

DUNDEE TOWN COMMISSION MEETING

APRIL 14, 2020

AGENDA ITEM 3: RESOLUTION NO. 20-11: AUTHORIZING USE OF COMMUNICATIONS MEDIA TECHNOLOGY

SUBJECT:

The Town Commission will consider Resolution No. 20-11: Authorizing Use of Communications Media Technology (CMT) for Public Meetings

STAFF ANALYSIS:

Novel Coronavirus Disease 2019 (“COVID-19”) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.

Proposed Resolution No. 20-11 authorizes the use of Communications Media Technology (“CMT”) and adopts emergency rules for virtual public meetings conducted through CMT in an ongoing effort to safely and expeditiously conduct the business of the Town of Dundee through public meetings while protecting the health, safety, and welfare of the public officials, members of the public, public sector, and citizens and residents of the Town of Dundee.

STAFF RECOMMENDATION:

Approval

ATTACHMENTS:

- Resolution No. 20-11

RESOLUTION NO. 20-11

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, RELATING TO THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19); AUTHORIZING THE USE OF COMMUNICATIONS MEDIA TECHNOLOGY (CMT) FOR PUBLIC MEETINGS INCLUDING, BUT NOT LIMITED TO, PUBLIC HEARINGS OF ALL BOARDS OF THE TOWN OF DUNDEE, INCLUDING THE TOWN COMMISSION AND MAGISTRATE, DURING THE COVID-19 LOCAL STATE OF EMERGENCY; SUSPENDING LOCAL LAWS RELATING TO PUBLIC MEETINGS; PROVIDING FOR PUBLIC MEETINGS TO BE HELD VIRTUALLY BY COMMUNICATIONS MEDIA TECHNOLOGY INCLUDING, BUT NOT LIMITED TO, TELECONFERENCING AND VIDEO CONFERENCING; PROVIDING FOR PUBLIC PARTICIPATION AND COMPLIANCE WITH CHAPTER 286, FLORIDA STATUTES; PROVIDING FOR EMERGENCY RULES AND ACCOMMODATIONS FOR VIRTUAL PUBLIC MEETINGS CONDUCTED BY COMMUNICATIONS MEDIA TECHNOLOGY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Novel Coronavirus Disease 2019 (“COVID-19”) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, pursuant to §§ 252.38(3)(a) and 252.46, Florida Statutes (2019), and §4 of Resolution No. 20-11 of the Town Commission of the Town of Dundee, Florida, the Town Commission of the Town of Dundee, Florida, authorizes the use of Communications Media Technology (“CMT”) and adopts emergency rules for virtual public meetings conducted through CMT in an ongoing effort to safely and expeditiously conduct the business of the Town of Dundee through public meetings while protecting the health, safety, and welfare of the public officials, members of the public, public sector, and citizens and residents of the Town of Dundee; and

WHEREAS, on March 1, 2020, Florida Governor Ron DeSantis issued Executive Order 2020-51 declaring COVID-19 and the presence of the coronavirus responsible for COVID-19 (“SARS-CoV-2”) in the State of Florida to be a public health emergency pursuant to Chapter 381 of the Florida Statutes; and

WHEREAS, on March 7, 2020 Governor DeSantis directed the Director of Emergency Management to activate the State Emergency Operations Center to Level 2 to provide coordination and response to the COVID-19 emergency; and

WHEREAS, on March 9, 2020, Governor DeSantis issued Executive Order 2020-52 (a) declaring COVID-19 and the presence of SARS-CoV-2 in the State of Florida to

be a state of emergency pursuant to Chapter 252 of the Florida Statutes; (b) activating the Florida National Guard to assist with emergency management; (c) suspending the effect of budgetary statutes and rules that would prevent, hinder or delay necessary action in coping with the emergency; (d) authorizing pharmacists to dispense extended refills of medication; and (e) authorizing political subdivisions of the state to waive certain procedures and formalities relating to public work, contracts, obligations, employment of workers, rental of equipment, acquisition of supplies and appropriation/expenditure of public funds; and

WHEREAS, on March 13, 2020, President Trump issued a Proclamation Declaring a National Emergency Concerning the COVID-19 Outbreak; and

WHEREAS, on March 16, 2020, the Polk County Manager declared a state of local emergency to exist in Polk County, Florida under authority of Chapter 252, Florida Statutes and Polk County Ordinance 19-074; and

WHEREAS, on March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures, such as avoiding gatherings of more than 10 people, and in states with evidence of community spread, recommending restrictions to certain establishments conducive to mass gatherings and congregations; and

WHEREAS, on March 17, 2020, Governor DeSantis issued Executive Order 20-68 as a result of COVID-19 relating to Bars, Pubs and Nightclubs; Beaches; and Restaurants within the State of Florida; and

WHEREAS, on March 18, 2020, the City Commission of the City of Winter Haven declared a local state of emergency to exist within the corporate limits of the City of Winter Haven, Florida under authority of the Charter and Code of Ordinances of the City of Winter Haven, Florida and Chapter 252 of the Florida Statutes; and

WHEREAS, on March 19, 2020, in response to a letter received from Governor DeSantis dated March 17, 2020, the Florida Attorney General issued Florida Attorney General Opinion 2020-03 concluding that, unless and until legislatively or judicially determined otherwise, if a quorum is required to conduct official business, local government bodies may only conduct meetings by teleconferencing or other technological means if either a statute permits a quorum to be present by means other than in-person, or the in-person requirement for constituting a quorum is lawfully suspended during the state of emergency; and

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order 2020-69 that, for the duration of the state of emergency: (a) suspended Florida’s statutory laws requiring that a quorum of any local governing body be physically present in-person at a specific public place; and (b) authorized local governing bodies to use

communications media technology, such as telephonic and video conferencing, as provided in Section 120.54(5)(b)2., Florida Statutes; and

WHEREAS, on March 23, 2020, Governor DeSantis issued Executive Order 2020-80 requiring all individuals that fly into Florida from states with substantial community spread to self-isolate in Florida for 14-days or the duration of their trip, whichever is shorter; and

WHEREAS, on March 24, 2020, Governor DeSantis issued Executive Order 2020-82 directing all persons, including Floridians, who traveled to an area with substantial community spread of SARS-CoV-2, such as the New York Tri-State Area (Connecticut, New Jersey and New York), between March 10, 2020 and March 24, 2020, and all persons arriving in Florida after March 24, 2020 from such an area, to isolate or quarantine for a period of 14 days from the time of entry into the State; and

WHEREAS, on March 24, 2020, Governor DeSantis issued Executive Order 2020-83 directing the State Surgeon General to issue public health advisories during the state of emergency, as follows:

- (1) directing (a) all persons over 65 years of age and (b) all persons with a serious underlying medical condition that places them at a high risk of severe illness from COVID-19, urging them to stay home and to take such other measures as necessary to limit their risk of exposure to SARS-CoV-2;
- (2) advising against all social or recreational gatherings of 10 or more people; and
- (3) urging all those who can work remotely to do so.

WHEREAS, the *State Emergency Management Act*, Chapter 252, Florida Statutes (“SEMA”), permits each Florida county and municipality to make, amend, and rescind such orders and rules as are necessary for emergency management purposes which have the full force and effect of law when filed in the office of the responsible respective clerk or recorder, so long as such orders and rules are taken or made with due consideration of the orders, rules, actions, recommendations and requests of federal authorities relevant thereto; and

WHEREAS, the Centers for Disease Control (“CDC”) has issued formal guidance advising that, as of March 16, 2020, all public events of 10 or more people in communities with minimal or moderate spread of SARS-CoV-2 should be canceled or held virtually to reduce the viral transmission rate; and

WHEREAS, on March 27, 2020, Governor DeSantis issued Executive Order 2020-86 requiring all individuals that drive into Florida from states with substantial community spread to self-isolate in Florida for 14-days or the duration of their trip, whichever is shorter; and

WHEREAS, on March 29, 2020, the President extended such guidance to be in effect until April 30, 2020; and

WHEREAS, on March 30, 2020, Governor DeSantis issued Executive Order 2020-88 directing that, for Florida Retirement System (FRS) employees who have retired since October 1, 2019, or who may retire prior to August 1, 2020, may have the requirements of §121.091(9), Florida Statutes, tolled for purposes of re-employment or continued employment assisting the COVID-19 emergency response; and

WHEREAS, on March 30, 2020, Governor DeSantis issued Executive Order 2020-89 ordering Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines established by Miami-Dade County pursuant to its March 19, 2020 Emergency Order 07-20, as may be modified, prior to the effective date of this Executive Order; 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 Town of Dundee, Florida; and

WHEREAS, as of 6:00 P.M. on March 31, 2020, the Florida Department of Health reports 6,741 active SARS-CoV-2 infections, and 85 COVID-19-related deaths in the State of Florida with 73 active SARS-CoV-2 infections, 28 hospitalizations and 1 death in Polk County; and

WHEREAS, consistent with CDC guidance and to prevent rapid spread of the SARS-CoV-2 virus, it is formally found that, for the duration of the state of emergency, all public meetings including but not limited to public hearings of the governing bodies of the Town of Dundee, Florida, to include the Town Commission, lesser appointed boards, authorities and magistrates, should be conducted by Communications Media Technology consistent with all Centers for Disease Control (CDC) and State of Florida Department of Health guidelines and advisories; and

WHEREAS, pursuant to §120.54(5)(b)2, Florida Statutes (2019), Communications Media Technology (“CMT”) means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available; and

WHEREAS, pursuant to §120.54(5)(b)2, Florida Statutes (2019), the use of CMT does not permit an agency to conduct any proceeding(s) otherwise subject to the provisions of §286.011, Florida Statutes (2019), without making provision(s) for the attendance of *any member of the public who desires to attend*; and

WHEREAS, pursuant to 28-109.004 of the Florida Administrative Code (FAC), no proceeding otherwise subject to §286.011, Florida Statutes (2019), shall be conducted

exclusively by means of CMT if the available technology *is insufficient to permit all interested persons to attend*; and

WHEREAS, pursuant to §120.54(5)(b)2, Florida Statutes (2019), the use of CMT shall not be construed to diminish the right of the public to inspect public records under Chapter 119, Florida Statutes; and

WHEREAS, CMT includes, but shall not be limited to, telephone and internet connections which are ubiquitous throughout the Town of Dundee, Florida; and

WHEREAS, on April 1, 2020, Governor DeSantis issued Executive Order 2020-91 requiring that (i) senior citizens and individuals with significant underlying medical conditions (chronic lung disease, serious heart conditions, cancer, diabetes, etc.) shall stay at home and take all measures to limit exposure to COVID-19; and (ii) all persons in Florida to limit their movements and personal interactions outside of their home to only those necessary to obtain or provide **essential services** or **essential activities**; and

WHEREAS, pursuant to the lawful powers granted to the Town of Dundee by the *State Emergency Management Act*, §§ 252.38(3)(a)5 and 252.46, Florida Statutes (2019), and the suspension of state statutes requiring a physical in-person quorum and physical meeting space by Executive Order 2020-69 and §4 of Resolution No. 20-11 of the Town Commission of the Town of Dundee, Florida, the Town of Dundee is authorized to suspend rules and procedures relating to public meetings and use CMT, as provided in §120.54(5)(b)2, for conducting virtual public meetings.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

SECTION 1. Incorporation of Recitals. The foregoing recitals are incorporated herein and found by the Town Commission to be true and correct statements of fact.

SECTION 2. COMMUNICATIONS MEDIA TECHNOLOGY.

(a) *Communications Media Technology* ("CMT") means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available. See §120.54(5)(b)2, Fla. Stat. (2019) and 28-109.002, F.A.C. (defining CMT for purposes of providing public access to a proceeding by an agency).

(b) All local governing bodies of the Town of Dundee, Florida, to include the Town Commission, lesser appointed boards and authorities and magistrates, and any dependent public agency (individually each a "Board" and collectively the "Boards"), are authorized to convene or meet through the use of CMT in the manner provided for by this Resolution for the duration of the state of emergency set forth in Executive Order

2020-52, including any extension thereof, and the state of local emergency in Resolution No. 20-11, including any extension thereof.

(c) All provisions of the *Charter of the Town of Dundee*, the *Code of Ordinances of the Town of Dundee, Florida*, and any governing non-codified ordinance, rule, resolution or bylaw, that regulate the meeting procedures, meeting dates, times and places of Boards, or provide specific physical public participation requirements or local in-person quorum requirements are, for the duration of the state of emergency in Executive Order 2020-52, including any extension thereof, and the state of local emergency in Resolution No. 20-11, including any extension thereof, are suspended pursuant to SEMA, § 252.38(3)(a)5.a., Florida Statutes (2019), to protect the health, safety and welfare of the community and the attendance by any member of a Board via CMT authorized herein shall be deemed acceptable for constituting a quorum for purposes of conducting the business of the Board including, but not limited to, any Public Hearings thereof.

SECTION 3. Teleconferences and Internet Video Conferences Authorized.

At the option of the Town Manager, any regular, special or emergency meeting including, but not limited to, Public Hearings of any Board may be convened by teleconference and internet video conference. Regardless of the type of technology used, Board members and participating officials shall be authorized through the conferencing system as speakers who may, at any time, be allowed to comment, subject to the general control of the meeting by the Mayor or Chair of the Board. In any event, CMT shall permit Board members and participating individuals to connect using a toll-free or local telephone number and internet video conferencing technology. The CMT selected shall accommodate unique connections equal to or greater than the physical occupancy of the regular meeting room used by the Board.

SECTION 4. Public Participation.

As required by Florida law, all meetings of any board or commission of any state agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided by the Florida Constitution, at which official acts are to be taken are declared to be public meetings and open to the public, and no resolution, rule, or formal action is binding except as taken at such meeting. See §286.011, Fla Stat. (2019) (providing that reasonable notice of all such meetings is required).

The *Government in the Sunshine Law* ("Sunshine Law") does not exempt governmental meetings conducted by CMT, and therefore the requirements of the Sunshine Law shall apply to meetings conducted by CMT, as follows: (i) meeting must be open to the public; (ii) reasonable public notice of meeting(s) must be provided; and (iii) meeting minutes must be promptly prepared and open to public inspection. See §286.0114, Fla Stat. (2019) (requiring public boards provide opportunity for public comment prior to taking official action).

Pursuant to Florida law, any member of the public shall be allowed to attend a meeting conducted by CMT. In the event the available technology is insufficient to permit all interested persons to attend such meetings conducted by CMT, the Town shall terminate the meeting until the insufficiencies are remedied.

For purposes of this Resolution, all interested persons desiring to attend a meeting conducted exclusively by means of CMT shall be permitted to attend and provided an opportunity for public comment on any official action item (not ministerial item), as follows:

(a) At least seven (7) days prior to the scheduled meeting of the Board, notice of the meeting in a substantially similar form to Exhibit 'A' attached hereto and incorporated herein shall be (1) published once in a newspaper of general circulation in the community and (2) published electronically on the Town's website in a prominent location; and (3) posted on the Town's social media outlets.

(b) The notice of a virtual public meeting shall, at a minimum, provide a call-in number for teleconferencing and link for internet video conferencing that will allow members of the public to connect to and listen and/or watch the meeting of the Board. Teleconferencing technology shall permit members of the public to connect and listen using a toll-free or local telephone number, and internet video conferencing technology shall permit individuals to connect and watch using generally available computer hardware, standard web browser software and high-speed internet connection.

(c) At least three (3) days prior to the scheduled meeting of the Board, the agenda packet, which includes the action items, for the Board shall be published and made available on the Town's website for examination by the public in preparation for the meeting. A link to the agenda packet or webpage where the agenda packet may be found shall be published in the meeting notice required by paragraph (a).

(d) At the option of the Town Manager and considering the circumstances giving rise to the state of emergency, the meeting notice (see Exhibit "A") required by paragraph (a) shall provide two (2) options for public comment, whichever is reasonable and technologically feasible, as follows:

- (1) Provide a call-in number or link for members of the public to connect and provide live comment or ask live questions during times set aside for public participation during the meeting of the Board;
- (2) Provide one (1) or more methods, such as a mailing address and/or an e-mail address, for members of the public to provide written and/or e-mailed comments or questions in advance of the meeting to be read during times set aside for public participation during the meeting of the Board; or

- (3) Provide the address of a physical access point where members of the public may participate in the Board meeting and provide comment or ask questions during times set aside for public participation during the meeting of the Board.

SECTION 5. Ground Rules.

The Town may promulgate ground rules for Board member, Town official and public participation in a meeting or conference conducted by CMT in order to promote the efficient dispatch of public business. In the event ground rules are promulgated, a link to such ground rules shall be either (i) published in the meeting notice required by Section 4(a) of this Resolution or (ii) be placed on the Town's website in a prominent location.

SECTION 6. Accommodations.

Pursuant to the provisions of the *Americans with Disabilities Act of 1990*, as amended, and § 286.26, Florida Statutes (2019), if any individual requires any special accommodation in order to participate in any teleconference or internet video conference meeting of the Board, the individual shall contact the Town Manager no later than forty-eight (48) hours prior to the meeting in order for the Town to make and/or arrange for reasonable accommodations. Every meeting notice published under Section 4(a) of this Resolution shall contain a provision advising the public of the availability of ADA accommodations as required by law.

SECTION 7. General Matters.

(a) If technical problems with the communication network develop during any meeting conducted by CMT, the meeting shall be recessed until the problems have been corrected or terminated.

(b) Minutes of every Board meeting conducted by CMT shall be taken and promptly recorded.

(c) If quasi-judicial matters are scheduled to be heard by CMT, the Town may develop and promulgate reasonable rules for the administration of oaths and for participation of applicants and organized group representatives.

(d) Any evidence, testimony, and argument which is offered by CMT shall be afforded equal consideration as if it were offered in-person and shall be subject to the same objections.

(e) No later than seventy-two (72) hours following a meeting conducted by CMT, the Town shall prominently publish on its website an "after-meeting notice" which, at a minimum, will provide (i) notice of the date and time in which the meeting was

conducted by CMT; (ii) a statement setting forth the reason(s) for conducting the meeting by CMT; and (iii) a statement setting forth the official action(s) (not ministerial) taken by the Board.

SECTION 8. Severability.

The provisions of this Resolution are severable. If any word, sentence, clause, phrase or provision of this Resolution for any reason is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then all remaining provisions and portions of this Resolution shall remain in full force and effect.

SECTION 9. Conflicts.

All official acts in conflict with any of the provisions of this Resolution are hereby temporarily repealed to the extent of any conflict for the duration of the local state of emergency as set forth in Executive Order 2020-52 and Resolution No. 20-11.

SECTION 10. Effective Date.

This Resolution shall take effect immediately upon its adoption.

READ, PASSED AND ADOPTED at a duly called meeting of the Town Commission of the Town of Dundee, Florida assembled on this 14th day of April, 2020.

TOWN OF DUNDEE

Samuel Pennant, Mayor

ATTEST WITH SEAL:

Town Clerk

Approved as to form:

Frederick J. Murphy, Jr., Town Attorney