



CITY COMMISSION - CITY OF WILDWOOD

Mayor/Commissioner – Ed Wolf – Seat 1

Mayor Pro Tem/Commissioner – Pamala Harrison-Bivins – Seat 2

Joe Elliott – Seat 3

Marcos Flores – Seat 4

Julian Green – Seat 5

Jason McHugh – City Manager

Agenda

Workshop

February 6, 2023 9:00 AM

City Hall Commission Chamber

100 N Main Street

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Department, ADA Coordinator, at 352-330-1330, Ext. 102, forty-eight (48) hours in advance of the meeting.

F.S.S. 286.0105A - If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City of Wildwood DOES NOT provide this verbatim record.

1. Call to Order

2. Item(s) for Discussion

A. *PRESENTATION REGARDING COMMISSION MEETING PROCEDURES*

3. Adjournment

February 6, 2023 9:00 AM

**CITY COMMISSION OF THE CITY OF WILDWOOD
EXECUTIVE SUMMARY**

SUBJECT: Presentation Regarding Commission Meeting Procedures

REQUESTED ACTION: For informational purposes only.

CONTRACT:

Vendor/Entity:

Effective Date:

Termination Date:

Managing Division/Department:

BUDGET IMPACT:

HISTORY/FACTS/ISSUES:

The City Attorney will present the attached PowerPoint presentation regarding City Commission meeting procedures.

COMMISSION MEETING PROCEDURES

QUASI-JUDICIAL

LEGISLATIVE

PUBLIC FORUM

QUASI-JUDICIAL VS. LEGISLATIVE

- Quasi-Judicial General Hearing Process – (Similar to civil trial – Applying law and policy to facts)
 - 1. Variances
 - 2. Plats, Improvement Plans, and Site Plan Approvals
 - 3. Rezoning
 - 4. Special Exceptions
 - 5. Temporary or Conditional Use Permits
 - 6. Code Enforcement Violation Issues
 - 7. Appeals
- Examples of Legislative Hearings
 - 1. Adoption of comprehensive plans, future land use maps, and master plans
 - 2. Adoption of ordinances
 - 3. Adoption of budgets
 - 4. Developer's Agreements



QUASI-JUDICIAL

IMPORTANT NOTE

Quasi-judicial process must ensure:

(1) notice;

(2) fair opportunity to be heard;

and

(3) right to an impartial decision-maker.

GENERAL PROCEDURE – FOLLOW JUDICIAL STYLE OF HEARING

- 1. Swearing in of all individuals who wish to speak
- 2. Case introduction/staff report
- 3. Applicant's case
- 4. Interested parties participation (intervenors and general public)
 - a. Could be in support or in opposition
 - b. Where objectors/intervenors have organized and/or retained counsel, additional procedures may be implemented to provide for orderly presentation of evidence
- 5. Optional comments by professional staff
- 6. Rebuttal by applicant
 - a. Applicant can address comments by interested parties, objectors, intervenors, or staff
- 7. Closing statements by applicant and, where applicable, legal representative of objectors, if any
- 8. Deliberation and questions by Commission
- 9. Final determination by Commission

LEGAL STANDARD – SUBSTANTIAL, COMPETENT EVIDENCE

Florida Supreme Court defined “substantial, competent evidence” as follows:

... such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.

– DeGoot v. Sheffield, 95 So.2d 912 (Fla 1957).

IN OTHER WORDS:

Competent substantive evidence
= evidence a reasonable mind
would accept as adequate to
support a conclusion



EVIDENTIARY STANDARDS

- 1. Appropriate forms of fact-based evidence:
 - a. Lay testimony (when adequately established)
 - b. Records, maps, and reports
 - c. Expert testimony – opinion evidence generally requires an expert
- 2. Rules of evidence are not strictly observed and the issue of whether or how evidence is presented generally becomes a question of fundamental fairness
- 3. Subjective preferences and conjecture or assumptions are irrelevant to issues
- 4. Statements by legal counsel are arguments, not testimony
- 5. Florida Statute 286.0115(2)(b) Provides rules for access of general public to quasi-judicial hearings. Evidentiary rules are loosened, but “the decision-making body shall assign weight and credibility to such testimony as it deems appropriate.”

Burden of Proof

The landowner bears initial burden to show application complies with procedural requirements and is consistent with relevant laws/regulations. After that, the interested parties will bear burden to provide competent substantive evidence against.

Where a decision by the commission is based upon competent substantive evidence it will more readily withstand judicial challenges.

Additional Notes

- A. Non-English speakers are entitled to a translation of the proceedings. Ideally, a qualified interpreter who has taken an interpreter's oath should be used.
- B. Cross-examination of adverse witnesses should be allowed.
- C. Commissioners should not take a position ahead of the hearing.

Legislative



GENERAL PROCEDURE – SIMILAR TO CONGRESSIONAL DEBATES AND PROCEEDINGS

- Follow Accepted Rules of Order:
 - a. Swearing in of all individuals who wish to speak
 - b. Item introduction/staff report
 - c. Open item to public comment
 - d. Close public comment
 - e. Motion by Commission
 - f. Additional debate, deliberation, comments, or questions by Commission
 - g. Final determination by Commission

OTHER CONSIDERATIONS

- 1. Broad notice required
- 2. Wide-ranging public hearing
 - a. Allows for consideration of:
 - i. Pure Preferences
 - ii. Opinions
 - iii. Conjecture
 - iv. Assumptions
- 3. Presentation of Evidence:
Anything Relevant
- 4. Redundant, immaterial, and irrelevant evidence may be limited by following appropriate rules of order

LEGAL STANDARD

- **A. Standard of Review is: Fairly Debatable**
- **B. Relaxed and tolerant standard of rationality**
 - 1. Only requires a reasonable basis to support the action
 - 2. A very deferential standard
 - a. Courts may not second guess wisdom of local government's action
 - b. Courts must affirm decision if there are:
 - (1) any reasonable basis for the decision; and
 - (2) there is no constitutional violation.
 - 3. Legislative findings may be based on rational speculation unsupported by evidence or empirical data
 - a. Commission can legislate as an experiment, with no proof of efficacy
 - b. Heavier burden of proof for anyone challenging legislative action
- **C. Commissioners have Substantial Discretion**
 - 1. Commission acting as lawmakers
 - 2. Commissioners can take a position ahead of the hearing

Public Forum



PUBLIC FORUMS: A BALANCING ACT

Cities must balance the right of the public to participate in their local government process with the need to conduct meetings in such a way as to allow the required business to be accomplished.



LEGAL FRAMEWORK

Florida Statutes/Sunshine
Law

US Constitution



SECTION 286.0114 OF THE FLORIDA STATUTES

- Requires that members of the public have a reasonable opportunity to be heard on any proposition before a board or committee
- Board or committee is permitted to establish rules and procedures governing things such as time limits, designation of specific times in meeting for public comment, and procedures for informing board of desire to speak
- Does not apply in case of emergency
- Does not apply to code enforcement hearings

SECTION 871.01 FLORIDA STATUTES

(1) Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose commits a misdemeanor of the second degree.

(Emphasis Added)

First Amendment

- Not an absolute right
- Government can regulate, to a certain extent, speech on premises that it owns or controls
- Three-step analysis from Supreme Court:
 - 1. Determine whether the speech is protected by the First Amendment;
 - 2. Determine the forum the government is regulating (public vs. non-public); and
 - 3. Determine the requisite standard and whether it has been met
- **Step two is a very important analysis with respect to public forums in meetings**

FORUM ANALYSIS

In forum analysis, there are four types of government fora:

1. the traditional public forum;
2. the designated public forum;
3. the limited public forum; and
4. the nonpublic forum

- The level of scrutiny that is applied to a government regulation is based upon the type of forum
- A City Commission meeting is a limited public forum

LIMITED PUBLIC FORUM

- A limited public forum is one which the government has opened up to the public for expressive activity. In a limited public forum, the government may impose content-based regulations so long as they are "viewpoint neutral and reasonable in light of the forum's purpose." *Barrett v. Walker County Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017)
- Traditionally, limited public forums have included meetings with public comment sections including city council meetings. Stated simply, a city can limit speech at a meeting to the topics being discussed, but cannot impose any restrictions on the viewpoints that may be expressed about the allowed topics.
- City councils may also place content-based restrictions to prevent speech that is disruptive, abusive, obscene, etc.

CONTENT-BASED RESTRICTIONS ARE OKAY, BUT MUST BE VIEWPOINT-NEUTRAL



- In a limited public forum:
 - Government may impose content-based regulations
 - Content-based restrictions must be viewpoint-neutral and reasonable in light of forum's purpose
 - People sometimes interchange content-neutral and viewpoint-neutral, however, content-neutral is what is needed

SIGNIFICANT GOVERNMENT INTEREST

- *Jones v. Heyman*:
 - “A valid time, place and manner regulation must be ‘narrowly tailored to serve a significant governmental interest.’ The Supreme Court has recognized the significance of the government's interest in conducting orderly, efficient meetings of public bodies.”
 - 888 F.2d 1328, 1332 (11th Cir. 1989)
- *Rowe v. City of Cocoa*:
 - "There is a significant governmental interest in conducting orderly, efficient meetings of public bodies."
 - 358 F.3d 800, 803 (11th Cir. 2004).

DECORUM: TIME, PLACE, AND MANNER - WHO, WHAT, WHEN, AND WHY

- Who – Define who is responsible for enforcing the policy. Most cities would typically designate the mayor (presiding officer).
- Who – Define who will execute an order to remove a speaker if the policy is violated.
- What – Identify what speech or conduct is prohibited.
- When – Different situations call for different approaches, but typically should consistently enforce after gentle warnings.
- Why – A policy of decorum must be viewpoint neutral and reasonable in light of the mission of running an efficient meeting.

HOW

- Regulate time given to speak
 - Time allotment
 - Set agenda
 - Set process for speaking
- *Just be sure that the policy is uniformly applied*



RECENT CASE

- On its face, the Policy is both content- and viewpoint-neutral. It allows the Chair to interrupt speech only when it is "too lengthy, personally directed, abusive, obscene, or irrelevant." (Doc. 20, p. 114.) Requiring the speaker to address the Chair rather than individual Board members is not based on the speech's content, but because members do not possess the power of the Board. (Doc. 19, p. 5.) And prohibiting abusive and obscene comments is not based on content or viewpoint, but rather is critical to prevent disruption, preserve "reasonable decorum," and facilitate an orderly meeting—which the Eleventh Circuit has held on multiple occasions is permissible. (Id.); see *Jones* , 888 F.2d at 1332 ; *Dyer* , 852 F. App'x at 402 ; see also *Rowe v. City of Cocoa* , 358 F.3d 800, 803 (11th Cir. 2004). So Plaintiffs are unlikely to succeed in this facial challenge.
- *Moms for Liberty - Brevard Cnty. v. Brevard Pub. Sch.*, 582 F. Supp. 3d 1214, 1219-20 (M.D. Fla. 2022)

PRACTICAL APPLICATION

- City can limit speech to topic being discussed and set time limits on speakers, but may not impose restrictions based on viewpoints
- Content-based restrictions may be used to prevent disruptions (i.e., vulgar and abusive language, personal attacks, obscenities, etc.)
 - “Here, the Policy does not affect a substantial amount of constitutionally protected conduct because abusive, irrelevant, and disruptive speech is permissibly restricted in a limited public forum.” *Moms for Liberty - Brevard Cnty. v. Brevard Pub. Sch.*, 582 F. Supp. 3d 1214, 1221 (M.D. Fla. 2022)
- Fixed Standards and concrete reasons:
 - Here, the Policy precisely lists what it expects of speakers and the Chair, so it gives a person of ordinary intelligence warning of prohibited conduct. See *Horton v. City of St. Augustine*, 272 F.3d 1318, 1330–31 (11th Cir. 2001). And it does not lack fixed standards, as it lists five concrete reasons for which the Chair may interrupt speakers and the conduct that can lead to stronger sanctions, and the Chair regularly explains these rules to attendees and applies them consistently. (Doc. 20, pp. 8–9, 43, 114); see *Doe*, 903 F.3d at 1233. As such, the Policy is not unconstitutionally vague. *Moms for Liberty - Brevard Cnty. v. Brevard Pub. Sch.*, 582 F. Supp. 3d 1214, 1221 (M.D. Fla. 2022)

DISRUPTIONS AND REMOVAL

- Removal should be course of last resort
- There should be due process for trespass
 - Presiding officer gives warning
 - Presiding officer removes
 - Trespass warning from officer
- Suspension from future meetings – (no bright line rule)
 - People need to be able to appeal or be heard
 - 1 – 2 meeting suspension more likely to be upheld over 7 meeting suspension

NO AFFIRMATIVE DUTY TO RESPOND

- Note that in this analysis there is no affirmative duty for the city or commissioners to engage with the public or respond to questions or statements. It is a public forum, not a public discussion.
- All that is required is a reasonable opportunity to be heard.
- Where issues warranting a response are raised, policy can provide for a response period later in the meeting.

PUBLIC FORUM - CONCLUSIONS

- Decorum policies and city commission rules governing public participation should be drafted with sufficient specificity to allow for consistent application and compliance with legal standards.
- A good policy will provide sufficient guidance for city officials to determine whether action needs to be taken to enforce the policy's guidelines and restrictions.
- City of West Melbourne's policy is a strong example of working to achieve these goals.
- A good policy also provides guidance to members of the public.
- **Recommendation:** Allow the City Manager and City Attorney to formulate a policy to strengthen meeting procedures and ensure specific guidelines for consistent application.