

RESOLUTION NO. 2020-10

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF JUPITER INLET COLONY, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ARRANGE FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED OFFICIALS DURING THE DECLARED COVID-19 PUBLIC HEALTH EMERGENCY OR SUCH OTHER CIRCUMSTANCES THAT AFFECT PUBLIC HEALTH, SAFETY AND WELFARE; PROVIDING FOR SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the Coronavirus (COVID-19), a contagious respiratory illness that has the ability to spread rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the residents and visitors of the Town of Jupiter Inlet Colony; and

WHEREAS, on March 1, 2020, Governor Ron DeSantis issued Executive Order 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 20-52 which declared a State of Emergency for the State of Florida due to COVID-19; and

WHEREAS, on March 30, 2020 the Town Commission of the Town of Jupiter Inlet Colony adopted Resolution No. 2020-04 thereby authorizing that all public meetings of the Town be conducted utilizing communication media technology; and

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

WHEREAS, to date, Governor DeSantis has issued approximately fifty-one (51) Executive Orders providing direction to local governments and citizens throughout the State of Florida, necessitated by the COVID-19 virus; and

WHEREAS, Florida Law, including Article 1, Section 24 (b) Florida Constitution and Florida Statutes §§ 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 Jupiter Inlet Colony, the Town's elected officials and personnel 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, Executive Order 20-52 authorizes the Town 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 emergency powers provided for throughout 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 Jupiter Inlet Colony, Florida; and

WHEREAS, as of November 10, 2020, the Florida Department of Health reports a total number of Florida resident COVID-19 cases of 852,174 statewide with 17,248 deaths in Florida and 56,145 cases and 1,612 deaths in Palm Beach County with said numbers currently increasing; and

WHEREAS, Palm Beach County has extended its facemask requirements by Emergency Order 2020-029 which indicates a continuing public health concern in Palm Beach County; and

WHEREAS, the current outbreak of COVID-19 has made the Town Commission 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 protecting human life; and

WHEREAS, since Executive Order 20-69 was rendered by the Governor, the Town Commission has engaged in virtual public meetings; and

WHEREAS, the Town Commission’s virtual public meetings provide for the public to comment live over the phone or via email; 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 Mayor and the Town Commission also possess broad home rule powers that authorize them to protect the public health, safety, and welfare, declare emergencies, and protect its citizens; and

WHEREAS, there is no statute, Charter provision or ordinance that defines “present” as being physically within the walls of Town Hall. Webster’s Dictionary includes “in attendance” as a meaning of “present;” and

WHEREAS, the Town Charter does not prohibit attendance at the meeting of Town Commission by electronic media and the Town Commission finds that its attendance requirement for the purpose of establishing a quorum, participating and voting can be satisfied by physical or communications media technology (CMT) attendance; and

WHEREAS, the Governor’s Executive Order 20-246 expired on November 1, 2020, and

WHEREAS, the Town Commission finds that it is in the best interests of Town Officials, Town personnel, Town residents and the public to authorize the Mayor and Town Administrator to provide for the Town Commission and other Committees and Boards to be able to attend meetings electronically during this declared public health emergency or such other circumstances which the Mayor and Town Administrator determine necessary to protect the health, safety and welfare of Town officials, Town personnel, Town residents and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF JUPITER INLET COLONY THAT:

SECTION 1. Recitals. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. Declaration of Emergency. Pursuant to the Town Charter and the home rule authority of the Town Commission afforded by Article VIII, Section 2 of the Florida Constitution, and by §166.021, Florida Statutes, Chapter 252, Florida Statutes, Section 4D of Governor DeSantis’ Executive Order 20-52, and based upon the findings set forth in the above-stated recitals, the Town Commission hereby finds and declares that a public health emergency exists requiring immediate action by the Town Commission.

SECTION 3. Limited Authorization for Public Meetings without Physical Presence. The Mayor and Town Administrator are hereby authorized, during this declared public health emergency due to COVID-19 virus, or such other circumstances that affect public health, safety, and welfare, to arrange for the Town Commission and other Town Committees and Boards to meet electronically. Such meetings shall be planned and conducted in conformance with the provisions of Town Resolution No. 2020-04 and in consultation with the Town Attorney to ensure, to the extent practicable, substantial compliance with §286.001, Florida Statutes, “Florida’s Sunshine Law,” and shall provide for remote electronic access and participation by the public to the fullest extent possible. Such meetings may only be conducted without the physical presence of a quorum of the Town Commission or other Town Committees or Boards during this declared public health emergency or such other circumstances that affect public health, safety, and welfare.

SECTION 4. Hybrid Meetings. Nothing herein shall be construed to prohibit hybrid public meetings in which one or more members of the Town Commission or other Committee or Board physically attend at Town Hall while other members attend by communication media technology, provided proper notice is provided and all requirements for conducting a Sunshine Law compliance meeting are met.

SECTION 5. Severability. If any clause, section, other part or application of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated, and in no way affecting the validity of the remaining portions or applications remaining in full force and effect.

SECTION 6. Conflicts. All Resolutions or parts of Resolutions in conflict herewith are to the extent of such conflicts hereby repealed.

SECTION 7. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____ 2020.

TOWN OF JUPITER INLET COLONY, FLORIDA

Mayor-Daniel J. Comerford, III

Vice-Mayor Milton J. Block

Commissioner Michael A. Armato

Commissioner Cynthia Keim

Commissioner Richard D. Busto

ATTEST:

Town Clerk Jude M. Goudreau