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MEMORANDUM

TO: Honorable Council President Tommy Hazouri

CC: Jason Gabriel, General Counsel

FROM: Margaret M. Sidman, Deputy Legislative Affairs & Managing Deputy *MS*

RE: **Council Member Attendance and Voting Through Virtual Technology**

DATE: November 2, 2020

I. Issue.

By virtue of the expiration of the Governor's Executive Order, Order 20-69 as extended and amended, regarding virtual quorum, a physical presence of a quorum of the governing board is required. The following questions have been posed, if there is physical presence of quorum of the governing body: (1) can the remaining members appear by electronic or telephonic means; and (2) if the answer to (1) is yes, can those members not physically present fully participate in the meeting including but not limited to discussion and voting.

II. Discussion

1. Once a quorum is physically present.

A physical presence of a quorum is required to conduct official business of the governing body, unless otherwise permitted by statute or lawfully suspended during a state of emergency. Recently, the Governor suspended the requirement of a physical presence for quorum of the governing body during the State of Emergency under COVID-19 through October 31, 2020.

Once a quorum of the board is present, numerous Attorney General opinions support the position that a board member who is physically unable to attend the meeting may participate and vote in the meeting by using telephonic or electronic communications so long as a quorum is physically present at the meeting and the member can participate in the discussions, the public can observe his or her participation, and the public can participate in the proceeding. See AGO 92-44, AGO 2003-41, and AGO 94-55. These AG opinions caution however, that participation of an absent member should be permitted only in extraordinary circumstances and when a quorum of the board is physically present at the meeting. Whether the absence of a member constitutes such circumstance is a determination that must be made in the good judgment of the board. See AGO 2003-41.

2. Ability or limitations on a Board Member's participation.

The second part of this question is governed by a number of considerations, specifically: technology, physical place locations, and other governing laws or bylaws.

The technology issue concerns the ability to hold an open public meeting accessible to the public, including consideration of hybrid meetings. The physical place component incorporates the technology concerns of the meeting room as well as the spacing requirements if social distancing is being observed.

Finally, each board's governing documents be it local laws, statutes or the board's bylaws, should be reviewed for compliance or conflicts with the procedure under which each board will engage in their open public meetings with access by the public to these meetings. A review of these laws and policies should be conducted to ensure the open government component of the meeting and proper recordkeeping of the meeting, including the voting record, as well as any limitations or requirements governed by the pertinent Board or Commissions' Municipal Code sections, bylaws, or applicable Florida Statutes.

3. City Council Rules

For City Council, the bylaws are known as the Rules of Council. The Rules of the Council require that the Council Member register their vote by the electric roll call system. The electric roll call, which was a system used from 1997-2018, was hard wired into the dais and required a Council Member to be at his or her seat in order to register a vote.

In 2019, the Council updated to a roll call system in which the voting and recording of the vote are done via electronic access. Under the direction of the Council Secretary/Director, the Council IT Computer Systems Management staff recently tested this system specific to the location of the iPad and the test indicated that the iPad or another secure remote access device can be located where the Council Member is located and need not be confined to Council Chambers. Therefore, the Council Member not physically present will be able to directly cast and have their vote recorded by virtue of the new voting system. This updated system thus complies with Council Rule 4.605 without the need for a proxy to record the vote.

In conclusion, while Council Members not physically present are not ordinarily counted toward quorum, once quorum is established the Council Rules permit Council Members to participate and vote by electronic means within the caveats noted herein.

III. Law.

1. Governor's Executive Order 20-69 (Emergency Management- COVID-19 - Local Government Public Meetings), extended by Governor's Executive Order 20-246:

The Governor's Executive Order 20-69, most recently extended by Executive Order 20-246, suspended the requirement of a quorum to be present in person or for the requirement of a governing body to meet at a specific public place. Further the Executive Order allowed local governments to use communication media technology (CMT) such as telephonic and video conferencing for conducting business and voting. The Executive Order is set to expire November 1 and likely will not be extended further. A copy of the referenced order is attached.

2. Ordinance 2020-200-E:

The Jacksonville City Council adopted Ordinance 2020-200-E to establish procedures and protocols to comply with the Governor's Executive order for virtual non presence quorum of the governing body and use of communication media technology. The enacted Ordinance also included a waiver of conflicting Council Rules. Specifically, Council Rule 4.605 (Proxy Voting) was waived as to the requirement that no person other than the Council Member may record his or her vote upon waiving Council Rule 4.605, upon the roll call vote of the Council, Legislative Services may record the vote of each Council Member as if he or she had voted in person. The temporary virtual policy approved in Ordinance 2020-200-E terminates when the Governor's Executive Order 20-69 expires. A copy of the referenced ordinance is attached.

3. COUNCIL RULE 4.603 MANNER OF VOTING

Votes on procedural matters, including withdrawals, amendments, substitutions and emergencies shall be by voice vote; the vote on the motion to declare these matters shall be by roll call vote. Roll call votes shall be taken by the electric roll-call system. In the case of a voice vote, if the presiding officer is in doubt, or upon the request of four Council Members, the presiding officer shall call for a rising vote, for a division of the Council or for a roll-call vote.

4. COUNCIL RULE 4.605 PROXY VOTING PROHIBITED

No Council Member shall vote for another Council Member, nor shall any person not a Council Member cast a vote for a Council Member. Any person not a Council Member who shall vote wrongfully in the place of a Council Member shall be excluded from the Council chambers for the remainder of the meeting.

5. City of Jacksonville Emergency Executive Proclamation 2020-09, dated October 27, 2020.

The Mayor's Executive Proclamation, 2020-09, requires face masks be worn when individuals are not able to socially distance. The Executive Proclamation was signed on October 27, 2020 and will expire on November 26, 2020, unless cancelled prior or extended.