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WHEREAS, the City Commission of the City of Margate deems it to be in the best interest of the citizens and residents of the City, to make provisions for public meetings by use of communication media technology and for attendance by use of such technology by elected, appointed officials, or staff during periods when the City Manager determines and declares a public health emergency or other circumstances in which the City Commission determines necessary to protect the health and safety of City Officials, City staff, and the public.

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

Section 2. This Ordinance is deemed to be an emergency as to the health, welfare and safety of the citizens of the City of Margate.

1 **Section 3. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.**
2

3 In adopting this Ordinance, the City Commission of the City of Margate (the “City
4 Commission”) intends to protect the public health and safety by making provisions for the
5 occurrence of and attendance at public meetings by use of communication media technology
6 (“CMT”) during local public health emergencies, as determined by the City Manager. The City
7 Commission finds:

8 1. The Coronavirus (COVID-19), a respiratory illness caused by a virus that spreads
9 rapidly from person to person and may result in serious illness or death, constitutes a clear and
10 present threat to the lives, health, welfare, and safety of the people of Margate.

11 2. On March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued
12 Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health
13 Emergency.

14 3. On March 1, 2020, the State Surgeon General and State Health Officer declared
15 that a Public Health Emergency exists in the State of Florida as a result of COVID-19.

16 4. On March 9, 2020, Governor DeSantis issued Executive Order 20-52 and
17 declared that a state of emergency exists in the State of Florida as a result of the continued spread
18 of COVID-19.

19 5. On March 12, 2020, City Manager Cale Curtis, declared a State of Local
20 Emergency.

21 6. To reduce the spread of COVID-19, the United States Centers for Disease Control
22 and Prevention (“CDC”) recommends implementation of community mitigation strategies to
23 increase containment of the virus.

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

28 8. As of December 3, 2020, the Florida Department of Health reports a total number
29 of COVID-19 cases of 19,012 deaths in Florida and 1,018,160 cases, including 1,673 deaths, and
30 109,360 cases in Broward County. Nationwide, there were 199,988 new cases reported on
31 December 2, 2020.

1 9. Florida law, including Article 1, Section 24 (b) Florida Constitution, and Florida
2 Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials
3 (“Bodies”), for the conduct of public business, must be held following procedures (notice, access
4 of meetings, opportunity to be heard, the taking of minutes, etc.) that ensure that the public is
5 able to participate in and be aware of the decision making process (the “Sunshine Law”).

6 10. Florida law, including but not limited to, Florida Statutes Section 255.0518
7 requires that the opening of sealed bids be conducted at a public meeting in compliance with
8 Section 286.011.

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

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

21 13. On March 20, 2020, Governor DeSantis issued Executive Order (“EO”) 20-69,
22 which suspends any Florida Statute that requires a quorum to be present in person or requires a
23 local government body to meet at a specific public place and permits local government bodies to
24 utilize CMT such as telephonic and video conferencing, as provided in section 120.54(5)(b)2.,
25 Florida Statutes. EO 20-69 has been extended on several occasions reflecting the continued state
26 of emergency and threat to the public when there is a gathering to attend public meetings.

27 14. Section 4 D of Governor DeSantis’ Executive Order 20-52 expressly authorizes
28 the City Commission to take whatever prudent action is necessary to ensure the health, safety,
29 and welfare of the community in accordance with section 252.38, Florida Statutes.

30 15. Chapter 252, Florida Statutes, among other things, confers upon the City
31 Commission the emergency powers provided for in Chapter 252 in order to protect the public

1 peace, health, and safety; and to preserve the lives and property of the people of the state; and to
2 “make, amend, and rescind such orders and rules as are necessary for emergency management
3 purposes and to supplement the carrying out of the provisions of ss. 252.31-252.90, but which
4 are not inconsistent with any orders or rules adopted by the division or by any state agency
5 exercising a power delegated to it by the Governor or the division.” Section 252.46(1), Florida
6 Statutes.

7 16. COVID-19 has created or imminently threatens to create conditions that may
8 severely affect the public health, safety, welfare and security of the citizens, residents and
9 visitors of the City of Margate, Florida.

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

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

14 19. The City Commission also possesses broad home rule powers that authorize it to
15 protect the public health, safety, and welfare, declare emergencies, and protect its citizens.

16 20. There is no statute, Charter provision, or ordinance that defines “present” as
17 physically within the walls of the City Hall Chambers. Webster’s Dictionary defines “in
18 attendance” among other things as a meaning of “present”. Article 3, Section 3.17(7) of the City
19 Charter provides:

20 “*Voting.* Voting on ordinances and resolutions shall be by roll call and shall be
21 recorded in the minutes. A majority of the Commission shall constitute a quorum;
22 but a smaller number may adjourn from time to time and may compel the attendance
23 of absent members in the manner and subject to the penalties prescribed by the rules
24 of the Commission. No action of the Commission, except as otherwise provided in
25 this Charter, in the preceding sentence, and in Section 3.11(3) shall be valid or
26 binding unless adopted by the affirmative vote of the majority of a quorum of the
27 Commission.”

28 The City Charter does not require that a quorum be physically present.

29 21. The Charter does not prohibit attendance at the meeting of City Commissioners
30 by electronic media and the City Commission finds that its attendance requirement for the
31 purpose of establishing a quorum, participating and voting can be satisfied by physical or CMT

attendance. This same rule of attendance applies to City Commission, City Boards, Committee meetings, and quasi-judicial hearings.

22. There is no intrinsic error to use telephone and computer attendance to achieve a quorum. Consequently, the “preemption” of phone attendance, if it exists, must be expressly set forth in the Florida Constitution or general or special law, and not vaguely and ambiguously implied. Thus, the City Commission finds that no preemption exists in state law.

23. The City Commission finds that it is in the best interests of the City Commission, Boards, Committees, City personnel, and citizens and residents of the City to authorize the City Manager to provide for the City Commission, members of the various Boards, Committees, Magistrate, staff, and the public to be able to attend meetings electronically during a declared public health emergency, pursuant to the City’s Charter, Chapter 252, Florida Statutes, Section 4 D of Governor DeSantis’ Executive Order 20-52, and the City’s home rule authority, including that set forth in Article VIII, Section 2(b), Florida Constitution, and Section 166.021, Florida Statutes.

Section 3. DECLARATION OF EMERGENCY. Pursuant to its home rule powers, Chapter 252, Florida Statutes, section 4 D of Governor DeSantis’ Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, the City Commission of the City of Margate finds the declared public health emergency still exists requiring immediate action by the City Commission. By virtue of the threat to public health and safety and by virtue of the threat to the City’s financial health and home rule powers, it is necessary for the City to implement this regulation.

Section 4. LIMITED AUTHORIZATION FOR PUBLIC MEETINGS WITHOUT PHYSICAL PRESENCE. The City Manager is authorized, pursuant to the home rule authority, Chapter 252, Florida Statutes, section 4 D of Governor DeSantis’ Executive Order 20-52, and based upon the Legislative Findings set forth in the above-stated recitals, during a declared public health emergency to:

- a) arrange for the City Commission, Boards, Committees, Special Magistrates, and staff to meet and the public to participate 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 a quorum of the City Commissioners, Boards, and Committees, if an emergency is declared based upon an infectious disease, and only so long as (1) the meeting is properly noticed, (2) minutes are taken, and (3) the public is permitted to attend via technology such as teleconferencing or web-based conferencing.

Section 5. That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

Section 7. That this Ordinance shall be effective immediately upon adoption and effective for sixty (60) days through April 4, 2021, which may be extended by ordinance under regular procedures or, if the emergency still exists then by emergency ordinance.

PASSED on as an Emergency Ordinance on December 9, 2020.

ATTEST:

JOSEPH J. KAVANAGH
CITY CLERK

MAYOR ARLENE R. SCHWARTZ

RECORD OF VOTE

Caggiano	_____
Simone	_____
Ruzzano	_____
Arserio	_____
Schwartz	_____