

RESOLUTION 2022-_____

A RESOLUTION AMENDING SECTION 10(N) OF RESOLUTION 2021-14640 CONTAINING THE RULES OF PROCEDURE FOR CITY OF NAPLES CITY COUNCIL MEETINGS, AS ADOPTED AND AMENDED, TO AMEND PROCEDURES RELATED TO APPEALS FROM THE DESIGN REVIEW BOARD DECISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Naples City Council, as the duly elected governing body for the City of Naples holds regularly scheduled public meetings to discuss, review and act upon items of concern, which affect the residents of the City; and

WHEREAS, Exhibit A of Resolution 2021-14640, as previously amended by Resolutions, 13-13267, 15-13710, 16-13801, 18-14148, and 21-14600, currently sets forth the Rules of Procedure for the City Council, including procedures applicable to the Design Review Board when sitting as the Board of Appeals;

WHEREAS, the Naples City Council desires to amend Section 10(N) of its current rules and procedures related to appeals of decisions by the Design Review Board for purposes of consistency with recent changes to Section 2-477 of its Code of Ordinances; and

WHEREAS, it is in the best interests of the residents of the City of Naples to adopt and amend the City Council's Rules of Procedure;

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

Section 1. That the above "Whereas" clauses are incorporated by reference as if stated herein in their entirety.

Section 2. That the City Council hereby amends Section 10(N) of Exhibit A containing the Rules of Procedure of the City Council, City of Naples as adopted by Resolution 21-14640, as amended. A copy of the revisions to Section 10(N) is attached hereto and incorporated herein by this reference as Exhibit A.

Section 3. That this resolution will take effect immediately upon adoption of Ordinance 2022-_____, upon Second Reading.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, THIS 15TH DAY OF JUNE, 2022.

Attest:

Patricia L. Rambosk, City Clerk

Teresa Lee Heitmann, Mayor

Approved as to form and legality:

Nancy Stuparich, City Attorney

Date filed with City Clerk: _____

EXHIBIT A

N. Design Review Board Appeals. The following procedures shall apply when the City Council reviews appeals from decisions by the Design Review Board (“DRB”):

- i. The appeal is a de novo review of the Petition as presented to the DRB. Any ex parte communication or conflict of interest shall be disclosed as provided in Resolution 95-744 at the beginning of the public hearing. Council members shall confirm on the record that no opinion has been formed regarding the merits of the appeal, they have no bias towards any of the participants and their vote shall be based on the evidence and testimony presented during the public hearing.
- ii. At the beginning of the public hearing, the mayor shall announce the time that has been allocated for presentations by the Appellant(s), DRB Petitioner and city staff, which shall not be less than 20 minutes each. Any request for allocation of additional time shall be made at the beginning of the public hearing and shall require the vote of city council.
- iii. The mayor shall ask whether council members have reviewed the agenda materials and if there is a motion to include the agenda materials in the record for the appeal.
- iv. The Appellant(s) is the Petitioner in the appeal. The burden of proof is initially on the Appellant(s) to demonstrate by competent and substantial evidence that the Appellant(s) has standing to file the appeal in accordance with Section 2-477. Following the Appellant(s) presentation, the city council may ask questions of the Appellant and city staff.
- v. If the city council determines Appellant(s) have standing to file the appeal or if the city council reserves ruling on the standing issue until the conclusion of the public hearing, the burden shifts to the DRB Petitioner, a property owner or his or her representative, in accordance with Sections 2-475 through 2-477, to demonstrate by competent and substantial evidence that the criteria in Section 50-241 is satisfied. The city council may ask questions of the DRB Petitioner.
- vi. City council may next ask city staff to make a presentation and respond to any questions from the city council.
- vii. Next Appellants shall have an opportunity to present their case. Following the presentation of their case, Appellants shall have an opportunity to cross examine the DRB Petitioner and city staff as well as any witnesses appearing on behalf of the DRB Petitioner.
- viii. Next the DRB Petitioner shall have an opportunity to cross-examine the Appellant(s), any witnesses appearing on behalf of the Appellants and city staff.
- ix. The mayor shall next ask if there are any members of the public who wish to provide comment. Comment from the public shall be limited to 3 minutes, unless an extension of time is requested at the end of the 3 minutes and granted by the mayor.
- x. Rebuttal and closing comments shall follow first from the Appellant(s), DRB Petitioner, and city staff. Rebuttal and closing comments should not exceed 10 minutes each.

- xi. The mayor shall close the public hearing and request discussion from the city council including a motion to approve, deny, or approve with conditions the DRB Petition.
- xii. The record before the city council when reviewing an appeal of a DRB decision shall consist of submittals provided by the DRB Petitioner, Appellants or city staff in advance of the distribution of the agenda for the public hearing or any supplements distributed by city staff prior to the public hearing. Any additional documents presented during the public hearing may be accepted as part of the record at upon an affirmative vote by the city council after the public hearing has ended.
- xiii. Any procedures in Paragraphs A-M of Section 10, which are not otherwise in conflict with Paragraph N, shall apply in DRB appeals.

N. Design Review Board Appeals. The following procedures shall apply when the city council reviews appeals from decisions by the Design Review Board ("DRB"):

- i. The appeal is a review of the DRB decision based upon the record upon which the DRB rendered its decision. Any ex parte communication related to the appeal or conflict of interest shall be disclosed as provided in Resolution 95-744 at the beginning of the public hearing. Council members shall also confirm on the record that no opinion has been formed regarding the merits of the appeal, they have no bias toward any of the participants and their vote shall be based on the evidence and testimony presented during the public hearing.
- ii. In addition, at the beginning of the public hearing, anyone intending to speak shall be sworn in. The mayor shall announce the time that has been allocated for presentations, rebuttal and closing with approval by a majority of city council. Any request for allocation of additional time shall be made at the beginning of the public hearing and shall require a majority vote of city council.
- iii. The city council shall first determine if the appellant(s) has standing before the appellant(s) begins presentation of the merits of the appeal. If it is unclear based on the information provided by the appellant(s), the city council shall direct questions to the appellant(s). Thereafter, a finding should be made by motion regarding the appellant(s)' standing to present the appeal. The city council may reserve ruling on the standing issue until the conclusion of the public hearing.
- iv. The order of the oral presentation of the appeal shall be determined by the mayor. The public shall be afforded an opportunity for comment. Any comments from the members of the public shall be limited to 3 minutes. Thereafter, there shall be rebuttal and closing comments as determined by city council.
- v. The mayor shall close the public hearing. Thereafter, the city council may ask questions of individuals providing testimony before rendering a decision. Any council member may make a motion to approve, deny, or remand the DRB decision with directions to the DRB for further consideration.
- vi. The record before the city council when reviewing an appeal of a DRB decision shall at a minimum consist of: 1) a copy of the agenda materials submitted to the DRB; 2) the DRB decision; 3) timely submittals provided by the DRB petitioner/property owner, appellant(s), city staff, or from the public, including but not limited to a transcript

of the DRB hearing. All materials for inclusion in the record must be received no later than 7 days prior to the date of the hearing of the appeal. At the request of a majority of city council, a video of the DRB hearing may be viewed during the DRB appeal.