

**Proposed Code Revisions for Ordinance No. 2018-12**  
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**Chapter 2 – ADMINISTRATION**

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**ARTICLE III. – QUASI-JUDICIAL PROCEEDINGS**

**Sec. 2-79. - Intent.**

It is the intent of the city commission to provide an equitable and efficient method for the commission, as well as certain city boards, committees, and authorities, to hear matters which are considered quasi-judicial in nature. These procedures shall be utilized by the city in regard to hearings on quasi-judicial matters.

**Sec. 2-80. - Definitions.**

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Aggrieved or adversely affected person.* Any person who will suffer a negative effect to a protected interest as a result of the quasi-judicial action sought by the applicant. The alleged adverse interest may be shared in common with other members of the community at large but shall exceed in degree the general interest in the community.

*Applicant.* Any person, corporation or other legal entity who files with the department responsible for land development an application for an action which has been determined by city staff to be quasi-judicial in nature as reflected on the agenda and within the agenda packet for that commission meeting at which said matter will be heard.

*Clerk.* For any proceeding before the city commission, the clerk is the city clerk. For any other board, the clerk will be the clerk or secretary designated for the respective board, committee, agency, authority, or hearing officer.

*Competent substantial evidence.* Evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.

*Ex parte communication.* Any verbal or written expression made to a local public official which is outside of the presence of all interested parties and is not made during a public hearing or meeting to consider matters involving the exercise of quasi-judicial decision making.

*Local public official.* Any elected or appointed public official of the City of North Port who recommends or takes quasi-judicial action as a member of a quasi-judicial body.

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39           *Party or parties.* The applicant, the city, and any aggrieved or adversely affected  
40 person who has complied with the notice provisions set forth in section 2-81 below.

41           *Presider.* For any proceeding before the city commission, the mayor or, in his/her  
42 absence, the vice-mayor is the presider. For any proceeding before a hearing officer,  
43 the hearing officer is the presider. For any proceeding before any other quasi-judicial  
44 body, the chair or, in his/her absence, the vice-chair is the presider.

45           *Quasi-judicial body.* The city commission sitting in its quasi-judicial capacity, or  
46 any other city board, committee, authority, or hearing officer sitting in its quasi-  
47 judicial capacity.

48           *Quasi-judicial in nature.* The application of a general rule or policy to specific  
49 individuals, interests, or activities by the quasi-judicial body, as more specifically set  
50 forth in section 2-82 below.

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52       **Sec. 2-81. - Notice procedures for aggrieved or adversely affected persons.**

53           (a) Aggrieved or adversely affected persons are entitled to a fair and impartial  
54 hearing, notice of the hearing, and an opportunity to be heard.

55           (b) Any aggrieved or adversely affected person desiring to become a party in the  
56 quasi-judicial proceeding shall provide written notice to the clerk which  
57 notice shall, at a minimum, set forth the aggrieved or affected person's name,  
58 address, and telephone number, indicate how the aggrieved or affected  
59 person qualifies as an aggrieved or affected person and indicate whether the  
60 aggrieved or affected person is in favor of or opposed to the requested quasi-  
61 judicial action. The filing of notice with the clerk shall serve as notice to the  
62 parties of the aggrieved or affected person's intent to appear at all applicable  
63 quasi-judicial proceedings to testify, present evidence, bring forth witnesses,  
64 and cross-examine witnesses. The required notice must be received by the  
65 clerk no later than five business days at the close of business, which is 5:00  
66 p.m., before any hearing.

67           (c) The written notice in subsection (b) above, filed with the clerk of a quasi-  
68 judicial body other than city commission for a quasi-judicial matter that will  
69 procedurally be forwarded to the city commission for consideration shall  
70 also serve as the notice for the aggrieved or affected person to appear at the  
71 proceeding held by the city commission on the same quasi-judicial matter.

72  
73       **Sec. 2-82. - Quasi-judicial matters.**

74           (a) Matters that are quasi-judicial in nature involve the actions of public officials  
75 who are required to investigate facts, or ascertain the existence of facts, hold  
76 hearings, weigh evidence and draw conclusions from such facts, as a basis  
77 for their official action, and to exercise discretion of a judicial nature and any

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other decision involving the implementation, rather than formation, of city policy. Quasi-judicial matters include, but may not necessarily be limited to the following:

- (1) Site-specific rezoning of land which rezoning will have an impact on a limited number of persons or property owners where the decision is contingent on fact(s) arrived at from distinct alternatives presented at a hearing and where the decision can be functionally viewed as policy application rather than policy setting;
- (2) Applications for special exceptions or amendments thereto;
- (3) Hearings on code enforcement violations by the code enforcement board or hearing officer;
- (4) Applications for preliminary and final plats;
- (5) Variances from the application of the land development code;
- (6) Appeals from an administrative determination by the director of neighborhood development services or any city official interpreting the provisions of the land development code;
- (7) Hearings on applications for disability or service retirements before the board of trustees of the North Port Police Officers and Firefighters Pension Fund; and
- (8) Vacation of easements.

- (b) For all quasi-judicial matters which require more than one reading, the first reading shall constitute the quasi-judicial proceeding. Once a decision is rendered to grant or grant with conditions the relief sought by the applicant, then the second reading shall be procedural in nature with the quasi-judicial body ratifying and affirming its prior decision. If new evidence is introduced which, if brought to the attention of the quasi-judicial body at the first reading, would have had a material impact on its decision, the quasi-judicial body may reopen the quasi-judicial hearing. If the quasi-judicial body reopens the quasi-judicial hearing, it shall be scheduled for a date and time certain and provide notice to all parties.

**Sec. 2-83. - Procedures for quasi-judicial proceedings.**

- (a) The following is a guideline for conducting quasi-judicial hearings:
- (1) *Introduction.* The presider will introduce the case and if appropriate, defer to the clerk for the reading of the ordinance or resolution caption.
  - (2) *Swearing in.* All persons wishing to speak on a quasi-judicial matter shall take an oath to tell the truth. This includes attorneys representing parties, as well as members of the public providing comment.

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- 116 (3) *Ex parte disclosures.* The presider shall call for disclosure of ex parte  
117 communications by the members of the quasi-judicial body. Such  
118 disclosures shall be made in accordance with this article.
- 119 (4) *Presentation of evidence.* The presider shall have the option of  
120 determining the order to expedite the proceedings. However, all  
121 parties shall be provided the opportunity to present their case. The  
122 general order of the presentation of evidence shall be as follows:
- 123 a. *Presentations.* The applicant, city staff, and any aggrieved or  
124 adversely affected person, in that order, shall each have 20  
125 minutes to make an initial presentation.
- 126 b. *Rebuttal.* The applicant, city staff, and any aggrieved or adversely  
127 affected person, in that order, shall each have five minutes for  
128 rebuttal. During this time, the parties may present rebuttal  
129 testimony, cross-examine opposing witnesses, impeach witnesses,  
130 and rebut evidence.
- 131 c. *Public comment.* Any ~~other~~ person who did not speak during  
132 presentations and rebuttals may speak for not more than three  
133 minutes. Prior to being heard, each speaker must take an oath to  
134 tell the truth and must state his/her name and address for the  
135 record. The quasi-judicial body may by motion extend the time for  
136 an individual speaker, provided that all other speakers are allowed  
137 the same time extension.
- 138 d. *Questions.* The presider and quasi-judicial body may ask questions  
139 of any party, witness, or person providing public comment.
- 140 e. *Closing argument.* Any aggrieved or adversely affected person, city  
141 staff, and the applicant, in that order, shall each have five minutes  
142 for closing argument.
- 143 (5) *Action by the quasi-judicial body.*
- 144 a. At the conclusion of the presentation of the evidence and testimony,  
145 the quasi-judicial body shall close the public hearing. The presider  
146 shall entertain any motions, and the quasi-judicial body shall  
147 proceed to deliberate and vote on the motion(s). The quasi-judicial  
148 body shall make its determination based upon competent  
149 substantial evidence.
- 150 b. If after notice of hearing, a party does not appear, the hearing may  
151 be conducted and an order entered in the absence of the party.
- 152 c. If during the deliberations a question arises which the quasi-judicial  
153 body desires to ask, it shall reopen the public hearing, pose the  
154 question and allow each party the opportunity to respond to the

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question posed prior to closing the public hearing again and resuming deliberations.

(b) *Representation of parties.*

(1) *Attorney.* Any natural person or party may represent himself/herself or may be represented by an attorney. If the party chooses to be represented by an attorney, a notice of representation, signed by the attorney, shall be filed with the clerk prior to the hearing.

(2) *Non-attorney.* In the event any party (other than a corporation or the city) chooses to be represented by a non-attorney, such party shall file a written, notarized power of attorney with the clerk prior to the hearing stating that the person appearing has the full power and authority to act on behalf of the party in the matter.

(3) *Business representative.* A corporation or limited liability company may appear through a representative who is listed with the Florida Department of State as a current officer or manager of an active corporation or limited liability company entity. The representative must identify himself/herself in that business capacity.

(c) *Evidence.*

(1) All relevant evidence shall be admitted. The quasi-judicial body may exclude irrelevant, immaterial, or unduly repetitious evidence.

(2) Hearsay evidence may be accepted for the purpose of either supplementing or explaining any direct evidence, provided it is not offered to prove the truth of the matter asserted, but such hearsay evidence shall not, in and of itself, be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in any civil litigation proceeding in a state or federal court in Florida.

(3) Except as provided herein, neither the Federal Rules of Evidence nor the Florida Evidence Code shall apply, but fundamental due process shall be observed and shall govern said proceedings at all times.

(d) *Orders.*

(1) If the quasi-judicial body denies relief to the applicant, the quasi-judicial body's legal counsel shall issue a subsequent written order setting forth the reasons therefor.

(2) The quasi-judicial body shall have the authority to issue any and all orders to afford the proper relief, and this authority shall include the authority to grant continuances to a date certain upon good cause shown.

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- 193 (e) *Hearing record.* The clerk shall maintain custody of all recordings of  
194 testimony, evidence, and documents submitted into evidence at the hearing.  
195 This shall include the official file in the matter, as well as any document  
196 presented at the hearing or demonstrative exhibit seen by the quasi-judicial  
197 body while making its decision. Nothing herein shall be deemed to prohibit  
198 any party from providing a court reporter for the proceedings. Any party  
199 wishing to appeal the decision of a quasi-judicial body shall have the  
200 responsibility to ensure compliance with F.S. § 286.0105.

201  
202 **Sec. 2-84. - Ex parte communication.**

- 203 (a) Any person not otherwise prohibited by statute, charter provision or  
204 ordinance may discuss with any local public official the merits of any matter  
205 on which action may be taken by any board or commission on which the local  
206 public official is a member. The provisions of this article shall be followed for  
207 all such communications.
- 208 (b) The following process is hereby established for ex parte communications  
209 with any local public official:
- 210 (1) *Disclosure.* Pursuant to F.S. § 286.0115, the substance of any ex parte  
211 communication with a local public official which relates to quasi-  
212 judicial action pending before the official is not presumed to be  
213 prejudicial to the action if the subject of the communication and the  
214 identity of the person, group or entity with whom the communication  
215 took place is disclosed and made a part of the record before final action  
216 on the matter.
- 217 (2) *Written communications.* A local public official may read a written  
218 communication from any person. However, a written communication  
219 that relates to quasi-judicial action pending before a local public official  
220 shall not be presumed prejudicial to the action, and such written  
221 communication shall be made a part of the record before final action on  
222 the matter.
- 223 (3) *Investigations and site visits.* Local public officials may conduct  
224 investigations and site visits and may receive expert opinions  
225 regarding quasi-judicial action pending before them. Such activities  
226 shall not be presumed prejudicial to the action if the existence of the  
227 investigation, site visit or expert opinion is made a part of the record  
228 before final action on the matter.
- 229 (4) *Timing of disclosure.* Disclosure made pursuant to subsections (1)—(3)  
230 must be before or during the public meeting at which a vote is taken on  
231 such matters, so that persons who have opinions contrary to those

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232                   expressed in the ex parte communication are given a reasonable  
233                   opportunity to refute or respond to the communication.

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235           **Secs. 2-85 — 2-109. - Reserved.**