

EMERGENCY/EXECUTIVE ORDER NO. 2020 - 04

**AN EXECUTIVE ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF
COLLIER COUNTY, FLORIDA, PROVIDING FOR HYBRID VIRTUAL QUASI-
JUDICIAL HEARING PROCEDURES DURING THE CURRENT COVID-19
STATE OF EMERGENCY**

WHEREAS, COVID-19 is a respiratory illness caused by a virus that spreads rapidly from person to person, which may result in serious illness or death, and which constitutes a clear and present danger to the health, welfare and safety of the citizens of Collier County; and

WHEREAS, on March 1, 2020, Governor DeSantis declared a Public Health Emergency as a result of COVID-19, and on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency as a result of COVID-19, which has been supplemented by subsequent Executive Orders all relating to the threat of COVID-19, which Orders are incorporated herein; and

WHEREAS, on March 16, 2020, the Board of County Commissioners of Collier County, Florida adopted Proclamation/Resolution No. 2020-50 declaring a state of emergency due to COVID-19 for all territory within the legal boundaries of Collier County; and

WHEREAS, Florida Statutes Sec. 252.38 provides that “Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state;” and

WHEREAS, Florida Statutes Sec. 252.46 provides in relevant part that “In accordance with the provisions of Chapter 120, the political subdivisions of the state...are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes...” so long as such powers are not in conflict with the State; and

WHEREAS, Governor DeSantis’ Executive Order No. 20-69 specifically provides:

Section 1: I hereby suspend 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.

Section 2: Local government bodies may utilize communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes. . .

Section 3. This Executive Order does not waive any other requirement under the Florida Constitution and “Florida’s Government in the Sunshine Laws,” including Chapter 286, Florida Statutes.

Section 4. This Executive Order shall expire at the expiration of Executive Order 20-52, including any extension.” ; and

WHEREAS, Governor DeSantis directed that Executive Order No. 20-69 shall expire at the expiration of his Executive Order 20-52, including any extension thereof, which the Governor extended on May 8, 2020 for an additional sixty days from that date; and

WHEREAS, on April 28, 2020, the Board of County Commissioners of Collier County, Florida adopted Emergency/Executive Order No. 2020-01, which implemented Collier County Hybrid Remote Public Meeting Procedures to facilitate conducting the Board’s meetings, including its advisory boards, councils and committees during the COVID-19 declared state of emergency; and

WHEREAS, on May 12, 2020, during a regular meeting of the Collier County Board of County Commissioners the Board discussed its interest in implementing procedures to conduct hybrid virtual quasi-judicial proceedings before the Board, the Collier County Planning Commission, and its other Quasi-Judicial bodies to insure fair hearings that are accessible to the public and to all participants to such proceedings, while allowing for the Centers for Disease Control’s direction to practice “social distancing”; and

WHEREAS, on May 26, 2020, during a regular meeting of the Collier County Board of County Commissioners the Board reviewed and approved the attached Hybrid Virtual Quasi-Judicial Hearing Procedures to be implemented during declared emergencies to include the COVID-19 pandemic; and

WHEREAS, the Board of County Commissioners believes that these procedures are necessary to promote the health, safety and welfare of the County residents and the general public.

NOW THEREFORE, IT IS ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

1. The Collier County Hybrid Virtual Quasi-Judicial Hearing Procedures During Declared Emergencies attached hereto as Exhibit “A,” is hereby approved, adopted and shall be

implemented by all Collier County boards, the Collier County Planning Commissions and its other Quasi-Judicial bodies.

2. The attached Collier County Hybrid Virtual Quasi-Judicial Hearing Procedures supplements and amends Collier County Executive Order No. 2020-01, County Resolution No. 98-167, and County ordinances and resolutions governing land use matters.

3. The attached procedures are hereby ordered to be followed immediately.

4. Effective Date; Duration. This Order shall remain in effect as long as the Governor DeSantis' Executive Order 20-52 remains in effect, including any extensions by the Governor.

THIS ORDER ADOPTED after motion, second, and majority vote favoring same this 26th day of May, 2020.


ATTEST:
CRYSTAL K. KINZEL, CLERK

By: 
Attest as to Chairman's Deputy Clerk
signature only.

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: 
BURT L. SAUNDERS, Chairman

Approved as to form and legality:


Jeffrey A. Klatzkow, County Attorney

**COLLIER COUNTY HYBRID VIRTUAL QUASI-JUDICIAL
HEARING PROCEDURES DURING THE DECLARED
COVID-19 EMERGENCY**

1. Applicability.

These procedures allow for the use of communications media technology (CMT) pursuant to Executive Order No. 20-69, Section 120.54(5)(b)(2), Florida Statutes, and supplement and amend Collier County Executive Order No. 2020-01, County Resolution No. 98-167, and County ordinances and resolutions governing land use matters. A hybrid quasi-judicial proceeding allows for in person participation and CMT participation as described in these procedures.

2. Ex parte communications.

All ex parte disclosures by the Board of County Commissioners or members of the Planning Commission, or other body subject to ex parte communication disclosures (Quasi-Judicial Body), who are appearing virtually, will be made in writing before the public hearing. Unless waived by an individual Commissioner of the Board of County Commissioners, there will be no ex parte communication by any party to the proceeding beginning five business days before each public hearing. Staff will send the written disclosures electronically to the Applicant and any person that requests a copy.

3. General procedures.

(a) *Condition to Scheduling Hearing.* When an Application has progressed to the point of scheduling a quasi-judicial hearing (as determined by the County), Applicants shall choose either (i) delaying consideration of their Application and proceeding with the public hearing, after the declared emergency has ended, at a meeting that is not a hybrid virtual meeting; or (ii) proceeding during the declared emergency, while the County conducts a hybrid virtual meeting, and waiving Applicant's right to contest any procedural irregularity. Such election by an Applicant shall be provided in writing.

(b) *Oaths.* A person who appears remotely before the Quasi-Judicial Body who is not a party or party-intervenor shall be allowed to testify before the Quasi-Judicial Body, subject to control by the Quasi-Judicial Body, and may be requested to respond to questions from the Quasi-Judicial Body, but shall not be sworn as a witness, is not subject to cross-examination, and is not required to be qualified as an expert witness. The Quasi-Judicial Body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate. Each Staff person participating remotely may be sworn one time for all quasi-judicial proceedings during the duration of the Declared Emergency.

(c) *Technical Malfunction During Hearing.* In the event the County's communications media technology malfunctions during the Hybrid Virtual Quasi-Judicial Hearing, the County shall use its best efforts to provide notice to all parties as to the date and time of the continuation of the Hybrid Virtual Quasi-Judicial Hearing.

(d) *Record.* The Clerk shall maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the Virtual Quasi-Judicial Hearing in the same manner as for non-emergency quasi-judicial hearings.

(e) *Notice.* The notice of Hybrid Virtual Quasi-Judicial Hearing will provide the instructions for accessing the meeting using CMT.

4. **Hybrid Virtual Quasi-Judicial Hearing Procedures.**

Public meetings conducted as hybrid virtual meetings will be conducted in accordance with the procedures in County Resolution No. 98-167 subject to the following:

a) *Quorum; Voting.* Unless a physical quorum is required, any requirement that the voting members be physically present at the meeting, either to vote or to be counted for quorum requirements, is hereby waived for the duration of the declared State of Emergency provided that a quorum of such members participate in the meeting by means of a hybrid virtual meeting. If there is not a physical quorum present at the meeting, the Chairman or his designee will call the roll and verbally verify that a quorum is present at the beginning of the meeting and all voting shall be conducted verbally by roll call.

b) *Staff and Applicant Participation.* Unless waived by a majority of the voting members of the Quasi-Judicial Body, the Applicant and its witnesses will attend the meeting in person. Staff and its witnesses may attend in person or electronically.

c) *General Public.* The public may attend in person or electronically. All public comment or participation will be limited to a maximum of 3 minutes, unless the Chairman, in their discretion allows additional time. Remote participants will not be allowed to receive speaking time from another speaker or to provide speaking time to another speaker. Remote participation is provided as a courtesy and is at the user's risk. The County is not responsible for technical issues.

d) *Participation by way of electronic media.* All speakers participating electronically must be recognized by the Chair prior to speaking, and no more than one person will speak at the same time. To facilitate the orderly conduct of the meeting, the County will "mute" or otherwise disable the lines of members of the public until such time as they are recognized to speak. Interested persons desiring to provide public comment should comply with the directions provided in the meeting notice and/or otherwise described by the Chair and/or County staff operating the electronic media. Electronic participants will be placed in a queue on a first-come, first serve basis, and will be notified by a member of County staff when they will be permitted to speak.

(e) *Order of presentation.* The initial presentation will be by Applicant followed by Staff's presentation. Applicant and Staff are limited to the use of Powerpoint. Unless approved by the Chair, a visualizer will not be available.

5. Technical Information for CMT Quasi-Judicial Hearings.

(a) *Participating in the Virtual Quasi-Judicial Public Meeting.* Individuals who would like to participate remotely, should register in advance through the link provided on the front page of the county website at www.colliercountyfl.gov. Individuals who register will receive an email in advance of the public hearing detailing how they can participate remotely in this meeting. Virtual meeting attendees will be able to hear the members of the Quasi-Judicial Body and other persons when speaking.

(b) *Viewing the Virtual Quasi-Judicial Public Meeting.* The meeting may be viewed online via livestreaming at www.colliercountyfl.gov, or live on Comcast Channel 97, within the County limits. The public will be able to listen to the meeting, but no comments can be made without registering in advance in accordance with the prescribed procedure.