

CITY OF BONITA SPRINGS, FLORIDA

RESOLUTION NO. 20- 32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONITA SPRINGS, FLORIDA, PROVIDING FOR THE UTILIZATION OF COMMUNICATIONS MEDIA TECHNOLOGY IN LAND USE PROCEEDINGS AND PROVIDING FOR PUBLIC PARTICIPATION IN RESPONSE TO COVID-19; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, both the World Health Organization and federal Centers for Disease Control and Prevention (CDC) recognized the novel and virulent danger posed by COVID-19, declaring it a worldwide pandemic; and

WHEREAS, Ron DeSantis, Governor of Florida issued Executive Order 20-52 declaring a public health emergency due the public threat of COVID-19; and

WHEREAS, on March 13, 2020, the City Council began taking active steps to contain the spread of COVID-19 in accordance with state and federal guidance, including the declaration of a local state of emergency on March 17, 2020 with Resolution 20-14, which has been renewed every seven days as necessary thereafter; and

WHEREAS, the Governor has issued a series of Executive Orders limiting both businesses and the public interactions consistent with his authority under Chapter 252, Florida Statutes, in order to slow the spread of COVID-19; and

WHEREAS, the United States Centers for Disease Control and Prevention 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 implementation of social distancing measures; and

WHEREAS, Article I, Section 24 of the Florida Constitution guarantees a right of public access to all meetings of any collegial public body, and Section 286.011, Fla. Stat., commonly referred to as Florida's "Sunshine Law," requires such meetings to be publicly noticed in advance, open to the public, and documented by minutes that are promptly recorded; and

WHEREAS, land use proceedings are considered quasi-judicial in nature and require additional evidentiary and due process considerations including a reasonable opportunity to participate and submit evidence into the record beyond general public comment opportunities; and

WHEREAS, recognizing the compelling need to protect life while at the same time maintaining the functioning and continuity of government, the Governor issued Executive Order 20-69, as extended, suspending requirements that local governing bodies have a quorum physically present in a specific public place to conduct public meetings and specifically authorizing the use

of communications media technology (“CMT”), as provided in Section 120.54(5)(b)2., Florida Statutes, to conduct meetings of local governing bodies; and

WHEREAS, the City Council desires to utilize and hereby authorizes the use of CMT during the declared state of local emergency due to COVID-19 to conduct meetings of its boards and committees allowing operations to continue while protecting the health and safety of elected officials, staff, and the general public; and

WHEREAS, the Sections 252.38 and 252.45, Florida Statutes, the City Council is empowered to both waiver formalities otherwise required by law and to adopt rules necessary for emergency management purposes; and

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

NOW, THEREFORE, be it resolved by the City Council of the City of Bonita Springs, Florida:

SECTION ONE. The above recitals are true and correct and are incorporated herein by this reference.

SECTION TWO. The City Council of the City of Bonita Springs hereby adopts the following interim regulations to provide standards in furtherance of Executive Order 20-69, as amended, concerning the use of CMT for the various boards and committees of the City which operate under the Sunshine Law:

1. General Rules Relating to Use of CMT.

- a. CMT includes one or more of the following: the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, or digital video by any method available which permits the attendance and participation at public meetings.
- b. If during the course of a meeting conducted by CMT, technical problems develop with City’s communications network that prevent the use of CMT for the conduct of the meeting, then the meeting must be recessed or adjourned until the problems have been corrected.

2. Notice.

- a. Posting. The notice of any public meeting to be held by CMT must be provided in the same manner as required for a non-CMT meeting.
- b. Content. The notice must (1) plainly state that the meeting is to be conducted utilizing CMT and identify the specific form of CMT to be used; (2) describe how interested persons may attend and participate in the meeting; and (3) include the contact information for a designated individual to whom interested

persons may contact for additional information or assistance in participating in CMT meetings.

- c. Determination of Quorum and Voting. The board or committee clerk must verify at the beginning of the meeting that a quorum is present throughout the CMT. If a board or committee members leaves the meeting, the board or committee clerk should announce the departure. To ensure accuracy, all voting must be conducted verbally by roll call.
- d. Minutes and Recording. Minutes of all meetings conducted by CMT must be kept in the same manner as required for a non-CMT meeting. Where practicable, all meetings conducted by CMT should be recorded or otherwise captured for the record.
- e. Public Comment. All meetings conducted by CMT must include at least one designated public comment period in which interested members of the public will be permitted to address the board or committee. CMT public comment will be limited to the same time limits as non-CMT meetings (if not specified, three minutes).
 - i. Persons interested in making public comments may also submit written or alternative comments beforehand within the timelines and procedures indicated in the CMT meeting notice.
 - ii. All boards and committees will afford all relevant comments the same consideration as if they were offered in person.

3. Additional Rules Relating to Quasi-Judicial Matters.

- a. Testimony. Where sworn testimony is required, the City Clerk or designee will administer the oath to all individuals being recognized to testify.
- b. Submission of Materials. Interested person or parties wishing to submit documentary evidence or other materials to the staff liaison identified in the meeting notice for consideration in a quasi-judicial proceeding must do so five (5) days prior to the date of the hearing. Additional documentary evidence or materials may be considered by the board or committee after such date only upon an affirmative finding that the evidence is relevant to rebut evidence submitted earlier and that there was inadequate time to otherwise provide such rebuttal evidence.
- c. Weight of Evidence. The board or committee will afford all evidence, testimony, and argument full consideration and determine its evidentiary significance as if the evidence and testimony were offered in person.

- d. Hearing. Only the City, applicant, and aggrieved or adversely affected parties will be afforded the opportunity to make presentations, cross-examine witnesses, and rebut testimony or evidence live during a CMT hearing. Such parties will be limited to a total of 30 minutes of time to make their respective cases unless extended by the chair of the board or committee.
- e. Procedures for Aggrieved or Adversely Affected Parties. Aggrieved or adversely affected persons desiring to become a party in a quasi-judicial proceeding must provide written notice to the City Clerk seven (7) days prior to the public hearing. The request must include a factual basis for why the requestor believes that he or she should be allowed to participate as a party. At the outset of each quasi-judicial public hearing, the quasi-judicial board or committee 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. As used in this Resolution an aggrieved or adversely affected party means any person or entity that will suffer an adverse effect to an interest protected or furthered by the City's comprehensive plan or land development regulations, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.
- f. Conflict. To the extent this order conflicts with any provision of the Code of the Bonita Springs Code, this order controls.

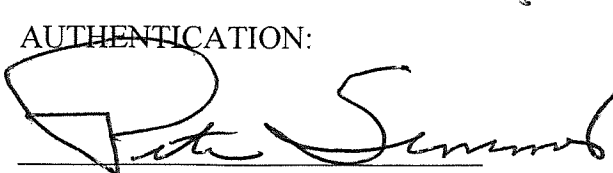
SECTION THREE. Neighborhood Informational Meetings. Due to the limitations placed on public gatherings and facilities, any neighborhood meeting required under Section 4-28 of the land development code may utilize CMT consistent with the provisions of this order provided the applicant (1) provides satisfactory evidence to the City Attorney of the unavailability of appropriate public facilities, and (2) that the applicant has made accommodations to any individual who wishes to participate in the meeting but is unable to attend the hearing through CMT without assistance.

SECTION FOUR. This Resolution shall take effect immediately upon adoption. This temporary order shall expire within forty-five (45) days if not extended by the City Council or upon termination of the local state of emergency, whichever occurs sooner.


DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida this 20th day of May, 2020.

[SIGNATURE PAGE FOLLOWS]

AUTHENTICATION:

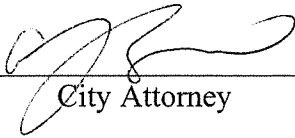


Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

VOTE:

Carr	Aye	Simmons	Aye
Forbes	Aye	Corrie	Aye
Gibson	Aye	Purdon	Aye
Quaremba	Aye		