

**EMERGENCY ORDINANCE NO. 18-2020**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO ARRANGE FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS DURING A DECLARED PUBLIC HEALTH EMERGENCY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Novel Coronavirus Disease 2019 (COVID-19) is a contagious disease that has the apparent ability to spread rapidly among humans and may result in serious illness or death, constituting a clear and present threat to the lives, health, welfare, and safety of the people of the Town of Palm Beach; and

**WHEREAS**, on March 1, 2020, Governor Ron DeSantis issued Executive Order number 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

**WHEREAS**, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

**WHEREAS**, on March 9, 2020, Governor Ron DeSantis issued Executive Order number 20-52 which declared a State of Emergency for the State of Florida due to COVID-19; and

**WHEREAS**, on March 16, 2020, the Town of Palm Beach took similar action and declared a local State of Emergency which was extended by subsequent Town Council resolutions until said State of Emergency expired on October 13, 2020; and

**WHEREAS**, on November 9, 2020 in response to the rise of infection rates of Covid-19, the Town adopted Resolution No. 122-2020 to extend the Emergency Declaration until December 8, 2020; and

**WHEREAS**, Governor DeSantis' Executive Orders 20-51 and 20-52 also contain a recommendation to limit public gatherings; and

**WHEREAS**, Florida Law, including Florida Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials, for the conduct of public business, must be held following procedures (notice, access to meetings, opportunity to be heard, the taking of minutes) that ensure that the public is able to participate in and be aware of the decision making process (the “Sunshine Law”); and

**WHEREAS**, public meetings have traditionally been conducted in spaces with people in close proximity with each other and in groups varying in size, but generally much larger than ten people; and

**WHEREAS**, due to the apparent ability to spread rapidly among humans, during this declared State of Emergency, the traditional public meeting, including compliance with the physical quorum and public attendance requirements of the Sunshine Law, may unnecessarily expose the residents of the Town of Palm Beach, the Town’s elected officials, appointed board and commission members, and employees to COVID-19; and

**WHEREAS**, the Governor’s Executive Order 20-52 acknowledges that special duties and responsibilities placed on state, regional and local agencies in responding to the emergency may require them to suspend the application of the statutes, rules, ordinances and orders they administer; and

**WHEREAS**, specifically, Section 4(D) of Executive Order 20-52 provides for political subdivisions within the State to “waive the procedures and formalities otherwise required . . . by law pertaining to:

- 1) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety and welfare of the community;
- 2) Entering into contracts . . . ;
- 3) Incurring obligations;

- 4) Employment of permanent and temporary workers;
- 5) Utilization of volunteer workers;
- 6) Rental of equipment;
- 7) Acquisition and distribution, with or without compensation, of supplies, materials and facilities; and
- 8) Appropriation and expenditure of public funds.”; and

**WHEREAS**, therefore, Executive Order 20-52 authorizes the Town Council to take prudent action to ensure the health, safety, and welfare of the community, which necessarily includes holding virtual public meetings; and

**WHEREAS**, on September 4, 2020, Governor DeSantis signed Executive Order 20-213 which extended Order 20-52 through November 3, 2020; and

**WHEREAS**, Governor DeSantis recognized this action was necessary as, on March 20, 2020, he rendered Executive Order 20-69, suspending the physical quorum requirement for local government public meetings; and

**WHEREAS**, Governor DeSantis has extended Executive Order 20-69 several times with the last extension taking place on September 30, 2020, Executive Order 20-246, allowing public meetings to continue virtually through November 1, 2020; and

**WHEREAS**, Chapter 252, Florida Statutes, among other things, confers upon the Town Council the emergency powers provided for in Chapter 252 in order to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state; and to “make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of ss. 252.31 -252.90, but which are not inconsistent with any orders or rules adopted by the division or by any state agency exercising a power delegated to it by the Governor or the division.” Section 252.46(1), Florida Statutes; and

**WHEREAS,** COVID-19 threatens the public health, safety, welfare and security of the citizens, residents and visitors of the Town of Palm Beach, Florida; and

**WHEREAS,** as of November 2, 2020, the Florida Department of Health reports a total number of COVID-19 cases of 812,063 with 17,043 deaths in Florida and 53,151 cases and 1,595 deaths in Palm Beach County; and

**WHEREAS,** the Town Council finds there is a clear and present danger in holding a public “in person” meeting for those attending and those who come in contact with those attending; and

**WHEREAS,** the current outbreak of COVID-19 has made the Town Council acutely aware that provisions must be made to ensure that the business of municipal governance can occur without unnecessarily exposing public officials, Town personnel or members of the public to a risk of infection while ensuring public access and open government; and

**WHEREAS,** the technology exists to conduct public meetings using technology in which the Town can comply with the provisions of the Sunshine Law while preserving human life; and

**WHEREAS,** since Executive Order 20-69 was rendered by the Governor, the Town and its various boards and commissions have conducted virtual public meetings; and

**WHEREAS,** the Town’s virtual public meetings provide for the public to comment live over the phone, via email, or live in person at a designated location at Town Hall for those without phone or email access; and

**WHEREAS,** the technology and methods to hold virtual public meetings by the Town provide broader access to the general public to watch, listen to, or comment on public business; and

**WHEREAS,** the Town is unaware of any person that has been unable to view or participate in any virtual meeting held to date; and

**WHEREAS**, the Town Council also possesses broad home rule powers that authorize it to protect the public health, safety, and welfare, declare emergencies, and protect its citizens; and

**WHEREAS**, no statute, Charter provision, or ordinance provides that the Town Council or its boards or commissions must physically be present at the same place to hold a meeting; and

**WHEREAS**, although the Governor's Executive Order 20-246 expired on November 1, 2020, before the Town Council could hold two public meetings to pass a traditional Ordinance in accordance with Section 166.041, Florida Statutes, Section 166.041(3)(b) allows a municipality to enact an emergency ordinance in one meeting if approved by a two-thirds vote of the governing body; and

**WHEREAS**, due to the significant risk to the public health, safety, and welfare by having in- person meetings the Town Council at its meeting of November 10, 2020 considered the adoption of this Emergency Ordinance; and

**WHEREAS**, the Town Council finds that it is in the best interests of the Town Council, its Boards, Commissions, Committees, Town personnel, and citizens and residents of the Town to authorize the Town Manager to provide for the Town Council and members of all Boards, Commissions and Committees to be able to attend meetings electronically during a declared public health emergency;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA:**

**SECTION 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

**SECTION 2.** Pursuant to the Town's Charter and Code of Ordinances, the home rule authority of the Town Council, Chapter 252, Florida Statutes, Section 4D of Governor

DeSantis' Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, the Town Manager is hereby authorized, during a declared public health emergency, to arrange for the Town Council, and all Boards, Commissions and Committees to meet electronically. Such meetings shall be planned and conducted in consultation with the Town Attorney's Office to ensure, to the extent practicable, substantial compliance with Section 286.001, Florida Statutes, "Florida's Sunshine Law."

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith shall be and hereby are repealed.

**SECTION 4.** If any section, subsection, clause or provision of this Emergency Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5.** This Emergency Ordinance shall take effect immediately.

**PASSED AND ADOPTED** in a regular, adjourned session of the Town Council of the Town of Palm Beach this 10th day of November, 2020.

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Gail L. Coniglio, Mayor

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Margaret A. Zeidman, Town Council President

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Bobbie Lindsay, Council President Pro Tem

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Julie Araskog, Town Council Member

ATTEST:

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Lewis S.W. Crampton, Town Council Member

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Queenester Nieves, CMC, Town Clerk

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Danielle H. Moore, Town Council Member