

Ordinance No. 2006-21

1 AN ORDINANCE OF THE CITY OF CITY OF DORAL, FLORIDA,  
2 IMPLEMENTING PROCEDURES FOR "QUASI-JUDICIAL  
3 PROCEEDINGS" FOR THE CITY; PROVIDING FOR INTENT;  
4 PROVIDING DEFINITIONS; IDENTIFYING QUASI-JUDICIAL  
5 MATTERS; PROVIDING PROCEDURES FOR QUASI-JUDICIAL  
6 PROCEEDINGS, INCLUDING BUT NOT LIMITED TO EX-PARTE  
7 COMMUNICATIONS, NOTIFICATION, PRESENTATION OF  
8 EVIDENCE AND PREPARATION OF THE ORDER; PROVIDING FOR  
9 SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR  
10 INCLUSION IN THE CODE, AND PROVIDING FOR EFFECTIVE DATE  
11

12 WHEREAS, the Florida Supreme Court has determined that the application of a  
13 general rule or policy to specific individuals, interests, or activities that does not affect a large  
14 portion of the public is "quasi-judicial" in nature; and

15 WHEREAS, Section 286.0115, Florida Statutes, recognizes that a City may adopt  
16 procedures and provisions for quasi-judicial proceedings on land use matters, that  
17 nondisclosure of ex parte communications during quasi-judicial proceedings on local  
18 government land use matters is not prejudicial to the decision of the decision-making body, so  
19 long as the decision is supported by substantial, competent evidence in the record pertinent to  
20 the proceedings; and

21 WHEREAS, this City Council has determined that it is in the best interest of the  
22 citizens and residents of Doral to implement quasi-judicial procedures and ex parte  
23 communication standards, so as to be consistent with the provisions set forth in Section  
24 286.0115, Florida Statutes;

25 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
26 CITY OF DORAL, FLORIDA, THAT:

27 **Section 1.** That the City's Code of Ordinances be amended to create quasi-judicial  
28 procedures to read as follows:

29 CHAPTER \_\_: ADMINISTRATION  
30 QUASI-JUDICIAL PROCEEDINGS  
31

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1  
2 Section \_\_\_\_\_. Intent.

3  
4 It is the intent of the City to provide an equitable and efficient manner for the City to  
5 hear matters which are considered quasi-judicial in nature. Notwithstanding other provisions  
6 in the code of ordinances, this Chapter sets forth the City's procedures to be utilized for quasi-  
7 judicial proceedings. These procedures shall be utilized by the City Council in regards to  
8 hearings on quasi-judicial matters.  
9

10 Section \_\_\_\_\_. Definitions.

11  
12 As used in this Chapter, the terms listed below shall be defined as follows:

- 13  
14 1. **Affected person** means a person (or persons), natural or corporate, who is the owner  
15 of the subject property or who owns property within five hundred (500) feet of the  
16 subject property as listed in the records of the county property appraiser, or who  
17 resides in or operates a business within five hundred (500) feet of the subject property.  
18  
19 2. **Board** means the City Council sitting in its capacity as the planning and zoning board,  
20 and the City Council.  
21  
22 3. **City Council** means the City Council of the City of Doral.  
23  
24 4. **Party or parties** means the petitioner, City, and any Affected Person who has  
25 requested to be heard at the proceeding.  
26  
27 5. **Quasi-judicial** in nature means the application of a general rule or policy to specific  
28 individuals, interests, or activities.  
29  
30 6. **Quasi-judicial proceeding** means a hearing held by the Board or the City Council to  
31 adjudicate private rights of a particular person after a hearing which comports with  
32 due process requirements, and makes findings of fact and conclusions of law on the  
33 issue.  
34  
35 7. **Site specific** means an individual piece of real estate which can be clearly defined by  
36 street address, legal description or similar means at a single identifiable location.  
37  
38 8. **Local Public Official** means any elected or appointed public official holding a city  
39 office and who recommends or takes quasi-judicial action as a member of a board  
40 or Council.

41 Section \_\_\_\_\_. Quasi-Judicial Matters.

- 42  
43 1. For the purposes of this chapter, the following matters shall be considered to be quasi-  
44 judicial:  
45  
46 (a) Site specific rezonings, site plans and amendments to site plans;  
47 (b) Site specific land use amendments;  
48 (c) Conditional use approvals;

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- (d) Variances, including, but not limited to, trees, signs, setbacks, distance requirements between buildings or other variances permitted by the code of ordinances.
- (e) Plat Approvals;
- (f) Special Exceptions which relate to the use of land and business; and
- (g) Any other matter determined by Florida law to be quasi-judicial.

Section \_\_\_\_\_. Procedures for Quasi-Judicial Proceedings.

1. *Ex-parte (oral) communications.* Ex-parte (oral) communications.

Board and council members should avoid ex-parte communications where they are identifiable. However, it is recognized that in reality, board and council members are public officials who may unavoidably be recipients of unsolicited ex-parte communications regarding quasi-judicial matters for which the board or council will be required to decide, and that a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communications prohibitions. Any ex-parte (oral) communications which are made to any board or council member with regards to any quasi-judicial matter by any person who has a direct or indirect interest in the proceeding, or by any authorized representative or counsel, shall be reported either orally at the hearing or in writing prior to the meeting, and shall become part of the record of the proceedings. The report of the incident shall include the identification of the person(s) involved in any ex-parte communication and a description of the substance of the communication and any response. At the proceeding, the party(ies) responsible for the ex-parte shall have the opportunity to contest the accuracy of the communication and may be required to prove absence of prejudice. All decisions of the decision-making body must be supported by substantial, competent evidence in the record pertinent to the proceedings, irrespective of such communications.

2. Notification and Required Forms to be Completed by Affected Persons, the Petitioner and the City.

- (a) At least **fourteen (14) calendar days** prior to the proceeding, City shall provide a **legal advertisement** to be published in a newspaper of general paid circulation in Broward County and of general interest and readership in the community, not one of limited subject matter. Said notice shall state the name of the petitioner for the requested action, the date, time and location of the proceeding, and the location and times where and when the petition and any back up information may be reviewed. In addition, the notice shall inform all Affected Persons that they will be allowed to present evidence at the hearing, bring forth witnesses, and cross-examine witnesses provided they notify and file the required forms provided by the city clerk's office, the substance of which is described in subsection (d) below, at least seven (7) calendar days prior to the proceeding.

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- 1 (b) No later than fourteen (14) calendar days prior to the proceeding, a  
2 mail notice containing the same information as the legal advertisement  
3 shall be sent to each real property owner within five hundred (500)  
4 feet of the subject property as each is listed in the records of the county  
5 property appraiser. Mail notice may be provided by bulk mail, first  
6 class mail or certified mail, return receipt requested.  
7  
8 (c) All cost for notification shall be paid by the petitioner.  
9  
10 (d) Any Affected Person desiring to testify, present evidence, bring forth  
11 witnesses, or cross examine witnesses at the proceeding shall complete  
12 the required forms provided by the city clerk's office which forms shall  
13 at a minimum (1) set forth the Affected Person's name, address and  
14 telephone number which shall serve as notice to the petitioner and city  
15 of the Affected Person's intent to appear at the proceeding to testify,  
16 present evidence, bring forth witnesses, or cross-examine witnesses;  
17 (2) set forth the names, addresses and telephone number of all  
18 witnesses including consultants or experts to testify on their behalf; (3)  
19 provide copies of all documents, correspondence, memoranda or other  
20 evidence the Affected Person intends to present, use or make reference  
21 to during the proceeding; (4) indicate whether the Affected Person is  
22 for or against the petition; and (5) indicate how the Affected Person  
23 qualifies as an Affected Person. The required form must be completed  
24 and returned to the city clerk's office at least seven (7) calendar days  
25 before the proceeding.  
26  
27 (e) The petitioner and the City shall also complete the required forms,  
28 provided by the city clerk's office, described in subsection (d) above.  
29 The completed form shall be returned to the city clerk's office within  
30 the time frame set forth in subsection (d) above.  
31

32 4. Presentation of evidence.  
33

- 34 (a) All persons testifying before a Board or the City Council must be  
35 sworn in. The petitioner, members of a Board or the City Council and  
36 any Affected Person who has provided notice that it intends to appear  
37 at the proceeding shall be given the opportunity to present evidence,  
38 bring forth witnesses, and cross-examine any witnesses.  
39  
40 (b) All evidence relied upon by reasonably prudent persons in the conduct  
41 of their business shall be admissible, whether or not such evidence  
42 would be admissible in a court of law. However, immaterial or unduly  
43 repetitious evidence shall be excluded.  
44  
45 (c) Hearsay evidence may be used for the purpose of supplementing or  
46 explaining other evidence, but it shall not be sufficient by itself to  
47 support a finding.  
48

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- (d) Documentary evidence may be presented in the form of a copy or the original, if available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- (e) A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.
- (f) The office of the city attorney shall represent the Board or the City Council. Any questions as to the propriety and admissibility of evidence shall be presented to the City Attorney's office in a timely fashion.

5. Rights of Participants for Quasi-Judicial Proceedings.

The proceedings shall be conducted in an informal manner. Each party shall have the right to do the following:

- (a) To call and examine witnesses;
- (b) To introduce exhibits;
- (c) To cross examine opposing witnesses on any relevant matter; and
- (d) To rebut evidence.

6. Conduct of Quasi-Judicial Proceedings.

To the extent possible, the following shall be the order of the proceedings:

- (a) Call the proceeding to order and announce the beginning of the proceeding. A majority of the Board or City Council members must be continuously present during the proceeding.
- (b) The matter to be heard and the rules concerning the admissibility of evidence should be announced.
- (c) Statements of counsel shall only be considered as argument and not be considered as testimony. Counsel for parties shall not be subject to cross-examination. The Board or the City Council shall have the authority to refuse to hear any testimony which is irrelevant or repetitive.
- (d) The chairman of the Board or the City Council shall have the option of determining the order of presentation of the parties in order to expedite the proceeding. During its presentation the City shall present any staff, board or other reports on the matter as well as any comments. These reports shall include, but not be limited to, a description of the request of the petitioner; a description/background related to the petition; an

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1 analysis which includes the consistency with the City's Comprehensive  
2 Plan, if applicable, and how the petition does or does not meet the  
3 requirements of the City Code; a listing of the exhibits to be presented;  
4 a listing of potential witnesses; a summarization of the issues; and the  
5 staff and board(s) recommendations. These reports shall include  
6 specific findings in support of justifying a recommendation for  
7 approval or denial of the petition.  
8

- 9 (e) Petitioner, or his or her representative, shall make a presentation. The  
10 petitioner should include a description of the nature of the petition if  
11 there is additional information that has not been previously provided to  
12 or by the City. In addition the petitioner shall introduce any exhibits  
13 and witnesses.  
14  
15 (f) Parties who are in support of the petition shall make their presentation.  
16 The party shall introduce any exhibits and witnesses.  
17  
18 (g) Parties who are in opposition of the petition shall make their  
19 presentation. The party shall introduce any exhibits and witnesses.  
20  
21 (h) City personnel in attendance shall provide any responses to any other  
22 party to the proceeding.  
23  
24 (i) After each witness testifies or documents are made a part of the record,  
25 a party shall be permitted to question the witness. The questioning  
26 party is not permitted to make any statements, only to ask questions  
27 which are directly related to the testimony presented.  
28  
29 (j) Final presentation by petitioner in response to any testimony from  
30 other parties.  
31  
32 (k) Final presentation by City in response to any testimony from other  
33 parties.  
34  
35 (l) The Board or the City Council shall deliberate on the petition. No  
36 further testimony shall be taken and the members of the Board or the  
37 City Council shall not ask further questions of persons presenting  
38 testimony. The Board or the City Council shall discuss the evidence  
39 that was presented at the proceeding and vote on the petition.  
40

41 7. Final Determination by Board or City Council

42  
43 In reaching a determination as whether to grant or deny the petition, the Board or City  
44 Council shall:

- 45  
46 (a) Consider whether the petitioner's request is consistent with the City's  
47 Comprehensive Plan, if applicable, and  
48

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- (b) State with specificity the reasons for the approval or denial of the petition. Said approval or denial may by reference incorporate the staff, board or other reports or evidence presented at the proceeding.
- (c) State whether or not the order is to be recorded in the public records of Miami-Dade County and, if applicable, that the cost of recording shall be paid by the petitioner.

8. Preparation of the Order

The City Attorney's Office shall prepare the final order of the Board or City Council based upon the determination. The final order shall include, but not be limited to, the finding of facts, any conditions, requirements or limitations on the approval of the petition, and whether or not the order shall be recorded in the Broward County public records. If an ordinance is required to be adopted upon approval of an action by the City Council, a final order will not be prepared unless the petition is denied.

9. Continuances and Deferrals

If, in the opinion of the Board or City Council, any testimony or documentary evidence or information presented at the proceeding justifies providing additional time to allow additional research or review in order to properly determine the issue presented, the Board or City Council shall continue the case to a designated time to allow for the additional research or review. After the decision is made to continue, the date to which the proceeding shall be continued shall be announced at the proceeding.

10. Transcription of Quasi-Judicial Proceedings.

- (a) The official transcript of a proceeding shall be preserved by tape recording or other device by the city clerk's office. Nothing precludes any party from providing a court reporter for the proceeding.

11. Maintenance of Evidence and other documents.

The office of the City Clerk shall retain all of the evidence and documents presented at the proceeding, except for large scale exhibits which shall be retained by the planning, zoning or building department, all which become a part of the public record of the proceeding.

12. Appeal of final determination by Board or City Council.

The final determination of the Board or City Council is subject to judicial review in a court of competent jurisdiction.

**Section 2.** It is the intention of the City Council of the City of Doral that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of

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1 the City of Doral, Florida, and that the Sections of this ordinance may be renumbered,  
2 re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other  
3 word or phrase in order to accomplish such intention.

4 **Section 3.** If any clause, section, or other part or application of this Ordinance  
5 shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such  
6 unconstitutional or invalid part or application shall be considered as eliminated and so not  
7 effecting the remaining portions or applications remaining in full force and effect.

8 **Section 4.** All Ordinances or parts of Ordinances, Resolutions or parts of  
9 Resolutions in conflict herewith be and the same are hereby repealed to the extent of such  
10 conflict.

11 **Section 5.** This Ordinance shall become effective immediately upon adoption  
12 by the City Council.  
13



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1 A motion to approve the application was offered by Vice Mayor Cabrera, who  
2 moved its adoption. The motion was seconded by Councilwoman Ruiz and upon being put  
3 to a vote, the vote was as follows:

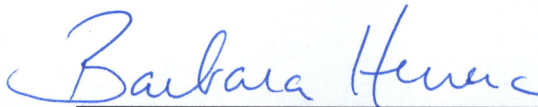
4		
5	Mayor Juan Carlos Bermudez	Yes
6	Vice Mayor Peter Cabrera	Yes
7	Councilmember Michael DiPietro	Yes
8	Councilwoman Sandra Ruiz	Yes
9	Councilmember Robert Van Name	Yes
10		

11 PASSED ON 1ST READING this 8<sup>th</sup> day of August, 2006.

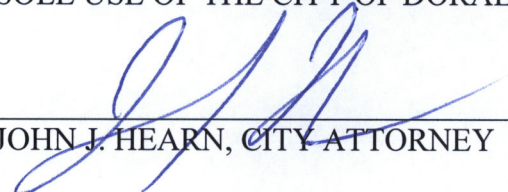
12 PASSED AND ADOPTED this 14<sup>th</sup> day of September, 2006.

13  
14  
15  
16   
17 \_\_\_\_\_  
18 JUAN CARLOS BERMUDEZ, MAYOR

19  
20 ATTEST:

21  
22   
23  
24 \_\_\_\_\_  
25 BARBARA HERRERA, CITY CLERK

26  
27  
28 APPROVED AS TO FORM AND  
29 LEGAL SUFFICIENCY FOR THE  
30 SOLE USE OF THE CITY OF DORAL:

31  
32   
33 \_\_\_\_\_  
34 JOHN J. HEARN, CITY ATTORNEY