



**AGENDA**  
**COMMUNITY DEVELOPMENT BOARD MEETING**  
**MARCH 12, 2025 AT 6:00 PM**  
**116 FIRST STREET**  
**NEPTUNE BEACH, FL 32266**

1. **Call to Order and Roll Call**
2. **Pledge of Allegiance**
3. **Board Training:** Sunshine Law, Public Records, Voting Conflicts, & Quasi-Judicial Hearing Training for Local Government Board Members
4. **Article XVIII Nonconforming Lots, Structures, Uses and Signs.**
5. **Subcommittee Reports**

**Historical Review Subcommittee:**

Draft Ordinance "Chapter 2. Administration, Article VII. Boards And Commissions. Division 5. Historical Review Board"

**Code Review Subcommittee:**

6. **Open Discussion**
7. **Adjourn**

Residents and Board Members attending public meetings can validate their parking at no cost by using the parking code

**DD14**

After 5:00 on the date of the meeting, follow these steps:

- Make sure you are parked in a North Beaches public parking space – we can't validate valet parking or parking in private lots.
- To use a kiosk: Press the Start button and then select 2 to enter your plate and the validation code.
- To use the Flowbird app: Tap the nearest yellow balloon and tap "Park here." From the payment screen, select "Redeem a code" at the top. Confirm your information and tap "Purchase" the price will show "Free."

# Sunshine Law, Public Records, Voting Conflicts, & Quasi-Judicial Hearing Training for Local Government Board Members



**Presented by:**

**Paul Waters, Esq.  
Partner, Vose Law Firm LLP**

# Presentation Overview



Today, we'll be covering:

- **Government in the Sunshine (Open Meetings) Law**
- Public Records Law
- Voting Conflicts
- Quasi-Judicial Hearings

# Government in the Sunshine (Open Meetings) Law



# Scope of the Sunshine Law



- Provides right of access to governmental proceedings
- Applies to both elected and appointed boards
- General Rule – All meetings at which official acts are taken or public business is transacted or discussed shall be open and noticed to the public

# Scope of the Sunshine Law



## **Sunshine Law applies to:**

- Any meeting
- Between two or more members of the same board
- When discussing matters that may foreseeably come before that board

## **“Meeting” includes:**

- City Commission meetings and workshops
- Telephone calls and text messages
- Emails and other written correspondence
- Informal discussions or deliberations

# Scope of the Sunshine Law



**There are three basic requirements :**

- (1) Meetings of public boards or commissions must be open to the public
- (2) Reasonable notice of such meetings must be given
- (3) Minutes of the meetings must be taken, promptly recorded and open to public inspection

# Scope of the Sunshine Law



- Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them.

# Scope of the Sunshine Law



- While a board member is not prohibited from discussing board business with staff or a nonboard member, these individuals cannot be used as a liaison to communicate information between board members.
- For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

# Meetings



Meetings must be open to public:

- Location accessible to the public
- Adequate size
- May not discriminate against or restrict access to public

So, meetings subject to the Sunshine Law generally should not be held in private homes, or restaurants where an attendee may feel compelled to order a meal.

# Meetings



- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings.

# Meetings – Right to Public Comment



Newer section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.

# Meetings – Right to Public Comment



Newer section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if:
  - The opportunity occurs at a meeting that is during the decision making process, and
  - is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

# Meetings – Right to Public Comment



Newer section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

# Meetings – Right to Public Comment



Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

- Provide time limits for individuals to address the board.
- Prescribe procedures for allowing representatives of groups or factions to address the board, rather than all members of such groups, at meetings in which a large number of individuals wish to be heard.
- Prescribe procedures or forms for an individual to use to inform the board of a desire to be heard.
- Designate a specified period of time for public comment.

# Penalties



- Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree.
- An unintentional violation may be prosecuted as a noncriminal infraction resulting in a civil penalty up to \$500.

# Penalties



- The Sunshine Law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

# Penalties



- Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law was void *ab initio*.

# Public Records Law



# Scope of the Public Records Act



- Florida's Public Records Act provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- A right of access is also recognized in Article I, section 24 of the Florida Constitution, which applies to virtually all state and governmental entities including the legislative, executive, and judicial branches of government. The only exceptions are those established by law or by the Constitution.

# Scope of the Public Records Act



- Section 119.011(12), Florida Statutes, defines "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

# Scope of the Public Records Act



- The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.

# Scope of the Public Records Act



- All such materials, **regardless of whether they are in final form**, are open for public inspection **unless the Legislature has exempted them from disclosure.**
- There is no **“This is Really Embarrassing!”** exemption from the Public Records Act.

# Electronic Records



- Email messages made or received by public officers or employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption.
- The Attorney General has advised that materials placed on an agency's Facebook page presumably would be in connection with official business and thus subject to Chapter 119, Florida Statutes.

# Providing Public Records



- Section 119.07(1)(a), Florida Statutes, provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records or the custodian’s designee.”

# Penalties



- A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119.

# Penalties



- In addition to judicial remedies, Section 119.10(1)(b), Florida Statutes, provides that a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.

# Voting Conflicts



# Voting Conflicts



- Voting Conflicts Law codified in Section 112.3143

# To Whom Does This Apply?



- “Public Officers,” that is, persons elected or appointed to hold office in an agency, including persons serving on an advisory body
- If you are a member of a collegial body, it applies to you.

# What is a Voting Conflict?



Local elected or appointed officers may not vote on:

- Any measure which would inure to his or her special private gain or loss, or
- Any measure which a public officer *knows* would inure to the special private gain or loss of:
  - A principal by whom he/she is retained
  - A parent organization or subsidiary of a corporate principal by whom the officer is retained
  - A relative
  - A business associate

# Who is a “Principal?”



- An employer
- A client of a legal, accounting, insurance, or other professional practice
- A corporation for which officer serves as a compensated director

# Who is a “Relative?”



- Father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law
- Note: This definition is different than the similar definitions of “relative” in the anti-nepotism and gift laws

# What is a “Business Associate?”



- A person or entity who is carrying on a business enterprise with the public officer, regardless of the form of the business
- Key Question #1– Are they engaging in a common commercial or entrepreneurial pursuit?
- Key Question #2 – Is this a current, ongoing business relationship?

# “Special” Private Gain (or Loss)



- The voting conflicts law does not apply to all situations that might result in gain or loss to the official—the gain or loss must be “special”
- Requires an *economic* benefit or harm that will inure to the officer, his or her relative, business associate, or principal
- What should be considered?

# Special Private Gain or Loss - Considerations



1. What is the size of the affected class?
2. What is the relative benefit or harm when compared to other members of affected class?
3. Is the gain or loss remote or speculative?
4. Is this merely a preliminary or procedural measure?

# Size of the Affected Class

- “Special” gain will depend on size of class of persons who are similarly affected by measure
- $\downarrow$  class,  $\uparrow$  chance of “special gain”
- $\uparrow$  class,  $\downarrow$  chance of “special gain”



# Remote or Speculative



- Is gain or loss so remote or speculative that the measure cannot be said to inure to officer's gain or loss?
- Will hinge on the facts of each individual case



# Preliminary or Procedural



- Some measures are simply procedural or preliminary (to later actions that would result in actual gain or loss)
- Other measures, while procedural in nature, are substantive in effect and will inure to officer's gain or loss



# If You Have a Voting Conflict, What Should You Do?



The officer must:

- (1) abstain from voting;
  - (2) disclose conflict orally prior to the vote; and
  - (3) file a memorandum (Form 8B) within 15 days.
- 
- In addition, appointed local officers must publicly disclose the conflict before participating in discussion of the matter.

# Exceptions



- If the “principal by whom you are retained” is a public agency, you may vote.
- If you are a commissioner of a community redevelopment agency or a one-acre, one-vote officer, you may vote.
- If measure affects your expenses and compensation *as provided by law*, you may vote.

# Related Issues – Voting Requirement



- Section 286.012 requires members of a collegial body to vote when present at a meeting and prohibits abstaining, except when “there is, or appears to be, a possible conflict of interest . . .”
- “If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.”

# Quasi-Judicial Hearings



# Quasi-Judicial Hearings



- Under Florida law, there are times when a board acts in a quasi-judicial manner. That is, the board acts similarly to how a judge might act when hearing a case.
- All matters that come before a board are either considered “legislative” or “quasi-judicial”. The County Attorney or County staff will typically mention that a particular matter is “quasi-judicial” since different rules apply as to those matters.

# Quasi-Judicial vs. Legislative Matters



- Decisions that **set** general policy rather than implement or apply policy are **legislative**.
- Decisions that **apply** an adopted policy are **quasi-judicial**.

# Examples of Quasi-Judicial Matters



- Variances
- Rezoning
- Site Plan approvals
- Special Exceptions
- Conditional Uses
- Development Approvals

# Examples of Legislative Matters



- Amendments to the Comprehensive Plan
- Amendments to the Code of Ordinances
- Amendments to the Land Development Code
- Budget matters
- Many resolutions
- Purchasing decisions
- Vacation of rights of way
- Donations

# Ex Parte Disclosures



- It is a best practice for board members to disclose ex parte communications at quasi-judicial hearings. At the beginning of a hearing, all board members should disclose any contacts or information the member has received prior to the hearing – including emails received, conversations had and site visits, or anything else which might have provided information outside of the meeting on the subject.
- Board members may NOT use information not disclosed at the hearing to be a basis for, or to effect, their vote at the hearing.

# Overview of Quasi-Judicial Hearings



- Quasi-judicial proceedings are less formal than proceedings before a circuit court but are more formal than some other types of meetings and must follow basic standards of notice and due process.
- Decisions must be made based on **competent substantial evidence**.
- Only competent, substantial, fact-based testimony or evidence can be considered by the Board in its deliberation and voting on these items.
- You must apply the applicable law (comprehensive plan, LDRs) to the facts and evidence presented in the hearing.

# What Can Be Considered in a Quasi-Judicial Hearing

- Pure speculation or mere opinion, not based on competent facts, cannot legally be considered by the board members in weighing their decision.
- Lay testimony with fact-based support may be considered competent and substantial evidence.
- **IMPORTANT** – A quasi-judicial hearing cannot be a “popularity contest”.
- The decision cannot be based on the number of people who are at the meeting (or who sent emails) who are either for or against a proposal.

# If Contemplating Denial, State Reason on Record



- If the Board is contemplating a denial of a quasi-judicial matter, the maker of the motion, and others in support of denial, should state their reasons for denial on the record:
  - Competent substantial evidence presented in the hearing supporting denial.
  - Relevant law (comprehensive plan/LDR provisions) supporting denial.

# Sunshine Law, Public Records, Voting Conflicts, & Quasi-Judicial Hearing Training for Local Government Board Members



## QUESTIONS?

## ***ARTICLE XVIII. NONCONFORMING LOTS, STRUCTURES, USES AND SIGNS<sup>1</sup>***

### **Sec. 27-701. Reserved.**

Editor's note(s)—Ord. No. 2022-03, § 1(Exh. A), adopted Aug. 1, 2022, deleted § 27-701 entitled "Intent," which derived from: Ord. No. 2004-10, § 1, adopted Oct. 4, 2004; and Ord. No. 2017-24, § 1, adopted Nov. 6, 2017. See. § 27-703 for similar provisions.

### **Sec. 27-702. Generally.**

Within the districts established by this Code, there exist lots, structures, uses, and signs which existed before the adoption of this Code or previous amendments, but which would be prohibited or restricted under the provisions of this Code or future amendments. This article prescribes how these nonconformities may be continued, terminated, or made to comply with this Code.

(Ord. No. 2004-10, § 1, 10-4-04; Ord. No. 2010-14, § 55, 9-7-10; Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

### **Sec. 27-703. Purpose and intent.**

The provisions of this article have been written to achieve the following purposes and intentions of the city council:

- (1) An existing lot that qualifies as a nonconforming lot of record may be used for the purposes allowed in its zoning district (see section 27-705).
- (2) An existing structure that is nonconforming due to the size of the structure or its placement on the lot, or due to noncompliance with other regulations in this chapter such as lot coverage or allowable signage, may be expanded only in compliance with this Code (see section 27-706).
- (3) An existing use that is not permitted in its zoning district may not be expanded (see section 27-708).
- (4) Abandoned signs must be removed (see section 27-709).

(Ord. No. 2004-10, § 1, 10-4-04; Ord. No. 2017-24, § 1, 11-6-17; Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

### **Sec. 27-704. Definitions.**

Refer to article I for definitions.

(Ord. No. 2004-10, § 1, 10-4-04)

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<sup>1</sup>Editor's note(s)—Ord. No. 2004-10, § 1, adopted Oct. 4, 2004, amended Art. XVIII in its entirety to read as herein set out. Former Art. XVIII, §§ 27-701—27-707, pertained to similar provisions, and derived from Ord. No. 91-1-5, § 2, 5-6-91; Ord. No. 1994-15, §§ 3—6, 8-1-94; Ord. No. 2002-13, § 1, 11-4-02.

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## **Sec. 27-705. Nonconforming lots of record.**

- (a) Lot of record means a parcel of land, the deed or plat of subdivision (which has been approved by the City of Neptune Beach) of which has been recorded in the Office of the Clerk of the Circuit Court of Duval County, Florida.
- (b) Nonconforming lot of record means any lot of record recorded prior to January 1, 1991 that does not conform to the lot area or width requirements established for the zoning district in which said lot is located. A lot of record recorded after January 1, 1991, will also be a nonconforming lot of record if the lot area or width requirements are later changed such that the lot no longer complies with the zoning district in which said lot is located.
- (c) Special requirements for lots in the R-3 zoning district are provided in section 27-242.
- (d) Special requirements for lots in the R-4 zoning district are provided in section 27-243.
- (e) Except in the R-3 and R-4 zoning districts, nonconforming lots of record may be developed and used for any use permitted in the district, provided:
  - (1) That residential uses must comply with density restrictions imposed by the adopted future land use map (see section 27-242).
  - (2) That such lots shall have a minimum width throughout their length of at least forty (40) feet; and
  - (3) That any new development shall conform to the required setbacks, lot coverage limitations, and building height limitations for the district in which it is located.
- (f) Wherever there exists a structure which by itself or with accessory structures exists on a parcel containing more than one (1) nonconforming lot of record, said building site shall not henceforth be reduced or diminished in dimension or area below the minimum requirements set forth in this chapter for the district in which it is located (regardless of whether the structure or accessory structures have been demolished, or removed therefrom, in whole or in part).

(Ord. No. 2004-10, § 1, 10-4-04; Ord. No. 2017-24, § 1, 11-6-17; Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

## **Sec. 27-706. Nonconforming structures.**

- (a) Nonconforming structure means any structure that does not conform with the provisions of the zoning district where the structure is located due to noncompliance with the dimensional standards in chapters 27 or 30.
- (b) A nonconforming structure may remain indefinitely, subject to the following limitations:
  - (1) The nonconforming structure may not be physically expanded in any manner that would increase the nonconformity.
  - (2) The nonconforming structure may not be physically expanded in any manner that would violate any additional physical standards in this Code.
  - (3) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building, if a building permit was issued prior to the adoption or amendment of this Code causing the nonconformity; provided, that construction commences within six (6) months of issuance and continues in good faith.
  - (4) If characteristics of use are made nonconforming by this chapter as adopted or amended, no change shall thereafter be made in such characteristics of use which increases nonconformity with the

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regulations set out in this chapter; however, changes may be made that do not increase or that decrease such nonconformities.

- (c) A nonconforming structure will have its nonconforming status terminated, and shall not thereafter be used, repaired, or rebuilt except in conformity with the regulations of the district in which it is located, under the following conditions:
- (1) If the principal structure has been destroyed or is substantially damaged, as that term is defined in section 27-15.
  - (2) Whenever the use of a nonconforming structure has been discontinued, as evidenced by the lack of use or a vacancy for a period of at least twelve (12) months, or whenever a conforming use is substituted, such nonconforming use shall not thereafter be re-established; and the future use shall be in conformity with the provisions of the district in which it is located.
  - (3) If a nonconforming structure or portion thereof becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official of the city to be an unsafe building, it shall not thereafter be repaired or rebuilt except in conformity with the regulations of the district in which it is located.
  - (4) All repairs and rebuilding must also comply with:
    - a. The Florida Building Code (see chapter 8, article II); and
    - b. The International Property Maintenance Code (see chapter 8, article III), which includes provisions for unsafe conditions and unsafe structures.

(Ord. No. 2004-10, § 1, 10-4-04; Ord. No. 2009-04, § 1, 6-1-09; Ord. No. 2017-24, § 1, 11-6-17; Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

### **Sec. 27-707. Reconstruction of residential buildings when destroyed or substantially damaged.**

- (a) Notwithstanding any other provisions of this Code, a residential building that is nonconforming as to its structure or use may be reconstructed if it is destroyed or substantially damaged, as defined in section 27-15, provided that:
- (1) The reconstruction does not result in an increase in nonconformity of a lot area, yards, or setbacks;
  - (2) The number of dwelling units in such reconstructed structure does not exceed the number of units in existence prior to the destruction or substantial damage; and
  - (3) The repair or reconstruction is substantially completed within twenty-four (24) months of the date of such destruction or substantial damage. A twelve-month extension may be granted by the city manager or designee due to extenuating circumstances.

(Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

### **Sec. 27-708. Nonconforming uses.**

- (a) Nonconforming use means any use of a structure, or use outside a structure, that does not conform with the uses allowed for the parcel's zoning district or with density restrictions imposed by the adopted future land use map.
- (b) A nonconforming use may not be extended or enlarged:

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- (1) By having any buildings or structures replaced or expanded in physical size; or
  - (2) By having an additional structure erected for the nonconforming use; or
  - (3) By increasing the residential density; or
  - (4) By increasing the land or water area for the nonconforming use.
- (c) Where open land, i.e., improved, or unimproved vacant land, is being used for a nonconforming use, such use shall not be extended or enlarged either on the same or adjoining property.

(Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

### **Sec. 27-709. Abandoned signs and removal.**

- (a) Abandoned signs shall be removed by the owner or property lessee within thirty (30) days of the cessation of business or activity conducted on the property where the sign is located.
- (b) A business shall be considered to have ceased or be inactive where the property: (1) is vacated; (2) no longer has a valid certificate of occupation or business tax receipt; (3) no longer provides the service or product advertised on the sign; (4) has no active utility service account(s); or (5) displays a blank sign.
- (c) Any sign which pertains to a business or occupation which is no longer using the property on which the sign is situated, or which relates to a time or event that no longer applies, constitutes abandonment, as well as false advertising or false identification.
- (d) A sign or sign structure shall also be considered abandoned or discontinued when its owner fails to operate or maintain a sign for a period of sixty (60) days or longer after receipt of notice from the city manager or designee of apparent abandoned status.
- (e) Failure to remove an abandoned sign shall result in a civil fine of one hundred (\$100.00) dollars per day of non-removal after notice from the city manager or designee and shall constitute a lien upon the property upon which the sign is affixed, subject to enforcement and collection, as provided in this Code and the Florida Statutes.

(Ord. No. 2007-15, § 1, 10-1-07; Ord. No. 2015-02, § 2, 3-2-15; Ord. No. 2022-03, § 1(Exh. A), 8-1-22)

Editor's note(s)—Formerly codified as § 27-707, which was renumbered by Ord. No. 2022-03, as herein set out.

### **Secs. 27-710—27-735. Reserved.**

SPONSORED BY:

ORDINANCE NO. 2025-04

MAYOR CORI BYLUND  
CHAIRPERSON

**A BILL TO BE ENTITLED**

**AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA, AMENDING CHAPTER 2. ADMINISTRATION, ARTICLE VII. BOARDS AND COMMISSIONS BY CREATING DIVISION 5. HISTORICAL REVIEW BOARD; PROVIDING CODIFICATION, CONFLICTS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 2, Article VII of the City of Neptune Beach's Code of Ordinances establishes Boards and Commissions; and

**WHEREAS**, it is the Intent of this Ordinance to create a Historical Review Board to make Determinations of Historical Significance and to issue Certificates of Appropriateness; and

**WHEREAS**, it is the intent of this Ordinance that applicants for Development Permits may submit a Certificate of Appropriateness based on a Determination of Historical Significance to request an exception to certain requirements found in Chapter 27, Article IV, related to setbacks, lot coverage, floor area ratio and standards particular to the RC Overlay of the Unified Land Development Regulations; and

**WHEREAS**, it is the intent of this Ordinance to provide procedural due process to all applicants and interested parties for Determination of Historical Significance and issuance of Certificates of Appropriateness.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL ON BEHALF OF THE PEOPLE OF THE CITY OF NEPTUNE BEACH, FLORIDA that:**

**SECTION 1.** Chapter 2., Article VII of the Code of Ordinances, City of Neptune Beach, Florida is hereby amended to read as follows: (~~strikethrough~~ text shall mean deletions and underlined / highlighted text shall mean additions):

**DIVISION 5. HISTORICAL REVIEW BOARD**

**Sec. 2-492. – Established.**

A Historical Review Board for the City of Neptune Beach, Florida, is hereby established. The Historical Review Board may be dissolved by a majority vote of City Council at any time, for any reason and members of the Board serve at the will of the City Council and may be removed with or without cause by a majority vote.

## **Sec. 2-493. Generally**

- (a) A Certificate of Appropriateness shall be submitted for review and approval for any Development Permit request for exterior modifications or site work performed on a Historically Significant Property.
- (b) A Certificate of Appropriateness and a Determination of Historical Significance is nontransferable. Both are unique to the applicant and shall be automatically void upon the sale or change of ownership of the subject property. The Determination of Historical Significance shall not inure to the benefit of the subsequent property owners unless said future property owners apply for such designation as prescribed herein. The City may revoke a Certificate of Appropriateness or a Determination of Historical Significance upon the change in characteristics of the subject property. For example, and not to be meant as an all-inclusive list of examples: changing the exterior historical character or aesthetics of the property, changing the footprint of the structures on the property, changing the use of the property, or violating any provision of the Code of Ordinances or of the elements that lead to the Historical Review Board's final determination.

## **Sec. 2-494. Definitions**

*Certificate of Appropriateness* is a designation required to apply for a Development Permit for any new construction, alteration, relocation, or demolition on a property with a Determination of Historic Significance

*Crime of Moral Turpitude* is any offense that violates the community standards of honesty and good morals including but not limited to fraud, theft, misrepresentation, and violence.

*Determination of Historic Significance* is a finding that a structure is at least fifty (50) years old and retains the physical characteristics for the time the structure was built and otherwise meets the requirements found in Section 2-499.

*Development Permit* has the same meaning as the definition found in Chapter 27, Section 27-15 of the Unified Land Development Code of the City of Neptune Beach.

*Quasi-Judicial hearing* involves a process where the Board acts in a capacity similar to that of a court. This type of hearing is characterized by the following elements: basic due process requirements such as notice and hearing and right to present testimony, evidence and cross examine witnesses; application of existing policies to specific facts, rather than creating new policies. This means the decision impacts a limited number of persons or property owners and is based on distinct alternatives presented at the hearing; public participation and reviewability of final decisions by petition for writ of certiorari to the circuit court. The circuit court's review of quasi-judicial decisions is confined to: (1) whether procedural due process is accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence.

**Sec. 2-495. Composition, qualifications and terms of office.**

- (a) The Historical Review Board shall consist of five (5) members, at least three (3) of whom shall be residents of the City of Neptune Beach. A Quorum shall consist of three members. All motions shall be approved by majority vote. The qualifications for membership on the Board shall be a person who possesses one of the following skill set, professional degrees and experience:
- 1) An Architect or Engineer licensed under Chapters 471 or 481, Florida Statutes with verifiable experience in rehabilitating historic residential or commercial structures;
  - 2) A teacher or professor with verifiable experience in the fields of history, architectural history, historic landscapes or art history;
  - 3) A planner or urban designer with a bachelor's degree in planning or closely related field, with course work or verifiable experience in historic preservation;
  - 4) A real estate sales professional licensed under Chapter 475, Florida Statutes with verifiable experience in transactions involving historic properties;
  - 5) A licensed attorney in the State of Florida;
  - 6) A licensed contractor under Chapter 489, Florida Statutes, with verifiable experience rehabilitating historic residential or commercial structures; or
  - 7) Consideration will be given to any of the above professionals who holds an equivalent license in another state, or that has retired.
  - 8) Any licensed or retired professional selected for membership on the Historical Review Board shall not have a history of discipline from the licensing agency.
- (b) Any current or prior violation of the Code of Ethics for Public Officers and Employees found in Chapter 112, Florida Statutes, prior felony criminal conviction or prior conviction, or plea of no lo contendere, regardless of adjudication, of any crime involving Moral Turpitude shall disqualify any person from being appointed or serving as a member of the Historical Review Board.
- (c) All members of the Historical Review Board shall be appointed by the Mayor and confirmed by the City Council.
- (d) Members of the Historical Review Board shall elect a chair and a vice-chair for a one-year term each. The chair shall preside at all meetings and shall have the right to vote. The vice-chair shall preside in the absence of the chair.
- (e) Initial Members of the Historical Review Board shall serve staggered terms. Three of the initial Board Members shall be appointed for terms of three (3) years. Two of the initial Board members shall be appointed for terms of two (2) years. Members may

be reappointed for one additional consecutive two-year term. If reappointed, Members may be eligible to reapply for the Board after one year and may serve an additional term of three (3) years. Subsequent Members shall be appointed for terms of three (3) years. In the event the City is unable to appoint five (5) members, the Board may conduct business with three (3) duly appointed members until such time as a full Board is appointed.

- (f) Members previously appointed shall continue to serve until such time as they are replaced or reappointed
- (d) All members of the Historical Review Board shall serve without compensation.
- (e) Whenever vacancies shall occur, a person qualified shall be appointed by the Mayor and approved by the City Council to fill such vacancies for the unexpired term.
- (f) An employee of the City may not serve as a member of the Historical Review Board.
- (g) Members of the Historical Review Board are expected to attend each committee meeting in person. More than three unexcused absences in a rolling twelve-month period shall be grounds for removal for cause.

#### **Sec. 2-496. Meetings and Board procedures.**

- (a) The Historical Review Board shall adopt rules of procedure to carry out its purposes. All rules must conform to this Code, other city ordinances, and state law and shall be filed in the office of the city clerk.
- (b) All meetings shall be conducted in a public building and shall be open to the public.
- (c) The Historical review Board shall meet each calendar month, unless cancelled by the board or its chair; and more often at the call of the chair, the board, or the city council.
- (d) Notice of meetings of the Historical Review Board shall be given as provided for in this Code and by state statute.
- (e) The Historical Review Board shall keep minutes of its proceedings, indicating the attendance of each member, and the decision of each member on every question. The minutes shall be signed by the chair, or in his absence the vice-chair and approved by the board at a future meeting.
- (f) Statement of the facts for Determination of Historical Significance and issuance of Certificate of Appropriateness by the Historical review Board shall be included in the minutes of each case heard or considered by it.
- (g) The Historical Review Board shall set a reasonable time for the hearing of administrative appeals and shall give notice thereof to the person making the appeal and to the officer from whom the appeal is taken.

#### **Sec. 2-497. Application Requirements for Determination of Historical Significance**

- (a) The owner or developer of a property shall submit a completed application, as described below, to the office of the city manager or designee.
- (b) The city manager or designee shall review the application within five (5) working days of its submission to determine if it is complete. When the application is determined to be complete within the requirements set forth herein, the city manager or designee shall forward the application to the Historical Review Board for consideration.
- (c) All applications for Determination of Historical Significance shall be filed with the City using the forms approved and provided by the city staff.
- (d) The application shall be accompanied by payment of the official filing fee as set by resolution of the City Council.
- (e) The application shall include the following:
  - (1) Name and address of the owner and agent, along with notarized signatures of the same;
  - (2) Address and legal description of the property, a copy of the deed and an accurate survey;
  - (3) A description of the proposed historical significance of the property as more fully described in 2-495 (b);
  - (4) An eight and one-half (8½) inches by eleven (11) inches overhead site plan drawn to an appropriate scale showing the location of all existing and proposed improvements to the property and including all setback measurements from property lines. The plot plan, as submitted or modified by the applicable board, shall be binding upon the applicant if the determination of historical significance is granted;
  - (5) An eight and one-half (8½) inches by eleven (11) inch copy of the relevant area of the Duval County Property Ownership Map, to be provided by the building official's office as part of the application packet. Said copy shall show the exact location of the land proposed for the Determination of Historical Significance, along with all of the properties requiring notice as described in subsection 27-500(c)(2);
  - (6) A list of the addresses of all properties, as described in section 2-500(c)(2);
  - (7) Photographs of property as it exists

#### **Sec. 2-498. Application Requirements for Issuance of Certificate of Appropriateness**

- (a) Upon the Determination of Historical Significance, the owner of such property may apply for a Certificate of Appropriateness from the Historical Review Board subject to the requirements contained in this Section.

- (b) The owner or developer of a property shall submit a completed application for Certificate of Appropriateness as described below, to the office of the city manager or designee.
- (c) The city manager or designee shall review the application within five (5) working days of its submission to determine if it is complete. When the application is determined to be complete within the requirements set forth herein, the city manager or designee shall forward the application to the Historical Review Board for consideration.
- (d) All applications for a Certificate of Appropriateness shall be filed with the City using the forms approved and provided by the city staff.
- (e) The application shall be accompanied by payment of the official filing fee as set by resolution of the City Council.
- (f) The application shall include the following:
  - (1) Name and address of the owner and agent, along with notarized signatures of the same;
  - (2) Address and legal description of the property.
  - (3) A description of the proposed work to be performed on the historically significant property.
  - (4) An estimate of the timeline of the proposed work.
- (g) The applicant shall complete an application form provided by the City. The City shall determine when an application is complete and may request additional information when such application is determined to be incomplete.
- (h) In considering an application for a Certificate of Appropriateness for alterations, new construction, demolition, or relocation, the Historic Preservation Board shall be guided by the following general criteria:
  - (1) The effect of the proposed work on the historically significant property upon which such work is to be done;
  - (2) The extent to which the historic, architectural, or archaeological significance, architectural style, design, arrangement, texture and materials of the landmark or the property will be affected.
  - (3) Whether the plans may be carried out by the applicant within a reasonable period of time.
- (i) Applications for Certificates of Appropriateness for alterations shall be considered by the Historic Review Board in accordance with the following additional criteria, which are based on the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings:

- (1) Every reasonable effort shall be made to use a property for its originally intended purpose, or to provide a compatible use for a property that requires minimal alteration of the building structure, or site.
  - (2) The distinguishing original qualities or character of a building, structure, or site shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features shall be avoided when possible.
  - (3) Each building, structure, and site shall be recognized as a product of its own time. An alteration which has no historical basis and which seeks to create an earlier appearance shall be discouraged.
  - (4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
  - (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site, shall be treated with sensitivity.
  - (6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture, and other visual qualities. However, technologically advanced materials shall be considered and used as replacement alternatives. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
  - (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall be not undertaken.
  - (8) Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration, or reconstruction project.
- j. All work performed pursuant to the issuance of a Certificate of Appropriateness shall conform to the requirements of such certificate. It shall be the duty of the City to inspect from time to time any work being performed pursuant to such certificate to assure such compliance.
- k. Any Certificate of Appropriateness which has been approved pursuant to the provisions of this Section shall expire 12 months from the date of issuance if the work authorized is not commenced within this period. Further, such certificate shall

expire if the work authorized is not completed within five years of the date of issuance, unless otherwise extended by the Historical Review Board.

**Sec. 2-499. Hearing Procedures; Powers and Duties; Determination of Historical Significance and Issuance of Certificate of Appropriateness**

- (a) The Historical Review Board shall consider applications for residential or commercial properties. Upon application and Determination of Historical Significance, the Historical Review Board may consider applications for the issuance of a Certificate of Appropriateness.
- (b) The Historical Review Board may make a Determination of Historical Significance for properties that are at least fifty (50) years old and retain the physical characteristics for the time the structure was built. The fifty (50) year old requirement may be waived if the property is determined to be a Florida Heritage Site as determined by the Florida Department of State's Historical Division of Historical Resources. In addition, the Historical Review Board shall find at least one of the following criteria for the historical designation:
  - 1. Have the Florida Heritage Landmark status as determined by the Florida Department of State's Historical Division of Historical Resources by being on the Division's Florida Register of Heritage Landmarks;
  - 2. Be listed on the National Register of Historic Places by the United States Department of the Interior's National Parks Service, Office of Cultural Resources;
  - 3. Have an association with a significant historical event that made a significant contribution to the broad patterns of our history;
  - 4. Have regional significance in areas like architecture, having retained those physical characteristics that were present during the period which the structure was built and that are unique to the City of Neptune Beach. Examples include but are not limited to the two-story homes located along First Street with sleeping porches or the mid-century modern homes west of Third Street that were constructed in a manner to capture ocean breezes;
  - 5. Have an association with the lives of people significant in our past. A non-exhaustive list of examples of significant people in our past includes those that contributed to an important historical event, or who were noted artists, actors, authors, performers, musicians, soldiers, professional athletes, politicians, scholars, religious figures, social activists or newsworthy persons;
  - 6. Embody distinctive characteristics of a type, period, or method of construction or design and represent the work of a master or notable or renowned architect or builder, or possessing high artistic values; or
  - 7. Have the potential to yield information important in prehistory or history.
- (c) Upon a Determination of Historical Significance, the Historical Review Board may consider an application for the issue a Certificate of Appropriateness which the applicant may use to obtain a Development Permit which may allow exceptions to any requirement found in Chapter 27, Article IV, related to setbacks, lot coverage,

floor area ratio and standards particular to the RC Overlay of the Unified Land Development Regulations.

- (d) No use shall be made of the property which is inconsistent with the historic qualities of the property. Any restoration or repair of the property deemed historically significant to the architectural features of the exterior shall be retained consistent with the historic qualities of the property. The property deemed historically significant shall not be permitted to deteriorate and shall be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.
- (e) The Determination of Historic Significance shall only be for the purpose of applying for a Certificate of Appropriateness and shall convey no other rights, interests or title to the owner of the subject property from the City.
- (f) Issuance of a Certificate of Appropriateness shall only be used to apply for exception to any requirement found in Chapter 27, Article IV, related to setbacks, lot coverage, floor area ratio and standards particular to the RC Overlay of the Unified Land Development Regulations and shall be used for no other purpose nor shall it be binding upon the City for any other purpose or convey any rights or remedies not expressly enumerated herein.
- (g) Neither Determination of Historical Significance nor an issuance of a Certificate of Appropriateness shall guarantee that an exception to any requirement found in Chapter 27, Article IV, related to setbacks, lot coverage, floor area ratio and standards particular to the RC Overlay of the Unified Land Development Regulations will be granted. Hearings for request for Determination of Historical Significance and an issuance of a Certificate of Appropriateness shall be quasi-judicial in nature and the Historical Review Board may make determinations based on other considerations such as compatibility with the City of Neptune Beach's Charter, Code of Ordinances, Unified Land Development Code and Comprehensive Plan. Any Determination of Historical Significance and issuance of Certificate of Appropriateness must be to protect the unique historical qualities of the City of Neptune Beach.
- (h) Any final decision of the Historical Review Board of historical significance and issuance of Certificate of Appropriateness may be appealed by an applicant, owner or substantially impacted person residing within 300-foot of the subject property to City Council within 30-days of its rendering or it shall be deemed final. Any decision of the City Council may be appealed to by an applicant, owner or substantially impacted person residing within 300-foot of the subject property to a court with competent jurisdiction within 30-days of its rendering or it shall be deemed final. After receiving notice of hearing, a substantially impacted person residing within 300-feet of the subject property lacks standing to appeal if such person was not present at the hearing.
- (i) The City may enforce any provision related to Determinations of Historical Significance or issuance of a Certificate of Appropriateness through any means

allowed by law including but not limited to those remedies found in Chapter 162, Florida Statutes and any other available civil or injunctive relief.

**Sec. 2-500. - Notice requirements for Hearings on Applications to Determine Historical Significance and Issuance of Certificates Of Appropriateness.**

- (a) Notice indicating the time and place of the quasi-judicial public hearing shall be posted in two (2) places in the city, one of which shall be in the front yard of the subject property, facing the street on which the property is addressed, and one (1) of which shall be at city hall on the public notice board, for at least ten (10) days immediately prior to the quasi-judicial public hearing. Such notice shall contain the address or location of the property and the nature of the application.
- (b) The City shall ensure advertised notice is printed in a newspaper of general circulation within the City of Neptune Beach at least ten (10) days prior to the quasi-judicial public hearing before the Historical Review Board. The advertised notice shall state the date, time, place of the quasi-judicial public hearing, case number, and shall contain the address of the property and the nature of the application.
- (c) At least ten (10) days prior to the quasi-judicial public hearing, the City shall give notice of the quasi-judicial public hearing before the Historical Review Board by U.S. Mail to the following:
  - (1) The property owner and the applicant if different from the owner; and
  - (2) The owner(s), as listed in the current Duval County Tax Assessor's records, of each property within a three-hundred-foot radius of the boundary of the subject property.
- (d) If any person described in this Section does not contest the issue of proper notice within thirty (30) days from the date the Historical Review Board renders final action on a Determination of Historical Significance or issuance of Certificate of Appropriateness, then notice shall be deemed to be in compliance with this section.

**SECTION 2: Codification.** The provisions of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of Neptune Beach, Florida* and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Three, Four, Five, and Six shall not be codified.

**SECTION 3. Conflict.** All ordinances, resolutions, official determinations, or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this ordinance are repealed to the extent inconsistent herewith.

**SECTION 4. Severability.** If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which

shall remain in full force and intact.

**SECTION 5. Effective Date.** This ordinance shall immediately take effect upon second reading and approval.

**(SIGNATURE AND ADOPTION PAGE FOLLOWS)**

**VOTE RESULTS OF FIRST READING: (Date \_\_\_\_\_)**

|                           |       |
|---------------------------|-------|
| Mayor Cori Bylund         | _____ |
| Vice Mayor Nia Livingston | _____ |
| Councilor Josh Messinger  | _____ |
| Councilor Brent Rogers    | _____ |
| Councilor Tim Horvath     | _____ |

**VOTE RESULTS OF SECOND READING: (Date \_\_\_\_\_)**

|                           |       |
|---------------------------|-------|
| Mayor Cori Bylund         | _____ |
| Vice Mayor Nia Livingston | _____ |
| Councilor Josh Messinger  | _____ |
| Councilor Brent Rogers    | _____ |
| Councilor Tim Horvath     | _____ |

\_\_\_\_\_  
Cori Bylund, Mayor

ATTEST:

\_\_\_\_\_  
Catherine Ponson, City Clerk

Approved as to form and content:



\_\_\_\_\_  
Paul Waters, City Attorney