



City of North Port

ORDINANCE NO. 2018-12

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE CODE OF THE CITY OF NORTH PORT, FLORIDA, CHAPTER 2 - ADMINISTRATION, ARTICLE III. - QUASI-JUDICIAL PROCEEDINGS, SECTIONS 2-80 THROUGH 2-84; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODING OF AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 2, Article III of the Code of the City of North Port establishes administrative procedures for quasi-judicial proceedings; and

WHEREAS, at its February 5, 2018 special meeting, the City Commission of the City of North Port discussed these administrative procedures to ensure they provided appropriate notice, the opportunity to be heard, and an impartial decision-maker; and

WHEREAS, the City Commission of the City of North Port has determined that the amendments herein serve the public health, safety, and welfare of the citizens of the City of North Port, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA, AS FOLLOWS:

SECTION 1- FINDINGS:

- 1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.

SECTION 2 - ADOPTION:

2.01 The City Commission of the City of North Port hereby approves and adopts the following amendments and additions to the Code of the City of North Port, Florida:

“Chapter 2 – ADMINISTRATION

...

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 ~~special magistrate hearing officer.~~

Competent substantial evidence. Evidence that is sufficiently relevant and material that a reasonable mind ~~could~~ would accept it as adequate to support a 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.

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

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

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

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

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

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

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

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

Sec. 2-82. - Quasi-judicial matters.

- (a) Matters that are quasi-judicial in nature involve ~~Describes~~ the actions of public officials who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence and draw conclusions from such facts, as a basis for their official action, and to exercise discretion of a judicial nature and any 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 special magistrate hearing officer for code enforcement; ~~for code enforcement~~;
 - (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; ~~and~~
 - (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~~ 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) All testimony shall be under a sworn oath to tell the truth. The oath shall be contained on a speaker's card. All persons wishing to speak on a quasi-judicial item shall submit a speaker's card to the clerk on duty.~~
- ~~(2) The presider shall call the cases on the agenda but shall not be bound by the order in which the cases appear on the agenda.~~
- ~~(3) Introduction. The presider will introduce the case and, if appropriate, defer to the city manager (or designee) or city attorney (or board counsel) for either an explanation of the matter 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.~~
- ~~(3) Ex parte disclosures. The presider shall call for disclosure of ex parte communications by the members of the quasi-judicial body. Such disclosures shall be made in accordance with this article.~~
- ~~(4) Presentation of evidence. The presider shall have the option of determining the order to expedite the proceedings. However, all parties shall be provided the opportunity to present their case. ~~In the event the quasi-judicial matter constitutes a public hearing, the~~ The general order of the presentation of evidence shall be as follows:
 - ~~a. Presentations. The applicant, ~~having the burden of persuasion and the burden of proof,~~ shall proceed to present its case first city staff, and any aggrieved or adversely affected person, in that order, shall each have 20 minutes to make an initial presentation;.~~
 - ~~b. City staff shall then present the opinion of the city or any other relevant information necessary for the quasi-judicial body's consideration-Rebuttal. The applicant, city staff, and any aggrieved or adversely affected person, in that order, shall each have five minutes for rebuttal. During this time, the parties may present rebuttal testimony, cross-examine opposing witnesses, impeach witnesses, and rebut evidence.~~
 - ~~c. Any aggrieved or adversely affected person who has complied with the notice requirement set forth in section 2-81 shall be heard;~~
 - ~~d. Public comment. Any other person who did not speak during presentations and rebuttals may speak for not more than three minutes. Prior to being heard, each speaker must take ~~who has taken an oath to tell the truth and must state upon statement of his/her name and address for the record shall be heard;~~ The quasi-judicial body may by motion extend the time for an individual speaker, provided that all other speakers are allowed the same time extension.~~~~

- d. Questions. The presider and quasi-judicial body may ask questions of any party, witness, or person providing public comment.
- e. Closing argument. Any aggrieved or adversely affected person, city staff, and the applicant, in that order, shall each have five minutes for closing argument. ~~shall then be given by the applicant.~~

(5) Action by the quasi-judicial body.

- a. At the conclusion of the presentation of the evidence and testimony, the quasi-judicial body shall close the public hearing. The presider shall entertain any motions, and the quasi-judicial body shall proceed to deliberate and vote on the motion(s). The quasi-judicial body shall make its determination based upon competent substantial evidence.
- b. If after notice of hearing, a party does not appear, the hearing may be conducted and an order entered, in the absence of the party.
- c. If during the deliberations a question arises which the quasi-judicial body desires to ask, it shall reopen the public hearing, pose the question and allow each party the opportunity to respond to the question posed prior to closing the public hearing again and resuming deliberations.

(b5) 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. ~~The statements or arguments of the attorney are not considered evidence. The attorney need not be sworn.~~
- (2) a-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 ~~at least five calendar days~~ 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) b-Business representative. A corporation or limited liability company may appear through ~~an officer of the corporation provided the officer~~ 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 with the secretary of state and identifies. The representative must identify himself/herself in that business capacity.

(c6) Evidence. The parties may:

- a. ~~Call and examine witnesses;~~
- b. ~~Introduce exhibits;~~

- ~~c. Cross-examine opposing witnesses;~~
 - ~~d. Impeach witnesses; and~~
 - ~~e. Rebut evidence.~~
- ~~(7) The quasi-judicial body shall have the authority to ask questions of anyone present at the proceedings prior to closing the public hearing and commencing deliberations. If during the deliberations, a question arises which the quasi-judicial body desires to ask, it shall reopen the public hearing, pose the question and allow both the applicant and the city the opportunity to respond to the question posed prior to closing the public hearing again and resuming deliberations.~~
- ~~(8) Neither the Federal Rules of Evidence nor the Florida Evidence Code shall apply, but fundamental due process shall be observed and govern said proceedings at all times.~~
- ~~(91) All relevant evidence shall be admitted. The quasi-judicial body may exclude irrelevant, immaterial, or unduly repetitious evidence.~~
- ~~(102) 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.~~
- ~~(11) If, after notice of a hearing, a party does not appear, the hearing may be conducted, and an order entered, in the absence of the party.~~
- ~~(12) 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.~~
- ~~(13) At the conclusion of the presentation of the evidence and the taking of testimony, the quasi-judicial body shall close the public hearing and proceed to deliberate. The quasi-judicial body shall endeavor to make a determination based upon competent and substantial evidence.~~
- ~~(d) Orders.~~
- ~~(141) At the conclusion of the hearing, if and only if If the quasi-judicial body denies relief is denied to the applicant, the quasi-judicial body's legal counsel shall issue a subsequent written order shall be issued to the applicant by the quasi-judicial body's legal counsel 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.

(e15) Hearing record. The clerk shall ~~retain~~ maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the hearing. This shall include the official file in the matter, as well as any document presented at the hearing or demonstrative exhibit seen by the quasi-judicial body while making its decision. Nothing herein shall be deemed to prohibit any party from providing a court reporter for the proceedings. Any party wishing to appeal the decision of a quasi-judicial body shall have the responsibility to ensure compliance with F.S. § 286.0105.

Sec. 2-84. - Ex parte communication.

- (a) ~~Ex parte communications, a~~ Any person not otherwise prohibited by statute, charter provision or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member, ~~provided that the~~. The provisions of this article ~~are~~ shall be followed for all such communications.
- (b) The following process is hereby established for ex parte communications with any local public official:
- (1) *Disclosure.* Pursuant to F.S. § 286.0115, the substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed to be 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 final action on the matter.
 - (2) *Written communications.* A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official 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) *Investigations and site visits.* Local public officials 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 investigation, site visit or expert opinion is made a part of the record before final action on the matter.

- (4) Timing of disclosure. Disclosure made pursuant to subsections (1)—(3) must be 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.

Secs. 2-85—2-109. - Reserved.”

SECTION 3 – SEVERABILITY:

- 3.01 If any section, subsection, sentence, clause, phase, or provision of this Ordinance 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 4 – CONFLICTS:

- 4.01 In the event of any conflicts between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 5 – CODING OF AMENDMENTS:

- 5.01 In this Ordinance, additions are shown as underlined and deletions as strikethrough. These editorial notations shall not appear in the codified text.

SECTION 6 – EFFECTIVE DATE:

- 6.01 This Ordinance shall take effect immediately after adoption by the City of North Port City Commission.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session this 24th day of April 2018.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, Florida, on the second and final reading in public session this 12th day of June 2018.

CITY OF NORTH PORT, FLORIDA

VANESSA CARUSONE
MAYOR

ATTEST:

PATSY C. ADKINS, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

AMBER L. SLAYTON
CITY ATTORNEY