

**CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM**

Meeting Date: November 10, 2020

Presenter's Name and Title: Burnadette Norris Weeks, City Attorney

Prepared By: Burnadette Norris-Weeks, Esq.

Temp. Reso. Number: R7311

Item Description: Temp. Reso. #R7311 DECLARING EMERGENCY REGULATIONS LIMITED TO CERTAIN PUBLIC MEETINGS DURING THE COVID-19 STATE OF EMERGENCY AS DECLARED BY THE GOVERNOR AND AUTHORIZING THE CITY MANAGER TO ARRANGE FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND ADVISORY BOARD ATTENDANCE.

Consent ☐ Resolution ☒ Ordinance ☐ Quasi-Judicial ☐ Public Hearing ☐

Instructions for the Office of the City Clerk: None

Public Notice – As required by the Sec. ____ of the City Code and/or Sec. ____, Florida Statutes, public notice for this item was provided as follows: on _____ in a _____ ad in the _____; by the posting the property on _____ and/or by sending mailed notice to property owners within _____ feet of the property on _____
(fill in all that apply)

Special Voting Requirement – As required by Sec. _____, of the City Code and/or Sec. _____, Florida Statutes, approval of this item requires a _____ (unanimous, 4/5ths etc.) vote by the City Commission.

Fiscal Impact: Yes ☐ No ☒

REMARKS: None


Content:

- Agenda Item Memo from the City Manager to City Commission
- Resolution 7311
- Exhibit A



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

wb **TO:** Mayor, Vice Mayor, & City Commissioners

FROM: Vernon E. Hargray, City Manager 

BY: Austin Pamies Norris Weeks Powell, PLLC

DATE: November 11, 2020

RE: Temp. Reso. No. R7311 Declaring Emergency Regulations Limited To Certain Public Meetings During The Covid-19 State Of Emergency As Declared By The Governor And Authorizing The City Manager To Arrange For Public Meetings By Use Of Communication Media Technology and Advisory Board Attendance

RECOMMENDATION: The City Manager recommends approval of Temp. Reso. No. 7311 declaring Emergency Regulations Limited To Certain Public Meetings During The Covid-19 State Of Emergency As Declared By The Governor And Authorizing The City Manager To Arrange For Public Meetings By Use Of Communication Media Technology and Advisory Board Attendance.

ISSUE: Commission authorization is required to allow public participation by use of communication media technology and to allow advisory boards to continue meeting in the same way since Emergency Order 20-69 was not extended by the Governor of Florida.

BACKGROUND: On March 20, 2020, Governor DeSantis issued Executive Order 20-69 which permitted public meetings to take place without quorum present, in person, and allowed for the utilization of communications media technology, such as telephonic and video conferencing, as provided in Section 120.54(5)(b)(2), Florida Statutes. Emergency Order 20-69 was extended on several occasions reflecting the continued state of emergency and threat to the public when gathering to attend public meetings, but it has now expired. There is a need to put on place legislation that will formally permit the City Manager to operate under existing authority granted to municipalities by Florida Statutes Sections 252.38, Executive Order Number 20-52 promulgated by Governor Ron DeSantis on March 9, 2020, as amended, and by City of Miramar Code of Ordinances Section 22-64 (m) and Section 22-86 (6) and any and all other statutorily granted authority.

DISCUSSION: 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. COVID-19 constitutes a clear and present threat to the lives, health, welfare and safety of the people of Miramar.

On March 9, 2020, Governor Ron DeSantis issued Executive Order number 20-52 which declared a State of Emergency for the State of Florida due to COVID-19. The Governor DeSantis' Executive Order 20-52 contained a recommendation to limit public gatherings. Executive Order number 20-52 was extended by Executive Orders 20-114; 20-166, 20-192; 20-213 and Executive Order 20-276, which was entered on November 3, 2020 and is effective for a period of sixty days.

As mentioned, on March 20, 2020, Governor DeSantis issued Executive Order 20-69 which permitted public meetings to take place without quorum present, in person, and allowed for the utilization of communications media technology, such as telephonic and video conferencing, as provided in Section 120.54(5)(b)(2), Florida Statutes. This Emergency Order 20-69 was extended on several occasions reflecting the continued state of emergency and threat to the public when gathering to attend public meetings, but it has now expired. A danger to the public still exists.

While the City of Miramar has declined to operate under an independent order of emergency, it is still subject to any emergency orders established by the State of Florida and Broward County, however, neither the State or the County has in place an order that authorizes public participation utilizing communications media technology.

ANALYSIS: Pursuant to its home rule powers, Chapter 252, Florida Statutes, Section 4 D of Governor DeSantis' Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, the City Commission, by virtue of the threat to public health and safety and by virtue of the threat to the City's financial health and home rule powers, it is necessary for the City to declare a limited emergency so that that requirements of the Resolution, which approves an emergency order can be accomplished.

As of this week, there have been more than 17,000 deaths reported in the State of Florida due to COVID-19, with more than 844,000 confirmed cases as reported by the Florida Division of Emergency Management. Even with considerations of a possible vaccine, the Center for Disease Control ("CDC") is predicting that it is "likely" that "widespread transmission" of COVID-19 will continue to occur within the United States as the number of cases continues to rise nationwide. It is in the best interests of the City that the public be permitted to attend all City of Miramar public meetings through the utilization of communications media technology, as provided in Section 120.54(5)(b)(2), Florida Statutes.

This authorization would extend to City personnel, independent contractors, and residents during the currently declared State of Emergency related to COVID-19. Further, this Resolution would allow City advisory boards, including quasi-judicial boards, where applicable and working groups to be conducted without the presence of an in-person quorum so long as Florida laws are observed.

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**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, DECLARING EMERGENCY REGULATIONS LIMITED TO CERTAIN PUBLIC MEETINGS DURING THE COVID-19 STATE OF EMERGENCY AS DECLARED BY THE STATE OF FLORIDA; AUTHORIZING THE CITY MANAGER TO ARRANGE FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND ADVISORY BOARD ATTENDANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR 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 Miramar; 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 Order 20-52 contained a recommendation to limit public gatherings; and

WHEREAS, Executive Order number 20-52 was extended by Executive Orders 20-114; 20-166, 20-192; 20-213 and Executive Order 20-276, which was entered on November 3, 2020 and is effective for a period of sixty days; and

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WHEREAS, on March 14, 2020, pursuant to Section 22-86 (6) of the City of Miramar Code of Ordinances, the City Manager and the City Mayor declared a local State of Emergency as a result of COVID-19; and

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order 20-69 which suspended any Florida Statute that requires a quorum to be present in person or that requires a local government body to meet at a specific public place, and further permits local government bodies to utilize communications media technology such as telephonic and video conferencing, as provided in Section 120.54(5)(b)(2), Florida Statutes. Emergency Order 20-69 was extended on several occasions reflecting the continued state of emergency and threat to the public when gathering to attend public meetings, but it has now expired; and

WHEREAS, Section 4(D) of Governor DeSantis' Executive Order 20-52 expressly authorizes local governments to take whatever prudent action is necessary to ensure the health, safety and welfare of the community in accordance with Section 252.38, Florida Statutes, which necessarily would include holding virtual public meetings; and

WHEREAS, Chapter 252, Florida Statutes, in part, confers upon the City emergency powers 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

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and to supplement the carrying out of the provisions of ss. 252.31-252.90, but which are not inconsistent with any others or rules adopted by the division.” Section 252.46(1), Florida Statutes; and

WHEREAS, in accordance with Section 252.38(3) and 252.46, Florida Statutes in the event of a state of emergency the City is empowered to make and issue rules for reasons of health and safety; 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 or an advisory board meeting. Rather, Section 22-54 (m) of the City’s Code of Ordinance states that the City “may establish rules and regulations for its own procedure”; and

WHEREAS, the City 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, the City possesses the necessary communication media technology to allow for public participation during city commission meetings remotely; and

WHEREAS, the City possesses the necessary communication media technology to conduct advisory board meetings remotely, while fully complying with the provisions of the Sunshine law and allowing for public participation; and

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WHEREAS, as recognized by Attorney General Opinion (AGO) 2020-03, there are no statutes that expressly define “present” or the “presence” of a quorum as requiring physical attendance; and

WHEREAS, there have been more than 17,000 deaths reported in the State of Florida due to COVID-19, with more than 844,000 confirmed cases as reported by the Florida Division of Emergency Management; and

WHEREAS, Broward, Palm Beach and Miami-Dade Counties, have been most impacted by the COVID-19 pandemic and the infection rate is rapidly climbing in South Florida. The City Commission is acutely aware that provisions must be made to ensure that the business of the City can occur without unnecessarily exposing public officials, City personnel or members of the public to a risk of infection while also ensuring public access and open government; and

WHEREAS, the City Commission desires to approve the attached Declaration of Emergency Regulations, See, attached Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:

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

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Section 2. Pursuant to the City's Charter and Code of Ordinances, the home rule authority of 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 Manager is hereby authorized, during a declared public health emergency of the Governor or Broward County, to arrange for all Advisory Boards and Committees to utilize communications media technology. 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 286.001, Florida Statutes, "Florida's Sunshine Law."

Section 3. The City Manager is hereby authorized to extend the powers of the Declaration of Emergency Regulations set forth in Exhibit "A", consistent with Section 252.38, Florida Statutes and until such time as this Resolution is repealed.

Section 4. Pursuant to its home rule powers, Chapter 252, Florida Statutes, Section 4 D of Governor DeSantis' Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, the City Commission of the City of Miramar hereby confirms and declares that a public health emergency exists requiring immediate action by the City Commission. By virtue of the threat to public health and safety and by virtue of the threat to the City's financial health and home rule powers, it is necessary for the City to implement regulations set forth in Exhibit "A".

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Section 5. This Resolution shall take effect upon the adoption by the City Commission.

PASSED AND ADOPTED this _____ day of _____, _____.

Mayor, Wayne M. Messam

Vice Mayor, Maxwell Chambers

ATTEST:

City Clerk, Denise A. Gibbs

City Attorney,
Austin Pamies Norris Weeks Powell, PLLC

Requested by Administration

Commissioner Winston F. Barnes
Vice Mayor Maxwell B. Chambers
Commissioner Yvette Colbourne
Commissioner Alexandra P. Davis
Mayor Wayne M. Messam

Voted

Reso. No. _____

EXHIBIT A

EMERGENCY ORDER No. [REDACTED]
LOCAL EMERGENCY MEASURES
EXHIBIT “A” to RESOLUTION [REDACTED]

WHEREAS, on March 9, 2020, Florida Governor Ron DeSantis promulgated Executive Order 20-52 and declared a State of Emergency in Florida in response to COVID-19; and

WHEREAS, Section 4(D) of Governor DeSantis’ Executive Order 20-52 expressly authorizes local governments to take whatever prudent action is necessary to ensure the health, safety and welfare of the community in accordance with Section 252.38, Florida Statutes, which necessarily would include holding virtual public meetings; and

WHEREAS, COVID-19 is a natural emergency whose increasing effects are being felt within the City of Miramar and that on account thereof, there is reason to believe that the virus will continue to spread; and

WHEREAS, On March 13, 2020, the Broward County Commission declared a local State of Emergency due to the threat of COVID-19; and

WHEREAS, on March 14, 2020, pursuant to Section 22-86(6) of the City of Miramar Code of Ordinances, the City Manager and the City Mayor declared a local State of Emergency as a result of COVID-19; and

WHEREAS, the Center for Disease Control (“CDC”) is predicting that it is “likely” that “widespread transmission” of COVID-19 will continue to occur within the United States as the number of cases continues to rise nationwide; and

WHEREAS, the City Commission of Miramar (“City”) now desires to confirm a limited Declaration of Emergency and invoke the City’s Code of Ordinances, home rule authority, Chapter 252, Florida Statutes, Section 4D of Governor DeSantis’ Executive Order 20-52 and well as the above-stated recitals, to permit the City Manager to arrange for public participation to take place through the utilization of communication media technology, such as telephonic and video conferencing, as provided by Section 120.54 (5)(b)(2), Florida Statutes and to allow for advisory boards of the City to meet through communication media technology.

NOW, THEREFORE, the City Commission of the City of Miramar, County of Broward, State of Florida, acting under the authority granted to municipalities by Florida Statutes Sections 252.38, Executive Order Number 20-52 promulgated by Governor Ron DeSantis on March 9, 2020, as amended, and by City of Miramar Code of Ordinances Section 22-64 (m) and Section 22-86 (6), by relevant sections of the Broward

County Code of Ordinances, orders and resolution as imposed upon the City of Miramar, by prior City of Miramar relevant Resolutions, Local Emergency Measures statutorily granted hereby **ORDERS** and promulgates the following Local Emergency Measures for the City of Miramar, **effective immediately**:

DO HEREBY ORDER AND DECLARE

Section 1. Public Meetings

- A. There remains a significant risk of infection of COVID-19 in generally holding public “in-person” meetings.
- B. It is in the best interests of the City that the public be permitted to attend all City of Miramar public meetings through the utilization of communications media technology, as provided in Section 120.54(5)(b)(2), Florida Statutes. This authorization to participate in meetings using communication media technology shall extend to City personnel, independent contractors, and residents of the City during the currently declared State of Emergency related to COVID-19.
- C. All public meetings of City advisory boards, quasi-judicial boards, where applicable, committees working groups may be conducted and held without the presence of an in-person quorum so long as any meetings strictly adhere to any and all other requirements under the Florida Constitution and Florida’s Government in the Sunshine Laws, including Chapter 286, Florida Statutes and utilize communications media technology, as provided in Section 120.54(5)(b)(2), Florida Statutes. Such communications media technology must allow for advisory board members to hear and talk to one another and for the public and to have an opportunity to participate and review materials or exhibits that would be presented during the meeting.

Section 2. Applicability, Enforcement and Reauthorization by City Manager

- A. This Declaration repeals any portions of previously issued declarations of emergency that are in conflict.
- B. The regulations set forth in this Declaration applies only to City of Miramar government and is limited to the matters set forth herein.
- C. This authorization is limited in nature and is pursuant to the home rule authority of the City Commission, Chapter 252, Florida Statutes, Section 4 D of Governor DeSantis’ Executive Order 20-52, and based upon a declared public health emergency and the Legislative Findings set forth herein to permit the City Manager to: 1) arrange for the public to participate; 2) arrange for the City Advisory Boards and Committees to meet electronically;

3) extend technology options to City personnel and independent contractors during the currently declared State of Emergency related to COVID-19; 4) promulgate rules of procedure that will ensure compliance with the Sunshine Law; and 5) provide technology and administrative support as necessary to fulfill these objectives.

- D. Meetings may only be conducted without the physical presence of a quorum of the City Boards and Committees during a state of emergency if:
- 1) the meeting is properly noticed; (2) minutes are taken; (3) the public is permitted to attend via technology such as teleconferencing.
- E. Until such time that this resolution is repealed, the City Manager is hereby authorized to extend the powers of this Declaration of Emergency Regulations, consistent with Section 252.38, Florida Statutes.
- F. All requirements and directives contained in this Local Emergency Measure, as well as all active Broward County Emergency Orders and all Executive Orders issued by Florida Governor Ron DeSantis, shall be strictly adhered to at all times and enforceable pursuant to the City of Miramar Charter and Code of Ordinances Section City of Miramar Code of Ordinances Section 22-64 (m) and Section 252.50, Florida Statutes.

Mayor, Wayne M. Messam

City Manager, Vernon R. Hargray

Date

City Clerk, Denise A. Gibbs