

RESOLUTION NO. 20-R19

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA; **ESTABLISHING APPELLATE PROCEDURES** FOR THE CITY COMMISSION; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING ALL RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission recognizes the need for established legal procedures when appeal hearings are on the agenda; and

WHEREAS, the City Commission desires that this Resolution serve as the procedure for the City Commission to follow in conducting appeal proceedings; and

WHEREAS, the City Commission acknowledges that the procedures may be amended from time to time by resolution.

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Fort Pierce, Florida as follows:

SECTION 1. When conducting appeal hearings, the City Commission shall follow the procedures as outlined in Exhibit "A."

SECTION 2. The provisions of this Resolution are declared to be severable and if any section, sentence, clause, or phrase of this Resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Resolution but shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

SECTION 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 4. This Resolution shall take effect immediately upon its adoption.

IN WITNESS HEREWITH, we hereunto set our hands and affix the Official Seal of the City of Fort Pierce, Florida, this 16th day of March, 2020.

Linda Hudson, Mayor

ATTEST:

Linda W. Cox, City Clerk

Approved as to Form
And Correctness:

Peter J. Sweeney, Esq.
City Attorney

Exhibit "A"

**APPEAL HEARING PROCEDURES
AND RULES FOR EX PARTE COMMUNICATIONS**

I. Scope and Applicability. These procedures shall apply to all appeal hearings held by the City Commission.

II. Proceedings. The Mayor (hereafter, the "Presiding Officer") shall conduct the proceedings and maintain order. The City Attorney shall represent the City Commission, rule on all evidentiary and procedural issues and objections, and advise the City Commission as to the applicable law and necessary factual findings. Hearings shall be conducted with the appropriate decorum for an appeal. Formal rules of procedure shall not apply except as set forth herein; however, fundamental due process shall be accorded.

III. Unauthorized Communications. In all appeal hearings, all rulings must be based only upon the evidence presented in the record. Ex parte communications with City Commissioners in appeal matters are impermissible. In order to maintain fairness and remove any presumption of prejudice, the adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with City Commissioners:

A. The substance of any ex parte communication with a City Commissioner which relates to an appeal action pending before the Commission is not presumed 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 the final action on the matter.

B. A City Commissioner may read a written communication from any person. However, a written communication that relates to an appeal action pending before the Commission 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.

C. City Commissioners should not conduct investigations and site visits and may not receive expert opinions regarding appeal actions pending before them.

D. Disclosure made pursuant to subparagraphs A, B and C must be made before or during the public meeting at which a vote is taken on such matters.

IV. Supporting Materials. The Appellant shall file its materials in support of its appeal with the City Clerk as provided in the Code of Ordinances. The City Clerk will work with the appropriate department to prepare the record from the original hearing. All documents shall be included on the agenda for the appeal.

V. Conduct of Hearing.

A. The Presiding Officer shall call the proceeding to order and announce that the hearing has begun.

B. The City Attorney or Presiding Officer shall explain the rules concerning procedure for the appellate argument and the record.

C. The order of the hearing shall be as follows:

1. The Appellant will go first and make an oral presentation as to why it should win the appeal. The oral presentation is limited to twenty (20) minutes and there are no additional witnesses, exhibits or evidence that may be introduced. The Appellant will make its argument based only on the materials submitted to the City Clerk, which have been attached to the agenda.

The Appellant has the option to reserve time for rebuttal after the staff presentation.

2. After the Appellant has completed its argument, Commissioners may ask as many questions of the Appellant as desired. There is no time limit for this portion of the hearing. Questions must be addressed to appellant's representative only; no additional information can be submitted; and questions are limited to the materials/record provided and the statements made by the presenter. This is the only time for questions of the Appellant and there is no opportunity to call the presenter back up.
3. A single member of City staff will have twenty (20) minutes to make an oral presentation and there are no additional witnesses, exhibits or evidence that will be introduced. City staff will make its argument based only on the materials submitted to the City Clerk and attached to the agenda.
4. After staff has completed its argument, Commissioners may ask as many questions of the individual staff member as desired. There is no time limit for this portion of the hearing. Questions must be addressed to the individual staff member only; no additional information can be submitted; and questions are limited to the materials/record provided and the statements made by the presenter. This is the only time for questions of staff and there is no opportunity to call staff back up.
5. After the Commission has completed questions of the City staff person, rebuttal will be heard if originally requested by the Appellant; rebuttal is limited to the amount of time it initially requested. After the Appellant has completed its rebuttal, each of the Commissioners may ask as many questions to the Appellant as you like based only upon the statements and materials provided.
6. At the conclusion of all arguments and questions, the City Commission will conduct open deliberations on the appeal. After deliberations, a vote shall be taken to affirm or reverse the decision of the lower board which is the subject of the appeal

VI. Standard of Proof. The decision of the City Commission to affirm or reverse a decision of a lower board shall be based upon competent substantial evidence contained in the record provided and the oral arguments of the appellant and staff. Competent substantial evidence is evidence which will establish a substantial basis from which the fact at issue can reasonably be inferred. It includes fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issues to be decided. It is evidence a reasonable mind could accept as having probative weight and adequate to support a legal conclusion. Hypothetical, speculative, fear or emotion based generalized statements that do not address the relevant issues and that cannot be reasonably said to support the action advocated, are not competent substantial evidence.

VII. Continuances and Deferrals. The City Commission shall consider requests for continuances made by City staff or Appellant and may grant continuances in its sole discretion.

VIII. Maintenance of Evidence and Other Documents. The Office of the City Clerk shall retain all of the evidence and documents presented at the hearing unless any such evidence is too large to be stored by the City Clerk or staff liaison. In that event, such evidence will be stored in the Planning Department.