

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF CAPE CORAL, FLORIDA, ARTICLE 3, DEVELOPMENT REVIEW, CHAPTER 1, DEVELOPMENT REVIEW PROCEDURES, SECTION 3.1.3., DEVELOPMENT APPROVAL PROCESS; TABLE 3.1.3.; ARTICLE 3, DEVELOPMENT REVIEW, CHAPTER 1, DEVELOPMENT REVIEW PROCEDURES, SECTION 3.1.14. REVIEW BY DEPARTMENT DIRECTORS; ADMINISTRATIVE APPEALS; AND APPEALS; ARTICLE 5, DEVELOPMENT STANDARDS, CHAPTER 4, MARINE IMPROVEMENTS, SECTION 5.4.8. BULKHEADS, SEAWALLS, AND RETAINING WALLS; ARTICLE 9, FLOODPLAIN MANAGEMENT, CHAPTER 6, VARIANCES AND APPEALS, SECTION 9.6.2. APPEALS; AND ARTICLE 13, REASONABLE ACCOMMODATION & DISPUTE RESOLUTION, SECTION 13.1.1. REASONABLE ACCOMMODATION, REGARDING THE APPEAL PROCESS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral, Florida Land Development Code, Article 3, Chapter 1, Section 3.1.3., is hereby amended as follows:

Section 3.1.3. Development approval process; table 3.1.3.

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

TABLE 3.1.3 DEVELOPMENT APPROVAL AND REQUIRED NOTICE						
Decision Maker			Notice			
DD	Department Director	Recommendation	Decision Maker	Published	Mailed	Posted
HEX	Hearing Examiner					
LPA	Planning and Zoning Commission/Local Planning Agency					
CC	City Council					
SM	Special Magistrate					
CirC	Circuit Court					
	Application Type					
Administrative	Zoning or Flood Zone Verification Letters		DD			
	Certificate of Zoning Compliance		DD			
	Administrative Interpretations & Similar Use Determinations		DD			
	Sign Permits		DD			
	Lot Splits and Lot Combines		DD			
	Conditional Uses		DD			
	PDP Abandonments involving all property owners		DD			
	PDP Amendments - first extension requests only		DD			

	PUD Amendments - Minor			DD			
	Administrative Deviations			DD			
	Site Development and Subdivision Construction Plans			DD			
	Preliminary Subdivision Plans			DD			
	Site Improvements Permits			DD			
	Site Development Permits and Construction Authorization			DD			
	Temporary Use Permits			DD			
	Outdoor Dining			DD			
	Business Tax Receipts			DD			
	Reasonable Accommodations (see Article 13)			DD			
	Outdoor Dog Dining Permit			DD			
	Appeals of Administrative Decisions	DD		€€ <u>SM</u>	CirC	✓	
Quasi-Judicial	Deviations (Other than Administrative Deviations)		DD	HEX		✓	✓
	Variances		DD	HEX		✓	✓
	Special Exceptions		DD	HEX		✓	✓
	Vacations - Easement/Lot/Plat		HEX	CC		✓	✓
	Rezones		HEX	CC		✓	✓
	PDP Amendments except for first extension requests		HEX	CC		✓	✓
	PDP Abandonments involving less than 100% of the property owners		HEX	CC		✓	✓
	PUDs		HEX	CC		✓	✓
	PUD Amendments - Major		HEX	CC		✓	✓
	Appeals of Quasi-Judicial Decisions	DD		€€ <u>SM</u>	CirC	✓	✓
Legislative	Annexations		DD	CC		✓	✓
	Future Land Use Map Amendments		LPA	CC		✓	✓
	Comp Plan Text Amendments		LPA	CC		✓	
	LDC Text Amendments		LPA	CC		✓	
	Final Plats		DD	CC		✓	
Other	Outdoor Display of Merchandise		DD	CC			✓
	Special Events (Parks and Recreation)			DD			

SECTION 2. The City of Cape Coral, Florida Land Development Code, Article 5, Chapter 1, Section 3.1.14., is hereby amended as follows:

Section 3.1.14. Review by department directors; administrative appeals; and appeals.

A. Review by Department Directors.

1. Development Services Director review. Applicants for administrative permits and approvals may request a formal review by the Development Services Director of decisions made by Development Services Department staff within thirty (30) calendar days of the date the administrative decision was made. The request for review shall be accompanied by any relevant documents related to the review as determined by the Development Services Director. Staff involved in the decision shall review the relevant standards and present a written finding to the Development Services Director. The request for review shall be considered by the Development Services Director within ten (10) business days of submittal of a complete request. The Development Services Director may consult with the City Attorney's office on the matter.

The Development Services Director shall provide a written determination to reverse or affirm the staff decision, wholly or partially, modify the staff decision, with or without conditions, or respond to the applicant or staff requesting further information, documentation, or proceedings. The written determination by the Director shall be the final administrative decision.

2. Public Works Director review. Applicants for administrative permits and approvals may request a formal review by the Public Works Director of decisions made by Public Works Department staff within thirty (30) calendar days of the date the administrative decision was made. The request for review shall be accompanied by any relevant documents related to the review as determined by the Public Works Director. Staff involved in the decision shall review the relevant standards and present a written finding to the Public Works Director. The request for review shall be considered by the Public Works Director within ten (10) business days of submittal of a complete request. The Public Works Director may consult with the City Attorney's office on the matter.

The Public Works Director shall provide a written determination to reverse or affirm the staff decision, wholly or partially, modify the staff decision, with or without conditions, or respond to the applicant or staff requesting further information, documentation, or proceedings. The written determination by the Director shall be the final administrative decision.

- B. Administrative Appeals. Appeals of Department Director decisions. An applicant desiring to appeal a decision of a Department Director for a decision based upon the Land Development Code, shall, within ten (10) business days from the date of such decision, file a written Notice of Appeal with the Development Services Department. The appeal shall then be heard by the City Council at a regularly scheduled meeting the City Special Magistrate, following sufficient time to review the appeal and provide the required public notice. A staff or Department Director's recommendation is not a decision and is not appealable.
- C. Appeals from decisions of the Hearing Examiner on Quasi-judicial matters. Any aggrieved party by a decision of the Hearing Examiner on a quasi-judicial matter may file an appeal to the City Special Magistrate City Council within thirty (30) calendar days by filing a written Notice of Appeal with the City Clerk. All such appeals shall be based on the record.
- D. Appeals from Quasi-judicial decisions of the City Council. An action to review any decision of the City Council under these regulations may be taken by any person or persons aggrieved by such decision by presenting to the Circuit Court a petition for issuance of a Writ of Certiorari.
- E. Stay of proceedings. An appeal shall stay all proceedings in the matter appealed from until the final disposition of the appeal by the City Special Magistrate City Council. The pendency of an appeal shall toll all time periods applicable to the decision which is subject to appeal until final disposition of the appeal by the City Council with regard to the appeal.
- F. Record. The record to be considered in the appeal shall include any application, exhibits, appeal papers, written objections, waivers, or consents considered by staff, a Department Director, the Hearing Examiner, or City Special Magistrate City Council, as well as transcripts and recordings taken at a public hearing, the Hearing Examiner or City Council minutes, and resolutions or ordinances showing the decision or action being appealed. The City Clerk shall identify all

exhibits used at the hearing. All exhibits so identified or introduced shall be a part of the City record.

SECTION 3. The City of Cape Coral, Florida Land Development Code, Article 5, Chapter 4, Section 5.4.8, is hereby amended as follows:

Section 5.4.8. Bulkheads, seawalls, and retaining walls.

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C. Unexcavated platted waterway right-of-way.

1. The original developer of Cape Coral dedicated waterways on the Plat but did not excavate certain waterways to the full width indicated on the Plat, resulting in dry land existing between a platted lot line and the water. For purposes of this Section, "unexcavated platted waterway right-of-way" shall mean land lying between a platted lot line and the actual water part of any platted waterway. In the event that a person desires to place, install, or construct a seawall, alternative to vertical bulkhead, marine improvement, or any combination thereof, upon any unexcavated platted waterway right-of-way, such person may apply for and, subject to the approval of the City, receive an approval for a vacation of the unexcavated platted waterway right-of-way pursuant to Section 3.4.5, or alternatively, enter into an agreement with the City as provided in this section.
2. Written agreement required. It shall be unlawful for any person to place, install, or construct a seawall, alternative to vertical bulkhead, marine improvement, or any combination thereof, upon an unexcavated platted waterway right-of-way, without first entering into a written agreement with the City authorizing such work. The agreement to encroach into an unexcavated platted waterway right-of-way is intended as an alternative to the vacation of the subject right-of-way. Notwithstanding the foregoing, said agreement requirement is not intended to apply to seawalls, alternatives to vertical bulkheads, and marine improvements placed, installed, or constructed on or projecting from a platted lot line, directly into a platted waterway.
3. Application. An abutting property owner may submit an application to enter into an agreement with the City to authorize the placement, installation, or construction of a seawall, alternative to vertical bulkhead, marine improvement, or any combination thereof upon an unexcavated platted waterway right-of-way on a form provided by the City, and shall include all required information as specified in the application, including, but not limited to:
 - a) The legal description of the property that abuts the subject right-of-way, prepared by a professional surveyor licensed in the state of Florida within one year of the date of the application hereunder;
 - b) A survey showing the boundaries and features of the subject right-of-way to be subject to encroachment(s), prepared by a professional surveyor licensed in the state of Florida within one year of the date of the application hereunder;
 - c) A site plan drawn to scale and showing the location and dimensions of the proposed seawall, alternative to vertical bulkhead, and any marine improvements to be placed in the subject right-of-way;
 - d) Proof of ownership of the subject property abutting the platted waterway right-of-way;
 - e) Any additional information reasonably required by the City; and
 - f) A non-refundable application fee, as may be established by resolution of the City Council.
4. Review criteria. In determining whether an abutting property owner may place, install, or construct a seawall, alternative to vertical bulkhead, and marine improvements upon an unexcavated platted waterway right-of-way, the City shall consider factors that include, but are not limited to, the following:
 - a) Effect on navigational safety;
 - b) Effect on existing and proposed public utilities, powerlines, and other right-of-way improvements;
 - c) Effect on surface waters and drainage patterns;
 - d) Whether the proposed seawall, alternative to vertical bulkhead, and marine improvements would interfere with any infrastructure or maintenance use by the City or any utility company; and
 - e) Whether the proposed marine improvements meet the requirements set forth in Chapter 4 of this article.

5. Approval. The City Manager, or the City Manager's designee, is authorized to approve an application to encroach into an unexcavated platted waterway right-of-way and enter into a written agreement with the abutting property owner upon a determination that the proposed improvements will not have an unreasonably negative impact on the review criteria identified in Section 5.4.8.C.4., or the proposed marine improvements do not meet the requirements of Chapter 4. The form of said agreement shall be approved by the City Attorney's Office.
 - a) Unless expressly prohibited by an approved agreement with the City pursuant to this Subsection C., a property owner abutting an unexcavated platted waterway right-of-way may use such area to place, install, construct, maintain, and operate any surface improvements, including, but not limited to, sidewalks, walkways, curbing, landscaping and fencing, but excluding buildings, pools or any structures with a foundation.
 - b) Any approval to encroach into the platted waterway right-of-way shall not negate the requirement to obtain all other permits required by applicable governmental agencies, including, but not limited to, the City of Cape Coral and the U.S. Army Corps of Engineers.
 - c) Any approval granted by the City is to be deemed solely as a right to encroach into the platted waterway right-of-way, and no other property interest is acquired by the property owner.
 - d) Any approval granted by the City to the abutting property owner is made with the express condition that neither the owner or the owner's heirs, successors, assignees or any person claiming under or through them shall acquire any right superior to the City's right in such platted waterway right-of-way, whether by lapse of time or otherwise.
 - e) The City shall record the agreement, at the abutting property owner's expense, in the public records of Lee County, Florida. The agreement shall run with the land and be binding upon the parties thereto, their heirs, successors, and assignees, and it shall provide that it may not be rescinded or amended in any manner without the written consent of the City.
6. Denial. An application shall be denied by the City Manager, or the City Manager's designee, if the proposed improvements will have an unreasonably negative impact on the criteria in Section 5.4.8.C.4. or the proposed marine improvements do not meet the requirements of Chapter 4. If the City Manager, or the City Manager's designee, denies the application to encroach into a platted waterway right-of-way, the applicant shall have ten calendar days from the date of the notice of denial to appeal the decision to the City's Special Magistrate City Council. Such appeal to the City's Special Magistrate City Council shall be treated as an Administrative Appeal and follow the procedures provided in Section 3.1.14.B. of this Code.

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SECTION 4. The City of Cape Coral, Florida Land Development Code, Article 9, Chapter 6, Section 9.6.2., is hereby amended as follows:

Section 9.6.2. Appeals.

The Cape Coral Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any 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 City's Special Magistrate Cape Coral City Council, as provided by Article 2 of the Land Development Code.

SECTION 5. The City of Cape Coral, Florida Land Development Code, Article 13, Chapter 1, Section 13.1.1., is hereby amended as follows:

Section 13.1.1. Reasonable accommodations.

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- H. Appeal of determination. Within 30 days from the date of the City determination on a reasonable accommodation request, or revocation, or modification of a reasonable accommodation, the applicant may appeal the decision. All appeals shall contain a written statement containing sufficient detail of the grounds for the appeal. Appeals pursuant to this Section shall be to the

City's Special Magistrate City Council who shall, after public notice and a public hearing, render a written determination as soon as reasonably practicable, but in no event later than 60 days after an appeal has been filed. Notice of any public hearing hereunder shall be provided to the applicant at least 10 days in advance of the public hearing.

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SECTION 6. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 7. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AT THEIR REGULAR SESSION THIS _____ DAY OF _____, 2025.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

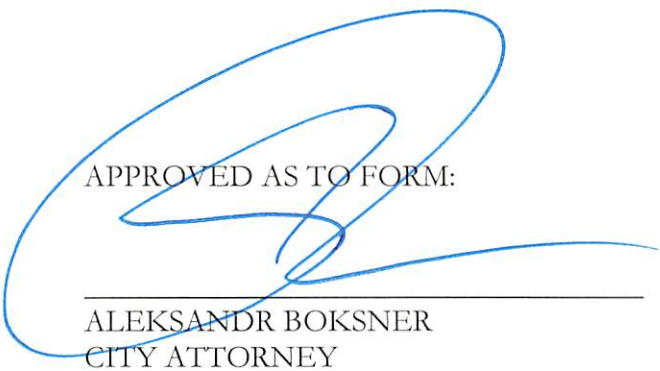
GUNTER _____
STEINKE _____
LEHMANN _____
DONNELL _____

LAstra _____
KILRAINE _____
LONG _____
KADUK _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2025.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



ALEKSANDR BOKSNER
CITY ATTORNEY

ord/Appeal

