

RESOLUTION 21-51

A RESOLUTION OF THE CITY OF MARCO ISLAND ADOPTING PROCEDURES FOR QUASI-JUDICIAL PROCEEDINGS BEFORE THE MARCO ISLAND CITY COUNCIL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council, pursuant to its authority to conduct quasi-judicial proceedings desires to adopt a uniform procedure for those quasi-judicial matters that may come before the City Council; and

WHEREAS, the City Council hereby finds that the Quasi-Judicial Procedures, which are attached hereto as Exhibit "A," provide the parties and public with the required due process, and the ability to fully present their positions with respect to the quasi-judicial matters that come before the City Council; and

WHEREAS, the City Council finds that this Resolution is consistent with the authority contained in the City's Code of Ordinances, and in the best interest of the City's health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA THAT:

SECTION 1. The City Council of the City of Marco Island adopts the Quasi-Judicial Procedures, which are attached hereto as **Exhibit "A,"** and which are incorporated herein by reference. The Quasi-Judicial Procedures shall be utilized for quasi-judicial proceedings before the Marco Island City Council.

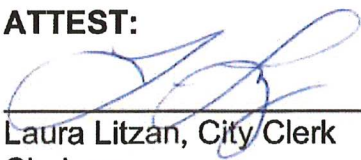
SECTION 2. Conflict, and Severability.

- (1) All sections or parts of sections of all resolutions or parts of resolutions, in conflict herewith, be and the same are hereby repealed to the extent of the conflict.
- (2) If any word, phrase, clause, subsection, or section of this resolution is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the resolution.

SECTION 3. Effective Date. That this Resolution shall take effect immediately upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 1st day of November 2021.

ATTEST:



Laura Litzan, City Clerk
Chairman

CITY OF MARCO ISLAND, FLORIDA

By: 

Erik Brechnitz, Chairman ,

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney

EXHIBIT "A"
CITY OF MARCO ISLAND
QUASI-JUDICIAL PROCEDURES

Sec. 1. - Intent.

It is the intent of the City to provide an equitable and efficient manner for the City to hear matters, which are considered quasi-judicial in nature. These procedures shall be utilized by the City Council in regard to hearings on quasi-judicial matters in which the City Council is the final authority.

Sec. 2. - Definitions.

As used in these proceeding, the terms listed below shall be defined as follows:

Affected person means a person (or persons), natural or corporate, who is the owner of the subject property or who owns property within 300 feet of the subject property as listed in the records of the county property appraiser, or who resides in or operates a business within 300 feet of the subject property.

City Council means the City Council of the City of Marco Island.

Party or parties means the petitioner, City, and any affected person or entity which has requested to be heard at the proceeding.

Quasi-judicial in nature means the application of a general rule or policy to specific individuals, interests, or activities.

Quasi-judicial proceeding means a hearing held by the City Council to adjudicate private rights of a particular person after a hearing which comports with due process requirements, and makes findings of fact and conclusions of law on the issue.

Site specific means an individual piece of real estate which can be clearly defined by street address, legal description or similar means at a single identifiable location.

Sec. 3. - Procedures For Quasi-Judicial Proceedings.

- (a) In quasi-judicial proceedings on local government land use matters, a person may not be precluded from communicating directly with a member of the City Council by application of ex parte communications prohibitions. Disclosure of such communications by a member of the City Council is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the City Council. All decisions of the City Council must be supported by substantial, competent evidence in the record pertinent to the proceedings, irrespective of such communications.
- (b) City Council members may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activity shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.
- (c) Notification and information to be provided by affected persons, the petitioner and the City.
 - (1) At least 15 calendar days prior to the proceeding, City shall provide a legal advertisement to be published in a newspaper of general paid circulation in Collier County and of general interest and readership in the community, not one of limited subject matter. Said notice shall state the name of the petitioner for the requested

action, the date, time and location of the proceeding and the location and times where and when the petition and any back up information may be reviewed. In addition, the notice shall inform all affected persons that they will be allowed to present evidence at the hearing, bring forth witnesses, and cross-examine witnesses provided they notify and file the required forms provided by the City Clerk's office, the substance of which is described in subsection (4) below, at least ten (10) calendar days prior to the proceeding.

- (2) No later than thirty (30) calendar days prior to the proceeding, a mail notice, sent by the petitioner, containing the same information as the legal advertisement shall be sent to each real property owner within 300 feet of the subject property as each is listed in the records of the county property appraiser. Mail notice may be provided by bulk mail, first class mail or certified mail, return receipt requested.
- (3) All costs for notification shall be paid by the petitioner.
- (4) Any affected person desiring to testify, present evidence, bring forth witnesses, or cross-examine witnesses at the proceeding shall submit documentation at least fifteen (15) days prior to the proceeding. The documentation shall include, at a minimum, the following information: (i) the affected person's name, address and telephone number which shall serve as notice to the petitioner and City of the affected person's intent to appear at the proceeding to testify, present evidence, bring forth witnesses, or cross-examine witnesses; (ii) the names, addresses and telephone number of all witnesses including consultants or experts to testify on their behalf; (iii) copies of all documents, correspondence, memoranda or other evidence the affected person intends to present, use or make reference to during the proceeding; (iv) indicate whether the affected person is for or against the petition; and (v) indicate how the affected person qualifies as an affected person. The required information must be submitted to the City Clerk's office at least fifteen (15) calendar days before the proceeding.

(d) *Presentation of evidence.*

- (1) All persons testifying before the City Council must be sworn in. The petitioner, members of a board or the City Council and any affected person who has provided notice that it intends to appear at the proceeding shall be given the opportunity to present evidence, bring forth witnesses, and cross-examine any witnesses.
- (2) All evidence relied upon by reasonably prudent persons in the conduct of their business shall be admissible, whether or not such evidence would be admissible in a court of law. However, immaterial or unduly repetitious evidence shall be excluded.
- (3) 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.
- (4) Documentary evidence may be presented in the form of a copy or the original, if available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- (5) A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.

- (6) The office of the City Attorney shall represent the board or the City Council. Any questions as to the propriety and admissibility of evidence shall be presented to the City Attorney's office in a timely fashion.
- (e) *Rights of participants for quasi-judicial proceedings.* The proceedings shall be conducted in an informal manner. Each party shall have the right to do the following:
 - (1) To call and examine witnesses;
 - (2) To introduce exhibits;
 - (3) To cross examine opposing witnesses on any relevant matter; and
 - (4) To rebut evidence.
- (f) *Conduct of quasi-judicial proceedings.* To the extent possible, the following shall be the order of the proceedings:
 - (1) The Council Chair, or Vice-Chair, in the absence of the Chair, shall call the proceeding to order and announce the beginning of the proceeding. A majority of the City Council members must be continuously present during the proceeding. City Council members shall also announce and communicate ex-parte communication, if any.
 - (2) The matter to be heard and the rules concerning the admissibility of evidence should be announced.
 - (3) Statements of counsel shall only be considered as argument and not be considered as testimony. Counsel for parties shall not be subject to cross-examination. The City Council shall have the authority to refuse to hear any testimony which is irrelevant or repetitive.
 - (4) The Chairman, or Vice-Chair, in the absence of the Chairman, shall have the option of determining the order of presentation of the parties in order to expedite the proceeding. During its presentation the City shall present any staff, board or other reports on the matter as well as any comments. These reports shall include, but not be limited to, a description of the request of the petitioner; a description/background related to the petition; an analysis which includes the consistency with the City's Comprehensive Plan, if applicable, and how the petition does or does not meet the requirements of the City Code; a listing of the exhibits to be presented; a listing of potential witnesses; a summarization of the issues; and the staff and board(s) recommendations. These reports shall include specific findings in support of justifying a recommendation for approval or denial of the petition.
 - (5) Petitioner, or his or her representative, shall make a presentation. The petitioner should include a description of the nature of the petition if there is additional information that has not been previously provided to or by the city. In addition the petitioner shall introduce any exhibits and witnesses.
 - (6) Parties who are in support of the petition shall make their presentation. The party shall introduce any exhibits and witnesses.
 - (7) Parties who are in opposition of the petition shall make their presentation. The party shall introduce any exhibits and witnesses.

- (8) An opportunity for persons to speak on the petition, either for or against, will be made available after all parties have made their presentations under oath or affirmation. Additionally, each person (member of the public) who gives testimony may be subject to cross-examination. Upon refusal to be cross-examined or to be sworn, that testimony will not be considered. The general public will not be permitted to cross examine witnesses.
- (9) City personnel in attendance shall provide any responses to any other party to the proceeding.
- (10) After each witness testifies or documents are made a part of the record, a party shall be permitted to question the witness. The questioning party is not permitted to make any statements, only to ask questions which are directly related to the testimony presented.
- (11) Final presentation by petitioner in response to any testimony from other parties.
- (12) Final presentation by City in response to any testimony from other parties.
- (13) The City Council shall deliberate on the petition. No further testimony shall be taken and the members of the City Council shall not ask further questions of persons presenting testimony. The City Council shall discuss the evidence that was presented at the proceeding and vote on the petition.
- (g) *Final determination by City Council.* In reaching a determination as whether to grant or deny the petition, the City Council shall:
 - (1) Consider whether the petition's request is consistent with the City's Comprehensive Plan, if applicable, and
 - (2) State with specificity the reasons for the approval or denial of the petition. Said approval or denial may by reference incorporate the staff; board or other reports or evidence presented at the proceeding.
 - (3) State whether or not the order is to be recorded in the public records of Collier County and, if applicable, that the cost of recording shall be paid by the petitioner.
- (h) *Preparation of the order.* The City Attorney's office shall prepare the final order of the City Council based upon the determination. The final order shall include, but not be limited to, the finding of facts, any conditions, requirements or limitations on the approval of the petition, and whether or not the order shall be recorded in the Collier County public records. If an ordinance is required to be adopted upon approval of an action by the City Council, a final order will not be prepared unless the petition is denied.
- (i) *Continuances and deferrals.* If, in the opinion of the City Council, any testimony or documentary evidence or information presented at the proceeding justifies providing additional time to allow additional research or review in order to properly determine the issue presented, the City Council shall continue the case to a designated time to allow for the additional research or review. After the decision is made to continue, the date to which the proceeding shall be continued shall be announced at the proceeding.

- (j) *Transcription of quasi-judicial proceedings.* The official transcript of a proceeding shall be preserved by tape recording or other device by the City Clerk's office. Nothing precludes any party from providing a court reporter for the proceeding.
- (k) *Maintenance of evidence and other documents.* The office of the City Clerk shall retain all of the evidence and documents presented at the proceeding, except for large scale exhibits which shall be retained by the City's Growth Management Department, all which become a part of the public record of the proceeding.
- (l) *Appeal of final determination by City Council.* The final determination of the City Council is subject to judicial review in a court of competent jurisdiction.