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**ORDINANCE NO. 20-030**

**AN ORDINANCE OF THE CITY OF BOYNTON BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO MAKE PROVISIONS FOR PUBLIC MEETINGS BY USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS DURING PERIODS WHEN THE CITY COMMISSION DETERMINES AND DECLARES A LOCAL PUBLIC HEALTH EMERGENCY OR OTHER CIRCUMSTANCES WHICH THE COMMISSION DETERMINES NECESSARY TO PROTECT THE HEALTH AND SAFETY OF CITY OFFICIALS, CITY STAFF, AND THE PUBLIC; PROVIDING FOR THIS ORDINANCE TO CONTROL IN THE EVENT OF CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA:**

**SECTION 1. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.**

In adopting this Ordinance, the City Commission of the City of Boynton Beach (the "City Commission") intends to protect the public health and safety by making provisions for the occurrence of and attendance at public meetings by use of communication media technology (CMT) during local public health emergencies, as determined by the City Commission. The City Commission finds:

1. 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.

2. 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.

3. 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.

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

5. 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

47 be heard, the taking of minutes, etc.) that ensure that the public is able to participate in  
48 and be aware of the decision making process (the “Sunshine Law”).

49

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

56

57 7. On March 19, 2020, the AG issued an AGO 2020-03 which provides that “unless  
58 and until legislatively or judicially determined otherwise, if a quorum is required to  
59 conduct official business, local government bodies may only conduct meetings by  
60 teleconferencing or other technological means if either a statute permits a quorum to be  
61 present by means other than in-person, or the in-person requirement for constituting a  
62 quorum is lawfully suspended by the Governor during the state of emergency.”

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64 8. On March 20, 2020, Governor DeSantis issued Executive Order Number 20-69  
65 which suspends any Florida Statute that requires a quorum to be present in person or  
66 requires a local government body to meet at a specific public place and permits local  
67 government bodies to utilize communications media technology such as telephonic and  
68 video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes. EO 20-69 has  
69 been extended on several occasions reflecting the continued state of emergency and  
70 threat to the public when gathering to attend public meetings.

71

72 9. COVID-19 has created or imminently threatens to create conditions that may  
73 severely affect the public health, safety, welfare and security of the citizens, residents  
74 and visitors of the City of Boynton Beach, Florida.

75

76 10. The City Commission finds there is a clear and present danger in holding a public  
77 “in person” meeting for those attending and those who come in contact with those  
78 attending.

79

80 11. The technology exists to conduct public meetings using technology in which the  
81 City can comply with the provisions of the Sunshine Law while preserving human life.

82

83 12. The City Commission also possesses broad home rule powers that authorize it to  
84 protect the public health, safety, and welfare, declare emergencies, and protect its  
85 citizens, and pursuant to its Charter.

86

87 13. There is no statute, Charter provision, or ordinance defines “present” as  
88 physically within the walls of the City hall chambers. Webster’s includes “in attendance”  
89 as a meaning of “present”. Section 8 of the City Charter provides:

90

91           *Sec. 8. Frequency, date of regular meetings; special meetings; rules of*  
92           *procedure.*

93           *(a) The Commission shall hold its meetings as the Commission deems*  
94           *necessary. Should any scheduled City Commission meeting fall upon a*  
95           *date on which any national, state, county or municipal election is held,*  
96           *said City Commission meeting should be deferred until the next regular*  
97           *working day.*

98           *(b) The Mayor, or any three members of the City Commission may call*  
99           *special meetings of the City Commission, upon written notice to each*  
100           *member served personally or left at the usual place of residence. All*  
101           *regular and special meetings of the City Commission shall be open to the*  
102           *public. The City Commission shall determine its own rules and order of*  
103           *business.*

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106           14. Charter does not prohibit attendance at the meeting of City commissioners by  
107           electronic media and the Commission finds that its attendance requirement for the  
108           purpose of establishing a quorum, participating and voting can be satisfied by physical  
109           or CMT attendance. This same rule of attendance applies to City Board meetings and  
110           quasi-judicial hearings.

111

112           15. There is no intrinsic evil to telephone attendance to achieve a quorum.  
113           Consequently, the “preemption” of phone attendance, if it exists, must be express, not  
114           vaguely and ambiguously implied. Thus, the City Commission finds that no preemption  
115           exists in state law.

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117           16. The City Commission finds that it is in the best interest of the personnel and  
118           citizens of the City for the City Commission and members of the various Boards and  
119           Committees to be able to attend meetings electronically during a declared public health  
120           emergency, Boynton Beach pursuant to the City’s Charter, and the City’s home rule  
121           authority, including that set forth in Article VIII, Section 2(b), Florida Constitution, and  
122           Section 166.021, Florida Statutes.

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124           **SECTION 2. DECLARATION OF EMERGENCY.** Pursuant to its home rule  
125           powers and based upon the Legislative Findings set forth in the above-stated Recitals,  
126           the City Commission of Boynton Beach hereby finds and declares that an public health  
127           emergency exists requiring immediate action by the City Commission. By virtue of the  
128           threat to public health and safety by virtue of the threat to the City’s financial health and  
129           home rule powers, it is necessary for the City to implement this regulation.

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131           **SECTION 3. LIMITED AUTHORIZATION FOR PUBLIC MEETINGS WITHOUT**  
132           **PHYSICAL PRESENCE.** The City Manager is hereby authorized, pursuant to the  
133           Home Rule authority of the City Commission, during a declared public health emergency  
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- a) arrange for the City 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 City Commission members if an emergency is declared based upon an infectious disease, 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.

**SECTION 4. SEVERABILITY.** If any provision of this ordinance 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 ordinance are hereby declared severable.

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

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

**FIRST READING** this 4th day of **August**, 2020.

**SECOND, FINAL READING AND PASSAGE** this 6th day of October, 2020.

CITY OF BOYNTON BEACH, FLORIDA		YES	NO
Mayor – Steven B. Grant	<u>✓</u>	___	
Vice-Mayor – Ty Penserga	<u>✓</u>	___	
Commissioner – Justin Katz	<u>✓</u>	___	
Commissioner – Woodrow L. Hay	<u>✓</u>	___	
Commissioner – Christina L. Romelus	<u>✓</u>	___	
VOTE	<u>5-0</u>		

178 ATTEST:

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181 Crystal Gibson, MMC

182 City Clerk

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185 (Corporate Seal)

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