

## **RESOLUTION 20R-11-234**

### **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAUDERHILL AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS REGARDING ELECTRONIC ATTENDANCE AT PUBLIC MEETINGS DURING PERIODS OF A DECLARED PUBLIC HEALTH STATE OF EMERGENCY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE (REQUESTED BY CITY MANAGER, DESORAE GILES-SMITH)**

WHEREAS, on March 1, 2020, Governor Ron DeSantis signed Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency in the State of Florida due to the public health threat resulting from the spread of the Novel Coronavirus Disease 2019 ("COVID-19"); and

WHEREAS, 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; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis signed Executive Order No. 20-52, thereby declaring State of Emergency in the State of Florida due to the continued spread of COVID-19; and

WHEREAS, on March 10, 2020, Broward County Administrator Bertha Henry declared a state of emergency in Broward County; and

WHEREAS, on March 10, 2020, at 2:40 p.m., the Interim City Manager of the City of Lauderhill (the "City") first declared a state of emergency by issuing SOE 20-02 pursuant to Chapter Section 8½-1 of the City Code, Florida Statute Chapter 252, and has issued weekly extensions of this declaration; and

WHEREAS, numerous emergency orders have been issued in the interim by the United States, the State of Florida, Broward County, and the City of Lauderhill regarding various aspects of COVID-19; and

WHEREAS, numerous emergency orders have been issued specifically to slow the spread of the virus and adopting far-reaching social distancing measures, such as working from home and avoiding gatherings of more than 10 people which remain in effect today; and

WHEREAS, on March 20, 2020, Governor Ron DeSantis signed Executive Order No. 20-69 ("E.O. 20-69") (with many subsequent extensions thereof), thereby suspending any statutory requirement that a physical quorum be present in order to conduct a meeting of a local government body; and

WHEREAS, the E.O. 20-69 and subsequent extensions further authorized meetings of a local government body to utilize communications media technology ("CMT"), such as telephonic and video conferencing, as provided in Section 120.54(5)(b)(2), F.S., to conduct a public meeting; and

WHEREAS, Florida Statutes, Sections 252.38, and 252.46, and City Code Section 8½-4, grants the City of Lauderhill certain powers during a declared state of emergency, with the Interim City Manager identified as the official designated official to declare said powers and is authorized to make such orders or rules that are necessary for emergency management purposes; and

WHEREAS, the City Commission of the City of Lauderhill previously passed Resolution No. 20R-05-88 establishing the CMT procedures to be used during City meetings and authorizing the City Manager to determine what other City public meetings were deemed to be essential and permitted to be held virtually; and

WHEREAS, Florida Statutes, Section 252.32(1) provides that the governing body of each political subdivision of the state is to protect the public peace, health, and safety' and to preserve the lives and property of the people of this state and is conferred with the emergency powers provided therein; and

WHEREAS, Florida Statutes, Sections 252.34(a), (4), and (5)(c) provide that political subdivisions are to respond to emergencies using all systems, plans, and resources necessary to preserve adequately the health, safety, and welfare of persons or property affected by the emergency; and

WHEREAS, the policy and intent provided in Florida Statutes, Sec 252.38 states that safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state; and

WHEREAS, the power granted to political subdivisions under Florida Statutes, Section 252.38(3)(a)(1) is to "provide for the health and safety of persons and property" and (a)(4) to "assign and make available for duty the offices and agencies of the political subdivision"; and

WHEREAS, the intent and purpose of the Governor's prior EO's which waived physical quorum requirements, and the applicable CDC guidance, note the "phase" in which the local government is in, and the requirements thereof; and

WHEREAS, although the State of Florida is in Phase 3, Broward County continues to have Emergency Orders in effect which maintain the gathering requirements consistent with Phase 1 of the Governor's Re-Open Florida Task Force Plan and are not permitted to gather in groups of more than ten (10) with social distancing; and

WHEREAS, the numbers still continue to rise in the State of Florida and Broward County and we still need to continue to slow the spread and protect the health and safety of our residents and visitors; and

WHEREAS, the City of Lauderhill includes the part of the area with zip code 33311, which has had the highest number of positive COVID-19 cases in Broward County; and

WHEREAS, it is prudent for the City to continue to act in a responsible manner and limit the amount of unnecessary physical contact between individuals in an effort to help to continue to Slow the Spread of COVID-19 during the duration of the State of Emergency; and

WHEREAS, Florida Statutes, Section 120.54 (4)(a) provides if an agency finds an immediate danger to the public health, safety or welfare then it may adopt a rule by any procedure which is fair under the circumstances if (1) the procedure provides at least the procedural protection given by other statutes... and (5)(b)(2) provides that uniform rules for each state agency that provide procedures for conducting public meetings...in person *and by means of communications media technology*; and

WHEREAS, Florida Statutes, Section 252.46(1) allows political subdivisions 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; and

WHEREAS, pursuant to Florida Statutes, Section 252.46(2) it is intended that this Resolution will have full force and effect of law when filed in the office of the City Clerk and that all existing laws, ordinances, and rules inconsistent with the provisions of this Resolution shall be suspended during the period of time and to the extent that such conflict exists; and

WHEREAS, the Governor's Order 20-69 and its most recent extension 20-246 which waived the physical presence requirement for boards and which specifically authorized meetings via CMT was left to expire; and

WHEREAS, the Governor's Order 20-52 and its most recent extension 20-276, acknowledges that special duties and responsibilities placed on 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, EO 20-52, Section 4(D) provides for political subdivisions within the State to "waive procedures and formalities otherwise required by law..."; and

WHEREAS, therefore, EO 20-52 authorizes the City Commission to take prudent action to ensure the health, safety, and welfare of its employees, residents and the community, which necessarily includes the holding of public meetings; and

WHEREAS, the City Commission finds that it is a clear and present danger within the City of Lauderhill to mandate that all members of the public and attendees for public meetings be physically present in the same room to participate in meetings and the physical attendance must be balanced with the need to preserve human life; and

WHEREAS, The City Commission feels it is essential to ensure that the business of the City can occur without unnecessarily exposing either City employees or members of the public to an unnecessary risk of infection while ensuring public access to open government; and

WHEREAS the City of Lauderhill has broad home rule powers that authorize it to protect the public health, safety, and welfare, declare emergencies, and protect its citizens, and pursuant to its Charter and Chapter 8½, the City Manager is authorized to declare civil emergencies and to continue to hold public meetings using CMT; and

WHEREAS, there is no intrinsic evil to electronic or telephonic attendance to conduct or participate in a public meeting. The City Commission of the City of Lauderhill finds that no preemption exists as expressly stated in state law regarding the use of CMT to conduct public meetings; and

WHEREAS, Federal and State courts in South Florida continue to hold hearings and court appearances via the use of CMT; and

WHEREAS, the City of Lauderhill finds that the health and safety of its employees and residents is paramount and as a result, during the a State of Emergency based upon an infectious disease, that public meetings are authorized to continue to be held using CMT, but that the Governing Body

shall be physically present albeit socially distanced with plexiglass or separate areas as necessary to meet CDC Guidelines and in order to support technology requirements necessary to avoid interference that would hinder or obstruct the successful transmission of the electronic/virtual meeting; and

WHEREAS, the City of Lauderhill finds that it is in the best interest of the employees and residents of the City to authorize the City Manager to provide, when she deems appropriate, for public meetings to be able to continue to be held electronically or virtually using CMT technology with the board members physically present during a declared Public Health State of Emergency, pursuant to the City's Charter Chapter 8 1/2, the City's home rule authority, Article VIII, Section 2(b), Florida Constitution, Florida Statutes, Section 120.54(4)(a) and (5)(b)(2), Section 166.021, as well as Chapter 252, and pursuant to Section 4(D) of EO 20-52 and its most recent extension EO 20-276;

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

SECTION 1. That the City Commission of the City of Lauderhill, pursuant to its Home Rule Powers, the Statutes stated herein, Governor's EO 20-52 as most recently extended by EO 20-276, and based upon the Legislative Findings and Recitals as set forth above which are incorporated herein, the City Commission hereby finds and declares that an emergency exists requiring immediate attention by the City Commission. By virtue of the continued threat to the public health and safety, 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 to continue to protect the health, safety and welfare of its employees, residents and the community as a whole.

SECTION 2. Limited authorization for continued communications media technology ("CMT") to conduct public meetings with board members physically present. The City Manager is hereby authorized, pursuant to the Home Rule authority, and the intent of the City's Charter, Article VIII, Section 2(b), Florida Constitution, Florida Statutes, Section 120.54(4)(a) and (5)(b)(2), Section 166.021, as well as Chapter 252, and EO 20-52 as extended by 20-276, during a declared Public Health State of Emergency to:

- A. Continue to allow for the City Commission, and other boards as deemed necessary by the City Manager, to conduct public meetings utilizing communications media technology ("CMT"), such as telephonic and video conferencing, as provided in Section 120.54(5)(b)(2), F.S., to conduct a public meeting and to encourage the public to continue to attend public meetings

via technology (such as teleconferencing or web-based conferencing). Participants will not be prohibited from attending in person, but all CDC guidelines must be followed.

- B. Promulgate Rules of Procedure that will ensure compliance with the Sunshine Law. Including the determination that the Governing Body shall be physically present, albeit socially distanced with plexiglass dividers, or separate areas as necessary to meet CDC Guidelines and in order to support technology requirements necessary to avoid interference that would hinder or obstruct the successful transmission of the electronic/virtual meeting, if necessary. All public board members must be physically present when holding a public meeting.
- C. Continue to provide technology and administrative support as necessary to fulfill these objectives.

SECTION 3. SEVERABILITY. If any provision of this Resolution is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision which shall be declared severable.

SECTION 4. CONFLICTS. All ordinances or Resolutions or Orders or parts of Ordinances Resolutions or Orders in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. This Resolution shall take effect immediately upon its passage and adoption.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

PASSED AND ADOPTED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
PRESIDING OFFICER

ATTEST:

\_\_\_\_\_  
CITY CLERK

MOTION  
SECOND

\_\_\_\_\_  
\_\_\_\_\_

M. DUNN  
D. GRANT  
L. MARTIN  
S. MARTIN  
K. THURSTON

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
W. Earl Hall  
City Attorney