

EMERGENCY ORDER NO. 2020-16
VIRTUAL GOVERNMENT IN THE SUNSHINE MEETINGS
THROUGH THE USE OF COMMUNICATIONS MEDIA TECHNOLOGY

WHEREAS, Alachua County is under Federal, State, and Local States of Emergency for the COVID-19 virus pursuant to Executive Orders of the Governor for the State of Florida (EO Nos. 20-51 and 20-52) and the Alachua County Proclamation 20-01, dated March 16, 2020, and renewed every seven days thereafter in accordance with law; and

WHEREAS, Chapter 252, Fla. Stat, and Section 27.03, Alachua County Code of Ordinances authorizes the County to take whatever prudent action is necessary to ensure the health, safety and welfare of the community in the event of a state of emergency; and

WHEREAS, to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention ("CDC") and the Florida State Department of Health recommend implementation of community mitigation strategies to increase containment of the virus, including cancellation of large gatherings and social distancing of at least six feet between persons in smaller gatherings; and,

WHEREAS, limitations on gatherings and the use of social distancing to prevent transmission of COVID-19 are especially important for people who are over sixty-five years old and people with chronic health conditions because those populations are at a higher risk of severe illness and death from COVID-19. However, it appears that everyone, regardless of age or health condition, is threatened by COVID-19; and,

WHEREAS, Article I, Section 24 of the Florida Constitution guarantees a right of public access to all meetings of any collegial public body of the County, and Section 286.011, Fla. Stat., commonly referred to as Florida's "Sunshine Law," requires meetings of the County to be publicly noticed in advance, open to the public, and documented by minutes that are promptly recorded; and

WHEREAS, the Sunshine Law is a polestar of local governance in Florida with the Florida Supreme Court stating that the Sunshine Law "was enacted in the public interest to protect the public from 'closed door' politics..." and as such, should be construed to frustrate all evasive devices; and

WHEREAS, recognizing the compelling need to protect life while at the same time maintaining the functioning and continuity of government, the Governor took the extraordinary measure of issuing Executive Order 20-69 ("EO 20-69"), which suspends any statutory requirement that local governing bodies have a quorum physically present in a specific public place to conduct public meetings; and

WHEREAS, the EO 20-69 specifically authorizes the use of communications media technology ("CMT"), as provided in Section 120.54(5)(b)2., Fla. Stat., to conduct meetings of local governing bodies; and

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WHEREAS, Section 120.54(5)(b)2., Fla. Stat., may be interpreted to imply that local government bodies should provide, and publish notice of the location of, a communication media technology facility that may be used by those members of the public that wish to participate in such public meetings but do not have the communications media technology to do so; however, providing such a location, and encouraging members of the public to use said facility, would violate the spirit, intent and purpose of the Governor's subsequent Executive Order ("EO 20-91"), which prohibits all persons in Florida from leaving their homes except to obtain or provide essential services or conduct essential activities; and

WHEREAS, Alachua County Emergency Order 20-10 specifically suspends any local law, ordinance, rule, charter provision or other regulations that requires a quorum to be physically present in a particular location, and authorizes the use of communications media technology for meetings of boards and committees; and

WHEREAS, the use of communications media technology during the declared state of local emergency due to COVID-19 to conduct meetings of the Board of County Commissioners and its boards and committees will allow governance to continue while protecting the health and safety of elected officials, staff, and the general public; and

WHEREAS, neither EO 20-69 nor this Emergency Order suspend the requirements of Florida's public records laws in any way or the Sunshine Law beyond the specific, discrete parameters explicitly set forth in EO 20-69 and this Emergency Order.

THEREFORE, IT IS ORDERED THAT:

Section 1. Findings. The above recitals are true and correct and are incorporated herein.

Section 2. Applicability and Limitation. This Emergency Order shall apply to all meetings of the Alachua County Board of County Commissioners, and its boards and committees which operate under the Sunshine Law. Public meetings will comply with all requirements of Section 286.011, Fla. Stat., which have not otherwise been suspended or waived pursuant to EO 20-69 and this Emergency Order. Pursuant to EO 20-69 and Alachua County Emergency Order 20-10, any necessary quorum of the county government may be established by members attending the meeting through CMT means. CMT, for purposes of this Order, shall include, but is not limited to, electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video which meets the intent of permitting attendance at public meetings.

Section 3. Meetings via Communications Media Technology.

a) Notice of Electronic Public Meetings.

The County will post notice of its electronic public meetings in a manner consistent with Section 286.011, Florida Statutes. Meeting notices will include instructions for interested members of the public to virtually attend via telephone, video conferencing or webinar technology utilized by the County. If a public meeting provides for the opportunity for public comment in general or on a specific item, the notice shall also include instructions regarding how members of the public may exercise their right to a reasonable opportunity to be heard.

b) Public Comment.

During CMT meetings, the public will be given a reasonable opportunity to be heard through CMT means on propositions before a board or committee where official action will be taken except if the action is purely ministerial. Unless extended by the chair of the board or committee, for each period of public comment, each speaker will be limited to 2 minutes of comment and each public comment period will last no more than 30 minutes all together. The chair of a board or committee may refuse to introduce or may discontinue public comment which is irrelevant, impertinent or slanderous. Unless expanded or extended by a chair of a board or committee, one designated public comment period on issues not appearing on the agenda will be allowed for no more than 30 minutes at the close of all business on the agenda. Public speakers who meets the definition of "lobbyists" per Sec. 68.02, Alachua County Code, shall disclose that they are lobbyists when addressing the Board of County Commissioners.

c) Wild Spaces Public Places 5pm Hearing Requirement Suspended.

Section 5.b(8) of Alachua County Resolution 18-101 states that Board of County Commissioners' actions on the acquisition of property using revenue from the Wild Spaces Public Places Local Government Infrastructure Surtax must occur at a duly noticed public hearing held after 5PM. The requirement that such Board of County Commissioners' meeting must be held after 5PM is hereby suspended until the expiration of the existing State of Local Emergency.

d) Voting.

All voting during CMT meetings will be taken by roll call vote. No member of a board or committee may vote on a matter where he or she has a voting conflict. An official action requires a majority vote of all members present by CMT means and eligible to vote, unless an extraordinary majority or unanimous vote is required. In case of a tie vote, the action fails. In case a member refuses to vote, his or her vote will be counted as in support of the proposition

e) Disruptions and Adjournment.

If during the conduct of a CMT public meeting, the meeting is interrupted through disruptions or glitches in the technology, the chair of the board or committee shall recess the meeting until the interruption is resolved. If the interruption cannot be resolved in a reasonable amount of time, the meeting shall be adjourned. The temporary recess or termination of a meeting is to assure compliance with the Sunshine Law.

Section 4. Public Education.

Due to the extraordinary nature of this Emergency Order and the paramount right of the public to participate in the decision-making process of its local government, the County will make reasonable efforts to publicize the subject matter being considered at its meetings and publicize the way that the public can participate in the meetings prior to the meetings.

Section 5. Temporarily Superseding Rules of Procedure.

This Emergency Order supersedes, to the extent it is inconsistent, any rule of procedure or tradition of procedure of the Board of County Commissioners or any other board or committee governed by this Order, until the termination of this Order.

Section 6. Effective Date and Termination.

This Emergency Order will take effect upon filing with the Clerk of Courts of Alachua County in accordance with Section 252.46(2), Fla. Stat., and shall remain in effect until modified or terminated by subsequent order or until the Executive Order 20-69 expires or is rescinded.

Dated this 8th day of April, 2020 at 3:30 p.m.

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

By: 
Robert Hutchinson, Chairman

APPROVED AS TO FORM:



County Attorney's Office