

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, IMPLEMENTING PROCEDURES FOR QUASI-JUDICIAL PROCEEDING, PROVIDING FOR DEFINITIONS, PROVIDING FOR PRESENTATION OF EVIDENCE, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Supreme Court has determined that the application of a general rule or policy to specific, individuals, interest or activities that do not affect a large portion of the public is “quasi-judicial” in nature; and

WHEREAS, Section 286.0115, Florida Statutes, recognizes that a City may adopt procedures and provisions for quasi-judicial proceedings on land use matters to ensure complete and full disclosure of ex-parte communications, thereby removing the presumption of prejudice; and

WHEREAS, the decision of the decision making body must be supported by “Competent, Substantial Evidence” in the record pertinent to the proceedings; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Westlake to implement quasi-judicial procedures so as to be consistent with the provisions as set forth in Section 286.0115, Florida Statutes;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AS FOLLOWS:

Section 1. Definitions: The following words, terms, and phrases, when used in this section, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

- A. **Applicant** shall mean the owner of record, the owner’s agent, a third party with written consent of all owner(s) of the property or staff when the application is initiated by the City.
- B. **Competent Substantial Evidence** shall mean testimony, documentary, or other evidence based on personal observation and which will establish a substantial basis from which an 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 issued to be decided. Competent Substantial Evidence is evidence a reasonable mind could accept as having probative weight and adequate to support a legal conclusion.
- C. **Decision Making Body** shall mean the City Council, the Planning & Zoning Board/Local Planning Agency, or other authorized committee, as the case may be, that makes a recommendation or decision on an application or decides the appeal.

- D. **Ex-Parte** communication, oral or written between members serving on the Planning & Zoning Board/Local Planning Agency or City Council and the public, other than those made on the record at the hearing.
- E. **Material Evidence** shall mean evidence that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.
- F. **Participants** shall mean members of the general public, other than the Applicant, including experts and representative of local governments and governmental agencies, who offer testimony at a quasi-judicial hearing for the purpose of being heard on an application.
- G. **Party** shall mean the Applicant, staff, or any person recognized by the Decision Making Body.
- H. **Quasi-Judicial Proceeding** shall mean a hearing held by the Decision Making Body wherein existing policies and regulations are applied to a specific property and due process requirements are complied with for the hearing. The Decision Making Body makes finding of fact and conclusions of law on the issue.

Section 2: General Procedures:

- A. **Intent:** The intent is to establish procedures to ensure fairness and procedural due process and to maintain citizen access to the local government decision making process for the review of development orders and appeals of those orders which require quasi-judicial hearings. These procedures shall be applied and interpreted in a manner recognizing both the legislative and judicial aspects of the local government decision making process in quasi-judicial hearings.
- B. **Applicability:** These procedures shall apply to all applications in which the decision making body acts in a quasi-judicial capacity for making recommendations or final decisions. These procedures do not apply to administrative decision(s) to the City Council.
- C. **Jurisdiction:** All quasi-judicial proceedings before the Decision Making Body shall be hearings of original jurisdiction unless the Decision Making Body is acting in an Appellate capacity, which, such Appellate proceeding shall be a hearing de nova. Unless all parties waive formal proceedings, each party shall have the right to call and examine witness, to introduce exhibits, to cross-examine opposing witness on any relevant matter (subject to the rules contained herein), and to rebut evidence.
- D. **Staff Report:** Staff shall have the responsibility of presenting the case on behalf of the City. The staff report on the application shall be made available by staff to the Applicant and the Decision Making Body no later than three (3) days prior to the quasi-judicial hearing on the application.
- E. **File/Inspection:** Official file shall include all written communication received by the Decision Making Body or staff concerning the application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The Comprehensive Plan, the City Code of Ordinances, and the Land Development Regulations shall be deemed part of the official file. The official file shall be available for inspection during normal business hours.

F. **Agenda:** The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall identify the hearing as quasi-judicial. Copies of the procedures shall be made available at the hearing.

G. **Hearing Procedures:**

- (1) All hearing shall be scheduled within a reasonable time, and provide a date for the application for quasi-judicial proceeding was properly and adequately filed.
- (2) The City shall advertise the hearing date, time, and place in accordance with the Florida Statutes, regulations and the City's ordinances.
- (3) All hearings shall be open to the public. Members of the public shall be permitted to testify at the quasi-judicial hearing.
- (4) The City Clerk, or the Clerk's designee, shall attend all hearings, and the City shall maintain a record of all hearings. The City shall retain the original recording(s) in accordance with the laws of the State of Florida, and if requested, provide a duplicate of the recordings to the Decision Making Body.

Section 3: Conduct of Hearing: To the extent possible, the hearing(s) shall be conducted as follows:

- A. **Title:** The Clerk shall read into the record the Ordinance, Resolution by title and number, or the Applicant's name, file number, and the subject matter to be decided if there is no ordinance or resolution.
- B. **Swearing of Witnesses:** The Applicant, staff, and all Participants requesting to speak, or present evidence, or both at the hearing shall be collectively sworn at the beginning of the hearing by the City Clerk or the City Clerk's designee, the Board Clerk, or the Board's Chair, Vice-Chair.
- C. **Disclosure of Ex Parte Communications:** The Decision Making Body shall disclose any ex parte communications and disclose whether any member physically inspected the property. To the extent possible, the Decision Making Body member shall identify with whom the communication took place, summarize the substance of the communication, the date of the site visit, if any. The Decision Making Body shall give the City Clerk, or his or her designee, any written ex parte communications they have received that are not already included in the project file.
- D. **Waiver of Evidentiary Hearing:** The Applicant may waive the Applicant's right to an evidentiary hearing if Applicant agrees with the staff recommendation and no one from the audience wishes to speak for or against the the application. The Decision Making Body may then vote on the item, or make a recommendation based upon the staff report and any other material contained within the official file. Regardless of a waiver by the Applicant, a Public Hearing shall be held for all decisions requiring an ordinance or resolutions.

Section 4: Presentation of Case: If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the Chair determines to proceed in a different order, taking into consideration fairness and due process.

- (1) The City staff shall present its case.
- (2) The Applicant shall present its case.
- (3) Participants in opposition to or support of the application shall make their presentation. Each Participant shall be limited to three (3) minutes.

- (4) Representative(s) representing a group of six (6) or more persons attending the meeting may speak for the group and the representative shall be limited to five (5) minutes to speak on behalf of the group.
- (5) The Applicant may cross examine any witness and respond to any testimony presented.
- (6) Staff may cross examine any witness and respond to any testimony presented.
- (7) The Chair of the Decision Making Body may choose to allow Participants to respond to any testimony if the Chair deems a response necessary to ensure fairness and due process.
- (8) Members of the Decision Making Body through the Chair may ask any question of the staff, the Applicant, and the Participants.
- (9) Final argument may be made by the Applicant and then the Staff, related solely to the evidence in the record.

Section 5: Chair to Halt Cross Examination: The Chair shall keep order and without requiring an objection may direct a Party conducting the direct examination or the cross examination to stop a particular line of questioning that in the sole judgment of the Chair is being utilized to merely harass, intimidate or embarrass the individual testifying or being cross examined, the line of questioning is unduly repetitious or is not relevant, or which is beyond the scope of the testimony by the individual being cross examined. If the Party conducting the direct examination or cross examination continues to violate the directions from the Chair to end a line of questioning deemed improper as set forth herein, the Chair may terminate the direct examination or cross examination.

Section 6: Continuance of the Hearing: The Decision Making Body may on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. The Applicant shall have the right to one continuance, however, all subsequent continuances shall be granted at the sole discretion of the Decision Making Body.

Section 7: Withdrawal of Application: The Applicant may withdraw the application by requesting such withdrawal in writing prior to commencement of the hearing.

Section 8: Basis of Decision: For all quasi-judicial hearings in which a decision is made regarding an application for any development permit, the decision to approve or deny shall be based upon whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, the Land Use and Development Regulations, and based upon the entirety of the record before the Decision Making Body. The Decision Making Body shall reach a written decision without unreasonable or unnecessary delay.

Section 9: Rules of Evidence:

- (a) The Decision Making Body shall not be bound by the strict rules of evidence, and shall not be limited only to consideration of evidence which would be admissible in a court of law. The Decision Making Body shall have the ability but not the duty to conduct site visits in their sole discretion and to consider any evidence so adduced in their deliberations.
- (b) The Chair of the Decision Making Body may exclude evidence or testimony that is not relevant, material or competent, or testimony which is unduly repetitious or defamatory.
- (c) The Chair, with the advice of the City Attorney will determine the relevancy of evidence. The City Attorney shall represent the Decision Making Body and advise it as to the procedures to be followed.

- (d) Matters relating to an applicant's consistency with the Comprehensive Plan, the City Code of Ordinance, or the Land Use and Development Regulations will be presumed to be relevant and material.
- (e) 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 unless it would be admissible over objection in court.
- (f) Documentary evidence may be presented in the form of a copy of the original. A copy shall be made available to the Decision Making Body and to the staff no later than three (3) days prior to the hearing on the application. Upon request, the Applicant and the staff shall be given an opportunity to compare the copy with the original. Oversized exhibits shall be copied and reduced for convenient record storage.
- (g) Only the Applicant, an authorized representative of the Applicant, Staff and the Decision Making Body shall be entitled to conduct cross examination when testimony is given or documents are made part of the record.
- (h) The Decision Making Body shall take judicial notice of all state and local laws, ordinances and regulations and may take judicial notice of such other matters as are generally recognized by the Courts of the State of Florida.

Section 10: Supplementing the Record: Supplementing the record after the quasi-judicial hearing is prohibited, unless specifically authorized by an affirmative vote of the Decision Making Body, under the following conditions:

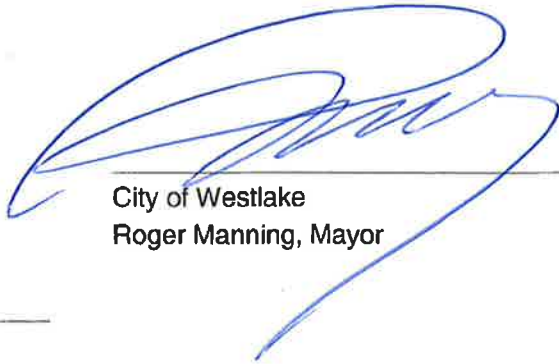
- A. The supplementation occurs after a quasi-judicial hearing is continued but prior to final action being taken on the application or appeal.
- B. If a question is raised by the Decision Making Body at the hearing which can not be answered at the hearing, the Party to whom the question is directed will submit the requested information in writing to the City Clerk and the Decision Making Body after the quasi-judicial hearing, with copies to the other Parties, provided the hearing has been continued or another hearing has been scheduled for a future date and no final action has been taken by the Decision Making Body. The information requested will be presented to the Decision Making Body at least two (2) business days prior to the time of the continued hearing.
- C. All Parties and Participants shall have the same right with respect to the additional information as they had for evidence presented at the hearing.
- D. All evidence admitted into the record at the hearing, the official file, and the adopted development order, ordinance, or resolution of the Decision Making Body or the written decision shall be maintained by the City Clerk or the Planning & Zoning Director.

Section 11. Severability: Should any section, sentences, clause, or phrases, of this ordinance be declared to be unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

Section 12. Effective Date: This ordinance shall be effective upon adoption on second reading.



Sandra Demarco, City Clerk



City of Westlake
Roger Manning, Mayor



City Attorney
Pam E. Booker, Esq.