 linear feet. The use of pilasters or protruding ribs, while encouraged, shall not be considered as a break in the vertical plane of such exterior walls. All such exterior walls in excess of 14 feet in height shall use horizontal banding, bays, reveals, small offsets or windows to break up the vertical plane.

l. No storage shall be visible from the exterior of the neighborhood storage facility. If the neighborhood storage facility contains windows, only finished construction including, but not limited to walls, doors, etc., shall be visible through the windows. No neighborhood storage facility window that is visible from any adjoining property or from any public right-of-way shall have paint or any other substance or material applied directly to the surface of such window so as to prevent visibility through such window. This restriction shall not, however, prevent a neighborhood storage facility from utilizing "solar window tinting", the use of Spandrel glass or other comparable material or interior window treatments such as blinds, shutters, or draperies.
(Ord. 102-07, 9-10-2007)

6. Multi-family residential use is permitted only on property with a Mixed Use Future Land Use designation and within a PDP.
(Ord. 40-03, 5-12-2003; Ord. 60-04, 6-14-2004; Ord. 2-11, 3-14-2011)

7. A compound use building that contains not more than two multi-family dwelling units located on the second floor or higher is not required to be approved through the PDP process.(Ord. 118-02, 1-21-2002; Ord. 40-03, 5-12-2003; Ord. 60-04, 6-14-2004; Ord. 2-11, 3-14-2011)

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.

(6) *Signage.* 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 and/or permittee's name and an emergency telephone number.

(7) *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.

(Ord. 69-10, 10-18-2010)

12. *Brewpub.* Brewpubs are subject to the following requirements.

a. The area used for brewing, bottling, and kegging of all beverages produced by the establishment shall not exceed 40% 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. A building plan shall be submitted to the City that clearly shows the area of the building that will be devoted to the brewing, bottling, and kegging component of the establishment.

c. No enclosed storage shall be allowed including the use of portable storage units, cargo containers, and tractor trailers, except that 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 the property lines and the building containing the brewpub;

(2) Located only along the side or rear of the building;

(3) Fully enclosed in containers that are located behind an opaque wall or fence. The wall or fence shall have a minimum height of six feet. Chain link, with or without slats, shall be prohibited as a wall or fence material.

(Ord. 31-14, § 1, 10-20-2014)

TABLE C-1
DIMENSIONAL REGULATIONS
(C-1 District)

Minimum lot size	None
Minimum lot width (at building line)	25 ft.
Minimum frontage	None
Minimum yards	
Front	25 ft. (a)(b)
Side	(a) (b) (c) (d)
Rear	10 ft. (a) (b) (c) (d) (i)
Maximum floor to area ratio (FAR)	1.0(e)
Maximum density	20 du/acre (f) (g)

TABLE C-1 *DIMENSIONAL REGULATIONS* *(C-1 District)*	
Minimum living area	(h)
Efficiency and one bedroom units	750 s.f.
Each additional bedroom	150 s.f.

(Ord. 118-02, 1-21-2002; Ord. 60-04, 6-14-2004; Ord. 69-10, 10-18-2010; Ord. 2-11, 3-14-2011)

(a) The Hearing Examiner may, upon request by the applicant, reduce or waive the minimum setback requirements within a commercial district provided the following determinations are made:
(1) The required setbacks would prevent the continuous development of a compact and coordinated row of commercial and professional buildings, commercial block or shopping area, or dedicated parking area.
(2) The required setback would severely limit the overall utilization of the property and would detract from the overall shopping desirability of the adjoining buildings and premises.
(b) (See Article III, §§ 3.7 and 3.8 for corner lot setbacks.)
(c) All non-residential uses in all non-residential districts which are located on lots abutting a residential future land use classification shall maintain a minimum setback requirement for all structures of 25 feet in the side or rear yard abutting the residential future land use classification. All development in the Pedestrian Commercial District shall provide a properly maintained landscaped buffer yard as required by Article V, § 5.2.
(Ord. 51-97, 8-15-1997; Ord. 107-07, 9-21-2009)
(d) All buildings erected by the owners of only one building lot must be built flush to both of its side lot lines but must then observe all Fire Underwriters Standards including a minimum of a two hour fire wall. All buildings erected by owners of two or more contiguous lots must be built with at least one of the sides flush with an end lot side line, and if it is not built flush to the side lot lines of both end lots, the minimum width that can be left vacant must be at least ten feet to permit the erection of another acceptable building at a later date.
A structure built on the lot line shall be designed to the following standards:
1. Water runoff shall be diverted to an approved retention area;
2. The structure shall be built so that there shall be no open compartments or cavities between structures on the property line; and
3. The roof shall be designed and built in such a manner as to prohibit water runoff to the adjacent site.
For properties with a driveway type side alley, a ten-foot side setback is required. A single row of parallel parking spaces may be permitted adjacent to the side alley. Properties with walkway type side alleys may be built to the property line.
(Ord. 54-91, 7-22-1991)
(e) Where a commercial property's only street frontage is along a local street across from a single-family residential future land use classification, the floor area ratio (FAR) for new development shall be a maximum of 0.25.
(Ord. 2-11, 3-14-2011)
(f) This density regulation shall be applied only to multi-family residential uses.
(Ord. 2-11, 3-14-2011)
(g) The following calculation shall be used to determine the maximum number of dwelling units (DU) permitted on a parcel with a Mixed Use Future Land Use designation:

(Parcel Area/43,560) x 20 = Maximum DU Permitted

In applying the foregoing calculation, the maximum dwelling units permitted shall be rounded to the nearest whole unit. Because multi-family residential use is permitted only in conjunction with a non-residential use on the same property within a Mixed Use Future Land Use designation, however, such a property that contains both residential use(s) and non-residential use(s) shall be allowed either:
(Ord. 60-04, 6-14-2004; Ord. 2-11, 3-14-2011)
1. A maximum floor to lot area ratio (FAR) of 1.0 for the non-residential use(s) together with a density that is equivalent to one-half the maximum density that would otherwise be allowed under this section for the residential use(s); or
(Ord. 60-04, 6-14-2004)
2. The maximum density that would be allowed under this section for the residential use(s) together with a maximum floor to lot area ration (FAR) that is equivalent to one-half the maximum FAR that would otherwise be allowed under this section for the non-residential use(s).
The property owner shall have the option of whether to apply the full density/intensity to the residential use(s) or to the non-residential use(s).
(Ord. 40-03, 5-12-2003)
(h) The minimum living area requirement shall apply only for multi-family residential uses.
(Ord. 118-02, 1-21-2002; Ord. 40-03, 5-12-2003; Ord. 2-11, 3-14-2011)
(i) Multi-family residential uses located on property with a Mixed Use Future Land Use designation may have swimming pools located on the roof of the building in which the multi-family use is located. For other swimming pools associated with multi-family residential uses located on property with a Mixed Use Future Land Use designation, the following shall apply: Open or enclosed swimming pools or screen enclosure are permitted no closer than ten feet from any rear lot line. Swimming pools or screen enclosures located elsewhere on property containing multi-family residential use(s) located on property with a Mixed Use Future Land Use designation are subject to the limitations and regulations specified for structures in this section. The minimum distance requirement from a lot line shall be measured from the exterior of the screen enclosure for a screen enclosure or an enclosed swimming pool and from the water line of an unenclosed swimming pool. In no event shall any swimming pool, pool enclosure, or screen enclosure be placed within a utility or drainage easement. For other recreational facilities, such as tennis courts, racquetball courts, basketball courts, volleyball courts, etc., associated with multi-family residential uses located on property with a Mixed Use Future Land Use designation, the following shall apply: Such recreational facilities are permitted as accessory structures provided that the court area meets all setback requirements of the zoning district. Recreational facility fencing must also conform to the zoning district setback requirements for structures.
(Ord. 40-03, 5-12-2003; Ord. 60-04, 6-14-2004; Ord. 2-11, 3-14-2011)

(Ord. 60-04, 6-14-2004; Ord. 69-10, 10-18-2010; Ord. 2-11, 3-14-2011; Ord. 71-11, 2-6-2012; Ord. 24-16, 6-6-2016)

(4) *Illumination.* A tower shall not be artificially lighted except as may be required by federal or state regulations.

(5) *Surface or finish color.* Regardless of whether designed as a stealth facility, towers shall be painted or have a noncontrasting 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.

(6) *Signage.* 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 and/or permittee's name and an emergency telephone number.

(7) *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.

(Ord. 69-10, 10-18-2010)

TABLE A
DIMENSIONAL REGULATIONS
(A District)

Maximum building height	35 ft (c)
Building setback	(a) (b)

(a) Building setback: All buildings shall be located at least 30 feet or one-half the width of the street right-of-way, whichever is larger, from all existing and proposed streets and at least 25 feet from all property lines.
(b) Any roofed structure, or building for the shelter of animals shall be located at least 100 feet from any property line.
(c) The maximum height for a communication tower shall be 140 feet as stated hereinabove.

(Ord. 69-10, 10-18-2010)

4. *Recreational vehicle parks.* Every special exception for a recreational vehicle park must be approved through the Planned Development Project (PDP) process. If a recreational vehicle park is approved by the Hearing Examiner or City Council, such recreational vehicle park shall comply not only with the conditions, if any, imposed by the Hearing Examiner or City Council, but also shall comply with the following special regulations:

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.

b. *Lodging unit characteristics.* Lodging shall only be allowed within recreational vehicles and camping cabins that have all of the following characteristics:

(1) Recreational vehicles:

(a) Shall be no more than eight and one-half feet in body width, exclusive of safety devices when slide outs are retracted;

(b) Shall have water and wastewater systems designed for continuous connection to water and wastewater service facilities while parked at a transient guest site; and

(c) Shall not be constructed with collapsible partial sidewalls that fold for towing in such a way as to be unusable for occupancy.

(2) Camping cabins shall comply with all of the following criteria:

(a) Cabins shall be constructed in compliance with the Florida Building Code;

(b) The square footage of interior space shall be a minimum of 200 square feet and a maximum of 600 square feet;

(c) Cabins shall be equipped with electric service and a full bathroom;

(d) Cabins are exempt from non-residential design standards, however when there is more than one cabin in a development, the color scheme, exterior materials on walls, exterior roof finishing, and roof type must be consistent among all cabins;

(e) Corrugated metal is prohibited for exterior walls;

(f) Roofs shall consist of pitched roofs, including but not limited to, gable, hip, or mansard roofs; however, mansard roofs with flat decks and shed style roofs are prohibited.

c. *Location.* Recreational vehicle parks are permitted only on property with a Mixed Use future land use designation. No new recreational vehicle park shall be developed and no existing recreational vehicle park shall be expanded within a coastal high hazard area, as depicted in the Comprehensive Plan.

d. *Minimum interior road standards.* All interior roads shall be privately owned and maintained, and shall be constructed in accordance with the structural requirements within the City of Cape Coral Engineering Design standards.

e. *Overall recreational vehicle park area and density.* The following requirements shall apply to the recreational vehicle park net area:

(1) Minimum recreational vehicle park net area: 25 acres;

(2) Maximum net density: 10 transient guest sites per acre, based on net area;

(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;

(b) Between a camping cabin and a recreational vehicle pad on the same transient guest site: 15 feet;

(c) Between a camping cabin and a recreational vehicle pad on a separate transient guest site: 20 feet;

(d) Between a transient guest site boundary line and a camping cabin: 7½ feet; and

(e) Between transient guest site boundary line and a recreational vehicle pad: 7½ feet.

(9) Each transient guest site designed with a pad for parking a recreational vehicle shall have the following standards:

(a) Maximum number of recreational vehicles: 1;

(b) Minimum site area: 2,000 square feet;

(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.

(10) Each transient guest site developed with a camping cabin shall have the following standards:

(a) Maximum number of camping cabins: 1;

(b) Minimum site: 2,500 square feet; and

(c) Parking space: Each site developed with a camping cabin shall include a minimum of one automobile vehicle parking space, paved with concrete or pavers, or as otherwise approved by the city, with minimum dimensions of 9 feet by 18 feet. This limitation shall not apply to transient guest sites with a pad for parking one recreational vehicle and one camping cabin. The use of asphalt as a paving material for vehicle parking spaces is prohibited.

(11) Each transient guest site developed with both a pad for parking a recreational vehicle and with a camping cabin shall have the following standards:

(a) Maximum number of units: one camping cabin and a pad for parking no more than one recreational vehicle;

(b) Minimum site area: 5,000 square feet;

(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; and/or

(4) Formed, decorative, or precast concrete.

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 § 5.2.

m. *Phasing.* The City Manager or the City Manager's designee 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 (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 City Manager or the City Manager's designee shall not issue a certificate of use for any phase that has not been completed in its entirety.

vehicle park, the developer shall provide an emergency response plan, approved by the Fire Chief or the Fire Chief's designee, 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 or the Fire Chief's designee.

s. *Procedures.* Every special exception for a recreational vehicle park is required to be approved through the Planned Development Project (PDP) process. In addition to other requirements for PDP development plans, development plans for recreational vehicle parks shall include the boundary lines, dimensions, areas of transient guest sites, and separation distances illustrating compliance with separation requirements for transient guest sites. (Ord. 1-13, 3-11-2013; Ord. 24-16, 6-6-2016)

.12 *Village District (Vill).*

A. *Purpose and intent.*

The purpose and intent of the Village district is to:

1. Implement the recommendations of the Pine Island Road Master Plan;

2. Provide for compact urban centers promoting maximum pedestrian friendliness and minimal automobile traffic between residential areas, shopping destinations, a variety of entertainment establishments, and employment opportunities;

3. Encourage "park-once" area, to maximize pedestrian environment and minimize traffic between destinations;

4. Permit multi-use development that combines commercial and housing uses in a single or multiple buildings;

5. Permit mixed use developments such as: commercial, office, multi-family residential and civic uses;

6. Provide for planned commercial developments on larger sites, allowing for a full range of retail and service businesses with a local, community or regional market;

7. Provide regulations, which ensure a consistent design theme and complementary palate of materials to produce a distinctive, traditional village character within this zoning district; and

8. Otherwise implement this ordinance.

The nature of the development(s) that can be built within the Village district is determined by the size of the land to be developed. As the property size increases, so do the options for development.

B. *Permitted uses.*

1. Administrative office;
2. Assisted living facility;
3. Automatic teller machine (ATM);
4. Automotive parking establishment;
5. Automotive parts store;
6. Banks and financial establishments - Groups I and II;
7. Bar or cocktail lounges;
8. Bed and breakfast establishment;
9. Boat parts store;
10. Brewpub;

(Ord. 31-14, § 3, 10-20-2014)

11. Building materials, sales - Group I;
12. Business offices - Groups I and II;
13. Carry-out/delivery food service establishment;
14. Child care facility/ preschool/ kindergarten;
15. Clothing store general;
16. Clubs: commercial, country, fraternal, and membership organization;
17. Commercial parking;
18. Conjoined residential structures (minimum three units);
19. Contractors and builders - Group I;
20. Cultural facilities;
21. Day care centers, adult;
22. Department store;
23. Drug store;
24. Entrance gate (applicable to private subdivisions with private rights-of-way);

25. Essential services;
26. Essential service facilities - Group II - distribution electric substation only (see § 3.27);
27. Florist shop;
28. Food stores - Group I;
29. Gate house;
30. Government uses - Group I;
31. Hardware stores;
32. Health care facilities - Group I;
33. Hobby, toy, game shops;
34. Home occupations;
35. Hotel/motel and resort;
36. Household/office furnishings - Groups I and II;
37. Insurance company;
38. Medical office;
39. Mortgage broker;
40. Motion picture theater;
41. Multi-family;
42. Nature and wildlife preserve;
43. Newsstand;
44. Nightclub;
45. Non-store retailers - Groups I, II, III, and IV;
46. Package store;
47. Parks - Groups I and II, except motorcross;
48. Personal services - Groups I, II, and III;
49. Pet services;
50. Pet shop;
51. Pharmacy;
52. Photo finishing lab;
53. Places of worship;
54. Printing services establish-ment;
55. Private park;
56. Recreation, commercial - Group I;
57. Religious facilities;
58. Rental establishments - Groups I (excluding pleasure craft) and II;
59. Repair shops - Groups I, II and III;
60. Restaurant, fast food;

(Ord. 155-05, 1-23-2006)

61. Restaurants - Groups I, II, III and IV;
62. Schools, commercial;
63. Schools: non-profit, private, public, or parochial - Groups I and II;
64. Social services - Groups I and II;
65. Specialty retail shops - Groups I and II;
66. Studio;
67. Swimming pool supply store (without liquid chemical tanks);
68. Used merchandise stores - Group I; and
69. Variety stores.

(Ord. 6-10, 5-24-2010)

C. *Special exception uses.*

1. Automotive service station limited with convenience store;
2. Dormitory, fraternity house, or sorority house;
3. Essential service facilities - Group I (see special regulations for communication [wireless] towers);

(Ord. 69-10, 10-18-2010)

4. Government uses - Group II;
5. Heliport;
6. Helistop;

7. Model home site (see special regulations D.1.); and

8. Swimming pool supply store (with liquid chemical tanks).

(Ord. 6-10, 5-24-2010)

D. *Special regulations.*

1. Model home site(s) may be permitted as a special exception subject to the following requirements:

a. Must be a dwelling unit that is part of an approved residential development. Stand alone model home sites are not permitted. In addition, model home site(s) shall be allowed as a special exception use for a period not to exceed the period when units within a residential or mixed-use development are actually under construction, or offered for sale or lease. The special exception for the model home site(s) use shall terminate and any model home site(s) use shall be converted to another lawful use not later than the date that the construction of all of the units within a residential or mixed-use development has been completed and all of the units have been either sold or rented. Although the Hearing Examiner may approve a termination date for a special exception to operate a model home site that is earlier than that otherwise required by this section, the termination date for such a special exception shall, in no event, be later than that otherwise provided in this section.

b. Model units and sales offices may be open for business between 9:00 a.m. and 9.00 p.m. daily.

c. Parking: five spaces on-site for the first model unit, three additional paved spaces on-site for each additional model unit.

d. Access to the parking area that serves the model unit(s) shall be through an approved access point that serves the residential development.

e. Outside lighting is permitted, except from 10:00 p.m. to 7:00 a.m.

f. Security lighting: two security lights permitted, one at front and one at the rear of the building.

g. Model home site(s) must be used exclusively for the display and sale of model units. No construction office or other real estate uses shall be permitted.

h. Deposit required: a deposit of funds or other financial instruments payable to the City of Cape Coral is required as a construction conversion deposit to convert the property back to a residential or other permitted use when the structure is converted or sold. The amount of the deposit to be set forth as follows: $5,000 for conversion of the parking lot; and $1,500 per model home site if driveway is not installed. The deposit shall be used by the city to remove any parking area not allowed in a residential zone or to convert the property to a residential or other permitted use. Such deposit shall be used when the model home site is abandoned as a model home, or at the expiration of the model home time limit, or if the model home site is sold as a residence or other permitted use and not converted to a residence or other permitted use, or if the structure is abandoned as a model home for 30 consecutive days. Conversion of the model home site must be completed within 60 days of the expiration of the time limit for the model home, or within 60 days of the structure being abandoned as a model home site, or prior to sale of the model home site for a residential or other permitted use. Any funds and interest resulting from these funds shall be returned to the party who made the deposit upon conversion of the model home site to a residential
or other permitted use if such conversion is done by parties other than the city. Should the city be required to perform the conversion, all unused monies, including interest accrued, shall be refunded to the party making the deposit.

2. Any storage of merchandise or materials outside of the building is prohibited.

3. No existing or proposed non-residential use shall be established, constructed, enlarged, or expanded on properties located adjacent to a residential future land use classification or to a property with Pine Island Road future land use classification not zoned village or corridor, except by means of

either the planned development project (PDP) process described in § 4.2 or the alternative procedure described below:

For purposes of this subsection, a property shall be deemed to be adjacent to a residential future land use classification or to a property with Pine Island Road future land use classification not zoned village or corridor, only when all or part of a property line of the property abuts a residential future land use classification or abuts a property with Pine Island Road future land use classification not zoned village or corridor or when the property is separated from a residential future land use classification or from a property with Pine Island Road future land use classification not zoned village or corridor only by an alley, canal, basin, lake, or other waterway.

Non-residential properties that are entirely separated from a residential future land use classification or to a property with Pine Island Road future land use classification not zoned village or corridor, by any public right-of-way (excluding alleys and canals, basins, lakes or any other waterway) shall not be deemed adjacent to such residential future land use classification or to a property with Pine Island Road future land use classification not zoned village or corridor.

As an alternative to the PDP required by this subsection, a non-residential use may be established, constructed, enlarged, or expanded within the Village district adjacent to a residential future land use classification or adjacent to a property with Pine Island Road future land use classification not zoned village or corridor provided that the city approves a site plan for such development, including the separation from any residential future land use classification or property with Pine Island Road future land use classification not zoned village or corridor with Buffer E as provided in § 5.2.11.F. which is not interrupted for any driveway or other vehicular ingress/egress.

(Ord. 107-07, 9-21-2009)

4. Communication [wireless] towers:

a. *Definitions.*

ANTENNA. A transmitting or receiving device used for services that radiates or captures electromagnetic radio frequencies for the communication of voice, video or data.

ANTENNA SUPPORT STRUCTURE. Any building or other structure, other than a tower, which can be used for location of wireless telecommunications facilities (WTCF).

CO-LOCATION. Erecting antenna(s) of a wireless service provider on a tower or an existing antenna support structure already supporting an antenna.

DESIGNED SERVICE STUDY. A study of the configuration and manner of deployment of wireless services the wireless provider has designed for an area as part of its network that demonstrates whether or not existing towers or tall structures in the search can be utilized for co-location.

MONOPOLE. A style of free-standing tower that is composed of a single shaft, usually composed of two or more hollow sections that are in turn attached to a foundation, with external antennas. This type of tower is designed to support itself without use of guy wires or other stabilization devices.

POLE-MOUNTED. An antenna attached to or upon an electric transmission or distribution pole, a streetlight, a traffic signal or similar facility located within the public right-of-way or a utility easement. A utility pole-mounted facility shall not be considered a tower.

STEALTH OR CAMOUFLAGED FACILITY. Any antenna, tower or wireless telecommunications facility which is designed to blend into the surrounding environment or that camouflages or conceals the presence of the tower or wireless telecommunication facility to the extent that the average person would be unaware of its nature as a tower, antenna, or wireless telecommunications facility. Examples of stealth or camouflaged facilities include, but not limited to, man-made trees, clock towers, bell steeples, flag poles, light poles, and similar alternative-design mounting structures. Examples of stealth or camouflaged antennas include, but are not limited to, architecturally screened roof-mounted antennas,

The pedestrian plaza or courtyard shall be open to the general public at least during the normal business hours of the uses in the development.

7. All trash collection/recycling receptacle(s) shall comply with the requirements of § 3.3.3C., except that the opaque visual barrier screening three sides of the area occupied by the collection/recycling receptacle(s) shall not be chain link, chain link with slats, plastic, vinyl, wood or bare concrete block, even if painted.

8. With the exception of driveway entrances, all loading docks and building service areas shall be screened from pedestrian view from any sidewalk or public street, excluding alleys, by a masonry wall or evergreen landscaping or a combination of the two.

9. All electrical and telecommunication utilities shall be located underground.

10. Parking areas shall not be located less than 25 feet from the front property line.

11. Structures located on different parcels within the same development that are adjacent to each other must provide for vehicular connection between their respective parking lots, and provide for interconnection of their pedestrian circulation system.

H. *Architectural requirements.*

1. No more than 30% of the front surface of any exterior wall facing any public right-of-way except alleys, shall be metal.

2. When outparcels are improved after the main development has been already constructed or approved, the outparcel site must employ landscaping elements that are similar and do not conflict with those used on the main development.

3. Buildings that are part of the same development, including buildings located on outparcels, must employ consistency within their architectural design. In order to comply with this requirement, at least two of the following design elements shall be similar among the buildings that are part of one development.

a. Color scheme;
b. Exterior materials on walls;
c. Exterior roof finishing; and
d. Roof line.

4. New buildings that are part of the same development on which improvement(s) were made or approved before the adoption of this ordinance are not obligated to follow the architectural and landscaping design of the structure(s) built or approved before the adoption of this ordinance.

5. Exterior facades of non-residential buildings facing Pine Island Road, Burnt Store Road, Chiquita Boulevard, Santa Barbara Boulevard, Nicholas Parkway, Cultural Park Boulevard, and Del Prado Boulevard, shall provide a minimum of five of the following building design treatments integrated with the massing and style of the buildings.

a. Overhangs, awnings or attached canopies which conform to a unified plan of compatible colors, shapes and materials;

b. Varying rooflines, pitches and shapes;

c. Arcades, minimum of eight feet clear in width;

d. Recessed or clearly defined entryways;

e. Transparent window or door areas or display windows along a minimum of 50% of front walls or any other wall alongside a pedestrian walkway;

f. Architectural features such as articulated roof parapets, attached or detached porticos, clock tower or other detail that alter the building height; or

g. Building ornamentation and varying building materials and/or colors that provides relief of otherwise blank walls.

6. All buildings shall have either a sloped roof, a full mansard roof, or a flat roof with a parapet wall which extends at least two feet above the highest level of the roof and which screens any roof top equipment from view from public rights-of-way.

7. Except when in conflict with Building and Fire Code, all buildings shall screen

from any public right-of-way, except alleys, utility connections and meter locations with the same material as the building exterior wall or with evergreen landscaping.

l. *Signs.*

1. *Non-residential (including the non-residential portion of multi-use development).* Unless specifically provided in this section, or in § 7.13, Miscellaneous Signs, subsection .7, Flagpoles and Standards, all provisions of Article VII that apply to signs on properties located in the C-1 district, shall apply in the same manner to sites located in the Village district. In addition, properties located within the Village district shall conform to the following:
(Ord. 135-05, 10-1-2005)

a. *Unified sign plan.* Where multiple signs are proposed for a single site or development, or in the case of a shopping center or other multiple-occupancy complex including outparcels under unified control with the main development, a unified sign plan must be employed. An application for a development order (or a building permit if a development order is not required) must be accompanied by a graphic and narrative representation of the unified sign plan to be utilized on the site. The unified sign plan may be amended and resubmitted for approval to reflect style changes or changing tenant needs. Design elements which must be addressed (in both graphic and narrative form) include:

(1) Colors;

(2) Construction materials and method;

(3) Architectural design;

(4) Illumination method;

(5) Copy style; and

(6) Sign type(s) and location(s).

(7) In the case of a shopping center or multiple occupancy complex and developments with multiple structures on-site, including outparcels, the unified sign plan must indicate conformance with the following:

(a) All wall signs for multi-use buildings must be located at a consistent location on the building facade, except that tenants with bigger street frontage may vary from this requirement in scale with the larger primary facade dimensions. All signs must adhere to the dimensions provided for in the unified signage plan; and

Free standing signs must include colors and/or materials common to those used in the design of the building to which the sign is accessory. A minimum 100 square foot planting area must be provided around the base of any free standing sign. These landscape areas must include shrubs and ground cover plants with a minimum of 50% coverage of the landscape area at the time of planting. Turfgrass is discouraged and is limited to 10% of the landscape area.

b. *Sign permit requests.* Requests for sign permits for permanent signs must adhere to the unified signage plan, which will be kept on file in the Department of Community Development. Requests to permit a new sign, or to relocate, replace or structurally alter an existing sign must be accompanied by a unified sign plan for the building or project the sign is accessory to. Existing permitted signs may remain in place; however, all future requests for permits, whether for a new sign, or relocation, alteration, or replacement of an existing sign, must adhere to the unified sign plan for the property.

2. *Residential.* All provisions of Article VII that apply to signs on residential properties located in the R-3 district, shall apply in the same manner to residential properties located in the Village district.
(Ord. 101-03, 10-20-2003; Ord. 24-16, 6-6-2016)

.13 *Corridor District (Corr).*

A. *Purpose and intent.*

This district is established to:

1. Implement the recommendations of the Pine Island Road Master Plan;

2. To promote such uses as retail, office, office/warehouse, light manufacturing, institutional (schools, colleges), residential, golf courses, larger scale commercial retail (big box stores over 50,000 square-feet) and government uses such as parks and public facilities;

98. Warehouse, public (45,000 square feet minimum lot area); and

99. Wholesale establishment - Group III (45,000 square feet minimum lot area).
(Ord. 6-10, 5-24-2010)

C. *Special exception uses.*

1. Agricultural and farm equipment supply (45,000 square feet minimum lot area);

2. Amusement park (45,000 square feet minimum lot area);

3. Animal and reptile exhibit;

4. Artisan brewery (see table within § 2.7.13.D.6);
(Ord. 31-14, § 4, 10-20-2014)

5. Artisan distillery (see table within § 2.7.13.D.6);
(Ord. 31-14, § 4, 10-20-2014)

6. Artisan winery (see table within § 2.7.13.D.6);
(Ord. 31-14, § 4, 10-20-2014)

7. Automotive and equipment dealers - Groups IV and V (45,000 square feet minimum lot area);

8. Automotive repair and service - Group I;
(Ord. 3-06, 3-13-2006)

9. Automotive service station limited w/convenience store (45,000 square feet minimum lot area);

10. Automotive service station full with repair service (45,000 square feet minimum lot area);

11. Boat repair and service (45,000 square feet minimum lot area);

12. Building materials sales - Group III (45,000 square feet minimum lot area);

13. Business offices - Group III (45,000 square feet minimum lot area);

14. Cemetery (45,000 square feet minimum lot area);

15. Cleaning and maintenance services;

16. Contractors and builders - Group III (45,000 square feet minimum lot area);

17. Essential service facilities - Group I (see special regulations for communication [wireless] towers);
(Ord. 69-10, 10-18-2010)

18. Heliport;

19. Helistop;

20. Manufacturing (45,000 square feet minimum lot area):

a. Chemical and allied product manufacturing - Group I;

b. Printing plant; and

c. Transportation equipment manufacturing - Groups I, II and III;

21. Model home (see special regulations D.1.);

22. Motor freight terminals (45,000 square feet minimum lot area);

23. Neighborhood storage facility (see special regulations D.3.);

24. Race track - Groups I and II (45,000 square feet minimum lot area);

25. Self service fuel pumps (45,000 square feet minimum lot area);

26. Self service fuel pump station (45,000 square feet minimum lot area);

27. Storage, enclosed (45,000 square feet minimum lot area);

28. Swimming pool supply store (with liquid chemical tanks);and

29. Wholesale establishment - Group IV (45,000 square feet minimum lot area).
(Ord. 81-04, 8-2-2004; Ord. 6-10, 5-24-2010; Ord. 69-10, 10-18-2010)
(Ord. 03-06, 3-13-2006; Ord. 102-07, 9-10-2007)

D. *Special regulations.*

1. Model home site(s) may be permitted as a special exception subject to the following requirements:

a. Must be a dwelling unit that is part of an approved residential development. Stand alone model home sites are not permitted. In addition, model home site(s) shall be allowed as a special exception use for a period not to exceed the period when units within a residential or mixed-use development are actually under construction, or offered for sale or lease. The special exception for the model home site(s) use shall terminate and any model home site(s) use shall be converted to another lawful use not later than the date that the construction of all of the units within a residential or mixed-use development has been completed and all of the units have been either sold or

rented. Although the Hearing Examiner may approve a termination date for a special exception to operate a model home site that is earlier than that otherwise required by this section, the termination date for such a special exception shall, in no event, be later than that otherwise provided in this section.

b. Model units and sales offices may be open for business between 9:00 a.m. and 9:00 p.m. daily.

c. Parking: five spaces on-site for the first model unit, three additional paved spaces on-site for each additional model unit.

d. Access to the parking area that serves the model unit(s) shall be through an approved access point that serves the residential development.

e. Outside lighting is permitted, except from 10:00 p.m. to 7:00 a.m.

f. Security lighting: two security lights permitted, one at front and one at the rear of the building.

g. Model home site(s) must be used exclusively for the display and sale of model units. No construction office or other real estate uses shall be permitted.

h. Deposit required: A deposit of funds or other financial instruments payable to the City of Cape Coral is required as a construction conversion deposit to convert the property back to a residential or other permitted use when the structure is converted or sold. The amount of the deposit to be set forth as follows: $5,000 for conversion of the parking lot; and, $1,500 per model home site if driveway is not installed. The deposit shall be used by the city to remove any parking area not allowed in a residential zone or to convert the property to a residential or other permitted use. Such deposit shall be used when the model home site is abandoned as a model home, or at the expiration of the model home time limit, or if the model home site is sold as a residence or other permitted use and not converted to a residence or other permitted use, or if the structure is abandoned as a model home for 30 consecutive days. Conversion of the model home site must be completed within 60 days of the expiration of the time limit for the model home, or within 60 days of the structure being abandoned as a model home site, or prior to sale of the model home site for a residential or other permitted use. Any funds and interest resulting from these funds shall be returned to the party who made the deposit upon conversion of the model home site to a residential or other permitted use if such conversion is done by parties other than the city. Should the city be required to perform the conversion, all unused monies, including interest accrued, shall be refunded to the party making the deposit.

2. Except for enclosed storage, any storage of materials or merchandise outside of the building is prohibited.

3. If a neighborhood storage facility is approved by the Hearing Examiner as a special exception use, such neighborhood storage facility shall comply not only with the conditions, if any, imposed by the Hearing Examiner, but also shall comply with the following special regulations.

a. No activity other than loading, unloading, and storage of goods is allowed from any storage unit. Furthermore, no business may be operated from any storage unit.

b. No loading or unloading activity to individual storage units shall be performed so as to be visible from the front of the building or the front right-of-way.

c. No hazardous materials shall be stored in a neighborhood storage facility.

d. A neighborhood storage facility shall be located on a site that is not less than one acre in size.

e. No outdoor storage of any kind shall occur or be allowed on a premise containing a neighborhood storage facility. All storage associated with a neighborhood storage facility shall be entirely confined within one or more enclosed buildings.

f. A neighborhood storage facility shall comply with the architectural requirements as well as the requirements for large retain projects, when applicable, of this section.

g. All heating, air conditioning, or other mechanical equipment located on the premises of a neighborhood storage facility shall be shielded or screened from a public right-of-way so as to minimize the effects of such equipment on surrounding properties.

b. Any artisan brewery, artisan distillery, or artisan winery 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 located 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. Chain link, with or without slats, shall be prohibited as a wall or fence material.

(3) Loading and unloading areas shall be restricted to the side or rear of the building. Loading and unloading areas shall not be located 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;

(c) Prohibited within any yard abutting a residential use or residential zoning district;

(d) Fully enclosed in containers that are located behind an opaque wall or fence. The wall or fence shall have a minimum height of six feet. Chain link, with or without slats, shall be prohibited as a wall or fence material.

(5) To encourage the repurposing of existing buildings within the Corridor District for the purpose of spurring economic development, for any artisan brewery, distillery, or winery that is approved as a permitted use, provisions (2), (3), and (4) within this subsection may be waived in part or in their entirety by the City Manager or the City Manager's designee. Business owners that plan to construct a new building for supporting an artisan brewery, distillery, or winery shall not be eligible for a waiver from these same requirements. For any artisan brewery, distillery, or winery that is approved as a special exception use, provisions (2), (3), and (4) within this subsection may be waived in part or in their entirety by the Hearing Examiner. In determining whether to waive one or more of these standards the City Manager or the City Manager's designee, or the Hearing Examiner shall utilize the following criteria:

(a) The visibility of the mechanical equipment and loading areas from a 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.

(g) The total square footage of the loading and unloading areas.
(Ord. 31-14, § 4, 10-20-2014; Ord. 36-15, 8-31-2015)

7. *Brewpub.* Brewpubs are subject to the following requirements.

a. The area used for brewing, bottling, and kegging of all beverages produced by the establishment shall not exceed 40% 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. A building plan shall be submitted to the City that clearly shows the area of the building that will be devoted to the brewing, bottling, and kegging component of the establishment.

c. No enclosed 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;

(2) Placed only along the side or rear of the building;

(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. Chain link, with or without slats, shall be prohibited as a wall or fence material.
(Ord. 31-14, § 4, 10-20-2014)

E. *Dimensional regulations.*

All development within the Corridor District shall be limited to the following:

Tract Size	
Less than 45,000	Non-residential uses only
45,000 s.f. and greater	Non-residential
	Residential: (minimum 20 acres)
	Single family
	Duplex multi-family
	Conjoined residential structure
	Multi-use (minimum 30 acres)

(9) Measuring, analyzing, and controlling instruments manufacturing;

(10) Novelties, jewelry, toys, signs manufacturing - Groups I, II and III;

(11) Printing plant;

(12) Rubber and plastic products - Group II;

(13) Stone, clay, glass and concrete products manufacturing - Groups I, II, III, IV;

(14) Transportation equipment Group I, II, III, and IV.

ee. Mini-warehouse;

ff. Motor freight terminals;

gg. Neighborhood storage facility;

hh. Non-store retailers - Groups I, II, III, and IV;

ii. Parks - Groups I, II and VI;

jj. Personal service - Group III;

kk. Pet services;

ll. Printing services establishment;

mm. Private park;

nn. Radio and television stations;

oo. Recreation, commercial - Groups II and III;

pp. Rental establishment - Groups I, II, III;

qq. Repair shops - Groups I, II, III, IV;

rr. Research, development and testing laboratories - Groups I, II, III, IV, and V;

ss. Restaurant - Groups I, II;

tt. Storage, open;

uu. Storage, enclosed;

vv. Studio;

ww. Transportation services - Groups I, II, III, and IV;

xx. Used merchandise stores - Groups I, II, III, and IV;

yy. Veterinary and animal clinics;

zz. Warehouse, private;

aaa. Warehouse, public;

bbb. Wholesale establishments - Groups I and III.

4. *Special exception uses.*

a. Essential service facility - Group II (other than distribution electric substations);

b. Laundry and dry cleaning plant;

c. Manufacturing:

(1) Chemical and allied products - Groups I and II;

(2) Food and kindred products - Group II;

d. Paper and allied products - Groups II, and III;

e. Rubber and plastic products - Group I;

f. Rental establishment - Group IV;

g. Repair shops - Group V. (Ord. 69-10, 10-18-2010)

5. *Special regulations.*

a. No existing or proposed Commerce Park Overlay use shall be established, constructed, enlarged, or expanded on properties located adjacent to a residential future land use classification or to a property with Pine Island Road future land use classification not zoned Village or Corridor, except by means of either the Planned Development Project (PDP) process described in § 4.2.

For purposes of this section, a property shall be deemed to be adjacent to a residential future land use classification or to a property with Pine Island Road future land use classification not zoned Village or Corridor, only when all or part of a property line of the property abuts a residential future land use classification or abuts a property with Pine Island Road future land use classification not zoned Village or Corridor or when the property is separated from a residential future land use classification or from a property with Pine Island Road future land use classification not zoned Village or Corridor only by an alley, canal, basin, lake, or other waterway,

Development within the Commerce Park Overlay that is entirely separated from a residential future land use

classification or to a property with Pine Island Road future land use classification not zoned Village or Corridor, by any public right-of-way (excluding alleys and canals, basins, lakes or any other waterway) shall not be deemed adjacent to such residential future land use classification or to a property with Pine Island Road future land use classification not zoned Village or Corridor.

b. If a special exception for a communications tower is approved by the Hearing Examiner as a special exception use, such use shall comply not only with the conditions, if any, imposed by the Hearing Examiner, but also shall maintain a setback equal to the height of the tower from any public street and/or any adjacent residential future land use classification or to a property with Pine Island Road future land use classification not zoned Village or Corridor.

c. Exemption from site plan requirements of the Corridor Zoning District. Commerce Park Overlay development shall be exempt from site plan requirements of the Corridor District (§ 2.7.13.F.) except §§ 2.7.13.F.2 and 2.7.13.F.3.

d. Exemption from architectural requirements of the Corridor Zoning District. Structures within the Commerce Park Overlay that are 35 feet in height or less are exempt from the architectural requirements specified in § 2.7.13.G. except the requirement that no more than 30% of the front surface of any exterior wall facing any public right-of-way except alleys shall be metal. Structures within the Commerce Park Overlay that are more than 35 feet in height are exempt from the regulations in § 2.7.13, but shall comply with the following:

(1) All exterior walls shall include a repeating or varying pattern and shall include no fewer than three of the design elements listed below. At least one of the three design elements shall repeat horizontally at intervals of no more than 50 feet, either horizontally or vertically.

(a) Building materials that create visual interest by their texture or pattern.

(b) Building materials that create visual interest through the use of colors or color contrasts.

(c) Architectural features that project such as columns, cornices, pilasters, window awnings.

(d) Architectural features that include but are not limited to building reveals that are a minimum of one inch in depth, recesses or building indentations, building recesses related to entryways.

(e) Upper level building setbacks, offsets, or projections that are a minimum of three feet in width.

(2) Buildings shall have either a sloped roof, a full mansard roof, or a flat roof with a parapet wall which extends at least two feet above the highest level of the roof and which screens any rooftop equipment from view from public rights-of-way. Exterior walls of buildings facing Pine Island Road or Pondella Road shall provide varying rooflines for sloped roofs or architectural features such as articulated roof parapets, attached or detached porticos or other detail that create variation in the building height. As used herein, an exterior wall shall be considered to face Pine Island Road or Pondella Road if the wall is parallel to or is at an angle of less than 90 degrees to a right-of-way regardless of whether it immediately abuts or is separated from such right-of-way features such as parking lots or landscaped areas.

(3) For buildings with an area of greater than 50,000 square feet, any exterior wall with a length exceeding 100 linear feet in a horizontal direction shall incorporate wall plane projections or recesses having a depth of at least 12 inches, with a single wall plane limited to no more than 60% of the total length of any such wall.

e. Exemption from sign requirements of Corridor Zoning District. Commerce Park Overlay development shall be exempt from the unified sign plan requirements of §§ 2.7.13.I.1.a. and 2.7.13.I.1.b.

f. Relief from landscape requirements. Properties buffered by a Commerce Park Buffer, are exempt from requirements specified in §§ 5.2.9.B.1., 5.2.9.C.1., 5.2.9.C.2., and 5.2.9.D. of the Land Use and Development Regulations.

trees shall be replaced with similar species equaling the diameter of the damaged trees.

7. Buffer yard exemptions.

a. Even if otherwise required by this section, no fence, hedge, or other growth shall be erected or planted that would obstruct the view of either a pedestrian or driver of a moving vehicle so as to create a hazard to the health and welfare of its citizens. Further, no buffer yard improvements are permitted in required sight triangles as described in Article III, § 3.7, Visibility Triangles, of the Land Use and Development Regulations.

b. No buffer yard improvements are required that would conflict with § 3.9 of the Land Use and Development Regulations.

8. CPO Dimensional regulations.

Minimum lot area	None
Floor area ratio	1.0
Maximum height	45 feet (b)
Minimum lot width (at building line)	None
Minimum yards Front Side Rear	 25 feet 0 ft or 10 ft.(a) 10 ft.
(a) See Article III, §§ 3.7 and 3.8 of the Land Use and Development Regulations for corner lot setbacks. (b) The maximum height of a communication tower shall be 140 feet as stated hereinabove.	

(Ord. 133-08, 1-26-2009; Ord. 69-10, 10-18-2010; Ord. 24-16, 6-6-2016)

.14 *Institutional District (INST).*

A. *Purpose and intent.* The purpose and intent of the Institutional District is to provide areas for the unified and orderly development of cultural, educational, governmental, medical and recreational uses and selected supporting activities that benefit the city while protecting adjacent residential uses. Emphasis is on protecting existing and future public and private investments, as well as ensuring that such activities are managed in accordance with the City of Cape Coral Comprehensive Plan and any regulations or ordinances relating to such activity.

B. *Permitted uses.*

1. Assisted living facilities;
2. Business offices - Group I;
3. Cemeteries;
4. Child care facilities;
5. Clubs, fraternal;
6. Clubs, membership organization;
7. Cultural facilities, except zoos;
8. Essential services;
9. Essential service facilities - Group I (see special regulations for communication [wireless] towers);

(Ord. 69-10, 10-18-2010)

10. Essential service facilities - Group II - distribution electric substation only (see § 3.27);
11. Government uses - Groups I and II;
12. Health care facilities - Groups I, II and III;
13. Hospices;
14. Nature and wildlife preserves;
15. Parks - Groups I, II and III;
16. Private park;
17. Research, development and testing laboratories - Groups II, III and V;
18. Schools, commercial;
19. Schools, nonprofit, private, public or parochial; and
20. Studios.

(Ord. 10-15, 4-7-2015)

C. *Special exception uses.*

1. Animal kennel;
2. Animal shelter;
3. Essential service facilities - Groups II and III (except distribution electric substation);
4. Group quarters (only in association with a permitted use);
5. Restaurants - Group II; and
6. Social services - Groups I and II.

(Ord. 66-08, 8-11-2008; Ord. 69-10, 10-18-2010; Ord. 10-15, 4-7-2015)

D. *Special regulations.*

1. If the primary use requires outdoor storage, then the storage area shall follow the requirements of the enclosed storage definition (Article XI).

2. No existing or proposed Institutional use shall be established, constructed, enlarged, or expanded when adjacent to a residential future land use classification except by means of the Planned Development Project (PDP) process as outlined in Article IV, Land Development Regulations, § 4.2, Planned Development Project Procedure, or the alternative procedure described below.

3. For purposes of this ordinance, an Institutional zoned property shall be deemed to be adjacent to a residential future land use classification only when all or part of a property line of the Institutional zoned property abuts a residential future land use classification or when the property is separated from the residential future land use classification only by an alley, two-laned street, canal, basin, lake, or other waterway.

4. Institutionally-zoned properties that are entirely separated from a residential future land use classification by any public right-of-way (excluding alleys, two-laned streets, and canals, basins, lakes, or any other waterway) shall not be deemed adjacent to such residential future land use classification.

5. As an alternative to the PDP required by this subsection, an Institutional use may be established, constructed, enlarged, or expanded on Institutionally-zoned properties located adjacent to a residential future land use classification provided that the city approves a site plan for such development, including enhanced buffering as required herein. For purposes of this subsection, such enhanced buffering shall mean providing buffering in accordance with either any two of a., b., or c. below or providing buffering in accordance with d. below:

a. A solid vegetative hedge not less than eight feet in height at maturity (to be placed on the residential side of the solid finished masonry wall, if such wall is installed under paragraph c. below). Such hedge must be maintained at a height not less than eight feet and shall also include shade trees with a minimum mature growing height of 20 feet spaced every 25 feet on center within the entire length of the hedgerow.. The hedges must be planted in double staggered rows with plants a minimum of three and one-half feet high at planting, spaced two and one-half feet apart, and be maintained so as to form a 100% opaque screen between the residential and commercial or industrial land use within one year of such planting. The hedge and trees required as part of this enhanced buffering area shall be properly maintained at all times, and shall conform to all other applicable provisions found in § 5.2; or
(Ord. 47-00, § 1, 8-14-2000)

b. A 50% increase in the width of the landscaped buffer yard otherwise required by § 5.2 of the Land Use and Development Regulations; or
(Ord. 47-00, § 1, 8-14-2000)

c. Installation in the buffer area required by § 5.2 of the Land Use and Development Regulations of a finished solid masonry wall that is either eight feet high or that is located on a landscaped berm so that the top of such wall would be eight feet high. The aforesaid wall must, however, comply with all requirements of § 3.9 of the Land Use and Development Regulations unless a variance for such wall is obtained from the city.
(Ord. 47-00, § 1, 8-14-2000)

d. Alternative buffering that is both approved by and found by the Hearing Examiner to be equivalent to providing any two of the foregoing enhanced buffering options described in § 2.7.14.D.5. in terms of mitigating the anticipated negative impact(s) of the Institutional use on the adjacent residential land use classification with respect to sound, lighting, traffic, parking, drainage, aesthetic, safety, or waste disposal issues.

6. All outdoor lighting shall be arranged to direct the light away from an adjacent residential property: Lighting trespass and glare shall be limited to a reasonable level through the use of shielding and directional lighting methods, including, but not limited to, fixture location and height. The lighting shall be so designed that light measured along any residential property line shall not exceed one footcandle.

Center, Mixed-Use, Mixed-Use Preserve, Parks and Recreation, or Preservation on the future land use map.

(4) *Priority 4.* If a proposed WTCF cannot comply with Priorities 1, 2, and 3, the applicant may propose a new WTCF or new tower on property designated Downtown Mixed or Residential on the future land use map.

e. *Tower design standards.* In addition to any other applicable requirements provided elsewhere in the Land Use and Development Regulations, an application for a communication tower shall include the following:

(1) *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.

(2) *Tower design for co-location.* A proposed tower shall be designed, when applicable, to allow for future rearrangement of antennas, to provide space for antennas to be mounted at varying elevations, and to accommodate co-location.

(3) *Monopoles or stealth.* All towers shall be monopoles or stealth design.

(4) *Illumination.* A tower shall not be artificially lighted except as may be required by federal or state regulations.

(5) *Surface or finish color.* Regardless of whether designed as a stealth facility, towers shall be painted or have a noncontrasting 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.

(6) *Signage.* 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 and/or permittee's name and an emergency telephone number.

(7) *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.

(Ord. 69-10, 10-18-2010)

TABLE INST. *DIMENSIONAL REGULATIONS*	
Minimum lot size	To meet minimum standards herein
Minimum lot width (at building line)	200 ft. (a)
Maximum structure coverage	40% of lot size (a)
Minimum lot frontage	200 ft. (a)
Minimum yards	
Front	25 ft. (a)
Side	15 ft. (a)
Rear	25 ft. (a)
Maximum height (excepting communication towers)	60 ft. (a)(b)(c)
(a) Essential Service Facilities - Group I shall be permitted on all lots regardless of width and depth. (b) Where additional height is required to satisfy engineering and safety criteria, additional height may be added providing that an additional two feet of setback in all yards is added for each additional foot of height. (c) The maximum height of a communication tower shall be 140 feet as stated hereinabove.	

(Ord. 81-04, 8-2-2004; Ord. 69-10, 10-18-2010; Ord. 24-16, 6-6-2016)

.15 *South Cape Downtown District (SC).*

A. *Purpose and intent.* The purpose and intent of the South Cape Downtown District is to promote and enhance the traditional commercial center of Cape Coral, otherwise known as South Cape, as a viable location for development, redevelopment and economic growth and to create a destination for both residents and visitors with daytime and nighttime activities that will serve the entire city and region. The provisions contained herein provide for the development of a wide range of uses in a compact and walkable form and encourage compound and mixed-use development. It is intended that these 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, street designation, or a combination thereof. It is further intended that these provisions incentivize compound use developments of significant size and character to serve as catalyzing forces to economic development through the South Cape Redevelopment Incentive Program (SCRIP), which provides for greater floor area ratio, residential density, and building height than that permitted by right.

For the purposes of this district, when the term ***LOT***, or phrases including the term ***LOT*** are used, such terms or phrases shall mean and include, but not be limited to, single lots, sites or parcels, as well as adjoining, combined, or amalgamated lots, sites or parcels that are being developed simultaneously.

B. *Street designation and rights-of-way.* Street designation and vacation of public rights-of-way shall be in accordance with the following standards:

1. *Street designation established.* The City Council hereby establishes street designations within the South Cape Downtown District which shall govern special regulations related to permitted and special exception uses; maximum building setbacks; minimum building frontages; and off-street parking area location. Street designations shall be classified from

development shall be identified on all building plans submitted to the city and described in the application for affordable housing development incentive;

(ll) 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;

(mm) The square footage, construction and design of the affordable housing units shall be the same as market rate dwelling units in the development;

(nn) 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;

(oo) 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.

(pp) 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

(qq) 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.

(iii) 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.

c. *Applications for development incentives.* To apply for an increase in floor area ratio, residential density, building height, or any combination thereof, through the SCRIP, a property owner shall submit an application to the City's Department of Community Development. The application shall be accompanied by a fee that will be set by the City Council and that shall be an amount that is adequate and reasonable for the administrative expenses incurred by the city in the review of the application. The application shall contain the following information:

(1) The application shall be on a form supplied by the Department of Community Development and shall be accompanied by all applicable supporting information and attachments including, but not limited to, all applicable site plan, planned development project documents, schematic architectural drawings, floor plans, elevations and perspectives, public benefits assessment(s), or any combination thereof, related to the proposed development.

(2) The documentation must clearly indicate baseline floor area ratios, residential density, building height, and the proposed increase of those items.

(3) Proof of ownership of the land for the development together with proof of ownership or other control of any property for which off-site improvements within the Cape Coral Community Redevelopment Area are sought for consideration under the SCRIP.

d. Requests for increased floor area ratio, residential density, building height, or any combination thereof, shall only be considered with respect to a specific proposed development. If granted by the city, an increase in floor area ratio, residential density, building height, or any combination thereof, shall be applied only to the development with respect to which such increase(s) were sought. Excess floor area ratio, residential density, height, or any combination thereof, awarded under the SCRIP are not transferable.

e. Except as otherwise provided herein, all improvements and amenities used as the basis of approval for increased floor area ratio, residential density, building height, or any combination thereof, shall remain in place throughout the life of the development, unless such basis of approval is rescinded or amended by the city or the city determines that good cause has been shown by the applicant. Except as otherwise provided herein, the owner of the property which has benefitted from the SCRIP shall be responsible for maintaining any such improvements or amenities in good condition and in accordance with any conditions of approval throughout the life of the development. Such maintenance responsibility of said owner shall not apply for improvements or amenities which are donated or dedicated to the city or for which the city has approved alternative responsibility provisions. Failure to comply with this requirement shall constitute a violation of the City of Cape Coral's Code of Ordinances, and would subject the aforementioned party to any penalty imposed by law.

f. Standards for approval of an increase in floor area ratio, residential density, building height, or any combination thereof pursuant to the SCRIP. For any development project applying for an increase in floor area ratio, residential density, building height, or any combination thereof, the development incentive proposals and the issuance of any increased floor area ratio, residential density, building height, or any combination thereof, shall be determined by the City Manager, or the City Manager's designee. A request pursuant to the SCRIP shall be submitted to the Department of Community Development, reviewed by all applicable department(s), and the Community Redevelopment Agency. In the event the City Manager, or the City Manager's designee approves the request pursuant to the SCRIP for a project that is proposed to be a planned development project (PDP), such approval shall be made prior to consideration of the PDP, and shall be contingent on the approval of a PDP for the subject development by either the City Council or the Hearing Examiner.

g. The City Manager or the City Manager's designee shall prepare and submit to the City Council an annual report identifying and describing all projects and public benefits achieved through the SCRIP.

13. *Supplemental parking requirements.*

a. *Parking area sites.* Sites located, as of December 1, 2005, within 25 feet, excluding alleys and walkways, of any of those dedicated city parking areas identified in § 2.7.15.D.13.a.(1) below shall be considered "parking area sites". For parking area sites, the following parking and PILOP regulations shall apply:

(1) Each of the following dedicated city parking areas in the Cape Coral CRA is hereby assigned a parking allocation factor as provided in Table SC-8:

b. Any artisan brewery, artisan distillery, or artisan winery 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 located behind a fence or wall 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 fence or wall shall be opaque and have a minimum height of six feet.

(3) Loading and unloading areas shall be restricted to the side or rear of the building. Loading and unloading areas shall not be located 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;

(c) Fully enclosed in containers that are located behind an opaque wall or fence. The fence or wall 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 located behind an opaque wall or fence.

(5) To encourage the repurposing of existing buildings within the SC District for the purpose of spurring economic development, for any artisan brewery, distillery, or winery that is approved as a permitted use, provisions (2), (3), and (4) within this subsection may be waived in part or in their entirety by the City Manager or the City Manager's designee. Business owners that propose to construct a new building for supporting an artisan brewery, distillery, or winery shall not be eligible for a waiver from these same requirements. For any artisan brewery, distillery, or winery that is approved as a special exception use, provisions (2), (3), and (4) within this subsection may be waived in part or in their entirety by the Hearing Examiner. In determining whether to waive one or more of these standards the City Manager or the City Manager's designee, or the Hearing Examiner shall utilize the following criteria:

(a) The visibility of the mechanical equipment and loading areas from a 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 total square footage of the loading and unloading areas.

(Ord. 30-14, § 1, 10-20-2014; Ord. 36-15, 8-31-2015)

18. *Brewpub.* Brewpubs are subject to the following requirements.

a. The area used for brewing, bottling, and kegging of all beverages produced by the establishment shall not exceed 40% 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. A building plan shall be submitted to the City that clearly shows the area of the building that will be devoted to the brewing, bottling, and kegging component of the establishment.

c. No enclosed 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 the property lines of the building containing the brewpub;

(2) Located only along the side or rear of the building;

(3) Fully enclosed in containers that are located behind an opaque wall or fence. The fence or wall shall have a minimum height of six feet.

(Ord. 30-14, § 1, 10-20-2014; Ord. 24-16, 6-6-2016)

.16 *Reserved.*

.17 *Reserved.*

.18 *Marketplace-Residential (MR).*

A. *Purpose and intent.* The purpose of this zoning district is to provide a variety of pedestrian-oriented neighborhood retail, specialty retail, office, services, and residential uses within the Commercial Activity Center future land use classification. The intent of the district is to encourage multi-use development at key locations, within close proximity to major corridors throughout the City of Cape Coral. Additionally, the intent is to encourage land assembly, provide a range of uses compatible with surrounding development, and to serve as a receiving zone for transfers of development rights (TDRs).

(Ord. 90-10, 3-14-2011)

B. *Permitted uses.* (See § 2.7.18D.1., special regulations.)

1. Administrative offices;
2. Assisted living facility;
3. Automatic teller machine ATM;
4. Automotive parking establishment;
5. Banks and financial establishments - Groups I and II (see § 2.7.18D.4., special regulations for drive-thru facilities);
6. Bed and breakfast establishment;
7. Business office - Group I;
8. Brewpub;

(Ord. 31-14, § 5, 10-20-2014)

9. Child care facility/preschool/ kindergarten;
10. Clothing store general;
11. Clubs: commercial, country, fraternal, and membership organization;
12. Conjoined residential structures (see § 2.7.18D.3., special regulations);
13. Contractors and builders - Group I;
14. Cultural facilities;
15. Department stores (no greater than 50,000 square feet);
16. Duplex dwellings (see § 2.7.18D.3., special regulations);
17. Drugstore (see special regulations § 2.7.18D.4. for drive-thru facilities);
18. Entrance gates;
19. Essential service facilities - Group II - distribution electric substation only (see § 3.27);
20. Essential services;
21. Family day care home;
22. Florist shop;
23. Food stores - Group I;
24. Government uses - Group I;
25. Hardware store (no greater than 50,000 square feet);
26. Health care facilities - Groups I, II, and III;
27. Hobby, toy, and game shop;
28. Home occupation;
29. Hotel/motels, convention, efficiency, resort, and transient;
30. Household/office furnishings - Group I and II;
31. Insurance companies;
32. Large family child care home;
33. Medical offices;
34. Mortgage broker;
35. Motion picture theater;

F. *Deviations.*

1. Deviations from the site plan requirements and/or the architectural requirements of this section may be approved by the Hearing Examiner (or the City Council in PDPs that require the approval of the City Council and as further provided herein) 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:

a. 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

b. Literal conformity with the regulations would inhibit innovation or creativity in design.

2. In determining whether a particular deviation request should be approved as the result of unnecessary or undue hardship, factors the Hearing Examiner (or the City Council, when applicable) 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 and loading areas which are otherwise required to be screened along with constraints on alternative location of such equipment or loading areas. Additionally, the Hearing Examiner (or the City Council, when applicable) 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.

3. In determining whether a particular deviation request should be approved because literal conformity with the regulations would inhibit innovation or creativity in design, the Hearing Examiner (or the City Council, when applicable) may 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 Hearing Examiner (or the City Council, when applicable) 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. For purposes of this section, indicia of unique and innovative design may include, but are not limited to, the following:

a. 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;

b. Building forms that evoke exceptional expression through use of angularity, curvature, or other means;

c. Design elements or other forms that achieve dynamic or symmetric aesthetic balance; or

d. Other details that preclude visual monotony and are pleasing in aesthetic character.

4. 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, but not limited to, 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.

5. Subject to these standards and criteria, the Hearing Examiner (or the City Council, when applicable) 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 Hearing Examiner (or the City Council, when applicable) 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.

6. Deviations shall be heard by the Hearing Examiner (or the City Council, when applicable) under the following circumstances:

a. When a planned development project (PDP) Development Order is not required for development, is not in effect and no application for a PDP Development Order is pending with the city for a particular development or property, then the Hearing Examiner shall hear and determine the request for deviation(s).

b. In the event a PDP application is pending with the city, and a request for deviation(s) is submitted that would affect all or any part of the property that would be subject to the PDP Development Order, if it were to be approved, then the request for deviations shall be reviewed and heard by the body that would review and hear the PDP application pursuant to the regulations for PDP approval. In the event a request for deviation(s) is pending with the city, and an application for a PDP Development Order is filed with the city that would affect all or any part of the property for which deviation(s) to the requirements of this section are sought, then the request for deviation(s) shall be heard by the body that would review and hear the PDP pursuant to the regulations for PDP approval. The deviation(s), if approved, may or may not, in the discretion of the body approving them, be included in the PDP Development Order.

c. If all or any part of the property for which a deviation is requested is currently regulated by a PDP, an application may be submitted for a deviation without requiring an amendment to the PDP. If the PDP was adopted by the Planning and Zoning Commission or Hearing Examiner, then the deviation must be reviewed and considered for adoption by the Hearing Examiner. If the PDP was adopted by the City Council, then the deviation must be reviewed for recommendation by the Hearing Examiner, then reviewed and considered for adoption by the City Council.

d. If all or any part of the property for which an application for a PDP Development Order is filed has previously been approved for one or more deviation(s) to the requirements of this section, then the previously approved deviation(s) may be reconsidered by the body considering the PDP Development Order, subject to the conditions identified herein. The deviation(s) may be revoked, amended, or remain unchanged by the body hearing the PDP application provided, however, that a deviation shall not be revoked for any building on the site that has either been completed or so substantially constructed that revocation of the deviation at the time the PDP Development Order is considered would be impracticable and would be unduly burdensome on the property owner. The body hearing the application for the PDP Development Order may amend previously approved conditions and may impose additional conditions of approval in consideration of the deviation(s) previously approved, as a condition of the PDP Development Order or the continuation of any previously approved deviation(s).

7. Appeals by any person aggrieved by a decision concerning a requested deviation are governed by § 8.9 of the Land Use and Development Regulations.

(Ord. 90-10, 3-14-2011; Ord. 24-16, 6-6-2016)

adverse impacts which would otherwise result from such seasonal sale.
(Ord. 44-97, 8-25-1997; Ord. 125-00, 1-16-2001) (Ord. 16-07, 4-23-2007)

§ 3.5 Access required.

Except as otherwise provided herein, no building shall be erected on any building site unless such building site has access on a street or is located on a road shown on an approved and recorded final development plat. Within a planned development project (PDP), one or more buildings may be erected on a building site that has no direct access to a street provided that the City Council (or the Hearing Examiner for PDPs that do not require action by the City Council) finds that such building site has adequate indirect access to a street such as a recorded easement or right-of-way through or over another parcel. For building sites that are not a part of a PDP, one or more buildings may be erected on a building site that has no direct access to a street provided that the Director of the Department of Community Development finds that such building site has adequate indirect access to a street such as a recorded easement or right-of-way through or over another parcel. Furthermore, within a planned development project (PDP) that contains more than one parcel and/or building site, the city, in the PDP development order, may prohibit direct access from a parcel and/or building site to a street when the City Council (or the Hearing Examiner for PDPs that do not require action by the City Council) finds that such prohibition of direct access would promote the public health, safety, and welfare based on factors including, but not limited to, traffic and/or transportation safety and when the parcel and/or building site could be afforded indirect access to a street or other road via another parcel or building site within the PDP.
(Ord. 122-05, 11-21-2005; Ord. 24-16, 6-6-2016)

§ 3.6 Building numbers required.

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.

§ 3.7 Visibility triangles.

The intersection of a public road right-of-way with an alley, driveway, or other public or private road right-of-way presents potential traffic hazards if on-site visual obstructions are present. Therefore, property at these intersections shall maintain a triangular area within which no obstruction, except septic mounds, where required by the Department of Health (DOH) shall be permitted to impede visibility. Development within said triangular areas shall meet the visibility triangle requirements as prescribed by the *City of Cape Coral Engineering Design Standards.*
(Ord. 66-91, 8-26-1991; Ord. 147-05, 11-14-2005; Ord. 25-09, 7-20-2009)

§ 3.8 General regulations for lots and yards.

.1 *Double frontage other than corner lots.* Double frontage other than corner lots shall meet front yard regulations on all adjacent streets.

.2 *Corner lots.* In the downtown 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:

A. 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.

B. The remaining street frontage shall have a setback of no less than ten feet in all zoning districts. Single-family homes in R-1 districts shall also adhere to § 2.7.1, Dimensional Regulations footnote (i). For purposes of this section, this remaining street frontage shall be maintained as a front yard and the regulations for fences, shrubbery and walls of this ordinance shall apply.

C. 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.

D. The front of a single-family residential building may not be offset from the front property line by an angle greater than 45 degrees.

.3 *Prohibitions.*

A. No part of a yard required for any building may be included as fulfilling the yard requirements for an adjacent building.

B. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that lot area, yards, width or other dimension and area regulations of this ordinance are not maintained. This provision shall not apply when a portion of a lot is acquired for public purpose.

(Ord. 66-91, 8-26-1991; Ord. 91-05, 11-14-2005; Ord. 102-08, 10-6-2008; Ord. 15-12, 9-10-2012)

§ 3.9 Fences, shrubbery, walls.

.1 Residential Zoning Districts.

A. A fence shall not be constructed on unimproved property.

B. No fence shall be maintained at a height greater than six feet, and no wall or fence shall be erected or placed within the front setback lines of any residential lot, except as follows:

(Ord. 20-98, 4-6-1998; Ord. 48-98, 8-24-1998; Ord. 80-04, 7-19-2004)

1. A fence in a residential zone 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.

(Ord. 1-97, 2-10-1997; Ord 20-98, 4-6-1998)

2. If a parcel located in a residential zone is used for residential purposes, and abuts a property which is used for commercial or professional purposes, a fence may be maintained at a height up to eight feet along the side(s) of the property which abut(s) the property or properties containing commercial or professional uses. For purposes of this section, a property shall be deemed to abut another property if the two properties are either immediately adjacent to each other or separated only by an alley. Properties which are separated by a street, canal, lake, or other body of water shall not be deemed to be abutting properties.

(Ord. 1-97, 2-10-1997)

3. 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.

4. Fencing for critical public utilities infrastructure, including but not limited to 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, or sharp objects are permitted on thetop of fencing around critical infrastructure sites or equipment, however, the height of the fencing together with any barbed wire, spire tips, or sharp objects may not exceed eight feet, and only the top two feet may contain barbed wire, spire tips, or sharp objects. No other barbed wire, spire tips, or sharp objects shall be erected in residential zones. Further, no electrically charged fences shall be erected in residential zones.

C. Any fencing within 20 feet of the rear property line on waterfront sites must be open mesh above a height of three feet. The City Manager, or the City Manager's designee may, in his or her discretion, approve minor projections above the restricted heights for architectural features.

D. No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design and location thereof shall have been approved in writing and proper permit issued by the Director. Unless the posts or other supports used in connection with the fence or wall are visible from and identical in appearance from both sides of the fence, all posts or other

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.

(2) 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.

With respect to a "corner" parcel that is "angled" so that each end of its water frontage line is located 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 subject property's water frontage line, or to the offset point, if any, located 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 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 subject parcel's water frontage line. The offset line for the corner parcel's 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's water frontage line, the offset line, and lines connecting the ends of the offset line to the corresponding offset points for the subject parcel, if any, or to the ends of the parcel's water frontage line.

(3) 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's marine improvement area (on the side where it abuts the "adjacent" parcel) shall form the side boundary of the "adjacent" parcel's 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 subject "adjacent" parcel's water frontage line to the nearest terminus point of the subject "corner" parcel's offset line and passing through the "adjacent" parcel's offset line. The subject side boundary of the "adjacent" parcel shall be that portion of the aforesaid line located between the end of the "adjacent" parcel's waterfrontage line and such parcel's offset line.

(4) If the owner of a waterfront parcel located on a lake or basin is aggrieved by the interpretation or application of this section to such waterfront parcel due to the physical configuration of the particular lake or basin, then the Hearing Examiner 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 subject waterfront parcel a reasonable marine improvement area. The property owner may appeal the decision of the Hearing Examiner to the City Council in accordance with § 3.16.9C.

K. *"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. 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 § 3.16.2.H. The aforesaid joint use agreement shall, at a minimum, comply with the following requirements.

1. The agreement shall contain the name(s) and current home address(es) of both property owners.

2. 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.

3. The agreement shall include a drawing of the proposed marine improvement(s) to be constructed, showing the design and dimensions of such marine improvement(s), and where such marine improvements will project from the parcels.

4. 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.

5. The agreement shall identify the responsibilities of each of the parties for the construction and maintenance of the facilities. However, such identification and/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 Use Regulations against the property owner(s) of the joint marine improvement, jointly and severally.

6. 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.

7. 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.

8. 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, but not limited to, those contained 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.

9. Prior to execution and recording of the agreement, the parties shall submit a draft of the proposed agreement to the city's Department of Community Development for its review and comment.

.3 *Application.*

A. The provisions of this section shall apply to all marine improvements and boat canopies for which an application for a construction permit has been submitted to the Department of Community Development after the

S. Amber reflectors or amber reflective material with at least four square inches of reflective surface shall be placed on all freestanding mooring posts or other freestanding pilings as well as on the outside end pilings of all docks which project into a waterway. For purposes of this section, marine improvements which are "U"-shaped, "V"-shaped, "J"-shaped, or which otherwise have more than one section of the marine improvement projecting into the waterway shall have such reflectors or reflective material located on the outside end pilings of each section of the marine improvement which projects into the waterway. Such reflectors shall be located so as to be visible to vessels approaching in the waterway from any direction.

T. This section shall control the regulation, construction, and maintenance of marine improvements within the City of Cape Coral. If any part of this section conflicts with any other codes adopted by the city, the most restrictive provision shall apply. Furthermore, all such marine improvements shall conform to all requirements of the National Fire Code, this section, and other applicable law.

.9 *Deviations.*

A. Any person aggrieved by the effect of this section shall have the right to request a deviation from the provisions of this section.

B. Deviations from the following provisions of this section may be approved by the Director of the Department of Community, or the Director's designee. Deviations concerning the maximum length or width of a boat canopy may be approved provided that such deviation will not be contrary to the public interest and will be in harmony with the general intent and purpose of this section. In determining whether to approve such a deviation, the Director of Community Development, or the Director's designee shall consider factors such as whether the boat canopy permit applicant has a present need to cover a marine vessel that could not be protected from the elements unless a longer or wider boat canopy were to be permitted; the design, size, and proposed location of the proposed larger boat canopy, and the effect of such larger boat canopy on the waterway in which it is proposed to be located and on the use and enjoyment of surrounding properties.

C. All other deviations from the provisions of this section may be approved by the Hearing Examiner 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 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. In determining whether a particular deviation request should be approved, factors the Hearing Examiner shall consider include, but are not limited to, the following: the effect the proposed deviation would have on the navigability of the waterway involved; the design, size, and proposed location of the marine improvement for which deviation is sought; the effect, if any, that the proposed deviation would have on any extant marine improvements in the subject waterway. Subject to these standards and criteria, the Hearing Examiner shall approve only the minimum deviation from the provisions of this section necessary to avoid the unnecessary or undue hardship required herein.
(Ord. 9-15, 4-7-2015)

D. Any person aggrieved by the decision of the Hearing Examiner or the Director of the Department of Community Development or the Director's designee concerning the interpretation and application of this section with respect to a waterfront parcel located on a lake or basin or concerning a requested deviation from the provisions of this section may appeal such decision to the City Council provided that a written notice of appeal is filed within 30 days after the date of the action appealed from. The notice of appeal shall be considered filed when it is received by the Department of Community Development.
(Ord. 26-04, 3-8-2004; Ord. 35-09, 8-3-2009; Ord. 38-13, 8-5-2013; Ord. 24-16, 6-6-2016)

§ 3.17 Sidewalks and alleys.

.1 *Commercial, Professional, Downtown, and Marketplace-Residential Zoning Districts.*

As part of the construction of each building erected in professional, commercial, downtown, or marketplace-residential zoning district of the city, 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*, a copy of which is hereby adopted and on file in the Cape Coral City Clerk's office, except such installation of sidewalks shall not be applied to the alteration or repair of existing primary use buildings or structures or the construction, alteration, or repair of buildings or structures which are accessory to primary use structures. Sidewalks, curbs and gutters shall be constructed only if the city has developed construction designs for that roadway segment. In areas without city approved construction designs for roadway segment, construction of sidewalks, curbs and gutters shall be done through a city established special assessment district All sidewalks shall be constructed in the area to the widths shown in the *City of Cape Coral Engineering Design Standards*, except where a sidewalk has been installed and the established width is less than five feet, the minimum width of the sidewalk to be installed shall be the width of the existing sidewalk. No ramp parking area shall be constructed in front of commercial buildings. As part of the construction of each building, there shall be constructed concrete curbing and gutters, plus that portion of the unpaved street fronting on each such building lying between the curb and gutter and the street, if any, in front of the proposed construction shall be paved, according to the standards and specifications as set forth in the *City of Cape Coral Engineering Design Standards* adopted and on file in the office of the Cape Coral City Clerk. Lot owners who erect buildings or change the use on only a fractional portion of a lot must provide the curbs, sidewalks, gutters of the construction type as required by this subsection and shall be at the expense of the lot owner and shall be paid for by the lot owner before or concurrently with and paving for the entire lot as set out in this subsection.

(Ord. 66-91, 8-26-1991; Ord. 91-05, 11-14-2005)

Within the High Intensity Commercial-Industrial zoning district only, additional design elements are required. Design elements which include, but are not limited to, bike lanes and bike paths must be provided for all frontages along collector and arterial roadways. Where bike lanes, bike paths, or sidewalks intersect with collector and arterial roadways, provision should be made for the installation of enhanced safety features which may include, but are not limited to, stamped concrete, raised intersections, in-roadway warning lights, and audible pedestrian signals.

(Ord. 27-13, 11-25-2013)

As part of the construction of each building erected in a professional, commercial, downtown, or marketplace-residential zoning district of the city on any such development site located adjacent to a platted alley, an improved alley portion shall be installed at the site of such platted alley prior to the issuance of a certificate of occupancy. Such alley portion shall be constructed along the length of the property line of the site of the commercial or professional development lying adjacent to the platted alley. Such alley portion also shall be constructed in accordance with the requirements of the *City of Cape Coral Engineering Design Standards*. The City of Cape Coral Engineering Division shall provide drainage design and stakeout related to such alley improvement. In addition to developments involving new construction erected in a Professional, Commercial, downtown, or marketplace-residential zoning district, alteration(s) to the site of an existing site lying adjacent to a platted alley shall be required to make the alley improvements required by this section if the value of such alteration(s), as calculated by the city, exceeds 50% of the replacement value of the site improvements including, but not limited to, parking areas, internal curbing, and retention areas, but excluding internal modifications to the building, previously existing on the site.

(Ord. 72-97, 10-27-1997; Ord. 91-05, 11-14-2005)

ARTICLE IV: LAND DEVELOPMENT REGULATIONS

Section

§ 4.1 Subdivision regulations.

.1 *Purpose and intent.* The City of Cape Coral has determined that new commercial, professional, industrial, institutional and multi-family developments and all subdivision of land require additional regulations and a greater level of review than can be provided through the building permit process. This article defines special procedures and standards to govern the review of such developments.

.2 *Applicability.* This article describes four separate processes for the approval of new developments that are proposed for land that already has the proper zoning district for the proposed uses. None of these processes are required for single-family dwellings or duplex on existing platted lots, which can proceed directly to the building permit stage as described in § 8.5 of this LUDR. The four processes described in this article are:

A. *Planned development project (PDP) procedure (§ 4.2).* The PDP procedure provides a more intensive review of certain more complex developments. The PDP is not a zoning district and may contain more than one zoning district. A PDP application may include requests for subdivision, rezonings, special exceptions, variances, vacations of plat and deviations that can be considered simultaneously with the PDP application. PDP applications require a public hearing before the Hearing Examiner and, in some cases, also before the City Council. PDP approval is based on a specific development plan; innovative designs may be permitted to depart from standards in this LUDR through the deviation process, as described in § 4.2 below. The PDP procedure is mandatory for certain types of developments and is optional for others:

1. The subdivision of land within the City of Cape Coral, except as provided in § 4.2 of this article, shall be permitted only within approved developments of regional impact (DRIs) or planned development projects (PDPs).

2. The PDP procedure is mandatory for new development in the urban services reserve area of the Comprehensive Plan except for uses permitted in single-family residential districts.

3. The PDP procedure is also mandatory within certain zoning district uses for proposed or expanding developments as outlined in the regulation for those zoning districts.

4. The PDP procedure remains available as a voluntary option for any other development throughout the city, including the downtown community redevelopment area, as a route to request approval of deviations from the standards in this LUDR, as provided in § 4.2.4.K. below.

B. *Mobile home planned development projects (MHPDP) (§ 4.3).* New or expanded mobile home parks and subdivisions can only be approved through this procedure, which is similar to the regular PDP procedure. Section 4.3 describes these standards and procedures.

C. *Site plan review procedure (§ 4.4).* Site plans for commercial, professional, industrial, institutional and multi-family developments shall be submitted for approval through this site plan review procedure. Final site plan approval may be granted under this procedure. Section 4.4 describes the standards and procedures for site plan review.

D. *Transfer of development rights (§ 4.5).* The City of Cape Coral encourages the voluntary dedication of privately-owned land in areas planned for future park sites by permitting owners of such properties to sever and transfer their development rights to other properties. Section 4.5 describes the voluntary process for accomplishing such transfers.

(Ord. 91-05,11-14-2005)

(Ord. 16-07, 4-23-2007; Ord. 24-16, 6-6-2016)

§ 4.2 Planned development project procedure.

.1 *Purpose and intent.* This section is established to provide standards, requirements and procedures for planned development projects.

.2 *Generally.* A planned development project, which may depart from conformance with the regulations for principal building and single lot development may be permitted anywhere within the city limits of the City of Cape Coral In accordance with the Comprehensive Plan, development in the urban services reserve area, other than permitted single-family residential district uses, must be through a planned development project. Furthermore, in accordance with § 2.7 of the City of Cape Coral Land Use and Development Regulations, no existing or proposed commercial/professional use shall be established, constructed, enlarged, or expanded on C-1, C-3, or P-1 zoned properties located adjacent to a residential zoning district or land use classification except by means of the planned development project (PDP) process. For the purposes of carrying out the provisions of this LUDR, all of the procedures, standards, requirements, regulations and provisions set forth for planned development projects in this ordinance shall apply.

(Ord. 55-91, 7-22-1991; Ord. 18-97, 4-23-1997)

.3 *Permitted uses.* Only those permitted land uses, including special exception uses, allowed by Article II, § 2.7, District Regulations, may be utilized in their respective zoning districts within the planned development project. A PDP is not a zoning district, and may contain more than one zoning district.

.4 *General standards and requirements.* In any planned development project, although it is permissible to depart from conformance with the principal building and single lot development regulations contained in the Land Use and Development Regulations, there shall be no diminution of the regulations and standards set forth in this section. All planned development projects shall conform to the following standards:

A. *Environmental control standards.* The City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council) shall examine the proposed project to ensure that it will be properly located, will have a minimal adverse impact on the natural environment and its surroundings and will be in compliance with Article V, § 5.4, of the Land Use and Development Regulations. In addition, the development proposed by the applicant shall reflect the overall location standards and principles of land use arrangement and design, as set forth in the community's Comprehensive Plan including, but not limited to, the Future Land Use Plan.

(Ord. 2-99, 2-8-1999)

B. *Maintenance of improvements.* The owner of a project shall provide and permanently maintain the areas required for landscaping purposes. Such landscaping is subject to review and approval by the Director. The applicant of a project may be required to provide a detailed statement of assurance including covenants, agreements or other specific documents showing the ownership and method of providing perpetual maintenance to be applied to those areas within the project that are to be used for open space, recreational or other common or quasi-public purposes.

C. *Consistency with Comprehensive Plan.* The proposed PDP shall be consistent with the Comprehensive Plan for the City of Cape Coral, Florida.

D. *Financial responsibility.* The applicant of a project may be required to provide a statement of financial responsibility including the posting of a security bond or certified check at the city's sole option payable to the city to assure the installations of required improvements. The bond or check shall be subject to the condition that the improvements will be completed within two years after approval of the final plan or one year from last permit approval from all appropriate regulatory bodies, whichever is less, unless otherwise specified or approved by the City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council).
(Ord. 2-99, 2-8-1999)

E. *Dimensional requirements.* When area, dimensional and other standards are applied to a proposed PDP, the standards of the zoning district of the site in question shall apply, except as specified in this ordinance. Where the proposed PDP departs from said requirements, the applicant's request shall state the specific departure requested and the reason therefore. If the applicant requests a variance, the review and approval of such variance shall be governed by the standards and requirements of this section and Article VIII, § 8.10, Variances. If the applicant requests a deviation, the review and approval of such deviation shall be governed by this section.
(Ord. 55-91, 7-22-1991; Ord. 18-97, 4-23-1997)

F. *Maximum density.* The maximum number of residential dwelling units which shall be permitted within a PDP shall generally be 16 units per buildable acre. Up to 20 units per buildable acre may be approved, in accordance with the Comprehensive Plan, as an incentive for the assembly of large parcels (at least three acres) with a minimum of 250 feet of depth.
(Ord. 55-91, 7-22-1991)

G. *Minimum parcel size.*

In the urban services infill and transition areas, as designated on the adopted Future Land Use Map, residential, commercial, professional, industrial or institutional development may proceed through the PDP process at the property owner's option.

In the urban services reserve area, all development, except for permitted single-family residential uses, must proceed through the PDP process and must contain a minimum land area of three acres, except as specified in this ordinance. Projects in the urban services reserve area as delineated in the Comprehensive Plan that are less than three acres in size but which encompass the entire undeveloped area illustrated on the Future Land Use Map for a specific use may be submitted and reviewed under the PDP process. Additionally, projects in the urban services reserve area that are less than three acres, and are designated as commercial activity center, mixed use, commercial/professional, Pine Island Road District, or public facilities future land uses may be submitted and reviewed under the PDP process if uses are limited to those that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on F.A.C. 64E-6.008, as may be amended from time to time.
(Ord. 55-91, 7-22-1991; Ord. 13-00, § 1, 3-13-2000; Ord. 125-05, 10-11-2005; Ord. 94-08, 9-8-2008)

H. *Time limitation.* Substantial construction shall commence within two years from the date of project approval or within one year of the last permit approval from all appropriate regulatory bodies, whichever is less, unless otherwise approved by the City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council). Substantial construction shall mean that a valid building permit has been issued for construction of the main building or buildings. In the case of subdivisions, substantial construction shall mean the issuance of valid permits for the installation and construction of the required infrastructure for the subdivision. When construction is not a part of the use, substantial construction shall mean that the use in operation is in compliance with the conditions as set forth in the approval of the zoning change. Failure to commence construction within said specified time period shall cause the PDP approval to be null and void, except that any rezoning(s), vacation(s) of plat, or variances approved during the PDP approval process shall remain in full force and effect. All other acts or conditions approved as a part of the PDP approval

process including, but not limited to, special exceptions and deviations, shall be null and void in the event construction is not commenced within the aforesaid specified time period and shall terminate in the event the PDP development order is terminated. In such event, recorded subdivisions shall revert to acreage in accordance with § 4.2.5 of the City of Cape Coral Land Use and Development Regulations.
(Ord. 55-91, 7-22-1991; Ord. 18-97, 4-23-1997; Ord. 2-99, 2-8-1999)

I. *Ownership requirements.* An application for a PDP must be made by the owner or owners holding title to 100% of the property comprising the PDP, or by a third party with written consent of all owner(s) of the property within the PDP for which the third party will apply. Any applicant may be represented by an attorney or may, in writing, authorize an agent or representative to represent the applicant. Unless the construction would be inconsistent with the intent, all requirements and responsibilities of the owner as stated in this section remain the responsibility of the actual owner(s) holding legal title to 100% of the property. An application shall identify the owner(s) of property, the third party applicant, and any authorized representative.
(Ord. 8-15, 4-7-2015)

J. *Special exceptions.* Except as otherwise provided herein, special exceptions granted within a PDP shall meet all of the requirements of § 8.8 of the City of Cape Coral Land Use and Development Regulations. However, instead of one year from the date of approval as provided in § 8.8 of the City of Cape Coral Land Use and Development Regulations, special exceptions granted within a PDP development order shall be established in the PDP within six years from the effective date of such PDP development order.
(Ord. 18-97, 4-23-1991)

1. *Establishment of special exception.* During such initial six-year time period, an approved special exception may be established at any time and operated for any length of time within any of the units of the development for which such special exception has been approved. For purposes of this ordinance, a special exception use shall be considered to be established in a single-unit PDP if it has been issued a certificate of use by the city in such PDP and in a multi-unit development PDP if it has been issued a certificate of use by the city for a location in any unit of the development for which such special exception has been approved, regardless of whether such special exception use is actually in operation at the end of the initial six-year time period following the effective date of the PDP development order.
(Ord 18-97, 4-23-1997)

2. *Expiration, discontinuance, abandonment.* In the event a special exception granted within a PDP development order has not been established as provided herein within six years from the effective date of the PDP development order, such special exception shall automatically expire and be deemed null and void. After the aforesaid initial six-year time period, a special exception which is not actively in operation or which is discontinued for a period of one year in the PDP shall be deemed to have been abandoned and such special exception approval shall terminate as provided in § 8.8 of the City of Cape Coral Land Use and Development Regulations. For purposes of this ordinance, a special exception granted in a PDP development order for a multi-unit development shall not be deemed to have been abandoned so long as it is in operation in any unit of the development for which such special exception has been granted.
(Ord. 18-97, 4-23-1997)

3. *Multi-unit developments.* Special exceptions for multi-unit developments containing two or more units shall be deemed as approved for all units within the development unless the PDP development order specifically limits such special exception(s) to one or more particular units. In the event one or more conditions are imposed on the grant of the special exception(s) for a multi-unit development, such condition(s) may be the same for all units for which the special exception(s) are granted or such condition(s) may differ for different units.
(Ord. 18-97, 4-23-1997)

K. *Deviations.* To provide design flexibility in developing land through the PDP

process, deviations from the City of Cape Coral Land Use and Development Regulations which relate to standards of the zoning district of the site in question, including, but not limited to, area, dimensional, and other standards, may be approved in a PDP development order by the City Council provided that the PDP demonstrates unique and innovative design which would be enhanced by the approval of such deviation(s) and that the intent of such regulations to protect the health, safety, and welfare of the public would be served by the approval of the deviation. Requests for deviations and the reasons therefor shall be set forth by the applicant in the application for PDP approval and shall be accompanied by documentation including, but not limited to, 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. For purposes of this section, examples of unique and innovative design may include, but are not limited to, the following:

1. Providing usable common open space within the development to offset and compensate for decreases in typical lot sizes or yard requirements;
(Ord. 18-97, 4-23-1997)

2. The use(s) occurring within the PDP are such that compatibility with surrounding uses can be assured by applying different requirements than would be otherwise applicable under the zoning district of the site in question;
(Ord. 18-97, 4-23-1997)

3. Providing places for public assembly such as parks and plazas which are linked together and centrally located to ensure accessibility;
(Ord. 18-97, 4-23-1997)

4. Locating buildings and dwelling units to provide optimum access to open space areas; and
(Ord. 18-97, 4-23-1997)

5. Providing for the integration and preservation of natural resources with development, through conservation of natural resources such as streams, lakes, floodplains, groundwater, wooded areas and areas of unusual beauty or importance to the natural ecosystem.
(Ord. 18-97, 4-23-1997)

L. *Underground utilities.* Within a new planned development project, provisions shall be made for placement of all utilities underground. 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.
(Ord. 128-02, 4-14-2003; Ord. 24-16, 6-6-2016)

.5 *Procedures.* All PDP applications shall be subject to the following procedure:

A. *Generally.*

1. *Standards.* The review and approval of all amendments to PDP or MHPDP shall be governed by the standards and requirements of this section and Article VIII, § 8.7, Amendments. The review and approval of all special exception use permits for planned development projects shall be governed by the standards and requirements of this section and Article VIII, § 8.8, Special Exceptions. The review and approval of all variances within planned development projects shall be governed by the standards and requirements of this section and Article VIII, § 8.10, Variances. The review and approval of site plans within planned development projects shall be governed by this section, § 4.4, and Article VIII, § 8.3.2. The review and approval of all vacations of plats within planned development projects shall be governed by the standards and requirements of this section and Article VIII, § 8.11. The review and approval of all borrow pits within planned development projects shall be governed by the standards and requirements of this section and Article III, § 3.23.
(Ord. 55-91, 7-22-1991)

2. *Conditions.* In approving a planned development project, the City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council) may establish such

conditions or require modifications as necessary to assure compliance with the intent of the Land Use and Development Regulations. The violation of any such condition or safeguard shall be deemed a violation of this section and shall be enforceable not only by revocation of the approval of all or part of the planned development project, but also by all other remedies available to the city, including, but not limited to, all code enforcement procedures.
(Ord. 18-97, 4-23-1997; Ord. 2-99, 2-8-1999; Ord. 87-03, 9-8-2003)

3. *Amendment.* Once a development plan has been approved, any owner-initiated rezoning for any property within the approved development plan shall require an amendment to the PDP development plan. City-initiated rezoning of property within an approved PDP development plan shall not require an amendment to the development plan. Any substantial deviation from an approved development plan, as such substantial deviation is articulated therein, shall require an amendment to the PDP development plan. Additionally, the expansion of a project that is the subject of an extant PDP development plan onto property that is not subject to such plan shall require an amendment to the approved PDP development plan. When there is any cause for amendment of an approved PDP development plan or any portion thereof, such amendment shall be processed in the same manner as the original application and shall meet all requirements of the original application, except as follows:
(Ord. 92-00, § 1, 10-10-2000; Ord. 172-05, 1-23-2006)

a. An amendment to a portion of a PDP development plan shall not require an application by the owners of or third parties in relation to 100% of the property that is controlled by the extant PDP development plan if all of the following criteria are met:

(1) The property that is controlled by the extant PDP development plan consists of more than one parcel or tract of land;

(2) The party or parties making application for the amendment of the extant PDP development plan hold(s) title to ownership of 100% of the property that would be included in the proposed amendment, or is a third party with written consent of all owner(s) of the property that would be included in the proposed amendment for which the third party will apply; and

(3) The proposed amendment would not negatively affect the lawful existence of the extant PDP development plan as it relates to the property that is controlled by such development plan and that would not be included in the proposed amendment. For example, a proposed amendment that would have the effect of reducing the amount of parking, retention area, or development area available for property approved for development under an extant PDP development plan would not require application by the owners of or third parties in relation to 100% of the property governed by the extant PDP development plan so long as the subject parking, retention area, or development area available for the development that would remain governed solely by the extant PDP development plan remained above the minimum required by law so that such development could continue to lawfully exist if the proposed amendment were approved by the city. For purposes of this subsection, a proposed amendment of a PDP that would render the property that is subject to the extant PDP development plan "legally non-conforming" in any way shall be considered an amendment that would negatively affect the lawful existence of the extant PDP development plan as it relates to the property that is controlled by such development plan and that would not be included in the proposed amendment. Amendments to portions of PDP development plans shall require the same public notice as that required for amendments to PDP development plans in their entirety, including, but not limited to, the mailing of notice by the city to property owners within 500 feet of the boundaries of the property subject to the PDP development plan in its entirety rather than to only those within 500 feet of the property for which amendment is sought. In addition to the foregoing notice requirement, however, if an application for amendment of a portion of a PDP development plan meets the criteria stated herein and is filed by owners of or third parties in relation to less than

100% of the property that is subject to the extant PDP development plan, then the city shall also provide the foregoing written notice to all parties holding title to ownership of property controlled by the extant PDP development plan who have not joined in the application.
(Ord. 82-00, § 1, 8-28-2000; Ord. 1-08, § 1 3-10-2008; Ord. 8-15, 4-7-2015)

b. An amendment to an extant PDP development plan for the purpose of expanding a project that is the subject of the extant PDP development plan onto additional property that is not subject to the extant PDP development plan shall not require an application by the owners of or third parties in relation to 100% of the property, provided that all of the following criteria are met:

(1) The property that is controlled by the extant PDP development plan consists of more than one parcel or tract of land and all owners of at least one of the parcels or tracts of land submits an application for amendment;

(2) The party or parties making application for the amendment of the extant PDP development plan includes the party or parties who hold title to ownership of 100% of the property onto which the project is proposed to expand, or is a third party with written consent of all owner(s) of the property that would be included in the proposed expansion for which the third party will apply:

(3) If the amendment to the extant PDP development plan involved a physical change to the development that was previously approved for any parcel or tract of land, the owner or owner(s) of such parcel or tract of land shall join in the application for amendment. For purposes of this section, such "physical change" would include, but not be limited to, any alteration to the design or layout of any structure(s), other improvements(s), or infrastructure as previously approved for a parcel or tract of land, and/or the addition or deletion of any structure(s), other improvement(s), or infrastructure as previously approved for a parcel or tract of land; and

(4) The proposed amendment would not negatively affect the lawful existence of the extant PDP development plan as it relates to the property that is controlled by such development plan and that would not be included in the proposed amendment. For example, a proposed amendment that would have the effect of reducing the amount of parking, retention area, or development area available for property approved for development under an extant PDP development plan would not require application by the owners of or third parties in relation to 100% of the property governed by the extant PDP development plan so long as the subject parking, retention area, or development area available for the development that would remain governed solely by the extant PDP development plan remained above the minimum required by law so that such development could continue to lawfully exist if the proposed amendment were approved by the city. For purposes of this subsection, a proposed amendment of a PDP that would render the property that is subject to the extant PDP development plan "legally non-conforming" in any way shall be considered an amendment that would negatively affect the lawful existence of the extant PDP development plan as it relates to the property that is controlled by such development plan and that would not be included in the proposed amendment. Amendments that expand extant PDP development plans onto additional property shall require the same public notice as that required for any other amendment to PDP development plans, including, but not limited to, the mailing of notice by the city to property owners within 500 feet of the boundaries of the property subject to the extant PDP development plan in its entirety and to property owners within 500 feet of the boundaries of the property onto which expansion is proposed. In addition to the foregoing notice requirement, however, if an application for amendment of a portion of a PDP development plan meets the criteria stated herein and is filed by owners of or third parties in relation to less than 100% of the property that is subject to the extant PDP development plan, then the city shall also provide the foregoing written notice to all parties holding title to ownership of property controlled by the extant PDP development plan who have not joined in the application.
(Ord. 172-05, 1-23-2006; Ord. 1-08, § 1, 3-10-2008; Ord. 8-15, 4-7-2015; Ord. 24-16, 6-6-2016)

B. *Advisory meeting.* The developer of a proposed planned development project shall meet at least once with the Director and other city staff as determined by the Director prior to the preparation or submission of a development plan for a proposed planned development project. The purpose of this meeting shall be to discuss existing or proposed development, which may affect or be affected by the proposed planned development project. For the purpose of such discussion, the developer shall provide a sketch plan indicating the proposed project area, its relationship to the surrounding area and general development scheme to include the specific PDP requested and, if residential, the dwelling units per acre. The advisory meeting and informal review are designed to prevent unnecessary and costly revisions in the design and development scheme to be presented in the planned development project application. Formal application or filing of a plan with the Director is not required for the advisory meeting.
(Ord. 82-00, § 1, 8-28-2000)

C. *Submission.* After the advisory meeting, the developer of a proposed planned development project may submit an application for a planned development project, administrative review, zoning amendment, and/or subdivision, as applicable, to the Director along with the required number of copies of the development plan and required supplementary material. The plan shall reflect the standards of design set forth in this ordinance for planned development projects and shall provide at least the applicable data and information required for development plans as detailed in § 4.2.6. Requests for special exceptions, variances, and site plan review may be submitted in conjunction with the planned development project and acted upon concurrently with such planned development project review. If a period of six months expires between the time of submission of the PDP administrative review application and the application for PDP approval, without an excusable delay as determined by the Director, then the PDP administrative review application shall be null and void, and the applicant must resubmit for PDP administrative review.
(Ord. 55-91, 7-22-1991)

D. *Administrative review.* Upon receipt of the application and all required plans and supplementary material, the Director shall forward it to all appropriate reviewing agencies and shall initiate his or her review of the application for conformance with all requirements of the ordinance. Upon completion of the administrative review, a draft planned development project development order shall be prepared by the Director. The Director shall forward a copy of the draft planned development project development order to the applicant.

E. *Planned development project application.* After receipt of the draft planned development project development order, the developer of the proposed planned development project may submit a planned development project application to the Director. Upon receipt of the

application and all required plans and supplementary material, the Director shall forward it to all appropriate reviewing agencies for determination of consistency with the draft planned development project development order. Upon receipt of all comments, the Director shall forward a copy of the application and comments to the Hearing Examiner for consideration.
(Ord. 55-91, 7-22-1991)

F. *Procedure for adoption of planned development projects (PDPs) that require City Council approval.* The following procedures shall apply to all PDP applications that contain, in addition to any other request, a request for rezoning, a request for vacation of plat or of easement, a request for subdivision approval, a request for borrow pit approval, adjustment of and/or credit to impact fee(s), betterment fee(s), or assessment(s) otherwise required by city ordinance, the extension or expansion of infrastructure (not including site development work, such as the installation of curbs, gutters, sidewalks, etc. required by the *City Engineering Design Standards*), the transfer of development rights, or other request that would require approval by the City Council:
(Ord. 2-99, 2-8-1999)

1. *Notice and hearing.* Within a reasonable period of time following receipt from the Director, the Hearing Examiner shall hold a public hearing on the application. Notice shall be provided in accordance with Article VIII, § 8.3, Public Hearings.

2. *Recommendation.* Within a reasonable period of time following the close of the public hearing, the Hearing Examiner shall review the development plan, zoning amendment(s), and/or subdivision for the proposed planned development project in regard to the provisions of the Land Use and Development Regulations. The Hearing Examiner shall especially consider the effect of the proposed project on existing and anticipated land use patterns, traffic circulation, community services and facilities. The Hearing Examiner may require revised or additional plats, data, drawings or profiles of the proposed project when necessary. Since a planned development project is inherently more complex than individual lot development, and because each such project must be tailored to a specific site and neighboring uses, the conditions for such projects cannot be flexible. The Hearing Examiner may therefore recommend reasonable special conditions to ensure there shall be no departure from the intent of the Land Use and Development Regulations. After receiving written recommendations from the Director in regard to the development plan and required supplementary material, and after complete review and negotiation with the developer on changes deemed advisable, and the kind and extent of improvements to be made, the Hearing Examiner shall make the Hearing Examiner's recommendations to the City Council. Such recommendations shall include a statement of the Hearing Examiner's determination and a statement of any special conditions which may have been recommended by the Hearing Examiner.

3. *Action by the City Council.*

a. *Notice and hearing.* Upon receipt of the recommendations of the Hearing Examiner, the City Council shall hold a public hearing on the application. The City Council shall follow its normal procedure of action, as set forth in the Land Use and Development Regulations regarding zoning amendments, as applicable. Notice shall be provided in accordance with Article VIII, § 8.3, Public Hearings.

b. *Action.* Within a reasonable period of time following the close of the public hearing, the City Council shall approve, disapprove or approve subject to modifications or conditions the said development plan and required supplementary material. One copy of the plan shall be returned to the developer, one copy shall be filed with the City Manager and the other retained by the City Council, to be filed with the Director.

(1) *Approval.* If the City Council approves the proposed development plan, zoning amendment(s), and/or subdivision, it shall amend the zoning district map to designate the appropriate zoning district(s) for the proposed planned development project. Upon adoption of the zoning map amendment(s), the City Council shall issue written authorization to the developer to submit a final development plan and subdivision

plat, as applicable, of the proposed planned development project to be submitted to the Director. The zoning map amendment adopted by the City Council shall not become final until the final development plan and subdivision plat, as applicable, of the proposed planned development project has been approved by the Director as in compliance with any modifications or conditions made by the City Council, and properly recorded in the office of the City Clerk and Lee County.

(2) *Preparation of ordinance for City Council review.* An ordinance shall be prepared by the City Council incorporating any restrictions, requirements or variances deemed appropriate by the City Council. The ordinance shall require certain stipulations involving performance bond, building time limitations, or other provisions deemed necessary for the protection of the city's interests. The final construction plan must be consistent with the drawings presented and approved except for specific detail work necessary, or except for changes otherwise allowed in the applicable zoning district.

(3) *Time limitation; extensions.* The approval of the development plan shall lapse unless a correct final development plan and subdivision plat, as applicable, is submitted within two years from the date of such approval or within one year of the last permit approval from all appropriate regulatory bodies, whichever is less. An extension of time may be applied for by the developer and granted by the City Council for just cause.

G. *Procedure for adoption of planned development projects (PDPs) that do not require City Council approval.* The following procedures shall apply to all PDP applications that do not contain a request for rezoning, a request for vacation of plat or of easement, a request for subdivision approval, a request for borrow pit approval, adjustment of and/or credit to impact fee(s), betterment fee(s), or assessment(s) otherwise required by city ordinance, the extension or expansion of infrastructure (not including site development work, such as the installation of curbs, gutters, sidewalks, etc. required by the City's *Engineering Design Standards*), the transfer of development rights, or other request that would require approval by the City Council:
(Ord. 2-99, 2-8-1999)

1. *Notice and hearing.* Within a reasonable period of time following receipt from the Director, the Hearing Examiner shall hold a public hearing on the application. Notice shall be provided in accordance with Article VIII, § 8.3, Public Hearings.
(Ord. 2-99, 2-8-1999)

2. *Action.* Within a reasonable period of time following the close of the public hearing, the Hearing Examiner shall approve, disapprove, or approve subject to modifications or conditions the development plan and required supplementary material. One copy of the plan shall be returned to the developer, one copy shall be filed with the City Manager, and one copy shall be retained by the Hearing Examiner, to be filed with the Director.
(Ord. 2-99, 2-8-1999)

a. Preparation of order for Hearing Examiner review. An order shall be prepared by the Hearing Examiner incorporating any restrictions, requirements, or conditions deemed appropriate by the Hearing Examiner. The order shall require certain stipulations involving performance bond, building time limitations, or other provisions deemed necessary for the protection of the city's interests. The final construction plan must be consistent with the drawings present and approved except for specific detail work necessary, or except for changes otherwise allowed in the applicable zoning district.
(Ord. 2-99, 2-8-1999)

b. *Time limitations; extensions.* The approval of the development plan shall lapse unless a correct final development plan or building permit, as applicable, is submitted within two years from the date of such approval or within one year of the last permit approval from all appropriate regulatory bodies, whichever is less. An extension of time may be applied for by the developer and granted by the Hearing Examiner for just cause.
(Ord. 2-99, 2-8-1999)

H. *Final development plan and subdivision plat approval.*

1. *Submission.* After receiving written authorization by the City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council) and after completion of all the required improvements and conditions or the posting of a surety bond or certified check to assure such completion, the developer may submit an application requesting final approval of the planned development plan and subdivision plat, as applicable. The developer shall submit the original and the required number of copies of the final development plan and subdivision plat, if applicable, and required supplementary material to the Director along with a written application for final approval of the project. The final development plan shall include all of the information required under § 4.2.6, including any revisions or modifications required by the City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council). In addition, the developer shall submit one reproducible copy of the final development plan. The final plan and subdivision plat, if applicable, shall conform to the approved development plan and subdivision plat with any conditions or modifications stipulated by the City Council (or the Hearing Examiner for PDPs that do not require the approval of City Council), and, if desired by the developer, it may constitute only that portion of the approved plan and subdivision which he or she proposes to record and develop at the time, provided however, that such portion conforms to all requirements of the Land Use and Development Regulations. The final development plan and subdivision plat shall reflect the design and all special conditions of the approved development plan and subdivision plat as well as the applicable data and information required for final development plans.
(Ord. 2-99, 2-8-1999)

2. *Action by the Director.*

Upon receipt of the final development plan and subdivision plat, the Director shall review the plan and plat for completeness and adherence to the approved development plan and subdivision plat and attached conditions, if any. If the plan and plat are substantially in accord with the approved development plan and subdivision plat and all previous requirements, fulfills all attached special conditions, are complete and reflect all of the required certifications, the Director shall approve the final development plan and subdivision plat, and the Mayor shall indicate such approval on the plan and plat by signing the certificate of approval for recording. If the plan or plat is disapproved, the grounds for disapproval shall be stated in writing to the governing body and a statement in writing of such grounds of disapproval shall be furnished to the developer or agent. Approval by the Director shall not constitute acceptance by the public of the dedication of any street, other public way or improvement, unless indicated on the development plan or plat. A certified copy shall be retained by the governing body to be filed with the Director. A reproducible copy, certified by the governing body, shall be transmitted to the City Clerk or Lee County, as applicable, for recording. A reproducible recorded copy shall be returned to the Director.

All approved final development plans and subdivision plats shall be recorded at the expense of the applicant in the office of the City Clerk and/or County Clerk, as applicable.

The Director shall not issue any permits for any project until the final development plan and subdivision plat has been properly recorded by the applicant.

An approved and recorded final development plan and subdivision plat shall limit and control the issuance of all permits and shall restrict the construction, location, use and operation of all lands and structures to all conditions set forth on the final development plan and subdivision plat; provided, however, that upon appeal to, and approval by the City Council, minor changes in the location of structures and other minor details may be permitted. No change shall be authorized which violates the spirit or intent of the originally approved final development plan, the subdivision plat, or the provisions of this ordinance. A final development plan applies to the property for which it is granted and not to the

individual who applied for it. A final development plan also runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.

I. *Subdivision of land.*

1. *Applicability.* An application for a planned development project may include a proposed subdivision of the tract of land within the project property lines into one or more separately owned and operated units. These regulations shall apply to all subdivisions of land, as defined in this ordinance, located within the City of Cape Coral, Florida, after the effective date of this ordinance. In accordance with the Comprehensive Plan, all subdivisions of land must be made as part of a planned development project. Such a subdivision may include platted lots fronting on access roads not dedicated as public streets provided that such access roads meet all the requirements of this ordinance for planned development projects, and the method of assuring perpetual ownership and maintenance of such access roads must be approved along with the development plan for the planned development project. Any project which includes a proposed subdivision of the total tract of land within the project property lines into one or more separately owned and operated units shall, if approved, be subject to all attached special conditions and all provisions of this ordinance regarding development plats in its entirety, including all approved subdivisions regardless of their ownership. There shall, however, be no subdivision of an approved planned development project unless such subdivision is in conformance with the originally approved and recorded final plan.

a. *Generally.* No land within the City of Cape Coral shall be subdivided without approval and recording of a final subdivision plat in compliance with all requirements of this ordinance.

b. *Sale or transfer of property.* No land within a subdivision shall be sold as a building site without prior recording of a final subdivision plat approved in accordance with this ordinance. Provided, however, that nothing herein shall affect the validity of transfers on sales of interests in property.

2. *Subdivision defined.* The division of a premises or tract of land, whether improved or unimproved, into three or more new lots or parcels of land for the purpose, whether immediate or future, of transfer of ownership or, if the establishment of a new street is involved, any division of such premises or tract of land; provided, however, that the division of land into lots or parcels of five acres or more and which does not involve any change in street lines or public easements of any kind shall not be deemed a subdivision within the meaning of this ordinance. ***SUBDIVISION*** does include resubdivision and, when appropriate to the context of this ordinance, relates to the process of subdivision or to the land subdivided or proposed to be subdivided. For the purposes of this definition, the term ***STREET*** means the primary means of access, whether public or private, to a lot or parcel of land.

3. *Compliance with zoning and other regulations.* The subdivision of land is permitted in any zoning district, provided that said subdivision complies with all zoning regulations, this ordinance and other applicable law.

4. *Building permits and certificates of use.* No building permit or certificate of use shall be issued for any structure or use on a lot or parcel created in violation of this ordinance.

5. *Transferring of land violations.* It shall be unlawful for anyone who is the owner, or agent of the owner, of any land to sell such land by reference to or exhibition of, or by other use of a plat without having first submitted such plat for approval if required by this ordinance. If such unlawful use is made of a plat before it is properly approved and recorded, the owner, or agent of the owner, of such land shall be subject to the penalties provided in this ordinance.

6. *General standards.* Prior to approving any subdivision plat, the City Council shall review the proposed land subdivision to ensure compliance with the following standards:

a. The environmental control standards set forth in Article V, § 5.4, of this ordinance in order to ensure that the proposed subdivision will be located with a minimal adverse impact on the natural environment.

b. The influence the proposed subdivision may have on existing or future development in surrounding areas and the relationship of proposed lots, streets and building areas.

c. The effect that proposed streets and access points will have on the surrounding major street system and the provisions to ensure suitable and adequate street design and access location to serve existing and anticipated traffic volumes.

d. To ensure that existing or proposed utility services are adequate for the population densities and land use development proposed.

e. To ensure that the proposed subdivision reflects the overall design standards and principles of land development as set forth in the city's Comprehensive Plan and the Major Street Plan.

f. The governing body shall not approve a subdivision of land which would involve danger or injury to the public health, safety, or welfare by reason of lack of adequate water supply, sanitary sewer system, schools, proper drainage, streets and highway facilities or other public services; or, which would necessitate an excessive expenditure of public funds for the supply and/or maintenance of such services and facilities.

g. If it is determined that land proposed to be subdivided is unsuitable for subdivision development due to flooding, bad drainage, unstable soil, slopes, rock formations and other such conditions that may increase the danger of health, life, or property or aggravate erosion or flood hazards; and, if from adequate investigations, conducted by all the public agencies concerned, it has been determined that, in the best interest of the public, the land should not be platted and developed for the purpose proposed, the governing body shall not approve the land for subdivision unless adequate methods are formulated by the developer for meeting the problems that such subdivision and development of land will create.

h. When land is subdivided into parcels larger than 10,000 square feet, such parcels shall be arranged so as to allow for the opening of future streets and logical resubdivision.

i. Access points on all collector or arterial streets serving a subdivision shall be located and spaced to coordinate with the existing streets and be in accordance with *Engineering Design Standards.* The Council may approve the use of temporary access points provided that such temporary access points shall be eliminated by the developer when minor streets or marginal access streets are extended to the permanent access points.

j. The developer of a proposed subdivision shall comply with all city, county and state regulations pertaining to the subdivision of land, installation of improvements and preparation and filing of subdivision plats.

7. *Procedures.* The procedure for review and approval of all subdivision plats shall be the same as, and done concurrently with, the planned development project of which the subdivision is a part.

8. Failure to commence subdivision within two years of project approval or one year of final permit approval from all appropriate regulatory bodies, whichever is less, unless otherwise approved by the governing body, shall cause the reversion of subdivided land to acreage. (Ord. 55-91, 7-22-1991)

The reversion of subdivided land to acreage shall be subject to the following regulations:

a. *Reversion by owner.* The owner of any land subdivided into lots may file for record a plat for the purpose of showing such land as acreage. Such plat and the procedure in connection therewith shall conform to the requirements of this ordinance, except that:

(1) No survey or certificate of any surveyor or engineer shall be required; provided, however, that the governing body shall require a survey of the exterior boundaries of the land and the placing of suitable monuments along such boundaries if it finds that the last preceding survey of record is faulty or inadequate or that insufficient monuments are in position along such boundaries.

(2) No improvements are required, except such as may be necessary to provide equivalent access, as provided by this section.

(3) No findings need be made as to the suitability of the land or as to the provision of public facilities and services.

b. *Reversion by governing body.* The governing body may, upon its own motion or recommendation by the Hearing Examiner, order the vacation and reversion to acreage of all or any part of a subdivision including the vacation of streets or other parcels of land dedicated for public purposes or any of such streets or other parcels, the plat of which subdivision was recorded as provided by law not less than one year before the date of such action, and in which subdivision or part thereof not more than 10% of the total subdivision area has been sold as lots by the original subdivider or his or her successor in title. Such action by the governing body shall not be taken until the Hearing Examiner has made the Hearing Examiner's recommendation finding that the proposed vacation and reversion to acreage of subdivided land conforms to the Comprehensive Plan of the area, and that the public health, safety, economy, comfort, order, convenience and welfare will be promoted thereby. Before acting on a proposal for vacation and reversion of subdivided land to acreage, the Hearing Examiner shall hold a public hearing thereon, with due public notice.

c. *Zoning requirements.* If land in a subdivision or part thereof is proposed for reversion to acreage, the governing body shall, upon the recommendation of the Hearing Examiner, and concurrently with the proceedings for vacation and reversion to acreage, conduct proceedings for any necessary zoning amendment as may be deemed advisable under its standards for rezoning in view of the conditions that will exist subsequent to such reversion to acreage. Any such zoning amendment shall be processed in accordance with the requirements of Article VIII, § 8.7, Amendments.

9. *Variances.*

The governing body may grant a variance to the subdivision regulations contained in this ordinance.

The governing body may grant a variance to the subdivision regulations whereby reason of the unusual shape of a specific piece of property, or whereby reason of exceptional topographical conditions, the strict application of the subdivision regulations contained in this ordinance would result in extreme practical difficulties and undue hardship upon the developer of such property; provided, however, that such relief may be granted without detriment to the public good and without substantially impairing the intent and purpose of the subdivision regulations or this ordinance. In granting such variances or modifications, the governing body may require such conditions that will substantially secure the objectives of the standards or requirements so varied or modified. Financial disadvantage to the property owner or developer shall not be sufficient grounds of hardship within the purpose of these regulations.

10. *Enforcement.* The subdivision regulation provisions of this ordinance shall be enforced in the following manner:

a. No plat or plan of a subdivision of land located within the jurisdiction of the City of Cape Coral shall be admitted to the records of Lee County or received or recorded by the County Clerk until said plat has received final approval in writing by the City Council as provided for in this ordinance. Admission to the County records shall not be construed as approval.

b. No board, public officer, or authority shall accept, lay out, improve, or authorize utilities to be laid in any street within the City of Cape Coral unless the street has been accepted by the city as a public street prior to the adoption of this ordinance, unless the street corresponds with a street shown on the major street plan, or unless the street is shown on a subdivision plat or a street plat which has been approved by the Commission or governing body as provided for in this ordinance.

c. No building shall be erected, or building permit issued, within any territory unless the requirements as provided for in the subdivision regulation provisions of this ordinance have been fulfilled, if applicable.

utility authorities is necessary to provide coordination of all underground utility service installation.

(4) *Storm drainage.* If the city deems it necessary for proper drainage within or through a subdivision, the Council shall require that a storm water easement or drainage right-of-way be provided.

12. *Required improvements approval.* The following tangible improvements are required as part of a subdivision:

a. *Monuments.*

(1) Metal or suitable concrete monuments at least 24 inches long with an approved diameter and suitable center point shall be properly set at each street intersection on the street right-of-way line, at changes in direction along street right-of-way lines, at each corner or change in direction on the boundary of the land being platted and at any other necessary surveying data point required on the final plat. The monuments shall be described in relation to the primary control points as required by F.S. Chapter 177 and as approved by the City Engineer.

(2) Metal pin monuments of an approved diameter and 24 inches long or suitable concrete markers shall be placed at all points on lot lines where there is a change of direction and at all lot corners.

b. *Streets.*

(1) *Grading specifications.* All streets and alleys shall be graded to their full widths by the developer so that pavements and sidewalks can be constructed on the same level plane. Deviation from this standard due to special topographical conditions will be allowed only with the special approval of the Council upon recommendation from city staff.

(a) *Preparation of the subgrader.* Before grading is started, the entire right-of-way area shall be first cleared of all tree stumps, roots, brush, and other objectionable materials and of all trees not intended for preservation. The subgrade shall be properly shaped, rolled, and uniformly compacted to conform with the accepted cross section and grades.

(b) *Cuts.* In cuts, all tree stumps, boulders, organic material, and other objectionable materials shall be removed to a depth of at least two feet below the graded surface. Rock, when encountered, shall be scarified to a depth of at least 12 inches below the graded surface.

(c) *Fills.* In fills, all tree stumps, boulders, organic material, soft clay, spongy material, and other objectionable material shall be removed to a depth of at least two feet below the natural ground surface. This objectionable matter as well as similar matter from cuts shall be removed from the surface. This objectionable matter as well as similar matter from cuts shall be removed from the right-of-way area and disposed of in such a manner that it will not become incorporated in fills or hinder proper operation of the drainage system.

(2) *Minimum pavement widths.* As established in the *City of Cape Coral Engineering Design Standards.*

(3) *Pavement specification for streets.* As established in the *City of Cape Coral Engineering Design Standards.*

(4) *Curbs and gutters.* As established in the *City of Cape Coral Engineering Design Standards.*

(5) *Sidewalks.* As specified in the *City of Cape Coral Engineering Design Standards.* The governing body may waive the requirements for sidewalks where such sidewalks are not deemed necessary for pedestrian safety and vehicular circulation.

(6) *Street name signs.* Durable street name signs, approved by the City Manager, shall be installed at all street intersections.

(7) *Street lights.* As established in the *City of Cape Coral Engineering Design Standards.*

c. *Utilities and drainage facilities.*

(1) *General requirements for installation of utilities.* Utilities shall be provided in rear lot easements wherever possible. When it is necessary to install utilities in street

rights-of-way and after grading is completed and approved, and before any pavement base is applied, all of the in-street underground work-water mains, gas mains, etc. and all service connections shall be completely installed and approved through the length of street and across the flat section. Where the utility mains are outside the pavement area, the developer may be allowed to omit the installation of service connections provided that at such time as these service connections are needed, they may be jacked or bored across the street without breaking or weakening the existing pavement. Where rock is known to exist beneath the pavement area and at such depth as to interfere with the jacking of service connections, the Council, upon recommendation by the City Engineer, shall require the complete installation of service connections before any base is applied. In cases where underground utilities must be provided within the right-of-way of streets, they should not be installed under the paved portions of such streets.

(2) *Water supply system.* Where, in the opinion of the city, the public water supply is reasonably accessible or available to the proposed subdivision, the developer shall construct a complete water distribution system which shall adequately serve all lots and which shall include appropriately spaced fire hydrants. This system shall be properly connected with the public water supply and shall be approved by the city and any appropriate state agency. Where a public water supply is not within a reasonable distance or otherwise available, the developer shall normally be required to construct a similar water distribution system and connect it with an alternate supply approved by the city and any appropriate state agency. If the city approves the use of individual wells, lot sizes shall conform with the requirements of any appropriate state agency and applicable law.

(3) *Sanitary sewers.* Where, in the opinion of the city, the public sanitary sewer system is reasonably accessible or available to the proposed subdivision, the developer shall construct a sanitary sewer system to adequately serve all lots. This system shall be properly connected with the public sanitary sewer system and shall be approved by the city and any appropriate state agency. Where lots cannot be served by the extension of an existing public sanitary sewer, the developer shall either obtain approval of lot sizes for individual septic tanks and disposal fields from the city and appropriate state agency, or obtain approval from the city and appropriate state agency for a neighborhood disposal system.

(4) *Storm drainage.* An adequate drainage system, approved by the city, including necessary open ditches, pipes, culverts intersectional drains, drop inlets, bridges, etc., shall be provided for the proper drainage of all surface water. Cross drains shall be provided to accommodate all natural water flow and they shall be of sufficient length to permit full width roadways and the required slopes.
(Ord. 24-16, 6-6-2016)

.6 *Development plan submission requirements.* Unless the Director determines that certain requirements are unnecessary, all development plans shall be prepared to include all of the following information:

A. *Graphic standards; general information.*

1. The development plan shall be of sufficient size to show all detail and shall be both stated and graphically illustrated by a graphic scale shown on every sheet;

2. Date, true north line and graphic scale;

3. Names and addresses of the owner, planner, architect, engineer or surveyor;

4. Name and statement of intent of the project including all requested approvals;
(Ord. 55-91, 7-22-1991)

5. General location and vicinity map including relationship of proposed project site to surrounding land uses, community facilities and major streets;

6. Legal description;

7. Certified boundary survey;

8. All dimensions, angles, bearings, and all similar data on the plan shall be tied to primary control points approved by the City Engineer; location and description of said control points shall be given. All dimensions shall be

shown to the nearest one-hundredth of a foot. Bearings or deflection angles, radii, arcs, and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown;
(Ord. 55-91, 7-22-1991)

9. Location and description of all monuments; and

10. Names and locations of adjoining subdivisions, development projects, unplatted properties, and streets within unincorporated Lee County, and the names and addresses of the property owners of said properties.
(Ord. 55-91, 7-22-1991)

B. *Existing site conditions.*

1. Acreage of land within the project;

2. Contours at an interval of not greater than one foot;

3. Boundary lines of the project and their bearings and distances;

4. Existing and proposed easements and their locations, widths and distance, as well as existing structures;

5. Streets and waterways on and adjacent to the project, their names, widths and other dimensions as may be required;

6. The location, size and depth of all existing utilities;

7. Flood protection elevation data and flood zone boundary lines delineated, if applicable;

8. The type, location and approximate size of all existing trees or tree groupings; and

9. Any other significant existing features as may be required by the Director.

C. *Proposed site design.* The development plan shall also show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following:

1. *Subdivision.*

a. Lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use;

b. Project boundary lines, right-of-way lines of streets, waterways, easements, and other right-of-way;

c. Certification of title and dedication, on plat, identifying the owner and containing a statement by such owner dedicating streets, rights-of-way, and any other sites for public use, if any; (Ord. 8-15, 4-7-2015)

d. Certification by the City Engineer that a surety bond, certified check, or other guarantee has been posted with the city in sufficient amount to assure the completion of all such required site improvements;

e. Certificate of approval for recording, on plat, suitable to be signed by the Mayor, as applicable, to indicate that the plan has been approved for recording; and

f. Any other appropriate certification required by the governing body under this ordinance or necessary to comply with F.S. Chapter 177.
(Ord. 55-91, 7-22-1991)

2. *Site plan.*

a. As required in § 4.4.10.

D. *Supplementary information.* The following supplementary material shall accompany the development plan:

1. Whenever part of a tract of land is proposed as an immediate project and additional parts of the tract are intended to be proposed as project phases in the future, a phase plan for the entire tract shall be submitted at the same time the development plan for the first part of the tract is submitted and said phase plan shall identify size, location, sequence and timing of the various phases of the development.

2. Proposed method of assuring the provision and permanent maintenance of areas required for landscaping, screening and common uses, including a proposed statement of such assurance that the coordinated development of the site will be compatible with the surrounding area.

3. Proposed method of assuring the perpetual ownership and maintenance of areas within the project that are to be used for open space, recreational or other common or quasi-public purposes, including a detailed statement of such assurance, including covenants, agreements or other specific documents as required.

4. Copies of proposed restrictions or protective covenants, if any.

5. The Hearing Examiner may also require that the developer provide additional supporting data such as economic justification, financing and construction scheduling, topographic data or similar information when deemed necessary for project review.

6. Proposed construction plans and specifications for utilities and street improvements, buildings, parking areas, access roads and other required project improvements including cross sections, profiles and grades drawn to city standard scales and elevations shall be submitted to the City Manager for review and approval after the applicant has received conditional approval of the development plan and prior to the construction or installation of any required or proposed project improvements or special conditions.

7. In the case of development plats submitted in connection with subdivisions of lands, all requirements of F.S. Chapter 177 shall apply. (Ord. 24-16, 6-6-2016)

.7 *Noncompliance.* The Director shall review all final development plans and subdivision plats, except those for which all conditions have been permanently satisfied, periodically and shall have the power to inspect the land or structure where the project is located in order to ascertain that the owner is complying with all of the conditions of the final development plan and subdivision plat approval. If the owner is not complying with all of the conditions of the final development plan and/or subdivision plat, the Director shall notify the owner of such violations and shall order that such violations cease. If the owner does not take appropriate steps to remedy such violations within 30 days from the date of written notice, the Director may authorize any appropriate officer, bureau, department or agency to disconnect utilities serving the premises in violation. If necessary, the governing body, or any appropriate official of the governing body, may institute appropriate action or proceedings in a civil action in the local court of record to eliminate the threat or existence of any violation of an approved and recorded final development plan in accordance with F.S. Chapter 163 and the City's Charter as well as to revoke the final development plan authorized and/or to compel offending structures or uses removed at the cost of the violator and may have judgment in persona for such cost. (Ord. 16-07, 4-23-2007)

§ 4.3 Mobile home planned development projects.

.1 *Purpose and intent.* The purpose of this section is to provide for planned residential mobile home developments by allowing mobile home planned development projects (MHPDP) to be established. The intent of this section is to allow for adequate lot sizes, recreation, open space and buffering to support the higher intensity of use permitted for mobile homes.

.2 *Definitions.* For the purpose of this section, the following definitions shall apply.

A. ***MOBILE HOME.*** A detached single-family living unit which possesses all of the following characteristics:

1. Normally is identified by the manufacturer as a mobile home and/or displays a motor vehicle license plate identifying it as a mobile home;

2. Designed to be transported after fabrication on its own wheels;

3. Designed primarily for long-term occupancy, and containing sleeping accommodations, a flush toilet, a tub or shower bath and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems;

4. Normally arrives at the site where it is to be occupied as a complete unit, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connection to utilities, and the like;

may be applicable to certain developments and/or uses:
(Ord. 35-99, § 7, 6-3-1999)

1. *Standards for non-paved areas.*

a. Up to 50% of the off-street parking requirements for the following uses may be satisfied by use of clearly identified non-paved parking areas:

(1) Agriculture or farming uses;

(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.

b. Non-paved parking areas shall be graded and covered with sod to provide a surface that is durable and stable and will also assist in managing stormwater as well as reduce dust and erosion.

D. *Drainage.* Design and construction of all parking structures 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 and/or right-of-way(s) prior to treatment. The developer shall be responsible for obtaining all required permits.

.5 *Appeals.*

A. *Generally.* Any person aggrieved by the final order or decision of the Director in enforcement or interpretation of the provisions of this section may appeal such order, requirement, decision, or determination to the Hearing Examiner provided that a written notice of appeal is filed within 30 days after the date of the action appealed from. The notice of appeal shall be considered filed when it is received by the Department of Community Development.

B. *Powers.* The Hearing Examiner may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in the Hearing Examiner's opinion ought to be made in the case before it. To this end, the Hearing Examiner shall have all the powers of the authority from whom the appeal is taken. The Hearing Examiner's powers on appeal also shall be limited to the powers of the authority from whom the appeal is taken so that the Hearing Examiner shall have the power to reduce the number of parking spaces to be required only in accordance with the terms of the Land Use and Development Regulations. Furthermore, with respect to parking requirements pursuant to the Land Use and Development Regulations, the Hearing Examiner shall have only the power to hear appeals concerning the reduction in such parking requirements. The reduction of parking requirements provided in the Land Use and Development Regulations shall be the only reductions available for off-street parking spaces for developments. Neither the variance procedures nor "variances" themselves shall be available for the purpose of reducing the number of parking spaces to be required for a development.
(Ord. 24-16, 6-6-2016)

.6 *Special regulation for condition of parked vehicles.* 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 located in the development shall be permitted on or within any required off-street parking area.

.7 *Table of parking standards.* The following Table of Parking Standards identifies the number of parking spaces which shall be required for each use except as otherwise provided in the Land Use and Development Regulations (such as in the downtown zoning district(s)). Use classifications referenced in the Table of Parking Standards are identical to the use classifications identified and referenced in the Table of Permitted Uses.
(Ord. 91-05, 11-14-2005; Ord. 15-12, 9-10-2012)

A. *Automotive.*

Land Use Classification	*Parking Standard*
Automotive service stations or automotive	Two spaces per bay plus one space
Repair and service	per employee. Additional spaces required for accessory uses
Car wash	One space per employee plus required stacking spaces

B. *Entertainment.*

Land Use Classification	*Parking Standard*
Bowling alleys	Four spaces per lane plus additional spaces for any eating establishment
Clubs, fraternal, or membership organizations	One space per 300 sq. ft. of gross leasable floor area (GLFA)
Golf courses	36 spaces per nine holes plus one space per 200 sq. ft. of building area
Golf driving range	One space per tee plus one space per 200 sq. ft. of building area
Miniature golf	Three spaces per hole plus one space per 200 sq. ft of building area
Tennis courts, commercial	Four spaces per court plus one space per 200 sq. ft. of building area

C. *Institutional care facilities.*

Land Use Classification	*Parking Standard*
Health care facilities Groups I and II	One space per 300 sq. ft. of gross leasable floor area (GLFA)
Health care facilities Group IV	One space per 300 sq. ft. of gross leasable floor area (GLFA)
Social services Groups III and IV	One space per four beds
Funeral homes	One space per four seats or one space per 25 sq. ft. of chapel area, whichever is greater, plus one space per employee
Day care facility	One space per 300 sq. ft. of gross floor area plus one space per employee
Educational institutions	
Elementary and middle schools	One space per 25 classroom seats
High school	One space per ten classroom seats
College, university, trade, and vocational institutions	One space per ten students based on design capacity
(Where public use lan auditorium or place assembly within a school is likely an additional one space for each six seats shall be provided)	
Places of worship and religious facilities	One space per four seats
Public places of assembly	
Theaters	One space per 300 sq. ft. of gross leasable floor area (GLFA)
Auditoriums	
Stadiums/arenas	
Museums	
Art galleries	
Libraries	
Other similar uses	

D. *Manufacturing.*

Land Use Classification	*Parking Standards*
Manufacturing and processing	One space per employee based on largest shift or one space per 1,000 square feet of gross leasable floor area (GLFA), whichever is greater

natural feature, which due to its nature, would preclude open landscaped areas.

(4) Buffer yard areas may not be located on any portion of an existing or dedicated street right-of-way or roadway easement.

D. *Irrigation.* All landscaping shall contain an automatic irrigation system. All required irrigation systems shall be designed to minimize the application of water to impervious areas, including roads, drives and other vehicle areas. Required irrigation shall also be designed to avoid damage to existing native vegetation from over watering or from physical conflicts with plant roots. The following standards shall apply to the design, installation and maintenance of the irrigation systems:

1. The irrigation system shall be properly maintained and operated consistent with watering schedules established by the South Florida Water Management District, or the City of Cape Coral, whichever is more restrictive.

2. Existing native plants are exempt from this requirement.

3. Automatic control systems shall be equipped with an operable rain sensor or other devices, such as soil moisture sensors, to prevent unnecessary irrigation.

(Ord. 27-13, 11-25-2013)

.14 *Tree credits.*

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 yard 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 § 5.2.10. 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 § 5.2.8 that are preserved on a site, and that are properly protected prior to and during the course of development activities, can 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, but are not limited to, land clearing, construction, grading, or placement of fill. Canopy trees that exceed the minimum size required by § 5.2.10 are credited at the following ratios for existing canopy trees:

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's list of Category I or Category II invasive exotics, as may be amended.

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 that are properly protected prior to and during the course of development activities, can 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.

.15 *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, but not limited to the following:

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; and

2. Trees, palm trees, shrubs, and tree bed(s) shall be kept free of refuse, debris, and disease; and

3. Nonliving materials shall be maintained in good condition at all times.

4. Shrubs planted in non-residential and mixed-use development 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 on the approved landscape plan, 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, or their successor, 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's 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 but not limited to 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, but are not limited to the following:

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.

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 § 5.2.15.D.2.

D. *Nonconforming landscaped areas.*

1. *Legal nonconforming landscaped areas established.* All landscaped areas within the City of Cape Coral which were lawful prior to the adoption of § 5.2 of the City of

Cape Coral Land Use and Development Regulations, or the adoption of any subsequent amendment to the City of Cape Coral Land Use and Development Regulations 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, but not limited to, buffer yards, shall be maintained in accordance with approved landscape plans, as modified by requirements of any approval for 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 can request approval of an amended landscape plan meeting the minimum requirements pursuant to § 5.2.15.

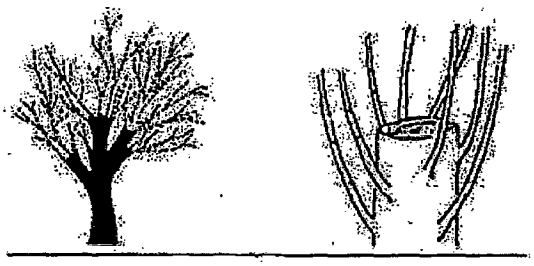
b. For single-family and duplex sites, nonconforming landscaped areas shall be maintained in accordance with landscape regulations in effect at the time of issuance of the original building permit for the primary structure.

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).

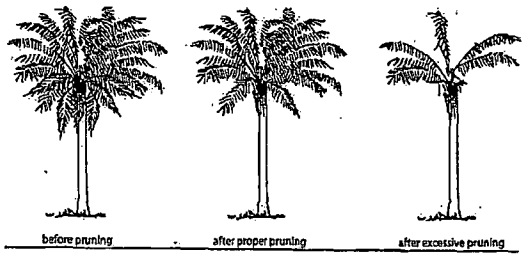
2. Trees required by regulations in effect at the time of site development shall not be pruned so as to include topping of trees through removal of crown material or the central leader, or any other similar procedure to permanently limit growth to a reduced height or spread or that cause irreparable 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 § 5.2.10. A tree's growth habit shall be considered in advance of conflicts that might arise (i.e. signage, power lines, sidewalks, buildings, and similar conflicts).



Excessively pruned trees

F. *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.



(Ord. 24-16, 6-6-2016)

.16 *Planting in medians.*

A. *Permits.*

1. *Required.* It shall be unlawful for any person to place any landscape material, including, but not limited to 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 Manager, or the City Manager's designee.

2. *Application.* An application for a permit shall be submitted on a form provided by the city. The application shall include, but shall not necessarily be limited to the following information:

a. A general vicinity map showing the nearest intersecting streets;

b. The location of existing public and private utilities, including but not limited to overhead power lines and drainage facilities, within 20 feet of the median;

c. A planting plan showing all pertinent dimensions, the location of existing plant materials, with indication if they are to be removed, the location of proposed plant materials indicating the size and species, the location of existing or proposed hardscape materials, the proposed irrigation plan and source of water;

d. A description of the proposed monthly maintenance schedule and who is proposed to perform the maintenance;

e. Any additional information reasonably required by the city because of unique circumstances of the project; and

f. A non-refundable application fee, if any, established by the City Council.

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 § 5.2.9 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, but not limited to, 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, but are not limited to, one or more of the following:

3. All expenses incurred by the city for removal of such trees, palm trees, shrubs, and tree bed(s), for any reason, shall be the responsibility of the subject property owner.

4. If, for any reason, such trees, palm trees, shrubs, and tree bed(s) are removed, the person or entity who owns the property abutting the portion of the lateral right-of-way along a city street in which the plantings and tree bed(s) were placed 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 his or her agent or by the city pursuant to this section.

.19 *Deviations.*

A. Deviations from the provisions of this section may be approved by the Hearing Examiner (or the City Council in PDPs that require the approval of the City Council and as further provided herein) 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 Hearing Examiner (or the City Council, when applicable) 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, and the effect the requested deviation would have on the community appearance. Additionally, the Hearing Examiner (or the City Council, when applicable) 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 literal conformity with the regulations would inhibit innovation or creativity in design, the Hearing Examiner (or the City Council, when applicable) may approve the request for deviation(s) if the applicant demonstrates that the design of the landscaping 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 Hearing Examiner (or the City Council, when applicable) 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. For purposes of this section, indicia of unique and innovative design may include, but are not limited to, the following:

1. Landscape 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. Plant massing that evokes 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 therefore shall be set forth by the applicant in the application for deviation and shall

be accompanied by documentation including, but not limited to, a narrative that clearly defines the section(s) of the regulations of the requested deviation, a narrative explanation as to the reason for the requested deviation and why it should be approved, sample detail drawings, 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. For deviations to avoid unnecessary or undue hardship, the Hearing Examiner (or the City Council, when applicable), 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 Hearing Examiner (or the City Council, when applicable), shall approve deviations necessary to enhance the unique and innovative design. The Hearing Examiner (or the City Council, when applicable) 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.

F. Deviations shall be heard by either the Hearing Examiner (or the City Council, when applicable) under the following circumstances:

1. When a Planned Development Project (PDP) development order is not in effect and no application for a PDP development order is pending with the city for a particular development or property, then the Hearing Examiner shall hear and determine the request for deviation(s).

2. In the event a PDP application is pending with the city, and a request for deviation(s) is submitted that would affect all or any part of the property that would be subject to the PDP development order, if it were to be approved, then the request for deviations shall be reviewed and heard by the body that would review and hear the PDP application pursuant to the regulations for PDP approval. In the event a request for deviation(s) is pending with the city, and an application for a PDP development order is filed with the city that would affect all or any part of the property for which deviation(s) to the requirements of this section are sought, then the request for deviation(s) shall be heard by the body that would review and hear the PDP pursuant to the regulations for PDP approval. The deviation(s), if approved, may or may not, in the discretion of the body approving them, be included in the PDP development order.

3. If all or any part of the property for which a deviation is requested is currently regulated by a PDP, an application may be submitted for a deviation without requiring an amendment to the PDP; however, the application for deviation must be reviewed and considered for adoption by the same governing body that adopted the PDP. If the PDP was adopted by the Hearing Examiner, then the deviation must be reviewed and considered for adoption by the Hearing Examiner. If the PDP was adopted by the City Council, then the deviation must be reviewed for recommendation by the Hearing Examiner, then reviewed and considered for adoption by the City Council.

4. If all or any part of the property for which an application for a PDP development order is filed has previously been approved for one or more deviation(s) to the requirements of this section, then the previously approved deviation(s) may be reconsidered by the body considering the PDP development order, subject to the conditions identified herein. The deviation(s) may be revoked, amended, or remain unchanged by the body hearing the PDP application provided, however, that a deviation shall not be revoked for any building on the site that has either been completed or so substantially constructed that

revocation of the deviation at the time the PDP development order is considered would be impracticable and would be unduly burdensome on the property owner. The body hearing the application for the PDP development order may amend previously approved conditions and may impose additional conditions of approval in consideration of the deviation(s) previously approved, as a condition of the PDP development order or the continuation of any previously approved deviation(s).

G. Appeals by any person aggrieved by a decision concerning a requested deviation are governed by § 8.9 of the Land Use and Development Regulations.

(Ord. 107-07, 9-21-2009; Ord. 15-12, 9-10-2012; Ord. 63-15, 1-25-2016; Ord. 24-16, 6-6-2016)

§ 5.3 Reserved.

§ 5.4 General environmental control criteria and performance standards.

The general criteria and standards contained herein are designed to ensure that all structures and uses will be properly located and will have a minimal adverse impact on the natural environment and their surroundings. The Director shall determine that the development proposed meets the environmental control criteria and performance standards and that the applicant has:

.1 The financial capacity and technical ability to meet federal, state and local air and water pollution control standards and has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies;

.2 Made adequate provision for parking and traffic movement from the development site onto public streets;

(Ord. 35-99, § 8, 6-3-1999)

.3 Made adequate provision for fitting development harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the surrounding areas; and

.4 Made adequate provisions to ensure that the development will be built on soil types which are suitable to the nature of the undertaking.

§ 5.5 City right-of-way reservation and acquisition standards.

.1 *City Council responsibility for municipal road system.* The City Council is invested with the general maintenance, superintendence and control of both the municipal roads and structures within the city, and it may establish rights-of-way for new roads. The City Council is responsible for establishing the design (alignment, right-of-way widths, grade, etc.) of such new roads and structures within the city.

.2 *Design and City Council approval of a right-of-way notification map.*

A. That the City of Cape Coral Public Works Department shall prepare the design of the Right-of-Way Notification Map. The Notification Map shall include the centerline location of the proposed right-of-way, the existing right-of-ways, the existing plat of all properties within 500 feet of the proposed centerline and the land use of all property affected by the proposed Right-of-Way Notification Map.
(Ord. 91-91, 10-28-1991; Ord. 1-08, § 3, 3-10-2008)

B. The City Council by ordinance may approve Right-of-Way Notification Map for any road within the city's jurisdiction. Prior to the approval by the City Council of any Right-of-Way Notification Map, the proposed Right-of-Way Notification Map shall be reviewed by both the City of Cape Coral Planning and Zoning Commission/ Local Planning Agency. The City of Cape Coral Planning and Zoning Commission/Local Planning Agency shall review the proposed map and provide any recommendations to the City Council on the proposed Right-of-Way Notification Map. Any such maps shall clearly delineate the limits of proposed rights-of-way for either the eventual widening of an existing road or the limits of proposed rights-of-way for the construction of a new road. Before approving or disapproving such map, the City Council shall advertise, hold a public hearing and shall notify all property owners of record within 500 feet of any proposed right-of-way, as recorded in the Property Appraiser's Office. The public hearing shall be advertised pursuant to the requirements of the City of Cape Coral Charter, Article IV, Government, § 4.18, Ordinance in General. If the map is approved by the City Council, the City Clerk shall forthwith record the map in accordance with F.S. Chapter 177 in the Public Land Records of the county.
(Ord. 91-91, 10-28-1991; Ord. 1-08, § 3, 3-10-2008)

C. Failure by the City of Cape Coral to comply with the requirements of this ordinance shall not effect the city's right to acquire the effected property.
(Ord. 91-91, 10-28-1991)

§ 5.6. Non-residential design standards.

The appearance of non-residential and compound-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.

.1 *Intent.* The intent of this section is to establish reasonable design standards that apply to non-residential and compound use development, which will serve to provide the builder/developer with both flexibility and a diversity of design options, and ensure that all development within the City of Cape Coral is of consistent high quality and character. Regulation of site layout and architectural features and patterns is intended to ensure that future non-residential developments and compound use buildings will have a high level of overall aesthetic appeal and visual interest, thereby promoting the City of Cape Coral as an attractive destination for tourists and residents and supporting its economic vitality while also protecting the health, safety, and welfare of the public.

.2 *Applicability.*

A. The non-residential and compound-use design standards of this section shall apply to all non-residential and compound use development for which application for Planned Development Project (PDP) approval, site plan approval, or a building permit is made after December 1, 2008, except development within the Downtown zoning district(s) or the Industrial zoning district.
(Ord. 15-12, 9-10-2012)

B. These design standards shall also apply to development of outparcels of shopping centers and other developments when the application for PDP approval, site plan approval, or building permit approval for outparcels is made after December 1, 2008. However, where development of the main parcel or parcels was approved prior to December 1, 2008, such development on the outparcels shall not be required to comply with standards for consistency of architectural style, detail, and trim features if no consistency of architectural style, detail, and trim features exists, or if such consistency would not conform to other provisions of this section, and shall not require modification of previously approved design features of the development on the main parcel(s).

C. These design standards shall also apply to existing development, not including development within the Downtown zoning district(s) or Industrial zoning district, if a building's gross floor area is increased by 50% or more.

.3 *Exemption.* 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, such as a character overlay district; unless the specific design standards otherwise expressly state their applicability. In addition, the City Council may require, in a Planned Development Project (PDP) development order, design standards that exceed the requirements of this section for an individual project when the Council determines that such enhanced design standards would be in the best interest of the public health, safety, and welfare. Similarly, the Hearing Examiner may require, in a Planned Development Project (PDP) development order that does not require the approval of the City Council, design standards that exceed the requirements of this section for an individual project when the Hearing Examiner determines that such enhanced design standards would be in the best interest of the public health, safety, and welfare.

.4 *Conflicts.* If any of the non-residential and compound-use design standards of this section conflict with any other provision of the City of Cape Coral Code of Ordinances or Land Use and Development Regulations, 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.

.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 but not limited to 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. *Buildings Facing Public Streets.* On a site that abuts a collector or arterial street, any portion of a building wall which is located not more than 250 feet from and that faces a collector street or an arterial street, shall have either at least 25% glazing or a percentage of glazing that is no less than the percentage of glazing of whichever other wall of that building has the highest percentage of glazing, whichever is less. Glazing applied as a veneer may be credited for this design element.

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.

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.

.8 *Roofs.*

A. To minimize the bulky, boxy shape of rooftop equipment, including but not limited to air-cooled condensing and/or compressor equipment, water cooling towers, fans, blowers, and other mechanical or service equipment or apparatus installed on roofs of buildings other than attic vents or solar panels, all rooftop equipment shall be screened on all sides in a manner consistent with the architectural design of the building. Such screening shall be at least as high as the highest portion of the equipment or apparatus being screened.

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.

C. All non-residential and compound use buildings are required to 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:

1. Decorative parapets;

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);

3. Varied roof lines with different roof heights and or separate/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's ridge line with a minimum change in elevation of two feet.

D. Roofs covering gas pumps. Roofs that cover gas pumps, whether free-standing or attached to another building, shall have a pitched roof with a minimum pitch of 4/12 over the gas pumps. A roof with a pitch of 4/12 would have a minimum slope of 18.5%. Unless a roof with an alternative design is approved by the DCD Director or his designee, all roofs are required to possess a pitched roof with a minimum pitch of 4/12. The DCD Director or his designee shall consider the following two criteria in determining whether to approve a roof with an alternative design:

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.

.9 *Equipment and Loading Areas.*

A. For all non-residential and compound use developments in the city, air conditioning and heating equipment, tanks used to store fuel or other liquid or gas, and electric meters shall be located or screened so as not to be visible from any property line abutting a public street other than an alley when viewed along a line perpendicular or radial to such property line.

Screening shall consist of a wall, fence, or plant material, or any combination thereof. Fences used for screening shall not be constructed of chain link with or 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.

B. For properties located adjacent to a residential future land use classification, all loading areas shall be located or screened from all property lines abutting the residential future land use classification 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. For purposes of this subsection, a property shall be deemed to be adjacent to a residential future land use classification only when all or part of the property line abuts a residential future land use classification or when the property is separated from such future land use classification only by an alley, canal, basin, lake, or other waterway. Properties that are entirely separated from a residential future land use classification by any public right-of-way (excluding alleys and canals, basins, lakes or any other waterway) shall not be deemed adjacent to such residential future land use classification.

.10 *Deviations.*

A. Deviations from the provisions of this section may be approved by the Hearing Examiner (or the City Council in PDPs that require the approval of the City Council and as further provided herein) 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 Hearing Examiner (or the City Council, when applicable) 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 Hearing Examiner (or the City Council, when applicable) 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 literal conformity with the regulations would inhibit innovation or creativity in design, the Hearing Examiner (or the City Council, when applicable) may 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 Hearing Examiner (or the City Council, when applicable) 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. For purposes of this section, indicia 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, but not limited to, 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 Hearing Examiner (or the City Council, when applicable) 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 Hearing Examiner (or the City Council, when applicable) 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.

F. Deviations shall be heard by either the Hearing Examiner (or the City Council, when applicable) under the following circumstances:

1. When a Planned Development Project (PDP) Development Order is not in effect and no application for a PDP Development Order is pending with the city for a particular development or property, then the Hearing Examiner shall hear and determine the request for deviation(s).

2. In the event a PDP application is pending with the city, and a request for deviation(s) is submitted that would affect all or any part of the property that would be subject to the PDP Development Order, if it were to be approved, then the request for deviations shall be reviewed and heard by the body that would review and hear the PDP application pursuant to the regulations for PDP approval. In the event a request for deviation(s) is pending with the city, and an application for a PDP Development Order is filed with the city that would affect all or any part of the property for which deviation(s) to the requirements of this section are sought, then the request for deviation(s) shall be heard by the body that would review and hear the PDP pursuant to the regulations for PDP approval. The deviation(s), if approved, may or may not, in the discretion of the body approving them, be included in the PDP Development Order.

3. If all or any part of the property for which a deviation is requested is currently regulated by a PDP, an application may be submitted for a deviation without requiring an amendment to the PDP; however, the application for deviation must be reviewed and considered for adoption by the same governing body that adopted the PDP. If the PDP was adopted by the Planning and Zoning Commission or Hearing Examiner, then the deviation must be reviewed and considered for adoption by the Hearing Examiner. If the PDP was adopted by the City Council, then the deviation must be reviewed for recommendation by the Hearing Examiner, then reviewed and considered for adoption by the City Council.

4. If all or any part of the property for which an application for a PDP Development Order is filed has previously been approved for one or more deviation(s) to the requirements of this section, then the previously approved deviation(s) may be reconsidered by the body considering the PDP Development Order, subject to the conditions identified herein. The deviation(s) may be revoked, amended, or remain unchanged by the body hearing the PDP application provided, however, that a deviation shall not be revoked for any building on the site that has either been completed or so substantially constructed that revocation of the deviation at the time the PDP Development Order is considered would be impracticable and would be unduly burdensome on the property owner. The body hearing the application for the PDP Development Order may amend previously approved conditions and may impose additional conditions of approval in consideration of the deviation(s) previously approved, as a condition of the PDP Development Order or the continuation of any previously approved deviation(s).

G. Appeals by any person aggrieved by a decision concerning a requested deviation are governed by § 8.9 of the Land Use and Development Regulations.

(Ord. 84-07, 5-12-2008; Ord. 62-15, 1-25-2016; Ord. 24-16, 6-6-2016)

§ 5.7 Development incentive program.

.1 *Intent.* The purpose of the development incentive program (DIP) is to encourage developers to provide development features that are not mandatory, but which would provide benefits to the community in which the development is located. Developers are encouraged to provide the creditable features by enabling them to qualify for densities and intensities that exceed the baseline densities and intensities specified by the zoning district. This program is available only to development within zoning districts which specifically allow participation in the DIP. The DIP is not applicable within any downtown district.

.2 *Framework.* Participation in the DIP is voluntary. The city allows increased densities and or intensities, in return for creditable features that a developer provides. The maximum density and/or non-residential intensity floor area ratio (FAR) allowed within the zoning district in which the project is located shall not be exceeded. The creditable features are attributes of a project that will provide benefits to the community but which the city does not wish to require of every developer. There are nine categories of creditable features. The increase in density and/or non-residential intensity provided by the program is commensurate with a point system provided herein. Site and/or area-wide constraints, public facility capacity limitations, and/or regulatory controls may limit the achievement of densities and intensities offered under this program.

.3 *Public Improvement Fund (PIF).* The Public Improvement Fund (PIF) is established to fund facilities and infrastructure enhancements to mitigate effects of increasing densities or intensities in the general vicinity where such increased densities and/or intensities are approved. Contributions to the city's Public Improvement Fund (PIF) can be made in accordance with the Development Incentive Program Table of Creditable Features. Contributions collected under PIF will be used by the city to make public improvements along corridors where developments achieve additional development through awards under this category. Monies from the PIF may be used for, but are not limited to, the following types of public improvements: public parks, bike and or pedestrian paths, greenbelt and nature trails, plantings, government facilities and infrastructure improvements. The City Manager shall prepare and submit to the City Council an annual report on the status of the Public Improvement Fund (PIF). The report shall include the fund balance and describe improvements funded. The City Council shall approve all expenditures of PIF, consistent with existing financial policies and requirements.

.4 *Exceeding baseline residential density and intensity limitations.* For each dwelling unit per acre in a project that would exceed the baseline density, the project would need to qualify for 100 credit points. For each increase of 0.1 FAR per acre exceeding the baseline FAR, the project would need to qualify for 100 credit points. The

Development Incentive Program *Categories and Creditable Features*	
Type of Feature	*Points*
Category 7 -- Enhanced waterfront access and use	
Waterfront Access. Credit is available only to properties with frontage on a natural waterway, a platted waterway, or on a private lake consisting of at least 15 contiguous acres measured at mean water table.	40 points for each percent of the total area of the site with frontage donated to the city.
	25 points for each percent of the total land area of the site land allocated to public waterfront access for which an properties with frontage on a natural easement, at least 6 feet in width, is waterway, a platted waterway, or on a private lake consisting of at least 15 contiguous acres
	7 points per percent of the total site developed with quasi-public use area, such as restaurants or commercial recreational facilities (not including residential units or hotel rooms) enhanced by a view of water, but for which no access easement is provided.
Category 8 -- Public Improvement Fund	
Funds contributed to Public Improvement Acreage Fund shall be rounded to the nearest tenth of an acre.	1 point for every $100 per acre
Category 9 -- Land Assembly	
Assembly of 3 acres or more of platted lots of less than 20,000 square feet and consisting of at least 250 feet in depth along at least the 50% of the site's frontage. Credit can be awarded, regardless of the time of assembly, for any platted lots on a subdivision recorded prior to 2007. Parcels platted consisting of 20,000 feet or more, are not eligible for such credit, even if assembled with parcels less than 20,000 square feet, but may be used to meet the depth requirement.	The following credit shall be awarded, based on that actual area of lands platted as parcels less than 20,000 square feet, regardless of the total area of the site: 175 points per acre for 3—4.99 acres 235 points per acre for 5—9.99 acres 290 points per acre for 10 or more acres

2. In the event that a particular feature is not listed anywhere in Table of Development Incentive Program Table of Creditable Features, the feature may be reviewed in accordance with the creditable feature with the most similar identifiable characteristics, if the Director determines that the feature is substantially consistent with the spirit and intent of the DIP.

.6 *Standards for approval of enhanced density and/or enhanced intensity pursuant to the DIP.*

A. For any development project for which an increase in density and/or intensity is sought, the development incentive proposals and the issue of any increased density and/or intensity shall be determined by the City Council in the form of a resolution. A request for increased density and/or intensity shall be submitted to the Department of Community Development, reviewed by all applicable department(s) and the Hearing Examiner. Following such review, the request and the recommendations of the department(s) and the Hearing Examiner shall be considered by the City Council.

B. If the City Council approves the request for enhanced density and/or intensity pursuant to the DIP, the applicant may be required to enter into an agreement to be recorded with the County Clerk of Courts, guaranteeing the provision of creditable features in a timely manner. Any such agreement shall not be considered sufficient until approved by the City Attorney as to legal form and effect.

C. In the event the City Council approves the request for enhanced density and/or intensity for a project that is proposed to be a planned development project, such approval shall be made prior to consideration of the PDP, and shall be contingent on the approval of a PDP for the subject development by either the City Council or the Hearing Examiner. In the event the City Council approves the request for enhanced density and/or intensity for a project that is not proposed to be a planned development project, such approval shall be made prior to approval of any site plan for the development.

D. All site plan, development plan, and building permit approvals within developments for which Council has approved enhanced density and/or intensity must be substantially consistent with the application materials for which such enhanced density and/or intensity was reviewed and approved. No development for which City Council has approved enhanced density and/or intensity shall substantially deviate from the application materials which supported the award of the enhanced density and/or intensity. Substantial deviations include, but are not limited to:

1. Any change which requires a variance to code not contemplated at the time of approval of enhanced density and/or intensity;
2. An increase of more than 5% in parking requirements, trip generation rates, water or sewer usage, or building square footage; and
3. Significant modification to the juxtaposition of structures, uses, access, parking areas, service areas, or significant modification of building heights, elevations, materials, or architectural features.

E. All creditable features used for the basis of approval for increased density and/or intensity above the baseline density and/or intensity shall remain in place throughout the life of the development, unless such basis of approval for increased density and/or intensity is rescinded or amended by the city. Except as otherwise provided herein, the owner, of the real property on which density and/or intensity above the baseline density is approved shall be responsible for maintaining any such creditable feature in good condition and in accordance with any conditions of approval throughout the life of the development. Such maintenance responsibility of said owner shall not apply for creditable features which are donated or dedicated to the city or for which the city has approved alternative responsibility provisions. Failure to comply with this requirement shall constitute a violation of the City of Cape Coral's Code of Ordinances, and would subject the aforementioned party to any penalty imposed by law.

F. Approval of an increase in density and/or an increase in intensity runs with the site plan or PDP development plan and is transferable to any future owner of the land, but it cannot be transferred to a different site or a different project on the same site. If a site plan or PDP development plan expires, any award of increased density and/or intensity also expires at the same time.

G. Expiration. Approval of enhanced densities or intensities pursuant to the development incentive program expires and becomes null and void, as follows.

1. Projects not required to be approved by a planned development project (PDP). For projects not required to be approved by a PDP, if substantial physical development does not occur within 24 months from the date of approval of enhanced densities or intensities pursuant to the Development Incentive Program, the approval of such densities or intensities expires and becomes null and void.
2. Projects that are required to be approved by a planned development project (PDP). For projects that are required to be approved by a PDP, approval of enhanced densities or intensities pursuant to the development incentive program expires if any one of the following occur:

a. If a PDP is not approved within 24 months from the date of approval of enhanced densities or intensities pursuant to the development incentive program;

b. If substantial physical development does not occur as specified in the PDP development order, or

c. If the developer fails to comply with any conditions pursuant to maintaining the effective period of enhanced densities or intensities pursuant to the development incentive program, as specified in the PDP development order.

d. Prior to the expiration of the original approval of enhanced densities or intensities pursuant to the development incentive program, the applicant may apply to Council for a one year extension of approval of enhanced densities or intensities pursuant to the development incentive program.
(Ord. 24-16, 6-6-2016)

.7 *Applications for the development incentive program (DIP).* To apply for additional density and/or intensity through the DIP, an application shall be submitted to the City of Cape Coral Department of Community Development. The application shall be accompanied by a fee in an amount set by the City Council that shall be adequate and reasonable for the administrative expenses incurred by the city in the review of the application. Unless the Director determines that certain requirements are unnecessary due to the type of proposed improvement or amenity, the application shall contain the following information, at a minimum.

A. The application shall be on a form supplied by the Department of Community Development and shall include the names and addresses of 100% of the property owners. It shall also include the names and addresses of any planner, architect, engineer or surveyor for the applicant, and shall identify the existing zoning and land use districts. The application shall be executed and submitted by the owners of 100% of the property.

B. The application shall be accompanied by all applicable supporting information including, but not limited to, all applicable site plan and/or planned development project documents related to the proposed development for which increased density and/or intensity is sought; schematic architectural drawings: floor plans; elevations and perspectives; and an assessment of public benefits.

C. Documentation related to any improvements or amenities, identifying the categories of creditable features eligible for consideration under the DIP. The documentation shall also include, but not be limited to, detailed drawings that clearly indicate the character, size, quality, public accessibility, visibility, the degree by which the proposed improvements or amenities preserves, enhances, expands, and/or protects the environment, including natural resources, views, pedestrian environment, landscaping, and relaxation areas as well as the potential public enjoyment of the features. The baseline and maximum allowable residential density and/or non-residential intensity, as well as the proposed densities and intensities.

D. Proof of ownership of the 100% of the land upon which the development for which enhanced density and/or non-residential intensity is sought together with proof of ownership and/or other control of any property for which off-site improvements are sought for consideration under the DIP.

E. No application shall be determined to be complete and therefore officially received and on file with the city unless all information, plans and materials required have been submitted.
(Ord. 83-07, 8-8-2007)

§ 6.1.7: Variances and appeals.

§ 6.1.7.1 General.

The Cape Coral Hearing Examiner, as established by the City Council of the City of Cape Coral, Florida shall hear and decide on requests for appeals and 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.
(Ord. 5-14, passed 3-31-2014; Ord. 24-16, 6-6-2016)

§ 6.1.7.2 Appeals.

The Cape Coral Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any 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 § 8.9 of the Land Use and Development Regulations.
(Ord. 5-14, passed 3-31-2014; Ord. 24-16, 6-6-2016)

§ 6.1.7.3 Limitations on authority to grant variances.

The Cape Coral Hearing Examiner shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in § 6.1.7.6 of this Article, the conditions of issuance set forth in § 6.1.7.7 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 it deems necessary to further the purposes and objectives of this Article.
(Ord. 5-14, passed 3-13-2014; Ord. 24-16, 6-6-2016)

§ 6.1.7.3.1 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 § 6.1.5.3 of this Article.
(Ord. 5-14, passed 3-31-2014)

§ 6.1.7.4 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.
(Ord. 5-14, passed 3-31-2014)

§ 6.1.7.5 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 § 6.1.7.3.1, 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.
(Ord. 5-14, passed 3-31-2014)

§ 6.1.7.6 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:

(1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
(2) The danger to life and property due to flooding or erosion damage;
(3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
(4) The importance of the services provided by the proposed development to the City of Cape Coral;
(5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
(6) The compatibility of the proposed development with existing and anticipated development;
(7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
(8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
(9) 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
(10) 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.

(Ord. 24-16, 6-6-2016)

§ 6.1.7.7 Conditions for issuance of variances.

Variances shall be issued only upon:

(1) 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;
(2) Determination by the Cape Coral Hearing Examiner that:
  (a) 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;
  (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
  (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
(3) 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 parcel of land; and
(4) 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.

(Ord. 5-14, passed 3-31-2014; Ord. 24-16, 6-6-2016)

§ 6.1.8: Violations.

§ 6.1.8.1 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.

(Ord. 5-14, passed 3-31-2014)

§ 6.1.8.2 Authority.

For development that is not within the scope of the Florida Building Code but that is regulated by this Article and that is 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.

(Ord. 5-14, passed 3-31-2014)

§ 6.1.8.3 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.

(Ord. 5-14, passed 3-31-2014)

Chapter 2: Definitions.

§ 6.2.1: General.

§ 6.2.1.1 Scope.

Unless otherwise expressly stated, the following words and terms shall for the purposes of this Article, have the meanings shown in this section.

(Ord. 5-14, passed 3-31-2014)

§ 6.2.1.2 Terms defined in the Florida Building Code.

Where terms are not defined in this Article and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.

(Ord. 5-14, passed 3-31-2014)

§ 6.2.1.3 Terms not defined.

Where terms are not defined in this Article or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

(Ord. 5-14, passed 3-31-2014)

§ 6.2.2: Definitions.

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 and/or velocity of the riverine flow of water during conditions of the base flood.

APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of this Article or a request for a variance.

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).

BASEMENT. The portion of a building having its floor subgrade (below ground level) on all sides.

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.

DESIGN FLOOD. The flood associated with the greater of the following two areas:

(1) Area with a floodplain subject to a 1% or greater chance of flooding in any year; or

(2) Area designated as a flood hazard area on the city's flood hazard map, or otherwise legally designated.

DESIGN FLOOD ELEVATION. The elevation of the "design flood," including wave height, relative to the datum specified on the city's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to two feet

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling grading, paving, excavations, drilling operations or any other land disturbing activities.

ENCROACHMENT. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

EXISTING BUILDING AND EXISTING STRUCTURE. Any buildings and structures for which the "start of construction" commenced before August 17, 1981.

EXISTING 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 before August 17, 1981.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the

or letters, either foreign or domestic. In the event a figure, design, picture, or character, that contains words or letters, either foreign or domestic, is painted or otherwise applied directly onto the window or wall of a building, the entire such figure, design, picture, or character is not a mural, but instead is a ***SIGN***, the area of which shall encompass the entire figure, design, picture, and/or character that is applied directly onto the window or wall and not merely the portion containing the logo(s), word(s), or letter(s).

NAMEPLATE SIGN. A sign indicating the name, profession, address, or some combination thereof, of a person, persons, business, or other entity legally occupying the building, unit, or establishment.

NONCOMMERCIAL SIGN. A sign which does not meet the definition of a commercial sign.

OBSCENE SIGN. A sign whose contents meet the judicially established definition of obscenity or that is otherwise considered obscene under Florida Statutes.

OFF-SITE SIGN. A permanently or temporarily affixed or hand-held sign identifying, advertising, or directing the public to a commercial business, product, service, entertainment, or activity which is located, sold, rented, based, produced, manufactured, or furnished or taking place at a location other than on the property or multiple business or entity site on which the sign is located. A sign containing a non-commercial message shall not be considered to be an off-site sign.

OPEN HOUSE SIGN. A sign identifying property for sale, rent, or lease and temporarily open for inspection.

PARASITE SIGN. Any sign not exempted by the sign code, for which no permit has been issued, and which is hung from, attached to, or added onto an existing sign.

PERMIT BOARD. A freestanding device erected on a construction site for the sole purpose of providing a conspicuous display of and shelter for the permits required for construction service(s) being performed on such construction site. A permit board may also display a contractor name or logo.

PORTABLE SIGN. Any non-exempt sign that is not permanently located on or attached to the ground, permanent structure, an inflatable object or umbrella, or that is hand held, worn as part of a costume or item of clothing, or that is designed to be transported, including, but not limited to: signs designed to be transported by means of wheels; a sign converted to a T-frame; or skid-mounted signs. A hand held sign or a sign worn as part of a costume or item of clothing containing a non-commercial message shall not be considered to be a portable sign.

REAL ESTATE SIGN. A sign which advertises the sale, rental, or lease of the parcel, improved or unimproved, upon which it is located.

RESIDENTIAL SIGN. Any sign, not otherwise defined and regulated in this article as an allowed sign in a residential zoning district, located in a district zoned for residential uses that contains no commercial message.

ROOF SIGN. Any sign, structure, or object painted or affixed to the roof of any building, excluding components integrated into the design of the roof structure, provided that no part of the sign, structure, or object extends vertically above the highest portion of the roof nor extends horizontally breaking the vertical plane of the roofline and/or building, whichever is greater.

SIGN. Any character, letter, figure, symbol, design, model, or device, or combination thereof, and all parts composing the same, together with the frame, background, or support, which is used to attract attention or to convey a message, regardless of the type of surface upon which the message appears and regardless of whether it is permanently affixed, portable, hand held, or worn as part of a costume or item of clothing.

SIGN BLADE. A sign that is attached to a real estate sign or support structure.

SPECIAL EVENT SIGN. A sign indicating a future social function, promotion, or fundraising event, other than a temporary vehicle sale, sponsored by a private, not-for-profit, or governmental entity that is open to the public and is distinct from the usual and customary business day functions of the organization.

STREET FRONTAGE. The linear dimension of the front of a building site as described in Article

III, § 3.8 of the Land Use and Development regulations. In the case of a double frontage site and for the purpose of administration of this article, this dimension shall be based on a single lot front adjacent to the street right-of-way of which the site is addressed.

SUSPENDED SIGN. A sign, other than a parasite sign, that is suspended from and supported by the underside of an awning, a marquee, a fascia, an umbrella, or a building overhang.

TEMPORARY. Not exceeding 30 consecutive days in duration or of such limited duration as otherwise provided in this article.

TEMPORARY SALE SIGN. A sign located on the site of a temporary vehicle sales event, conducted with the approval of the City Council.

TEMPORARY SALES OFFICE SIGN. A sign attached to a temporary sales office, permitted pursuant to Article III, § 3.2 of the Land Use and Development Regulations, which includes the name of the developer, subdivision, apartment, complex, or condominium, or residential, non-residential, compound use, or mixed use development.

TENANT. Any person, agent, firm, corporation or division who uses or occupies land, a building or portion of a building by title, under a lease, by payment of rent or who exercises limited control over the space, where the space meets the Florida Building Code requirements of fire partitions which require a wall permitted by the building type of construction that is fire-resistant rated of not less than one hour that separates individual tenant spaces.

TRADITIONAL PUBLIC FORUM. A place that has, by tradition or practice, been held out for general use by the public, including, but not limited to, public parks, sidewalks, and areas that have been open to political speech and debate.

UMBRELLA. A device, often round or square in shape, that is supported by a center pole, attached to and supported by a table, and that provides to such table and abutting seats, if any, shade or protection from the elements. For purposes of this article, any device, structure, canopy, etc. that is handheld, or that is totally or partially enclosed, or that projects from or is connected to a building shall not be deemed to be an umbrella.

UMBRELLA SIGN. A sign that is painted, installed, or otherwise applied to or located directly on an umbrella. For purposes of this article, signs that are suspended from umbrellas (suspended signs) shall not be considered to be umbrella signs.

VEHICLE SIGN. Any sign that is attached to or painted on a vehicle and/or trailer, parked so as to be visible from and so as to clearly provide advertising visible from the public right-of-way or parked on public property so as to clearly provide a commercial message close to the public right-of-way, unless said vehicle is used by a proprietor or employee of the business for the purpose of commuting between the business location and home or is used in the usual course or operation of a business. Factors to be considered in determining whether a vehicle is used in the usual course or operation of a business shall include, but not be limited to, whether the vehicle is operable, whether the vehicle has a current registration in the State of Florida, the role the vehicle plays in the business, and the frequency with which the vehicle is used in the course or the operation of the business. In addition, any sign that is composed of fabric, paper, or other lightweight material, or wood (unless the wood is an integral part of the vehicle itself), or that is physically supported by a motor vehicle, but not applied directly to the surface of the motor vehicle, or that is attached to the vehicle in such a manner as to constitute a safety hazard if the vehicle were to be driven with the sign in place, such as signs 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 vehicles while it is being driven, shall be presumed to be a vehicle sign. Further, any sign bearing a commercial message that is attached to or painted on a vehicle and/or trailer which is routinely parked or otherwise located on a site or sites other than that at which the firm, product, or services advertised on such sign is offered shall be presumed to be a vehicle sign.

WINDOW/DOOR SIGN. Any sign, picture, symbol, or combination thereof that is placed upon

a window or door and that is visible from the exterior of the window or door. The term ***WINDOW/DOOR SIGN*** shall not include interior signs and/or product displays that are located inside a business unit and that are visible from outside the business unit. Furthermore, murals on windows or doors shall not be deemed to be ***WINDOW/DOOR SIGNS***.
(Ord. 29-13, 9-30-2013; Ord. 18-14, 6-9-2014; Ord. 11-16, 5-23-2016)

§ 7.7 Prohibited signs.

The following signs are prohibited:

A. Animated signs, except electronic message signs, electronic laser, video, or digital display signs in which the messages change at intervals of two seconds or greater in duration, provided such signs comply with the requirements of § 7.12.K.;

B. Unless allowed under § 7.8 of this article, signs located on public property or rights of way or attached to trees or utility poles, other than by, or with the permission of, the owner of the public property or right-of-way;

C. Signs attached to fences on improved, non-residential property; however, this prohibition shall not extend to signs attached to recreational fences around activity fields, playgrounds, or playing fields (such as football fields, baseball diamonds, etc.) located in public parks owned and operated by one or more governmental entities and where the signs:

(1) Are only visible from inside the park, or

(2) If visible from outside the park, face the inside of the park;

D. Figure structured signs;

E. Obscene signs;

F. Off-site signs;

G. Parasite signs, except sign blades attached to real estate signs and their support structures pursuant to the requirements of § 7.10.E;

H. Portable signs;

I. Roof signs;

J. Special event signs, except with special event permit;

K. Vehicle signs; and

L. Feather banners, except as allowed under § 7.11.5.B.
(Ord. 29-13, 9-30-2013; Ord. 18-14, 6-9-2014)

§ 7.8 Signs in the public right-of-way.

.1 *Signs allowed in the public right-of-way.* No signs shall be erected, installed, or located in the public right-of-way or shall project over the public right-of-way, except permanent signs of the following type(s):

A. Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, announce public events, and direct or regulate pedestrian or vehicular traffic.

B. Signs that are placed within or on structures that are public service related, including, but not limited to, bus stop signs, bench/shelter signs, and other informational signs. These structures shall be erected by or on behalf of a public transit or communications company or the city. The location of these structures and the character, size, content, nature, and design of signs on such structures shall be approved by the city through a contract or other agreement approved by the City Council prior to the erection of such structures or the installation of such signs. If such structures cannot be located 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 or his or her authorized agent.

C. Informational signs of a public utility regarding its poles, lines, pipes, or facilities.

D. Awning, projecting, and suspended signs over a public right-of-way in conformity with §§ 7.9 and 7.12 of this article.

E. Development identification signs in conformity with § 7.11 of this article.

F. Directional signs in conformity with § 7.11 of this article.

G. Non-commercial signs in conformity with § 7.9D.10. and 7.9E.20.

.2 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 hereunder, the city shall have the right to recover from the owner of such sign and/or the person responsible for placing the sign in the public right-of-way all costs associated with the removal and/or disposal of the sign.
(Ord. 29-13, 9-30-2013; Ord. 11-16, 5-23-2016)

§ 7.9 Signs exempt from permitting.

The following types of activities and signs are exempt from the permitting requirements of this article, provided that number, area, and other limitations set forth in this section are satisfied. Except as otherwise provided herein, the area of exempt signs shall not be included in determining compliance with maximum allowable sign area requirements. Exempt signs are allowed in addition to signs for which permits are required. An otherwise exempt sign which exceeds the limitations of this section shall require a permit.

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 but not limited to 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.

C. Changing the message or locating official public notices or traffic control signs.

D. In residential zoning districts as provided in Article II, § 2.1 of the Land Use and Development Regulations, the following signs shall be allowed without a sign permit on sites containing residential uses:

1. Residential signs, whether freestanding or building, shall be considered exempt provided that the following requirements are met:

(a) Single-family uses in residential zoning districts. No more than one residential sign, in addition to any directional signs, flags, incidental signs, interior signs, and temporary signs which may be otherwise allowed, shall be erected or located on a single-family residential site located in a residential zoning district. Such residential sign shall not exceed four square feet in sign area and, if freestanding, five feet in height.

(b) Lawfully existing multi-family residential uses in multi-family residential zoning districts as provided in Article II, § 2.1 of the Land Use and Development Regulations. The maximum height and total area (in square feet) of residential sign(s) on a site containing a multi-family use and located in a multi-family residential (R-3), residential development (RD), or residential receiving (RX) zoning district shall be as follows:

(1) Residential structures containing two to six units shall be permitted to erect one residential sign per street frontage of the site, in addition to any directional signs, flags, incidental signs, interior signs, and temporary signs which may be otherwise allowed. However, in no event shall the total number of such signs exceed two per site. The maximum sign area for each such residential sign allowed on such multi-family site shall be 16 square feet and, if freestanding, the maximum height shall not exceed ten feet.

(2) Residential structures containing seven units or more shall be permitted to erect one residential sign per street frontage of the site, in addition to any directional signs, flags, incidental signs, interior signs, and temporary signs which may be otherwise allowed. However, in no event shall the total number of such residential signs exceed two per site. The maximum sign area for each such sign allowed on such multi-family site shall be 24 square feet, and, if freestanding, the maximum height shall not exceed ten feet.

2. Directional signs in accordance with § 7.11 of this article.

3. Flags that contain no commercial message. Flags containing a commercial message shall require a permit and be included in all sign area calculations as provided in § 7.15 of this article. Flags bearing an incidental sign message shall be treated in the same manner as incidental signs.

4. Incidental signs shall be allowed without a permit provided that the following requirements are met:

(a) Single-family uses in residential zoning districts. Incidental signs shall be allowed without a permit provided that they are no more than one square foot in area and six feet in height.

(b) Lawfully existing multi-family residential uses in multi-family residential zoning districts as provided in Article II, § 2.1 of the Land Use and Development Regulations. Incidental signs shall be allowed without a permit provided that they are no more than six square feet in area. Furthermore, no more than one entrance sign and one exit sign shall be located at any one entrance or exit. Incidental signs may contain a development name or logo together with an information message. Such development name or logo shall not exceed 25% of the sign area of the incidental sign. For purposes of this article, any sign for which more than 25% of its sign area is comprised of a development name or logo shall not be considered to be an incidental sign regardless of any other information which such sign may contain.

(c) 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.

5. Inflatable objects, provided that the inflatable objects comply with the limits and conditions provided in § 7.10 of this article and do not contain a commercial message. Inflatable objects that exceed those limits or conditions or contain a commercial message shall require a permit as provided in §§ 7.11 and 7.12 of this article and shall be included in all sign area calculations as provided in § 7.15 of this article.

6. Interior signs.

7. Temporary signs, not otherwise requiring a permit under §§ 7.11 or 7.12 of this article, and subject to § 7.10 of this article.

8. Umbrellas/umbrella signs.

9. 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.

10. An individual may display one (1) or more non-commercial signs on rights-of-way or a traditional public forum, as long as the following additional conditions are met:

(a) The sign must be hand-held or worn as an item of clothing;

(b) The sign must not be affixed to the ground or otherwise rendered freestanding; and

(c) 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.

E. In all categories of zoning districts provided under Article II, § 2.1 of the Land Use and Development Regulations, with the exception of residential zoning districts, and on sites containing non-residential uses lawfully located in residential zoning districts, the following signs shall be allowed without a permit, but shall be subject to all other requirements of this article:

1. Awning signs painted, installed, or otherwise located on any awning provided that the maximum area of the awning sign does not exceed eight square feet.

2. Exterior bulletin boards as follows:

(a) Such bulletin board(s) shall be located on the premises;

(b) No more than one bulletin board per building entrance shall be allowed without a permit; and

(c) The sign area of each such bulletin board shall not exceed 12 square feet.

3. Credit card/membership signs provided that they comply with the following:

(a) Individual credit card/ membership signs shall not exceed six square inches in area and shall be placed, erected, installed, or located only on the windows or doors of the commercial establishment, or in the case of a service station, at the fuel pumps of such station.

(b) No site, with the exception of sites on which service stations are located, shall contain more than one credit card/membership sign per credit or membership organization per street frontage. In addition to the aforesaid one credit card/membership sign per street frontage, service stations shall be allowed one credit card/membership sign at each fuel pump of such station.

4. Directional signs, in accordance with § 7.11 of this article.

5. 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.

6. Incidental signs, provided that they are no more than six square feet in area and six feet in height. 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.

Incidental signs may contain a business name or logo together with an informational message. Such business name or logo shall not, however, exceed 25% of the sign area of the incidental sign. For purposes of this article, any sign for which more than 25% of its sign area is comprised of a business name or logo shall not be considered to be an incidental sign regardless of any other information which such sign may contain.

7. Inflatable objects, provided that the inflatable objects comply with the limits and conditions provided in § 7.10 of this article and do not contain a commercial message. Inflatable objects that exceed those limits or conditions or contain a commercial message shall require a permit as provided in §§ 7.11 and 7.12 of this article and shall be included in all sign area calculations as provided in § 7.15 of this article.

8. Interior signs.

9. Memorial signs.

10. Menu boards: no more than two menu boards for each drive-through, with each menu board no greater than 28 square feet in area. Although such signs are allowed without a sign permit, the owner of property at which a menu board is proposed to be located shall obtain a menu board permit at no cost from the city prior to locating the menu board on the property.

11. Menu display box: one per public entrance.

12. Non-commercial signs: no more than one non-commercial sign, in addition to any other permissible exempt sign, shall be erected, installed, placed, or located on a site in a non-residential zoning district or on a site lawfully containing non-residential uses in a residential zoning district. Such non-commercial sign may be either freestanding or a building sign, but it shall not exceed four square feet in sign area and, if freestanding, shall not exceed five feet in height.

13. 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.

14. Nameplate signs: one nameplate sign per building entrance, not exceeding two square feet in area, attached to the building.

15. Suspended signs: no more than one suspended sign per business entrance provided that a minimum vertical clearance of eight feet from any sidewalk, private drive, parking area, or public street is maintained at all times and provided that the sign area of such suspended sign does not exceed four square feet.

16. Temporary signs, not otherwise requiring a permit, as allowed in § 7.10 of this article.

17. Umbrellas/umbrella signs.

18. Window/door signs: 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. Furthermore, any window/door sign or signs located above the first floor of a building shall not be deemed an exempt sign and shall require a permit.

19. A-frame signs, provided they comply with the following conditions.

(a) *Purpose.* An A-frame sign shall be used as a temporary announcement sign for businesses, containing sign copy that can be changed and identifying particular goods sold or services rendered from on-site premises.

(b) *Number.* One A-frame sign per business, as identified by business tax receipts.

(c) *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. No A-frame sign shall be permanently anchored or secured to any surface.

(d) *Time limits.* All A-frame signs shall only be placed outside during business hours. Signs shall be brought indoors at the close of each business day.

(e) *Size.* An A-frame sign shall not have a copy area wider than 24 inches by 36 inches and shall not be taller than 3 feet 6 inches.

(f) *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.

20. An individual may display one or more non-commercial signs on rights-of-way or a traditional public forum, as long as the following additional conditions are met:

(a) The sign must be hand-held or worn as an item of clothing;

(b) The sign must not be affixed to the ground or otherwise rendered freestanding; and

(c) 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.

(Ord. 29-13, 9-30-2013; Ord. 18-14, 6-9-2014; Ord. 11-16, 5-23-2016)

§ 7.10 Temporary signs.

Temporary signs, identified in this section 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.

A. *Construction signs.*

Construction signs	*R-1A and R-1B single-family 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		
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 located in right-of-way		
Duration	A. Each sign associated with on-site construction projects that require a building permit shall be removed upon: (1) Expiration of the building permit for the on-site construction; or (2) No later than 10 days after issuance of the certificate of occupancy for the on-site building; whichever date is earlier. B. 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.		

B. *Garage sale signs.* Such signs and related directional signs shall be located on-premises on private property (with permission of the private property owner). Any related temporary directional signs, permitted under § 7.10.H below, shall contain the address of the garage sale, the garage sale permit number, and the date(s) of the garage sale.

Garage sale signs	*Residential districts*	*Non-residential districts*
Garage sale permit required	Yes	Not applicable
Sign permit required	No	Not applicable
Number of signs	1 on-site, maximum of 5	Not applicable
Maximum area	4 square feet	Not applicable
Maximum height	2 feet	Not applicable
Location	Shall not be located in right-of-way	Not applicable
Duration	Permitted hours of garage sale	Not applicable

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.

.3 *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 so as to constitute a violation of this article. Any other alteration to an existing non-conforming sign will be required to conform to this article.

.4 *Exceptions.* A sign which is erected, located, or installed prior to October 1, 2013 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 October 1, 2013, 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.

(Ord. 29-13, 9-30-2013; Ord. 18-14, 6-9-2014)

§ 7.18 Deviations.

.1 Any person aggrieved by the effect of this article upon signs shall have the right to request from the Director of the Department of Community Development, or his or her designated representative, a deviation from the provisions of this article. However, deviations that would have the effect of allowing a category or type of sign that is prohibited by this article shall not be available.

.2 Requests for deviations and the reasons therefor shall be set forth by the applicant in the application for sign permit approval and shall be accompanied by documentation including, but not limited to, sample detail drawings, schematic architectural drawings, site 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. Deviations from the provisions of this article may be approved by the Director of the Department of Community Development, or his or her designated representative, provided that such deviation will not be contrary to the public interest and in harmony with the general intent and purpose of this article and where one or both of the following criteria are satisfied:

A. 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

B. There is something unique about the building or site configuration that would cause the signage permitted by this article to be ineffective in identifying a use or structure that would otherwise be entitled to a sign.

.3 Subject to the standards and criteria stated in § 7.18.2 above, the Director of the Department of Community Development, or his or her designated representative, shall approve only the minimum deviation from the provisions of this article necessary to avoid the undue hardship under § 7.18.2.A above or to cause the signage for the site to be effective in identifying the use or structure located on the site in accordance with § 7.18.2.B above. However, no deviation shall be approved that would have the effect of allowing a type or category of sign that would otherwise be prohibited by this article.

.4 Any person aggrieved by the decision of the Director of the Department of Community Development, or his or her designated

representative, concerning a deviation from the provisions of this article may appeal such decision to the Hearing Examiner provided that a written notice of appeal is filed within 30 days after the date of the decision made by the Director or the Director's designee. The notice of appeal shall be considered filed when it is received by the Director of the Department of Community Development, or his or her designated representative.

.5 The Hearing Examiner may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it within 60 days of the filing of a notice of appeal. To this end, the Hearing Examiner shall have all the powers of the authority from whom the appeal is taken. The Hearing Examiner's powers on appeal also shall be limited to the powers of the authority from whom the appeal is taken so that the Hearing Examiner shall have the power to approve only the minimum deviation from the provisions of this article necessary to avoid the undue hardship under § 7.18.2.A above or to cause the signage for the site to be effective in identifying the use or structure located on the site in accordance with § 7.18.2.B above. Neither the variance procedures nor variances themselves shall be available for the purpose of increasing the number of signs or the sign area to be allowed for a site.

.6 Appeals from the decision of the Hearing Examiner shall be in accordance with the procedures identified in Article VIII, § 8.9 of the Land Use and Development Regulations.

(Ord. 29-13, 9-30-2013; Ord. 18-14, 6-9-2014; Ord. 24-16, 6-6-2016)

[Next printed page is p.375.]

ARTICLE VIII: ADMINISTRATION

Section

§ 8.1 General provisions; enforcement of ordinance.

.1 *Administrative official.*

A. *Director.* The City Manager shall appoint an administrative official, hereafter known as the Department of Community Development Director, or Director who shall be charged and provided with the authority to administer all provisions of this ordinance, and to enforce the regulations and procedures contained herein.

B. *Assistants.* The Director is authorized to act and carry out his or her duties through aides and assistants. The Director may request and shall be provided assistance of such other persons as the City Council may approve.

C. *Authority.* The Director is provided with all necessary authority on behalf of City Council to administer and enforce all provisions of this ordinance and the Comprehensive Plan. The Director, in the performance of his or her duties and functions, may enter upon any land and make examinations and surveys that do not occasion damage or injury to private property. The Director may make decisions regarding the interpretation of the intent of any section of this ordinance.
(Ord. 68-91, 8-26-1991)

.2 *Files and records.*

A. *Written records.* The Director shall maintain written records of all official actions of his or her office as related to administration, and of all complaints, violations and/or actions taken in that regard, and the same shall be a public record.

B. *Files and applications.* The Director shall be responsible for the receipt, review of completeness and substantial compliance, official acceptance, and maintenance of current and permanent files, applications and records for zoning amendments, appeals, plans and all applications required by this ordinance, unless otherwise qualified by specific provisions.

§ 8.2 Filing of applications.

Every application required by this ordinance and the Comprehensive Plan shall be filed with the Director, unless otherwise specified. No application shall be determined to be complete and therefore officially received and on file with the city, unless all information, plans and materials required by this ordinance have been submitted.

§ 8.3 Public hearings.

.1 *Conduct of public hearings.* All public hearings required by the Land Use and Development Regulations, whether conducted by the City Council, the Planning and Zoning Commission/ Local Planning Agency, the Hearing Examiner, or an authorized committee, shall be conducted as follows:
(Ord. 124-03, 12-15-2003; Ord. 23-16, 6-6-2016; Ord. 24-16, 6-6-2016)

A. *Notice.* No public hearing shall be held unless all requirements for proper notice have been satisfied and documented evidence of the same can be presented.

B. *Open hearings.* All hearings shall be open to the public. Any person may appear and testify, either in person, in writing or represented by an authorized agent.

C. *Quasi-Judicial Procedures.*

1. Intent. The intent of this section is to establish procedures to ensure fairness and procedural due process and maintain citizen access to the local government decision-making process for the review of development orders and appeals of those orders that require quasi-judicial hearings. These procedures shall be applied and interpreted in a manner recognizing both the legislative and judicial aspects of the local government decision-making process in quasi-judicial hearings.

2. Applicability. These procedures shall apply to all applications in which the decision-making body or the Hearing Examiner acts in a quasi-judicial capacity for making recommendations or final decisions. These procedures do not apply to administrative decisions made by city staff, except upon the appeal of the administrative decision(s) to the Hearing Examiner or City Council.

3. Definitions. The following words, terms, and phrases, when used in this section, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

a. *Applicant* shall mean the owner of record, the owner's agent, a third party with written consent of all owners(s) of the property within a PDP for which the third party will apply, or any person with a legal or equitable interest in the property for which an application or appeal thereof has been made and which is subject to quasi-judicial proceedings, and shall mean staff when the application is initiated by the city.

b. *Competent Substantial Evidence* shall mean testimony, documentary, or other evidence based on personal observation and which will establish a substantial basis from which a fact at issue can reasonably be inferred. It includes fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issue to be decided. *Competent Substantial Evidence* is evidence a reasonable mind could accept as having probative weight and adequate to support a legal conclusion.

c. *Decision-Making Body* shall mean the City Council, the Planning and Zoning Commission/Local Planning Agency, or other authorized committee, as the case may be, that makes a recommendation or decision on an application or decides the appeal.

d. *Hearing Examiner* shall mean an attorney appointed by the City Council pursuant to the City of Cape Coral Land Use and Development Regulations, Section 9.2.

e. *Material Evidence* shall mean evidence that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.

f. *Participants* shall mean members of the general public, other than the applicant, including experts and representatives of local governments and governmental agencies, who offer testimony at a quasi-judicial hearing for the purpose of being heard on an application.

g. *Party* shall mean the applicant, staff, or any person recognized by the decision-making body or the Hearing Examiner.

h. *Quasi-judicial* shall mean the application of general rule or policy to specific individuals, interests, or activities.

i. *Quasi-judicial proceeding* shall mean a hearing held by a decision-making body or the Hearing Examiner to adjudicate private rights of a particular person after a hearing which comports with due process requirements, and makes finding of fact and conclusions of law on the issue.

4. General Procedures.

a. All quasi-judicial proceedings before the decision-making body and the Hearing Examiner shall be hearings of original jurisdiction unless the decision-making body or the Hearing Examiner is acting in an appellate

capacity, which, such appellate proceeding shall be a hearing de novo. Unless all parties waive formal proceedings, each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence.

b. Staff shall have the responsibility of presenting the case on behalf of the city. The staff report on the application shall be made available by staff to the applicant and the decision-making body or the Hearing Examiner no later than five business days prior to the quasi-judicial hearing on the application.

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 upon receipt 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 Use and Development Regulations shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.

d. 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.

5. Hearing Procedures.

a. All hearings shall be scheduled within a reasonable time of the date the application for quasi-judicial proceedings was properly and adequately filed.

b. The city shall advertise the hearing date, time, and place in accordance with Florida Statutes, regulations, and the city's ordinances.

c. All hearings shall be open to the public. Members of the public shall be permitted to testify at the quasi-judicial hearing.

d. The City Clerk, or the City Clerk's designee, 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) to the Hearing Examiner or decision-making body.

e. 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) 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 Chair, or the Hearing Examiner, 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 exhibits from the official file that have not already been transmitted to the decision-making body or the Hearing Examiner with the agenda materials, as staff desires; 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) Participants in opposition to or support of the application shall make their presentation in any order as determined by the Chair or Hearing Examiner. Each participant shall present their argument in five minutes.

(d) The applicant may cross-examine any witness and respond to any testimony presented.

(e) Staff may cross-examine any witness and respond to any testimony presented.

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

(g) Members of the decision-making body, through the Chair, or the Hearing Examiner, 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 decision-making body or the Hearing Examiner may grant additional time to any of the hereinabove time limitations.

(k) The decision-making body's, and Hearing Examiner's, decisions must be based upon Competent Substantial Evidence in the record.

(5) A copy of the procedures shall be made available at the hearing.

(6) The Chair, or Hearing Examiner, 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 or Hearing Examiner, 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 or Hearing Examiner to end a line of questioning deemed improper as set forth herein, the Chair or Hearing Examiner may terminate the direct examination or the cross-examination.

(7) The decision-making body or the Hearing Examiner 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 decision-making body or the Hearing Examiner.

(8) The applicant may withdraw an application by requesting such withdrawal in writing prior to the commencement of the hearing.

(9) For all quasi-judicial hearings in which a decision is made regarding an application for any development permit, the decision to approve or deny shall be based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the Land Use and Development Regulations, based on the entirety of the record before the decision-making body or Hearing Examiner.

6. Rules of Evidence.

a. 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.

b. 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.

c. The Chair, with the advice of the City Attorney or the City Attorney's designee only, will determine the relevancy of evidence. In matters decided by the Hearing Examiner, the Hearing Examiner, without the advice of the City Attorney or the City Attorney's designee, will determine the relevancy of evidence.

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

e. 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.

f. 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.

g. 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.

h. The City Attorney or the City Attorney's designee shall represent the decision-making body and advise it as to procedures to be followed.

i. The decision-making body and the Hearing Examiner 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.

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

(1) The supplementation occurs after a quasi-judicial hearing is continued but prior to final action being taken on the application or appeal.

(2) If a question is raised by the decision-making body or the Hearing Examiner 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.

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

7. Final decision by the decision-making body or Hearing Examiner. The decision-making body 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.

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

D. *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 Use and Development Regulations.

E. *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.

F. *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.

G. *Regularly scheduled public hearing dates.* The Hearing Examiner and/or the governing body may establish regular dates for public hearings on zoning amendments. Such dates, if established by the Hearing Examiner, or the governing body, shall not prevent the Hearing Examiner or governing body from scheduling additional public hearings whenever such public hearings are deemed necessary.

H. *Reading of ordinances.* Except for ordinances initiated by the governing body which rezone a parcel or parcels of land involving ten or more contiguous acres, or change permitted, special exception, or prohibited use categories in zoning districts, all ordinances shall be read, either by title or in full, on two separate days at a duly noticed public hearing of the governing body.
(Ord. 124-03, 12-15-2003; Ord. 24-16, 6-6-2016)

.2 *Required notice for public hearings.* Except as provided in § 8.3.3, special procedures for public hearings to consider ordinances that change permitted, special exception, or prohibited use categories in zoning districts, and rezoning amendments initiated by the governing body or the Planning and Zoning Commission/Local Planning Agency or § 8.3.4, Comprehensive Plan Amendments, notice for all public hearings shall be as follows:
(Ord. 68-91, 8-26-1991; Ord. 124-03, 12-15-2003)

A. *Required notice for amendments, special exceptions, planned development projects, deviations, rezoning amendments initiated by other than the governing body and variances.*
(Ord. 68-91, 8-26-1991; Ord. 124-03, 12-15-2003)

1. *Publication.* A notice in a newspaper of general circulation in the municipality shall be provided. Such publication shall be at least ten days prior to the date of the hearing. The notice shall substantially contain the following information:

a. The date, time and place of the hearing;

b. The title of the ordinance or resolution, and the nature of the matter to be discussed;

c. The place where a proposed ordinance or resolution may be inspected by the public;
(Ord. 124-03, 12-15-2003)

d. That written comments filed with the Director will be entered into the record;

e. That persons may appear and be heard, subject to proper rules of conduct; and

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

2. *Written notice.* In addition to publication, at least ten days prior to the public hearing, similar notice shall be mailed by first class mail to the owners, as shown on the latest ad valorem tax records, of the property involved and the owners of every parcel of land within a distance of 500 feet, in any direction from the property line of the area involved.
(Ord. 1-08, § 4, 3-10-2008)

a. *Failure to notify.* The unintentional failure to notify contiguous property owners or other persons, as set forth above, shall not be mandatory grounds for a continuance of the hearing, nor in any way affect the action taken at such hearing.

3. *Posting of a sign.* In addition, a sign, furnished by the city, shall be posted at least ten days prior to the hearing, in a conspicuous location determined by the Director, on the land involved in the application.

4. *Affidavit of proof.* Affidavit proof of the required publication, mailing and posting of the notice shall made part of the record.
(Ord. 68-91, 8-26-1991)

B. *Required notice for appeals and borrow pits.* Required notice for public hearings for appeals shall be the same as in § 8.3.2A. above, except that there shall be no requirement for the posting of a sign.

C. *Required notice for petitions to vacate plats, streets and other property.* Required notice for petition to vacate plats, streets and other property shall be as required in § 8.11.
(Ord. 24-16, 6-6-2016)

.3 *Special procedures for public hearings to consider ordinances that change permitted, special exception or prohibited use categories in zoning districts, and rezoning amendments initiated by the governing body or the Planning and Zoning Commission/Local Planning Agency.*
(Ord. 124-03, 12-15-2003)

Where the City Council or the Planning and Zoning Commission/Local Planning Agency initiates any amendment to the Official Zoning District Map, or an ordinance is changing permitted, special exception or prohibited use categories in zoning districts, the following provisions shall apply:

A. Amendments which change the actual zoning map designation for a parcel or parcels of land involving less than ten contiguous acres.
(Ord. 124-03, 12-15-2003)

1. *Notice requirements for Hearing Examiner public hearing.*

a. Publication of a notice in accordance with § 8.3.2A.1.;

b. Written notice in accordance with § 8.3.2A.2.; and

c. Sign posting in accordance with § 8.3.2A.3.
(Ord. 124-03, 12-15-2003)

2. *Notice requirements for public hearings before the governing body.*

a. Publication notice in accordance with § 8.3.2A.;

b. The City Clerk shall notify by mail each real property owner whose land within the city will be rezoned, whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the Office of the Clerk of the City of Cape Coral; and
(Ord. 68-91, 8-26-1991; Ord. 12403, 12-15-2003)

c. Sign posting in accordance with § 8.3.2A.3.
(Ord. 124-03, 12-15-2003)

B. *Amendments which change the list of permitted, special exception, or prohibited uses within a zoning category, or changes the zoning map designation of a parcel or parcels of land involving ten or more contiguous acres.*
(Ord. 12403, 12-15-2003)

1. *Notice requirements for Hearing Examiner or Planning and Zoning Commission/ Local Planning Agency public hearing.* Publication of a notice in a newspaper of general circulation, at least ten days prior to the date of the public hearing, and such notice shall be according to the following requirements:

a. The advertisement shall be no less than one quarter page in a standard size on tabloid size newspaper, and the headline shall be in a type no smaller than 18 point.

b. The advertisement shall not be placed in the legal notices and classified advertisements portion of the newspaper.

c. The advertisement shall be in the following form:

NOTICE OF _____ (TYPE OF CHANGE)

The City of Cape Coral, Florida proposes to adopt the following ordinance: _____ _____ (title of ordinance). A public hearing on the ordinance will be held on _____ _____ (date and time) at _____ meeting place).

d. Except for amendments which change the list of permitted, special exception, or prohibited uses within a zoning category, the advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the area.
(Ord. 124-03, 12-15-2003)

2. *Notice requirements for public hearings before the governing body.*

a. Amendments of this type require that the governing body hold two advertised public hearings on the proposed ordinances. At least one hearing shall be held after 5:00 p.m. on a weekday, unless the City Council, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least seven days after the day that the first advertisement is published. The second hearing shall be held at least ten days after the first hearing and shall be advertised at least five days prior to the hearing. Additionally, publication shall be as follows:

(1) The advertisement shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point.
(Ord. 124-03, 12-15-2003)

(2) The advertisement shall not be placed in the legal notices and classified advertisements portion of the newspaper. The advertisement shall be placed in a newspaper of general paid circulation in the municipality.
(Ord. 124-03, 12-15-2003)

(3) The advertisement shall be in the following form:

NOTICE OF _____ (TYPE OF) CHANGE

The City of Cape Coral, Florida proposes to adopt the following ordinance: _____ _____ (title of ordinance). A public hearing on the ordinance will be held on _____ _____ (date and time) at _____ (meeting place).

(4) Except for amendments which change the list of permitted, special exception, or prohibited uses within a zoning category, the advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. This map shall include major street names as a means of identification of the area.
(Ord. 124-03, 12-15-2003)

(5) Publication shall otherwise conform to all requirements of F.S. § 166.041, as amended, F.S. Chapter 50, as amended, and all other applicable law.

b. Alternative form of advertisement: in lieu of publishing the advertisement set out in this paragraph, the city may mail a notice by first class mail to each person owning real property within the area covered by the proposed ordinance. Such notice shall clearly explain the nature of the proposed ordinance and shall notify the person of the time, place and location of both public hearings on the proposed ordinance.

.4 *Procedures for public hearings to consider Comprehensive Plan amendments.*

A. *Required notice.*

1. *Transmittal hearing.*

a. A notice for public hearing in a newspaper of general circulation in the area shall be provided. Such publication shall be more than seven days prior to the date of the hearing. (Ord. 124-03, 12-15-2003)

2. *Adoption hearing.*

a. A notice for public hearing in a newspaper of general circulation in the area shall be provided. Such publication shall be more than five days prior to the date of the hearing. (Ord. 124-03, 12-15-2003)

B. *Notice requirement.*

1. The notice shall substantially contain the following information:

a. The date, time, and place of the hearing;

b. The subject matter of the hearing;

c. The place or places within the boundary of the city where the proposed amendments) may be inspected by the public;

d. The hours in which the amendments may be inspected;

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

f. That persons may appear and be heard, subject to the proper rules of conduct.

2. *Affidavit of proof.* Affidavit of proof of the required publication of the notice shall be made part of the record.

3. If the proposed Comprehensive Plan amendment changes the permitted use of the land or changes land use categories, then the advertisement shall be according to the following requirements:

a. The advertisement shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline shall be in a type no smaller than 18 point.

b. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

c. The advertisement shall be in substantially the following form:

NOTICE OF CHANGE OF LAND USE

The City of Cape Coral, Florida proposes to change the use of land within the area shown in the map in this advertisement. A public hearing will be held on _____ (date and time) at _____ (meeting place).

d. The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposal. This map shall include major street names as a means of identification of the area. (Ord. 68-91, 8-26-1991; Ord. 23-16, 6-6-2016)

§ 8.4 Reconsideration of action.

The Planning and Zoning Commission/ Local Planning Agency may refuse to review any application for Future Land Use Map amendment which has been denied within the past 12-month period when such application is substantially the same as the denied application. (Ord. 72-91, 9-23-1991)

The Hearing Examiner may refuse to review any application for zoning amendment, special exception use, or dimensional variance which has been denied within the past 12-month period when such application is substantially the same as the denied application. (Ord. 72-91, 9-23-1991; Ord. 24-16, 6-6-2016)

§ 8.5 Building permits.

.1 *Purpose and intent.* This section is established to provide procedures and requirements for submission and review of building permits in accordance with the requirements of this ordinance and the Building Code of Cape Coral.

.2 *Permit required prior to construction or alteration.* It shall be unlawful to add fill or deposit on any site or to commence any excavation or construction of any alteration of any structure until the Director has issued a permit authorizing such work. If no permit has been issued and a builder begins or continues to add fill or excavate or build, a restraining order may be obtained upon application to the proper court of record and evidence of the lack of a permit shall establish a prima facie case for the issuance of the restraining order.

A. *Grading of fill.* Fill shall be graded after being deposited on sites.

.3 *Procedures.*

Editor's note:

All reference to the Architectural Review Commission was deleted per Ord. 24-97 adopted May 5, 1997.

The procedure for securing a building permit shall be as follows:

A. *Application; submission requirements.* All applications for building permits shall include the following information and materials:

1. *Site plans.* For proposals subject to the requirements of Article IV, § 4.4, Site Plan Procedures, copies of a site plan approved in accordance with that section shall be submitted.

2. *Plot plans.* For proposals not subject to Article IV, § 4.4, Site Plan Procedures, copies of a plot plan, drawn to scale and containing the following information, shall be submitted.

a. *Lot identification.* A plat showing the dimensions, boundary lines and area of the lot, and a complete legal description of the property.

b. *Buildings and structures.* The location, height above finished grade, and dimensions of all existing and/or proposed buildings and structures, including additions and all eaves, overhangs, porches and patios.

c. *Yards.* The distance from all buildings, additions on structure to all property lines.

d. *Uses.* The existing and proposed use of each building, addition on structure, including the square footage associated with each use.

e. *Density.* The number of dwelling units in each building and gross residential density.

f. *Required access; driveways.* The location and dimension of adequate access and/or driveways.

3. *Other information.* In addition to all other requirements of this section, applications for building permits shall include the following:

a. *Off-street parking.* An off-street parking plan which conforms to all requirements of this ordinance.
(Ord. 35-99, 6-3-1999)

b. *Landscaping; screening; tree removal.* A landscaping plan which conforms to all requirements of this ordinance.

c. *Building plans; construction drawings.* Detailed construction drawings prepared in accordance with all requirements of the Building Code of Cape Coral and other applicable law.

d. *Other information.* Other information as the Director may reasonably require to ensure compliance with all provisions of this ordinance and other applicable law.

B. *Issuance of building permits.* If the proposed construction or alteration conforms with all applicable provisions of this ordinance, the Building Code of Cape Coral, and all other applicable law, the Director shall issue a building permit authorizing such construction or

alteration. If the proposed construction or alteration fails to conform, the Director shall refuse to issue a building permit and shall deliver written notice to the applicant stating the reason for the refusal. The Director shall act upon applications for building permits within two weeks from the date of their submission.

.4 *Validity and compliance.* Unless authorized by specific provisions of this ordinance, the Director shall not waive or alter any provision or regulation of this ordinance.

.5 *Duration.* A building permit shall become void six months from the date of issuance unless substantial progress has been made by that date on the construction or alteration authorized therein. Substantial progress, as set forth herein, shall mean that binding contracts for the construction of the main building, buildings, or other improvements have been let; or, in the absence of contracts that the main building, buildings, or other improvements, are under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development or completed.

§ 8.6 Certificate of use.

.1 *Certificate of use required prior to every occupancy and/or change of use and/or owner of business.* It shall be unlawful to occupy any newly erected or altered structure or to change the use or occupancy of any premises even though no structure was erected or altered until the Director has issued a certificate of use authorizing such occupancy.

.2 *Exceptions.* No permit or certificate of use shall be required in the following cases:

a. Recurring maintenance work regardless of cost; and

b. Change of business name with the same ownership and use, provided that a written notification shall be submitted to the Department of Community Development.

.3 *Procedures.* The procedure for securing a certificate of use shall be as follows:

a. *Application.* In applying to the Director for a certificate of use, the applicant shall notify the Director in writing of the date on which the occupancy of any new or altered structure or the new use of any premises will be ready to commence and shall be submitted no more than 30 days prior to occupation and become void if not issued within 60 days after application.

b. *Issuance.* If the newly erected or altered structure or the new use of premises conforms with all applicable provisions of this ordinance and all other applicable law, the Director shall issue a certificate of use authorizing the occupancy thereof. If the structure or use fails to conform, the Director shall refuse to issue a certificate of use and shall deliver written notice to the applicant stating the reasons for the refusal. The Director shall inspect a new structure or the premises for which a new use is proposed and shall issue or refuse a certificate of use within ten working days from the date such application for a certificate of use is made.

§ 8.7 Amendments.

.1 *Purpose and intent.* This section is established to provide procedures and standards for amendment of the Land Use and Development Regulations, the Comprehensive Plan, the Future Land Use Map, and the Official Zoning Map.
(Ord. 68-91, 8-26-1991; Ord. 24-16, 6-6-2016)

.2 *Amendment defined.* An "amendment" shall include any text amendment to the Land Use and Development Regulations, or the Comprehensive Plan, and/or map amendment to the Official Zoning District Map, or the Future Land Use Map made by official action by the City Council in accordance with the provisions of the Land Use and Development Regulations and all other applicable law.
(Ord. 68-91, 8-26-1991; Ord. 24-16, 6-6-2016)

.3 *Consistency with Comprehensive Plan and general standards.*

A. No amendment shall be approved or effective unless it is determined by City Council to be consistent with the Comprehensive Plan.

B. The Hearing Examiner, the Planning and Zoning Commission/ Local Planning Agency and the City Council shall apply the following

general standards in their consideration of amendments of the Land Use and Development Regulations, the Comprehensive Plan, the Future Land Use Map, and the Official Zoning Map:
(Ord. 68-91, 8-26-1991)

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

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;

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

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

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;

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

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;

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

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
(Ord. 68-91, 8-26-1991)

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.
(Ord. 24-16, 6-6-2016)

.4 *Origination of amendment proposal.* A proposal for an amendment to the Land Use and Development Regulations, or the Comprehensive Plan, either the text or Official Zoning District Map, or Future Land Use Map, may originate with the Planning and Zoning Commission/Local Planning Agency, the governing body, or by petition of the owners of 51% or more of the land area involved in the proposed change.
(Ord. 68-91, 8-26-1991; Ord. 24-16, 6-6-2016)

.5 *Rejected proposed zoning amendments.* The Hearing Examiner or the Planning and Zoning Commission/Local Planning Agency may refuse to review any proposed zoning or Future Land Use Map amendment which has been denied by the governing body within the past 12-month period.
(Ord. 68-91, 8-26-1991; Ord. 24-16, 6-6-2016)

.6 *Amendment procedures.* To petition any amendment to the Land Use and Development Regulations, or the Comprehensive Plan, either to the text or to the Official Zoning District Map, or to the Future Land Use Map, the procedures set forth below shall be followed. If any given use is not permitted in a given zoning district by the provisions of the Land Use and Development Regulations, it may not be permitted by any agency unless the Land Use and Development Regulations are amended according to the required amendment procedure.
(Ord. 68-91, 8-26-1991)

A. *Submission of zoning or future land use amendment petition.* The procedure and data required for the submission of a zoning or land use amendment petition by the owners of 51% or more of the land area involved in a proposed zoning district or land use classification change is as follows:

1. Every petition addressed to the governing body, requesting an amendment or change in the regulations, restrictions or boundaries herein established shall contain the following information and shall be presented to the Director in the following form:

a. The petition shall be sworn to by the petitioners, and shall include the post office address of the petitioners;
(Ord. 37-09, 8-17-2009)

b. It shall give an accurate legal description of the land involved, including street address, if any, and the names of all owners, mortgage holders, lienors and lessees;

c. It shall state the reason why such regulations, restrictions or boundaries should be amended or changed;

d. It shall give the existing zoning district and land use classification on the land and the zoning district or land use classification to which it is desired a change be made;

(Ord. 68-91, 8-26-1991)

e. It shall have attached a drawing or blueprint of the surrounding portion of the subdivision in which the land is located, or if unplatted land, streets, highways, roads, alleys and public places surrounding the land; and

f. One copy of the petition shall be filed with the Director.

B. *Administrative review.* The Director shall transmit all zoning or land use classification amendment petitions to all appropriate city agencies for review and comment, and shall review the application for compliance with the requirements of the Land Use and Development Regulations. Upon receipt of all comments, the Director shall refer a copy thereof to the Planning and Zoning Commission/Local Planning Agency or Hearing Examiner and the City Manager.

(Ord. 68-91, 8-26-1991; Ord. 91-05, 11-14-2005)

C. *Review and recommendation by the Planning and Zoning Commission or Hearing Examiner.*

1. *Notice and hearing.* The Commission or Hearing Examiner shall hold at least one public hearing on the proposed amendment, within a reasonable period of time, after receipt of the application and recommendations from the Department of Community Development Director, and from the Downtown Community Redevelopment Agency; if appropriate. Notice of the hearing shall be provided in accordance with the requirements of Article VIII, § 8.3, Public Hearings.

(Ord. 91-05, 11-14-2005)

2. *Recommendation.* Within a reasonable period of time after the close of the public hearing, the Commission or Hearing Examiner shall review the petition and all evidence presented, and forward a recommendation to the City Council for official action.

D. *Action by the governing body.*

1. *Notice and hearing.* Upon receipt of the petition and recommendations from the Planning and Zoning Commission /Local Planning Agency or Hearing Examiner, the City Council shall hold a public hearing. Notice of the hearing shall be provided in accordance with the requirements of Article VIII, § 8.3, Public Hearings.

2. *Action.* Within a reasonable period of time after the close of the public hearing, the City Council shall adopt or deny the amendment. If the recommendation of the Commission or Hearing Examiner is adverse to the proposed change, or if a protest against any zoning change signed by the owners of 20% or more of the land area included in the proposed change, or by the owners of 20% or more of the total number of lots or other parcels of land within a distance of 500 feet in any direction from the property line of the land for which the zoning change is requested, is filed with the City Council prior to or during the public hearing, such change may not be approved except by the affirmative vote of a majority of the entire membership of the City Council.

(Ord. 113-00, 12-4-2000; Ord. 1-08, § 5, 3-10-2008)

E. *Planned development project.* The procedure for all planned development projects shall be as set forth in Article IV, § 4.2, Planned Development Project Procedures.

(Ord. 24-16, 6-6-2016)

.7 *Public notice cost to be borne by petitioner.* Where a petitioner files a petition requesting a zoning or future land use classification amendment, the petitioner shall pay all cost and expenses in connection with notice of such public hearings and related notices as required by the provisions of the Land Use and Development Regulations in addition to the fees required for Commission or Hearing Examiner

review and administration. A receipt showing payment to the City of Cape Coral in the amount of the established fee, shall be attached to the petition. The requirements of this paragraph shall not be deemed or construed as applying to any public hearing held by the Commission, Hearing Examiner, or governing body on their own motion or volition, to consider any amendment, supplement, change or repeal of any regulation, restriction or boundary in connection with the Land Use and Development Regulations.
(Ord. 68-91, 8-26-1991; Ord. 24-16, 6-6-2016)

§ 8.8 Special exceptions.

.1 *Purpose and intent.* This section is established to provide procedures and requirements for submission and review of special exception uses in accordance with the requirements of the Land Use and Development Regulations, the Comprehensive Plan of Cape Coral, and other applicable law.
(Ord. 24-16, 6-6-2016)

.2 *Special exception defined.* A use which is essential to, or would promote the, public health, safety or welfare in one or more districts, but which might impair the integrity and character of the district in which it is located, or in adjoining districts, such that restrictions or conditions on location, size, extent and character of performance may be imposed in addition to those already imposed in the Land Use and Development Regulations.
(Ord. 17-92, 4-13-1992; Ord. 24-16, 6-6-2016)

.3 *Consistency with the Comprehensive Plan.* No special exception use shall be approved or effective unless determined by the Hearing Examiner to be consistent with the Comprehensive Plan.
(Ord. 24-16, 6-6-2016)

.4 *Authorization.*

a. *Review and approval.* Special exception uses may be permitted in only those zoning districts where they are designated as special exception uses by the Land Use and Development Regulations and then only when specifically approved by the Hearing Examiner in accordance with the provisions of the Land Use and Development Regulations. When certain minimum requirements are specifically identified in the Land Use and Development Regulations as necessary for a particular special exception use, no special exception for that particular special exception use shall be approved unless all of those minimum requirements are met and no variance shall be available for the purpose of reducing, modifying, or eliminating such minimum requirements. The applicant may choose to complete a related site plan review process in conjunction with the special exception request. (See § 4.4 for site plan review.)
(Ord. 7291, 9-23-1991; Ord. 2-01, 2-5-2001)

b. *Conditions and safeguards.* In granting any special exception, the Hearing Examiner may prescribe appropriate conditions and safeguards in conformity with the special exception use requirements which shall be made a part of the terms under which the special exception is granted. The violation of any such condition or safeguard shall be deemed a violation of this section and shall be enforceable not only by revocation of the special exception, but also by all other remedies available to the city, including, but not limited to, all code enforcement procedures. Such conditions and safeguards may include, but are not limited to:
(Ord. 87-03, 9-8-2003)

1. *Time limitations.* Reasonable time limits within which the action for which the special exception is required shall be begun or completed or both.

2. *Uses permitted.* Unless otherwise permitted by Article II, District Regulations, and the Land Use and Development Regulations, the premises of a special exception use shall be used for only those buildings and uses, and accessory buildings and uses specifically indicated by the Hearing Examiner in the Hearing Examiner's approval of the special exception use.

c. *Discontinuance.* With the exception of special exception uses that are approved pursuant to a planned development project development order, a special exception use that is discontinued for more than one year or for which a building permit or certificate of use is not

obtained within one year from the date the special exception was approved shall be deemed to have been abandoned. Abandonment of a special exception use automatically terminates the special exception granted and the property may thereafter only be used as prescribed by the City of Cape Coral Land Use and Development Regulations.
(Ord. 2-01, 2-5-2001; Ord. 24-16, 6-6-2016)

.5 *Standards.* The following standards shall apply to all applications for special exception uses.

a. *Generally.* The proposal shall comply with all requirements of the zoning districts in which the property is located, the Land Use and Development Regulations, and all other applicable law.

b. *Compatibility.* The tract of land must be suitable for the type of special exception use proposed by virtue of its location, shape, topography and the nature of surrounding development.

c. *Minimum lot frontage; access.* Minimum lot frontage on a street shall be sufficient to permit properly spaced and located access points designed to serve the type of special exception use proposed. Wider spacing between access points and intersecting street right-of-way lines should be required when the lot has more than the minimum required frontage on a street. All access points shall be specifically approved by the Hearing Examiner.

d. *Building location; setbacks.* All buildings shall be located an adequate distance from all property lines and street right-of-way lines. Greater building setback lines may be required when the lot has more than the minimum lot area required or when deemed necessary to protect surrounding properties.
(Ord 2-01, 2-5-2001)

e. *Screening and buffering.* A continuous strip of properly maintained landscaped area should be provided along all property lines and along all streets serving the premises. Such continuous strip of properly maintained landscaped area may, however, be allowed to contain walkway(s) and driveway entrances. The Hearing Examiner shall also require that the premises be permanently screened from adjoining and contiguous properties by a fence, evergreen hedge and/or other approved enclosure when deemed appropriate to buffer the special exception use from surrounding uses.
(Ord. 2-01, 2-5-2001; Ord. 24-16, 6-6-2016)

.6 *Procedures.* To request approval of a special exception, the following procedures shall be followed:

a. *Generally.* In applying for a special exception use, the applicant shall follow the same procedures as required by the Hearing Examiner.

b. *Administrative review.* The Director shall transmit all applications to all appropriate city agencies for review and comment, and shall review the application himself or herself for compliance with the requirements of the Land Use and Development Regulations. Upon receipt of all comments, the Director shall refer a copy thereof to the Hearing Examiner and the City Manager.
(Ord. 72-91, 9-23-1991; Ord. 91-05, 11-14-2005)

c. *Review and action by the Hearing Examiner.*

1. Upon receipt of the application and recommendations from the Department of Community Development Director, Hearing Examiner shall hold a public hearing. Notice of the hearing shall be provided in accordance with the requirements of Article VIII, § 8.3, Public Hearings.
(Ord. 72-91, 9-23-1991; Ord. 91-05, 11-14-2005)

2. *Action.* Within a reasonable period of time after the close of the public hearing, the Hearing Examiner shall approve, approve with conditions, or disapprove the application, stating in writing, any reasons for denial or conditions.
(Ord. 24-16, 6-6-2016)

.7 *Permits and licenses required.* The Director shall not issue any building permits and/or certificates of use approvals for a special exception use unless and until all approvals and licenses, including approvals under this section, have been completed or obtained.
(Ord. 24-16, 6-6-2016)

§ 8.9 Appeals.

.1 *Purpose and intent.* This section is established to provide requirements and

procedures for appeals when it is alleged that there is an error in any requirement, order, decision, or determination made in the administration of this ordinance.

.2 *Exercise of power.* In exercising its powers, the City Council may, upon appeal and in conformity with the provisions of this ordinance:

1. Reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by the Director or another administrative official in the enforcement of this ordinance;

(Ord. 72-91, 9-23-1991)

2. Decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Director or another administrative official in the enforcement of this ordinance;

(Ord. 72-91, 9-23-1991)

3. Decide appeals involving the literal interpretation of this ordinance including definitions and land use classifications; and/or

(Ord. 72-91, 9-23-1991)

4. Make interpretation of the exact location of zoning district boundaries according to this code.

(Ord. 72-91, 9-23-1991)

.3 *Procedures.* Appeals to the Council shall be as follows:

A. *Initiation.*

Appeal procedure. Appeals to the Council may be taken by any person aggrieved or by any officer, bureau, department or agency of the city affected by any decision of an administrative official, board or agency having final authority under these Land Use and Development Regulations.

(Ord. 72-91, 9-23-1991; Ord. 113-00, 12-4-2000; Ord. 70-05, 11-7-2005)

B. *Time limit for filing.* Such appeal shall be taken within 30 days after the date the order, requirement, decision or determination being appealed from was decided, by filing with the Director an application and notice of appeal specifying the grounds therefore.

(Ord. 113-00, 12-4-2000)

C. *Submission of application.* The applicant shall submit the application in triplicate, along with any additional data and information required by the Council, to the Director. The Director shall then refer one copy each of the application and any appropriate accompanying material, such as documents, plats, papers or other materials constituting the record upon which the action appealed from was taken, to the Council. The Director shall retain the original copy of the application along with a copy of the accompanying material for the record.

(Ord. 113-00, 12-4-2000)

D. *Hearing of appeal.* Upon receipt of the appeal application, the Council shall fix a reasonable time for the hearing of the application, give public notice thereof, as well as due notice to the parties in interest. Notice of the hearing shall be provided in accordance with the requirements of Article VIII, § 8.3, Public Hearings. Any party aggrieved may appear in person or by agent or by attorney at the hearing. The Council, after holding a hearing, shall approve, disapprove, or approve subject to modifications or conditions the order, requirement, decision or determination being appealed. The Council shall especially consider the effect of the request on surrounding uses in determining whether an order, requirement, decision or determination being appealed shall be approved, modified or disapproved. Action on any appeal shall be by resolution of the City Council and shall include a statement of the reasons therefor and any approval modifications or conditions imposed by the City Council.

(Ord. 72-91, 9-23-1991; Ord. 113-00, 12-4-2000; Ord. 70-05, 11-7-2005)

.4 *Stay of work and proceedings.* An appeal to the Council stays all work on the premises and all proceedings in furtherance of the action appealed from, unless an administrative official from whom the appeal is taken shall certify to the Council that, by reasons of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the Council or by a local court of record on application, on notice to an administrative official from whom the appeal is taken and on due cause shown.

(Ord. 72-91, 9-23-1991)

.5 *Judicial remedy by local court of record.* Except as otherwise provided in § 8.13 of the City of Cape Coral Land Use and Development Regulations, any person or persons, jointly or severally, aggrieved by any decision of the Council or any officer, bureau, department or agency of the city, may apply to the local court of record for judicial relief within 30 days after the date of approval of the decision by the Council. The proceeds in the local cast of record shall be commenced by filing of a petition for writ of certiorari. Changes to regulations or decisions on the basis of inconsistency with the Comprehensive Plan shall comply with the requirements of F.S. Chapter 163.
(Ord, 113-00, 12-4-2000; Ord. 70-05, 11-7-2005) (Ord. 68-91, 8-26-1991; Ord. 72-91, 9-23-1991; Ord. 57-96, 10-21-1996; Ord. 113-00, 12-4-2000)

§ 8.10 Variances.

.1 *Purpose and intent.* This section is established to provide for the granting of variances by the Hearing Examiner.
(Ord. 24-16, 6-6-2016)

.2 *Variance defined.* A ***VARIANCE*** is defined as a modification of the requirements of the Land Use and Development Regulations when such modification will not be contrary to the public interest where, because of conditions peculiar to the property involved and not the result of the actions of the applicant which occurred after the effective date of the Land Use and Development Regulations, a literal interpretation of the Land Use and Development Regulations would result in unnecessary and undue hardship.
(Ord. 24-16, 6-6-2016)

.3 *Findings generally.* Before any variance may be granted, the Hearing Examiner must and shall find all of the following. Such findings shall be recorded, along with any imposed conditions or restrictions, in the Hearing Examiner's minutes and the records and issued in written form to the applicant to constitute proof of the variance:

a. *Special conditions.* The 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; that the special conditions and circumstances do not result from the actions of the applicant.

b. *No special privilege.* The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

c. *Hardship.* That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardships on the applicant.

d. *Minimum variance.* That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

e. *Purpose and intent; public interest.* That the grant of the variance will be in harmony with the general intent and purpose of this ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
(Ord. 24-16, 6-6-2016)

.4 *Prohibitions.* Under no circumstances shall the Hearing Examiner grant a variance to permit a use not generally or by special exception use permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the Land Use and Development Regulations or to alter density requirements in the zoning district in question. No non-conforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
(Ord. 24-16, 6-6-2016)

.5 *Conditions and safeguards.* In granting any variance, the Hearing Examiner may prescribe appropriate conditions and safeguards in conformity with the Land Use and Development Regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this section and shall be enforceable

not only by revocation of the variance, but also by all other remedies available to the city, including, but not limited to, all code enforcement procedures. The Hearing Examiner may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.
(Ord. 87-03, 9-8-2003; Ord. 24-16, 6-6-2016)

.6 *Exception to findings; undeveloped lawfully platted and recorded lots.* For undeveloped lawfully platted and recorded lots existing prior to January 1, 1992, which are too small to allow conformance with zoning district lot area regulations, the following regulations shall apply:

a. If the deficiency in lot area is 200 square feet or less, the City Manager or City Manager's designee may grant a variance to allow the owner the reasonable use of his or her premises, in lieu of the general conditions found in Section 8.10.3a-e.

b. If the deficiency in lot area is more than 200 square feet, the Hearing Examiner may grant a variance to allow the owner the reasonable use of his or her property, in lieu of the general conditions found in Section 8.10.3a-e.

c. In both cases, review of such variances in this subsection shall find that the undeveloped lawfully platted and recorded lot existed prior to January 1, 1992, and that said undeveloped lot is not adjacent to another lot owned by the same property owner. If either of these findings is not met, then the variance shall not be granted.
(Ord. 21-14, 8-4-2014; Ord. 24-16, 6-6-2016)

.7 *Effect of approval.* A variance applies to the property for which it is granted and not to the individual who applies for it. A variance also runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.

.8 *Recording.* All variances, including any attached conditions or restrictions, approved by the Hearing Examiner shall be recorded in the office of the Lee County Clerk of the Circuit Court.
(Ord. 21-14, 8-4-2014; Ord. 24-16, 6-6-2016)

§ 8.11 Vacation of plats, rights-of-way and other property.

.1 *Purpose and intent.* This section is established to provide procedures for City Council to vacate rights-of-way and plats pursuant to authority granted under Florida law.
(Ord. 77-00, 8-28-2000; Ord. 24-16, 6-6-2016)

.2 *Generally.* The City Council may adopt resolutions or ordinances vacating plats in whole or in part of subdivisions within the corporate limits of the city, returning the property covered by such plats either in whole or in part into acreage for the purpose of taxation, or resolutions or ordinances vacating public rights-of-way, public easements, or other property after receipt of a petition therefore at public hearing on such petition.
(Ord. 77-00, 8-28-2000; Ord. 37-09, 8-17-2009; Ord. 24-16, 6-6-2016)

.3 *Plat, right-of-way, public easement, and other property vacation procedures; notice.*

a. *Notice of intention to apply, publication.* The petitioner will cause to be published in a newspaper having general circulation in the city a notice of his or her intention to apply to the City Council to vacate a plat or portion thereof once a week for two consecutive weeks, the first publication being not less than two weeks prior to the date of public hearing on such petition, and must present to the Council at a public hearing on such petition an affidavit of publication of such notice. The Director shall, not less than ten days prior to the date set for the public hearing, send a copy of the notice to the owner or owners of every parcel of land within a distance of 500 feet in any direction from the property line of the land which the petitioner requests the Council to vacate. If the parcel to be vacated includes an alley, all property owners serviced by the alley and all property owners serviced by a connecting alley, shall be noticed. The copy of the published notice shall be mailed to such owner or owners, as shown on the latest ad valorem tax records. The Director, or designee, shall make an affidavit giving the description of such lands, the names of the owners thereof, and the date and post office address to which each copy of the published notice was mailed. Such

affidavit shall be on file with the Director prior to the public hearing.
(Ord. 112-06, 9-18-2006; Ord. 1-08, § 6, 3-10-2008; Ord. 37-09, 8-17-2009)

b. *Petition required.* A petitioner(s) for the vacation of any plat, city street, alley, canal, other right-of-way, public easement, or other property shall file a petition on a form to be approved by the Director, which form shall advise the petitioner(s) that the city may retain an easement for utilities and/or drainage over any vacated right-of-way and that no use may be made of vacated right-of-way which will be inconsistent with or interfere with the retained easement. The party seeking vacation of a plat, city street, alley, canal, other right-of-way, public easement, or other property must file its petition with the Director which shows and includes:

1. Petitioner has color of title to the tract or parcel of land covered by the plat or portion of the plat of which vacation is sought or the petitioner is the City of Cape Coral;
2. A copy of the plat showing the portion thereof of which vacation is sought;
3. Letter of approval from Lee County Electric Cooperative, Inc.;
4. Letter of approval from affected telephone companies;
5. Letter of approval from affected cable television companies;
6. Letter of approval from any other affected utility companies (i.e. water, sewer, gas);
7. A. Applications to vacate only a right-of-way shall provide a copy of a recent boundary survey or survey sketch of the property prepared and executed by a registered surveyor showing the area requested to be vacated, and a complete metes and bounds legal description of said area;

B. Applications to vacate rights-of-way and/or easements shall provide a copy of a recent boundary survey or survey sketch of the property prepared and executed by a registered surveyor showing the area requested to be vacated; providing complete metes and bounds legal descriptions of said areas, and showing all pavement and all utility and drainage facilities in said area, including water, sewer and cable lines, utility poles, swales, ditches, manholes, and catch basins. Separate drawings and metes and bounds legal descriptions will be required for each proposed vacation area when the right-of-way and easement configurations differ.

c. *Petitions filed concurrently with rezoning petitions.* When an application for vacation of plat is related to or materially affects a rezoning application, public notice of both applications shall be published concurrently. Public hearings before the Hearing Examiner and the City Council shall be held concurrently. Decisions on respective applications shall be made separately. Full fees shall be charged in accordance with the Cape Coral City Code.

d. *Adoption and recording of resolution or ordinance.* After public hearing, the City Council may approve an application for a vacation if it determines there is no reasonably foreseeable public use for said vacated area. Approval of a vacation shall be by resolution or ordinance. Any such resolution or ordinance vacating a right-of-way may retain for the city easements for utilities and/or drainage in and upon the vacated area. Upon adoption of the resolution vacating the plat or portion thereof, the City Clerk shall furnish to the petitioner a certified copy thereof and the petitioner shall cause the same to be recorded in the public records of the county, and shall return a copy, showing the recording information, to the Department of Community Development.

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

f. *Petitioner's responsibility.* The city, City Council and all of the officers, employees and

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

g. *Forms.* The petition, notice of hearing and resolution or ordinance referred to in this section shall be prepared in accordance with forms provided by the city. Both the petition and the notice of hearing shall include notice to the applicant that, if easements for utilities and drainage are retained by the city over any vacated right-of-way, no use may thereafter be made of said vacated right-of-way which is inconsistent with or interferes with the retained easement.
(Ord. 77-00, 8-28-2000; Ord. 112-06, 9-18-2006; Ord. 37-09, 8-17-2009; Ord. 24-16, 6-6-2016)

§ 8.12 Fees.

The filing of any application, petition, permit, plan or other document or materials required by this ordinance shall be accompanied by required processing fees as identified by a schedule of fees approved by City Council.

§ 8.13 Procedures for Special Magistrate dispute resolution.

.1 *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.
(Ord. 57-96, 10-21-1996)

.2 *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.*

A. ***CITY.*** The City of Cape Coral, Florida.

B. ***DEVELOPMENT.*** The meaning given it in F.S. § 380.04, as same may hereafter be amended.

C. ***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.

D. ***DEVELOPMENT PERMIT.***

1. Any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of the city; or

2. Any other permit authorized to be issued by the city under state law which has the effect of authorizing the development of land, including, but not limited to, programs implementing F.S. Chapters 125, 161, 163, 166, 187, 258, 372, 373, 378, and 403.

ARTICLE IX: BOARDS, COMMISSIONS AND COMMITTEES

Section

§ 9.1 Planning and Zoning Commission/Local Planning Agency.

.1 *Purpose and creation.* In order to secure a coordinated, adjusted and harmonious plan for the development of the city and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare as well as efficiency and economy in the process of development, including among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, this Planning and Zoning Commission is created as advisor to the Council and City Manager. In addition, the Planning and Zoning Commission is hereby designated and established as the Local Planning Agency for the City of Cape Coral.
(Ord. 24-16, 6-6-2016)

.2 *Composition, compensation; quorum; organization; rules and records; meetings.*

a. *Composition.*

1. The Planning and Zoning Commission/Local Planning Agency shall be composed 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 aforesaid 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. Such 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/Agency in the same manner and to the same extent as the other members of the Commission/Agency. When not substituting for an absent member(s), alternate members shall not vote on any matter before the Commission/Agency, but may participate in all discussions of the Commission/Agency in the same manner and to the same extent as the other members of the Commission/Agency. Alternate members shall have the same attendance requirements as the other seven members of the Commission. Any member of the Planning and Zoning Commission/Local Planning Agency may be removed for cause by a majority vote of the City Council. Whenever a vacancy occurs on the Planning and Zoning Commission/Local Planning Agency, the city shall fill the vacancy for the remainder of the term within 30 days after the vacancy occurs.
(Ord. 56-99, 11-1-1999; Ord. 173-06, 1-22-2007)

2. If a vacancy occurs on the Planning and Zoning Commission/Local Planning Agency as the result of the resignation, death, or removal of a member from the Planning and Zoning Commission/Local Planning Agency, the senior alternate member shall temporarily fill such vacancy without the need for action by the City Council, until the City Council appoints a

successor regular member. For purposes of this subsection, the term ***SENIOR ALTERNATE MEMBER*** shall be deemed to be the alternate member who has served as an alternate for the longest continuous period of time. In the event both alternates have served as alternates for the same continuous period of time so that there is no "senior alternate member", 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 an alternate dies, resigns, is removed, or becomes a member of the Planning and Zoning Commission/Local Planning Agency to complete a term upon the occurrence of a vacancy, the City Council shall promptly appoint a qualified person to assume the unexpired term of such alternate.
(Ord. 48-01, 6-12-2001; Ord. 67-01, 9-10-2001)

3. In the event a vacancy occurs on the Planning and Zoning Commission/Local Planning Agency, an alternate member of the Planning and Zoning Commission/Local Planning Agency may apply for appointment to the position of regular member in the same manner as other applicants may apply for such position. In the event a person who holds the position of alternate member is appointed by the City Council to hold the position of regular member, then such appointment by the City Council shall simultaneously terminate such person's position as an alternate member. In such event, the City Council may then appoint another person to fill the resulting alternate member vacancy.
(Ord. 48-01, 6-12-2001; Ord. 67-01, 9-10-2001)

b. *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.
(Ord. 56-99, 11-1-1999)

c. *Quorum.* A majority of the Planning and Zoning Commission/Local Planning Agency membership shall constitute a quorum for the transaction of business; providing, however, that no official action shall be taken by the Planning and Zoning Commission/Local Planning Agency to adopt or amend the Comprehensive Plan or the Land Use and Development Regulations, or any component thereof, without the concurring vote of a majority of all members comprising the Commission.

d. *Organization.* The Commission shall elect a chairperson and a vice chairperson from among its members for a term of one year with eligibility for reelection. The Commission shall appoint a secretary who may be an officer or employee of the city.

e. *Rules and records.*

1. The Commission shall adopt its own rules and regulations as may be deemed necessary; provided such rules shall not be contrary to the spirit and intent of the Land Use and Development Regulations nor to the policies of the city. The Commission shall keep minutes of its meetings and records of all its transactions and deliberations. Such minutes and records shall be filed in the appropriate offices of the city and shall be public records. All meetings of the Commission shall be open to the public. Alternate Commission members who are present at a meeting, but who are not substituting for an absent regular member shall not vote on any matter before the Commission/Agency, but may participate in all discussions of the Commission/Agency in the same manner and to the same extent as the other members of the Commission/Agency.
(Ord. 56-99, 11-1-1999; Ord. 43-13, 9-23-2013)

2. The Local Planning Agency shall set up rules of procedure to monitor and oversee the effectiveness and status of the Comprehensive Land Use 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 Use and Development Regulations relating to the Comprehensive Land Use Plan.

f. *Meetings.* The Commission shall hold at least one public hearing in each month of the year unless there is no business to transact by the day before the regular meeting date. The Commission shall also meet at the call of the Chairperson and at such other times as may be determined by a majority of the Commission.
(Ord. 24-16, 6-6-2016)

.3 *Powers and duties.*

a. *Planning.* The Commission shall have the power and the duty to prepare and recommend to the City Council for adoption a Comprehensive Land Use Plan for the physical development of the city, and to perfect it from time to time. In conducting its work, the Planning and Zoning Commission/Local Planning Agency may consider and investigate any subject matter tending to the development and betterment of the city and may make recommendations, as it may deem advisable concerning the adoption thereof, to the City Council. Such Comprehensive Land Use Plan may show, among other things, existing and proposed streets, sidewalks, highways, expressways, bridges, tunnels and viaducts and approaches thereto, routes of railroads and transit lines, terminals, ports and airports, parks, playgrounds, forests, reservations and other public open spaces, sites for public buildings and structures, districts for residence, business, industry, recreation, agriculture and forestry, special districts for other purposes, limited development districts for purposes of conservation, water supply, sanitation, landfill, drainage, protection against floods and the like, areas for housing developments, slum clearance, urban renewal and redevelopment, location of public utilities, whether publicly or privately owned, including, but not limited to, sewerage and water supply systems, together with time and priority schedules and cost estimates for the accomplishment of the proposals. The Comprehensive Land Use Plan shall be based upon and include appropriate studies of the location and extent of present and anticipated use of land, population, social and economic resources and problems, and other useful data. The Commission shall prepare and recommend to the City Council for adoption rules and regulations governing the approval of maps and plats of the subdivision of land within the corporate limits of the city as the Local Planning Agency, the Planning and Zoning Commission shall monitor and oversee the effectiveness and status of the Comprehensive Land Use Plan and recommend to the City Council such changes in the Comprehensive Land Use Plan as may, from time to time, be required. The Local Planning Agency shall prepare periodic reports on the Comprehensive Plan, which shall be sent to the City Council at least once every five years after the adoption of the Comprehensive Land Use Plan or element or portion thereof by the City Council. Reports shall be transmitted at lesser intervals as may be required by the City Council.
(Ord. 77-00, 8-28-2000)

b. *Relationship of regulations to Comprehensive Land Use Plan.* After the Comprehensive Land Use Plan or element or portion thereof has been adopted by the City Council, no land development regulations, or regulations for the development of land including zoning, subdivision, building and construction, or other regulations controlling the development of land or zoning code or amendment thereto shall be adopted by the City Council until such zoning or land development regulation has been referred to the Local Planning Agency for review and recommendation as to the relationship of such proposal to the adopted Comprehensive Land Use Plan or element or portion thereof. The recommendation of the Local Planning Agency shall be transmitted to the City Council within a reasonable time, but no later than two months after the time of reference. If a recommendation of the Local Planning Agency is not transmitted to the City Council within the time provided herein, then the City Council may act upon the proposed land code or development regulation or amendment.
(Ord. 24-16, 6-6-2016)

.4 *Financial support and staff assistance.*

a. The City Council may appropriate funds for fees and expenses necessary in the conduct of the work of the Local Planning Agency.

b. To accomplish the purposes and activities authorized by the Ordinance of Cape Coral on the Local Planning Agency and the Comprehensive Land Use Plan, the Local Planning Agency, with the approval of the City Council and in accordance with the fiscal practices of the city, is authorized to expend all sums appropriated by the City Council for fees and expenses necessary in the conduct of work of the Local Planning Agency.

c. The City Manager shall provide such staff and clerical assistance to the Local Planning Agency as may be required in the performance of its duties, subject to the availability of such staff and clerical assistance as approved by the City Council.
(Ord. 24-16, 6-6-2016)

.5 *Conformance with state law.* The Comprehensive Land Use Plan, Land Development Regulations and the Evaluation and Review Appraisal Report shall be prepared in accordance with all applicable Florida law, and all applicable sections of the Florida Administrative Code, including, but not limited to, F.S. Chapter 163, as amended.
(Ord. 24-16, 6-6-2016)

§ 9.2 Hearing Examiner.

.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.

.2 *Appointment of Hearing Examiner(s); Vacancy: Recusal.*

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

b. The City Manager, or the City Manager's designee, shall recruit qualified persons to serve as a Hearing Examiner in such a manner as may be determined by the City Council.

c. The City Council shall, on an annual basis, 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 in the event the Hearing Examiner is unable to attend a meeting.

d. The appointment(s) shall be in the sole discretion of the City Council. However, any person appointed to the position of Hearing Examiner pursuant to this article 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, which contract shall set out the terms and conditions, to include, but not limited to, 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, from their positions at any time during their term by the City Council in its sole discretion.

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

f. If a Hearing Examiner vacancy occurs as a result of resignation, death, or removal, or if 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/Local Planning Agency in an advisory capacity and then heard by the City Council for the final decision.

.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 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 exception use permits;

2. Interpretation of the amount of off-street parking required according to this code;

3. Interpretation of the general environmental control criteria and performance standards according to this code;

4. Any other interpretation or decision specifically delegated to it by the

provisions of the Land Use and Development Regulations or Code of Ordinances;

5. Applications for variances where, by reason of exceptional narrowness, shallowness or unusual shape of a site or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of the site, the literal enforcement of the dimensional requirements (height or width of building or size of yards, but not dwelling unit or population density) of these regulations would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zoning district. The Hearing Examiner may impose any reasonable conditions or restrictions on any dimensional variance it decides to grant;

6. Requests for deviations authorized within these Land Use and Development Regulations;

7. Applications for Planned Development Projects (PDP's);

8. Applications for vacations of a plat;

9. Applications for zoning or rezoning property; and

10. Non-conforming Structure Exceptions (NCSE).

.4 *Counsel.* The City Attorney's Office shall act as counsel 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).

.5 *City Clerk.* The City Clerk, or the City Clerk's designee, 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) to the Hearing Examiner.

.6 *Decisions; Recommendations.* The Hearing Examiner shall provide the City Clerk with all original decisions, or recommendations, for transmission to the applicant if the applicant is not the city, to the Director of Community Development, and the City Attorney.
(Ord. 22-16, 6-6-2016)

§ 9.3 Architectural Review Commission.

Editor's note:

Section 9.3 was deleted in its entirety by Ord. 24-97 adopted May 5, 1997.

§ 9.4 Reserved.

Editor's note:

Ord. 37-99, adopted June 1, 1999, deleted § 9.4 in its entirety. Formerly, said section pertained to local planning agency citizens advisory committee.

§ 9.5 Building and Fire Code Conflict Resolution Board.

.1 *Purpose and creation.* That the Building and Fire Code Conflict resolution Board is created for the purpose of resolving conflicts between the Building Code and Fire Safety Code where the Building Official and Fire Marshal are unable to agree on a Resolution of a conflict between the codes and to hear appeals from decisions made by the Building Official and Fire Marshal when they apply provisions of either the applicable minimum Building Code or the applicable minimum Fire Safety Code where a conflict exists and where an agreement between the Building Official and Fire Marshal has been reached.

.2 *Designation of Board.* The city's Contractors' Regulatory Board, created pursuant to §§ 2-120.3 through 2-120.11 of the Code of Ordinances, City of Cape Coral, shall serve as the Building and Fire Code Conflict Resolution Board for purposes of this section.
(Ord. 128-00, 1-16-2001)

.3 *Powers and duties.* The Building and Fire Code Conflict Resolution Board shall have the following powers and duties:

a. To hear appeals from decisions made by the Building Official and Fire Marshal when reaching an agreement on the application of the provisions of either the applicable minimum Building Code or Fire Safety Code.

The Board may not alter the decision unless the Board determines that the application of such code is not reasonable. If the decision of the Building Official and Fire Marshal is to adopt

an alternative to the codes, the Board shall give due regard to the decision rendered by the Building Official and Fire Marshal and may modify that decision if the Board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the Board adopts alternatives to the decisions rendered by the Building Official and the Fire Marshal, such alternatives shall provide an equivalent degree of life safety and an equivalent method of construction as the decision rendered by the Building Official and Fire Marshal.

b. To resolve conflicts between the Building Code and Fire Safety Code when the Building Official and Fire Marshal are unable to agree on a resolution of a conflict between the Building Code and the Fire Safety Code.

The local Administrative Board shall resolve the conflict in favor of the code which offers the greatest degree of life safety or alternatives which would provide an equivalent degree of life safety and an equivalent method of construction.

c. All decisions of the Board shall be reduced to writing and shall be binding upon all persons. Decisions of general application shall be indexed by Building and Fire Safety Code sections and shall be available for inspection during normal business hours of the city.

.4 *Financial support and staff assistance.* That the City Manager shall provide such staff and clerical assistance as the Building and Fire Code Conflict Resolution Board may require in the performance of its duties, subject to the availability of such staff and clerical assistance as approved by the City Council. The Building and Fire Code Conflict Resolution Board may call upon any department or other agency of the City of Cape Coral for information or advice in the performance of its work.

Coral in contrast to a full-fledged winery that may produce an unlimited volume of wine. These establishments may include a tasting room and retail space to sell wine produced on the premises, as well as wine, beer, and spirits produced elsewhere, along with related retail items and food.
(Ord. 30-14, § 2, 10-20-2014; Ord. 36-15, § 4, 8-31-2015)

ASSISTED LIVING FACILITY. A facility as defined by F.S. § 400.402, as same may hereafter be amended.
(Ord. 68-98, 11-30-1998)

AUTOMOTIVE PARTS STORE. Establishments primarily engaged in the retail sale of new or used parts and accessories for automobiles, truck trailers, and motorcycles but not providing installation services. This term does not include auto-wrecking yards.

AUTOMOTIVE PARKING ESTABLISHMENTS. A premises, or portion of a premises, occupied by an establishment primarily engaged in providing commercial parking facilities on open air lots, sites or structures for relatively short periods of time directly to meet the needs of ultimate consumers normally for a fee or charge.

AUTOMOTIVE SERVICE ESTABLISHMENTS. A premises, or portion of a premises, occupied by an establishment primarily engaged in furnishing car-washing, waxing, detailing, polishing or similar services except repairs, intended for and directly incidental to the needs of ultimate consumers on the premises normally for a fee or charge.

AUTOMOBILE SERVICE STATION, LIMITED. An establishment primarily engaged in the retail sale of motor fuel and lubricants, but which may also include facilities for washing, waxing, detailing, polishing, greasing, tire repair (no recapping or vulcanizing) and other minor incidental repairs. (See also ***SELF-SERVICE FUEL PUMP STATION.***)

AUTOMOBILE SERVICE STATION, FULL-SERVICE. An establishment similar to an automobile service station, limited, but which also provides emergency road service, including towing and emergency repairs and services, provided however, such establishment is not primarily engaged in work or services listed as automotive repair and service.

AUTOMOBILE TOWING ESTABLISHMENT. A premises or portion of a premises occupied by an establishment in which a person, or persons, practice a vocation or occupation that performs a type of labor, act, or work off the premises that results in the towing of motor vehicles. Tow trucks or wreckers may be stored on the premises, but no towed vehicles shall be stored on the premises.

AUTOMOBILE WRECKING OR WRECKING YARD. A premises or portion of a premises engaged in the dismantling, crushing, shredding, or disassembly of used motor vehicles or trailers, or the storage sale, or dumping of dismantled, partially dismantled, or wrecked vehicles or their parts. (See also ***JUNK YARD.***)

AUTOMOTIVE SERVICE CENTERS. A grouping of consumer-oriented automotive establishments, planned and developed as a single structure or under a unified architectural theme, owned and managed as a unit and providing a range of goods, services and repair specific to the automotive market; and providing customer and employee parking off-street and on-site.

AUTOMATIC TELLER MACHINE (ATM). Unattended banking station located outside of, or away from the principal bank building and in operation beyond normal lobby hours; operated by computerized equipment and capable of carrying out specific banking transactions.

AVIARY. A structure, ancillary to the principal dwelling, used for the confinement of birds. Such use shall be non-commercial only.

AWNING. A flexible roof-like cover that extends out from an exterior wall and shields a window, doorway, sidewalk, or other space below those elements.
(Ord. 101-03, 10-20-2003)

BALCONY. An open portion of an upper floor that extends beyond a building's exterior wall and is not supported from below by vertical columns or piers.
(Ord. 91-05, 11-14-2005)

BAR or ***COCKTAIL LOUNGE.*** Any establishment devoted primarily to the retailing and on-premises drinking of malt, vinous, distilled, or other alcoholic beverages.

BATHROOM. A separate room within a structure containing, at least, a bathtub or shower, a commode and a washbowl.

BED AND BREAKFAST ESTABLISHMENTS. A residence which provides sleeping accommodations and breakfasts on a short-term basis for paying guests. Such establishments may also provide lunch and supper. A ***BED AND BREAKFAST*** shall have no more than six sleeping rooms of which one must be occupied by the owner or manager. Such establishments shall not be construed as lodging houses, motels, hotels, or boarding or rooming houses.

BOARDING OR ROOMING HOUSE. A building, or portion of a building, in which five or more sleeping rooms are provided for occupancy by nontransient persons with or without meals for compensation on a prearranged weekly or monthly basis. A ***BOARDING OR ROOMING HOUSE*** shall include living quarters and may contain independent cooking facilities designed for the resident manager only. (See also Art. III, § 3.3.5.)

BOAT. Any vessel, watercraft, or other artificial contrivance used, or which is capable of being used, as a means of transportation, mode of habitation, or as a place of business, professional, or social association on waters of Lee County, Florida, including:

1. Foreign and domestic watercraft engaged in commerce;
2. Passenger or other cargo-carrying water craft;
3. Privately-owned recreational watercraft;
4. Airboats and seaplanes; and
5. Houseboats or other floating homes.

BOAT PARTS STORE. Establishments primarily engaged in the retail sale of watercraft parts and accessories (excluding trailers), but not providing installation service.

BOAT REPAIR AND SERVICE. Establishments primarily engaged in minor repair service to small watercraft, including the sale and installation of accessories.

BOAT YARD. A boating or harbor facility located on or having direct access to navigable water engaged in building, maintaining and performing extensive repair on boats and small ships, marine engines and equipment, and including all uses also found in a marina. However, a ***BOAT YARD*** shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway or large capacity lifts used to haul out boats for maintenance or repair. (See ***MARINA***.)

BREWPUB. A restaurant, bar, or nightclub 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.
(Ord. 30-14, § 2, 10-20-2014; Ord. 36-15, § 4, 8-31-2015)

BUILDABLE LAND. Land remaining after the applicable minimum yard and green area requirements are met.
(Ord. 68-98, 11-30-1998)

BUILDING. Any structure either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This definition shall include tents, awnings, cabanas, or vehicles situated on private property and serving in any way the function of a building, but does not include screened enclosures not having a roof impervious to the weather. In addition, the area of the pool deck or other impervious surfaces, exclusive of pools and spas that may be located under screened enclosures, shall be included as part of the building.
(Ord. 71-91, 9-23-1991)

STRUCTURE. Any combination of materials fabricated to fulfill a function in a fixed location on the land, including buildings and signs.

STUDIO. An establishment in which an artist or craftsperson practices their art, craft, or vocation.

SUPERMARKET. A retail establishment which is principally for the sale of general food items on a cash and carry basis, generally self-service in arrangement, and frequently with a wide range of nonfood items including sundries, package sale of alcoholic beverages, hardware and the like, and frequently housing discrete but subordinate commercial operations, such as, bakeries, restaurants, pharmacies and package stores. A ***SUPERMARKET*** is to be distinguished from a grocery store on the basis of scale, being usually 25,000 square feet or larger in size, and the broader mix of goods and services.

SURFACED IN A STABLE MANNER. The term surfaced in a stable manner shall mean surfaced in a manner approved by the Director, or other designated official; however, such pavement shall be of a stable type and shall be designed to carry the anticipated traffic loads of the premises and uses served and shall conform with appropriate current city standard specifications.

SWIMMING POOL SUPPLY STORE. An establishment engaged in the retail sale of swimming pool supplies, such as pumps, motors, cleaning and maintenance supplies, and pool accessories such as spas and hot tubs.
(Ord. 6-10, 5-24-2010)

TASTING ROOM. A dedicated area within an artisan brewery, distillery or winery where beer, spirits, or wine is sampled and food may be served to patrons. Such facilities may also be used for the hosting of private and public events.
(Ord. 30-14, § 2, 10-20-2014; Ord. 36-15, § 4, 8-31-2015)

TELEMARKETING ESTABLISHMENT. An establishment primarily engaged in the selling of goods and services through telephone solicitations.

THEATER, INDOOR. A building or part thereof devoted to showing motion pictures, or for dramatic, musical or live entertainment, but not including "Nightclubs" which are specifically defined.

TRAVEL TRAILER. A vehicular portable structure designed for temporary living and sleeping purposes, primarily for travel, recreational and vacation uses, which:

(a) Is identified by the manufacturer as a travel trailer; or

(b) Is not more than eight feet in body width; or

(c) Is of any weight provided that its body length does not exceed 32 feet; or

(d) Is of any length provided that its gross weight, factory equipped for use, does not exceed 4,500 pounds.

TRUCK STOP. An establishment where the principal use is primarily the refueling and servicing of trucks and tractor-trailer rigs. Such establishments may have restaurants or snack bars and sleeping accommodations for the drivers of such over-the-road equipment and may provide facilities for the repair and maintenance of such equipment.

TRUCKING TERMINAL. An area of building where cargo is stored and where trucks load and unload cargo on a regular basis.

UNTREATED SEWAGE. Sewage other than that discharged from a vessel having sanitation devices installed and operated in compliance with standards and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, or in the absence of such standards and regulations or prior to their effective date, sewage which has not been treated to conform to the applicable specifications of the state.

USE. Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or any activity; occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

VARIANCE. A departure from the terms of this ordinance pertaining to height, width, depth and area of structures and size of yards, and parking space and 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. (See §§ 4.1.9A. and 5.1.15.)
(Ord. 68-98, 11-30-1998)

VARIETY STORE. A retail store offering a broad mix of generally non-durable goods, notions and sundries, also generally of moderate price. Durable goods (furniture, large appliances and the like) are seldom offered in a variety store.

VESSEL. Any boat, ship or other type of watercraft or contrivance capable of being used for transportation on water or as a floating object.

VETERINARIAN AND ANIMAL CLINIC. A premises, or portion of a premises, occupied by an establishment in which a person, or persons, practice a vocation or occupation that performs a type of labor, act or work that primarily results in the medicine, dentistry or surgery of animals, and similar veterinary services normally for a fee or charge. ***VETERINARIAN AND ANIMAL CLINICS*** do not include "Animal Specialty Farms".

WAREHOUSE, PRIVATE. Indoor terminal facilities operated primarily for a specific commercial establishment or group of establishments in a particular industrial or economic field, such as moving companies, transfer companies, freight delivery, specific retail store storage, or beverage distribution, but not generally accessible to the public.

WAREHOUSE, PUBLIC. Indoor terminal facilities available to the general public at a fee for the dead storage of farm products, furniture and other household goods or commercial or private goods of any nature. (See also ***WAREHOUSE***.)

WATERS OF THIS CITY. All navigable waters or waters connected thereto within the boundaries of the city.

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. ***YARDS*** are further defined as follows:

(a) ***FRONT YARD.*** That portion of the yard extending the full width of the lot and measured between the front lot line and a parallel line tangent to the nearest part of the principal building, which line shall be designated as the front yard line.
(Ord. 15-12, 9-10-2012)

(b) ***REAR YARD.*** That portion of the yard extending the full width of the lot and measured between the rear lot line and parallel line tangent to the nearest part of the principal building.

(c) ***SIDE YARDS.*** Those portions of the yard extending from the front property line to the rear property line and measured between the side lot lines and parallel lines tangent to the nearest parts of the principal building.
(Ord. 35-99, 6-3-1999)
(Ord. 139-06, 11-20-2006; Ord. 102-07, 9-10-2007; Ord. 69-10, 10-18-2010; Ord. 24-16, 6-6-2016)

LUDR COMPARATIVE TABLE

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 1.4 to 1.7	142-06	concurrencypolicy	12-11-2006
Sec. 2.1	101-03	estzondismx/vill/corr	10-20-2003
Sec. 2.1	91-05	zondistrdowntown	11-24-2005
Sec. 2.1	146-07	zoningdist	6-2-2008
Sec. 2.1(.2)	27-13	commercialdist	11-25-2013
Sec. 2.1(.7)	82-07	estzoningdistr	8-20-2007
Sec. 2.1(.8)	81-04	est/zon/dis/addinstit/deless	8-2-2004
Sec. 2.1(.8)	16-07	institutionaldistr	4-23-2007
Sec. 2.1(.9)	15-12	downdistrcts	9-10-2012
Sec. 2.1(.10)	29-08	preservationdistrict	4-14-2008
Sec. 2.1(.12)	135-05	zon/miscsignsflagpoles	10-31-2005
Sec. 2.2	39-06	zondismapelectronic	5-15-2006
Sec. 2.4	4-12	classofuses	2-27-2012
Sec. 2.4(.3)	24-16	hearingexaminer	6-6-2016
Sec. 2.5	78-00	luclass	8-28-2000
Sec. 2.5	98-03	luclass	10-14-2003
Sec. 2.5	125-06	luclass	10-23-2006
Sec. 2.5	157-06	naics n.amerind class	12-11-2006
Sec. 2.5	1-13	luclass	3-11-2013
Sec. 2.5(.2)	24-16	hearingexaminer	6-6-2016
Sec. 2.5(.5)	6-10	luclass	5-24-2010
Sec. 2.6	91-05	nonconformities	11-14-2005
Sec. 2.6	44-06	nonconformities/natureof	6-12-2006
Sec. 2.6	36-09	nonconformities	8-3-2009
Sec. 2.6	39-10	nonconformities	8-9-2010
Sec. 2.6	15-12	nonconformities	9-10-2012
Sec. 2.6(.5)	24-16	hearingexaminer	6-6-2016

LAND USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 2.7	118-02	c1cra	1-21-2003
Sec. 2.7	69-10	districtregulations	10-18-2010
Sec. 2.7(.1)	19-00	minyards	4-10-2000
Sec. 2.7(.1)	103-00	setback2	10-23-2000
Sec. 2.7(.1)	36-04	gatehousepdp	4-12-2004
Sec. 2.7(.1 - .5)	70-08	dimensionalregulations	8-25-2008
Sec. 2.7(.1 - .7)	125-06	dimensionalregulations	10-23-2006
Sec. 2.7(.1 - .11)	81-04	est/zon/dis/addinstit/deless	8-2-2004
Sec. 2.7(.1 - .17)	125-06	esssvcsgroupII	10-23-2006
Sec. 2.7(.2)	62-99	duplex	1-31-2000
Sec. 2.7(.2)	28-00	r3lvng	4-24-2000
Sec. 2.7(.2)	103-00	setback2	10-23-2000
Sec. 2.7(.2)	49-01	setback2rev	6-4-2001
Sec. 2.7(.2)	98-03	R-3	10-14-2003
Sec. 2.7(.2)(.3)(.4)(.11)(.12)	139-06	clubprivate	11-20-2006
Sec. 2.7(.2)(.3)(.5)(.7)(.11)-(.15)(.18)	24-16	hearingexaminer	6-6-2016
Sec. 2.7(.3)	62-99	duplex	1-31-2000
Sec. 2.7(.3)	28-00	r3lvng	4-24-2000
Sec. 2.7(.3)	103-00	setback2	10-23-2000
Sec. 2.7(.3)	114-00	guesthouse	12-4-2000
Sec. 2.7(.3)	98-03	RD	10-14-2003
Sec. 2.7(.4)	114-00	guesthouse	12-4-2000
Sec. 2.7(.4)	7-11	Reresidentialestate	5-2-2011
Sec. 2.7(.4)D	61-02	modelhomes-RE	6-17-2002
Sec. 2.7(.5)	103-00	setback2	10-23-2000
Sec. 2.7(.6-.10)	107-07	districtregulations	9-21-2009
Sec. 2.7(.7-.10)	47-00	buffer	8-14-2000
Sec. 2.7(.7-.10)	50-01	buffering	6-4-2001
Sec. 2.7(.7)	81-00	storage	10-23-2000
Sec. 2.7(.7)	117-02	metalroofs	12-9-2002
Sec. 2.7(.7)	40-03	C-1 dist	5-12-2003

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 2.7(.7)	60-04	C-1 dist	6-14-2004
Sec. 2.7(.7)	16-05	C-1 dist Auto/Equip. Dealers	2-28-2005
Sec. 2.7(.7)	102-07	C-1 disNeighhoodstorage	9-10-2007
Sec. 2.7(.7)	2-11	C-1pedcommdist	3-14-2011
Sec. 2.7(.7)	71-11	C-1pedcommdist	2-6-2012
Sec. 2.7(.7)	31-14	artisanalcoholandbrewpub	10-20-2014
Sec. 2.7(.7, .8)	6-10	C-1, C-3 districts	5-24-2010
Sec. 2.7(.7, .8)	9-11	C-1, C-3 districts	5-2-2011
Sec. 2.7(.8)	81-00	storage	10-23-2000
Sec. 2.7(.8)	106-08	C-3 overlaydistrictdeleted	10-6-2008
Sec. 2.7(.9)	40-03	P-1district	5-12-2003
Sec. 2.7(.9)	125-06	P-1district	10-23-2006
Sec. 2.7(.10)	18-00	I-1uses	4-10-2000
Sec. 2.7(.10)	81-00	storage	10-23-2000
Sec. 2.7(.10)	92-00	I1change	10-10-2000
Sec. 2.7(.10)	35-01	I-1uses	5-7-2001
Sec. 2.7(.10)	50-01	buffering	6-4-2001
Sec. 2.7(.10)	48-07	assistlivchildfacdelete	5-14-2007
Sec. 2.7(.10)	81-07	Industrfuneralhome	8-20-2007
Sec. 2.7(.10)	31-14	artisanalcoholandbrewpub	10-20-2014
Sec. 2.7(.10)	36-15	artisanandbrewpub	8-31-2015
Sec. 2.7(.11)	03-06	agridisdelesssvcfacgrpl	3-13-2006
Sec. 2.7(.11)	1-13	agridisdelesssvcfacgrpl	3-11-2013
Sec. 2.7(.12)	101-03	villagedistrict	10-20-2003
Sec. 2.7(.12)	155-05	villagedistrfastfood	1-23-2006
Sec. 2.7(.12)	03-06	villdisdelgatehouse	3-13-2006
Sec. 2.7(.12)	5-09	villagedistrictspecialregs	3-23-2009
Sec. 2.7(.12, .13)	107-07	districtregulations	9-21-2009
Sec. 2.7(.12, .13)	6-10	village/corridordistricts	5-24-2010
Sec. 2.7(.12, .13)	31-14	artisanalcoholandbrewpub	10-20-2014
Sec. 2.7(.13)	101-03	corridordistrict	10-20-2003

Cape Coral - Parallel References

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 2.7(.13)	16-05	corridordist/autoequpdealers	2-28-2005
Sec. 2.7(.13)	03-06	corrdistautorep/cleaning	3-13-2006
Sec. 2.7(.13)	102-07	corridordistrict	9-20-2207
Sec. 2.7(.13)	133-08	commerceparkoverlay	1-26-2009
Sec. 2.7(.13)	36-15	artisanandbrewpub	8-31-2015
Sec. 2.7(.13, .14)	81-04	est/zon/dis/addinstit/deless	8-2-2004
Sec. 2.7(.14)	16-07	purpintentpermuses	4-23-2007
Sec. 2.7(.14)	66-08	instdistrictpuses	8-11-2008
Sec. 2.7(.14)	10-15	instdistrictpuses	4-7-2015
Sec. 2.7(.15)	50-06 & 51-06	Dcdistrict	6-5-2006
Sec. 2.7(.15)	70-06	DCdistrict550sqft	8-7-2006
Sec. 2.7(.15)	171-06	Dcdistrictfastfood	2-5-2007
Sec. 2.7(.15)	27-07	Commtrashrecep	4-16-2007
Sec. 2.7(.15)	67-09	Downtowncoreddistrict	3-1-2010
Sec. 2.7(.15)	30-14	artisanalcoholandbrewpub	10-20-2014
Sec. 2.7(.15)	36-15	artisanandbrewpub	8-31-2015
Sec. 2.7(.15 -.17)	107-07	districtregulations	9-21-2009
Sec. 2.7(.15 -.17)	15-12	downtowndistregs	9-10-2012

LAND USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 2.7(.16)	50-06 & 51-06	DGDistrict	6-5-2006
Sec. 2.7(.16)	70-06	DGDistrict550sqft	8-7-2006
Sec. 2.7(.16)	171-06	Dcdistrictfastfood	2-5-2007
Sec. 2.7(.16)	27-07	Commtrashrecep	4-16-2007
Sec. 2.7(.16)	67-09	Downtowngatewaydistrict	3-1-2010
Sec. 2.7(.16, .17)	6-10	DGDEdistricts	5-24-2010
Sec. 2.7(.17)	50-06 & 51-06	DEDistrict	6-5-2006
Sec. 2.7(.17)	70-06	DEDistrict550Sqft	8-7-2006
Sec. 2.7(.17)	171-06	Dcdistrictfastfood	2-5-2007
Sec. 2.7(.17)	27-07	Commtrashrecep	4-16-2007
Sec. 2.7(.17)	105-08	DEDistrictspecialregs	10-6-2008
Sec. 2.7(.17)	67-09	Downtownedgedistrict	3-1-2010
Sec. 2.7(.18)	82-07	marketplres	8-20-2007
Sec. 2.7(.18)	90-10	marketplres	3-14-2011
Sec. 2.7(.18)	71-13	marketplres	1-13-2014
Sec. 2.7(.18)	31-14	artisanalcoholandbrewpub	10-20-2014
Sec. 2.7(.19)	29-08	preservationdistrict	4-14-2008
Sec. 2.7(.20)	146-07	proffbussdist	6-2-2008
Sec. 2.7(.20)	107-07	districtregulations	9-21-2009
Sec. 2.7(.21)	27-13	highintencommind	11-25-2013
Sec. 3.1	1-01	sheds	2-5-2001
Sec. 3.1	36-12	accessoryuses	12-10-2012
Sec. 3.1	68-13	accessoryuses	1-13-2014
Sec. 3.1(.2) A .1.a	1-02	garages	2-11-2002
Sec. 3.1(.2)	45-01	sheds2	5-21-2001
Sec. 3.1(.2)	13-06	heightsunshelters	2-27-2006
Sec. 3.2	107-04 (dpo 06-04)	tempusessalesofcs	9-13-2004
Sec. 3.2	91-05	tempusesstoragedwntwn	11-14-2005
Sec. 3.2	74-06	tempusesrentalofcs	8-7-2006
Sec. 3.2(.1)	96-08	temporarysalesoffice	9-8-2008
Sec. 3.2(.1) - (.2)	16-07	tempsalesofc	4-23-2007

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 3.2(.3)	15-12	tempuses	9-10-2012
Sec. 3.2(.4)	26-09	temporaryhabitablestructures	7-20-2009
Sec. 3.3	91-05	multiconjoineddwntwn	11-14-2005
Sec. 3.3	172-06	specuseregscommreceptcl	1-22-2007
Sec. 3.3(.1)	15-04	waterdischrggutersdwnsputs	2-9-2004
Sec. 3.3(.1)	107-04 (dpo 06-04)	specuseregsconstrtralr	9-13-2004
Sec. 3.3(.1)	46-11	speuseregsnglefamres	10-17-2011
Sec. 3.3(.2) & (.3)	15-12	specificuse	9-10-2012
Sec. 3.3(.6)	34-02	carportvehicles	5-6-2002
Sec. 3.3(.8)	79-02	temp stor contanrs	10-7-2002
Sec. 3.4	125-00	outdoor	1-16-2001
Sec. 3.4	91-05	outdoordisplay	11-14-2005
Sec. 3.4	15-12	specificuse	9-10-2012
Sec. 3.4(.1) & (.2)	39-05	outdoordisplay	8-21-2006
Sec. 3.4(.1) & (.3)	16-07	outdoordisplaymerch	4-23-2007
Sec. 3.5	122-05	streetaccess	11-21-2005
Sec. 3.5	24-16	hearingexaminer	6-6-2016
Sec. 3.7	147-05	visibilitytriangles	11-14-2005
Sec. 3.7	25-09	visibilitytriangles	7-20-2009
Sec. 3.8	91-05	generalregslotsyards	11-14-2005
Sec. 3.8	102-08	generalregslotsyards	10-6-2008
Sec. 3.8	15-12	generalregslotsyards	9-10-2012
Sec. 3.9	80-04	fencefaceoutward	7-19-2004
Sec. 3.9	124-08	fencesshrubberywalls	12-8-2008
Sec. 3.9	26-13	fencesshrubberywalls	6-3-2013
Sec. 3.9	28-14	fencesshrubberywalls	9-29-2014
Sec. 3.9(.1)	87-06	fencesportsbackstops	7-31-2006
Sec. 3.9(.1)	62-10	fencesshrubberywalls	8-9-2010
Sec. 3.9(.2)	102-08	fencesshrubberywalls	10-6-2008
Sec. 3.9(.2)	15-12	fencesdwtnzngdist	9-10-2012
Sec. 3.9(.6)	112-04	fencehgtlocinstitn'lzoning	9-7-2004

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 3.9(.6)	82-07	fenceshrmixeduse	8-20-2007
Sec. 3.9(.6)	102-08	fencesshrubberywalls	10-6-2008
Sec. 3.10	17-07	swimmingpoolsnewconstr	10-1-2007
Sec. 3.12	60-99	popups	12-13-1999
Sec. 3.12	6-00	parking	2-28-2000
Sec. 3.12(.1) & (.3)	62-02	comvehicles	6-17-2002
Sec. 3.12(.1) - (.3)	61-04	rvparking	6-1-2004
Sec. 3.12(.2)	73-02	rvparking	8-12-2002
Sec. 3.12(.2)	122-02	rvparking	12-9-2002
Sec. 3.12(.4)	1-13	rv/truckparking	3-11-2013
Sec. 3.12(.7)	115-03	pkgvaclot	11-10-2003
Sec. 3.12(.9)	31-05	pkgvaclotcraarea	3-7-2005
Sec. 3.13	38-09	variationculdesaclots	8-3-2009
Sec. 3.14	107-07	protectioneasements	9-21-2009
Sec. 3.14(.1-.6)	68-04	protectioneasements	6-8-2004
Sec. 3.14(.3)	16-07	protectioneasements	4-23-2007
Sec. 3.16	63-99	dock3	11-29-1999
Sec. 3.16	28-11	dockstandards	6-20-2011
Sec. 3.16	38-13	marineimprovements	8-5-2013
Sec. 3.16(.1)	26-04	boatcanopy	3-8-2004
Sec. 3.16(.1)(.2)(.8)	35-09	marineimprovements	8-3-2009
Sec. 3.16(.2)(.9)	24-16	hearingexaminer	6-6-2016
Sec. 3.16(.2)(.8)	102-04	dockladders	8-23-2004
Sec. 3.16(.2)	111-04	boatcanopyextension	9-7-2004
Sec. 3.16(.2)	9-15	boatcanopyextension	4-7-2015
Sec. 3.16(.3)	36-08	marineimpapplic	4-28-2008
Sec. 3.16(.9)	9-15	marineimpdeviations	4-7-2015
Sec. 3.17	91-05	sidewalksalleys	11-14-2005
Sec. 3.17(.1)	82-07	sidewalksalleys	8-20-2007
Sec. 3.17(.1)	27-13	sidewalksalleys	11-25-2013
Sec. 3.19	170-06	occlic-businesstaxdiv	12-11-2006
Sec. 3.20	170-06	occlic-businesstaxdiv	12-11-2006

Cape Coral - Parallel References

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 3.21	94-01	miscfees	12-3-2001
Sec. 3.21	79-07	garagesalesonline	7-30-2007
Sec. 3.21	24-09	garagesales	7-20-2009
Sec. 3.23	4-16	borrowpits	2-8-2016
Sec. 3.24	91-05	rightofwaydwntwn	11-14-2005
Sec. 3.24	103-06	rightofwaymailbox	8-28-2006
Sec. 3.24	171-06	rightofwaytrees	2-5-2007
Sec. 3.24	107-07	rightofwaycity	9-21-2009
Sec. 3.24(.3)	16-07	cityrightofwayinst	4-23-2007
Sec. 3.26	75-00	assmts	8-14-2000
Sec. 3.26 (.1)&(.2)	39-05	Special events	8-21-2006
Sec. 3.26	17-15	Special events	6-15-2015
Sec. 3.27 (est. section)	125-06	distribelectricsubstation	10-23-2006
Sec. 3.28	21-11	dogsinfoodservestab	6-6-2011
Sec. 3.29	25-13	newsracksandvendingmachines	7-15-2013

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 4.1	91-05	landdevprocesses	11-14-2005
Sec. 4.1(.1) - (.2)	24-16	hearingexaminer	6-6-2016
Sec. 4.1(.1) - (.2)	16-07	generalinstitutionalzoning	4-23-2007
Sec. 4.2	13-00	pdpmod	3-13-2000
Sec. 4.2	91-05	pdpproceduredowntwn	11-14-2005
Sec. 4.2	1-08	planneddevprojectprocedure	3-10-2008
Sec. 4.2(.4)	128-02	pdpundergroundutilities	4-14-2003
Sec. 4.2(.4)	125-05	pdpprocurbansvcsarea	10-11-2005
Sec. 4.2(.4)	16-07	pdpprojprocedure	4-23-2007
Sec. 4.2(.4)	94-08	pdpprojprocedure	9-8-2008
Sec. 4.2(.4)	8-15	pdpprojprocedure	4-7-2015
Sec. 4.2(.4)-(.6)	24-16	hearingexaminer	6-6-2016
Sec. 4.2(.5)	82-00	pdpamend	8-28-2000
Sec. 4.2(.5)	87-03	pdpprocedure	9-8-2003
Sec. 4.2(.5)	172-05	pdppocedures/amendmnts	1-23-2006
Sec. 4.2(.5)	15-12	pdppocedures/amendmnts	9-10-2012
Sec. 4.2(.5)	8-15	pdppocedures/amendmnts	4-7-2015
Sec. 4.2(.6)	8-15	pdppocedures/plansubmission	4-7-2015
Sec. 4.4	91-05	siteplanreviewprocedure	11-14-2005
Sec. 4.4	1-08	siteplanreview procedures	3-10-2008
Sec. 4.4	107-07	siteplanreview procedures	9-21-2009
Sec. 4.4(.2)	16-07	siteplanreviewprocedure	4-23-2007
Sec. 4.4(.4)	15-12	siteplanreviewprocedure	9-10-2012
Sec. 4.5(1,.4,.7)	82-07	transfdevrights	8-20-2007
Sec. 5.1	91-05	pkyspacesdowntown	11-14-2005
Sec. 5.1	102-07	pkyspacesdowntown	9-10-2007
Sec. 5.1	15-12	pkyspacesdowntown	9-10-2012
Sec. 5.1(.5)	24-16	hearingexaminer	6-6-2016
Sec. 5.1(.7)	31-14	artisanalcoholandbrewpub	10-20-2014
Sec. 5.2	107-07	landscaping	9-21-2009
Sec. 5.2	15-12	landscaping	9-10-2012
Sec. 5.2	27-13	landscaping	11-25-2013

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 5.2(.8)	88-01	treeprohibit	12-3-200
Sec. 5.2(.8F)	103-06	generalimitations	8-28-2006
Sec. 5.2(.9)	81-04	est/zon/dis/addinstit/deless	8-2-2004
Sec. 5.2(.9)	16-07	landscapingrequirements	4-23-2007
Sec. 5.2(.10), (.15)	63-15	landscaping	1-25-2016
Sec. 5.2(.15), (.19)	24-16	hearingexaminer	6-6-2016
Sec. 5.3	88-01	treeprohibit	12-3-2001
Sec. 5.3	103-06	plantingmedianslateralROW	8-28-2006
Sec. 5.3	107-07	plantingmedianslateralROW	9-21-2009
Sec. 5.5	1-08	cityrowreservationacquisitionstands	3-10-2008
Sec. 5.6	84-07	nonresdsgnstds	5-12-2008
Sec. 5.6(.2)	15-12	nonresdsgnstds	9-10-2012
Sec. 5.6(.3), (.10)	24-16	hearingexaminer	6-6-2016
Sec. 5.6(.8)	62-15	nonresdsgnstds	1-25-2016
Sec. 5.7	83-07	devincentiveprogram	8-6-2007
Sec. 5.7(.6)	24-16	hearingexaminer	6-6-2016
Secs. 6.1.1 - 6.3.7	5-14	flooddamageprevention	3-31-2014
Secs. 6.1 - 6.6	81-08	flooddamageprevention	8-11-2008
Secs. 6.1 - 6.6	67-11	flooddamageprevention	12-12-2011
Sec. 6.1.7(.1) - (.3), (.6), (.7)	24-16	hearingexaminer	6-6-2016
Sec. 6.2	91-05	floodproofingmarketvalue	11-14-2005
Sec. 6.4	91-05	menuboarddisplaybox	11-14-2006
Sec. 6.5	91-05	floodhazardreductiondowntwn	11-14-2005
Sec. 6.5(B)	16-07	provfloodhazreduction	4-23-2007
Secs. 7.1 - 7.13, 7.15 - 7.18	29-13	signs	9-30-2013
Sec. 7.3	110-02	bldgcode	12-3-2002
Sec. 7.4	110-02	definitions	12-3-2002
Sec. 7.4	111-00	flagstd	11-20-2000
Sec. 7.4	90-05	deftemppatrioticsigns	8-1-2005
Sec. 7.4	60-6	defmultbussites/offsitesign	5-30-2006

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 7.6	91-05	prohibitedsigns	11-14-2005
Sec. 7.6	60-6	prohibitedsigns	5-30-2006
Sec. 7.6	11-09	prohibitedsigns	5-4-2009
Sec. 7.6	15-12	prohibitedsigns	9-10-2012
Sec. 7.6	18-14	prohibitedsigns	6-9-2014
Sec. 7.6	11-16	prohibitedsigns	5-23-2016
Sec. 7.7	1-00	polsigns	1-31-2000
Sec. 7.7	110-02	exmpsigns	12-2-2002
Sec. 7.7	90-05	exmpsignspatriotic	8-1-2005
Sec. 7.7	91-05	exemptsigns	11-24-2005
Sec. 7.7	18-14	exemptsigns	6-9-2014
Sec. 7.7(.1)	79-07	exemptsignsgaragesales	7-30-2007
Sec. 7.7(.2)	16-07	exemptsignspolitical	4-23-2007
Sec. 7.7(.2)	41-07	exemptsignspolitical	4-30-2007
Sec. 7.7(.3)	15-12	exemptsigns	9-10-2012
Sec. 7.8	91-05	signpermits	11-14-2005
Sec. 7.8	15-12	signpermits	9-10-2012
Sec. 7.8	11-16	signpermits	5-23-2016
Sec. 7.9	91-05	lightedsigns	11-14-2005
Sec. 7.9	15-12	reqsallsigns	9-10-2012
Sec. 7.9	18-14	reqsallsigns	6-9-2014
Sec. 7.9	11-16	reqsallsigns	5-23-2016
Sec. 7.11	110-02	signpubrofway	12-3-2002
Sec. 7.11	90-05	rowpatrioticsigns	8-1-2005
Sec. 7.11	18-14	rowpatrioticsigns	6-9-2014
Sec. 7.12	25-08	nonconformingsigns	3-17-2008
Sec. 7.12	91-05	nonconformingsigns	11-14-2005
Sec. 7.12	25-08	nonconformingsigns	3-17-2008
Sec. 7.12	123-08	nonconformingexistingsigns	12-8-2008
Sec. 7.12	15-12	nonconformingexistingsigns	9-10-2012
Sec. 7.13	115-00	flagpoles	12-18-2000

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 7.13	110-02	miscsigns	12-3-2002
Sec. 7.13	79-04	signspclevntfinnotcc	7-19-2004
Sec. 7.13(.7)	135-05	miscsignsvillcorrdistricts	10-31-2005
Sec. 7.13(.7)	16-07	miscsigns	4-23-2007
Sec. 7.14	18-14	reqsallsigns	6-9-2014
Sec. 7.15	18-14	maxsignareapersite	6-9-2014
Sec. 7.16	18-14	unifiedsignplan	6-9-2014
Sec. 7.17	18-14	nonconformingexistingsigns	6-9-2014
Sec. 7.18	18-14	deviations	6-9-2014
Sec. 7.18(.4)-(.6)	24-16	hearingexaminer	6-6-2016
Sec. 8.3	1-08	publichearings	3-10-2008
Sec. 8.3	23-16	quasijud	6-6-2016
Sec. 8.3(.1) - (.3)	24-16	hearingexaminer	6-6-2016
Sec. 8.4	24-16	hearingexaminer	6-6-2016
Sec. 8.7	1-08	amendments	3-10-2008
Sec. 8.7	37-09	amendments	8-17-2009
Sec. 8.7(.1) - (.7)	24-16	hearingexaminer	6-6-2016
Sec. 8.7(.6)	113-00	appeals	12-4-2000
Sec. 8.7(.6)	91-05	execdirreviewapplications	11-25-2005
Sec. 8.8	2-01	compatible	2-5-2001
Sec. 8.8	87-03	specexcep	9-8-2003
Sec. 8.8	91-05	execdirrevspeexceptions	11-14-2005
Sec. 8.8(.1) - (.7)	24-16	hearingexaminer	6-6-2016
Sec. 8.9(.3 and .5)	113-00	appeals	12-4-2000
Sec. 8.9(.3 & .5)	70-05	appealsquasi	11-7-2005
Sec. 8.10	87-03	variances	9-8-2003
Sec. 8.10	21-14	variances	8-4-2014
Sec. 8.10(.1) - (.6), (.8)	24-16	hearingexaminer	6-6-2016
Sec. 8.11	77-00	vacrow	8-28-2000
Sec. 8.11	1-08	vacationplatsrowotherproperty	3-10-2008
Sec. 8.11	37-09	vacationplatsrightsofwayotherproperty	8-17-2009

LAND USE SECTION	ORDINANCE #	FILE NAME	DATE
Sec. 8.11(.1) - (.3)	24-16	hearingexaminer	6-6-2016
Sec. 8.11(.3)	112-06	Platvacprocnotice	9-18-2006
Sec. 8.11(.4)	112-06	ROWvacationsnotice	9-18-2006
Sec. 8.13	64-09	specialmagistrate	12-14-2009
Sec. 9.1(.1) - (.5)	24-16	hearingexaminer	6-6-2016
Sec. 9.1(.2)	56-99	p&zalt	11-15-1999
Sec. 9.1(.2)	48-01	p&z	6-4-2001
Sec. 9.1(.2)	67-01	p&z	9-10-2001
Sec. 9.1(.2)	173-06	PZcomposition	1-22-2007
Sec. 9.1(.2)	43-13	PZcomposition	9-23-2013
Sec. 9.1(.3)	77-00	vacrow	8-28-2000
Sec. 9.2	22-16	hearingexaminer	6-6-2016
Sec. 9.2(.2.c)	56-99	p&zalt	11-15-1999
Sec. 9.5.2	128-00	bdchanges	1-16-2001
Sec. 10.1	87-03	violations	9-8-2003
Sec. 10.2	87-03	remediespenalties	9-8-2003
Sec. 11.1	62-99	def/duplex	1-31-2000
Sec. 11.1	81-00	def/storage	10-10-2000
Sec. 11.1	114-00	def/guesthouse	12-4-2000
Sec. 11.1	1-01	def/sheds	2-5-2001
Sec. 11.1	2-01	def/compatible	2-5-2001
Sec. 11.1	1-08	def/directlyaffectedproperty	3-10-2008
Sec. 11.1	98-03	def/lrgfamchildcare	10-14-2003
Sec. 11.1	101-03	def/re:vill/corrdist	10-20-2003
Sec. 11.1	44-06	def/nonconfbldgstruc	6-12-2006
Sec. 11.1	102-07	def/neighborhoodstoragefacility	9-10-2007
Sec. 11.1	139-06	def/clubhouseprivate	11-20-2006
Sec. 11.1	84-07	def/eaveselectranscorrmain parcelsmassingoffsetoutparcelpilaster reveals	5-12-2008
Sec. 11.1	6-10	def/swimmingpoolsupplystore	5-24-2010
Sec. 11.1	69-10	def/towerscommunicationdeleted	10-18-2010

Cape Coral - Parallel References

LAND USE SECTION	*ORDINANCE #*	*FILE NAME*	*DATE*
Sec. 11.1	15-12	definitions	9-10-2012
Sec. 11.1	1-13	defrecveh/recvehpark	3-11-2013
Sec. 11.1	61-13	dwellingunit	12-9-2013
Sec. 11.1	30-14	artisanalcoholandbrewpub	10-20-2014
Sec. 11.1	36-15	artisanandbrewpub	8-31-2015
Sec. 11.1	24-16	hearingexaminer	6-6-2016
Sec. 12.1	103-01	engdesign	5-6-2002
Sec. 12.1 thru 12.2	39-03	adoptflbldgcode2001/nochp1	4-28-3003
Sec. 12.1 thru 12.2	28-09	adoptbldgcode2007	8-3-2009
Sec. 12.1 thru 12.4	6-14	bldgcodes	3-31-2014
Sec. 12.1	86-06	bldgcode2004	7-31-2006
Sec. 12.1	14-07	engdesignstdrdfbc2004	3-26-2007
Sec. 12.1	120-07	flabdgcode2004ch1admin	9-11-2007
Sec. 12.2	14-07	addsectionsec114stopwkorder	3-26-2007
Sec. 12.3	120-07	stanhousingcodesuppreq	9-11-2007
Sec. 12.4	120-07	intlpropmaincode2006	9-11-2007
Sec. 12.4	28-09	intlpropmaincode2006	8-3-2009

REFERENCES TO ORDINANCES

Ord. No.	*Date Passed*	*Code Section*
42-90	6-25-1990	12.1
66-90	9-10-1990	4.4
7-91	2-11-1991	2.7
53-91	7-22-1991	2.5
54-91	7-22-1991	2.7
55-91	7-22-1991	4.2
57-91	7-22-1991	3.23
65-91	8-26-1991	2.6
66-91	8-26-1991	3.1, 3.14, 3.17, 3.3, 3.7, 3.8, 3.9
68-91	8-26-1991	8.1, 8.3, 8.7, 8.9
70-91	9-23-1991	4.4
71-91	9-23-1991	11.1
72-91	9-23-1991	2.3, 8.4, 8.8, 8.9
91-91	10-28-1991	5.5
17-92	4-13-1992	8.8
11-93	4-26-1992	4.4
33-92	6-22-1992	12.1, 12.4
2-93	2-22-1993	3.25
34-93	7-26-1993	3.19, 3.20
36-93	7-26-1993	2.7
83-93	12-6-1993	3.24
87-93	12-20-1993	3.9
79-93	2-14-1994	2.7
7-94	2-28-1994	2.7
35-94	6-27-1994	2.7
43-94	8-8-1994	2.7
48-94	10-11-1994	4.4
49-94	10-11-1994	11.1
39-95	8-14-1995	12.1
1-96	3-12-1996	3.12
22-96	5-6-1996	2.7
57-96	10-21-1996	8.13, 8.9
69-96	1-13-1997	2.7
1-97	2-10-1997	3.9

Ord. No.	*Date Passed*	*Code Section*
3-97	2-10-1997	2.7, 11.1
18-97	4-23-1997	4.2
26-97	6-9-1997	3.12
32-97	7-28-1997	3.3
1-97	8-15-1997	2.7
51-97	8-15-1997	2.7
44-97	8-25-1997	3.4
72-97	10-27-1997	3.17
89-97	1-26-1998	2.7
20-98	4-6-1998	3.9
29-98	4-20-1998	12.1
48-98	8-24-1998	3.9
49-98	8-24-1998	3.1
68-98	11-30-1998	2.7, 11.1
2-99	2-8-1999	4.2
7-99	3-8-1999	3.21
18-99	5-3-1999	2.7, 11.1
35-99	6-3-1999	2.7, 4.2, 4.3, 4.4, 5.1, 5.4, 8.5, 11.1
53-99	10-18-1999	12.1
56-99	11-1-1999	9.1, 9.2
60-99	12-13-1999	3.12
62-99	1-31-2000	2.7, 11.1
6-00	2-28-2000	3.12
13-00	3-13-2000	4.2
18-00	4-10-2000	2.7
19-00	4-10-2000	2.7
28-00	4-24-2000	2.7
47-00	8-14-2000	2.7
77-00	8-28-2000	8.11, 9.1
78-00	8-28-2000	2.5
78-00	8-28-2000	2.5
82-00	8-28-2000	4.2
92-00	10-10-2000	2.7, 4.2
81-00	10-23-2000	2.7, 11.1
103-00	10-23-2000	2.7
113-00	12-4-2000	8.7, 8.9
114-00	12-4-2000	2.7, 11.1
125-00	1-16-2001	3.4
128-00	1-16-2001	9.5
1-01	2-5-2001	3.1, 11.1
2-01	2-5-2001	8.8, 11.1

Ord. No.	*Date Passed*	*Code Section*
82-07	8-20-2007	2.1, 2.7, 3.9, 3.17, 4.5
102-07	9-10-2007	2.7, 5.1, 11.1
17-07	10-1-2007	3.10
120-07	10-29-2007	12.1, 12.3, 12.4
1-08	3-10-2008	4.2, 4.4, 5.5, 8.3, 8.7, 8.11, Art. 11.1
29-08	4-14-2008	2.1, 2.7
36-08	4-28-2008	3.16
84-07	5-12-2008	5.6, 11.1
146-07	6-2-2008	2.1, 2.7
66-08	8-11-2008	2.7.14
70-08	8-25-2008	2.7.1 - 2.7.5
94-08	9-8-2008	4.2.4
96-08	9-8-2008	3.2.1
102-08	10-6-2008	3.8, 3.9
106-08	10-6-2008	2.7.8
124-08	12-8-2008	3.9
133-08	1-26-2009	2.7.13
5-09	3-23-2009	2.7.12
24-09	7-20-2009	3.21
25-09	7-20-2009	3.7
26-09	7-20-2009	3.2
28-09	8-3-2009	12.1, 12.2, 12.4
35-09	8-3-2009	3.16
36-09	8-3-2009	2.6
37-09	8-17-2009	8.7, 8.11
38-09	8-3-2009	3.13
107-07	9-21-2009	2.7, 3.14, 3.24, 4.4, 5.2
64-09	12-14-2009	8.13
67-09	3-1-2010	2.7
6-10	5-24-2010	2.5.5, 2.7.7, 2.7.8, 2.7.12, 2.7.13, 11.1
39-10	8-9-2010	2.6
62-10	8-9-2010	3.9
69-10	10-18-2010	2.7, 11.1
90-10	3-14-2011	2.7.18
2-11	3-14-2011	2.7.7
7-11	5-2-2011	2.7.4
9-11	5-2-2011	2.7.7, 2.7.8
21-11	6-6-2011	3.28
28-11	6-20-2011	3.16
46-11	10-17-2011	3.3
71-11	2-6-2012	2.7.7
4-12	2-27-2012	2.4

Ord. No.	*Date Passed*	*Code Section*
15-12	9-20-2012	2.1, 2.6, 2.7.15, 2.7.16, 2.7.17, 3.2, 3.3, 3.4, 3.8, 3.9, 4.2, 4.4, 5.1, 5.2, 5.6, 11.1
36-12	12-10-2012	3.1
1-13	3-11-2013	2.5, 2.7.11, 3.12.4, 11.1
25-13	7-15-2013	3.29
26-13	6-3-2013	3.9
27-13	11-25-2013	2.1.2, 2.7.21, 3.17, 5.2
29-13	9-30-2013	7.1 - 7.13, 7.15 - 7.18
38-13	8-5-2013	3.16
61-13	12-9-2013	11.1
68-13	1-13-2014	3.1
71-13	1-14-2014	2.7.18
5-14	3-31-2014	6.1.1 - 6.1.8, 6.2.1, 6.3.1 - 6.3.7
6-14	3-31-2014	12.1, 12.2, 12.3, 12.4
18-14	6-9-2014	7.6, 7.7, 7.9, 7.11, 7.14 - 7.18
21-14	8-4-2014	8.10
28-14	9-29-2014	3.9
30-14	10-20-2014	2.7.15, Art. 11.1
31-14	10-20-2014	2.7.7, 2.7.10, 2.7.12, 2.7.13, 2.7.18, 5.1.7
8-15	4-7-2015	4.2.4, 4.2.5, 4.2.6
9-15	4-7-2015	3.16.2, 3.16.9
10-15	4-7-2015	2.7.14
17-15	6-15-2015	3.26
36-15	8-31-2015	2.7.10, 2.7.13, 2.7.15, 11.1
62-15	1-25-2016	5.6.8
63-15	1-25-2016	5.2.10, 5.2.15
4-16	2-8-2016	3.23
11-16	5-23-2016	7.6, 7.8, 7.9
22-16	6-6-2016	9.2
23-16	6-6-2016	8.3
24-16	6-6-2016	2.4 - 2.7, 3.5, 3.16, 4.1, 4.2, 5.1, 5.2, 5.6, 5.7, 6.1.7, 7.18, 8.3, 8.4, 8.7, 8.8, 8.10, 8.11, 9.1, 11.1