

EMERGENCY ORDINANCE NO. 2020-017

AN EMERGENCY ORDINANCE OF THE CITY OF DANIA BEACH, FLORIDA, AUTHORIZED BY A 2/3 VOTE OF THE CITY COMMISSION TO WAIVE THE REQUIREMENTS OF THE CITY CHARTER, ARTICLE 3, SECTION 3, AS TO NOTICE AND REQUIREMENTS FOR NONEMERGENCY ORDINANCES; AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS DURING PERIODS WHEN THE CITY MANAGER DETERMINES AND DECLARES A LOCAL PUBLIC HEALTH EMERGENCY OR OTHER CIRCUMSTANCES IN WHICH THE CITY COMMISSION DETERMINES IT IS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF CITY OFFICIALS, CITY STAFF, AND THE PUBLIC, FOR A 90 DAY PERIOD; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; FURTHER, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Dania Beach deems it to be in the best interest of the citizens and residents of the City, to make provisions for public meetings by use of communication media technology and for attendance by use of such technology by elected and appointed officials during periods when the City Manager determines and declares a local public health emergency or other circumstances in which the City Commission determines necessary to protect the health and safety of City Officials, City staff, and the public.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA:

Section 1. The foregoing whereas clause is ratified and confirmed as being true and correct and is made a part of this Ordinance.

Section 2. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.

In adopting this Ordinance, the City Commission of the City of Dania Beach (the "City Commission") intends to protect the public health and safety by making provisions for the occurrence of and attendance at public meetings by use of communication media technology ("CMT") during local public health emergencies, as determined by the City Manager. The City Commission finds:

1. The Coronavirus (COVID-19), a respiratory illness caused by a virus that spreads rapidly from person to person 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 Dania Beach.

2. On March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency.

3. On March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19.

4. On March 9, 2020, Governor DeSantis declared that a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19.

5. On March 12, 2020, Dania Beach Mayor Lori Lewellen, issued an Emergency Order for the City of Dania Beach, relating to the City's response to COVID-19 and declared a State of Emergency.

6. To reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention ("CDC") recommends implementation of community mitigation strategies to increase containment of the virus.

7. The current outbreak of COVID-19 has made 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.

8. As of October 27, 2020, the Florida Department of Health reports a total number of COVID-19 cases of 16,505 deaths in Florida and 786,311 cases, and a positivity rate of 631 percent, and 1,520 deaths, and 84,338 cases in Broward County. Nationwide, there were 74,434 new cases on October 26, 2020. New cases over a one-week period is almost 500,000. The seven-day average of new cases is at the highest levels since the pandemic began.

9. Florida law, including Article 1, Section 24 (b) Florida Constitution, and Florida Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials ("Bodies"), for the conduct of public business, must be held following procedures (notice, access of meetings, opportunity to be heard, the taking of minutes, etc.) that ensure that the public is able to participate in and be aware of the decision making process (the "Sunshine Law").

10. Previously, when asked whether a public body complies with the Sunshine Law when one or more members of the Body wish to participate in a meeting electronically from a remote location, the Florida Attorney General (“AG”) has opined that a quorum of the Body must be physically present in order to allow a member, who due to “extraordinary circumstances” is unable to physically attend the meeting, to appear and participate electronically.

11. On March 19, 2020, the AG issued an AGO 2020-03, which provides that “unless and until legislatively or judicially determined otherwise, if a quorum is required to conduct official business, local government bodies may only conduct meetings by teleconferencing or other technological means if either a statute permits a quorum to be present by means other than in-person, or the in-person requirement for constituting a quorum is lawfully suspended by the Governor during the state of emergency.”

12. On March 20, 2020, Governor DeSantis issued Executive Order (“EO”) Number 20-69, which suspends 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 permits local government bodies to utilize CMT such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes. EO 20-69 has been extended on several occasions reflecting the continued state of emergency and threat to the public when there is a gathering to attend public meetings.

13. Section 4 D of Governor DeSantis’ Executive Order 20-52 expressly authorizes the City Commission 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.

14. Chapter 252, Florida Statutes, among other things, confers upon 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 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.

15. COVID-19 has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare and security of the citizens, residents and visitors of the City of Dania Beach, Florida.

16. 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.

17. 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.

18. 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.

19. There is no statute, Charter provision, or ordinance that defines “present” as physically within the walls of the City Hall Chambers. Webster’s Dictionary defines “in attendance” among other things as a meaning of “present”. Article 3, Section 4 of the City Charter provides:

“The majority of the members of the city commission of the City of Dania Beach shall constitute a quorum. The affirmative vote of three (3) members of the city commissioners shall be necessary to enact any ordinance or adopt any resolutions; provided that two-thirds of the membership of the city commission is required to enact an emergency ordinance. On final passage, the vote of each member of the city commission shall be entered on the official record of the meeting.”

The City Charter does not require that a quorum be physically present.

20. The Charter does not prohibit attendance at the meeting of City Commissioners 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. This same rule of attendance applies to City Board or Committee meetings and quasi-judicial hearings.

21. There is no intrinsic error to use telephone and computer attendance to achieve a quorum. Consequently, the “preemption” of phone attendance, if it exists, must be expressly set forth in the Florida Constitution or general or special law, and not vaguely and ambiguously implied. Thus, the City Commission finds that no preemption exists in state law.

22. 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 Manager to provide for the City Commission and members of the various Boards and Committees to be able to attend meetings electronically during a declared public health emergency, pursuant to the City’s Charter, Chapter 252, Florida States, Section 4 D of Governor DeSantis’ Executive

Order 20-52, and the City's home rule authority, including that set forth in Article VIII, Section 2(b), Florida Constitution, and Section 166.021, Florida Statutes.

Section 3. DECLARATION OF EMERGENCY. 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 Dania Beach finds 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 this regulation.

Section 4. LIMITED AUTHORIZATION FOR PUBLIC MEETINGS WITHOUT PHYSICAL PRESENCE. The City Manager is authorized, 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 the Legislative Findings set forth in the above-stated recitals, during a declared public health emergency to:

- a) arrange for the City Commission, Boards, and Committees to meet and the public to participate electronically;
- b) promulgate rules of procedure that will ensure compliance with the Sunshine Law;
- c) provide technology and administrative support as necessary to fulfill these objectives.

Such a meeting may only be conducted without the physical presence of a quorum of the City Commissioners, Boards, and Committees, if an emergency is declared based upon an infectious disease, and only so long as (1) the meeting is properly noticed, (2) minutes are taken, and (3) the public is permitted to attend via technology such as teleconferencing or web-based conferencing.

Section 5. That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

Section 7. That this Ordinance shall be effective immediately upon adoption and effective for ninety (90) days.

PASSED on as an Emergency Ordinance on October 27, 2020.

ATTEST:

Thomas Schneider

THOMAS SCHNEIDER
CITY CLERK



Lori Lewellen

LORI LEWELLEN
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

Thomas J. Ansbro

THOMAS J. ANSBRO
CITY ATTORNEY