

RESOLUTION NO. 03.30.20-1

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SEBASTIAN INLET DISTRICT AUTHORIZING THE EXECUTIVE DIRECTOR TO MAKE PROVISIONS FOR ELECTRONIC ATTENDANCE BY ELECTED OFFICIALS AT DISTRICT MEETINGS DURING PERIODS OF A DECLARED PUBLIC HEALTH EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the current outbreak of Coronavirus (COVID-19) has made the District Commission acutely aware that provisions must be made to ensure that the business of the District can occur without unnecessarily exposing either District personnel or members of the public to a risk of infection while ensuring public access and open government; and,

WHEREAS, Florida law, including Florida Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials (“Bodies”), for the conduct of public business, must be held following procedures (notice, access of meetings, opportunity to be heard, the taking of minutes, etc.) that ensure that the public is able to participate in and be aware of the decision making process (the “Sunshine Law”); and,

WHEREAS, previously, when asked whether a public body complies with the Sunshine Law when one or more members of the Body wish to participate in a meeting electronically from a remote location, the Florida Attorney General (“AG”) has opined that a quorum of the Body must be physically present in order to allow a member, who due to “extraordinary circumstances” is unable to physically attend the meeting, to appear and participate electronically; and,

WHEREAS, the AG relies on the language in Florida Statutes Section 166.041(4), that states “[A]n affirmative vote of a majority of a quorum *present* is necessary to enact any ordinance or adopt any resolution” (emphasis added); and,

WHEREAS, the AG admits, in AGO 2010-34, that “this office has consistently suggested a conservative interpretation” as the Sunshine Law does not expressly prohibit remote electronic participation nor suggest that a member of a Body is not “present” when they access the meeting electronically; and,

WHEREAS, Florida Sunshine Law has three fundamental requirements: (1) meetings are noticed; (2) meetings are open to the public; and (3) minutes are taken. The Sunshine Law does not make any provisions concerning emergencies other than concerning notice. “Virtual meetings” — that is, meetings using technology to allow the public to attend remotely and, potentially, allow board members to attend remotely — are not addressed in the Sunshine Law insofar as the statutes neither expressly allow virtual meetings nor expressly prohibit virtual meetings. While statutes concerning emergency management address many issues, they do not specifically address any alteration of the Sunshine Law during emergency situations; and,

WHEREAS, on March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency; and,

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19; and,

WHEREAS, on March 9, 2020, Governor DeSantis declared that a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19; and,

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order No. 20-69, suspending 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. Florida Statutes; and

WHEREAS, COVID-19 has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare and security of the citizens, residents and visitors within the boundaries of the District; and,

WHEREAS, the District Commission finds there is a clear and present danger in holding a public “in person” meeting for those attending and those who come in contact with those attending; and,

WHEREAS, the technology exists to conduct public meetings using technology in which the District can comply with the provisions of the Sunshine Law while preserving human life; and,

WHEREAS, the District Commission finds that it is in the best interest of the personnel and citizens within the District to authorize the Executive Director to provide, when he determines appropriate, for the District Commission to be able to attend meetings electronically during a declared public health emergency pursuant to the District’s Charter, including that set forth in Article VIII, Section 2(b), Florida Constitution, and Section 166.021, Florida Statutes.

BE IT HEREBY RESOLVED by the Board of Commissioners of the Sebastian Inlet District:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT. The above stated recitals to this Resolution are hereby incorporated into this Resolution by the Commission as the legislative findings and intent pertaining to this Resolution.

SECTION 2. DECLARATION OF EMERGENCY. Pursuant to state law and based upon the Legislative Findings set forth in the above-stated Recitals, the Sebastian Inlet District Commission hereby finds and declares that an emergency exists requiring immediate action by the District Commission. By virtue of the threat to public health and safety, and by virtue of the threat to the District's financial health, it is necessary for the District to implement this regulation, which can only be accomplished by the adoption of this Emergency Resolution.

SECTION 3. LIMITED AUTHORIZATION FOR PUBLIC MEETINGS WITHOUT PHYSICAL PRESENCE. The Executive Director is hereby authorized, during a declared public health emergency to:

- a) arrange for the District Commission to meet electronically;
- b) promulgate rules of procedure that will ensure compliance with the Sunshine Law;
- c) provide technology and administrative support as necessary to fulfill these objectives.

Such a meeting may only be conducted without the physical presence of the District Commission members if an emergency is declared based upon an infectious disease outbreak, and only so long as: (1) the meeting be properly noticed, (2) minutes be taken, and (3) the public be permitted to attend via technology such as teleconferencing or web-based conferencing. Furthermore, the meeting notice include information for the public regarding how they can attend the meeting virtually or direction to go to the District's website where the information can be found on the homepage. Findings shall be made on the record and captured in the minutes concerning how the meeting is being conducted and the necessity of those measures. At any virtual meetings held under these circumstances, matters discussed and matters where action is taken should be limited to issues concerning the health, safety, and welfare of the community.

SECTION 4. SEVERABILITY. If any provision of this Resolution is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision, and to that end, the provisions of this Resolution are hereby declared severable.

SECTION 5. CONFLICTS. All Resolution or parts of Resolution in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. EFFECTIVE DATE. This Emergency Resolution shall take effect immediately upon its passage, and shall expire on August 31, 2020. Nothing contained in this Resolution shall give rise to any vested rights, equitable estoppel, or claim for continuing any specific land use.

THE FOREGOING RESOLUTION Upon motion by Commissioner _____ and second by Commissioner _____, the Board approved the Resolution as follows:

Lisa Frazier _____
Chris Hendricks _____
Beth Mitchell _____
Jenny Lawton Seal _____
Michael Rowland _____

The Chair thereupon declared the resolution duly passed and adopted this 30 day of March, 2020.

SEBASTIAN INLET DISTRICT

By: _____
Jenny Lawton Seal, Chairman

APPROVED AS TO FORM

By: _____
Jack Kirschenbaum
Attorney for Sebastian Inlet District