



CITY OF AVENTURA
OFFICE OF THE CITY MANAGER

**AMENDMENT TO ORDER ADOPTING RULES FOR USE OF
COMMUNICATIONS MEDIA TECHNOLOGY FOR PUBLIC
MEETINGS DURING HEALTH EMERGENCY**

(VIRTUAL MEETINGS – QUASI JUDICIAL PROCEDURES)

Section 1. Declaration Supplemented.

In accordance with City Code Section 2-404, and Chapter 252, Florida Statutes, I hereby further supplement my March 12, 2020 declaration of a state of emergency within the City of Aventura, Florida, (“City”) as provided herein.

Section 2. Findings.

- (A) On March 20, 2020, Governor DeSantis issued Executive Order 20-69, “Emergency Management - COVID-19 Local Government Public Meetings”; and
- (B) Pursuant to Executive Order 20-69, the quorum requirements for public meetings are suspended, and the City is authorized to hold public meetings through the use of communications media technology, subject to the adoption of rules pursuant to Section 120.54(5)(b)2, Fla.Stat.; and
- (C) On March 20, 2020, I entered an Emergency Order to provide for the authorization to hold public meetings through the use of communications media technology (“CMT”); and
- (D) In order to insure due process and the ability of applicants and the public to access quasi-judicial proceedings that are held through the use of CMT, the City must adopt and implement procedures for quasi-judicial hearings at virtual public meetings held with the use of CMT; and
- (E) The Emergency Order dated March 20, 2020 is and remains in full force and effect subject to the amendments contained herein.

Section 3. Rules of Procedure for Quasi-Judicial Hearings Held Through the Use of Communications Media Technology (“CMT”).

- (A) As used in this Order, “Communications Media Technology” means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.
- (B) Any quasi-judicial hearing held by the City Commission or other quasi-judicial body in the City of Aventura shall be held pursuant to the Quasi-Judicial Procedures attached hereto as **Exhibit “A,”** and incorporated herein by reference.

(C) The City Clerk shall insure that the public meeting complies with all requirements of Section 286.011, Florida Statutes, which have not otherwise been suspended or waived pursuant to Executive Order 20-69 or other applicable law (e.g., the preparation of minutes, etc.).

Section 4. Effective Date.

This Order and supplement to Declaration shall be effective as of 3 pm, May 8, 2020, and may be further supplemented from time to time in accordance with Article VIII of Chapter 2 of the City Code. This document shall be posted and distributed as provided by City Code Section 2-404 (f).

Executed this 8th day of May, 2020.

By: 

Ronald J. Wasson, City Manager
City of Aventura, Florida

Copy: Mayor and Commissioners, City Clerk, Police Chief, City Attorney, Department Directors

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CITY OF AVENTURA QUASI-JUDICIAL PROCEDURES UTILIZING COMMUNICATIONS MEDIA TECHNOLOGY (CMT) DURING DECLARED EMERGENCIES

1. **Intent.**

The intent of these emergency quasi-judicial procedures is to establish procedures to ensure that during a declared Federal, State, County, or Municipal state of emergency ("Declared Emergencies") the City Commission, as well as certain City boards and committees, for the City of Aventura (the "City") may still meet to consider and hear various land-use and zoning applications that are required to be considered pursuant to quasi-judicial procedures. The procedures are intended to insure procedural due process and maintain citizen access to the local government decision-making process for the review of development orders requiring quasi-judicial hearings. It is the intent of the City Commission to provide an equitable and efficient method for the City Commission, as well as certain City boards and committees, to hear land use and zoning applications that are considered quasi-judicial in nature (the "Quasi-Judicial Body").

2. **Applicability.**

These procedures shall be utilized only during Declared Emergencies where the Quasi-Judicial Body is unable to have a physical quorum present at a specific public place for a public meeting. These procedures shall apply to all applications for rezonings, special exceptions, conditional use approvals, variances, preliminary and final plat approvals, site plan approvals and any other land use and/or zoning site-specific development approval determined to be quasi-judicial in nature by the City Attorney.

3. **Definitions.**

The following words, terms and phrases, when used in these emergency quasi-judicial procedures and notwithstanding any other definitions in the City code, shall have the meanings ascribed to them in this section.

Applicant shall mean 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 quasi-judicial proceedings, and shall mean the staff when the application is initiated by the City.

Application shall mean an application for any one of the following development orders:

- (1) Variances.
- (2) Conditional use approvals.
- (3) Preliminary and Final Plat approvals.
- (4) Site-specific rezonings.
- (5) Special exceptions or conditional use.

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- (6) Site plan approvals.
- (7) Rezoning.
- (8) Any other site-specific development approval determined to be quasi-judicial in nature by the City Attorney.

Chair shall mean the Mayor or, in his/her absence, the Vice-Mayor presiding over the quasi-judicial proceedings. For any quasi-judicial proceedings before any other quasi-judicial body, the chair or, in his/her absence, the vice-chair shall preside over the quasi-judicial proceedings.

Communications media technology (CMT) shall mean the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available, as provided in Section 120.54(5)(b)(2), Florida Statutes.

Competent substantial evidence shall mean 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.

Development Order shall mean the written decision of the Quasi-Judicial Body regarding an application considered under these quasi-judicial proceedings, including a written order or other communication from an authorized City official memorializing a decision of the Quasi-Judicial Body.

Ex-parte communication shall mean any written, oral, or graphic communication with a member of the Quasi-Judicial Body, which may relate to or which could influence the disposition of an application, other than those made on the record during a quasi-judicial hearing. This term also includes visiting the site of the application, receipt of expert opinions, and any independent investigations by a member of the Quasi-Judicial Body.

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

Intervenor shall mean a person whose interests in the proceeding are adversely affected in a manner greater than those of the general public.

Material fact shall mean 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 shall mean members of the general public, other than the Applicant, an Intervenor, experts, and representatives of local governments and governmental agencies, who offer testimony at the Virtual Quasi-Judicial Hearing for the purpose of being heard on an Application.

Party or Parties shall mean the Applicant, the Staff, and any person recognized by the Quasi-Judicial Body as an Intervenor.

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Virtual Quasi-Judicial Hearing shall mean a virtual hearing held by the Quasi-Judicial Body to adjudicate the rights of an Applicant on an application listed in this section above, by means of a hearing which is conducted utilizing CMT and comports with these emergency procedures and due process requirements.

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

Staff shall mean members of the City staff.

4. **Ex-parte communications.**

- (a) The City hereby adopts the ex-parte communication disclosure processes of Section 286.0115(1), Florida Statutes, and these procedures shall be construed so as to be consistent therewith.
- (b) Compliance with these procedures shall remove any presumption of prejudice arising from ex-parte communications with any member of the Quasi-Judicial Body.
 - (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 matter.
 - (2) *Written communications.* Any written communication related to an application pending before the Quasi-Judicial Body shall be forwarded to the appropriate staff for inclusion in the official file for the application, and such written communication shall be made a part of the record before final action on the matter.
 - (3) *Investigations, site visits and expert opinions.* The existence and subject matter of the investigations, site visits, or expert opinions are 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.
 - (4) *Timing of disclosure.* Disclosure made pursuant to subsections (b)(1)-(3) must be made before or during the Virtual Quasi-Judicial Hearing at which a vote is taken on such matters, to afford persons a reasonable opportunity to refute or respond to the communication.

5. **General procedures.**

- (a) *Virtual Quasi-Judicial Hearing.* The Virtual Quasi-Judicial Hearing shall be held through the use of CMT accessible to all Participants.
- (b) *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.
- (c) *Duties of Staff.* Staff shall have the responsibility of presenting the Application on behalf of the City. The Staff Report on the Application shall be made available to the Applicant, interested Parties and the Quasi-Judicial Body no later than three (3) days prior to the Virtual Quasi-Judicial Hearing on the Application.

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- (d) *Official file.* All written communication received by the Quasi-Judicial Body 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 City Comprehensive Plan and the City Code of Ordinances shall be deemed to be part of the official file.
- (e) *Meeting agenda.* The agenda for the meeting at which the Virtual Quasi-Judicial Hearing is scheduled to take place shall explain the process for accessing the Virtual Quasi-Judicial Hearing Procedures, and the nature of the Virtual Quasi-Judicial Hearing. A copy of the meeting agenda, along with the agenda materials for the Application shall be posted on the City's Website.
- (f) *Applicant and Intervenor Materials.* The Applicant and any Intervenor shall submit all supplemental materials, presentations, and statements related to the Application to the City in electronic format no later than one (1) day prior to the date of the Virtual Quasi-Judicial Hearing.
- (g) *Public comment.* Members of the public that desire to submit comments regarding the Application to be heard at the Virtual Quasi-Judicial Hearing may submit their comments, via any of the CMT utilized by the City, which includes e-mail, and written correspondence, no later than one (1) day prior to the date of the hearing. If the individual desires to speak at the Virtual Quasi-Judicial Hearing, the individual shall so state at the time they submit their comments to the City. To the extent that individuals desire to submit sworn testimony in writing, their comments should include a signed statement that their comments are provided under oath or affirmation. Notwithstanding the above, members of the public will be provided an opportunity to provide public comments during the Virtual Quasi-Judicial Hearing, and have their comments included in the record.
- (h) *Virtual Quasi-Judicial Hearing Procedures.* A copy of the Virtual Quasi-Judicial Hearing Procedures shall be provided with the Agenda or posted on the City Website.
- (i) *Notice.* Notice requirements as contained in the City's Code of Ordinances shall apply to the Virtual Quasi-Judicial Hearing. Any agenda notice for a matter to be heard at a Virtual Quasi-Judicial Hearing shall include a reference to the Virtual Quasi-Judicial Hearing Procedures and provide the method and access to view and provide comment during the meeting at which the Virtual Quasi-Judicial Hearing will occur.
- (j) In the event the CMT malfunctions during the Virtual Quasi-Judicial Hearing, the City shall use its best efforts to provide notice to all parties as to the date and time of the continuation of the Virtual Quasi-Judicial Hearing.

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6. Virtual Quasi-Judicial Hearing Procedures.

- (a) The Virtual Quasi-Judicial Hearing shall, to the extent possible, be conducted as follows:
- (1) The City Attorney shall read a statement at the beginning of the Virtual Quasi-Judicial Hearing portion of the meeting agenda, which shall outline the procedure to be followed.
 - (2) The Applicant, Staff, and all Participants shall be sworn by oath or affirmation.
 - (3) The City Attorney may call for disclosure of ex-parte communications by the members of the Quasi-Judicial Body. Such disclosures shall be made in accordance with these procedures.
 - (4) If a Virtual Quasi-Judicial Hearing is held, the order of the presentation shall be as follows, unless the Quasi-Judicial Body 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 appropriate additional exhibits from the official file, which have not already been transmitted to the Quasi-Judicial Body, along with the agenda materials, as staff desires; summarize issues; and may provide a recommendation on the Application. Staff may also introduce and present the testimony of any witnesses at the hearing.
 - b. The Applicant shall make its presentation, including offering any exhibits, and introduce and provide the testimony of any witnesses.
 - c. The Intervenor(s), if any, make their presentation, including offering any exhibits, and introduce and provide the testimony of any witnesses.
 - d. City staff shall include in the record any comments of the Application that were submitted prior to the Virtual Quasi-Judicial Hearing.
 - e. Any other Participants may be recognized and may submit public comment via any of the CMT utilized by the City, which may include, but not be limited to, live testimony, e-mail, and written correspondence.
 - f. Staff may cross-examine any witnesses and respond to any testimony presented. If any witness is unavailable at the hearing to be cross-examined, their testimony may be disregarded.
 - g. The Applicant and any Intervenor may cross-examine any witnesses and respond to any testimony presented. If any witness is unavailable at the hearing to be cross-examined, their testimony may be disregarded.

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- h. The Chair may choose to allow Participants to respond to any testimony if the Chair deems the response to be necessary to ensure fairness and due process.
 - i. Members of the Quasi-Judicial Body, through the Chair, may ask any questions of the Staff, Applicant, and Participants.
 - j. Final presentation may be made by the Staff, related solely to the evidence in the record.
 - k. Final presentation may be made by the Applicant, related solely to evidence in the record.
- (5) The Chair 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 Chair to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the individual, the Chair may terminate the cross-examination.
- (6) After the presentations, and at the conclusion of any continuances, the Quasi-Judicial Body shall deliberate on the Application. Once the Quasi-Judicial Body begins its deliberations, no further presentations or testimony shall be permitted except in the discretion of the Quasi-Judicial Body. The Quasi-Judicial Body's decision(s) must be based upon competent substantial evidence in the record.
- (b) The Quasi-Judicial Body may, on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. The Applicant shall have the right to one continuance; however, all subsequent continuances shall be granted at the discretion of the Quasi-Judicial Body.
 - (c) At any time prior to the Quasi-Judicial Body's decision, the Applicant may withdraw an Application by requesting such withdrawal in writing or during the Virtual Quasi-Judicial Hearing.
7. **Rules of evidence.**
- (a) The Quasi-Judicial Body shall not be bound by the strict rules of evidence, or limited only to consideration of evidence that would be admissible in a court of law.
 - (b) The Quasi-Judicial Body may exclude evidence or testimony which is not relevant, material, or competent, or testimony which is unduly repetitious or defamatory.
 - (c) The Quasi-Judicial Body will determine the relevancy of evidence.
 - (d) Matters relating to an Application's consistency with the City Comprehensive Plan or Code of Ordinances will be presumed to be relevant and material.

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- (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) The City Attorney shall represent the Quasi-Judicial Body, and advise the Chair and Quasi-Judicial Body as to the procedures to be followed and the propriety, relevancy and admissibility of evidence presented at the hearing.
- (g) The Quasi-Judicial Body 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 of Florida.
- (h) Supplementing the record after the Virtual Quasi-Judicial Hearing is prohibited, unless specifically authorized by an affirmative vote of the Quasi-Judicial Body under either of the following conditions:
 - (1) The supplementation occurs after a Virtual Quasi-Judicial Hearing is continued but prior to final action being taken on the Application; or
 - (2) If a question is raised by the Quasi-Judicial Body during the hearing which cannot be answered at the hearing, the Party to whom the question is directed may submit the requested information via electronic communication to the City's authorized representative after the Virtual Quasi-Judicial 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 Quasi-Judicial body. The information requested will be presented to the Quasi-Judicial body at the time of the continued hearing.

8. Final decision by the Quasi-Judicial body.

The final decision on an Application by the Quasi-Judicial Body shall be reduced to writing and dated as of the date issued and shall indicate the date filed in the City Clerk's office. Notification of the Quasi-Judicial Body's decision, including any Development Order, shall be provided by City Staff to the Applicant by certified mail and electronic mail. Copies of the final decision may also be made available to any person who requests a copy from City Staff.

9. Virtual Quasi-Judicial Hearing Record.

The City shall maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the Virtual Quasi-Judicial Hearing. This shall include the official file in the matter, as well as any document presented at the hearing or demonstrative exhibit(s) seen by the Quasi-Judicial Body while making its decision.