



# City of North Port

## RESOLUTION NO. 2021-R-01

**A RESOLUTION OF THE CITY OF NORTH PORT, FLORIDA, APPOINTING JAMES TOALE TO THE POSITION OF HEARING OFFICER WITH THE AUTHORITY TO HEAR AND DECIDE MATTERS RELATED TO ENFORCING THE CITY'S CODES, AS WELL AS ZONING-RELATED MATTERS; INCORPORATING RECITALS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 2-110 of the Code of the City of North Port ("City Code") creates and establishes the City's office of Hearing Officer and confers authority to hear and decide matters pursuant to Chapter 2, Article IX of the City Code and to have the authority prescribed in Section 1-30 of the Unified Land Development Code ("ULDC"); and

**WHEREAS**, per Chapter 2, Article IX of the City Code, the Hearing Officer functions as the City's alternate code enforcement system, utilizing Hearing Officers to conduct hearings to determine whether a violation of any code or ordinance has occurred, and to order compliance and penalties against violators; and

**WHEREAS**, per Section 1-30 of the ULDC, in the absence of there being sufficient appointed members of the Zoning Board of Appeals ("ZBA") to constitute a quorum, the Hearing Officer may serve in the place and exercise the powers of the ZBA; and

**WHEREAS**, on April 13, 2015, the City Commission appointed James Toale, Esquire as a Zoning Hearing Officer; and

**WHEREAS**, on October 26, 2015, the City Commission adopted Ordinance No. 2015-26, creating a new division of the City Code to include Sections 2-110 and 2-111, combining all hearing officer functions into an office of Hearing Officer; and

**WHEREAS**, on November 9, 2015, the Commission ratified Resolution No. 2015-R-31, appointing James Toale, Esquire as a Hearing Officer; and

**WHEREAS**, City Code Section 2-505(d) and ULDC Section 1-30(A)(3) establish a Hearing Officer's appointment to a term not to exceed four years; and

**WHEREAS**, City Code Section 2-111(a) provides that a hearing officer may be appointed to preside over both the code enforcement and zoning hearings; and

**WHEREAS**, James Toale, Esquire has expressed an interest in serving as the City’s Hearing Officer to preside over both the code enforcement and zoning hearings for an additional four years, utilizing the rates set forth in his Response to Request for Proposal No. 2015-13; and

**WHEREAS**, the City Commission desires to reappoint James Toale, Esquire as a Hearing Officer to preside over both the code enforcement and zoning hearings for a term of four years; and

**WHEREAS**, the City Commission has determined that this resolution serves the public health, safety, and welfare of the citizens of the City of North Port, Florida.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:**

**SECTION 1 – FINDINGS**

- 1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.
- 1.02 James Toale, Esquire is an attorney in good standing with the Florida Bar Association, has practiced law for at least five years prior to appointment, and practices law within Sarasota County, Florida.
- 1.03 During his service as Hearing Officer, Attorney Toale has demonstrated satisfactory knowledge of municipal law and the general procedures for enforcement of municipal codes, as well as a temperament suitable for the exercise of the quasi-judicial powers vested in a hearing officer.
- 1.04 Attorney Toale has more than two years’ experience in land use, zoning, or other land use regulatory experience.
- 1.05 Attorney Toale is not a City employee, officer, or board or committee member.
- 1.06 The City Commission finds that James Toale, Esquire meets the qualifications to preside over code enforcement matters pursuant to Section 2-505(c) of the City Code and to preside over zoning matters pursuant to Section 1-30A.(2) of the ULDC.

**SECTION 2 – APPOINTMENT**

- 2.01 The City Commission hereby appoints James Toale, Esquire as a Hearing Officer for a term of four years, invested with the power and authority set forth in Section 2-110 of the City Code to preside over matters pursuant Chapter 2, Article IX of the City Code and Section 1-30 of the ULDC.
- 2.02 The Hearing Officer shall be compensated as set forth in his Response to Request for Proposal No. 2015-13, at an hourly rate of \$195.00. Travel time is not compensable. Time will only be billed for the following actions of the Hearing Officer:
  - A. Review of appeals or petitions for variance.

- B. Scheduling and conducting hearings.
  - C. Preparing written findings of fact, decisions, and orders.
- 2.03 When the Hearing Officer is named as a defendant for actions taken during the scope of his duties as Hearing Officer, he shall be compensated at an hourly rate of \$50.00 for time spent consulting with attorneys, preparing for and attending depositions, and preparing for and attending court hearings.
- 2.04 Despite the term of this appointment, pursuant to Section 2-505(d) of the City Code and Section 1-30A.(4) of the ULDC, the Hearing Officer serves at the pleasure of the City Commission and may be removed from service at any time, with or without cause, by a majority of the City Commission. Pursuant to Section 2-505(d), a Hearing Officer's office is considered vacant if the Hearing Officer fails to attend two of three successive hearings without good cause.

**SECTION 3 – CONFLICTS**

- 3.01 In the event of any conflict between the provisions of this resolution and any other resolution or portions thereof, the provisions of this resolution shall prevail to the extent of such conflict.

**SECTION 4 – SEVERABILITY**

- 4.01 If any section, subsection, sentence, clause, phase, or provision of this resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 5 – EFFECTIVE DATE**

- 5.01 This resolution shall take effect immediately upon adoption by the City Commission of the City of North Port, Florida.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, Florida in public session this 12th day of January 2020.

CITY OF NORTH PORT, FLORIDA

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GISELE "JILL" E. LUKE  
MAYOR

ATTEST

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HEATHER TAYLOR, CMC  
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

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AMBER L. SLAYTON  
CITY ATTORNEY