



UPDATE NO. 10 – TOWN OF SURFSIDE EMERGENCY MEASURES VIRTUAL QUASI-JUDICIAL HEARING PROCEDURES

(Effective July 9, 2020 at 12:00 p.m.)

WHEREAS, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency in the State of Florida due to Novel Coronavirus Disease 2019 (“COVID-19”); and

WHEREAS, on March 12, 2020, the Town of Surfside, Florida (“Town”) declared a local state of emergency through Resolution No. 2020-2676 due to COVID-19 public health emergency, as authorized by Section 252.38(3)(a), Florida Statutes, and Chapter 2, Article VIII “Emergency Management Procedures” of the Town Code; and

WHEREAS, on March 20, 2020, due to health and safety concerns related to COVID-19, Governor DeSantis issued Executive Order 20-69, “Emergency Management – COVID-19 Local Government Public Meetings” suspending physical quorum and location requirements for public meetings, as extended by Executive Orders 20-121, 20-123, 20-139, and 20-150, until August 1, 2020; and

WHEREAS, pursuant to Executive Order 20-69, as extended, the Town Manager issued the Town Emergency Measures Update No. 2 on March 22, 2020, establishing and adopting rules for the use of communications media technology (“CMT”) at public meetings for the duration of the Town state of emergency; and

WHEREAS, the Town finds that it is in the best interest of the residents of the Town to issue “Virtual Quasi-Judicial Hearing Procedures,” in accordance with Executive Order 20-69, as extended, and the Town Emergency Measures Update No. 2.

NOW, THEREFORE, as Town Manager of the Town of Surfside, Florida, and pursuant to the authority vested in me by Section 252.38(3)(a), Florida Statutes, and Town Code Chapter 2, Article VIII “Emergency Management Procedures”, in addition to previously ordered emergency measures and directives promulgated, I hereby **ORDER** and **PROMULGATE** the following additional emergency measures, effective **July 9, 2020, at 12:00 p.m.** (the “Order”):

- 1. Virtual Quasi-Judicial Hearing Procedures.** Quasi-judicial hearings conducted using CMT shall comply with Sections 2-147-150 of Article IV in Chapter 2 of the Code of the Town of

Surfside, Florida, and the Town Emergency Measures Update No. 2, "Adopting Rules for Use of Communications Media Technology for Public Meetings during Health Emergency due to COVID 19." *A copy of Town Emergency Measures Update No. 2 and Sections 2-147-150 of the Code of the Town of Surfside, Florida, and the are attached hereto and incorporated herein as Exhibits "A" and "B," respectively.*

The following additional procedures shall apply to Virtual Quasi-Judicial Hearings:

- (A) The Town is only conducting virtual quasi-judicial hearings if requested by an Applicant; otherwise, quasi-judicial hearings will be scheduled for the next available regularly scheduled Town Commission meeting where all individuals may attend the hearing in person in Town Commission Chambers. Therefore, by proceeding with the hearing using CMT and these procedures, the Applicant indemnifies and holds the Town harmless against any causes of action brought by third parties and waives any action against the Town for conducting the hearing using CMT and these procedures.

Applicants that request a quasi-judicial hearing shall execute a "Waiver, Indemnification, and Hold Harmless Agreement," which shall be in substantially the form attached hereto as Exhibit "C" and shall be subject to approval by the Town Attorney as to form, content, and legal sufficiency.

- (B) Virtual quasi-judicial hearings shall be conducted in an informal manner.
- (C) The Town Clerk will confirm compliance with all advertising and notice requirements, in accordance with the notice requirements under the Town Emergency Measures, Update No. 2, "Adopting Rules for use of Communications Media Technology for Public Meetings during Health Emergency due to COVID 19."
- (D) If the Applicant or agent of the Applicant agrees with the Town Staff's recommendation and wishes to waive his or her right to a quasi-judicial hearing, and if no Commissioner or any member of the public wishes to speak for or against the quasi-judicial agenda item, the Town Commission may vote on the item based upon the materials in the agenda back-up, without any discussion or debate on the item.
- (E) The Town Clerk will swear in all witnesses immediately prior to speaking on a quasi-judicial item.
- (F) The Town Staff shall introduce their presentation, if any, first. Following the Town Staff's presentation, the Applicant may introduce their presentation.
- (G) All witnesses are subject to cross-examination by the Town Staff, Town Commission, and the Applicant.
- (H) Any member of the public may speak on the quasi-judicial item. The individual's name and address must be provided prior to delivering any remarks. If the Town Staff, Town Commission, or Applicant want to cross-examine a member of the public, they must do so immediately following the individual's remarks.
- (I) The Applicant and Town Staff will make concluding remarks, if any.
- (J) After concluding remarks by the Applicant and Town Staff, the public hearing will be closed. Once the public hearing is closed, no further presentations or testimony shall be

permitted. However, the Town Commission may ask questions to Town Staff or the Applicant after the public hearing is closed.

- (K) The Town Commission will make their comments, ask questions, deliberate, and then announce its decision by vote of the Town Commission.
- (L) The Town Commission reserves the right to limit or prohibit redundant or irrelevant evidence, testimony, or questions and may set reasonable time limits.
- (M) The Town's Comprehensive Plan, the Code of the Town of Surfside, Florida, material in the Town Commission's agenda backup, and Town Staff resumes on file with the Town Clerk will automatically be considered as evidence without authentication.
- (N) Any documents or evidence that the Applicant or any member of the public wishes to be admitted into evidence during his or her presentation (including but not limited to any documents or other evidence not contained in the agenda back up, all supplemental materials, Powerpoint/computer presentations, and statements related to the application) shall be provided to the Town Clerk in electronic format no later than 12:00 p.m. five business days prior to the date of the virtual quasi-judicial hearing.
- (O) Although the Town Commission may listen to non-expert opinion and public sentiment, its decision must be based upon competent substantial evidence presented to it at the virtual quasi-judicial hearing.

- 2. **Prior Emergency Measures.** All prior emergency orders and measures remain in effect except to the extent modified by this Order. This Order supersedes and governs over any conflicting provisions contained in any prior order or emergency measures.
- 3. **Conflicts.** In the event of a conflict between the provisions of this Order and Sections 2-147-150 of Article IV, in Chapter 2 of the Code of the Town of Surfside, Florida, this Order shall govern.

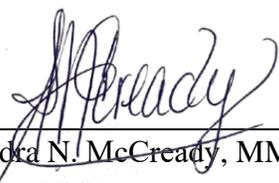
THE EMERGENCY MEASURES THAT HAVE BEEN ORDERED AND PROMULGATED ABOVE SHALL BE EFFECTIVE COMMENCING JULY 9, 2020, at 12:00 P.M., AND SHALL CONTINUE IN EFFECT FROM DAY-TO-DAY UNTIL THE STATE OF EMERGENCY ISSUED ON MARCH 12, 2020, IS DECLARED TO BE TERMINATED IN ACCORDANCE WITH SECTION 2-262 OF THE TOWN CODE. THIS EMERGENCY ORDER MAY BE CANCELLED EARLIER BY ACTION OF THE TOWN MANAGER.

TOWN OF SURFSIDE, FLORIDA



Guillermo Olmedillo, Town Manager

ATTEST:



Sandra N. McCready, MMC, Town Clerk

Date: July 9, 2020

Time: 12:00 p.m.



TOWN OF SURFSIDE
OFFICE OF THE TOWN MANAGER

UPDATE No. 2 – TOWN OF SURFSIDE EMERGENCY MEASURES
ADOPTING RULES FOR USE OF COMMUNICATIONS MEDIA TECHNOLOGY FOR
PUBLIC MEETINGS DURING HEALTH EMERGENCY DUE TO COVID 19

Effective Immediately

Section 1. Declaration of State of Emergency Supplemented.

In accordance with Article VIII, Chapter 2, and Section 2-262, of the Town Code and Chapter 252, Florida Statutes, I hereby further supplement Town Resolution No. 2676 dated March 12, 2020 declaring a state of emergency within the Town of Surfside, Florida (“Town”) due to COVID 19, 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 physical quorum and location requirements for public meetings are suspended, and the Town 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, Florida Statutes.

Section 3. Adopting Rules of Procedure for Public Meetings Utilizing Communications Media Technology.

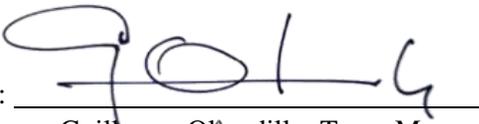
- (A) Prior to the commencement of any Town public meeting, the Town shall post notice of the meeting in a manner consistent with Section 286.011, Florida Statutes. The notice shall also include instructions on how the public may access the public meeting either via telephone, video conference, or other communications media technology utilized by the Town.
- (B) 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.

- (C) If a public meeting provides for the opportunity for public comment, the notice shall also include instructions regarding how members of the public may submit comments or questions to be read at the public meeting.
- (D) The Town 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 (e.g., the preparation of minutes, etc.).

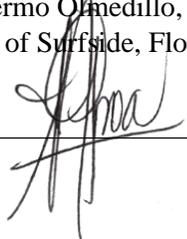
Section 4. Effective Date.

This Order and supplement to Declaration shall be effective immediately, and may be further supplemented from time to time in accordance with Article VIII of Chapter 2 of the Town Code. This document shall be posted and distributed as provided by the Town Code Section 2-203, Rule 4.02.

Executed this 22nd day of March, 2020.

By: 
Guillermo Omedillo, Town Manager
Town of Surfside, Florida

March 22, 2020
Date

Witness 

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

CODE OF THE TOWN OF SURFSIDE
Chapter 2 – ADMINISTRATION
ARTICLE IV. – OFFICERS AND EMPLOYEES

Sec. 2-147. - Procedures for conduct of quasi-judicial hearings.

Unless otherwise provided by law or by ordinance of the town commission pertaining to a specific matter, quasi-judicial hearings shall be substantially as follows.

(Ord. No. 1463, § 1, 9-12-06)

Sec. 2-148. - Purpose.

It is the purpose of these rules to provide a fair, open, and impartial procedure for the consideration by members of the town commission or such other zoning board or boards as may be appointed by the town commission of quasi-judicial matters in the course of quasi-judicial proceedings.

(Ord. No. 1463, § 1, 9-12-06)

Sec. 2-149. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

Applicant. An individual, corporation or other authorized legal entity filing an application or an appeal that initiates a quasi-judicial proceeding, including town staff and the town commission.

Application. An application for a site-specific rezoning, variance, special exception, conditional use permit or other request for a quasi-judicial proceeding or appeal as authorized by the town's zoning ordinance.

Chair. Mayor, unless otherwise provided/mayor's appointee to any zoning board.

Town commission. The five-member elected commission.

Town staff. An employee or agent of the Town of Surfside.

Member. Town commission/appointee of commission member to any zoning board.

Planning and zoning board. An appointed zoning board, if one is so designated by the town commission.

(Ord. No. 1463, § 1, 9-12-06)

Sec. 2-150. - Quasi-judicial proceedings.

(a) *Legal representation.*

(1) Applicants. Applicants may be represented by legal counsel.

- (2) The town commission and/or the planning and zoning board may be advised by the town attorney.
- (b) *Participants at hearings.* All who testify on any application must sign in and be sworn in by the presiding officer. All persons testifying subject themselves to cross-examination. Each person who addresses the town commission and/or the planning and zoning board, other than members of town staff, shall give the following information:
- (1) Name; and
 - (2) Address; and
 - (3) Whether they speak for themselves, a group of persons, or a third party, if the person says that he or she represents an organization, he or she shall also indicate whether the view expressed by the speaker represents an established policy of the organization approved by the board of governing body.
- (c) *Conduct of hearing.* All quasi-judicial hearings shall be recorded. A court reporter may be retained and paid for by any interested person to transcribe the proceedings. Any person may order and pay for a transcript of the proceedings. Any such retained court reporter shall identify himself/herself to the town attorney before the hearing. The order of hearing shall be as follows:
- (1) The chair or staff shall read a preliminary statement once at the beginning of the quasi-judicial public hearing agenda, announce the particular agenda item, and open the public hearing. The chair shall conduct the meeting, and all questions shall be through the chair.
 - (2) The applicant, witnesses, town staff, and all participants asking to speak shall be sworn. Attorney's shall be excluded, unless an attorney intends to testify.
 - (3) The chair shall decide any parliamentary objections and objections to evidentiary matters with the advice of the town attorney or special counsel.
 - (4) The town staff shall present its report, recommendations, offer it into evidence, and have it made part of the record.
 - (5) The applicant shall present his/her case.
 - (6) Participants in support of the application shall present their testimony and any evidence.
 - (7) Representatives of the opposition as may be designated by the opposition, or the chair, if necessary, shall have the right to cross-examine individual speakers.
 - (8) As evidence, members may comment, ask questions of, or seek clarification from the applicant or participants in support of the applicant or staff, or any speaker through the chair.
 - (9) Participants in opposition to the application shall present their testimony and evidence.
 - (10) The applicant shall have the right to cross-examine individual speakers.
 - (11) Members may comment, ask questions of, or seek clarification from the applicant or participants in support of the applicant or staff, or any speaker through the chair.
 - (12) Town staff shall be given time for rebuttal, if requested. Town staff shall be subject to cross-examination.

- (13) Any other member of the public may testify and present evidence, and is subject to cross-examination.
 - (14) The applicant shall be given time for rebuttal, if requested.
 - (15) The chair closes the public comment portion of the meeting on the matter upon the conclusion of the last speaker's comments at the hearing. Members shall discuss the matter in public session and render a decision. No further presentations or testimony shall be permitted unless directed by the town commission and/or the planning and zoning board.
- (d) *[Communications with officials.]* Communications with local public officials (as defined in F.S. § 286.0115(2)) regarding quasi-judicial matters shall be governed by the following procedure:
- (1) If any person not otherwise prohibited by statute, Charter provision, or ordinance discusses with any local public official representing the Town of Surfside the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member, such communication shall not raise any presumption of prejudice, provided that the following process of disclosure occurs:
 - a. The subject and substance of any ex parte communication with a local public official representing the Town of Surfside which relates to quasi-judicial action pending before the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.
 - b. A local public official representing the Town of Surfside may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.
 - c. A local public official representing the Town of Surfside may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions are made a part of the record before final action is taken on the matter.
 - (2) Disclosure made pursuant to subsection (d)(1)a., b. and c. above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.
- (e) *Record of the hearing.* Following the final disposition of the application, all evidence admitted at the hearing, the application file, all town staff reports, and the adopted order promulgating the decision of the town commission and/or the planning and zoning board shall be maintained in a separate file constituting the record of the application. The record shall be kept in the custody of the appropriate town staff at all times during the pendency of the application. The record will be made available to the public for inspection upon request during normal business hours.

WAIVER, INDEMNIFICATION, AND HOLD HARMLESS AGREEMENT

THIS WAIVER, INDEMNIFICATION, AND HOLD HARMLESS AGREEMENT (the “Agreement”) is made this ___ day of _____, 2020 between the [APPLICANT], a [STATE] [BUSINESS ENTITY], (the “Applicant” and/or the “Indemnitor”), and the Town of Surfside, a Florida municipal corporation (the “Town” and/or the “Indemnitee”).

WHEREAS, the nation, state of Florida, Miami-Dade County (the “County”), and the Town are facing an unprecedented public health emergency brought upon by the Covid-19 pandemic (the “Emergency”); and

WHEREAS, various emergency orders have been issued by the state, County, and Town, respectively, severely curtailing personal interaction during the pendency of the Emergency, and thus impacting the Town’s ability to conduct public meetings, including but not limited to quasi-judicial hearings; and

WHEREAS, in an effort to continue conducting municipal business during the Emergency, the Town has created special procedures for conducting quasi-judicial hearings using communications media technology (“Virtual Hearings”); and

WHEREAS, on July 8, 2020, the Town adopted Virtual Quasi-Judicial Hearing Procedures, a copy of which is attached hereto as **Exhibit “A,”** (the “Virtual Hearing Procedures”); and

WHEREAS, the Applicant is seeking development approvals for certain real property located generally at [PROPERTY ADDRESS], as legally described in **Exhibit “B,”** (the “Property”) pursuant to [APPLICATION OR HEARING NUMBER] (the “Application”) and wishes to proceed with a Virtual Hearing during the course of the Emergency rather than voluntarily stay further action on the Application until after the Emergency; and

WHEREAS, although the Town’s Virtual Hearing Procedures are intended to afford due process to all parties, the conduct of Virtual Hearings during the Emergency represents a novel endeavor for the Town; and

WHEREAS, the Town seeks to ensure that, in electing to proceed with a Virtual Hearing on the Application: (1) the Applicant accepts the Virtual Hearing Procedures after having carefully reviewed them and waives all rights to contest, appeal, or seek review of any decision by the Town where such appeal is based in whole or in part on the Virtual Hearing Procedures or the conduct of the Virtual Hearing in accordance with them; and (2) the risks of appeal in connection with any Virtual Hearings on the Application are borne solely by the Applicant, such that the Applicant agrees to hold the Town harmless and fully indemnify the Town for any judgments, attorneys’ fees, fines, and costs associated with defending an appeal, original action under Chapter 163, Florida Statutes, or any other action intending to challenge, set aside, or otherwise contest the Town’s action on the Application, which may be brought by third parties.

NOW, THEREFORE, in consideration of the scheduling, review, and deliberation by the Town of the Application by Virtual Hearing utilizing the Virtual Hearing Procedures during the Emergency, the Applicant hereby agrees with the Town as follows:

1. **Recitals.** The foregoing recitals are true and correct and are made a part hereof.
2. **Waiver.** The Applicant acknowledges: (a) that it has received and carefully reviewed a copy of the Town’s Virtual Hearing Procedures; (b) that the conduct of Virtual Hearings in this municipal context has not previously been considered by Florida courts; and (c) that the Applicant is proceeding at its own risk. The Applicant hereby waives any and all objections and/or appellate arguments in any way based in whole or in part on the content or application of the Virtual Hearing Procedures, including but not limited to allegations or contentions invoking a lack of due process.
3. **Hold Harmless and Indemnification With Respect to the Application.**
 - a. The Applicant agrees to indemnify and hold harmless the Town from any appeals, petitions, claims, demands, liabilities, losses or causes of action of any nature, including but not limited to original actions brought pursuant to Chapter 163, Florida Statutes, by any third party (any such claim being a “Third Party Claim”) in connection with: (a) the Town’s consideration of the Application at a Virtual Hearing conducted during the Emergency; (b) the Town’s implementation and use of the Virtual Hearing

Procedures to consider the Application; (c) from and against any orders, judgments or decrees which may be entered; and/or (d) from and against all costs, attorneys' fees, fines, expenses and liabilities incurred in the defense of any Third Party Claim, or in the investigation thereof.

b. The Applicant agrees to pay any and all of the Town's costs expended in connection with the Town's analysis of, preparation for, response, and/or defense of any Third Party Claim, including but not limited to, the cost and expense of Town staff, attorneys' fees and costs, and the fees and costs of any consultants (including but not limited to court reporters, information technology (IT) professionals, urban planners, engineers, etc.) (collectively, the "Town's Costs").

c. In the event that a Third Party Claim described above is filed, the Applicant shall, within seven days of the filing of any such Third Party Claim, provide the Town an initial deposit of \$25,000.00 from which the Town's Costs will be deducted as they are incurred. Should Town's Costs exceed the initial deposit, the Applicant agrees to pay any overage within thirty days of being billed by the Town.

4. **Hold Harmless, Defense, and Indemnification in Connection with this Agreement.** The Applicant shall indemnify, defend and hold Town harmless from and against any and all claims, liability, losses and causes of action, of any nature whatsoever which may arise out of the granting of this Agreement or out of the Applicant's activities under this Agreement, including all other acts or omissions to act on the part of the Applicant or any person acting for or on the Applicant's behalf, and from and against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, fines expenses and liabilities incurred in the defense of any such claims or in the investigation thereof.

5. **Successors.** It is expressly understood and agreed that this instrument shall be binding upon the Applicant, and also upon its heirs, successors in interest, or assigns, and this instrument shall be a condition implied in any conveyance or other instrument affecting the title to the Property or any portion thereof.

6. **Termination.** This Agreement shall terminate automatically ten days after the complete expiration of any appeal periods or statutes of limitations for all potential Third Party Claims if no Third Party Claim has been made within that time frame. If any Third Party Claim is made, then this Agreement shall be deemed to continue until such time as there is a final adjudication, including the lapse of any applicable appeal periods, of all Third Party Claims.

7. **Notice.** Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be deemed as having been given when mailed by United States registered or certified mail (return receipt requested), postage prepaid, to the other parties at the address listed on the signature page of this Agreement or at the last changed address given by the party to be notified as herein specified.

[Remainder of page intentionally left blank. Signature page follows.]

