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MEMO

To: Harmony Community Development District Board of Supervisors
From: Young Qualls, P.A., District Counsel
Date: March 30, 2020
Re: COVID-19 (03/30/2020 Update)

Questions Presented

1. What precautions should the CDD take to maintain the health, safety and welfare of the public in connection with the District's Recreational Facilities?
2. What steps may the CDD take for District meetings during the COVID-19 pandemic?

Answers

1. The District should follow all recommendations of state and local public health officials and close the pool and playgrounds. We recommend further that any scheduled activities and events through the CDD be suspended until further notice. Various officials have suggested avoiding gatherings over 10 persons and for mass gatherings of 250 or more persons be cancelled or postponed.¹

2. The District may hold a meeting so long as Executive Order 20-69 is followed. In Executive Order 20-69, the Governor has suspended 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.²

¹ https://www.cdc.gov/coronavirus/2019-ncov/downloads/Mass-Gatherings-Documents_FINAL.pdf;
https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf;

Osceola County Emergency Order #2. Retrieved from:

<https://www.stcloud.org/DocumentCenter/View/28486/Executive-Order---Stay-at-Home---Osceola-County>

² Executive Order 20-69. Retrieved from: https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-69.pdf

The order permits local government bodies to utilize communications media technology, such as telephonic and video conferencing.

Considering the Executive Orders, the AGO opinions, and the Sunshine Laws, in order to conduct essential District business and meet the conflicting demands of this emergency, the proper steps for holding an electronic meeting would be to:

1. Provide Reasonable Notice of the electronic meeting,
2. Take minutes and/or have the meeting recorded,
3. Utilize technology to make the meeting open to the public.
4. Ratify any actions taken at an electronic meeting at the first available face-to-face meeting.

We advise conferring with District Counsel before taking any action between Board meetings and that all actions taken be ratified at the first meeting where a physical quorum is present. We will continue to monitor and keep the CDD up-to-date on the latest advisories and directives.

Discussion

The Centers for Disease Control and Prevention (“CDC”) has reported the community spread of coronavirus (“COVID-19”) within the United States. The Florida Department of Health (“DOH”) has announced over three-hundred persons in the state have been diagnosed with COVID-19, so far. The World Health Organization and CDC report that more cases of COVID-19 are likely to be identified in the coming days; person-to-person spread will continue to occur; and at some point, widespread transmission of COVID-19 in the United States will occur.³

The White House has advised that the public avoid groups of more than ten people. Osceola Count has issued “Emergency Order No. 2 Pertaining to COVID-19.” The Order temporarily closes all non-essential retail and commercial business including but not limited to

³ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

pools and playgrounds. We advise the District to similarly follow this and close all indoor recreational facilities and events, including, but not limited to, the swimming pools. Large outdoor areas such as the dog parks or boat docks may remain open and accessible for the purpose of physical activity and exercise at the District's discretion. We additionally advise the District to facilitate common-sense sanitation / cleaning precautions for all common areas which are not closed. Please use your sound business judgment on the extent of closures required or contact us if you have further questions.

Board of Supervisors Meetings

Both present and future directives from Federal and State health officials declaring quarantines may prevent the CDD from holding board meetings at which the physical attendance of the board of supervisors is required to conform with Section 286.011, Florida Statutes ("F.S."). Encouraging the public to attend such meetings may conflict with such quarantines and could potentially promote further community spread.

The Attorney General & Florida Statutes (2019)

Section 286.011, F.S., requires that all meetings of the governing boards of local government at which official acts are to be taken be open to the public. The Florida Attorney General's Office (the "AGO") has consistently interpreted this statute to require the physical presence of a quorum of the local governing board in order to hold a local governing board meeting at which official acts are to be taken. (AGO's 92-44, 98-28, 03-41).

Specifically, the AGO has opined that the participation of an absent member in a meeting by telephone conference should be permitted only in extraordinary circumstances and when a quorum of board members is physically present at the meeting. (AGO 03-41). The AGO has further held that local governments may not alter the quorum requirements to allow members

who are participating remotely and not physically present to be counted toward the quorum. CDD's are not authorized to provide that participation by a member of the board by electronic media technology constitutes his or her physical presence for purposes of establishing a quorum (AGO's 2010-34, 09-56).

Executive Orders 20-69 and 20-52

On March 19, 2020, Governor DeSantis issued Executive Order 20-69 regarding Local Government Public Meetings (an extension of E.O. 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19).⁴ Specifically, the order 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; authorizes the use of communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., F.S.; but does not waive any other requirement under the Florida Constitution and the Sunshine Laws, including Chapter 286, F.S.

On March 9, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-52 declaring a State of Emergency exists in Florida.⁵ This order suspends any statute, rules, or ordinances that would in any way prevent or hinder the State's response necessary to mitigate and recover from the COVID-19 pandemic. Governor DeSantis has further recommended that local authorities strongly consider canceling mass gatherings and follow CDC guidance. Regarding actions to be taken by local governments. The executive order states:

- D. In accordance with section 252.38, Florida Statutes, each political subdivision within the State of Florida may waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

⁴ See Executive Order 20-69

⁵ <https://www.flgov.com/wp-content/uploads/2020/03/EO-20-52.pdf>

- 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.

Electronic/Telephonic Meetings

The AGO's opinions have consistently held that a physical quorum must be present in order to hold a public meeting at which official acts are to be taken. Under the current public health emergency, strict compliance with the physical quorum and public attendance requirements would very likely threaten the health and welfare of the board members and public. Nonetheless, the CDD may still take steps to hold a board meeting electronically in order to ensure the safety and welfare of the community. Under the auspices of E.O. 20-69, the District may hold an electronic board meeting without a physical quorum being present. Official acts may be taken during meetings where a quorum of the Board is only met remotely and/or electronically. Our firm advises that if the CDD determines a board meeting is necessary, an electronic or telephonic meeting would best serve the public interest and protect the health, safety and welfare of the citizens and residents of Florida.

In light of the Executive Orders 20-52 and 20-69, the AGO opinions, and the Sunshine Laws, in order to conduct essential District business and meet the conflicting demands of this emergency, the proper steps for holding an electronic meeting would be to: (1) reasonably notice the meeting on the CDD website, (2) take minutes and/or have the meeting recorded, (3) make the meeting open to the public through technological means that are made available to the public,

and (4) ratify any actions taken before, during, or after an electronic meeting at the next board meeting where a physical quorum is present.