

**FIRST AMENDMENT TO 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, quasi-judicial hearings require that parties be afforded additional opportunities to participate in hearings beyond general public comment opportunities; and

WHEREAS, due process is an important aspect of quasi-judicial hearings to ensure that parties have a reasonable opportunity to submit evidence into the record for the consideration of the collegial board; and

WHEREAS, these rules provide an adequate avenue for the public to participate in public meetings and public hearings, including as parties to quasi-judicial matters; and

WHEREAS, the Governor issued EO-112, extending the use of CMT for public meetings and public hearings under EO 20-69 for the duration of EO-112; 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. Emergency Order 20-16, Section 2, is hereby amended as follows:

Section 2 Applicability and Limitation. This Emergency Order, and any amendments to this Emergency Order, shall apply to all meetings or public hearings of the Alachua County Board of County Commissioners, and its boards and committees which operate under the Sunshine Law. Public meetings and public hearings will comply with all requirements of Section 286.011, Fla. Stat., as well as all other requirements of law, which have not otherwise been suspended or waived pursuant to EO 20-69 or Emergency Order 20-16, including any amendments. 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. Emergency Order 20-16 is hereby amended to include the following supplemental rules for quasi-judicial public hearings as Section 3(f) of Emergency Order 20-16:

f) Specific Rules for Quasi-Judicial Public Hearings

1. Notice of Electronic Quasi-Judicial Public Hearings

The County will post notice of its electronic public meetings 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 20-16. 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. 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 CMT proceeding are properly recorded, all speakers at the 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. Effective Date and Termination.

This First Amendment to Emergency Order 20-16 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 4th day of May, 2020 at 4:40 p.m.

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

By: 
Robert Hutchinson, Chairman

APPROVED AS TO FORM:



County Attorney's Office