

# MEMORANDUM

Office of the City Attorney

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**TO:** Mayor and City Commission **DATE:** March 15, 2004

**FROM:** City Attorney **RESOLUTION**

**SUBJECT:** A RESOLUTION AMENDING RULE XXI OF THE RULES OF PROCEDURE OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA; REMOVING THE PROHIBITION AGAINST EX PARTE COMMUNICATIONS AND ESTABLISHING A PROCESS TO DISCLOSE SUCH COMMUNICAITONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Recommendation: The City Commission adopt the proposed Resolution.


The City Commission, at its meeting of February 23, 2004, authorized the City Attorney to prepare an amendment to Rule XXI of the City Commission relating to Ex Parte Communications.

Rule XXI currently prohibits City Commissioners from engaging in ex parte communication in quasi-judicial matters. This amendment to Rule XXI enables City Commissioners to engage in ex parte communication to quasi-judicial matters and removes the presumption of prejudice through the disclosure of those ex parte communications. This amendment does not obligate or require City Commissioners to engage in any ex parte communications.

Prepared by:

  
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Prepared, approved and submitted by:

  
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RESOLUTION NO. \_\_\_\_\_

Adopted \_\_\_\_\_

**A RESOLUTION AMENDING RULE XXI  
OF THE RULES OF PROCEDURE OF THE  
CITY COMMISSION OF THE CITY OF  
GAINESVILLE, FLORIDA; REMOVING  
THE PROHIBITION AGAINST EX PARTE  
COMMUNICATIONS AND ESTABLISHING  
A PROCESS TO DISCLOSE SUCH  
COMMUNICAITONS; AND PROVIDING  
AN IMMEDIATE EFFECTIVE DATE.**

**WHEREAS**, under the provisions of Section 2.06 Gainesville Charter, the City Commission may determine its own rules of procedure.

**WHEREAS**, Rule XXI of the rules of procedure for the City Commission of the City of Gainesville currently prohibits ex parte communication in connection with any quasi-judicial matter.

**WHEREAS**, the Mayor and City Commission desire to allow ex parte communication and remove the presumption of prejudice from ex parte communications in connection with any quasi-judicial matters as expressly permitted by §286.0115(1), F.S.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE:**

**SECTION 1.** Rule XXI of the rules of the City Commission of the City of Gainesville, Florida is hereby amended to read as follows:

**RULE XXI**

**QUASI-JUDICIAL ACTIONS**

**Part I. Request for Hearing**

**(A) Quasi-Judicial Hearings before the Commission**

The quasi-judicial hearings before the City Commission shall be either formal or informal hearings. A formal quasi-judicial hearing is a hearing where applicants and affected

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1 parties have the rights and responsibilities of a party as set forth in Sections (B) - (D) of  
2 the rules of formal quasi-judicial procedure. An informal hearing is a hearing where the  
3 applicant and public may present testimony for or against a proposal before the Board  
4 without the procedures of a formal hearing.

## 5 (B) Scope of Quasi-Judicial Proceedings

6 A quasi-judicial proceeding, either formal or informal, shall occur as provided by law.

## 7 (C) Selection of Hearing

8 All persons entitled to actual written notice of a matter before the City Commission, that  
9 is quasi-judicial may request a formal hearing before the City Commission by filing with  
10 the Clerk of the Commission the written request before the close of business at least  
11 seven (7) days prior to the City Commission meeting when the matter is scheduled to be  
12 heard. Persons who are not entitled to actual written notice but believe they are an  
13 "affected party", as defined in this rule; may request a formal hearing and determination  
14 of affected party status by filing with the Clerk of the Commission the written request for  
15 a formal hearing and an application for affected party status as provided in Part II of this  
16 rule, before the close of business at least seven (7) days prior to the City Commission  
17 meeting when the matter is scheduled to be heard. Failure to timely file such requests for  
18 a formal hearing shall set the matter for an informal quasi-judicial hearing.

## 19 **Part II. ~~Formal Quasi-Judicial Hearings~~ Ex Parte Communications**

### 20 **A) Ex Parte Communication**

21 Florida Statutes Section 286.0115(1) provides that any person who is not otherwise  
22 prohibited by the Gainesville Charter, statute or ordinance may discuss with any member  
23 of the City Commission the merits of any matter on which the City Commission may take  
24 action. The following procedures for ex parte communications are adopted pursuant to

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1        §286.0115(1), F.S., and are intended to remove the presumption of prejudice arising  
2        from ex parte communications, as follows:

- 3            1. The subject of any oral ex parte communication, together with the identity of  
4            the person, group or entity with whom the communication took place, shall be  
5            disclosed and made a part of the record on file with the Clerk of the  
6            Commission prior to final action on the matter, as further provided in this  
7            Rule.
- 8            2. Any written ex parte communication read by a member of the City  
9            Commission that relates to a quasi-judicial matter pending before the City  
10           Commission, shall be placed in and made a permanent part of the record on  
11           file with the Clerk of the Commission prior to final action on the matter, as  
12           further provided in this Rule.
- 13           3. Members of the City Commission may conduct investigations and site visits  
14           and may receive expert opinions regarding quasi-judicial action pending  
15           before the City Commission. The existence of such investigation, site visit or  
16           expert opinion shall be made a part of the record on file with the City prior to  
17           final action on the matter, as further provided in this Rule.

## 18        **B) Time and Purpose of Disclosure**

19        Disclosure shall occur as provided in Parts III and IV of this Rule. Such disclosures shall  
20        be made a part of the record so that persons with opinions contrary to those expressed in  
21        the ex parte communication are provided a reasonable opportunity to respond to or refute  
22        the ex parte communication.

## 23        **C) Procedure for Disclosure**

24        Members of the City Commission shall disclose ex parte communications by placing on  
25        the record of the pending matter the following:

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- a. all ex parte written communications, including expert opinions, received and read;
- b. all ex parte written responses to such communications;
- c. the subject of all ex parte oral communications, including expert opinions, and the identity of the person, group or entity with whom the communication took place; and
- d. the existence of investigations or site visits.

## **D) Basis of Final Decision**

All decisions of the City Commission in a quasi-judicial matter must be supported by substantial competent evidence in the record pertinent to the proceeding, irrespective of such communications.

## **E) Optional Participation**

This Rule does not require or obligate any member of the City Commission to engage in ex parte communication on any matter and any participation or receipt of ex parte communications in any quasi-judicial matter is purely voluntary and optional.

## **F) Code of Ethics**

Members of the City Commission shall not be subject to Part III of Chapter 112, F.S. for not complying with the requirements of this Part of these Rules.

### **Part H III. Formal Quasi Judicial Hearings**

#### **(A) Order of Presentation; Time Limits**

- (1) The order of presentation, with corresponding time limits for each presentation, are as follows:

	Order	Maximum Time Limit (minutes)
1)	Introduction of the matter by staff	3
*2)	Petitioner	20
*3)	Staff presentation	10
*4)	Affected Party (if any) for (per person)	10
*5)	Affected Party against (if any) against (per person)	10
*6)	Rebuttal (Petitioner/Staff)	5

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- 1 7) Close of presentation by Petitioner, Staff and Affected Parties
- 2 8) Public hearing (per person) 5
- 3 9) Deliberation and vote of the Commission
- 4

5 (2) Cross examination is limited to ten (10) minutes per witness.

6 (3) The time limits set forth in Section (1) may be modified by the City Commission on  
7 its own motion or upon request of a party to the proceedings. Said request shall  
8 detail the modified time desired and the subjects to be discussed during the  
9 additional time. A request for a modification of time should be considered by the  
10 City Commission to assure all parties have an opportunity to participate without  
11 undue repetition and delay.

12 \* **Witnesses may be presented during parts 2-6 of the presentation with cross-**  
13 **examination.**

## 14 (B) **Affected Party Defined; Determination**

15 (1) An affected party is any person who is entitled to actual written notice of a matter  
16 before the Commission.

17 (2) An affected party who is not entitled to actual written notice but who believes that  
18 they have a special interest or would suffer an injury distinct in kind and degree from  
19 that shared by the public at large may request affected party status by filing an  
20 application, as provided in Part I of this rule. The Commission will consider an  
21 application for affected party status prior to the commencement of the hearing. The  
22 decision of the Commission shall be final.

## 23 (C) **Registration of Affected Parties**

24 In order to participate in the formal quasi-judicial hearing, all affected parties shall complete  
25 the form prescribed by the Clerk of the Commission, stating their name and address and  
26 other pertinent information, and whether they support or oppose the matter or matter before  
27 the City Commission. The form shall be delivered to the City Commission's secretary at the  
28 commencement of the hearing.