

TAB 11



# City of Palmetto Agenda Item

**Meeting Date**

11/05/2012

**Presenter:** Mark P. Barnebey

**Department:** City Attorney/City Clerk

**Title:** Resolution 2012-35

**Background:**

Rules of Procedure for public hearings provide directions on how meeting are to run, and the rights of participants. Adoption of such rules provide structure for the flow of orderly meetings and added due process protections to the City which are not addressed by Robert's Rules of Procedure, particularly those related to quasi-judicial meetings.

**Issues:**

This version reflects changes discussed in the numerous workshops held by the Commission and largely are limited to procedures related to quasi-judicial proceedings. However, we have also incorporated much of Policy 09-04 on telephonic participation and Resolution 08-40 and Policy 09-06 into this resolution so as to consolidate this information into one location.

**Since the last meeting:**

The Rules have been revised based on comments and some general simplification. Section I was revised to allow participation by phone or video conference with notification to the Mayor or a Member of the Commission. Section II was simplified to eliminate the distinction between Proponents and Opponents and treat them as simply members of the public. This allowed elimination of duplicative language in several sections. The Rules would take effect on November 19, 2012.

**Budgeted Amount:** \$0.00    **Budget Page No(s):**    **Available Amount:** \$0.00    **Expenditure Amount:** \$0.00

**Additional Budgetary Information:** \_\_\_\_\_

**Funding Source(s):**    **Sufficient Funds Available:**  Yes  No    **Budget Amendment Required:**  Yes  No    **Source:** \_\_\_\_\_

**City Attorney Reviewed:**  Yes  No  N/A    **Advisory Board Recommendation:**  For  Against  N/A    **Consistent With:**  Yes  No  N/A

**Potential Motion/Direction Requested:** I move to adopt Resolution 2012-35, adopting Rules of Procedure related to Public Hearings.

**Staff Contact:** \_\_\_\_\_

**Attachments:** Resolution 2012-35

RESOLUTION NO. 2012-35

A RESOLUTION OF THE CITY COMMISSIONERS OF THE CITY OF PALMETTO, FLORIDA, ADOPTING RULES OF PROCEDURE FOR PUBLIC HEARINGS AND REPEALING THE RULES AND PROCEDURES IN CONFLICT TO GOVERN MEETINGS OF THE CITY COMMISSION, SETTING FORTH FINDINGS; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF IF DECLARED INVALID; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Commission of the City of Palmetto, Florida, is empowered under Chapter 166, Florida Statutes to adopt its own rules of procedures; and

**WHEREAS**, it is the intent of the City Commission to update their Rules of Procedure in accordance with applicable Florida law and current practices of the City Commission as well as to streamline Commission meetings and to further protect the health, safety and welfare of the citizens of the City of Palmetto; and

**WHEREAS**, the City Commission has prepare these rules in an attempt to encourage public participation during public hearings, both legislative and quasi-judicial, so as to afford all participants due process, while recognizing the need for certain procedures to maintain orderly meetings.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, THAT:**

**Section 1.** The findings set forth in the preamble above are hereby adopted as findings of the City Commission and incorporated herein by reference.

**Section 2.** The Rules of Procedure entitled: "Procedures for the City of Palmetto Commission Public Hearings," attached hereto as Exhibit "A" and incorporated herein by reference are hereby adopted.

**Section 3.** By adoption of this resolution, the City Commission hereby repeals any rules of procedure in conflict with this Resolution, including specifically City Commission Policy 09-04 and Resolution 08-40 and Policy 09-02.

**Section 4.** It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Resolution inclusive of Exhibit "A", be deemed severable, and if any phrase, clause, sentence, paragraph or section hereof is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this resolution.

**Section 5.** This Resolution takes effect November 19, 2012.

**APPROVED AND ADOPTED**, by the City Commission, in open session, with a quorum present and voting, this \_\_\_\_ day of November, 2012

CITY OF PALMETTO, FLORIDA, BY  
AND THROUGH THE CITY  
COMMISSION OF THE CITY OF  
PALMETTO

By: \_\_\_\_\_  
SHIRLEY GROOVER BRYANT, MAYOR

ATTEST: James R. Freeman  
City Clerk

By: \_\_\_\_\_  
City Clerk/Deputy Clerk

**EXHIBIT “A”**

**PROCEDURES FOR  
THE CITY COMMISSION  
OF THE CITY OF PALMETTO MEETINGS**

**Adopted November 19, 2012**

PROCEDURES FOR THE CITY OF  
PALMETTO CITY COMMISSION RELATED TO PUBLIC HEARINGS

PREAMBLE AND STATEMENT OF INTENT

Consistent with the requirements of law, particularly Chapters 163 and 166, Florida Statutes, the City Commission of the City of Palmetto has prepared these rules in an attempt to encourage public participation during public hearings to the full extent allowed by law. As part of that effort and within the confines of the law, the Commission intends its meetings and hearings to be informal and not intimidating for the public, while recognizing the need for certain structure to maintain orderly meetings.

I. PARTICIPATION IN BOARD MEETINGS BY TELEPHONE OR VIDEO CONFERENCE

Any Board member who wishes to participate in a Board meeting by telephone shall, prior to the meeting, may notify the Mayor or a Member of the Board of participation by telephone or video conference.

Staff members may participate by phone as permitted by the Mayor.”

II. OFFICIAL CITY COMMISSION ACTION AND MEETINGS.

A. Public Hearings.

1. Quasi-Judicial Matters, Including Zoning Amendments, Conditional Use Permits, Site Plan Applications and Variances. The City Commission shall allow comments of public hearings for matters involving quasi-judicial matters, including zoning atlas amendments and site plan applications in the following manner:

- (a) Initial Presentation by Staff. After swearing in of staff, the Applicant, and the public, City staff shall make the initial presentation to the City Commission regarding any item under consideration. After completion of the staff presentation, the City Commission may make inquiries of staff at this time. Affected parties may ask questions of, or seek clarification from, staff by request through the Mayor at the time that party makes its initial presentation to the City Commission.

- (b) Agenda Packets. To the extent available, land use agenda items shall include an aerial, a zoning map and a Future Land Use Map. These photographs and maps shall include the subject property and adjoining property.
- (c) Applicants' Presentation. After staff presentation, the applicant(s), shall be allowed a total of fifteen (15) minutes without interruption to make a presentation to the City Commission.
- (d) Public Comment. After presentation by the applicant(s), members of the public who wish to comment on the item or request, shall be allowed to speak based on the following criteria:
  - (1) Persons who have been authorized to represent an organization with five (5) or more members or a group of five (5) or more persons shall be entitled to speak ten (10) minutes without interruption, provided others in that organization or group waive their time; and
  - (2) All other persons shall be entitled to speak up to a total of two (2) minutes each without interruption.
- (e) Inquiry. After each presentation, the City Commission shall have an opportunity to comment or ask questions of or seek clarification regarding the presentation. The City Commission may allow staff to comment, ask questions of or seek clarification of a matter at this time. The Applicant may ask questions of, or seek clarification from any by request through the Mayor at this time.
- (f) Staff Response and Summary. After inquiry of the opponents, the staff shall be allowed an opportunity for response to the presentations by the Applicant, and the public and a summary with any changes in position after consideration of relevant public comment.
- (g) Applicants' Rebuttal Presentation.

Applicants' rebuttal shall be allowed only in hearing items where there is an Applicant, unless the majority of the Commissioners present vote to allow rebuttal. After staff response, the Applicant shall be allowed an opportunity for rebuttal with the time limit therefore to be five (5) minutes unless otherwise set by the City Commission.

- (h) Closing of Public Comment. For those matters in which public comment is heard by the City Commission, the Mayor shall close the public comment portion of the meeting on that item upon the conclusion of the last appropriate speaker's comments or the expiration of the allowed speaking times as set forth above. No additional public comments shall be allowed, except in specific response to questions by members of the City Commission or if an extension of time for public comment is approved as set forth above.
- (i) City Commission and Staff Inquiry. After the public comments portion of the hearing is closed, the City Commission shall have a final opportunity to comment or ask questions regarding the matter.
- (j) Limit on Presentations. No person who has made a presentation for or against an item during a given hearing shall be allowed to make additional comments, except as allowed at the discretion of the Mayor.
- (k) Miscellaneous; Organization or Group Speakers; Interruption for Inadmissibility; Speakers' Qualifications.
  - (1) Prior to a person representing an organization or others speaks, that person shall indicate who he represents and how he received authorization to speak on behalf of such organization or group of persons. The City Commission may make further inquiry into the represented authority of such person if necessary.
  - (2) Persons addressing the City Commission should identify any educational, occupational and other experience which they may possess which would be relevant to the matter under consideration. The



Mayor or the City Attorney may inquire as to such experience.

- (l) Irrelevant or immaterial matters. Notwithstanding any provisions herein, the Mayor or the City Attorney may interrupt and/or stop any presentation which discusses matters which cannot be considered in deciding the matter then before the City Commission for consideration.
- (m) Additional Time for Presentations. The Mayor may allow more than the allotted time for presentations by an Applicant or the public, if the additional time is requested from the Mayor or City Clerk. If more than a total of one-half hour is requested, the request must be submitted in writing not later than the day before the meeting at which the item is to be heard; provided, however, even in the absence of a timely request for additional time to make a presentation, the Mayor or City Commission, by majority vote, may grant such extension where, in the Mayor's discretion, it is advisable to do so because of the considerations of law, equity or fairness.

2. Other Land Use or Non-Land Use Items. The City Commission shall allow public comments in matters requiring public hearings which are not for an owner-initiated or individual parcel zoning atlas amendment, a development, site plan or vested rights determination application, or an appeal of an administrative determination to the City Commission in the following manner:

- (a) Initial Presentation by Staff. City staff shall make the initial presentation to the City Commission regarding any item under consideration. The City Commission may make inquiries of staff at this time.
- (b) Public Comment. After staff presentation, the applicant(s), if any, shall be allowed up to a total of fifteen (15) minutes without interruption to make a presentation to the City Commission. After presentation by the applicant(s), if applicable, members of the public shall be allowed to speak based on the following criteria:

- (1) Persons who have been authorized to represent an organization with five (5) or more members or a

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group of five (5) or more persons shall be entitled to speak ten (10) minutes without interruption; and

- (2) All other persons shall be entitled to speak up to a total of two (2) minutes without interruption.
- (c) City Commission Inquiry. After the presentation by the Applicant or members of the public, the City Commission shall have an opportunity to comment or ask questions of, or seek clarification from the public.
- (d) Staff Response and Summary. The staff shall be allowed an opportunity for response to the presentations by the Applicant, and members of the public and a summary with any changes in position after consideration of relevant public comment.
- (e) Applicants' Rebuttal Presentation. After staff response, the Applicant, where there is an Applicant, shall be allowed an opportunity for rebuttal with the time limit therefore to be five (5) minutes unless otherwise set by the Mayor.
- (f) City Commission and Staff Inquiry. After the public comments portion of the hearing is closed, the City Commission shall have a final opportunity to comment, or ask questions regarding the matter.
- (g) Closing of Public Comment. The Mayor shall close the public comment portion of the meeting on that item upon the conclusion of the last appropriate speaker's comments or the expiration of the allowed speaking times as set forth above. No additional public comment shall be allowed, except in specific response to questions by members of the City Commission or if an extension of time for public comment is approved as set forth above.
- (h) Limit on Presentations. No person who has made a presentation for or against an item at a given meeting shall be allowed to make additional comments as of right.
- (i) Miscellaneous: Organization or Group Speakers; Interruption for Inadmissibility.

Prior to a person representing an organization or a group of people other than himself speaks, that person shall indicate who he represents and how he received authorization to speak on behalf of such organization or group of persons. The City Commission may make further inquiry into the represented authority of such person if necessary.

(j) Irrelevant or Immaterial Matters. Notwithstanding any provisions herein, the Mayor or the City Attorney may interrupt and/or stop any presentation which discusses matters which cannot be considered in deciding the matter then before the City Commission for consideration.

(k) Additional Time for Presentations. The Mayor may allow more than the allotted time for presentations by an Applicant or the public, if the additional time is requested from the Mayor or City Clerk. If more than a total of one-half hour is requested, the request must be submitted in writing not later than the day before the meeting at which the item is to be heard; provided, however, even in the absence of a timely request for additional time to make a presentation, the Mayor or City Commission, by majority vote, may grant such extension where, in the Mayor's discretion, it is advisable to do so because of the considerations of law, equity or fairness.

3. Continued Public Hearings. Continuances may be granted by majority vote of the Commission in the Commissions' discretion. In any matter where it is known that a scheduled public hearing will be continued to a future date certain, the staff report may be abbreviated and public comment may be limited to those persons who state under oath that they believe they cannot be available to speak on the date to which the public hearing is being continued. Such persons shall be allowed to make their comments at the then current meeting; provided, however, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject. This waiver shall not preclude such persons from making different presentations based on new information or from offering response to other persons' presentation, if otherwise allowable, at any subsequent meeting.

4. Oaths and Affirmations. Before making factual statements or factual representations at a public hearing held to consider quasi-judicial matters, such as each person shall declare that the factual statements or factual representations that that person will present before or to the City Commission are truthful and accurate by taking an oath or affirmation in a form substantially similar to that provided in “Attachment 1.” The City Clerk, Deputy Clerk or notary public shall administer such oath or affirmation. Any person who knowingly makes a false factual statement or representation under oath or affirmation shall be subject to sanctions including criminal sanctions, as provided by law, in addition to having approvals revoked or modified after notice and hearing before the City Commission.
- B. Workshops. Generally, public comment is not allowed for non-public hearing items and workshops. If appropriate, the Mayor, unless overruled by a majority vote of the City Commission, or the City Commission, by majority vote, may allow for public comments for non-public hearing matters or workshops after staff presentation. Each speaker shall be given 2 minutes to speak.
- C. Termination of Presentations. At any City Commission proceeding, the Mayor, unless overruled by a majority of the City Commission members present or the City Commission, by majority vote, may restrict or terminate presentations which are determined to be frivolous, unduly repetitive or out of order.
- D. Disruptive Comments or Behavior. If a member of the audience becomes disruptive, the Mayor has the right to require the person to leave the room after a verbal warning, and may order this done by the Police Department, if necessary. If a crowd becomes unruly, the Mayor may recess or adjourn the meeting.
- E. Written Comments. Applicants and the public of any matter under consideration by the City Commission shall be entitled to submit written comments for consideration by the City Commission. Written comments submitted shall be considered and entered into the record of the meeting in accordance with Section II.B. herein.
- F. Elected Officials. Notwithstanding other provisions hereof, the Mayor may allow any elected or appointed public official, or representative thereof, to appear and make presentations at any time.

- G. Pledge of Public Conduct. The Mayor, City Commission and Employees of the City of Palmetto agree to:

Establish a process to promote positive interaction among ourselves and the citizens of Palmetto in a positive and non-threatening environment. Encourage visible, involved and active participation among all. Promote improved communication through active listening, providing feedback and honest expression of ideas. Utilize consensus for decision making. We realize that though we may disagree, we will be respectful of each other. We will direct all comments to the issues and will avoid personal attacks.

### III THE RECORD.

- A. Automatically Included in the Record. The following documents shall automatically be included in the records of the City Commissioners:
1. Agenda packet or staff report;
  2. The most recent copies of the City representatives' and consultants' resumes for those persons filed with the City Clerk and agents speaking on the matter; and
  3. Comments and documents previously entered into the record at a prior City Commission meeting on the particular matter.
- B. Items Which Shall Be Placed in the Record. Any documents, exhibits, diagrams, petitions, letters or other materials presented to the City Commission in support of, or in opposition to, an item to be considered by them shall be entered into the record, unless clearly inadmissible and irrelevant. The City Commission may accept wholly or partially inadmissible items into the record, provided that members of the City Commission shall not consider those items, or parts thereof, which are inadmissible. In the event the City Commission has any questions as to the relevancy and admissibility of any item placed into the record, the City Commission may request an opinion from the City Attorney.
- C. Custodian. The City Clerk shall be custodian of the record.
- D. Correction of Errors in the Record. In the event the City Commission determines that there was an error, either of commission or omission regarding the placement of an item into the record, any member of the City

Commission may move to correct such errors and such act of correction shall be done upon a majority vote of the members of the City Commission.

- E. Exhibits. Unless an oversized exhibit is absolutely essential, documentary paper or photographic exhibits shall not exceed 24 inches by 36 inches and, if mounted on a backboard, shall be removable therefrom.
- F. Substitution of Copies of Exhibits. A person submitting an Exhibit for the City Commission's consideration in support of, or in opposition to a pending matter, must file the original thereof with the City Clerk. The City Commission may approve substitution of a copy or duplicate thereof after viewing the original and the copy or duplicate. In the case of a written document, the person may furnish the Clerk with an exact duplicate and, upon verification thereof, the Clerk may return the original to said person. Alternatively, the Clerk may, in the Clerk's discretion, and at the expense of the person requesting the return of the original, make or arrange for the making of a copy of the Exhibit after which the original may be returned to the person requesting it.

#### IV. EFFECT OF THESE RULES OF PROCEDURE.

- A. Conflict with Laws. In any instance where the procedure established by this resolution is in conflict with state law, city ordinance or court order, or has the effect of violating any applicable law, ordinance or ruling, or order of a court or administrative agency, or rights thereunder, the procedures established hereunder shall be inoperative to the extent of such conflict or violation.
- B. Robert's Rules of Order. In all cases not covered by this resolution and these procedures, Robert's Rules of Order: The Classic Manual of Parliamentary Procedure, last copyrighted in 1978, shall be used in determining how to proceed. After considering due process, informational and fairness issue, the Mayor as presiding officer, shall determine how to proceed unless overruled by a majority vote of the City Commission.

#### V. PUBLICATION.

Upon adoption of this resolution and any amendment hereof, the City Clerk shall cause same to be published in a form suitable for distribution to the public. Copies shall be provided by the City Clerk to all persons who request them. Copies shall be available for review by the public at all meetings of the City Commission.

ATTACHMENT 1

Do you swear or affirm that the factual statements and factual representations which you are about to give or present before or to this Commission during this public hearing will be truthful and accurate?