

ORDINANCE No. 2005-18-56

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, RELATING TO QUASI-JUDICIAL PROCEEDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROCEDURES FOR QUASI-JUDICIAL MATTERS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council would like to establish procedures for quasi-judicial proceedings to ensure compliance with laws relating to quasi-judicial proceedings, and

WHEREAS, the City Council would like to ensure that quasi-judicial proceedings are conducted in an equitable and efficient manner, and

WHEREAS, the City Council recognizes the decision of Jennings vs. Dade County, 589 So.2d 1337 (Fla. 3rd DCA 1991), which held that ex parte communications with a decision maker concerning a quasi-judicial land use matter were presumed prejudicial, and

WHEREAS, the City Council also recognizes that §286.0115(2), which was enacted subsequent to the *Jennings* decision, specifically provides that in quasi-judicial proceedings on local government land use matters, a person may not be precluded from communicating directly with a local public official by application of ex parte communication prohibitions, and that disclosure of such communications by a local public official is not required, and that such nondisclosure shall not be presumed prejudicial to the decision of the local public official, and

WHEREAS, due to the fact that there has not been a court decision dealing with ex parte communications concerning local land use matters, since the enactment of

§286.0115(2), and in light of the constitutional due process issues involved, the City Council prefers to act in the abundance of caution by requiring that all such communications be disclosed on the record,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. CREATION OF QUASI-JUDICIAL PROCEEDING ORDINANCE: There is hereby created an ordinance in the City of Miami Gardens, relating to quasi-judicial proceedings.

Section 1. Intent

It is the intent of the City to provide an equitable and efficient manner for the City to hear matters that are considered quasi-judicial in nature. This Ordinance shall provide the City's procedures to be utilized for quasi-judicial proceedings.

Section 2. Definitions

As used in this Ordinance, the terms listed below shall be defined as follows:

- (1) *Applicant* means an individual, corporation or other authorized legal entity that initiates a quasi-judicial proceeding.
- (2) *Application* means an application for a site-specific rezoning, variance, conditional use permit, design review approval or other request for a quasi-judicial proceeding
- (3) *City Council* means the City Council of the City of Miami Gardens.
- (4) *City staff* means an employee(s) of the City.
- (5) *Local public official* means any elected or appointed public official holding a municipal office who recommends or takes quasi-judicial action

as a member of a board, commission or council.

- (6) *Ex-parte communication* means any written or oral communication with a local public official that may directly or indirectly influence the disposition of an application, other than those made on the record during a public hearing.
- (7) *Party or parties* means the applicant, City, and any affected person who has requested to be heard at the proceeding.
- (8) *Quasi-judicial* means and refers to an action or proceeding by the City Council or City board on an site-specific application, that has an impact on a limited number of persons or property owners, or identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, or as may otherwise be defined by case law.
- (9) *Site specific* means an individual piece of real estate that can be clearly defined by street address, legal description or similar means at a single identifiable location.

Section 3. Quasi-judicial matters.

- (1) For the purposes of this article, the following land use matters, where a final determination is made by the City Council or a board created by the City Council, shall be considered to be quasi-judicial:
 - (a) Site specific rezoning;
 - (b) Site specific land use amendments;
 - (c) Conditional use approval;
 - (d) Variances;
 - (e) Plat approvals;
 - (g) Special exceptions;
 - (h) Site plan applications;
 - (i) Developments of regional impact
 - (j) Other site-specific development applications determined to be

quasi-judicial by the City Attorney.

Section 4. Procedures for quasi-judicial proceedings.

(1) *[In general]*

- (a) In quasi-judicial proceedings, ex-parte communications are not presumed prejudicial 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
- (b) Local public officials may read a written communication from any person. A written communication that relates to a quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action if such written communication is made a part of the record before final action on the matter.
- (c) Local public officials 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.

(2) *Notice.*

Notice for all quasi-judicial proceedings is to be provided in accordance with Section 33.310 of the Miami Dade County Code of Ordinances as adopted by the City of Miami Gardens.

(3) *Presentation of evidence.*

- (a) All persons testifying before the City Council or a board must be sworn in. The applicant, members of the City Council or board and any affected person shall be given the opportunity to question or cross-examine any witnesses. Each person, other than the salaried members of City staff, who addresses the City Council or board shall state their name and address on the record.
- (b) 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.

- (c) 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.
 - (d) 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.
 - (e) A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.
 - (f) The office of the City Attorney shall represent the City Council or board and advise as to the propriety and admissibility of evidence presented at the proceeding.
- (4) *Procedures for quasi-judicial proceedings.* The proceedings shall be conducted in an informal manner. Each party shall have the right to do the following:
- (a) To call and examine witnesses;
 - (b) To introduce exhibits;
 - (c) To cross examine opposing witnesses on any relevant matter; and
 - (d) To rebut evidence.
- (5) *Conduct of quasi-judicial proceedings.* To the extent possible, the following shall be the order of the proceedings:
- (a) Call the proceedings to order and announce the beginning of the proceeding. A majority of the City Council or board members must be continuously present during the proceeding.
 - (b) Swearing in of all persons intending to provide testimony at the proceedings, including City staff. 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.
 - (c) The matter to be heard and the rules concerning the admissibility of evidence should be announced. The City Council or board shall have the authority to refuse to hear any testimony that is irrelevant or repetitive.

- (d) City staff shall present its report on the matter as well as any comments. This report shall include, but not be limited to, a description of the request of the applicant; a description/background of the application; an analysis which includes the consistency with the City's Comprehensive Development Master Plan, if applicable, and how the application does or does not meet the requirements of the City Code; a listing of the exhibits to be presented; a summarization of the issues; and the staff recommendations. The staff recommendation shall include specific findings in support of justifying a recommendation for approval or denial of the application.
- (e) Applicant, or his representative, shall be permitted to make a presentation. The applicant should include a description of the nature of the application if there is additional information that has not been provided by City. In addition the applicant shall introduce any exhibits and witnesses. The Applicant may waive his or her right to an evidentiary hearing if he or she agrees with the staff recommendation. However, members of the public may still be permitted to speak in favor of or against the application. The City Council or board may vote on the item based upon the materials in the agenda back-up. At any time prior to the City Council or board voting on the item, the Applicant may re-invoke the right to a quasi-judicial proceeding.
- (f) Parties who are in support of the application shall make their presentation. The party shall introduce any exhibits and witnesses.
- (g) Parties who are in opposition of the application shall make their presentation. The party shall introduce any exhibits and witnesses.
- (h) Staff shall provide any responses to any other party to the proceeding.
- (i) 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 that are directly related to the testimony presented.
- (j) Final presentation by applicant in response to any testimony from other parties.
- (k) Final presentation by City in response to any testimony from other parties.

- (l) At the discretion of the City Council or board, the applicant may be permitted to respond to final staff recommendations.
 - (m) The City Council or board shall deliberate on the application. No further testimony shall be taken and the members shall not ask further questions of persons presenting testimony. The City Council or board shall discuss the evidence that was presented at the proceeding and vote on the application. All decisions must be based upon competent substantial evidence submitted in the record.
- (6) *Continuances and deferrals.* If, in the opinion of the City Council or board, 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 or board 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 proceeding shall be continued shall be announced at the proceeding.
- (7) *Transcript of quasi-judicial proceedings.* The City shall preserve all hearings by tape recording or some other device. However, anyone wishing to appeal any decision made by the City Council or board will need a record of the proceedings and will need to ensure that a verbatim record of the proceedings is made.
- (8) *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 that shall be retained by the department of community development, all which become a part of the public record of the proceeding.
- (9) *Appeal of final determination by the City Council or board.* The final determination of the City Council or board, is subject to judicial review in a court of competent jurisdiction.

SECTION 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining

portions of this Ordinance.

SECTION 5. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 27th DAY OF APRIL, 2005.

PASSED ON SECOND READING ON THE 11TH DAY OF MAY, 2005.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 11TH DAY OF MAY, 2005.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: Sonja K. Dickens, Esquire

MOVED BY: Councilwoman Pritchett

SECONDED BY: Councilman Braynon

VOTE: 6-0

Mayor Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Campbell	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No) Out of town
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Oscar Braynon, II	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Audrey J. King	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)

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