

CAPE CORAL

§ 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. 68-91, 8-26-1991)

- .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. 124-03, 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)
<p style="text-align: center;">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).</p>

- 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.
- (3) The advertisement shall be in the following form:

(Ord. 124-03, 12-15-2003)

NOTICE OF _____ (TYPE OF CHANGE)
<p style="text-align: center;">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).</p>

- (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
<p>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).</p>

- 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)