



PEMBROKE PINES CITY COMMISSION

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INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2020-190

TO: Mayor Frank C. Ortis
Members of the City Commission

CC: Charles F. Dodge, City Manager
Marlene Graham, City Clerk

FROM: Samuel S. Goren, City Attorney *SSG*
Jacob G. Horowitz, Assistant City Attorney *JGH*

DATE: November 17, 2020

RE: City of Pembroke Pines ("City") / Emergency Ordinance – Virtual Meetings

The City Attorney's Office has received a number of inquiries pertaining to virtual meetings and the City Commission's legal authority to continue to meet without the presence of a physical quorum. As we previously advised, Governor DeSantis' Executive Order No. 20-69, as amended, which provided for virtual meetings utilizing communication media technology ("CMT"), expired on November 1, 2020.

On November 3, 2020, Governor DeSantis issued Executive Order No. 20-276, thereby extending the state of emergency in the State of Florida related to COVID-19 through January 3, 2021. However, this EO did not extend EO 20-69, pertaining to virtual meetings.

Notwithstanding the expiration of EO 20-69, a number of municipalities in Broward County, and throughout the state, have considered emergency ordinances and/or procedures authorizing local government bodies, including the city commission and advisory boards, to continue to meet virtually and without the need for a physical quorum present.

In response to the various inquiries received by the City Attorney's Office, our office has prepared the enclosed emergency ordinance for your review and consideration. As drafted, the proposed ordinance authorizes the City Commission, during a declared public health emergency, to arrange for City Commission meetings and meetings of City advisory boards to be conducted through the use of CMT.

Section 166.041(3)(b), F.S., expressly authorizes the City Commission, by a two-thirds majority vote, to enact the proposed ordinance with one reading. This item will be presented to the City Commission for consideration on November 18, 2020.

Please contact our office if there is any additional information that we can provide.

PROPOSED ORDINANCE NO. 2020-19

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY OF PEMBROKE PINES, FLORIDA, AUTHORIZING THE CITY COMMISSION TO ARRANGE FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS DURING A DECLARED PUBLIC HEALTH EMERGENCY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Novel Coronavirus Disease 2019 (COVID-19) is a contagious disease that has the apparent ability to spread rapidly among humans and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Pembroke Pines; and

WHEREAS, on March 1, 2020, the Governor Ron DeSantis issued Executive Order number 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, the Governor Ron DeSantis issued Executive Order number 20-52 which declared a State of Emergency for the State of Florida due to COVID-19; and

WHEREAS, Governor DeSantis' Executive Orders 20-51 and 20-52 also contain a recommendation to limit public gatherings; and

WHEREAS, Florida Law, including Florida Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials, for the conduct of

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public business, must be held following procedures (notice, access to meetings, opportunity to be heard, the taking of minutes) that ensure that the public is able to participate in and be aware of the decision-making process (the “Sunshine Law”); and

WHEREAS, public meetings have traditionally been conducted in spaces with people in close proximity to each other and in groups varying in size, but generally much larger than ten (10) people; and

WHEREAS, due to the apparent ability to spread rapidly among humans, during this declared State of Emergency, the traditional public meeting, including compliance with the physical quorum and public attendance requirements of the Sunshine Law, may unnecessarily expose the residents of Pembroke Pines, the City’s elected officials, appointed board members, employees, and first responders to COVID-19; and

WHEREAS, the Governor’s Executive Order 20-52 acknowledges that special duties and responsibilities placed on state, regional and local agencies in responding to the emergency may require them to suspend the application of the statutes, rules, ordinances and orders they administer; and

WHEREAS, specifically, Section 4(D) of Executive Order 20-52 provides for political subdivisions within the State to “waive the procedures and formalities otherwise required . . . by law pertaining to:

- 1) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety and welfare of the community;
- 2) Entering into contracts . . .;
- 3) Incurring obligations;
- 4) Employment of permanent and temporary workers;

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- 5) Utilization of volunteer workers;
- 6) Rental of equipment;
- 7) Acquisition and distribution, with or without compensation, of supplies, materials and facilities; and
- 8) Appropriation and expenditure of public funds.”; and

WHEREAS, therefore, Executive Order 20-52 authorizes the Mayor and the City Commission to take prudent action to ensure the health, safety, and welfare of the community, which necessarily includes holding virtual public meetings; and

WHEREAS, on September 4, 2020, Governor DeSantis signed Executive Order 20-213 which extended Order 20-52 through November 3, 2020; and

WHEREAS, Governor DeSantis recognized this action was necessary as, on March 20, 2020, he rendered Executive Order 20-69, suspending the physical quorum requirement for local government public meetings; and

WHEREAS, Governor DeSantis has extended Executive Order 20-69 several times with the last extension taking place on September 30, 2020, Executive Order 20-246, allowing public meetings to continue virtually through November 1, 2020; and

WHEREAS, Chapter 252, Florida Statutes, among other things, confers upon the Mayor and the City Commission the emergency powers provided for in Chapter 252 in order to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state; and to “make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of ss. 252.31 -252.90, but which are not inconsistent with

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any orders or rules adopted by the division or by any state agency exercising a power delegated to it by the Governor or the division.” Section 252.46(1), Florida Statutes; and

WHEREAS, COVID-19 threatens the public health, safety, welfare and security of the citizens, residents and visitors of the City of Pembroke Pines, Florida; and

WHEREAS, as of October 26, 2020, the Florida Department of Health reports a total number of COVID-19 cases of 782,013 with 16,652 deaths in Florida and 83,962 cases and 1,521 deaths in Broward County; and

WHEREAS, on November 3, 2020, Governor DeSantis issued Executive Order No. 20-276, thereby extending the state of emergency in the State of Florida through January 3, 2021; and

WHEREAS, the Mayor and the City Commission finds there is a clear and present danger in holding a public “in person” meeting for those attending and those who come in contact with those attending; and

WHEREAS, the current outbreak of COVID-19 has made the Mayor and the City Commission acutely aware that provisions must be made to ensure that the business of municipal governance can occur without unnecessarily exposing public officials, City personnel or members of the public to a risk of infection while ensuring public access and open government; and

WHEREAS, the technology exists to conduct public meetings using technology in which the City can comply with the provisions of the Sunshine Law while preserving human life; and

WHEREAS, since Executive Order 20-69 was rendered by the Governor, the City Commission’s virtual public meetings have been live broadcast over television, the

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internet, radio, and simulcast to a designated location at City Hall for those without television, internet, or radio access; and

WHEREAS, the City Commission's virtual public meetings provide for the public to comment live over the phone, via email, or live in person at a designated location at City Hall for those without phone or email access; and

WHEREAS, the technology and methods to hold virtual public meetings by the City provides broader access to the general public to watch, listen to, or comment on public business; and

WHEREAS, the City is unaware of any person that has been unable to view or participate in any virtual meeting held to date; and

WHEREAS, the Mayor and the City Commission also possesses broad Home Rule powers that authorize it to protect the public health, safety, and welfare, declare emergencies, and protect its citizens; and

WHEREAS, no statute, Charter provision, or ordinance provides that the City Commission must physically be present at the same place to hold a City Commission meeting; and

WHEREAS, the City Charter does not prohibit attendance at meetings of City Commission by electronic media and the City Commission finds that its attendance requirement for the purpose of establishing a quorum, participating and voting can be satisfied by physical or CMT attendance; and

WHEREAS, Section 166.041(3)(b) allows a municipality to enact an emergency ordinance in one meeting if approved by a two-thirds vote of the governing body; and

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WHEREAS, the City Commission finds that it is in the best interests of the City Commission, Boards, Committees, City personnel, and citizens and residents of the City to authorize the City Commission to provide for the City Commission and members of all Boards and Committees to be able to attend meetings electronically during a declared public health emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA:

SECTION 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. Pursuant to the City’s Charter and Code of Ordinances, the Home Rule authority of the Mayor and the City Commission, Chapter 252, Florida Statutes, Section 4D of Governor DeSantis’ Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, the City Commission is hereby authorized, during a declared public health emergency, to arrange for the City Commission, and all Boards and Committees to meet electronically. Such meetings shall be planned and conducted in consultation with the City Attorney’s Office to ensure, to the extent practicable, substantial compliance with Section 286.011, Florida Statutes, “Florida’s Sunshine Law.”

SECTION 3. All ordinances or parts of ordinances in conflict herewith shall be and hereby are repealed.

SECTION 4. If any section, subsection, clause or provision of this Emergency Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. This Emergency Ordinance shall take effect immediately.

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PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, ON THE FIRST READING, THIS ____ DAY OF _____, 2020.

PASSED ADOPTED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, ON THE SECOND AND FINAL READING, THIS ____ DAY OF _____, 2020.

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

By: _____
MAYOR FRANK C. ORTIS

MARLENE D. GRAHAM
CITY CLERK

ORTIS _____

CASTILLO _____

GOOD _____

SCHWARTZ _____

SIPLE _____

APPROVED AS TO FORM:

OFFICE OF THE
CITY ATTORNEY