

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FURTHER ADDRESSING THE ONGOING COVID-19 PUBLIC HEALTH EMERGENCY FOR PURPOSES OF SAFEGUARDING THE CITY'S HEALTH, SAFETY AND WELFARE AND SERVING A PUBLIC PURPOSE IN THE BEST INTEREST OF THE CITY BY PROVIDING THAT: 1) THE CITY'S ADVISORY BOARDS AND COMMITTEES SUBJECT HEREIN, AS WELL AS THE CITY'S CHARTER OFFICERS (CITY MANAGER, CITY ATTORNEY, CITY CLERK AND INSPECTOR GENERAL) AND THEIR STAFF, SHALL CONTINUE TO MEET VIRTUALLY, CONSISTENT WITH THE DICTATES STATED IN THIS RESOLUTION; 2) COMMENCING NOVEMBER 1, 2020, THE CITY COMMISSION AND CITY LAND USE BOARDS (CONSISTING OF THE BOARD OF ADJUSTMENT, PLANNING BOARD, DESIGN REVIEW BOARD AND HISTORIC PRESERVATION BOARD) SHALL MAINTAIN PHYSICALLY-PRESENT QUORUMS AT MEETINGS REQUIRING ACTION, WITH REMAINING CITY COMMISSION AND LAND USE BOARD MEMBERS WHO ARE NOT PHYSICALLY PRESENT TO PARTICIPATE VIRTUALLY, DUE TO THE EXTRAORDINARY CIRCUMSTANCES PRESENTED BY THE CURRENT PUBLIC HEALTH EMERGENCY; 3) WAIVER OF APPLICABLE REQUIREMENTS WITHIN THE CITY'S CHARTER, CODE OF ORDINANCES, RESOLUTIONS OR OTHER CITY POLICY THAT MAY REQUIRE THE PHYSICAL PRESENCE OF QUORUM/BOARD MEMBERS OR CHARTER OFFICERS/STAFF AT ANY SAID PUBLIC MEETINGS; 4) ALL VIRTUAL MEETINGS/PARTICIPATION SHALL CONTINUE TO BE COMPLIANT WITH THE FLORIDA CONSTITUTION AND FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW, CHAPTER 286 FLORIDA STATUTES; 5) THE TERMS OF THIS RESOLUTION SHALL BE INCORPORATED INTO THE CITY MANAGER'S DECLARATION OF EMERGENCY, FOR IMPLEMENTATION COMMENCING NOVEMBER 1, 2020 AND CONTINUING UNTIL THE CURRENT CITYWIDE STATE OF EMERGENCY HAS ENDED; AND PROVIDING FOR SEVERABILITY.

WHEREAS, following the COVID-19 Statewide Emergency declared by Governor Ron Desantis on March 9 2020 via Executive Order 20-52, the Miami Beach City Manager declared on March 12, 2020 a State of Emergency for the City of Miami Beach, which Declaration of Citywide Emergency has been extended to-date by the City Commission¹; and

WHEREAS, on March 20, 2020, the Governor issued Executive Order No. 20-69 which suspended any Florida Statute that "...requires a quorum to be present in person or requires a local government body to meet at a specific public place...", and authorized local government bodies to conduct meetings remotely, utilizing communications media technology, such as telephonic and video conferencing meetings; and

¹ CMB Resolution No. 2020-31463, adopted by the City Commission on October 14, 2020, extended the City Manager's Declaration of Emergency to November 18, 2020.

WHEREAS, since issuance of the Governor’s EO 20-69, the City has conducted all of its City Commission and Board and Committee meetings remotely, in accordance with the City’s procedural safeguards² for ensuring full transparency in compliance with the Florida Constitution and Florida’s Government in the Sunshine Law, Chapter 286 Florida Statutes; and

WHEREAS, significantly, of the 310 virtual public meetings conducted by the City since EO-20-69’s issuance, the City has not received any complaints regarding its process for conducting said meetings; and

WHEREAS, on September 30, 2020, the Governor issued Executive Order No. 20-246, extending Executive Order 20-69 until 12:01 a.m. on November 1, 2020³; and

WHEREAS, the November 1, 2020 expiration of EO 20-69 presents an imminent health threat to the City of Miami Beach, as the need to suspend in-person quorum requirements for the City’s public bodies will be no less compelling after November 1, 2020 than as presently exists; and

WHEREAS, the City remains in a State of Emergency due to the COVID-19 pandemic; and

WHEREAS, the impact of this health emergency is particularly significant in our tourist destination and, further, because the City’s Boards and Committees are composed in large part with members of at-risk groups (over age 65 or with pre-existing conditions), or those who live with at-risk individuals, or who had members that may have been subject to quarantine for exposure and thus unable to attend in person⁴; and

WHEREAS, relevant opinions of the State’s Attorney General have concluded that a quorum of a public body must be physically present in order to allow members, who due to

² Though the move to remote meetings required changes to the City’s meeting practices and procedures, these changes were done consistent with the existing laws and statutes governing public access.

³ NOTE: Per Section 2 of EO 20-246: “This order shall not apply to election canvassing boards.”

⁴ Countless City board and committee members have informed City personnel that they will not be attending in-person meetings post-November 1, due to the public health emergency.

"extraordinary circumstances" are unable to physically attend the meeting, to appear and participate electronically⁵; and

WHEREAS, the subject relevant Attorney General opinions, however, are expressly based upon a "conservative interpretation"⁶ of the law that applies exclusively to meeting requirements for "governing bodies"⁷ such as the City Commission, *not* to City boards or committees; and

WHEREAS, furthermore, the Attorney General's "conservative interpretation" is based upon "concerns about the validity of official actions taken by a public body when less than a quorum is present", which concerns have been addressed by the City via its creation and enforcement of Sunshine Law procedural safeguards for virtual meetings (enacted following the Governor's authorization for remote meetings in his EO 20-69), with no related concerns/controversy having been expressed by the public; and

WHEREAS, as such, in his legal analysis of the Sunshine Law and related Constitutional open government requirements⁸ as well as statutory requirements applicable to actions of municipal bodies, the City Attorney has advised the City Commission that despite the Attorney General's opinions advising that a quorum be present in order to conduct remote meetings of all public boards and committees, these State laws *do not* expressly prohibit remote electronic participation for the City's advisory boards and committees⁹; and

WHEREAS, in accordance with § 252.38, Florida Statutes, the Governor's Executive Order No. 20-52 authorized the City to waive the procedures and formalities otherwise required

⁵ The Attorney General's most recent opinion on this issue, issued March 19, 2020 (immediately prior to the Governor's EO 20-69), advised that local government bodies could meet remotely, if authorized by statute or state of emergency declaration. AGO 2020-03.

⁶ See, Fla. AGO 2001-66: "...concerns about the validity of official actions taken by a public body when less than a quorum is present argue for a very conservative reading of the statute"; and Fla. AGO 2010-34: "For meetings where a quorum is required, this office has consistently suggested a conservative interpretation of the requirement to ensure the validity of official actions taken by a public body. This office has concluded that, in the absence of a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum."

⁷ Florida Statutes Section 166.041(4): "A majority of the *members of the governing body* shall constitute a quorum. An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution...". (Emphasis added.)

⁸ See, Article I, section 24, Florida Constitution, ensuring a right of access to meetings of collegial public bodies.

⁹ All references in this Resolution to the City's "advisory boards and committees" concern those bodies set forth in the City Code, at subparts A and B, as well as the Mayor's City Commission Committees.

of the City by law: "...pertaining to the ... performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community"¹⁰; and

WHEREAS, for reasons directly related to combating effects of the existing public health emergency including, but not limited to, fostering adequate social distancing, protecting those who may be at a greater risk for severe effects from COVID-19, and ensuring the continued business of the City's advisory boards and committees, the City Commission hereby determines that a public purpose is served and it is in the public interest during this public health emergency to continue allowing members of the City's advisory boards and committees to attend their public meetings virtually (by phone or video conferencing) in light of the extraordinary circumstances presented by the current health emergency, and thus waives any and all applicable requirements within the City's Charter, Code of Ordinances, Resolutions or other City policy that may require the physical presence of a quorum and/or board members' physical presence at any said public meeting¹¹; and

WHEREAS, the above waiver and determination of public purpose served shall apply as well during this public health emergency to any and all requirements within the City's Charter, Code of Ordinances, Resolutions or other City policy that may require the physical presence at public meetings of the Charter Officers (City Manager, City Attorney, City Clerk and Inspector General) and their staff, as the City Commission finds a public purpose is served and it is in the public interest to continue allowing their virtual attendance in light of the extraordinary circumstances presented by the current health emergency, except when otherwise directed by the City Commission; and

WHEREAS, notwithstanding the above, the City Commission recognizes that unlike the City's advisory boards, actions taken by the City Commission and the City's Land Use Boards (consisting of the Board of Adjustment, Planning Board, Design Review Board and Historic Preservation Board) are binding/non-advisory on City policy and legislation and, as such, the City Commission determines that it serves the public interest to take a heightened, more conservative¹² approach with regard to the issue of "physical presence" at those meetings in order to insulate

¹⁰ Fla. Stat. sec. 252.38(3)(a)5a. See also, AGO 2004-58 in which the Attorney General has seemingly confirmed the applicability of municipal emergency powers under Florida Statutes Chapter 252 to the partial waiver of Sunshine Law: "...The waiver of the notice requirements required under the Sunshine Law is not among those listed, although the statute does recognize the authority of the political subdivision to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community. ...".

¹¹ Provisions of law establishing the number of members required to constitute a quorum for each of the subject boards or committees remain in effect and are unaffected by this Resolution.

¹² Adoption of this conservative approach is not to be interpreted as concession on the City's part of a legal requirement for physical presence of City personnel at its public meetings.

decisions made and forestall potential legal challenges, which challenges can cause additional disruptions to City government to those presently encountered by the City due to the public health emergency; and

WHEREAS, accordingly, the City Commission deems a public purpose is served and it is in the public interest to impose stricter requirements (than established above for the City's advisory boards), by requiring a physically-present quorum at City Commission and Land Use Board meetings requiring action, while allowing those remaining members who are not physically present to participate virtually in light of the extraordinary circumstances presented by the current health emergency; and

WHEREAS, all virtual public meetings of the City of Miami Beach shall remain subject to, and be otherwise compliant with, the Florida Constitution and Florida's Government in the Sunshine Law, Chapter 286 Florida Statutes; and

WHEREAS, it is the intent of the City Commission that the terms of this Resolution shall be incorporated into the City Manager's Declaration of Emergency for implementation commencing November 1, 2020¹³, and continue until the current Citywide State of Emergency has ended; and

WHEREAS, if any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby determine that a public purpose is served and it is in the public interest in order to ensure the health, safety and welfare of our community in the face of the ongoing COVID-19 public health emergency that: 1) the City's Advisory Boards and Committees subject herein, as well as the City's Charter Officers (City Manager, City Attorney, City Clerk and Inspector General) and their staff, shall continue to meet virtually, consistent with the dictates stated hereinabove; 2) commencing November 1, 2020, the City Commission and City Land Use Boards (consisting of the Board of Adjustment, Planning Board, Design Review Board and Historic Preservation Board) shall maintain a physically-present quorum at meetings requiring action, with remaining City Commission and Land Use Board members who are not physically present to participate virtually due to the extraordinary circumstances presented by the current health

¹³ The November 1 2020 expiration date of the Governor's EO 20-69 is intended as a condition precedent to this Resolution; in the event EO 20-69 is extended in its entirety beyond November 1, 2020, the terms of this Resolution shall not take effect on said date, and all public meetings of the City shall continue to be held virtually with City personnel's remote attendance, consistent with EO 20-69.

emergency; 3) the City Commission thus waives any and all applicable requirements within the City's Charter, Code of Ordinances, Resolutions or other City policy that may require the physical presence of quorum/board members or Charter Officers/staff at any said public meeting; 4) providing that all virtual meetings/participation shall continue to be compliant with the Florida Constitution and Florida's Government in the Sunshine Law, Chapter 286 Florida Statutes; and 5) the terms of this Resolution shall be incorporated into the City Manager's Declaration of Emergency, for implementation commencing November 1, 2020 and continue until the current Citywide State of Emergency has ended.

PASSED and ADOPTED this 28 day of October, 2020.

ATTEST:



DAN GELBER
MAYOR

RAFAEL E. GRANADO
CITY CLERK



**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

10/28/20
City Attorney Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: October 28, 2020

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FURTHER ADDRESSING THE ONGOING COVID-19 PUBLIC HEALTH EMERGENCY FOR PURPOSES OF SAFEGUARDING THE CITY'S HEALTH, SAFETY AND WELFARE AND SERVING A PUBLIC PURPOSE IN THE BEST INTEREST OF THE CITY BY PROVIDING THAT: 1) THE CITY'S ADVISORY BOARDS AND COMMITTEES SUBJECT HEREIN, AS WELL AS THE CITY'S CHARTER OFFICERS (CITY MANAGER, CITY ATTORNEY, CITY CLERK AND INSPECTOR GENERAL) AND THEIR STAFF, SHALL CONTINUE TO MEET VIRTUALLY, CONSISTENT WITH THE DICTATES STATED IN THIS RESOLUTION; 2) COMMENCING NOVEMBER 1, 2020, THE CITY COMMISSION AND CITY LAND USE BOARDS (CONSISTING OF THE BOARD OF ADJUSTMENT, PLANNING BOARD, DESIGN REVIEW BOARD AND HISTORIC PRESERVATION BOARD) SHALL MAINTAIN PHYSICALLY-PRESENT QUORUMS AT MEETINGS REQUIRING ACTION, WITH REMAINING CITY COMMISSION AND LAND USE BOARD MEMBERS WHO ARE NOT PHYSICALLY PRESENT TO PARTICIPATE VIRTUALLY, DUE TO THE EXTRAORDINARY CIRCUMSTANCES PRESENTED BY THE CURRENT PUBLIC HEALTH EMERGENCY; 3) WAIVER OF APPLICABLE REQUIREMENTS WITHIN THE CITY'S CHARTER, CODE OF ORDINANCES, RESOLUTIONS OR OTHER CITY POLICY THAT MAY REQUIRE THE PHYSICAL PRESENCE OF QUORUM/BOARD MEMBERS OR CHARTER OFFICERS/STAFF AT ANY SAID PUBLIC MEETINGS; 4) ALL VIRTUAL MEETINGS/PARTICIPATION SHALL CONTINUE TO BE COMPLIANT WITH THE FLORIDA CONSTITUTION AND FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW, CHAPTER 286 FLORIDA STATUTES; 5) THE TERMS OF THIS RESOLUTION SHALL BE INCORPORATED INTO THE CITY MANAGER'S DECLARATION OF EMERGENCY, FOR IMPLEMENTATION COMMENCING NOVEMBER 1, 2020 AND CONTINUING UNTIL THE CURRENT CITYWIDE STATE OF EMERGENCY HAS ENDED; AND PROVIDING FOR SEVERABILITY.

RECOMMENDATION

See memorandum attached.

Applicable Area

Not Applicable

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

No

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Office of the City Attorney

ATTACHMENTS:

Description

- Virtual Public Hearings
- Reso Virtual Public Hearing

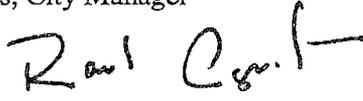
MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission
Jimmy Morales, City Manager

FROM: Raul J. Aguila
City Attorney



DATE: October 28, 2020

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, SETTING FORTH STATEMENTS OF PUBLIC NEED FOR PURPOSES OF SERVING THE PUBLIC INTEREST DURING THE ONGOING COVID 19 PUBLIC HEALTH EMERGENCY, BY ESTABLISHING POST-NOVEMBER 1, 2020 STANDARDS AND PROCEDURES FOR ATTENDANCE AT MEETINGS OF THE CITY COMMISSION, CITY COMMISSION COMMITTEES, AND CITY BOARDS.

As a matter of further addressing the ongoing COVID-19 public health emergency, and for purposes of safeguarding uninterrupted the City of Miami Beach's health, safety and welfare, the attached Resolution confronts the imminent threat presented to our community as a result of the upcoming November 1, 2020 deadline by which Governor DeSantis's EO 20-69, authorizing virtual City public meetings with members' remote attendance, will expire. This Resolution thus expresses the Mayor and City Commission's statements of public need (including, without limitation, as discussed and expressed at the September 29, 2020 Commission Meeting) to continue said virtual public meetings during this health emergency; thereby establishing and clarifying the City's post-November 1, 2020 standards and procedures for attendance at meetings of the City Commission and stated City Boards and Committees, summarized as follows:

- The City Commission and City Land Use Boards (consisting of the Board of Adjustment, Planning Board, Design Review Board and Historic Preservation Board) shall maintain a physically-present quorum at meetings requiring action, with remaining City Commission and Land Use Board members who are not physically present to participate virtually.
- The City's Advisory Boards and Committees subject to this Resolution, including, without limitation, the City Commission Committee (consisting of the Land Use and Sustainability Committee; the Finance and Economic Resiliency Committee; and the Neighborhood and Quality of Life Committee), as well as the City's Charter Officers (City Manager, City Attorney, City Clerk and Inspector General) and their staff, shall continue to meet virtually (except re: Charter Officers, when otherwise directed by the City Commission).

- In accordance with authority provided in the Governor's EO 20-52 and Florida statutory law, the Mayor and City Commission hereby waive, during this public health emergency, any and all applicable requirements within the City's Charter, Code of Ordinances, Resolutions or other City policy that may require the physical presence of quorum/board members or Charter Officers/staff at any said City public meeting.
- All virtual meetings/participation shall be compliant with the Florida Constitution and Florida's Government in the Sunshine Law, Chapter 286 Florida Statutes.
- The terms of this Resolution shall be incorporated into the City Manager's Declaration of Emergency for implementation, commencing November 1, 2020, and continue until the current Citywide State of Emergency has ended.

Finally, it should be noted that in the event the Governor's EO 20-69 is extended in its entirety beyond November 1, 2020, the terms of this Resolution shall not take effect on said date, and all public meetings of the City shall thus continue to be held virtually with City personnel's remote attendance, consistent with EO 20-69.