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M E M O R A N D U M

DATE: October 16, 2023
TO: Mayor Pachota and City Council Members
CC: Ed Lavallee, City Manager
Kelly Michaels, City Clerk
FROM: Kelly M. Fernandez, City Attorney
SUBJECT: Draft Revised Quasi-Judicial Procedures

As a follow-up to Council's last discussion of the City's quasi-judicial procedures, I have attached a draft of the revised Code for further discussion that addresses the below previously presented options as well as some necessary cleanup. The goal of these revisions remains to tighten up the procedures to achieve a streamlined and efficient proceeding while still affording the parties more than adequate due process.

Options:

1. Place time limitations on cross-examination by parties.
2. Eliminate the opportunity to do re-direct, meaning a party would have the opportunity to

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present witnesses, another party would have the opportunity to cross-examine those witnesses, but then the original party would not be able to re-question the witness.

3. Reduce public comment time to 3 minutes instead of 5 minutes each. The City could also establish a set time limit for designated representatives no matter the number of persons represented.
4. Remove the opportunity for a party to do rebuttal. Rebuttal occurs when a party, after their original presentation and after public comment, is allowed to present additional testimony and exhibits in theory to counter anything said during public comment or by another party during that party's original presentation.
5. Reduce the time for parties' initial presentations. Currently 30 minutes per party is provided.
6. Reduce the amount of time each affected party has to present its case if there are multiple affected parties, and/or allow a unified presentation by multiple affected parties.
7. Reduce closing argument/rebuttal time, which is currently 15 minutes per party.
8. Restrict the allowance of any additional time beyond the time limits stated in City Code.
9. Establish and/or increase pre-hearing submittal requirements for witness and exhibit identification. Presently, any written material the applicant and any affected party wishes to have considered by city council should be submitted at least three business days prior to the hearing. There is no requirement for witnesses to be pre-identified.
10. Clarify how evidentiary and procedural objections will be handled.

Requested Action: Direct the City Attorney to draft an ordinance approving the revised quasi-judicial procedures (optional: with the modifications requested by Council).

DRAFT REVISED QUASI-JUDICIAL PROCEDURES

Section 2-53

(a) No change.

(b) Quasi-judicial hearings shall be conducted in substantially the following manner:

(1) All speakers shall sign and submit a request to speak card, which shall contain an oath or affirmation that the testimony to be given will be truthful.

(2) Affected party. City council may allow a person or entity to intervene as an affected party if they have an interest in the application which is different than the public at large. At least ~~five~~^{three} business days prior to the hearing, the person or entity shall complete an application for affected party status and submit it to the city clerk's office.

(3) Designated representative. Members of the public, an association, corporation, legal entity, or group who wish to communicate the same message or provide the same competent substantial evidence to the city may choose a designated representative to speak on the members' behalf, rather than individual members of the group speaking. Designated representatives shall submit a written list of the members they represent and shall verify that the representative speaks on behalf of the members. Such verification may be by testimony under oath or by notarization. Members of the public on the written list shall cede their time for public comment to the designated representative, who shall be granted ten minutes to speak ~~additional time to speak based on the number of members represented~~. Designated representatives shall be considered participants and not an affected party. Any person seeking to speak on behalf of three or more people, inclusive of themselves, shall be considered a designated representative.

(4) The order of the hearing should generally be as follows:

a. The mayor, or designee, shall open the public hearing and call upon the city clerk to read the title of the proposal before council.

b. The mayor and councilmembers shall disclose any conflicts of interest and ex parte communications.

c. City attorney shall raise any preliminary matters including whether there are any requests for affected party status.

d. City council decides on any preliminary matters including affected party status.

e. Staff makes a presentation, if requested.

f. After the staff presentation, the applicant may make a presentation.

g. Any affected party may make a presentation.

h. Cross examination of witnesses, limited to matters about which the witnesses testified, may occur after each presentation. Such cross examination shall be limited to ten minutes per side. There shall be no re-direct examination of any witnesses.

i. City council shall hear any public comment whereupon the public comment portion of the public hearing shall be closed. Members of the public shall have five minutes each to speak, except by vote of the majority of councilmembers present the amount of time allotted to each member of the public may be reduced to no less than three minutes if more than twelve members of the public have signed up to speak.

j. Staff may offer rebuttal or a summary.

k. Any affected party may offer rebuttal or a summary.

l. The applicant may offer rebuttal or a summary.

m. Cross examination of any party's witnesses during rebuttal shall be limited to five minutes per side. There shall be no re-direct examination of any witnesses.

(5) During the course of the hearing, councilmembers may ask questions through the mayor, or designee, of the person testifying. The timing of these questions shall be at the sound discretion of the mayor, or designee, in consultation with the presenter in order to facilitate and achieve an orderly public hearing process. After rebuttal, the mayor, or designee, shall close the public hearing but may reopen the public hearing to allow staff, the applicant or any affected party to respond to specific questions from councilmembers.

(6) Staff shall submit written material in accordance with the requirements of this Code. Copies of all exhibits, including presentations, which will be presented at the public hearing and the names and addresses of all witnesses who will be called to testify (including resumes for any witnesses the party intends to qualify as experts) ~~Any written material the applicant and any affected party wishes to have considered by city council shall~~ should be submitted by the applicant and any affected party to the city clerk at least five^{three} business days prior to the hearing. The hearing may be continued to the next available agenda at the discretion of city council if these deadlines are missed~~any substantive written material is submitted thereafter.~~ All material submitted shall be made part of the record except for material specifically excluded by law.

(7) Staff, the applicant and any affected party shall each be entitled to 25~~30~~ minutes for presentation. If there is more than one affected party, the total time allotted to affected parties' presentations shall be 25 minutes. ~~All other persons shall be entitled to five minutes.~~ Rebuttal shall be limited to 10~~15~~ minutes and shall not include new evidence. To ensure that due process is afforded, time limits may be extended by vote of the majority of councilmembers present. All time limits shall be enforced by the city clerk and shall not include the time for council questions or presenter's responses.

(8) Statements of counsel, or any non-attorney representative, shall only be considered as argument and not testimony unless counsel or the representative indicates at the start of their presentation that they are a fact witness, is sworn in, and the testimony is based on personal knowledge of the matters which are the subject of the statements.

(9) All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a court of law in Florida. Irrelevant, immaterial, harassing, defamatory or unduly repetitive evidence shall be excluded. Hearsay evidence may be used for the purposes of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The City Attorney's Office or mayor shall rule on all evidentiary issues.

(10) Any person making personal, impertinent or slanderous remarks, or who shall become boisterous or disorderly, or who speaks longer than the allotted time without permission, or who speaks vulgarities, may be requested to leave the meeting and may be barred from further presentation before the council at that meeting by the mayor, or designee.

(11) City council shall deliberate on the petition after vote on the matter within 30 days of closing the public hearing unless the mayor, or designee, announces at the close of the public hearing that a vote will be taken on a specific date beyond the 30-day period. Unless otherwise required by state or

local law, final action shall be by majority vote of those present. A failure to receive a majority vote of the members present defeats the question. If no further motion for approval or denial is made the petition is deemed denied and the entire record, including petition materials, testimony, documents, and evidence is made a part of the facts relied upon to make the determination.