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TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: July 28, 2021
RE: Ratification and Extension of Local Emergency; August 3, 2021 Council Meeting Agenda Item 8(d)

Section 1. Background. Beginning in 2020, the COVID-19 health pandemic swept across the globe, leading to unprecedented disruption and closure of government, businesses, and schools, along with shifts to remote work, learning, and meeting environments. The World Health Organization, Centers for Disease Control, and innumerable other government agencies acknowledged the seriousness of the pandemic, urging government and individuals alike to take steps to protect themselves and others from COVID-19, which has resulted in 4.2 million deaths globally and over 7,000 deaths in the State of Minnesota alone. On March 13, 2020, Governor Walz declared that the COVID-19 Health Pandemic constituted a peacetime emergency under Minn. Stat. Cha. 12, and in the months following that declaration issued more than one hundred Executive Orders to address the health crisis presented by the scope of a pandemic not seen in a lifetime. On March 16, 2020, the Mayor of Sunfish Lake issued a Proclamation and Declaration of Emergency, finding that a local emergency existed due to the COVID-19 health pandemic. The Sunfish Lake City Council subsequently ratified and extended that Proclamation and Declaration of Local Emergency on March 19, 2020 with the adoption of Resolution No. 20-06, and extended the declaration of local emergency by way of Resolution No. 20-08, adopted on June 2, 2020. Per Resolution No. 20-08, this declaration of local emergency due to the existing COVID-19 health pandemic shall continue until such time as the City Council takes formal action to declare the local emergency due to the COVID-19 health pandemic has ended. The Council has taken no action to date to rescind the declaration of local emergency.

Starting in the spring of 2021, existing regulations related to group gatherings, mask mandates, and similar restrictions were slowly dialed back, with the peacetime emergency declaration terminating on July 1st. Since then, the number of COVID-19 cases and hospitalizations both within the state and across the country dipped, but recently have increased, to the point where, as of July 29, 2021, fourteen Minnesota counties meet the criteria established by the CDC for triggering its recommendation that even fully vaccinated people wear a mask in public indoor settings due to having “substantial” or “high” rates of new COVID-19 cases.

Based on the existing status of the on-going COVID-19 global health pandemic, the Council is asked to review its existing declaration of local emergency due to the health pandemic, determine if such declaration should remain in effect or be rescinded, and review the revised provisions of Minn. Stat. Cha. 13D related to the ability of the City Council to meet via interactive technology at this time.

A. Analysis

Minnesota Statutes Chapter 13D, the Open Meeting Law, requires that meetings both be open to the public and that certain requirements be met before a meeting of a body subject to the open meeting law, including a City Council, may be conducted by “interactive technology,” defined as “a device, software program, or other application that allows individuals in different physical locations to see and hear one another.” Minn. Stat. Sec. 13D.01, subd.2. There are two ways that members of the Council may attend a meeting via interactive technology.

1. Remote Participation Under Minn. Stat. Sec. 13D.02

Pursuant to the provisions of Minn. Stat. Sec. 13D.02, a meeting of the Council may be conducted using interactive technology if all of the following requirements are met:

- (1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;
- (2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;
- (3) at least one member of the body is physically present at the regular meeting location;
- (4) all votes are conducted by roll call so each member's vote on each issue can be identified and recorded; and
- (5) each location at which a member of the body is present is open and accessible to the public.

The statute further provides as follows:

(b) A meeting satisfies the requirements of paragraph (a), although a member of the public body participates from a location that is not open or accessible to the public, if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public, and:

- (1) the member is serving in the military and is at a required drill, deployed, or on active duty; or
- (2) the member has been advised by a health care professional against being in a public place for personal or family medical reasons. This clause only applies when a state of emergency has been declared under section 12.31, and expires 60 days after the removal of the state of emergency.

Because the Governor's declaration of a peacetime emergency ended on July 1, 2021, the exception found in Minn. Stat. Sec. 13D.02, subd. 1(b)(2) expires on August 30, 2021. Thus the Council may meet via interactive technology and a Council member may participate from a location that is not open or accessible to the public if they have been advised by a health care professional against being in a public place for personal or family medical reasons.

Synopsis: The Council may meeting via interactive technology at any time, provided that the City has the technology to ensure that:

1. All members of the Council can see and hear each other
2. Members of the public are allowed at the regular meeting location and can hear and see all discussion and votes of all members of the Council.
3. At least one member of the City Council is physically present at the regular meeting location.
4. All votes occur by roll call vote.
5. Each location where any member of the Council is present is open and accessible to the public, and must be listed on the meeting notice.
6. Members of the public must be allowed to monitor the meeting remotely.

2. Remote Participation Under Minn. Stat. Sec. 13D.021

Minn. Stat. Sec. 13D.021 authorizes the City Council and its Planning Commission to meet via interactive technology when the following conditions exist:

- A. The presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under chapter 12.
- B. All members of the body participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony.
- C. Members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.
- D. At least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
- E. All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.
- F. To the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location.
- G. If Interactive technology is used to conduct the meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate

by interactive technology, and of the provisions of subdivision 3 (monitoring from a remote site).

- H. If attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration and the public body's practice is to offer a public comment period at in-person meetings, members of the public shall be permitted to comment from a remote location during the public comment period of the meeting, to the extent practical.

Synopsis: While there is no longer an emergency declared under Chapter 12, there continues to be an existing health pandemic. Therefore, the Council may meet remotely (via interactive technology) if all of the conditions listed above exist. This will require the following:

1. The Mayor or City Attorney determines that an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under chapter 12.
2. All members of the body participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony.
3. Members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.
4. At least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
5. All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.
6. Persons shall be allowed to monitor the meeting remotely.
7. The requisite notice of the meeting and how it can be monitored remotely is provided.
8. Members of the public shall be permitted to comment from a remote location during the public comment period of the meeting.

Section 2. Requested Council Action.

The Council should consider adopting a resolution ratifying and continuing the existing declaration of local emergency and authorizing continued remote meetings via interactive technology at this time pursuant to Minn. Stat. § 13D.021.

RESOLUTION NO. 21-_____

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

**RESOLUTION RATIFYING CONTINUED EXISTING DECLARATION OF LOCAL
EMERGENCY BASED ON CONTINUING COVID-19 GLOBAL HEALTH PANDEMIC**

WHEREAS, on March 13, 2020, Governor Tim Walz, by way of Emergency Executive Order 20-01, declared a Peacetime State of Emergency to authorize any and all necessary resources to be used in support of the COVID-19 response; and

WHEREAS, by that Proclamation and Declaration of Emergency dated March 16, 2020, Mayor Dan O'Leary declared that a local emergency existed due to the COVID-19 health pandemic; and

WHEREAS, on March 19, 2020, the City Council adopted Resolution No. 20-06 which agreed with the Mayor's Proclamation and Declaration of Emergency, consented to the declaration of a local emergency due to the COVID-19 health pandemic, and extended the declaration of local emergency until June 5, 2020; and

WHEREAS, on June 2, 2020, the City Council of the City of Sunfish Lake adopted Resolution No. 20-08 which extended the local declaration of emergency due to the COVID-19 global health pandemic; and

WHEREAS, the City Council of the City of Sunfish Lake finds that the COVID-19 global health pandemic continues at this time, posing a threat to the health and safety of the residents of Sunfish Lake, and further finds that there is public benefit to ratifying the continued existing declaration of local emergency within the City of Sunfish Lake due to the existing COVID-19 global health pandemic.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sunfish Lake, Minnesota, as follows:

1. The City Council finds that the COVID-19 global health pandemic continues at this time, including within the City of Sunfish Lake.
2. The City Council hereby ratifies the continued existing declaration of local emergency due to the existing COVID-19 global health pandemic approved by the City Council in Resolution Nos. 20-06 and 20-08, and such local emergency shall continue until such time until the Council takes formal action to declare that the local emergency due to the COVID-19 health pandemic has ended and to rescind the declaration of local emergency.
3. All of the authorizations and approvals granted in the initial Proclamation and Declaration of Emergency and in Resolution Nos. 20-06 and 20-08 are hereby continued for the duration of the existence of the previously-declared and extended local emergency, and the Mayor and City Staff are authorized and directed to take any and all additional actions necessary or convenient in order to accomplish the intent of this Resolution, the initial Proclamation and Declaration of Emergency, and Resolution Nos. 20-06 and 20-08.

4. The Mayor and City Attorney hereby determine that in-person meetings of the City Council and Planning Commission of the City of Sunfish Lake are not practical or prudent, due to the COVID-19 health pandemic and existing local emergency. The City Council hereby extends the authority to all city public bodies to conduct public meetings pursuant to and in compliance with Minnesota Statutes, Section 13D.021 until such time as the presiding officer of each body determines, in consultation with the City Attorney, that it is no longer impractical or imprudent for the respective public body to resume in-person meetings or the termination of this declaration of local emergency, whichever occurs first.
5. That due to the health pandemic and existing local emergency and due to the capacity limitations of the regular meeting location, it is not feasible to have members of the public present and in attendance at the regular meeting location of the Council and Planning Commission.
6. That due to the health pandemic and local emergency, it is not feasible to have a member of the Council or the Planning Commission (as the case may be) or the City Attorney or the City Administrator present at the regular meeting location of the Council or Planning Commission.
7. The City Clerk is authorized and directed to file and post notice of adoption of this resolution and any emergency regulations as authorized and required by State law or City Code and City Staff are authorized and directed to take any and all additional actions necessary or convenient to accomplish the intent of this resolution.

Adopted by the City Council of the City of Sunfish Lake this 3rd day of August, 2021.

Ayes:

Nays:

CITY OF SUNFISH LAKE

By: _____

Dan O'Leary, Mayor

ATTEST:

Catherine Iago, City Clerk