

RESOLUTION NO. 21-03-21

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING RESOLUTION NO. 20-04-26; UPDATING AND RATIFYING EMERGENCY RULES FOR USE OF COMMUNICATIONS MEDIA TECHNOLOGY FOR PUBLIC MEETINGS DURING A DECLARED EMERGENCY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on March 9, 2020, Governor DeSantis declared a State of Emergency for the State of Florida in Executive Order 20-52 as a result of the COVID-19 outbreak; and

WHEREAS, on March 16, 2020, the Mayor of Islamorada, Village of Islands (the "Village") declared a State of Local Emergency in order for the Village to take actions to protect the health, safety, and welfare of the community due to COVID-19; and

WHEREAS, on March 20, 2020, the Governor issued Executive Order 20-69 suspending any requirement in 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, Executive Order 20-69 further authorized local government bodies to utilize communications media technology such as telephonic and video conferencing; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the "Village Council") subsequently adopted Resolution 20-04-26, thereby approving emergency rules for use of communications media technology for public meetings of the Village Council and other advisory boards, committees, and panels that are required to meet in the Sunshine; and

WHEREAS, the State Attorney General's Office provided guidance through the Monroe County Attorney on the requirements necessary to hold a meeting exclusively via communications media technology; and

WHEREAS, the Administrator of the Monroe County Health Department continues to advise that due to the social distancing directives against public gatherings; and

WHEREAS, Executive Order 20-69, as extended by Executive Orders 20-112, 20-123, 20-

139 and 20-150, expired on November 11, 2020 and the Village Council elected to conduct its meetings using a hybrid format of communications media technology and with a physical quorum for elected officials; and

WHEREAS, by utilizing the hybrid format, the Village Council continues to provide members of the public the opportunity to provide comments to the Village Council consistent with the intent of the Government in the Sunshine Law; and

WHEREAS, Executive Orders 20-52 as amended and extended by Executive Order 20-114, 20-166, 20-192, 20-213 and 20-276 and the Village's Declaration of State of Emergency, including any extensions thereto, remain in effect until expired or rescinded by the Village Council, whichever occurs first; and

WHEREAS, in the interests of protecting the health, safety, and welfare of the residents and visitors to the Village and the Florida Keys, the Village Council desires to ratify and update the rules for use of CMT for public meetings during a declared emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Updating Rules for Use of CMT During Declared Emergencies. The Village Council hereby approves and adopts updates to the Rules for Use of Communications Media Technology During Declared Emergencies as set forth in Exhibit "A" and the Virtual Quasijudicial Procedures set forth in Exhibit "B" to this Resolution are hereby ratified by adoption of this Resolution.

Section 3. Authorization of Village Officials. The Village Manager is hereby authorized to take all necessary and expedient action to effectuate the intent of this Resolution.

Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion to adopt by Councilman David Webb, second by Councilman Mark Gregg.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Joseph B. Pinder III	YES
Vice Mayor Pete Bacheler	YES
Councilman Mark Gregg	YES
Councilman Henry Rosenthal	YES
Councilman David Webb	YES

PASSED AND ADOPTED this 18th day of March, 2021.



JOSEPH B. PINDER III, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY



ROGET V. BRYAN, VILLAGE ATTORNEY

Exhibit "A"

TEMPORARY RULES FOR USE OF COMMUNICATIONS MEDIA TECHNOLOGY (CMT) DURING DECLARED EMERGENCIES COVID-19 EMERGENCY

~~These rules are promulgated pursuant to the authority set forth in Executive Order 20-69, issued by Governor DeSantis on March 20, 2020:~~

Section 1. Definitions and Applicability

1. For purposes of these rules, the term "agency" shall mean the Village Council of Islamorada, Village of Islands (the "Village"), one of its duly constituted advisory committees, and/or a committee of Village staff serving in any capacity that triggers the applicability of the Government in the Sunshine Law, chapter 286, Florida Statutes.
2. The term "communications media technology" (abbreviated "CMT") shall have the same meaning as provided for in F.S. 120.54(5)(b)2, and Chapter 2017-214, Laws of Florida.
3. For purposes of these rules, the term "meeting" means any gathering of two (2) or more members of the Village Council, one of its duly constituted advisory committees, and/or a committee of Village staff serving in any capacity that triggers the applicability of the Government in the Sunshine Law, chapter 286, Florida Statutes. The term "meeting" including a public hearing or workshop meeting.
4. Meetings of the Village Council or one of its duly constituted advisory committees or of Village staff, which are required to be held in public as set forth in F.S. 286.011, may be held by CMT provided that such meeting follows these rules.

Section 2. Conducting Proceedings by Communications Media Technology (CMT)

1. A meeting may be held exclusively by CMT.
2. If technical issues arise during a CMT meeting that prevent all interested persons from attending, the meeting shall terminate until the problems have been corrected. Termination of the meeting shall not be required if at least one (1) means of audio communication remains available.
3. When a meeting is to be held via CMT, the Village shall provide notice in the same manner as required by a non-CMT meeting, and shall plainly state that such a meeting is to be conducted using CMT, and identify the specific type of CMT to be used. Multiple methods of CMT are permissible for conducting a meeting. The Village must provide notice to describe how interested persons may attend. That notice shall include:
 - a. The method by which a member of the public may access the meeting using CMT;
 - b. An address, email, and phone number where a person may request additional information; and

- c. The address, email, and designated person to whom someone may submit written or other physical evidence which he/she intends to offer into evidence during a CMT proceeding.
- 4. Any evidence, testimony, argument, or other information which is offered utilizing CMT shall be afforded equal consideration as if it were offered in person and shall be subject to the same objections. In situations where sworn testimony is required by the agency, person(s) offering such testimony shall be responsible for making appropriate arrangements for offering sworn testimony including but not limited to providing for the attendance of a notary public or other official authorized by law to place a person under oath.
- 5. All agency meetings at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, decision, or formal action shall be considered binding except as taken or made at such meeting.
- ~~6. Pursuant to Section 2 of Executive Order 20-69, a quorum may be established by members attending the meeting via CMT.~~

Exhibit "B"
ISLAMORADA, VILLAGE OF ISLANDS
VIRTUAL QUASIJUDICIAL HEARING PROCEDURES
UTILIZING COMMUNICATIONS MEDIA TECHNOLOGY DURING DECLARED EMERGENCIES

1. Intent.

The intent of this division is to establish procedures to ensure that during a declared Federal, State, County or Municipal emergency ("Declared Emergencies"), the Village Council can may still meet to consider and hear various land-use, zoning and other applications, while providing procedural due process and maintaining citizen access to the local government decision-making process for the review of development orders requiring quasijudicial hearings. These procedures shall be applied and interpreted in a manner recognizing both the legislative and judicial aspects of the local government decision-making process in quasijudicial hearings. They shall only apply to the hearings held by the Village Council with the authority to make the final decision in regard to the development order.

2. Applicability.

Except as may otherwise be provided by statute or ordinance, these procedures shall apply only during Declared Emergencies, such as the COVID-19 pandemic. These procedures shall apply to all applications for site-specific rezonings, administrative relief, beneficial use review, conditional use permits, site plan approval, variances, plats, and any other land use proceeding in which the council acts in a quasijudicial capacity during Declared Emergencies. These procedures are consistent with the

3. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means the owner of record, the owner's agent, or any person with a legal or equitable interest in the property for which an application for a development order has been made and which is subject to quasijudicial proceedings.

Application means an application for any one of the following permits:

- (1) Administrative relief.
- (2) Beneficial use proceedings.
- (3) Conditional use permits.
- (4) Plat approvals.
- (5) Site-specific rezonings.
- (6) Site plan approvals.
- (7) Variances.
- (8) Vested rights determinations.
- (9) Any other site-specific development approval determined to be quasijudicial by the village attorney.

Communication Media Technology ("CMT") means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video and digital video by any means available and as otherwise provided for Section 120.54(b)2, Florida Statutes, and Chapter 2017-32, Laws of Florida.

Competent substantial evidence means testimony or other evidence based on personal observation, or fact or opinion evidence offered by an expert on a matter that requires specialized knowledge, that is

relevant to the issue to be decided. Competent substantial evidence is evidence a reasonable mind could accept as adequate to support a conclusion.

Comprehensive plan means the village comprehensive plan which has been adopted pursuant to F.S. ch. 163, pt. II (F.S. § 163.3161 et seq.).

Council means the Islamorada, Village of Islands, Village Council.

Councilmember means a village council member hearing the application (see the definition of "council" in this section).

Ex-parte communication means any written, oral, or graphic communication with a councilmember which may relate to or which could influence the disposition of an application, other than those made on the record during a virtual quasijudicial hearing. This term also includes visiting the site of the application, receipt of expert opinions, and any independent investigations by councilmembers.

Expert means a person who is qualified in a subject matter by knowledge, skill, experience, training, or education.

Material fact means a fact that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.

Participants means members of the general public, other than the applicant, including experts and representatives of local governments and governmental agencies, who offer testimony at a virtual quasijudicial hearing for the purpose of being heard on an application.

Party means the applicant, the village staff, and any person recognized by the council as a qualified intervenor.

Virtual Quasijudicial proceeding means a virtual hearing held by the Village Council to adjudicate the private rights of an applicant by means of a hearing which is conducted utilizing CMT and which comports with these emergency procedures and due process requirements.

Relevant evidence means evidence which tends to prove or disprove a fact that is material to the determination of the application.

Staff means members of the village staff and authorized third-party agents of the Village.

4. Ex-parte communication.

- (a) This section is adopted to follow the disclosure processes of F.S. § 286.0115(1), and shall be construed so as to be consistent therewith.
- (b) Any councilmember may choose to discuss the merits of any matter on which action may be taken by the council with any person not otherwise prohibited by statute, Charter provision, or ordinance if the councilmember complies with the procedures of this section.
- (c) Compliance with the procedures of this subsection shall remove the presumption of prejudice arising from ex-parte communication with any councilmember:
 - (1) *Oral communications.* The subject of the communication and the identity of the person, group, or entity with whom the communication took place shall be disclosed and made a part of the record before final action on the application. At the virtual quasijudicial hearing the person or persons responsible for the ex-parte communication, any party to the hearing and any participant shall have the opportunity to contest the accuracy of the matters disclosed.
 - (2) *Written communications.* Any written communication related to an application pending before the council shall be forwarded to the appropriate staff for inclusion in the official file for the application, and shall be disclosed on the record before final action on the matter. It shall be the responsibility of the applicant to review the official file periodically to determine whether written ex-parte communications have been placed in the official file.

- (3) *Investigations, site visits and expert opinions.* Councilmembers may conduct investigations and site visits and may receive expert opinions regarding a quasijudicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence and subject matter of the investigations, site visits, or expert opinions is made a part of the record before final action on the matter and an opportunity for the parties and participants to respond is provided prior to or at the hearing.
- (d) Councilmembers must make disclosures of the ex-parte communications listed in subsection (c)(1), (2), or (3) of this section before or during the public meeting at which a vote is taken on the application, to afford persons a reasonable opportunity to refute or respond to the communication.

5. General procedures.

- (a) *Witnesses and evidence.* Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence. During Declared Emergencies, the Village Council's prior practice of providing Participants an opportunity to cross-examine other Participants and/or the Applicant (and Applicant's witnesses) may be suspended. (See *Carillon Cnty Residential*. *Seminole Cnty.* 45 So.2d 7 (Fla 5th DCA 2010), *review denied* 60 So.3d 386 (Fla. 2011).
- (b) *Duties of village staff.* Staff shall have the responsibility of presenting the case on behalf of the village. The staff report on the application shall be made available to the applicant and the council at least 12 working days prior to the virtual quasijudicial hearing on the application.
- (c) *Official file.* All written communication received by councilmembers or staff concerning an application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The comprehensive plan and the village Code shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.
- (d) *Agenda.* The printed agenda for the meeting at which the virtual quasijudicial hearing is scheduled to take place shall briefly explain the procedures and nature of the virtual quasijudicial hearing.
- (e) *Technical Malfunction During Hearing.* In the event that the Village's CMT malfunctions during the virtual quasijudicial hearing, the Village shall use its best efforts to provide notice to all parties as to the date and time of the continuation of the virtual hearing. Malfunction of an individual's CMT equipment, including, but not limited to, computers and/or telephones, shall not require continuation of the virtual quasijudicial hearing, provided that the Village's CMT continues to function.

6. Virtual Quasijudicial Hearing procedures.

- (a) The virtual quasijudicial hearing shall, to the extent possible, be conducted as follows:
 - (1) The mayor or village attorney shall read a statement at the beginning of the virtual quasijudicial hearing portion of the agenda, which shall outline the procedure to be followed. A copy of this division shall be made available at the hearing.
 - (2) The applicant, staff, and all participants requesting to speak shall be collectively sworn by oath or affirmation.
 - (3) The applicant may waive its right to an evidentiary hearing if it agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The council may then vote on the item, based upon the staff report and any other materials entered by staff from the official file into the record of the hearing.
 - (4) If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the council agrees to a different order, taking proper consideration of fairness and due process:
 - a. Staff shall present a brief synopsis of the application, introduce any additional exhibits from the official file which have not already been transmitted to the council with the agenda

materials, summarize issues, and make a recommendation on the application. Staff may also introduce and provide the testimony of any witnesses.

- b. The applicant shall make its presentation, including offering any exhibits from the official file, and introduce and provide the testimony of any witnesses.
 - c. Participants in support of the application shall make their presentations.
 - d. Participants in opposition to the application shall make their presentations.
 - e. Staff may cross examine any witnesses and respond to any testimony presented. If any witness is unavailable at the hearing to be cross examined, his testimony shall be disregarded.
 - f. The applicant may cross examine any witnesses and respond to any testimony presented. If any witness is unavailable at the hearing to be cross examined, his testimony shall be disregarded. During Declared Emergencies, the Village Council's prior practice of providing Participants an opportunity to cross-examine other Participants and/or the Applicant (and Applicant's witnesses) may be suspended. (See *Carillon Cnty Residential*. *Seminole Cnty*. 45 So.2d 7 (Fla 5th DCA 2010), *review denied* 60 So.3d 386 (Fla. 2011).
 - g. The mayor may choose to allow participants to respond to any testimony if the mayor deems the response to be necessary to ensure fairness and due process.
 - h. The council may ask any questions of the staff, applicant and participants.
 - i. Final argument may be made by the staff, related solely to the evidence in the record.
 - j. Final argument may be made by the applicant, related solely to evidence in the record.
- (5) The mayor shall keep order, and without requiring an objection, may direct a party conducting the cross examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross examined, is unduly repetitious, not relevant or beyond the scope of the testimony by the individual being cross examined. If the party conducting the cross examination continuously violates directions from the mayor to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the individual, the mayor may terminate the cross examination.
- (6) After the presentations, and at the conclusion of any continuances, the council shall deliberate on the application. Once the council begins its deliberations, no further presentations or testimony shall be permitted except in the sole discretion of the council. The council's decisions must be based upon competent substantial evidence in the record.
- (b) The council may, on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. A written request by the applicant for a continuance of a maximum of 180 calendar days shall be granted one time by the director of planning and development services, provided that the request is received at least seven working days prior to the date that the public hearing is scheduled to occur. If the request is not received within the time period specified above, the request shall be considered by the village council at its sole discretion. The village council shall not grant a continuance of more than 180 calendar days from the date of the scheduled public hearing at which the applicant made the request.

7. Rules of evidence.

- (a) The council shall not be bound by the strict rules of evidence, or limited only to consideration of evidence which would be admissible in a court of law.
- (b) The council may exclude evidence or testimony which is not relevant, material, or competent, or testimony which is unduly repetitious or defamatory.
- (c) The council will determine the relevancy of evidence.

- (d) Matters relating to an application's consistency with the village comprehensive plan or this chapter will be presumed to be relevant and material.
- (e) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a court.
- (f) Documentary evidence may be presented in the form of a copy of the original, if available. A copy shall be made available to the council and to the staff no later than two days prior to the hearing on the application. Upon request, the applicant and staff shall be given an opportunity to compare the copy with the original. Oversized exhibits shall be copied and reduced for convenient record storage.
- (g) Only the applicant, staff and the council shall be entitled to conduct cross examination when testimony is given or documents are made a part of the record.
- (h) The village attorney shall represent the council and advise the council as to the procedures to be followed and the propriety and admissibility of evidence presented at the hearing.
- (i) The council shall take judicial notice of all state and local laws, ordinances and regulations and may take judicial notice of such other matters as are generally recognized by the courts of the state.
- (j) Supplementing the record after the virtual quasijudicial hearing is prohibited, unless specifically authorized by an affirmative vote of the council under the following conditions:
 - (1) The supplementation occurs after a virtual quasijudicial hearing is continued but prior to final action being taken on the application.
 - (2) If a question is raised by the council at the hearing which cannot be answered at the hearing, the party to whom the question is directed may submit the requested information in writing to the council after the quasijudicial hearing, with copies to the other parties, provided the hearing has been continued or another hearing has been scheduled for a future date and no final action has been taken by the council. The information requested will be presented to the council at the time of the continued hearing.
 - (3) All parties and participants shall have the same right with respect to the additional information as they had for evidence presented at the hearing.

8. Final decision by council.

The council shall reach a decision without unreasonable or unnecessary delay. All development orders adopted by the council shall be reduced to writing and dated as of the date issued. Notification of the council's development order shall be provided to the applicant by certified mail, and made available to any person who requests a copy from the village clerk.

9. Virtual Quasijudicial Hearing Record.

All evidence admitted into the record at the virtual hearing, and the adopted development order of the council, shall be maintained by the village clerk in the same manner as for non-emergency quasijudicial hearings and for a period of at least 45 days from issuance of the development order. Thereafter, the evidence and the adopted development order shall be maintained in the same manner as are the village public records.

10. Technical Information for Virtual (CMT) Quasijudicial Hearings.

The notice of virtual quasijudicial hearings will provide that instructions for accessing the meeting utilizing CMT (as detailed below), will be available on the Village's website and available upon request from the Village Clerk.

11. Participating in the Virtual Quasijudicial Hearing.

To participate as an Attendee in the virtual quasijudicial hearing the public may access the meeting streamed live on the Village website from their personal computer, tablet or phone via the following link: https://www.islamorada.fl.us/departments/communications/live_village_broadcast_meeting.php

Attendees will be able to see and hear the Village Council and Staff's presentation as applicable and hear other persons when speaking. Attendees may provide public comment on specific quasijudicial items on the agenda. Below are the guidelines for submitting public comments:

(a) Public Comment:

The public may provide public comment on items of a general nature or items specific to the agenda. Below are the guidelines for submitting public comments:

Option 1: Email your comments.

1. Public comment should be submitted via email to: public.comment@islamorada.fl.us
2. The email should contain "Public Comment" in the subject line.
3. The name and address of the submitter shall be included in the email.
4. Public comment should be submitted by 9 a.m. on the day prior to the virtual quasijudicial hearing. Public comment will be sent to the Village Councilmembers for consideration prior to the meeting. Public comments will not be read during the meeting.

Option 2: Real Time Public Comment During the Meeting.

To provide real-time comment on a quasijudicial item:

1. If phoning in, dial 301-715-8592 and enter the webinar **ID: 911 0656 4166** followed by #. When the Mayor opens public comment pertaining to the agenda item you are interested in dial *9 to be recognized by the Zoom meeting monitor. The Monitor will call you by the last four digits of your phone number. Please be sure to unmute your phone when you are called upon.
2. If watching online via Zoom: Open the Zoom webinar link <https://zoom.us/j/91106564166> and follow the prompts to join the webinar. When the Mayor opens public comment use the "raise your hand" feature to be recognized by the meeting monitor. Public comments will be heard in the order in which they are received.

During the meeting, individuals will be provided only one (1) opportunity to provide comment upon each specific quasijudicial agenda item.

If Participants wish to provide PowerPoint or other similar type of visual presentation or submit any materials to the Village Council as part of a virtual quasijudicial hearing, Participants are asked to provide copies via email to the Village Clerk, clerk@islamorada.fl.us, no later than two (2) business days hours prior to the quasijudicial hearing so that materials can be scanned for digital security purposes and provided to the Village Council prior to the meeting.

ADA Assistance:

These meetings are open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the ADA Coordinator at (305) 664-6448 or by email at ADA@islamorada.fl.us at least 48 hours before the scheduled meeting.