



## TOWN OF CUTLER BAY AMENDMENT 1 TO EMERGENCY ORDER NO. 20-06

Pursuant to Governor DeSantis' Executive Orders 20-51 and 20-52, in which the Governor declared a public health emergency and a state of emergency, there is a recommendation to limit public gatherings. On March 13, 2020, as Town Manager, I issued a Declaration of State of Emergency due to health and safety concerns related to COVID-19, which was confirmed by Resolution No. 2020-76 of the Town Council on April 22, 2020. On March 20, 2020, Governor DeSantis issued Executive Order 20-69, "Emergency Management - COVID-19 Local Government Public Meetings." Pursuant to Executive Order 20-69, "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" is suspended, and the Town is authorized to hold public meetings through the use of communications media technology ("CMT"). Pursuant to Executive Order 20-69, on April 14, 2020, the Town adopted Emergency Order No. 20-03, establishing procedures governing public meetings utilizing CMT. On June 24, 2020, Governor DeSantis issued Executive Order 20-150, which extended Executive Order 20-69, as extended by Executive Orders 20-121, 20-123, and 20-139, until 12:01 a.m. on August 1, 2020.

By virtue of the powers and duties vested in me as the Town Manager of the Town of Cutler Bay, Miami-Dade County, Florida, in accordance with Chapter 252, Florida Statutes; Chapter 12, Article II, Sec. 12-23(g) of the Town Code, and pursuant to the Town's Declaration of State of Emergency issued on March 13, 2020, I hereby find that it is in the best interest of the residents of Cutler Bay to amend the "Virtual Quasi-Judicial Hearing Procedures" issued by EO 20-06 as follows:

### **Virtual Quasi-Judicial Hearing Procedures**

Quasi-judicial hearings conducted using CMT ("Virtual Quasi-Judicial Hearings") shall comply with Section 2-99, "Ex parte Communications with the town council," of Chapter 2 of the Town Code of Ordinances and the "Rules of Procedure for Public Meetings Utilizing Communications Media Technology" issued in Emergency Order No. 20-03. *A copy of Section 2-99 of the Town Code of Ordinances and Emergency Order No. 20-03 are attached hereto and incorporated herein as Exhibits "A" and "B," respectively.*

In addition, the following procedures shall apply to Virtual Quasi-Judicial Hearings:

1. **Requesting Virtual Quasi-Judicial Hearing.** 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 Council meeting where all individuals may attend the hearing in person in the Town Council Chamber. 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. *The Applicant 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.*

2. **Evidence.**

- a) The Town Clerk will individually swear in each witness immediately prior to speaking on a quasi-judicial agenda item.
- b) All witnesses are subject to cross-examination by the Town Staff, Town Council, and the Applicant.
- c) The Town's Comprehensive Plan, Code of Ordinances, material in the Town Council's agenda backup, and Town Staff resumes on file with the Town Clerk will automatically be considered as evidence without authentication.
- d) Any documents or evidence that the Applicant or any member of the public wishes to admit 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 1:00 p.m. on the Friday immediately preceding the date of the Virtual Quasi-Judicial Hearing.
- e) The Town Council reserves the right to limit or prohibit redundant or irrelevant evidence, testimony, or questions and may set reasonable time limits.
- f) Although the Town Council 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.

3. **Conduct of Hearing.**

- a) Virtual quasi-judicial hearings shall be conducted in an informal manner.
- b) 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 Councilmember or any member of the public wishes to speak for or against the quasi-judicial agenda item, the Town Council may vote on the item based upon the materials in the agenda back-up, without any discussion or debate on the item.
- c) The Town Staff's presentation, if any, ~~will be pre-recorded, and~~ will be introduced. Following the Town Staff's presentation, the Applicant's presentation, if any, ~~will be pre-recorded and~~ will be introduced.
- d) After Town Staff and the Applicant have made their presentations, any member of the public may deliver remarks relating to the quasi-judicial item. Any member of the public wishing to speak on the quasi-judicial item must provide their name and address prior to delivering any remarks. Cross-examination of a member of the public must be done by Town Staff, Councilmembers, or the Applicant immediately following the individual's remarks.

- e) The Applicant and Town Staff will make concluding remarks, if any, at the conclusion of public remarks.
  - f) The public hearing will then be closed. Once the public hearing is closed, no further presentations or testimony shall be permitted. However, the Town Council may ask questions of Town Staff or the Applicant after the public hearing is closed.
  - g) The Town Council will make their comments, ask questions, deliberate, and then announce its decision by vote of the Town Council.
4. **Conflicts.** In the event of a conflict between the provisions of this Order and Section 2-99 of Chapter 2 of the Town Code of Ordinances or Emergency Order No. 20-03, this Order shall govern.

This Emergency Order shall be effective **commencing July 2, 2020, at 12:00 p.m. (EST)** and shall continue in effect from day-to-day until the earlier of the expiration of the Town's Declaration of Emergency, issued March 13, 2020, or the expiration of the Governor's Executive Order 20-69, including any extensions to either. This Emergency Order may be cancelled earlier by action of the Town Manager.

All emergency orders or parts of orders, in conflict with this Emergency Order, are repealed to the extent of such conflict.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the Town of Cutler Bay to be affixed this 2<sup>nd</sup> day of July, 2020 at 12:00 p.m. (EST).

ATTEST:



Debra Eastman, MMC  
Town Clerk



Rafael G. Casals, ICMA-CM, CFM  
Town Manager

TOWN OF CUTLER BAY  
CODE OF ORDINANCES

CHAPTER 2

Sec. 2-99. - Ex parte communications with the town council.

Communications with local public officials as defined in F.S. § 286.0115(1)(b), regarding quasi-judicial matters as defined in *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993), including the adjudication of the rights of persons and the application of a general rule or policy to a specific individual, property, interest or activity, shall be governed by the following procedure: Any person not otherwise prohibited by statute, Charter provision, or ordinance may discuss with any local public official representing the town 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:

- (1) The subject and substance of any ex parte communication with a local public official representing the town which relates to quasi-judicial action pending or impending 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.
- (2) A local public official representing the town may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending or impending before such official shall be made a part of the record before final action is taken on the matter.
- (3) A local public official representing the town may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending or impending before him, provided that such activities and the existence of such investigations, site visits, or expert opinions is made a part of the record before final action is taken on the matter.
- (4) Disclosure made pursuant to subsections (1), (2) and (3) of this section 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.

(Ord. No. 07-08, § 2, 3-21-2007)



## TOWN OF CUTLER BAY EMERGENCY ORDER NO. 20-03

Pursuant to Governor DeSantis' Executive Orders 20-51 and 20-52, in which the Governor declared a public health emergency and a state of emergency, there is a recommendation to limit public gatherings. On March 20, 2020, Governor DeSantis issued Executive Order 20-69, "Emergency Management - COVID-19 Local Government Public Meetings." Pursuant to Executive Order 20-69, "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" is 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, Fla.Stat.

By virtue of the powers and duties vested in me as the Town Manager of the Town of Cutler Bay, Miami-Dade County, Florida, in accordance with Section 252.38 of the Florida Statutes, under Chapter 12, Article II, Sec. 12-23 (a) of the Town Code, and pursuant to the Town's Declaration of a State of Emergency issued on March 13, 2020, I hereby find that it is in the best interest of the residents of Cutler Bay to issue the following:

### Rules of Procedure for Public Meetings Utilizing Communications Media Technology

1. Prior to the commencement of any Town public meeting, the Clerk shall post notice of the meeting in a manner consistent with Section 286.011, Florida Statutes. The notice shall also include instructions on how to access the public meeting either via telephone, video conference, or other communications media technology utilized by the Town.
2. 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.
3. 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.
4. The Clerk shall ensure 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.).

This Emergency Order shall be effective commencing April 14, 2020 at 11:59 p.m. (EST) and shall continue in effect from day-to-day until the earlier of the expiration of the Town's Declaration of Emergency issued March 13, 2020, or the expiration of the Governor's Executive Order 20-52, including any extensions to either. This Emergency Order may be cancelled earlier by action of the Town Manager.

All emergency orders or parts of orders, in conflict with this Emergency Order, are repealed to the extent of such conflict.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the Town of Cutler Bay to be affixed this 14th day of April, 2020 at 9:00 a.m. (EST).



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Rafael G. Casals, ICMA-CM, CFM  
Town Manager

Attest:



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Debra Eastman, MMC  
Town Clerk

**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 Cutler Bay, 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 June 24, 2020, the Town Manager issued Emergency Order No. 2020-06, establishing the Town’s Virtual Quasi-Judicial Hearing Procedures, and on July 2, 2020 amended the order, 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.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

**TOWN OF CUTLER BAY/INDEMNITEE**

**APPLICANT/INDEMNITOR**

By: \_\_\_\_\_  
Rafael G. Casals, ICMA-CM, CFM, Town Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

Witness:

By: \_\_\_\_\_  
Debra E. Eastman, MMC, Town Clerk

Name: \_\_\_\_\_

Approved as to form and legal sufficiency:

Witness:

By: \_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

Name: \_\_\_\_\_

**Addresses for Notice:**

Town of Cutler Bay  
Attn: Debra Eastman, Town Clerk  
10720 Caribbean Blvd., Suite 105  
Cutler Bay, FL 33189  
Deastman@cutlerbay-fl.gov (email)

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Chad Friedman, Esq.  
Town of Cutler Bay Attorney  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, FL 33134  
cfriedman@wsh-law.com (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**NOTARIAL CERTIFICATION (AS TO APPLICANT/INDEMNITOR ONLY)**

State of Florida  
County of \_\_\_\_\_

I hereby certify that the foregoing Waiver, Indemnification, and Hold Harmless Agreement was acknowledged before me by means of physical presence or online notarization this \_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as \_\_\_\_\_, a \_\_\_\_\_, on behalf of said entity, and who is personally known to me or produced \_\_\_\_\_ as identification.

[Affix Seal]

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Exhibit A  
Virtual Hearing Procedures

Exhibit B  
Legal Description of Property