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MEMO

To: Harmony Community Development District Board of Supervisors
From: Young Qualls PA, District Counsel
Date: 03/19/2020
Re: COVID-19

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 precautions should the CDD take concerning upcoming scheduled District meetings?

Answers

1. The District should follow all recommendations of public health officials and maintain the recreational facilities in a manner that prevents a large gathering of people. We further recommend any scheduled activities and events through the CDD be suspended until further notice. Various officials have suggested gatherings from 50 persons to as little as 10 persons be avoided.¹
2. Florida law requires public meetings to be held in the sunshine and that three (3) District Supervisors must be physically present to constitute a quorum. However, under the coronavirus pandemic, the District may not be able to take necessary actions to carry out its duty to maintain infrastructure. As a result, we set forth procedures below for the District to hold an electronic meeting under the auspice of Executive Order 20-52 in order to take action on items that are essential to the health, safety and welfare of the community. We advise conferring with District Counsel before taking any action between Board meetings and that all actions taken be ratified at the first meeting with a physical quorum.

Considering the Executive Order, 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. Notice the electronic meeting on the CDD website,
2. Take minutes and/or have the meeting recorded,
3. Utilize technology to make the meeting open to the public.

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

Additionally, any actions taken before, during, or after an electronic meeting should be ratified at the next board meeting where a physical quorum is present.

Note this is a fluid situation and we have been in contact with the Governor's office to request that the Governor consider suspending the physical quorum requirement while outbreak prevention measures are in place.

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.²

The White House has advised that the public avoid groups of more than ten people. We advise the District to follow this recommendation and strongly consider closure of all indoor recreational facilities and events, including, but not limited to, the swimming pool. Large outdoor areas such as the dog parks or boat docks may remain open and accessible 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

² <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

media technology constitutes his or her physical presence for purposes of establishing a quorum (AGO's 2010-34, 09-56).

Executive Order 20-52

On March 9, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-52 declaring a State of Emergency exists in Florida.³ 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:

- 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. A request has been made to Governor DeSantis to grant an exception from Section 286.011, F.S., so that official acts may be taken during meetings where a quorum of the Board was only met remotely and/or electronically. The Governor has not yet responded to this request.

Nonetheless, the CDD may still take steps to hold a board meeting electronically in order to ensure the safety and welfare of the community. Executive Order 20-52 allows political subdivisions to take, "whatever prudent action is necessary to ensure the health, safety, and welfare of the community." 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.

Taking into account Executive Order 20-52, 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

³ <https://www.flgov.com/wp-content/uploads/2020/03/EO-20-52.pdf>

the CDD website, (2) take minutes and/or have the meeting recorded, (3) and if official actions are to be taken, to make the meeting open to the public through technological means that are made available to the public. Additionally, any actions taken before, during, or after an electronic meeting should be ratified at the next board meeting where a physical quorum is present.

At this time, our firm advises that a board meeting without a physical quorum only be held if there are agenda items that are essential to the public safety and welfare of the community. A majority, if not virtually all, cities, counties, and local governments in Florida that we have monitored, consistent with the Governor's executive order above and the recommendations by the CDC, are advising that all public meetings be cancelled unless essential to be held. Hence, our firm further advises that if no official action is to be taken by the Board at an electronic meeting, in accordance with the language of Executive Order 20-52, the recommendation of the White House, CDC, and other federal and state authorities, that the CDD cancel all public meetings and activities through the end of March until further information and guidance from the State is provided.

We will continue to monitor and keep the CDD up-to-date on the latest advisories and directives.