

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, RELATING TO PROCEDURES FOR QUASI-JUDICIAL HEARINGS; AMENDING SECTION 2.206, ORLANDO CITY CODE, "PRE-HEARING PROCEDURES" TO PROVIDE FOR CERTAIN QUASI-JUDICIAL HEARINGS BEFORE THE ORLANDO CITY COUNCIL IN LIEU OF A HEARING OFFICER; PROVIDING LEGISLATIVE FINDINGS, AND FOR SEVERABILITY, CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.**

**WHEREAS**, since 1994, the City of Orlando, Florida (the "City"), has provided procedures for certain quasi-judicial hearings pursuant to Article XXXII, Chapter 2, Code of the City of Orlando, Florida (the "Orlando City Code"); and

**WHEREAS**, Article XXXII, Chapter 2, Orlando City Code (the "quasi-judicial hearing ordinance"), provides the opportunity for a quasi-judicial hearing before a hearing officer for parties adversely affected by proposed quasi-judicial decision of the Orlando City Council upon recommendation from the Municipal Planning Board, the Board of Zoning Adjustment, the Historic Preservation Board, the Appearance Review Board, and the Human Relations Board; and

**WHEREAS**, when invoked by an adversely-affected party, the quasi-judicial hearing ordinance results in a quasi-judicial hearing before a hearing officer and a recommended order being provided to the Orlando City Council by the hearing officer in lieu of a quasi-judicial hearing being conducted before the Orlando City Council; and

**WHEREAS**, conducting quasi-judicial hearings before a hearing officer pursuant to the quasi-judicial hearing ordinance typically takes 4 to 6 months from the time a request for hearing is filed until a recommended order is adopted by the Orlando City Council; and

**WHEREAS**, the Orlando City Council hereby finds that the current quasi-judicial hearing ordinance occasionally results in an unreasonable and unfair delay in the City's development review process and that on occasion the quasi-judicial procedure has been invoked by parties for the purposes of delay or to impose additional cost and expense on the applicant; and

**WHEREAS**, the Orlando City Council hereby finds that the City's quasi-judicial hearing procedures must provide procedural and substantive due process to applicants and adversely-affected parties, including the essential elements of notice, opportunity to be heard, a fair and neutral magistrate, and that such procedures must be provided in a timely and efficient manner so that quasi-judicial decisions are made on their merits rather than being subject to potentially decisive procedural hurdles; and

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AS FOLLOWS:**

**SECTION 1. SEC. 2.206, AMENDED.** Section 2.206, Code of the City of Orlando, Florida, is hereby amended as follows:

**Sec. 2.206. - Pre-Hearing Procedures.**

(1) *Hearing Officers.* The City shall negotiate and enter into contracts with Hearing Officers from time to time, and shall maintain an alphabetical list of such Hearing Officers. Cases shall be assigned to Hearing Officers on a rotating basis. If a Hearing Officer is unable to accept a case because of a conflict, time constraints, or any other reason, the case shall be assigned to the next Hearing Officer on the list. The Hearing Administrator shall notify all parties of the assignment of the particular hearing officer to a matter as soon as possible after the assignment has been made and accepted.

(2) *Disqualification of Hearing Officer.* Unless good cause is shown, all motions for disqualification shall be filed with the Hearing Administrator no later than ten (10) working days after the moving party has been notified of the assignment of the particular hearing officer. The motion shall be accompanied by an affidavit stating particular grounds, which shall be limited to those for which a judge may be disqualified. The affidavit must state facts sufficient to show that the movant has a well-founded fear that the movant will not receive a fair and impartial hearing. Unless denied as untimely, the motion shall be ruled on by the Hearing Officer before whom the case is pending. If the motion and affidavit are found legally sufficient, the Hearing Officer shall disqualify himself or herself, after which the matter will be given to the next available Hearing Officer on the list.

(3) *Pre-Hearing Stipulation.* At any time after a matter has been assigned to a Hearing Officer, the Hearing Officer may direct the parties to confer for the purpose of clarifying and simplifying the issues, discussing possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation.

(4) *Pre-Hearing Conference.* No less than thirty-five (35) and no more than forty-five (45) calendar days after a petition is filed, the Hearing Officer shall schedule and conduct a pre-hearing conference with the parties. The pre-hearing conference may be conducted by telephone. At the pre-hearing conference, the Hearing Officer shall schedule a time for the final hearing. Additional pre-hearing conferences may be scheduled as deemed necessary by the Hearing Officer. At a pre-hearing conference the Hearing Officer may also:

(a) rule on all pending motions;

(b) schedule the service of motions, pleadings, and other papers, and schedule, limit, order, or expedite discovery (including directing an exchange of witness lists and proposed evidence);

(c) pursue the possibility of settlement;

(d) take any other action to further the progress of the proceeding;

and,

(e) enter an order reciting the action taken at a pre-hearing conference and any stipulations made. Any such order shall govern the subsequent course of the proceeding, unless modified to prevent injustice.

(5) *Intervention.* An adversely-affected person may file a motion to intervene in the proceedings. The motion shall be filed with the Hearing Administrator no later than ten (10) working days prior to the final hearing. The adversely-affected person shall furnish copies of such motion to all parties. The motion shall contain allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to the City Code, or that the substantial interests of the intervenor are subject to determination or will be adversely affected through the proceeding. The motion also shall state why the adversely-affected person could not have filed an original petition or response. Good cause must be shown for allowing an adversely-affected person to intervene. Mere negligence shall not be grounds for allowing an adversely-affected person who could have filed a petition or response to intervene. The motion shall also be in conformance with the requirements of an original petition as set forth in Section 2.205. Any party may make written objections to the motion to intervene within five (5) working days after receipt of the motion. The Hearing Officer shall rule on the motion to intervene prior to the hearing or at the commencement of the hearing.

(6) *Hearing before Council.* Notwithstanding anything in this Code to the contrary, the City Council may, at any time after a request for hearing has been timely filed and before the hearing described in section 2.207 of this Code, enter an order to hold the quasi-judicial hearing before the City Council instead of before a hearing officer. Such an order shall have the effect of automatically staying proceedings before the hearing officer pending the outcome of the hearing at City Council. The order electing to hold the hearing before the City Council must include the proposed date, time, and place of the hearing and must also provide reasonable time for each adversely-affected party to be heard on the quasi-judicial matter. This subsection applies only to quasi-judicial matters reviewed by the City's Municipal Planning Board. In deciding whether to issue an order pursuant to this subsection, the City Council must consider the following:

(a) the number of adversely-affected parties, with preference given to holding the hearing before a hearing officer where many adversely-affected parties are present; and

(b) the size of the proposed development, with preference given to holding the hearing before a hearing officer where the development program is great or the land area covered by the development is large; and

(c) the factual and legal complexity of the matter, with preference given to holding the hearing before a hearing officer where the questions of law and fact are complex or novel; and

(d) the time-sensitivity of the quasi-judicial application, with great preference given to holding the hearing before the City Council where the inherent delay of holding the quasi-judicial hearing before a hearing officer is unfair or unreasonable in light of demonstrable time-constraints on the proposed development related to financing or market conditions, or where the development review process is imposing an unfair or

unreasonable delay on the applicant or other adversely-affected party. Additionally, great preference shall be given to holding the hearing before the City Council where the Municipal Planning Board recommended approval (or approval with conditions) of the quasi-judicial application and the City Council finds that the inherent delay of holding the hearing before a hearing officer will unreasonably prejudice the applicant or other adversely-affected party.

(e) the preference of the applicable district commissioner, with due deference given to the special knowledge and historical background that a district commissioner is likely to have concerning development proposals in and near their district.

After conducting a quasi-judicial hearing pursuant to an order entered under this subsection, the City Council may immediately render a decision on the quasi-judicial application or may refer the application to the Hearing Officer.

**SECTION 2. CODIFICATION.** The city clerk and the city attorney shall cause the Code of the City of Orlando, Florida, to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

**SECTION 3. SCRIVENER'S ERROR.** The city attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the city clerk.

**SECTION 4. SEVERABILITY.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 5. EFFECTIVE DATE.** This ordinance takes effect upon adoption.

**DONE, THE FIRST READING,** by the City Council of the City of Orlando, Florida, at a regular meeting, the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**DONE, THE PUBLIC NOTICE,** in a newspaper of general circulation in the City of Orlando, Florida, by the city clerk of the City of Orlando, Florida, the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**DONE, THE SECOND READING AND PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE,** by an affirmative vote of a majority of a quorum present of the City Council of the City of Orlando, Florida, at a regular meeting, the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BY THE MAYOR OF THE CITY OF  
ORLANDO, FLORIDA:

\_\_\_\_\_  
Mayor

ATTEST, BY THE CLERK OF THE  
CITY COUNCIL OF THE CITY OF  
ORLANDO, FLORIDA:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Print Name

THIS ORDINANCE DRAFTED BY AND  
APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF ORLANDO, FLORIDA:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Print Name

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