

ORDINANCE 23-__

AN ORDINANCE AMENDING SECTION 32.08(a) PURPOSE, SCOPE, AND APPLICABILITY; AMENDING SECTION 32.80(b) DEFINITIONS; AND AMENDING SECTION 32.80(e) CONDUCT OF PUBLIC HEARING OF THE CODE OF ORDINANCES OF THE CITY OF PORT ST. LUCIE, FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City Council desires to update the policy and procedures for quasi-judicial proceedings; and

WHEREAS, The City desires to provide clarity to the quasi-judicial hearing process for applicants.

NOW, THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. Ratification of Recitals. The foregoing recitals are hereby ratified and confirmed as true and correct and are hereby made a part of this Ordinance.

Section 2. CHAPTER 32, ARTICLE IX. Policies and Procedures for Quasi-Judicial Procedures is amended as follows:

Sec. 32.80(a). Purpose, Scope, and Applicability.

(1.) Purpose: It is the policy of the City of Port St. Lucie ("City") to provide notice and guidance to all individuals and entities who appear before the City Council or by any City Board or Committee, as such board or committee as may be established by the City Charter and/or the Port St. Lucie City Code of Ordinances, acting in a quasi-judicial capacity, that said proceedings shall be subject to a public hearing and will be governed by the quasi-judicial proceedings set forth herein below shall govern said quasi-judicial public hearings.

(2.) Scope and Applicability: These procedures shall apply to all quasi-judicial hearings held by the City Council or by any City Board or Committee which holds quasi-judicial hearings. The City Attorney shall determine which matters are quasi-judicial in nature and

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shall direct the City Clerk or Board liaison to specifically designate such matters on the agenda.

Sec. 32.80(b). Definitions.

~~1.~~ *Applicant*: The owner of record or his or her authorized agent.

~~2.~~ *Application*: The original document filed by the Applicant which has given rise to the quasi-judicial proceeding. This includes, but is not limited to, requests for variances, special exception uses, and rezonings.

~~3.~~ *Citizen Participants*: Those members of the general public, other than the City's representatives or Staff or the Applicant, who attend a quasi-judicial public hearing for the purpose of being heard on a particular Application.

~~4.~~ *Ex Parte*: Any communication, oral or written, between members serving on the applicable City Council, board or committee and the public, other than those made on the record at the public hearing.

~~5.~~ *Official City File*: The City's project file that is established and created for a particular application, which shall include, but not be limited to, the Application at issue, all written communications exchanged between the City and the Applicant prior to the public hearing, all Staff Reports (including any recommendation, if applicable), if any, and pertinent sections of the City Code and Florida Statutes, and all other pertinent documents and materials on the matter.

~~6.~~ *Party Intervenors*: A person, entity, or designated representative or spokesperson of a recognized group who is authorized by the City Attorney to intervene as a party in a quasi-judicial proceeding.

~~7.~~ *Quasi-Judicial Proceedings*: Proceedings where existing policies and regulations are applied to a specific property right or other entitlement.

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Recommendation: The expression by City staff, if provided, as to the viability of the application and the relief sought, while not being a conclusive determination as to the entitlement to the relief or the actual compliance with the specified criteria required in a particular matter.

~~8.~~ *Record:* Refers to the testimony at the public hearing and the materials which are contained in the Official City File on the Application by the conclusion of the hearing.

Sec. 32.80(c). Unauthorized Ex Parte Communications.

In all quasi-judicial hearings, all rulings must be based only upon the evidence presented at the hearing. In accordance with Florida Statute Section 286.0115(1), ex parte communications with City Council, Board or Committee members in quasi-judicial matters is permissible and the adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with City Council, Board or Committee members:

1. The substance of any ex parte communication with a City Council, Board or Committee member which relates to the quasi-judicial action pending before the said City Council, Board or Committee is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the Record before the final action on the matter.

2. A City Council, Board or Committee member may read a written communication from any person. However, a written communication that relates to a quasi-judicial action pending before the City Council, Board or Committee shall not be presumed prejudicial to the action, and such written communication shall be made a part of the Record before final action on the matter.

3. A City Council, Board or Committee member may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the

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investigation, site visit, or expert opinion is made a part of the Record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1, 2, and 3 must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

Sec. 32.80(d). General Procedures for Quasi-Judicial Proceedings.

1. Any hearing listed on a City Council, Board or Committee agenda as a quasi-judicial public hearing will be conducted pursuant to these rules. This means that the applicable Council, Board or Committee is required by law to base its decision on the evidence contained in the Record of this proceeding, which consists of the testimony at the hearing and on the materials which are in the Official City File on this Application.

2. A complete copy of the Official City File shall be submitted by the applicable City department to the City Council, Board or Committee clerk no later than five (5) calendar days prior to the public hearing. All documents submitted at the public hearing shall be supplemented by the City and/or City Council, Board or Committee clerk at the hearing. The Official City File shall be made available ~~upon request~~ for public inspection at the City Clerk's Office upon reasonable request.

3. Party Intervenors: The City Attorney, at his or her sole discretion, may allow a person to intervene as a Party Intervenor if they have an interest in the Application which is different than the public at large. Persons wishing to be designated as Party Intervenors shall submit a written request to intervene no later than 5 days prior to the hearing. The written request must include a detailed outline of their interest in the Application, a synopsis of their argument, copies of all documents which they intend to present at the hearing and a list of all witnesses they intend to call to testify on their behalf.

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4. Time Limits:

- A. City Staff Time Limits: The City staff shall have up to twenty (20) minutes (including the presentation of witnesses and expert witnesses) to present the City's argument.
- B. Applicant's Time Limits: The Applicant shall have up to twenty (20) minutes (including the presentation of witnesses and expert witnesses) to present the Applicant's argument.
- C. Party Intervenor's Time Limits: The Party Intervenor shall have up to twenty (20) minutes (including the presentation of witnesses and expert witnesses) to present the Party Intervenor's argument.
- D. Citizen Participants: Citizen Participants, if applicable, shall each have three (3) minutes to speak.
- E. The time limits listed hereinabove exclude any applicable time expended for cross-examination or questions from the City Council, Board or Committee members.
- F. Extension of Time: The City Council, Board or Committee, at its sole discretion, may extend the time for presentations upon reasonable request.

Sec. 32.80(e). Conduct of the public hearing.

1. The chairperson of the City Council, Board or Committee shall call the proceeding to order ~~and announce that the hearing has begun and shall explain the rules concerning the quasi-judicial procedures, testimony and admission of evidence.~~ The Applicant, City staff and/or the City Council, Board or Committee may request a waiver of certain rules contained herein to ensure efficiency and fundamental fairness to all parties. Such waiver ~~must be mutually agreed to~~ is in the sole discretion of the presiding City Council, Board or Committee.

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2. At the beginning of the hearing, the City Council, Board or Committee members will announce for the record any "ex parte" communications not previously disclosed in writing and included in the Official City File. The name of the person with whom the contact occurred and the subject matter of the discussion will be disclosed.

3. The City Council, or Board or Committee clerk, or similar individual, will administer an oath to all persons who intend to testify at this public hearing. Any person appearing by Communications Media Technology (CMT) shall take the oath and provide all testimony with their camera on and while fully visible. Each Applicant shall disclose any consideration provided or committed directly, or on its behalf, for an agreement to support, or withhold objection to, the requested relief or action.

4. The presentation of the matter shall be in the following order:

~~(i)~~A. The City staff ~~shall first place the Official City File shall be presumed to be part of the Official into the Record and thereafter make its initial presentation;~~

~~(ii)~~B. The Applicant will ~~then~~ make a ~~rebuttal~~ presentation;

C. City staff will present its position on the requested relief;

~~(iii)~~D. A Party Intervenor, if applicable, shall make a presentation;

~~(iv)~~E. Citizen Participants may speak for or against the Application provided, however, that only testimony asserting facts impacting one or more of the criteria for relief shall be considered by the Council or Board, while desires, wants, wishes, or non-expert opinions are inappropriate to consider when determining the final result;

~~(v)~~F. The City Staff, the Applicant and any applicable Party Intervenor shall have two (2) minutes each for rebuttal and/or closing statements; and

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(vi)G. The City Council or Board shall commence deliberations and render a decision based on the Record.

5. In the event an applicant does not appear to present the item, the Council or Board may table the item to a future regular meeting. If there is any cost to readvertising the tabled item, it shall be borne by the applicant. In the event the applicant fails to appear at the subsequent hearing date, the item shall be Stricken by the Council or Board, and the applicant will be required to reapply for the relief sought.

6. Matters before the City Council may only be tabled at the request of the Council, City staff or the Applicant. Matters before a Board or Committee may only be tabled at the request of City staff or the Applicant.

7. All witnesses are subject to cross-examination during the hearing. After presentations have been made by the City staff, the Applicant and any Party Intervenor, if applicable, cross-examination will be permitted on the witnesses in the public hearing, including the City staff, the Applicant and any party Intervenor, in order of their appearance at the hearing. Cross examination shall be limited to two (2) minutes per witness. However, the Mayor or person presiding as the Chairperson over the meeting may enlarge the time period allowed for cross-examination when necessary to ensure due process is provided. Anyone who testifies at the hearing should remain until the conclusion of the hearing in order to be able to respond to any questions.

8. In the event letters or petitions are offered into the Record on a quasi-judicial matter, they shall not be considered "evidence" because they are neither offered under oath, nor are the individuals available for cross-examination.

6 9. During the presentation of the case and testimony by City staff, the Applicant, and the Party Intervenor, if applicable, only the City Council, or Board or Committee members are permitted to ask questions and may ask questions at any time during the proceeding.

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7 10. The Mayor or chairperson of the City Council, Board or Committee, or the legal advisor to the City Council, Board or Committee, shall have the authority to determine if the questions and evidence is relevant. If the questioning is deemed to be improper or irrelevant, the chairperson or the legal advisor to the City Council, Board or Committee shall have the authority to halt the line of questioning.

8-11. At the conclusion of the hearing, the City Attorney or legal advisor shall advise the City Council, Board or Committee as to the applicable law and the factual findings that must be made to approve or deny the Application.

Section 3. Conflict. If any ordinances or parts of ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflicting provisions.

Section 4. Severability. The provisions of this Ordinance are intended to be severable. If any provision of this Ordinance is determined to be void or is declared illegal, invalid, or unconstitutional by a Court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 5. Codification. The provisions of this Ordinance shall be made a part of the Code of Ordinances of the City of Port St. Lucie, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; the word “ordinance” may be changed to “section” or other appropriate word as may be necessary.

Section 6. Effective Date. This Ordinance shall become effective immediately after final adoption on second reading.

PASSED AND ADOPTED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2023.

CITY COUNCIL
CITY OF PORT ST. LUCIE

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By: _____
Shannon M. Martin, Mayor

ATTEST:

Sally Walsh, City Clerk

APPROVED AS TO FORM:

By: _____
James D. Stokes, City Attorney