

AN ORDINANCE OF THE CITY OF PORT ST. LUCIE, FLORIDA, 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; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution (Article I, Section 24) and the Florida Statutes, (Sections 286.011 and 166.041), require that meetings of elected and appointed officials for the conduct of public business must be noticed and open to the public, must provide an opportunity for public participation through comment, and generally must provide the opportunity for all members of the public to be aware of the decision making process (Sunshine Law Requirements); and

WHEREAS, the Florida Attorney General has consistently opined that in order to comply with Sunshine Law Requirements, a quorum of the decision-making body must be physically present at a place that is open to and accessible to the public when conducting public business; and

WHEREAS, the Attorney General has also acknowledged that: (1) that Sunshine Law Requirements do not expressly prohibit remote participation through communication media technology; and (2) that Sunshine Law Requirements do not suggest that a member of a decision-making body is not “present” when they access a meeting through communication media technology; and

WHEREAS, the Coronavirus (COVID-19), a respiratory illness caused by a virus 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 Port St. Lucie; and

WHEREAS, on March 1, 2020, the Governor of the State of Florida directed the Florida Department of Health to Issue a Public Health Emergency due to COVID-19, and the Florida Department of Health did so; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19 by issuing Executive Order 20-52; and

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WHEREAS, on March 17, 2020, the Port St. Lucie City Manager issued a Declaration of the City Manager of the City of Port St. Lucie, Florida, declaring a state of emergency due to public health crisis (Coronavirus a/k/a Covid-19) within the City of Port St. Lucie; and

WHEREAS, 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; and

WHEREAS, Section 4D of Executive Order 20-52 declaring a State of Emergency in the State of Florida authorized State agencies and political subdivisions, including municipalities, 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; and

WHEREAS, Chapter 252, Florida Statutes, among other provisions, confers upon the City Council 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; and

WHEREAS, 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 Port St. Lucie; 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 safety and life; and

WHEREAS, the City Council also possesses broad home rule power that authorize it to protect the public health, safety, and welfare, declare emergencies, and protect its citizens; and

WHEREAS, section 3.10 of the Charter states the following:

Sec. 3.10. - Procedure.

(c) *Voting*. Voting, on ordinances and resolutions, shall be by roll call on final action and shall be recorded in the minutes of the proceeding. A majority of the council shall constitute a quorum; but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council

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except as otherwise provided in the preceding sentence and in section 3.10, shall be valid or binding unless adopted by the affirmative vote of a majority of the council.

WHEREAS, the Charter does not prohibit attendance at the meeting of City Council by communication media technology and the City Council finds that its attendance requirement for purpose of establishing a quorum, participating and voting can be satisfied by physical or electronic attendance in times of emergency. This same finding applies to City Board and Committee meetings and quasi-judicial hearings; and

WHEREAS, there is no intrinsic evil to using communication media technology to achieve a quorum; and

WHEREAS, consequently, the “preemption” of attendance by communication media technology, if it exists, must be expressly set forth in the Florida Constitution or general or special law, not vaguely and ambiguously implied; and

WHEREAS, thus the City Council finds that no preemption exists in state law; and

WHEREAS, the City Council deems it to be in the best interest of the citizens and residents of the City of Port St. Lucie, to make provision for public meetings by use of such technology by elected and appointed officials during periods when the City Manager determines and declares a local public health emergency necessary to protect the health and safety of City Officials, City staff, and the public, pursuant to the City’s Charter, Chapter 252, Florida Statutes, Section 4D of 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.

NOW, THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. Ratification of Recitals and Legislative Findings and Intent. The foregoing recitals are hereby ratified and confirmed as true and correct and are hereby made a part of this Ordinance as the legislative findings and intent pertaining to this Ordinance.

Section 2. Limited Authorization for Public Meetings Without Physical Presence. The City Manager is hereby authorized pursuant to the home rule authority of the City Council, Chapter 252, Florida Statutes, Section 4D of Executive Order 20-52, and based upon the findings set forth in the recitals above, during a declared public health emergency to:

- a. Arrange for City Council, Boards, and Committees to meet electronically;
- b. Promulgate rules of procedure that will ensure compliance with the Sunshine Law Requirements;
- c. Provide technology and administrative support necessary to fulfill these objectives.

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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 of teleconferencing or web-based conferencing.

Section 3. Conflict. If any ordinances, or parts of ordinances, resolutions, or parts of resolutions, rules, or parts of rules, are in conflict herewith this Ordinance shall control to the extent of the conflicting provisions.

Section 4. Severability. The provisions of this Ordinance are intended to be severable. If any provision of this Ordinance is determined to be void or is declared illegal, invalid, or unconstitutional by a Court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective immediately upon final adoption on second reading and expires upon expiration of the Declaration of City Manager declaring a state of emergency due to public health crisis (Coronavirus a/k/a Covid-19) within the City of Port St. Lucie, including any extensions. Nothing contained in this ordinance shall give rise to any vested rights, equitable estoppel, or a claim for continuing any specific land use.

PASSED AND ADOPTED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2020.

CITY COUNCIL
CITY OF PORT ST. LUCIE

By: _____
Gregory J. Oravec, Mayor

ATTEST:

Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

James D. Stokes, City Attorney