



## Legislation Text

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**File #:** 20-0810, **Version:** 1

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### **Agenda Item Name:**

COVID-19 Discussion

- A. Receive Department of Health Update
- B. CARES Act Update
- C. Codes Enforcement Update
- D. Ratify Emergency Order 2020-44 (RESTAURANTS AND BARS)
- E. Adopt Emergency Order 2020-XX - permitting on-going virtual and hybrid virtual meetings
- F. September 8<sup>th</sup> Motion Regarding Indoor Occupancy

### **Presenter:**

Click or tap here to enter text.

### **Description:**

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### **Recommended Action:**

- Ratify Emergency Order 2020-44 (RESTAURANTS AND BARS)
- Adopt Emergency Order 2020-XX (CMT AND HYBRID CMT VIRTUAL GOVERNMENT IN THE SUNSHINE MEETINGS) - permitting on-going virtual and hybrid virtual public meetings

### **Prior Board Motions:**

September 8, 2020:

4. COVID-19 Discussion **20-0760**

**Fiscal Consideration:** N/A

**Recommended Action:** The discussion will go over the following items:

- Department of Health Update

Health Department Director Paul Myers presented the above item.

Commissioner Byerly, Commissioner Cornell, Chair Hutchinson, and Commissioner Wheeler presented comments.

- Cares Act Update

CRI Representative April Shuping presented the above item.

- Ratification of Emergency Order

Chair Hutchinson presented the above item.

County Manager Lieberman, County Attorney Torres, County Manager Lieberman, Commissioner Cornell, County Manager Lieberman, Mark Sexton, County Attorney Torres, Commissioner Byerly, Commissioner Chestnut, Commissioner Wheeler, Chair Hutchinson, Commissioner Cornell, County Attorney Torres, Commissioner Byerly, Commissioner Chestnut, and Commissioner Wheeler presented comments.

**Commissioner Cornell moved** to remove the gathering registration from the proposed Emergency Order and allow for citations for unsafe gatherings where more than 10 persons who do not reside in the same space occur where social distancing is not available.  
2<sup>nd</sup> Byerly

Commissioner Byerly, County Attorney Torres, Commissioner Cornell, Health Department Director Paul Myers, Commissioner Wheeler, Chair Hutchinson, Commissioner Chestnut, and Health Department Director Paul Myers presented comments.

**Commissioner Cornell moved the amended motion** to remove the gathering registration process from the proposed Emergency Order however allow for citations for unsafe inside gatherings. Unsafe inside gatherings shall be defined as gatherings of 10 or more individuals who do not reside in the inside space where by appropriate social distancing cannot occur.

Commissioner Byerly, Commissioner Cornell, and County Attorney Torres presented comments.

**Commissioner Cornell moved the amended motion** to remove the gathering registration process from the proposed Emergency Order and empower the Chair to define what would be an enforceable citation for unsafe gatherings with input from staff, the University of Florida, and the municipalities.  
2<sup>nd</sup> Byerly

Commissioner Wheeler, Commissioner Byerly, Health Department Director Paul Myers, Commissioner Chestnut, Chair Hutchinson, and County Attorney Torres presented comments.

#### Public Comments via Telephone

Mary Alford, Wendy, Health Department Director Paul Myers, and Commissioner Wheeler presented comments.

**The motion carried 3-2 with Commissioners Hutchinson and Wheeler voting “Nay”.**

#### **Fiscal Consideration:**

N/A

#### **Background:**

- Ratify Emergency Order 2020-44 (RESTAURANTS AND BARS)

On June 5<sup>th</sup>, Governor DeSantis issued Executive Order 20-139 (Phase 2: Safe. Smart. Step by Step. Plan for Florida's Recovery), which permitted restaurants and other establishments, and bars and other vendors licensed to sell alcoholic beverages for consumption on the premises, to operate at 50% of their indoor capacity, excluding employees, so long as bar areas only have seated service. On July 1, 2020, Secretary Halsey Beshears, Florida Department of Business and Professional Regulation, issued Emergency Order 2020-09, requiring vendors licensed to sell alcoholic beverages for consumption on the premises, but not licensed to offer food service, to suspend sales of alcoholic beverages for consumption on the premises. Prior to the issuance of Emergency Order 2020-09, news media around the state reported various incidents bars and other alcohol vendors not enforcing the occupancy and social distancing requirements of EO-139. On September 10, 2020, Secretary Beshears issued Emergency Order 2020-10, repealing Emergency Order 2020-09.

According to data provided by the Alachua County Health Department, Alachua County has experienced a marked increase in total cases of COVID-19 positivity. On September 11, 2020, the Board Chair issued Alachua County Emergency Order 2020-44 (RESTAURANTS AND BARS). This order requires restaurants and bars to follow Governor's Order 20-139, Section 4(A), which, in pertinent part, permits operation of these businesses at no more than 50% occupancy with social distancing, and only permits seated service.

Pursuant to recently-amended Chapter 27, Alachua County Code of Ordinances, Section 27.08(6), the Official Authority (Board Chair) is reporting to the Board this action taken pursuant to his authority in Section 27.08. The Board may take such action as it deems appropriate, or no action at all. Unless modified or repealed, Emergency Order 2020-44 shall stand ratified by the Board.

- Adopt Emergency Order 2020-XX (CMT AND HYBRID CMT VIRTUAL GOVERNMENT IN THE SUNSHINE MEETINGS)

On April 14<sup>th</sup>, the Board of County Commissioners ratified Alachua County Emergency Order 2020-16, as executed by the Chair on April 8, 2020, and amended to provide for quasi-judicial hearings. That Emergency Order provided rules for the Board of County Commissioners, and its boards and committees which operate under the Sunshine Law. This Order relied on Governor's Executive Order 20-69, as extended through various orders to October 1, 2020, which suspended any statutory requirement that local governing bodies have a quorum physically present in a specific public place to conduct public meetings. Due to uncertainty regarding any future extension by the Governor and the stated goal of the Board to continue to meet in as much of a communication media technology (CMT) format as possible, the order before the Board today replaces the First Amendment to Emergency Order 2020-16 and does the following.

- Permits fully-remote meetings and hearings to continue so long as the Governor's waiver of in-person quorum is in place.
- Creates a "hybrid" CMT process which:
  - Allows, once a quorum is physically present, the remaining members of board and committees to attend and participate remotely.

- Permits staff and the public to attend and participate remotely or in-person.
- Establishes rules for social-distancing seating capacity and screening of any person physically-present at a meeting of hearing.
- Permits the Board or County Manager to create rules and procedures for social distancing, facial covering and sanitations for in-person attendees.

This Emergency Order has not been executed by the Chair so the Board would adopt it in the first instance.

- September 8th Motion Regarding Indoor Occupancy

On September 8<sup>th</sup>, the Board voted, 3-2, to remove the gathering registration process from the proposed Emergency Order and empower the Chair to define what would be an enforceable citation for unsafe gatherings with input from staff, the University of Florida, and the municipalities. Following that Board direction, the County Attorney's Office sought input on how to define "unsafe gathering" from the City of Gainesville, Alachua County Sheriff's Department, University of Florida and Santa Fe College. No useful input was received.

Following this attempt to obtain a definition of "unsafe gathering," the County Attorney's Office reviewed orders around the state. The attached Broward County order (Broward County EO 20-22, as amended by EO 20-23) is the most relevant of orders found. This order prohibits indoor or outdoor gatherings at residential properties which exceed 10 persons, excluding members of household and parents, and minor children of residents of the household.

Broward County's order made a finding that recent reports indicated that a significant amount of COVID-19 transmission was resulting from social gatherings at residential properties, street parties, neighborhood gatherings, and other gathering and settings. For Alachua County to make that finding, we must have a factual basis on the record to support it.

At the moment, it is known that approximately 67% of the local spread of COVID-19 is within the home which is borne out by the fact that the numbers coming out of UF is driven in large part by cases in the residential settings. A logical extension is that roommates would spread the infection to each other and those who come into their dwelling. Another factor that has been brought up is the viral load that each individual is exposed to which is a factor of how long someone is exposed to an environment with the virus in the air.

Any order regarding gatherings, other than those which are already allowed, will have to make certain findings to support the restriction of gatherings. Compared to the masking order which is a relatively minor inconvenience, we can expect the argument to be made that limiting any sort of gathering is a violation of the right of assembly and needs to be examined by the compelling basis standard of constitutional scrutiny (much as the argument has been made in the Broward County case, attached). The requirements should be narrowly tailored to meet an important governmental interest, be based upon objective evidence, and be limited in time (necessitating the Board to review periodically to determine if the basis for continuing to impose the requirements still exists). If data and analysis supports the appropriate findings, the Board can consider:

- requiring a gathering of individuals above a certain size (excluding residents and certain relatives of residents) to utilize masks if social distancing cannot be maintained; and/or
- requiring gathering hosts maintain contact information for attendees in the event of positive test results related to that event.

At the moment, Broward County's order is being litigated. No hearing on Broward County's Motion to Dismiss is scheduled. Recently, an order from the Western District of Pennsylvania struck down the limitation in gatherings ordered by the Governor of Pennsylvania on Constitutional grounds. In large part, this Pennsylvania court's order was the result of what that court thought was overbroad action on the part of the Governor. The Federal courts in Florida are not governed by this order, but it would be binding in any court considering an Alachua County Board order.