



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report

Item # 10.c

REGULAR MEETING

TO: Honorable Mayor & Members of the
Biscayne Park Village Commission

FROM: Edward A., Dion, Village Attorney

DATE: October 6, 2020

TITLE: Resolution No. 2020-58
Approving Rules of Procedure for hybrid meetings/hearings

Recommendation

Adopt the Resolution.

Background

On March 9, 2020, the Governor of the State of Florida issued Executive Order No. 20-52, declaring a state of emergency for the entire State of Florida. Said order was issued in response to the Coronavirus/COVID-19 emergency. Coronavirus/COVID-19 spreads easily from person-to-person. Consequently, the Center for Disease Control and Prevention issued guidelines in order to slow the spread of the virus. Said guidelines advised that individuals should adopt far-reaching social distancing measures.

However, adhering to social distancing poses a problem for government bodies as it is well established in opinions issued by the Florida Attorney General that in order to establish a quorum, the requisite number of members must be physically present in the room. Florida Attorney General opinions further provide that if a quorum is physically present, the participation of an absent member by telephone/video is permissible due to extraordinary circumstances.

Recognizing the need for a local government body to meet while still adhering to principles of social distancing, on March 20, 2020, the Governor issued Executive Order No. 20-69, suspending the present-in-the-room quorum requirement and expressly allowing for local government bodies to utilize telephonic/video conferencing to hold meetings. Executive Order No. 20-69 requires that local government bodies adopt rules of procedure for virtual meetings in accordance with section 120.54(5)(b)(2), F.S. At the April 22nd Village Commission meeting, the Commission adopted Rules of Procedure for virtual meetings. Executive Order No. 20-69 has been extended numerous times and is currently set to expire on November 1st.

In light of the impending expiration of Executive Order No. 20-69, the proposed procedural rules are established for hybrid meetings/hearings of the Village Commission (in both its legislative and quasi-judicial capacity) as well as for its advisory and quasi-judicial boards, wherein a quorum will be maintained in-person, but the remaining members of the governing body and the public will appear virtually. This resolution ratifies and adopts Rules of Procedure for hybrid meetings/hearings

Resource Impact

- Unknown.

Attachment(s)

- Resolution
- Rules of Procedure for Hybrid Meetings/Hearings

Prepared by: Edward A. Dion, Village Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

RESOLUTION NO. 2020-58

**A RESOLUTION OF THE VILLAGE COMMISSION OF
THE VILLAGE OF BISCAYNE PARK, FLORIDA,
ADOPTING RULES OF PROCEDURE FOR HYBRID
MEETINGS OF THE VILLAGE COMMISSION AND
VILLAGE BOARDS THAT TAKE PLACE DURING THE
PENDENCY OF THE STATE OF EMERGENCY DUE TO
THE CORONAVIRUS/COVID-19 PANDEMIC.**

WHEREAS, on March 9, 2020, the Governor of the State of Florida issued Executive Order No. 20-52, declaring a state of emergency for the entire State of Florida and said order was issued in response to the Coronavirus/COVID-19 pandemic; and

WHEREAS, the Center for Disease Control and Prevention has advised that in order to slow the spread of the Coronavirus/COVID-19, individuals should adopt far-reaching social distancing measures; and

WHEREAS, finding it necessary and appropriate to take action to ensure that Coronavirus/COVID-19 remains controlled and that residents and visitors in Florida remain safe and secure, on March 20, 2020, the Governor of the State of Florida issued Executive Order No. 20-69 (“Order”) suspending any Florida Statute, “that requires a quorum to be present in person or requires a local government body to meet at a specific public place;” and

WHEREAS, the Order also expressly permits local government bodies to utilize communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)(2), F.S.; and

WHEREAS, the Order does not waive any other requirement under the Florida Constitution or “Florida’s Government in the Sunshine Law,” including Chapter 286, F.S.; and

WHEREAS, the Order requires that local government bodies adopt rules of procedure for virtual meetings, in accordance with section 120.54(5)(b)(2), F.S.; and

WHEREAS, on April 22nd, the Village Commission adopted Rules of Procedure for virtual meetings and the Village Commission has been meeting in a fully virtual format since that time; and

WHEREAS, the Village Commission finds that if a member of the Village Commission feels unsafe attending the Commission meeting in person due to the risks associated with the Coronavirus/COVID-19 pandemic, and instead wishes to attend the meeting virtually or telephonically, that is considered an “extraordinary circumstance” thereby allowing the member to attend the meeting in that fashion so long as there is a physical quorum present in the room; and

WHEREAS, the Order (as amended) is set to expire on November 1st and if it is not extended by the Governor, it will require the Village Commission to meeting in person with a quorum present in the room; and

1 **WHEREAS**, the Village Commission wishes to adopt Rules of Procedure for hybrid meetings of
2 the Village Commission and other Village boards.

3 **NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE**
4 **VILLAGE OF BISCAYNE PARK, FLORIDA**

5
6
7 **Section 1.** The foregoing "WHEREAS" clauses are true and correct and hereby ratified and
8 confirmed by the Village Commission.

9
10 **Section 2.** That in accordance with the Order, Chapter 252, F.S., and Section 120.54, F.S.,
11 the Village Commission hereby adopts the Rules of Procedure attached hereto as Exhibit A for hybrid
12 Village Commission meetings that take place during the pendency of the state of emergency declared in
13 the Governor's Executive Order 20-52. The Village Attorney is authorized to make changes to the
14 rules, consistent with the Commission's intent and in order to comply with best practices, as they are
15 developed.

16
17 **Section 3.** This Resolution shall become effective upon adoption.

18
19 **PASSED AND ADOPTED** this 6TH day of October, 2020.

20
21
22 The foregoing Resolution was offered by _____, who moved its adoption. The
23 motion was seconded by _____, and upon being put to a vote the vote was as follows:

24
25 Virginia O'Halpin, Mayor
26 MacDonald Kennedy, Vice-Mayor
27 Roxanna Ross, Commissioner
28 Dan Samaria, Commissioner
29 Dan Samaria, Commissioner

30
31
32 **VILLAGE OF BISCAYNE PARK**

33
34
35
36 _____
37 Virginia O'Halpin, Mayor

38
39 **ATTEST:**

40
41
42 _____
43 Roseann Prado, Village Clerk

1
2 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
3 USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:
4
5

6
7 _____
8 Edward A. Dion, Village Attorney
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

RULES OF PROCEDURES FOR HYBRID MEETINGS/HEARINGS
OF THE VILLAGE OF BISCAYNE PARK COMMISSION
(LEGISLATIVE AND QUASI-JUDICIAL) CORONAVIRUS/COVID-19

These rules are established in accordance with Chapter 252 and Section 120.54(5)(b)(2), F.S. These rules are established for hybrid meetings of the Village Commission where a quorum of the members of the Village Commission is present in the room¹ while applicants and the public attend the meeting virtually. These rules apply to all Village Commission meetings and are intended to address both legislative and quasi-judicial items. These rules shall also apply to all Village board meetings, including advisory board meetings and quasi-judicial board meetings, who shall be required to meet in person with a quorum present in the room and the public attending virtually. This action is taken in response to the Coronavirus/COVID-19 pandemic in order to comply with social distancing recommendations intended to protect the life and safety of individuals in the community. Accordingly, Village Hall shall remain closed to the public when these meetings are conducted.

PLATFORM:

The video conference platform Zoom will be used for public participation in hybrid Village Commission meetings as it was for virtual Village Commission meetings. The Village has a subscription with Zoom and it is the platform used by the Village Clerk for live remote public comments during traditional Village Commission meetings. In accordance with Section 2.02 of the Village Charter, the Mayor presides at the meetings of the Village Commission and serves as the Chair for the purpose of conducting quasi-judicial hearings of the Commission. Furthermore, in accordance with Section 2-30(e)(1) of the Village Code, each board and committee of the Village shall have a Chairperson. Therefore, the Mayor/Chairperson will administer any meetings conducted pursuant to these procedures with technical assistance from the Village Clerk..

Additionally, a Zoom conference number will be available so that any individual who does not wish (or is unable) to use Zoom video conference may listen to and participate in the meeting via phone.

¹ While the Village remains in a State of Emergency due to the COVID-19 pandemic, the existence of the pandemic is hereby determined to constitute an “extraordinary circumstance.” (See AGO 03-41)

NOTICE:

The hybrid meeting/hearing will be noticed in the same manner and at the same locations as all Village Commission meetings/hearings are noticed (including mailed notice, as may be required by the Village Code or Zoning Code). The Zoom conference number (along with instructions) will be published on the Village Commission agenda and will be included everywhere that the meeting/hearing is noticed. The phone number for phone participation will also be included on the Village Commission agenda and everywhere that the meeting/hearing is noticed. Additionally, instructions on how to provide a comment via e-comment and an email address will be provided everywhere that the meeting/hearing is noticed.

All notices will make clear that Village Hall (and other meetings spaces where advisory or quasi-judicial meetings/hearings may be held) are closed to the public.

All notices will provide that any person needing an accommodation in order to listen to or participate in the meeting should contact the Village Clerk at 305-899-8000, TTY 305-893-4427 no later than 48 hours prior to the proceedings.

STAFF/PUBLIC PARTICIPATION:

Members of Village staff presenting an item on the agenda will do so virtually via Zoom.

The public may comment during the “Open Public Comment” portion of the meeting or on an item on the agenda using the Zoom platform. The public may also comment using the dedicated phone number provided for anyone wishing to comment, via telephone, on an item on the agenda. Members of the public who attend the meeting by phone must keep their line muted at all times, except when acknowledged by the Mayor/Chairperson to speak on a particular agenda item.

In addition, comments to be considered during the hearing may be provided prior to the beginning of the meeting, by emailing VillageClerk@biscayneparkfl.gov.

Before each item is voted on, the Mayor/Chairperson will allow for public comment using Zoom or the telephone line provided. When the Mayor/Chairperson acknowledges those on the phone line that wish to speak, only one individual will be permitted to speak at a time.

In addition, the Mayor/Chairperson will request that the Village Clerk read any e-comments or emails relating to that particular item into the record.

The Mayor/Chairperson may exercise his or her authority to limit the length of time provided to an individual for public comment.

A phone number and email address will be provided for individuals who may have questions on how to access the meeting or participate in the meeting/hearing, prior to the date of the meeting.

QUASI-JUDICIAL HEARINGS:

Hybrid quasi-judicial hearings shall be conducted in the same manner as traditional quasi-judicial hearings with the following stipulations that account for the virtual nature of a portion of the hearing:

Exhibits: For all quasi-judicial hearings except appeals, a list of all proposed exhibits and a copy of the proposed exhibits shall be provided to the Village Clerk/board liaison, five (5) days prior to the hearing, in a format that is easily viewable on the Zoom platform. All exhibits shall be clearly labeled to allow for efficient retrieval and display on the Zoom platform during the hearing. All exhibits will be posted online, as is customary.

Testimony/Public Participation: The applicant shall present via Zoom. A list of all individuals who will be called as witnesses during the hearings, shall be provided to the Village Clerk/board liaison, five (5) days prior to the hearing.² At the beginning of the hearing, the Village Clerk/board liaison shall call each witness by name, one-by-one, in order to swear each person in. Any witness who wishes to testify during the hearing and is not included in the previously-provided witness list, shall be sworn in after all witnesses on the list are sworn in and prior to the beginning of the hearing. All witnesses providing testimony must appear by video conference. The Village Clerk or court reporter shall administer the oath to any individual who is appearing by video conference and shall establish the identity of the witness on the record as well as the witness's consent for the hearing to be recorded.

In addition, comments to be considered during the hearing may be provided prior to the beginning of the meeting, by emailing VillageClerk@biscayneparkfl.gov.

The Mayor/Chairperson will allow for public comment using Zoom after the parties have concluded the presentation of their cases and before a vote is taken. In addition, the Mayor/Chairperson will request that the Village Clerk or board liaison read any e-comments or emails sent about the matter that is the subject of the hearing into the record. However, those comments standing alone are not sworn and do not qualify as competent substantial evidence on which the quasi-judicial board may rely, except that they may be considered if they support sworn testimony that is considered competent substantial evidence. The failure to read a comment shall not have any impact on the validity of the final determination.

The Mayor/Chairperson may exercise his or her authority to limit the length of time provided to an individual for public comment.

A phone number and email address will be provided for individuals who may have questions on how to access the meeting or participate in the meeting/hearing, prior to the date of the meeting.

MINUTES:

Minutes and a recording of the meeting will be kept as customary.

² This requirement shall not apply to objectors at a zoning hearing