



AGENDA MEMORANDUM

Legal Department

City Council Regular Meeting Date: *February 7, 2023*

To: City Council
From: John Agnew, City Attorney
Date: February 3, 2023

SUBJECT: 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.

BACKGROUND: The Sanibel Planning Commission regularly conducts quasi-judicial proceedings on local land use matters, and the Sanibel City Council does so occasionally. Other City of Sanibel boards and commissions may conduct quasi-judicial proceedings from time-to-time. Ex parte communications are communications involving board members about a matter coming before the board which occur outside the noticed public hearing on the matter. Ex parte communications 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. Ex parte communications create a presumption of prejudice; however, the Florida legislature has provided an avenue to formalize a method to remove the presumption of prejudice from ex parte communications.

Specifically, Section 286.0115, Florida Statutes, provides that a county or municipality can remove the presumption of prejudice caused by ex parte communications in local land use matters by adopting the following by ordinance or resolution (and following the mandates created thereby):

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

Sanibel is and shall remain a barrier island sanctuary

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 for not complying with this paragraph.

Although the mandates described above are already generally part of Sanibel's practices in association with quasi-judicial proceedings, formalizing the process by resolution is desired to guaranty the safe-harbor provisions provided by Section 286.0115, Florida Statutes.

FUNDING SOURCE: N/A

RECOMMENDED ACTION: Motion to approve Resolution 23-012.