

**CITY OF BOCA RATON
AND
BOCA RATON COMMUNITY REDEVELOPMENT AGENCY
VIRTUAL QUASI-JUDICIAL HEARING PROCEDURES UTILIZING
COMMUNICATIONS MEDIA TECHNOLOGY (CMT)
DURING DECLARED EMERGENCIES**

1. Intent.

The intent of these emergency quasi-judicial procedures is to ensure that, during a declared Federal, State, County, or Municipal state of emergency (“Declared Emergencies”), the City Council, Community Redevelopment Agency (“CRA”), Planning and Zoning Board, Community Appearance Board, Builders’ Board of Adjustment and Appeals, Historic Preservation Board, and Environmental Advisory Board (as applicable, the “Quasi-Judicial Body”), may still meet to consider and hear various land-use, zoning, and other applications that are required to be considered pursuant to quasi-judicial procedures. These procedures are intended to maintain citizen access to the local government decision-making process for the review of development applications and items requiring quasi-judicial hearings.

2. Applicability.

These procedures shall be utilized only during Declared Emergencies where the Quasi-Judicial Body is unable to have a physical quorum present at a specific public place for a public meeting (or determines it is in the best interest of the City or the CRA and its residents to conduct the public meeting without a physical quorum).

3. Definitions.

The following words, terms and phrases, when used in these emergency quasi-judicial procedures and notwithstanding any other definitions in the City Charter or Code or other applicable regulations, shall have the meanings ascribed to them in this section:

Applicant shall mean the owner of record, the owner’s agent, or any person with a legal or equitable interest in the property for which an application for a development order has been made and which is subject to quasi-judicial proceedings, and shall mean the staff of the City when the application is initiated by the City or the CRA.

Application shall mean an application for any one of the following development orders or permits:

- (a) Variances.
- (b) Conditional use approvals.
- (c) Plat approvals.
- (d) Site-specific rezonings.
- (e) Site plan approvals.

- (f) Master plan approvals and planned developments (including planned mobility developments).
- (g) Rezoning.
- (h) Individual development approvals by the CRA.
- (i) Building, landscaping, and related permits requiring approval by the Community Appearance Board.
- (j) Certificates of Appropriateness for historic sites and districts.
- (k) Any other site-specific development approval or appeal of a site-specific approval determined to be quasi-judicial in nature by the City or CRA Attorney.
- (l) Recommendations to City Council or the CRA on any quasi-judicial matter.

Chair shall mean the mayor or, in his/her absence, the deputy mayor of the City Council, or the Chair of the CRA or, in his/her absence, the Vice-Chair of the CRA, presiding over the quasi-judicial proceedings. For any quasi-judicial proceedings before any other Quasi-Judicial Body, the chair or, in his/her absence, the vice-chair presiding over the quasi-judicial proceedings.

Communications media technology (CMT) shall mean the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available, as provided in Section 120.54(5)(b)(2), Florida Statutes.

Competent substantial evidence shall mean testimony or other evidence based on (i) personal observation or fact, or (ii) or opinion evidence offered by an expert on a matter that requires specialized knowledge, that is relevant to the issue to be decided that a reasonable mind could accept as adequate to support a conclusion.

Development Order shall mean the written decision of the Quasi-Judicial Body regarding an application that requires consideration under these quasi-judicial proceedings.

Ex parte communication shall mean any written, oral, or graphic communication with a member of the Quasi-Judicial Body, which may relate to or which could influence the disposition of an application, other than those made on the record during a quasi-judicial hearing. This term also includes visiting the site of the application, receipt of expert opinions, and any independent investigations by a member of the Quasi-Judicial Body. The term “Ex parte communication” does not mean a communication between Staff and a member of the Quasi-Judicial Body.

Expert shall mean a person who is qualified in a subject matter by knowledge, skill, experience, training, or education.

Material fact shall mean a fact 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.

Participants shall mean members of the general public who offer testimony at the Virtual Quasi-Judicial Hearing for the purpose of being heard on an Application and does not include the Applicant or the Applicant’s Experts, and does not include representatives of governmental agencies.

Party or Parties shall mean the Applicant, and Staff.

Virtual Quasi-Judicial Hearing shall mean a virtual hearing held by the Quasi-Judicial Body to adjudicate the rights of an Applicant on an application listed in the section above, by means of a hearing which is conducted utilizing CMT and comporting with these emergency procedures and due process requirements.

Relevant evidence shall mean evidence which tends to prove or disprove a fact that is material to the determination of the application.

Staff shall mean members of the City and/or CRA staff and authorized third-party agents of the City.

4. Ex parte communications.

(a) This rule shall govern ex parte activities by elected and appointed officials with respect to matters on which quasi-judicial action may be taken by the City Council, the CRA, or another Quasi-Judicial Body.

(b) The substance of any ex parte communication or other ex parte action involving a Council Member, CRA Commissioner, or appointed Board Member which relates to quasi-judicial action pending before the Council Member, CRA Commissioner, or Board Member shall not be presumed prejudicial to the action if the subject of the communication and the identity of the person, group or entity with whom the communication or action took place is disclosed pursuant to this rule, and made a part of the record before final action on the matter.

(c) Any person not otherwise prohibited by statute, charter provision or ordinance may discuss with any Member of the City Council, the CRA, or another Quasi-Judicial Body the merits of any Application on which quasi-judicial action may be taken by the Council, CRA Commissioner, or Board Member, provided that the communication is disclosed pursuant to the provisions of this rule.

(d) A Council Member, CRA Commissioner, or Board Member may conduct investigations and site visits and may receive written expert opinions regarding a quasi-judicial action pending before them. Such activities shall be disclosed and made part of the record pursuant to this rule.

(e) Disclosure made pursuant to this rule shall occur in such a manner that persons who have opinions contrary to those expressed in the ex parte communication or action are given a reasonable opportunity to refute or respond to the communication or action. Any communication or action subject to this rule, other than a written communication, shall be disclosed as follows:

(1) A written memorandum to the official file of the City or the CRA shall be prepared and submitted by the Council, CRA Commissioner, or Board Member who participated in an ex parte communication or ex parte action. The memorandum shall be issued and filed prior to the hearing on the Application.

(2) If written disclosure is not made prior to the hearing, it shall be made orally at the hearing on the Application as the first item of business with respect to the hearing.

(f) A Council Member, CRA Commissioner, or Board Member may read any written communication from any person regarding a pending Application. However, a written communication that relates to an Application pending before the Council Member, CRA Commissioner, or Board Member shall not be presumed prejudicial to the action, and such written communication shall be made part of the record before final action on the matter.

(g) Discussions between Council Members, CRA Commissioners, or Board Members and the City Manager, Executive Director of the CRA, or Staff are deemed not to be ex parte communications subject to this rule.

5. General procedures.

(a) When an Application has progressed to the point of scheduling a quasi-judicial hearing (as determined by the City or the CRA), Applicants shall choose either (i) delaying consideration of their

Application and proceeding with the public hearing, after the Declared Emergency has ended, at a meeting that does not utilize CMT; or (ii) proceeding during the Declared Emergency, while the City or the CRA is utilizing CMT to conduct a Virtual Quasi-Judicial Hearing, with consideration of their Application pursuant to the City's and the CRA's adopted CMT procedures. Such election by an Applicant shall be provided in writing.

(b) *Virtual Quasi-Judicial Hearing.* The Virtual Quasi-Judicial Hearing shall be held through the use of CMT.

(c) *Witnesses and evidence.* Each Party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine Participants (and opposing witnesses, if any) on any testimony or evidence presented by such Participant (or opposing witness), and to rebut evidence. During Declared Emergencies, the City Council's and CRA's prior practice of providing Participants an opportunity to cross-examine other Participants and/or the Applicant (and the Applicant's witnesses) shall be suspended. (*See Carillon Cmty. Residential v. Seminole Cnty.*, 45 So. 3d 7 (Fla. 5th DCA 2010, *review denied* 60 So. 3d 386 (Fla. 2011))

(d) *Duties of Staff.* Staff shall have the responsibility of presenting the Application on behalf of the City. The Staff report on the Application shall be made available to the Applicant, and the City Council or Quasi-Judicial Body no later than five (5) days prior to the Virtual Quasi-Judicial Hearing on the Application (as may be supplemented by Staff).

(e) *Official file.* All written communication received by the Council Members, Board Members or Staff concerning an Application, the Staff report on the Application, any petitions or other submissions from the public, and all other documents pertaining to the Application received prior to the hearing shall become a part of and shall be filed in the official file for the Application, which shall be maintained by Staff. The City of Boca Raton Comprehensive Plan, the City Code of Ordinances, and/or Ordinance No. 4035 and the Rules of the Boca Raton Community Redevelopment Agency, as applicable, shall be deemed to be part of the official file. The contents of the official file shall be deemed entered in the record of the Virtual Quasi-Judicial Hearing on the Application without any action.

(f) *Meeting agenda.* The agenda for the meeting at which the Virtual Quasi-Judicial Hearing is scheduled to take place shall explain the procedures for accessing the Virtual Quasi-Judicial Hearing. A copy of the meeting agenda, along with the agenda materials for the Application shall be posted on the City's website.

(g) *Applicant Materials.* The Applicant shall submit all supplemental materials, presentations, and statements related to the Application to the City or the CRA, as applicable, in electronic format no later than two (2) business days prior to the date of the Virtual Quasi-Judicial Hearing, which shall be provided to the Quasi-Judicial Body for review with the other hearing materials.

(h) *Public comment.* Members of the public that desire to submit comments regarding the Application to be heard at the Virtual Quasi-Judicial Hearing may submit their comments, pursuant to the Technical Information for CMT meetings provided in Section 8 below.

(i) *Virtual Quasi-Judicial Hearing Procedures.* A copy of these Virtual Quasi-Judicial Hearing Procedures shall be posted on the City's website.

(j) *Notice.* Notice requirements as contained in the City Code of Ordinances or Ordinance No. 4035 and the Rules of the Boca Raton Community Redevelopment Agency, as applicable, and Florida Statutes shall apply to the Virtual Quasi-Judicial Hearing. Any notice for a matter to be heard at a Virtual Quasi-Judicial Hearing shall include a reference to the Virtual Quasi-Judicial Hearing Procedures and

provide the method and access to view and provide comment during the meeting at which the Virtual Quasi-Judicial Hearing will occur.

(k) *Technical Malfunction During Hearing.* In the event the City's CMT malfunctions during the Virtual Quasi-Judicial Hearing, the City shall use its best efforts to provide notice to all parties as to the date and time of the continuation of the Virtual Quasi-Judicial Hearing. Malfunction of an individual's CMT equipment, including, but not limited to, computers and/or telephones, shall not require continuation of the Virtual Quasi-Judicial Hearing, provided the City's CMT continues to function.

6. Virtual Quasi-Judicial Hearing Procedures.

- (a) The Virtual Quasi-Judicial Hearing shall, to the extent possible, be conducted as follows:
- (1) The Chair or City or CRA Attorney shall read a statement at the beginning of the Virtual Quasi-Judicial Hearing portion of the meeting agenda, which shall outline the procedure to be followed.
 - (2) All Parties and Participants shall be collectively sworn by oath or affirmation. This will be done at the beginning of each hearing on a Quasi-Judicial item. It shall be the obligation of a speaker, prior to offering any testimony, to advise the Body if they have not been sworn in so that they may be so sworn prior to offering testimony.
 - (3) The Chair shall call for disclosure of ex parte communications. Such disclosures shall be made in accordance with these procedures.
 - (4) The order of the presentation shall be as follows, unless the Quasi-Judicial Body agrees to a different order, taking proper consideration of fairness and due process:
 - a. Staff shall present a brief synopsis of the Application; introduce any appropriate additional exhibits, materials or information, which have not already been transmitted to the Quasi-Judicial Body along with the agenda materials, as Staff desires; summarize issues; and may provide a recommendation on the Application. Staff may also introduce and present the testimony of any Experts or other witnesses at the hearing.
 - b. The Applicant shall make its presentation, including offering any exhibits, and introduce and provide the testimony of any Experts or other witnesses.
 - c. The City Clerk or Staff, as applicable, shall advise that any comments in support of, or in opposition to, the Application that were timely received prior to the Virtual Quasi-Judicial Hearing were made available for review and made a part of the record.
 - d. Any other Participants may be recognized and may submit their comments pursuant to the Technical Information for CMT meetings provided in Section 8.
 - e. Staff, and the Applicant may cross-examine any witnesses presenting spoken testimony through the webinar and respond to written submissions. During Declared Emergencies, the City Council's and CRA's prior practice of providing Participants an opportunity to cross-examine witnesses shall be suspended. *See Carillon Cmty. Residential v. Seminole Cnty.*, 45 So. 3d 7 (Fla. 5th DCA 2010), *review denied*, 60 So. 3d 386 (Fla. 2011).
 - f. Members of the Quasi-Judicial Body, through the Chair, may ask any questions of the Staff or Applicant (and any of their witnesses), or Participants.
 - g. Final argument may be made by the Staff.

h. Final argument may be made by the Applicant.

i. Time periods for presentation, cross examination and rebuttal by the Applicant and Staff, as applicable, as well as for testimony by Participants, shall be: presentation by Staff (20 minutes up to 1 hr); presentation by Applicant (20 minutes up to 1 hr); presentations by others (5 minutes); representative of a group/association (20 minutes); cross-examination (3 minutes); rebuttal (10 minutes); [with extensions of time allotments at the Chair's discretion].

(5) The Chair shall keep order, and without requiring an objection, may direct a Party conducting any cross-examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross-examined, is unduly repetitious, not relevant, or beyond the scope of the testimony by the individual being cross-examined.

(6) After the presentations, and at the conclusion of any continuances, the Quasi-Judicial Body shall deliberate on the Application. The Quasi-Judicial Body's decision(s) must be based upon Competent Substantial Evidence.

(b) The Quasi-Judicial Body may, on its own motion or at the request of any Party, continue the hearing to a fixed date, time, and place, and all requests for continuance shall be granted or denied at the discretion of the Quasi-Judicial Body.

(c) At any time prior to the commencement of the hearing, the Applicant may request, in writing, to withdraw an Application, which shall be granted or denied at the discretion of the Quasi-Judicial Body.

7. Virtual Quasi-Judicial Hearing Record.

The City Clerk shall maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the Virtual Quasi-Judicial Hearing in the same manner as for non-emergency quasi-judicial hearings.

8. Technical Information for CMT Quasi-Judicial Hearings.

The notice of Virtual Quasi-Judicial Hearing will provide that instructions, as detailed below, for accessing the meeting using CMT will be available on the City's website and available upon request from the City Clerk.

(a) Participating in the Virtual Quasi-Judicial Public Meeting:

To participate as a Attendee in the Virtual Quasi-Judicial Meeting using computer access or your smartphone, register via your internet browser through the link **CRA and City Council Meeting** provided on the City's webpage www.myboca.us/webinar. Virtual meeting attendees will be able to see Staff's meeting presentation materials and the City Council members or CRA Commissioners as applicable and hear other persons when speaking. In meetings of other Quasi-Judicial Bodies, virtual meeting attendees will be able to see Staff's meeting presentation materials and hear the members of other Quasi-Judicial Bodies and other persons when speaking.

To provide real-time comment using GoToWebinar on a Quasi-Judicial agenda item, you may use the **ask a question function** (as described below) to provide your name and the address where you reside and your written comment, or you may electronically **raise your hand** (as described below) to provide your name and address where you reside and be provided an opportunity to give spoken comment or ask a question. Comments or questions submitted via

the *ask a question* function will be read into the record (limited to the portion, starting from the beginning, that is 500 words or less, with the full written comment made a part of the record) along with your name and the address where you reside. Spoken comments will be limited to five (5) minutes.

During the meeting, individuals will be provided: (i) only one opportunity by speech or the *ask a question* function to provide comment upon each specific Quasi-Judicial agenda item, either by spoken comment limited to five (5) minutes or by having their submitted *ask a question* function comment read, up to five hundred (500) words, into the record by Staff.

If you wish to provide PowerPoint or similar presentations or any materials to the City Council, please provide copies via email to BRCityClerk@myboca.us no later than 12 hours prior to the start of the meeting. Materials must be scanned for security purposes, so we will not be able to accept PowerPoint presentations and similar computer-based materials later than 12 hours prior to the start of the meeting.

(b) Listening to or Viewing the Virtual Quasi-Judicial Public Meeting:

To listen to the meeting on any phone, dial the conference number given in the meeting notice online at www.myboca.us/1837/City-Public-Meetings and enter the conference code when prompted.

Watch the meeting online via livestreaming at www.myboca.us/meetings

Watch the meeting live on Comcast Channel 20, within the Boca Raton City limits, AT&T U-Verse Channel 99 within Palm Beach County and Hotwire Channel 395 within Palm Beach County.

Listen to the radio broadcast live on WPQJ AM 1650 within the City limits.

You will be able to listen to the meeting in any of the above formats, but no comments can be made.

(c) Submitting Comments via Email or Voicemail:

EMAIL: If you wish to comment via email, you may do so by emailing your name and address where you reside and agenda item number or description, as applicable, and your comment no later than two (2) hours prior to the scheduled starting time for commencement of the meeting. Email your comments to the following email address: meetingcomments@myboca.us. Email comments will be reviewable by the Quasi-Judicial Body as part of the meeting record.

VOICEMAIL: If you wish to comment via voicemail, you may do so by calling (561) 393-7721 and leaving a message no later than two (2) hours prior to the commencement of the meeting. The greeting will provide instructions for leaving your name, address where you reside, and comments. Voicemail messages will be reviewable by the Quasi-Judicial Body as part of the meeting record. Voicemail message recording time will be limited to five (5) minutes.

(d) GoToWebinar Instructions for Virtual City of Boca Raton Meetings

1. Visit webpage: www.myboca.us/webinar to register to be an Attendee for the meeting OR download the GoToWebinar app using a smartphone.

a. **Mute:** Attendees will be automatically placed in **Listen Only** (mute) mode during the meeting. The meeting organizer (Staff) will control mute/unmute.

b. **Ask a Question:** Attendees will be able to use the Ask a Question/Question function to enter their name and address where they reside to make a comment that will be read into the record by Staff, as described above.

c. **Raise Hand:** Attendees will be able to raise their hand, which the meeting organizer can use to allow attendees to speak at the appropriate time during the meeting, as described above.

d. **Mute/Unmute:** When the meeting organizer recognizes you to speak during the meeting, select the UNMUTE button on your computer, give your name and address, and offer your comments, which will be limited to five (5) minutes.

2. System Requirements

The latest versions of an internet browser should be used, whether it is Google Chrome, Firefox, or Safari. If Internet Explorer is used, version 9 or 10 is recommended as the earlier versions are only partially supported, which may cause some issues when logging into a meeting.