City of Boynton Beach
Special Meeting

Date: Wednesday, September 30, 2020
Time: 5:00 PM
Place: GoToWebinar Online Meeting

1. Agenda Items
   A. Call to Order - Mayor Steven B. Grant
      Invocation
      Pledge of Allegiance to the Flag led by Commissioner Woodrow L. Hay
      Roll Call
      Agenda Approval:
      1. Additions, Deletions, Corrections
      2. Adoption
   B. Proposed Emergency Ordinance No. 20-033 - Adoption of Emergency Ordinance allowing for virtual city commission meetings by communication media technology.

2. Adjourn

Notice

Notice if a person decides to appeal any decision made by the city commission with respect to any matter considered at this meeting, he/she will need a record of the proceedings and for such purpose, he/she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

The city shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the city. Please contact the City Clerk's office, (561) 742-6060 or (TTY) 1-800-955-8771, at least 48 hours prior to the program or activity in order for the city to reasonably accommodate your request. Additional agenda items may be added subsequent to the publication of the agenda on the city's web site. Information regarding items added to the agenda after it is published on the city's web site can be obtained from the Office of the City Clerk.
REQUESTED ACTION BY COMMISSION:
Call to Order - Mayor Steven B. Grant

Invocation

Pledge of Allegiance to the Flag led by Commissioner Woodrow L. Hay

Roll Call

Agenda Approval:
1. Additions, Deletions, Corrections
2. Adoption

EXPLANATION OF REQUEST:

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

ALTERNATIVES:

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION:

CLIMATE ACTION DISCUSSION:

Is this a grant?

Grant Amount:
REQUESTED ACTION BY COMMISSION: Proposed Emergency Ordinance No. 20-033 - Adoption of Emergency Ordinance allowing for virtual city commission meetings by communication media technology.

EXPLANATION OF REQUEST:
The City Commission has been conducting virtual meetings by use of communication media technology under the general state wide authority granted by the Governors Executive Orders. The continuation of those orders has created both confusion and uncertainty regarding the ability to continue virtual meetings. The attached Ordinance is intended to establish local home rule based authority for Virtual city commission meetings during the COVID-19 pandemic.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES?

FISCAL IMPACT:

ALTERNATIVES:

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION:

CLIMATE ACTION DISCUSSION:

Is this a grant?

Grant Amount:

ATTACHMENTS:

<table>
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<th>Type</th>
<th>Description</th>
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<td>☐ Ordinance</td>
<td>Emergency Ordinance</td>
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EMERGENCY ORDINANCE NO. 2020-____

AN EMERGENCY ORDINANCE OF THE CITY OF BOYNTON BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS DURING PERIODS WHEN THE CITY MANAGER DETERMINES AND DECLARES A LOCAL PUBLIC HEALTH EMERGENCY OR DURING OTHER CIRCUMSTANCES IN WHICH THE CITY COMMISSION DETERMINES IT NECESARY TO PROTECT THE HEALTH AND SAFETY OF CITY OFFICIALS, CITY STAFF, AND THE PUBLIC; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission deems it to be in the best interest of the citizens and residents of the City of Boynton Beach, to make provisions for public meetings by use of communication media technology and for attendance by use of such technology by elected and appointed officials during periods when the City Manager determines and issues a declaration of local public health emergency or during other circumstances in which the City Commission determines necessary to protect the health and safety of City Officials, City staff, and the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA:

SECTION 1. The foregoing whereas clause is hereby ratified and confirmed as being true and correct and is hereby made a part of this Ordinance.

SECTION 2. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.

In adopting this Ordinance, the City Commission of the City of Boynton Beach (the “City Commission”) intends to protect the public health and safety by making provisions for the occurrence of and attendance at public meetings by use of communication media technology (“CMT”) during local public health emergencies, as determined by the City Manager. The City Commission finds:
1. The Coronavirus (COVID-19), a respiratory illness caused by a virus that spreads 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 people of Boynton Beach.

2. On March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency.

3. On March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19.

4. On March 9, 2020, Governor DeSantis declared that a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19.

5. Since April 21, 2020, either in accordance with Florida Governor Executive Orders or City Emergency Ordinances 20-008, 20-009 and 20-026 the City has been conducting public meetings by use of communication media technology (CMT).

6. To reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention (“CDC”) recommends implementation of community mitigation strategies to increase containment of the virus.

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

8. As of September 20, 2020, the Florida Department of Health reports a total number of COVID-19 cases of 685,439 with 13,480 deaths in Florida and 45,425 cases and 1,277 deaths in Palm Beach County. These numbers continue to fluctuate and there is no indication of a steady downward trend. Current data is available at: https://experience.arcgis.com/experience/96dd742462124fa0b38d06db9b25429.

9. Palm Beach County has recently announced the extension of its facemask requirements which indicates a continuing public health concern in Palm Beach County. Palm Beach County Emergency Order 2020-026.

10. Florida law, including Article 1, Section 24 (b) Florida Constitution, and Florida Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials (“Bodies”), for the conduct of public business, must be held following procedures (notice, access of meetings, opportunity to be heard, the taking of minutes, etc.) that ensure that the public is able to participate in and be aware of the decision making process (the “Sunshine Law”).

11. Previously, when asked whether a public body complies with the Sunshine Law when one or more members of the Body wish to participate in a meeting electronically from a
remote location, the Florida Attorney General (“AG”) has opined that a quorum of the Body must be physically present in order to allow a member, who due to “extraordinary circumstances” is unable to physically attend the meeting, to appear and participate electronically.

12. On March 19, 2020, the AG issued an AGO 2020-03 which provides 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 by the Governor during the state of emergency.”

13. On March 20, 2020, Governor DeSantis issued Executive Order Number 20-69 which suspends 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 permits local government bodies to utilize CMT such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes. EO 20-69 has been extended on several occasions reflecting the continued state of emergency and threat to the public when gathering to attend public meetings but at this time the extension are scheduled to end September 30, 2020 and there is no indication of additional extension. The City Commission finds that further extension is justified, but has no authority to compel the Governor to act.

14. Section 4 D of Governor DeSantis’ Executive Order 20-52 expressly authorizes the City Commission to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in accordance with section 252.38, Florida Statutes.

15. Chapter 252, Florida Statutes, among other things, confers upon the City Commission 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.

16. COVID-19 has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare, and security of the residents and visitors of the City of Boynton Beach, Florida.

17. The City Commission finds there is a clear and present danger in holding a public “in person” meetings for those attending and those who come in contact with those attending.

18. The technology exists to conduct public meetings using technology in which the City can comply with the provisions of the Sunshine Law while preserving human life.
19. The City Commission also possesses broad home rule powers that authorize it to protect the public health, safety, and welfare; declare emergencies; and protect its citizens.

20. There is no statute, Charter provision, or ordinance that defines “present” as physically within the walls of the City Hall chambers. Webster’s Dictionary includes “in attendance” as a meaning of “present”.

21. Section 4 of the City Charter provides: “The City Commission shall be the judges of the qualifications, election and returns of its own members: it may enact rules of procedure and may prescribe penalties for the non-attendance or dis-orderly conduct of its members, and enforce the same. A majority of the members of the Commission shall be necessary to constitute a quorum for the transaction of any business; but a smaller number may adjourn from time to time, and under the provisions of ordinances or rules of procedure may compel the attendance of the absent members by the imposition of fines or penalties.”

22. The Charter does not prohibit attendance at the meeting of City Commissioners by electronic media and the City Commission finds that its attendance requirement for the purpose of establishing a quorum, participating and voting can be satisfied by in-person physical or CMT attendance. This same rule of attendance applies to any City Board or Committee meetings and quasi-judicial hearings.

23. There is no intrinsic evil to telephonic or CMT attendance to achieve a quorum. Consequently, the “preemption” of phone or CMT attendance, if it exists, must be expressly set forth in the Florida Constitution or general or special law, not vaguely and ambiguously implied. Thus, the City Commission finds that no preemption exists in state law.

24. The City Commission finds that it is in the best interests of the City Commission, Boards, Committees, City personnel, and citizens and residents of the City to authorize the City Manager to provide for the City Commission and members of the various Boards and Committees to be able to attend meetings electronically during a declared public health emergency, pursuant to the City’s Charter, Chapter 252, Florida Statutes, Section 4 D of Governor DeSantis’ Executive Order 20-52, and the City’s home rule authority, including that set forth in Article VIII, Section 2(b), Florida Constitution, and Section 166.021, Florida Statutes.

SECTION 3. DECLARATION OF EMERGENCY. Pursuant to its home rule powers, Chapter 252, Florida Statutes, section 4 D of Governor DeSantis’ Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, the City Commission of the City of Boynton Beach hereby finds and declares that a public health emergency exists requiring immediate action by the City Commission. By virtue of the threat to public health and
safety and by virtue of the threat to the City’s financial health and home rule powers, it is necessary for the City to implement this regulation.

SECTION 4. LIMITED AUTHORIZATION FOR PUBLIC MEETINGS WITHOUT PHYSICAL PRESENCE IN THE SAME ROOM. The City Manager is hereby authorized, pursuant to the home rule authority of the City Commission, Chapter 252, Florida Statues, section 4 D of Governor DeSantis’ Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, during a declared public health emergency to:

a) arrange for the City Commission, Boards, and Committees to meet electronically;

b) promulgate rules of procedure that will ensure compliance with the Sunshine Law;

c) provide technology and administrative support as necessary to fulfill these objectives.

Such a meeting may only be conducted without the physical presence of a quorum of the City Commissioners, Boards, and Committees, if an emergency is declared based upon an infectious disease, and only so long as (1) the meeting is properly noticed, (2) minutes are taken, and (3) the public is permitted to attend via communication media technology (CMT), technology such as teleconferencing or web-based conferencing.

SECTION 5. SEVERABILITY. If any clause, section, or other part of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affecting the validity of the other provisions of this Ordinance.

SECTION 6. HYBRID MEETING. Nothing herein shall be construed to prohibit hybrid public meetings in which one or more members of the City Commission (or a City Board) physically attend at a City Hall location while other Commission (or Board) members attend by
communication media technology, provided proper notice is provided and all requirements for conducting a sunshine law compliance meeting are met.

SECTION 7. CONFLICTS. All Ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect immediately. This Ordinance shall expire on December 31, 2020, but may be extended by Resolution of the City Commission.

PASSED ON EMERGENCY AND SINGULAR READING BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THIS _____ DAY OF ________________, 2020.

CITY OF BOYNTON BEACH, FLORIDA

Mayor – Steven B. Grant  
Vice-Mayor – Ty Penserga  
Commissioner – Justin Katz  
Commissioner – Woodrow L. Hay  
Commissioner – Christina L. Romelus  

YES  NO  
_____  ____  
_____  ____  
_____  ____  
_____  ____  

VOTE  ____

ATTEST:

_____________________________  
Crystal Gibson, MMC  
City Clerk  

(Corporate Seal)