

**CITY OF SANIBEL  
RESOLUTION 23-012**

**RESOLUTION 23-012 OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, RELATED TO QUASI-JUDICIAL PROCEEDINGS ON LOCAL LAND USE MATTERS; FORMALIZING A METHOD TO REMOVE THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Sanibel, the Sanibel Planning Commission, and certain of the City's other boards and commissions have the authority to conduct quasi-judicial proceedings on local land use matters; and

**WHEREAS**, ex parte communications (i.e., communications involving board members about a matter coming before the board which occur outside the noticed public hearing on the matter) are highly discouraged, because the quasi-judicial decision before the board should be based solely upon evidence in the record, known to all interested parties; and

**WHEREAS**, ex parte communications create a presumption of prejudice to the quasi-judicial proceeding; however, Section 286.0115, Florida Statutes, provides an avenue to formalize a method to remove the presumption of prejudice from ex parte communications related to local land use matters; and

**WHEREAS**, the City Council desires to formalize such method, consistent with its current, informal practices.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:**

**SECTION 1.** The recitals above are true and correct and made a part hereof.

**SECTION 2.** Consistent with Section 286.0115, Florida Statutes, the following procedures are hereby adopted for all quasi-judicial proceedings on local land use matters:

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to Part III of Chapter 112, Florida Statutes, for not complying with this paragraph.

**SECTION 3.** This Resolution shall be effective immediately upon adoption.

**PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA THIS 7TH DAY OF FEBRUARY 2023.**

Attest:

  
\_\_\_\_\_  
Scotty Lynn Kelly, City Clerk

  
\_\_\_\_\_  
Holly D. Smith, Mayor

Approved as to form and legality:

  
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John D. Agnew, City Attorney

Date filed with City Clerk: February 7, 2023

Vote of Council Members:

Smith	<u>Yea</u>
Johnson	<u>Yea</u>
Crater	<u>Yea</u>
Henshaw	<u>Yea</u>
Miller	<u>Yea</u>