

ORDINANCE NO. 17-____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING SECTION 2-99 OF THE TOWN CODE OF ORDINANCES RELATING TO EX-PARTE COMMUNICATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council adopted Section 2-99 of the Town Code of Ordinances (the “Town Code”) establishing a procedure governing ex-parte communications with local public officials concerning quasi-judicial matters; and

WHEREAS, after further review and consideration of this matter, the Town Council desires to repeal Section 2-99 of the Town Code, which will prohibit ex parte communications concerning quasi-judicial matters; and

WHEREAS, the Town Council finds that this Ordinance will promote the health, safety and welfare of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Repeal of Section 2-99 of the Town Code. The Town Council hereby repeals Section 2-99 of the Town Code as follows:

~~Sec. 2-99. Ex parte communications with the town council.~~

~~Communications with local public officials as defined in F.S. § 286.0115(1)(b), regarding quasi-judicial matters as defined in Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993), including the adjudication of the rights of persons and the application of a general rule or policy to a specific individual, property, interest or activity, shall be governed by the following procedure: Any person not otherwise prohibited by statute, Charter provision, or ordinance may discuss with any local public official representing the town the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member. Such communication shall not raise any presumption of prejudice provided that the following process of disclosure occurs:~~

- ~~(1) The subject and substance of any ex parte communication with a local public official representing the town which relates to quasi-judicial~~

~~action pending or impending before the official, as well as 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 is taken on the matter.~~

- ~~(2) A local public official representing the town may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending or impending before such official shall be made a part of the record before final action is taken on the matter.~~
- ~~(3) A local public official representing the town may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending or impending before him, provided that such activities and the existence of such investigations, site visits, or expert opinions is made a part of the record before final action is taken on the matter.~~
- ~~(4) Disclosure made pursuant to subsections (1), (2) and (3) of this section 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.~~

Section 3. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. That it is the intention of the Town Council, and hereby ordained, that the provisions of the Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered and/or re-lettered to accomplish such intentions; and that the word, "Ordinance," shall be changed to "Section" or such other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED and ADOPTED on first reading this ____ day of _____, 2017.

PASSED AND ADOPTED on second reading this ____day of _____, 2017.

PEGGY R. BELL
Mayor

Attest:

Debra Eastman, MMC
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE
USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
Town Attorney

Moved By: _____
Seconded By: _____

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell _____
Vice Mayor Sue Ellen Loyzelle _____
Council Member Mary Ann Mixon _____
Council Member Michael P. Callahan _____
Council Member Roger Coriat _____