

RESOLUTION NO. R-2-20

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, ADOPTING POLICY AND IMPLEMENTING PROTOCOLS FOR THE USE OF COMMUNICATIONS MEDIA TECHNOLOGY TO FACILITATE ATTENDANCE BY ELECTED AND APPOINTED OFFICIALS AT PUBLIC MEETINGS AND TO ALSO FACILITATE PUBLIC PARTICIPATION AND ATTENDANCE AT SUCH MEETINGS; PROVIDING THAT THE USE OF SUCH PROTOCOLS IS LIMITED TO PERIODS OF DECLARED EMERGENCY WHEN PUBLIC HEALTH AND SAFETY GUIDANCE LIMITS THE SAFE ATTENDANCE AT SUCH MEETINGS IN PERSON AND WHEN SUNSHINE LAW REQUIREMENTS ARE LAWFULLY RELAXED TO PERMIT SAME; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

WHEREAS, the Florida Constitution (Article I Section 24) and the Florida Statutes, (Sections 286.011 and 166.041), require that meetings of elected and appointed officials for the conduct of public business must be noticed and open to the public, must provide an opportunity for public participation through comment, and generally must provide the opportunity for all members of the public to be aware of the decision-making process (Sunshine Law Requirements); and

WHEREAS, the Florida Attorney General has consistently opined that in order to comply with Sunshine Law Requirements, a quorum of the decision-making body must be physically present at a place that is open to and accessible by the public when conducting public business¹; and

WHEREAS, on March 19, 2020, the Florida Attorney General issued Opinion 2020-03, opining that certain provisions of Florida law require a physical quorum to be present for local government decision-making bodies to conduct official business, and that local government decision-making bodies may only conduct meetings via "Communications Media Technology" (CMT) if either 1) a statute permits a quorum of the decision-making body to be present by means other than in person, or 2) that the requirement for a quorum of the decision-making body to be physically present is lawfully suspended during a state of emergency; and

WHEREAS, on March 1, 2020 the State of Florida Department of Health issued a Declaration of Public Health Emergency as a result of the global spread of Coronavirus ("COVID-19"); and

¹ This opinion is based on the language in Section 166.041(4), Florida Statutes, which requires "an affirmative vote of a majority of a quorum present ... to enact any ordinance or adopt any resolution." However, this is, admittedly, a conservative interpretation of the law and the Attorney General has also acknowledged 1) that Sunshine Law Requirements do not expressly prohibit remote electronic participation, and 2) that Sunshine Law Requirements do not suggest that a member of a decision-making body is not "present" when they access a meeting electronically.

WHEREAS, on March 9, 2020 Florida Governor Ron DeSantis issued Executive Order 20-52 declaring a State of Emergency in the State of Florida due to the COVID-19 Public Health Emergency; and thereby authorizing State agencies and political subdivisions, including municipalities, to suspend the provisions of regulatory statutes prescribing the procedures for the conduct of business if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the Emergency; and

WHEREAS, on March 20, 2020 Florida Governor Ron DeSantis issued Executive Order 20-69 suspending current Sunshine Law Requirements for a quorum of the government decision-making body to be physically present, for a government decision-making body to meet in any specific place, and to allow local government decision-making bodies to utilize “Communications Media Technology such as telephonic and video conferencing, as provided in Section 120.54(5)(b)2., Florida Statutes”, but specifically not waiving any other Sunshine Law Requirement; and

WHEREAS, a county-wide state of emergency was declared by Palm Beach County on March 13, 2020 due to the current outbreak of COVID-19; and

WHEREAS, current public health advisories from the Centers for Disease Control, the Florida Department of Health, and from other authoritative sources encourage, and in some cases dictate, the practice of social distancing by limiting public gatherings to 10 people or less, and by maintaining a minimum of six feet of open space between all persons in public; and

WHEREAS, the Town Commission is acutely aware that an appropriate balance must be struck between compliance with existing Sunshine Law Requirements, the need for the continuing operation of local government, and practicing social distancing in order to manage the current outbreak of COVID-19; and

WHEREAS, the Town Commission finds that it is in the best interest of Town of Palm Beach Shores officials, staff, residents, businesses and guests to adopt the “Communications Media Technology” policy and protocols contained in this Resolution, and to authorize the Town Manager or Mayor to implement same from time to time as appropriate during the continuation of the current State of Emergency in Palm Beach County due to the current outbreak of COVID-19 or in accordance with any future declared state of emergency (or any future change to general law) wherein Sunshine Law Requirements are suspended or changed to allow use of Communications Media Technology to conduct public meetings.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES THAT:

Section 1. Findings. The above recitals are declared to be true and correct and are hereby made part and parcel of this Resolution. In accordance therewith, certain

procedures and formalities pertaining to the operation of the Town of Palm Beach Shores may be waived as follows, in furtherance of the health, safety and welfare of the Town.

Section 2. Purpose. The purpose of this Policy is to establish the protocols by which Town of Palm Beach Shores decision-making bodies may conduct public meetings using Communications Media Technology in accordance with Executive Order 20-69 during the continuation of the current State of Emergency in Palm Beach County due to the current outbreak of COVID-19, or in accordance with any future declared state of emergency (or any future change to general law) wherein Sunshine Law Requirements are suspended or changed to allow use of Communications Media Technology to conduct public meetings.

Section 3. Definitions. The following terms shall have the following meanings as applied to this Policy:

“Access Point” means a physical location where members of the public who cannot access Communications Media Technology may observe and participate in an Electronic Meeting. On a case by case basis, any particular Access Point may limit the number of individuals that may enter in order to comply with Public Health Directives.

“Communications Media Technology” means electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available, pursuant to Section 120.54(5)(b)2., Florida Statutes.

“Electronic Meeting” means a meeting where a quorum of members of the government decision-making body are in attendance via Communication Media Technology from Remote Locations, and which the public is able to attend and participate via Access Point or via Communications Media Technology.

“Public Health Directives” means advisories, recommendations or directives from the Centers for Disease Control, the Florida Department of Health, or from other authoritative sources that are meant to promote the public health, safety and welfare in any particular case. Examples of Public Health Directives are distance separation guidelines and limitations on the size of human gatherings.

“Remote Location(s)” means any place other than the normally designated public meeting location for the public meeting, from which elected and appointed officials, staff, consultants, or members of the public may attend via Communications Media Technology.

Section 4. Electronic Meetings. the Town Commission hereby determines that it is appropriate to conduct Electronic Meetings using Communications Media Technology in order to conduct business of the Town whenever there exists in the Town (including a county-wide declaration) a declared state of emergency and when Sunshine Law Requirements are suspended or changed to allow use of Communications Media Technology to conduct public meetings. The Mayor or Town Manager is delegated the

authority, during any such state of emergency, to implement the use of Electronic Meetings in the Town of Palm Beach Shores.

Section 5. Notice. Prior to the commencement of any Electronic Meeting in the Town of Palm Beach Shores, the Town Clerk or designee shall post notice of the meeting consistent with Sections 120.54(b)(2)b. and 286.011, Florida Statutes. The notice shall be provided in the same manner as notice is provided for any other meeting but shall in addition, plainly state the following:

1. That the Electronic Meeting will be conducted using Communications Media Technology (specifying the type of technology being used) to constitute a quorum.
2. The address of any Access Point that is open to the public, where an interested person may go to attend the meeting. If an Access Point is limited in terms of the number of individuals that may enter in order to comply with Public Health Directives or because of other limitations, the notice shall so state.
3. An address, e-mail address, and/or telephone number where an interested person may write or call for additional information.
4. An address, e-mail address, and designated person (the Town Clerk or designee) to whom an interested person may submit evidence or public comments for the Electronic Meeting. All such submittals should, to the extent possible, be in advance of the Electronic Meeting.

Section 6. Quorum. For any Electronic Meeting, a quorum must be present at all times. A quorum shall be deemed to be present so long as a majority of the membership of the government decision-making body is participating in the meeting from a Remote Location through use of Communications Media Technology. In the event that Communications Media Technology equipment fails, causing a lack of quorum, no additional business may be conducted until the quorum is reconstituted.

Section 7. Conduct of Electronic Meetings. The Mayor or Chair of the government decision-making body shall preside over the meeting. In order to minimize the occurrences of multiple simultaneous speakers, members of the government decision-making body participating from Remote Locations shall refrain from speaking until called upon by the Mayor or Chair. Public comments submitted to the Town Clerk or designee shall be read into the record at the direction of the Mayor or Chair of the government decision-making body.

Section 8. Quasi-Judicial Proceedings. Quasi-judicial proceedings via Electronic Meeting should be avoided if possible. However, in the event that a quasi-judicial proceeding is conducted via Electronic Meeting, the following shall apply:

1. Evidence, testimony and argument which is offered utilizing Communications Media Technology shall be afforded equal consideration as if it were offered in person.
2. Persons intending to offer sworn testimony are responsible for making appropriate arrangements for offering sworn testimony.


3. Applicants shall be offered the choice of either waiting to proceed with their application at a regular meeting that does not utilize Communications Media Technology to establish a quorum; OR waive, in writing, the right to appeal the decision / development order rendered as a result of the Electronic Meeting on grounds that they were deprived due process because of the use of Communications Media Technology. No quasi-judicial proceeding may be processed at an Electronic Meeting prior to this election being made by the applicant.

Section 9. Voting. Voting shall be by verbal roll call vote.

Section 10. Sunshine Law Compliance. The Town Clerk or designee shall ensure that Electronic Meetings comply with all Sunshine Law Requirements not otherwise suspended or waived pursuant to an executive order or change in general law (e.g. the prompt keeping of meeting minutes, and public access).

Section 11. This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ADOPTED this 6th day of April 2020.


Alan Fiers, Mayor

ATTEST:


Evyonne Browning, Town Clerk

(SEAL)

