

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 5, DEVELOPMENT STANDARDS, CHAPTER 1, GENERAL REQUIREMENTS FOR ALL DEVELOPMENT, SECTION 5.1.6., PROTECTION OF EASEMENTS, AND ARTICLE 5, DEVELOPMENT STANDARDS, CHAPTER 1, GENERAL REQUIREMENTS FOR ALL DEVELOPMENT, SECTION 5.1.13. SINGLE-FAMILY RESIDENTIAL STANDARDS, REGARDING PUBLIC UTILITY EASEMENTS AND FILL LIMITATIONS; 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 5, Chapter 1, Section 5.1.6., is hereby amended as follows:

**Section 5.1.6. Protection of Easements.**

- A. Except as otherwise provided in the Cape Coral Code of Ordinances or the Land Development Code, in the R-1, RML, RE, and A zoning districts, the six-foot easement around the perimeter of sites shall be preserved and nothing shall be placed or constructed on such easements other than a paved driveway, walkway, sidewalk, fences, or well. In addition, for non-residential uses lawfully located in residential zoning districts, paved off-street parking areas may be placed or constructed on the six-foot easement around the perimeter of the site.
- B. In the R-1 zoning district, on property improved with a principal residential structure, stairs, hardscape features, landscape features, fall protection planters, elevated walkways, decks, and access ramps, may be constructed and placed in the six-foot public utility easement (PUE) along a side or rear property line of the residential structure and are not subject to rear or side setback requirements, provided each of the following requirements is met:
  - 1. Stairs, hardscape features, landscape features, elevated walkways, decks, and access ramps may project up to 36" into the 7.5-foot side yard setback and project into or occupy no more than 18" of the PUE, as measured perpendicular to the 7.5-foot side yard setback.
  - 2. Stairs, hardscape features, landscape features, elevated walkways, decks, and access ramps may project into the rear yard setback, including the 10-foot rear yard setback for pools and pool enclosures. Stairs, hardscape features, landscape features, elevated walkways, decks, and access ramps may be placed in the PUE along the rear property line.
  - 3. Fall protection planters, installed directly adjacent to an open-sided walking surface, may project up to 36" into the 7.5-foot side yard setback and project into or occupy up to 18" of the PUE, or project into the rear setback and PUE, provided the width of the planter is between 36" and 48", as measured perpendicular to such walking surface. The top surface of the fall protection planter must be located no more than 30" measured vertically to the floor or grade below at any point within 36" horizontally to the edge of the open-sided walking surface.
  - 4. Stairs, hardscape features, landscape features, fall protection planters, elevated walkways, decks, and access ramps shall not be structurally connected to the foundation of the residential structure in any manner that would preclude removing such material without damage to the residential structure or pool.
  - 5. Stairs, hardscape features, landscape features, fall protection planters, elevated walkways, decks, and access ramps shall not be permitted to project or occupy the side or rear yard PUE if any utilities or drainage improvements, above or below ground, are located in the subject PUE.
  - 6. An applicant may request an administrative deviation from the requirements of this Section to allow for certain encroachments into the PUE. The Development Services Director is authorized to approve such requests if all of the following conditions are met:
    - a. The encroachment does not contain mechanical, electric, or plumbing equipment and/or the associated equipment pad.
    - b. The encroachment will preserve at least 18 inches of the PUE, as measured from the property line.

- c. The applicant submits a letter of no objection from each utility provider with an interest in the PUE.
- d. The applicant executes a hold harmless and indemnification agreement in a form approved by the City Attorney's Office.
- e. The hold harmless and indemnification agreement is recorded by the City in the Public Records of Lee County, Florida, at the applicant's expense.

The Development Services Director's decision shall constitute final agency action appealable to Circuit Court. The applicant shall be responsible for paying fees associated with applying for such administrative deviation. Those fees shall be established by resolution and approved by the City Council.

- C. In the RMM zoning district, where lot depth is greater than 131 feet, the six-foot easement around the perimeter of the sites shall be preserved and nothing shall be placed or constructed on such easement other than a paved driveway, walkway, sidewalk, paved off-street parking areas, or a well when site conditions make it impractical to locate elsewhere. On sites with a depth of less than 131 feet, paving of the front easement for parking purposes shall be permitted.
- D. Lawn sprinkler systems and landscaping may be placed in the 6' PUE easements as permitted by the Code of Ordinances or the Land Development Code.
- E. In the C, CC, I, INST, MXB, MX7, NC, P, and SC zoning districts, paved off-street parking areas, paved driveways, sidewalks, wells, walkways at ground level, lawn sprinkler systems, or landscaping may be placed in an easement provided that all other requirements of the Code of Ordinances or the Land Development Code are met.
- F. Nothing in this section shall prohibit the construction of seawalls, davits, docks, or other structures as permitted by the Cape Coral Code of Ordinances.
- G. If a utility removes, damages, or disturbs the construction or other material within an easement as allowed by this section, the property owner shall be responsible for the cost of its removal, relocation, repair, or replacement. If any plant material in an easement required by Chapter 5 of this Article of the Land Development Code is removed or damaged, the property owner shall replace all such material within 30 days of the completion of the utility work. These requirements also include repair or replacement of sod within the right-of-way. In addition, prior to issuing a permit to locate, place, construct, or install any structure, construction, driveway, or other material in an easement, the city shall require the property owner to agree to indemnify and to hold the city harmless from any or all costs or expenses incurred as a result of such removal from the easement or the location, placement, construction, or installation in the easement. The City Attorney's Office shall approve the form of such indemnification and hold harmless agreement, which agreement shall be binding on the property owner, and the successors and assigns of the property owner. The indemnification and hold harmless agreement shall be recorded by the City in the Public Records of Lee County, Florida, at the property owner's expense.
- H. The city may deny applications to place wells, fences, walls, or other materials in an easement if such would conflict with existing or proposed utilities or drainage functions.

SECTION 2. The City of Cape Coral, Florida Land Development Code, Article 5, Chapter 1, Section 5.1.13., is hereby amended as follows:

#### **Section 5.1.13. Single-family residential standards.**

In addition to all other provisions of this Code, single-family residential uses shall be subject to the following requirements.

- A. In the A, R1, and RE zoning districts only one single family residence shall be permitted per parcel.
- B. Ornamental walls. Ornamental walls attached to the principal building shall have the following requirements
  - 1. Ornamental walls shall not be higher than four feet at any point where they extend beyond the roof overhang and into the side setback.
  - 2. Ornamental walls may extend into the side setback but shall not extend into the six-foot perimeters easements.
  - 3. An ornamental wall not to exceed 30 inches in height may be installed in the front yard.
  - 4. Ornamental walls may be in the form of a planter.

5. A planter may be incorporated into the construction of a wingwall.
- C. Water discharge. All gutter downspouts or similar water discharge devices shall direct the discharge to the front or rear property lines. Refer to the City of Cape Coral Engineering Design Standards, Section L, Drainage Design Standards for lot grading and drainage information.
- D. The following fill limitations will apply to the construction of single-family or duplex structures within a designated Special Flood Hazard Area to regulate the area of the lot outside the foundation of the primary structure as follows:
  1. Foundation Fill: The maximum allowable depth of base fill beneath the structure's foundation shall not exceed twelve (12) inches, measured from the existing natural grade to the bottom of the foundation.
  2. On-Site Fill Outside the Structure Foundation: The maximum depth of fill permitted on the remainder of the site, outside the foundation of the primary structure, shall be limited to thirty (30) inches maximum from existing natural grade, or shall maintain a slope no steeper than 4:1 (horizontal to vertical), whichever standard is more restrictive. This does not authorize exceeding 30 inches from existing natural grade.
  3. Exception. Any deviation from these limits shall require prior written approval from the Building Official, based on a determination that such deviation will not adversely affect drainage, floodplain management, or neighboring properties.

~~For single-family or duplex construction activities on any site in a Special Flood Hazard Area, the maximum amount of fill on-site shall be limited to 12 inches, unless otherwise approved by the Building Official.~~
- E. Generators and Heating, Ventilation, and Air Conditioning (HVAC) equipment may be installed in front of a single-family residence or in the front yard of a single-family residence subject to the following requirements:
  1. A generator or Heating, Ventilation, and Air Conditioning (HVAC) equipment placed in front of a single-family residence or in the front yard of a single-family residence shall be screened from the street and from any abutting residential site by an enclosure. The enclosure shall be composed of materials consistent with the building and be painted to match the front façade. The enclosure shall have a maximum height of six feet unless a greater height is needed to screen from view the full height of the equipment. For purposes of this subsection, the required enclosure shall not be considered a wall and shall not be subject to the requirements of Section 5.2.7.
  2. The enclosure shall meet all building setback requirements for the applicable zoning district.
  3. The generator or Heating, Ventilation, and Air Conditioning (HVAC) equipment shall be located at a distance not to exceed five feet from the front of the building unless a greater distance is required by the Florida Building Code.
  4. The enclosure shall be designed to provide screening solely for the generator or Heating, Ventilation, and Air Conditioning (HVAC) equipment. No other equipment or materials shall be screened or stored within the enclosure.
  5. The provisions of this subsection shall not apply to the temporary use of portable generators during emergencies or after natural disasters.

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 MAYOR AND COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA,  
AT THEIR REGULAR SESSION THIS 4th DAY OF JUNE, 2025.

  
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JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

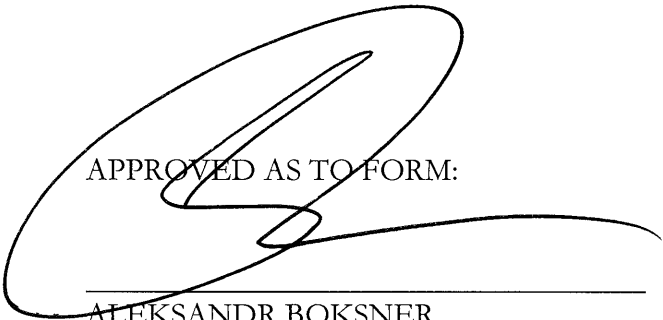
GUNTER                    aye  
STEINKE                aye  
LEHMANN              aye  
DONNELL               aye

LASTRA                aye  
KILRAINE              aye  
LONG                  aye  
KADUK                 aye

ATTESTED TO AND FILED IN MY OFFICE THIS 6<sup>th</sup> DAY OF June, 2025.

Kimberly Bruns  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:



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ALEKSANDR BOKSNER  
CITY ATTORNEY  
ord/PUE/Fill

CVE