

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL AMENDING THE CITY OF CAPE CORAL, FLORIDA, CODE OF ORDINANCES, CHAPTER 9, HEALTH AND SANITATION, ARTICLE III, DISPOSITION OF GARBAGE, SECTION 9-65, DEFINITIONS, REGARDING CONSTRUCTION REFUSE CONTAINERS, AND SECTION 9-69, GENERAL REGULATIONS FOR ON-SITE REFUSE AND ALL OTHER MATERIALS THAT ARE LOCATED ON THE SITE DURING CONSTRUCTION, RENOVATION AND REMODELING, REGARDING REGULATIONS AND PENALTIES FOR CONSTRUCTION SITE VIOLATIONS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council hereby finds that this ordinance promotes the public health, safety, and welfare of the citizens of the City of Cape Coral, Florida.

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

SECTION 1. The City of Cape Coral, Florida, Code of Ordinances, Chapter 9, Article III, Section 9-65, is hereby amended as follows:

**§ 9-65 Definitions.**

For the purpose of this article, the definitions contained in this section shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words used in plural include the singular, and words used in the singular include the plural. The word "shall" and "must" are always mandatory and not advisory. The definitions applicable to this article are as follows:

...

***CONTAINERS or RECEPTACLES.***

...

- (6) ***CONSTRUCTION REFUSE CONTAINER.*** A roll-off container obtained from the City's franchise hauler or a construction cleanup contractor; ~~a container consisting of four sheets of hard-sided solid material and assembled to form a container that is no more than eight feet in length by eight feet in width and by four feet in height when measured from the ground;~~ a disposable self-contained woven soft-sided demolition bag; or a disposable self-contained polypropylene dumpster bag. Such container may have a lid, but one is not required. The container shall be ~~securely constructed and~~ placed on a site in such a manner so that the construction refuse can be completely contained therein.

...

SECTION 2. The City of Cape Coral, Florida, Code of Ordinances, Chapter 9, Article III, Section 9-69, is hereby amended as follows:

**§ 9-69 - General regulations for construction sites and on-site refuse and all other materials that are located on the site during construction, renovation and remodeling.**

- (a) *Active permit.*

- (1) *Regulations.*

- a. For purposes of this section, the term *CONTRACTOR* shall mean the person who is qualified for, and shall only be responsible for, the project contracted for and means, except as exempted pursuant to F.S. § 489.103, as amended, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others. This term shall include, but not be limited to, general contractor, building contractor, and residential contractor. The term *OWNER-BUILDER* shall mean the owner of property when acting as their own contractor pursuant to F.S. § 489.103(7), as amended.

- b.
  1. During the construction, renovation, remodeling, demolition, or erection of a structure, the contractor or owner-builder shall be responsible for the storage and handling of construction refuse and all other materials including, but not limited to, debris, trash, garbage, litter, food wrappers, food containers, bottles, cans, and cups that are located on the site. Any construction refuse and all other said materials located outside of the structure which are subject to movement by light wind must be confined in an on-site construction refuse container as defined herein. An owner-builder or contractor must make special arrangements with the franchise hauler to provide for the appropriate containerized refuse service satisfactory to meet the construction refuse collection requirement necessitated by the construction or contract with a licensed construction clean-up contractor. Containerized service shall be provided by the franchise hauler under the rates for containerized construction, renovation and remodeling collection services as set forth in § 9-72.
  2. An on-site construction refuse container and collection service that conforms to the requirements set forth in this section must be provided for each construction site. At least one construction refuse container shall be placed on the site prior to the commencement of any construction, renovation, remodeling, demolition, or erection of a structure. For purposes of this requirement, a suitable on-site construction refuse container shall be placed outside the structure. The on-site construction refuse container shall be maintained in good condition so as to continually contain the construction refuse. Collection and disposal of construction refuse shall be with such frequency so as to avoid construction refuse spilling out of the on-site construction refuse container onto the site.
  3. In addition to all requirements set forth above, the contractor or owner-builder shall be responsible for the proper storage and collection of all other materials including, but not limited to, debris, trash, garbage, litter, food wrappers, food containers, bottles, cans, and cups that may accumulate on the site so that said materials will not be blown about by light wind.
  4. Construction refuse materials that are not susceptible to being blown around by light wind do not need to be contained in the on-site construction refuse container, but must be located in a concentrated location on the site. Refuse such as lumber and drywall may be located in no more than two concentrated locations on the site, one in the front of the property and the other at the rear. Masonry and roof tiles may be located in one additional, separate concentrated location on the site.
- c.
  1. Construction cleanup contractors are hereby authorized to provide the following services to a contractor for construction refuse disposal: the complete cleanup, consolidation, confinement, and subsequent hauling and disposal of construction refuse from a construction site to the Lee County designated landfill or other authorized solid waste or recycling facility, provided that the hauling and disposal of construction refuse is strictly incidental to the construction-site cleanup. All construction refuse transported by construction clean-up contractors shall be transported exclusively in a truck with a cargo area designed for such purpose, including pick-up trucks, trailers, dump trucks, or vans, which are properly covered with a tarpaulin as required by Florida law. All trucks used by construction cleanup contractors shall have the contractor's city competency license number clearly posted thereon and must be covered by a policy of liability insurance with limits of \$100,000 per person/\$300,000 per incident and \$50,000 property damage.
  2. All construction cleanup contractors shall maintain records of all sites serviced by said contractor. Said records shall reference the building permit number and location of the site. Contractors shall retain all weigh slips, referenced by site, which are issued at the city's solid waste facility or the Lee

County designated land fill. Records shall be made available, upon request, for inspection by the City Manager or his or her designee.

3. No construction cleanup contractor shall conduct any solid waste disposal activities other than as specifically authorized herein.

- d. It shall be unlawful for a person or a contractor operating within the jurisdictional limits of the city to hire, subcontract, or otherwise employ any person, company, partnership, or other business association for the purpose of construction-site cleanup and refuse removal, unless said person or association is either the city solid waste franchise hauler or a city licensed construction clean-up contractor.
- e. Portable restrooms or other approved restroom facilities shall be provided for construction workers at commercial and residential building sites for the duration of construction activity and such facilities shall be maintained in a sanitary condition.
- f. Prior to preparation of a building site for construction, the building permit holder shall obtain the correct flow line elevations from the City and shall create and maintain the required swale needed to allow continuous uninterrupted flow of stormwater for the duration of construction activity.
- g. During construction activity, approved erosion control devices shall be placed in the swale adjacent to both property lines, along the property lines of adjacent improved parcels, and placed in accordance with all other requirements of the City of Cape Coral Engineering Design Standards to impede all foreign matter from entering the stormwater system or adjacent improved properties. The erosion control devices shall remain in place until placement of final sod throughout the property.
- h. No excavated material or construction material shall restrict stormwater flow within the swale area.
- i. Approved turbidity screens shall be installed and maintained in place during any and all clearing, excavating, filling, and backfilling operations in accordance with the City of Cape Coral Engineering Design Standards.
- j. Weeds and grasses shall be maintained at a height of 12 inches or less throughout the construction process.
- k. Protection zones shall be installed and maintained for protected species in accordance with Chapter 23, City Code of Ordinances.
- l. The permit holder shall not damage any City property throughout the construction process.
- m. Construction site work is prohibited, including, but not limited to the early delivery of materials to the site, until an approved permit is obtained from the City.

(2) Violations and Penalties.

- a. 1. The failure of a contractor or owner-builder to comply with any provision of this section shall constitute a violation of this section. The city shall provide written notice of the violation to the contractor or owner-builder by either certified mail to the mailing address indicated on the permit application, hand delivery, electronically, email, or facsimile to the contact telephone numbers provided to the city by the contractor or owner-builder. In the event that the notice of violation was mailed by certified mail and returned as unclaimed or refused, notice may be provided by posting such notice at the subject job site where the permit is displayed and at the City of Cape Coral City Hall and by first class mail directed to the address furnished

to the city with a properly executed affidavit confirming the postings and first class mailing,

2. The city's Building Official, as defined in the Florida Building Code, or their designee, is authorized to issue a stop work order for any violation of this section that is not corrected within 48 hours after receipt of the notice of violation by the contractor or owner-builder. The stop work order shall continue until the violation is corrected. The following fines shall be imposed for each day that the stop work order is in effect:

First stop work order	\$200 per day
Second and subsequent stop work orders that occur on the same property within the active permit period for that property	\$500 per day

3. It shall be the responsibility of the contractor or owner-builder to contact the city's Building Official or ~~his or her~~ their designee once the violation is corrected to request inspection. When the city's Building Official or ~~his or her~~ their designee confirms that the violation is corrected, he or she shall remove the stop work order and calculate the total amount of the fine due to the City of Cape Coral for the violation. Unless appealed, the fine shall be due and payable to the City of Cape Coral within 30 calendar days after the stop work order is removed.

b. A stop work order issued pursuant to this section by the Building Official or ~~his or her~~ their designee may be appealed by requesting an administrative hearing to the City of Cape Coral Code Enforcement Special Magistrate. A notice of appeal shall be filed with the ~~Department of Community Development Services Department~~ within five calendar days of the issuance of the stop work order to be appealed. Appeals for an administrative hearing of the notice of violation must be accompanied by a fee as approved by a resolution of the City Council, which fee shall be refunded if the named violator prevails in the appeal. If the Code Enforcement Special Magistrate finds that the stop work order was properly imposed, all fines shall continue until the violation is corrected and said fines shall be due within 30 days after the stop work order is removed. If the Code Enforcement Special Magistrate overturns the stop work order, all fines shall be abated.

c. In the event the violation continues for 30 days after the date of the issuance of the stop work order, the City of Cape Coral shall be authorized to clean-up all construction refuse and other materials, ~~and~~ empty all containers on said construction site, and take all actions necessary to remedy the violation(s), either by utilizing the city's employees or agents, or by utilizing a contractor, and the cost of all clean-up and remedial actions shall be added to the fine imposed. In the event the city cleans up and corrects violations at the site as a result of the contractor or owner-builder's failure to timely do so pursuant to this section, the stop work order shall remain in effect until all costs incurred by the City of Cape Coral for the clean-up and remedial actions of the construction site have been paid.

d. No inspections will be made and no certificate of occupancy will be issued until all fines and costs have been paid.

(b) Inactive permit.

(1) Permits that are revoked, null and void, or expired because of lack of progress or abandonment, are considered inactive permits.

(2) In the event the permit is revoked, becomes null and void, or expires because of lack of progress or abandonment, the property owner shall assume all responsibilities for the proper storage and handling of construction refuse and other requirements as set forth in this section. A property owner's failure to comply with any provision of this section shall constitute a violation of this section, and shall

subject the property owner to the code enforcement provisions and procedures provided in §§ 2-81 through 2-96 of the City of Cape Coral Code of Ordinances including, but not limited to, any and all provisions that allow the city to seek relief as otherwise provided bylaw.

(c) The provisions of this section are additional and supplemental means of enforcing municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing contained in this section shall prohibit the city from enforcing its codes or ordinances by any other means.

SECTION 3. 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 4. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.


ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 17<sup>th</sup> DAY OF July, 2024.

  
JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	<u>aye</u>	CARR	<u>aye</u>
STEINKE	<u>aye</u>	WELSH	<u>aye</u>
SHEPPARD	<u>aye</u>	LONG	<u>aye</u>
HAYDEN	<u>aye</u>	COSDEN	<u>Excused</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 22<sup>nd</sup> DAY OF July, 2024.

  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
ALEKSANDR BOKSNER  
CITY ATTORNEY

Ord/ConstructionRefuseContainers