

ATTACHMENT XVIII

City of Hollywood Quasi Judicial Procedures

Announcement Re Quasi-Judicial Procedures

Florida courts have determined that there are certain types of matters, including items _____ on today's agenda, which are to be treated differently from other issues considered by the Commission (or Board). Most decisions of the Commission are legislative in nature, meaning that the Commission is acting as a policy making body. However, in quasi-judicial matters, the Commission is applying existing rules and policies to a particular factual situation, and is therefore acting like a judge or jury in courtroom. In such cases, courts have determined that due process and fundamental fairness require that more formal procedures be followed. Therefore, in quasi-judicial matters, all witnesses are sworn in and subject to cross examination by the parties. In addition, the decision of the Commission must be **supported by competent and substantial evidence presented at the hearing.**

However, in Hollywood, we have adopted a rule that allows for the waiver of the quasi-judicial formalities. Waiver can only occur if agreed to by staff, the applicant and any member of the public who is present. Therefore, at this time, I ask that the Chair inquire as to whether there is anyone who objects to waiving the quasi-judicial formalities.

IF QUASI NOT WAIVED:

The Chair shall act as the presiding officer conducting the proceedings and maintaining order. As City Attorney, I shall represent the Commission, rule on all evidentiary and procedural issues and objections, and advise the Commission as to the applicable law and necessary factual findings. Hearings shall be conducted informally but with decorum. Formal rules of procedure shall not apply except as I will now describe, and fundamental due process shall be accorded.

In quasi-judicial hearings, all rulings must be based only upon the evidence presented at the hearing. In accordance with Section 286.0115(1), Florida Statutes, ex parte communications with Commission members is permissible and adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications:

1. The substance of any ex parte communication with a Board member and the identity of the person, group, or entity with whom the communication took place must be disclosed before the final action on the matter.
2. A Board member may read a written communication from any person. Such written communication shall be made a part of the record before final action on the matter.

3. Board members may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall be disclosed and made a part of the record before final action on the matter.

The hearing shall be conducted as follows:

The staff liason (city clerk) shall swear in all witnesses who are to testify at the hearing.

The order of proof shall be as follows:

1. A representative of City staff (or outside counsel) shall briefly describe the Applicant's request, introduce and review all relevant exhibits and evidence, report staff's recommendation, and present any testimony in support of that recommendation. Staff shall have a maximum of 30 minutes to make their full presentation, including opening statement and all direct presentation by witnesses, but excluding any cross examination or questions from the Commission.
2. Any Party Intervenor (or representative or counsel) shall present evidence and testimony in support of, or opposed to, the application. A Party Intervenor shall have a maximum of 30 minutes to make its full presentation, including opening statement and all direct presentation by witnesses, but excluding any cross examination or questions from the Commission.
3. The Applicant (or representative or counsel) shall present evidence and testimony in support of the application. Applicant shall have a maximum of 30 minutes to make its full presentation, including opening statement and all direct presentation by witnesses, but excluding any cross examination or questions from the Commission.
4. Any other persons present who wish to submit relevant information to the Commission shall speak next for a total maximum of ____ (three unless presiding officer determines otherwise based on number of presenters) minutes each (excluding any cross examination or questions from the Commission). Members of the public will be permitted to present their non-expert opinions, but the Commission is expressly advised that public sentiment is not relevant to the decision, which must be **based only upon competent and substantial evidence presented at the hearing**.
5. The Applicant will be permitted to make final comments, if any (max: 5 minutes).
6. The Party Intervenor will be permitted to make final comments, if any (max: 5 minutes).
7. City staff will make final comments, if any (max: 5 minutes).

8. At the discretion of the Chair, the Applicant may be permitted to respond to the final Party Intervenor and staff comments and recommendations (max: 3 minutes).

After each witness testifies, the City staff representative, the Applicant's representative, and the Party Intervenor's representative may question the witness, but such cross examination shall be limited to matters about which the witness testified and shall be limited to five minutes per side. Members of the public will not be permitted to cross examine witnesses. Cross examination shall be permitted on as would be permitted in a Florida court of law.

At the conclusion of the hearing, I will advise the Commission as to the applicable law and the factual findings that must be made to approve or deny the application. Thereafter, the Commission will conduct open deliberations of the application. The Chair shall have the discretion to reopen the proceedings for additional testimony or argument by the parties when an outcome **substantially different** than either the granting or denial of the application is being considered. After deliberations, a vote shall be taken to approve, approve with conditions, or deny the application.