

**~~FIRST AMENDMENT TO~~ EMERGENCY ORDER NO. 2020-16XX
CMT AND HYBRID CMT 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 publically 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

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

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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, consistent with EO 20-69, Alachua County Emergency Order 20-16 (March 27, 2020) provides rules and procedures for CMT meetings of the Alachua County board and committees, with minor amendment on April 9, 2020; and

WHEREAS, consistent with EO 20-69, the Chair of the Alachua County Board of County Commissioners amended the rules and procedures for virtual meetings on May 4, 2020 (First Amendment to Emergency Order 20-16) to provide for procedures to hold CMT quasi-judicial hearings; and

WHEREAS, the Board of County Commissioners, as well as its boards and committees, have duly conducted fully virtual public meetings pursuant to Emergency Order 20-16 and the First Amendment to Emergency Order 20-16 through ~~June 30, 2020~~today; and

WHEREAS, the Board of County Commissioners prefer to continue conducted fully virtual public meetings pursuant to Emergency Order 20-16 and the First Amendment to Emergency Order 20-16 during the full duration of this emergency; and

WHEREAS, on June 5th, 2020, Governor DeSantis issued Executive Order 20-139 entitled "Phase 2: Safe. Smart. Step-by-Step. Plan for Florida's Recovery" ("EO 20-139"); and

WHEREAS, Section 6. of EO 20-13993 extended the duration of EO 20-69 through ~~June 30~~October 1, 2020; and

WHEREAS, EO 20-139 encourages all Florida residents to avoid congregating in groups larger than 50 persons, and strongly encourages senior citizens and individuals with a significant underlying medical condition to avoid crowds and take measures to limit the risk of exposure to COVID-19 ("EO 20-139 Safety Recommendations"); and

WHEREAS, upon the expiration of EO 20-69, which may occur on ~~June 30~~October 1, 2020, the Board of County Commissioners, as well as its boards and committees, will be required to have a quorum of their voting members meet at a physical location in order to conduct public business; and

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WHEREAS, even once EO 20-69 expires, there is nothing legally preventing the Board of County Commissioners, and its board and committees, from continuing to utilize CMT for the conduct of their public meetings, provided that a quorum of their voting members are present at a physical location, and provided the meetings otherwise comply with Chapter 286, Florida Statutes, and the Florida Constitution; and

WHEREAS, Governor DeSantis' Re-Open Florida Task Force has recommended that local government meetings in Phase 2 of the Re-Opening continue to allow for authorized technology and video conferencing for public participation in local government meetings; and

WHEREAS, consistent with the EO 20-139 Safety Recommendations and the recommendations of the Task Force, the Board of County Commissioners wishes for CMT to continue to be available for the conduct of public meetings in Alachua County, even once EO 20-69 expires; and

WHEREAS, Sections 252.46 and 125.01, Florida Statutes, allow Alachua County to create uniform rules and procedures for the conduct of public meetings; and

WHEREAS, Alachua County finds: (a) that the declared COVID-19 public health emergency presents an immediate danger to the public health, safety, or welfare that requires emergency action; (b) the creation of uniform rules and procedures for the conduct of public meetings partially by means of CMT is necessitated by the immediate danger to allow for continuity of County Government; (c) the creation of such rules and procedures is the minimum action necessary to protect the public interest; and (d) the County's decision to conduct public meetings partially by means of CMT, in this manner, has been balanced between public safety, the health and safety of the citizens, and the continued delivery of essential critical local governmental services and functions; and

WHEREAS, the rules and procedures adopted by this Resolution are necessary to safely conduct the business of Alachua County and provide notice, fair procedure, public participation and a sufficient opportunity to be heard in compliance with Chapter 286, Florida Statutes, and the Florida Constitution.

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.~~, except as waived by a Governor's Emergency Order. Unless appropriately waived, Pursuant to EO 20-69 and Alachua County Emergency Order 20-10, any necessary quorum of the county government ~~may~~must be established by physically-present members attending the meeting ~~through CMT means.~~ All other members of a board or committee, and staff may attend the meeting through CMT. 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. The Board does hereby find that extraordinary circumstances exist to justify the absence of remote board and committee members, and all remote board and committee members may participate and vote on all matters before that board or committee as if physically-present.

Section 3. CMT and Hybrid CMT Meetings via Communications Media Technology.

a) Notice of Electronic Public Meetings.

Except as waived by a Governor's Emergency Order, The County will post notice of its CMT and electronic-hybrid CMT public meetings in a manner consistent with Section 286.011, Florida Fla. Statutes. Meeting notices will include instructions for interested members of the public to attend in person or ~~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 and hybrid CMT meetings, the public will be given a reasonable opportunity to be heard in person or 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, repetitious 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. Comment offered by the public attending through CMT will be given as much weight and consideration as comment offered by public attending physically.

c) Virtual Attendance by Staff.

The County Attorney's Office, County Manager's Office, Clerk Office and all County employees may attend CMT and hybrid CMT virtual public meeting and hearing remotely, except as directed by the County Attorney, County Manager, or the Clerk.

d) Seating Capacity.

To maintain social distancing and in accordance with EO 20-139 Safety Recommendations, when a board and committee conducts hybrid CMT meetings, seating capacity shall be limited to the number that is able to socially distance within the meeting space, but in no case shall more than 50 persons total be permitted in any room. That seating capacity maximum number shall include board and committee members, and staff. All persons entering a board or committee room must meet screening criteria established by the Board of County Commissioners or the

County Manager, and may be excluded from physically attending in the instance where they do not meet the criteria. When the County Manager anticipates, prior to the start of a hybrid CMT meeting, that the number of physically-present meeting attendees will exceed the room meeting seating capacity, as established in this Order, the County Manager will take reasonable actions to accommodate the anticipated attendance and participation in the meeting, such as arranging “over-flow” seating or moving the meeting location to a meeting room with greater capacity. When it becomes clear during the course of a meeting that the number of physically-present meeting attendees will exceed the meeting room capacity, as established in this Order, the County Manager or staff liaison will take reasonable actions to accommodate the physically-present attendees in the meeting, such as arranging “over-flow” seating or moving the meeting location to a meeting room with greater capacity.

e) In-Person Attendance.

All persons attending a CMT or hybrid CMT meeting shall follow such rules and procedures established by the Board of County Commissioners and the County Manager, and may be excluded from physically attending in the instance where they do not comply. Such rules and procedures may include, but are not limited to, social distancing, facial coverings and sanitation requirements.

e)f) 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.

e)g) 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 physically-present or 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)h) Disruptions and Adjournment.

If during the conduct of a CMT or hybrid 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.

i) Specific Rules for Quasi-Judicial Public Hearings.

Except as amended below, all other guidelines of this Emergency Order apply to quasi-judicial hearings.

1. Notice of Electronic Quasi-Judicial Public Hearings

Except as waived by a Governor's Emergency Order, the County will post notice of its CMT and electronic-hybrid CMT public meetings-hearings in a manner consistent with Section 286.011, Florida Statutes, and any other requirement of law not otherwise waived by ~~the Governor's EO 20-69 or~~ Alachua County Emergency ~~Order 20-160~~. Meeting-Hearing notices will include instructions for interested members of the public to attend in person or virtually ~~attend~~ via telephone, video conferencing or webinar technology utilized by the County. The notice shall also include a process for individuals or entities to participate in the quasi-judicial public hearing as parties if they feel that they meet the legal criteria for party status, including being more substantially affected by the application than the public at large.

2. Request to Participate as a Party

A. No later than 5 calendar days prior to the hearing, an individual or entity wishing to participate as a party in a quasi-judicial public hearing must provide the County with a written request to be considered as a party. The request must include a factual basis for why the requestor believes that he or she should be allowed to participate as a party.

B. Any individual or entity who wishes to participate as a party to the proceeding but is unable to attend the hearing through communication media technology ~~(CMT)~~, may request a reasonable accommodation to allow for participation in the public hearing. All requests for reasonable accommodation must be made in writing no later than 5 calendar days prior to the hearing.

C. At the outset of each quasi-judicial public hearing, the Board of County Commissioners, or quasi-judicial boards or committees operating under its authority, shall consider the written requests for party status and make a determination of whether a requesting individual or entity will be considered a party to the proceeding and allowed to participate as such.

3. Evidence

A. Any evidence, testimony, argument, or other information offered utilizing CMT shall be afforded equal consideration as if it were offered in person and shall be subject to the same objections.

B. If an individual or entity intends to participate as a party and provide evidence, beyond testimony, at the public hearing, the individual or entity must provide electronic copies of all evidence to the Clerk or appropriate County staff no later than 3 calendar days prior to the hearing. Any evidence provided electronically will be entered into the record and provided to all identified parties, even if the evidence is provided by a non-party participant.

C. Witnesses are not required to be physically present to be sworn and may be sworn and testify through CMT. To the extent possible by CMT, testimony and evidence of recognized parties will be subject to reasonable cross-examination by other parties to the proceeding.

D. Parties will be provided a maximum of 15 minutes to make argument, testify, and present relevant evidence at the quasi-judicial public hearing. The Chair may grant additional time for complex matters if the party needs additional time to provide relevant, non-repetitious, non-slanderous testimony or evidence. The Chair may also grant additional time to a party to allow for questions from the Board or committee hearing the item.

E. Testimony and evidence offered during regular public comment on a quasi-judicial item will be considered and entered into the record of the decision.

4. Applicant Waivers for Quasi-Judicial Items

For quasi-judicial agenda items, applicants who elect to have their items considered at a CMT public hearing shall pay the cost to advertise the item and shall agree to waive the right to challenge the validity, adequacy, or constitutionality of the rules and procedures set forth in this Order or of the CMT proceeding. Such waivers shall be provided in writing in advance of the CMT meeting. Quasi-judicial applicants that do not provide such waivers shall be continued to the next available hearing that does not utilize CMT. In addition, the County reserves the right to continue any quasi-judicial item that the County Manager or Board of County Commissioners determines is not appropriate to be conducted through CMT, even if the applicant provides the required waivers.

5. Conduct of the Public Hearing

A. In order to ensure that all speakers at ~~the a CMT or hybrid CMT proceeding hearings~~ are properly recorded, all speakers at the CMT or hybrid CMT public hearing must be recognized by the Chair prior to speaking, and no more than one person shall speak at the same time. ~~All votes on all action items shall be by roll call vote.~~

B. The Chair of the Board of County Commissioners, or of any board or committee acting under its authority, may limit testimony or the presentation of evidence, including from recognized parties in quasi-judicial public hearings, if the testimony or evidence is repetitious, immaterial, or slanderous.

6. General Provisions

~~All other general provisions of Alachua County Emergency Order 20-16 shall apply to the conduct of quasi-judicial public hearings.~~

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 on September 23, 2020 at 12:01am 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 ____ day of ~~April~~September, 2020 at _____.

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

By: _____
Robert Hutchinson, Chairman

APPROVED AS TO FORM:

County Attorney's Office