

**CITY OF RIO COMMUNITIES  
RESOLUTION 2020-170**

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO,  
AUTHORIZING THE EXERCISE BY THE MAYOR AND GOVERNING BODY OF AMENDED  
PROCEDURES FOR THE CONDUCT OF PUBLIC MEETINGS DURING THE EFFECTIVE PERIOD OF  
EXECUTIVE ORDER NO. 2020-004, ISSUED BY THE GOVERNOR OF NEW MEXICO ON  
MARCH 11, 2020**

**WHEREAS**, on March 11, 2020, Governor Michelle Lujan Grisham issued Executive Order No. 2020-004, proclaiming a statewide public health emergency as a result of the global COVID-19 coronavirus pandemic; and

**WHEREAS**, on March 23, 2020, Governor Michelle Lujan Grisham issued a statewide stay-at-home instruction asking all New Mexicans to stay at home except for outing essential to health, safety, and welfare; and

**WHEREAS**, both the Office of the Governor and the United States Centers for Disease Control and Prevention (“CDC”) have issued directives limiting the holding of and attendance at public gatherings and recommending physical separation and reduced contact between persons in order to mitigate the spread of the virus; and

**WHEREAS**, the New Mexico Open Meetings Act, NMSA (1978), §§ 3-15-1 to 3-15-4 (“Act”) provides that all meetings of a quorum of members of any public body are declared to be open meetings open to the public at all time and further providing that all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings; and

**WHEREAS**, the New Mexico Supreme Court adopted a rule of substantial compliance in the case of *Gutierrez v. City of Albuquerque*, 1981-NMSC-061, 96 N.M. 398, 631 P.2d 304, in which the court found that substantial compliance with the provisions of the Open Meetings Act occurs when the statute has been sufficiently followed so as to carry out the intent for which it was adopted and serve the purpose of the statute and further held that the provisions of the Act mean only that the governmental entity must allow reasonable public access for those who wish to attend and listen to the proceedings; and

**WHEREAS**, in response to the Governor’s Executive Order the New Mexico Attorney General has issued an advisory recommending postponing or cancelling public meetings but also providing for the conduct of virtual meetings with electronic attendance and participation pursuant to the provisions of section 10-15-1(C) of the Act in the event that time-sensitive matters must be considered; and

**WHEREAS**, the Governing Body finds it to be in the best interests of the citizens of the City to conduct such public meetings as may be necessary for the conduct of City affairs while postponing or cancelling such public meetings as are not immediately necessary; and

**WHEREAS**, the Governing Body finds it to be in the best interests of the citizens of the City to adopt procedures for the conduct of public meetings that comply with the Governor's and the CDC's orders and directives, that safeguard the health and well-being of members of the public, the City staff and City officials, and that result in substantial compliance with the provisions of the Act;

**NOW THEREFORE, BE IT RESOLVED** by the Governing Body of the City of Rio Communities that the following procedures be adopted and implemented during the period of emergency proclaimed by the Governor of New Mexico:

1. The Mayor shall have the authority to cancel all meetings of the Governing Body and of all boards and commissions of the City that may have been scheduled pursuant to the City's current Open Meetings Resolution or pursuant to any other official notice heretofore or hereafter issued, provided, that a majority of the members of the City council may override any cancellation by convening a meeting for that purpose pursuant to the provisions of NMSA (1978), § 3-12-3(D).
2. The Mayor shall have the authority to limit public participation at any meeting by any reasonable means that ensures substantial compliance with the Open Meetings Act, including any or all of the following measures:
  - a. Admitting not more than ten (10) members of the public into the meeting room at any one time, provided that all persons admitted are able to maintain a minimum distance of six (6) feet from any other person, and provided further that additional persons awaiting their turn to enter are provided a comfortable and safe waiting area with a minimum of six (6) feet of separation from all other persons. The Mayor shall have the authority to direct any person to implement these requirements by verbal means and to enforce them by closure of the premises or by removal of persons by any peace officer.
  - b. Providing for a live broadcast of the meeting by audio, audio-visual or live-streaming means. Such means may include a broadcast by remote loudspeakers into another room or facility that meets the requirements of subparagraph (a) above.
  - c. Providing for the complete exclusion of members of the public into the meeting room or auxiliary meeting room if the Mayor determines that attendance cannot be safely accommodated and further determines that the subject of the meeting cannot be deferred without unduly jeopardizing the City's economic, security or safety interests or the health, safety and welfare of the City's residents and visitors.
  - d. Limiting or excluding all public comment except for that which may be required by law. In the event that public comment is required by constitutional, statutory or judicial directive and the Mayor determines that such comment cannot be reasonably

accommodated by the means identified herein, the Mayor, with the approval of the City Council, may immediately recess the meeting or continue the specific item to another meeting. In cases of an emergency, the Governing Body may take such action as it deems necessary despite the exclusion of any required public comment. Any such action shall be reported to the Attorney General as required by section 10-15-1(F) of the Act, notwithstanding the provisions therein waiving the reporting in the event of the declaration of a state or national emergency.

3. The Mayor may delegate the implementation of the measures of this resolution to the chair of any official board or commission of the City for purposes of meetings of that board or commission.
4. The Mayor may direct the City officials and staff to receive and present to the Governing Body written comments from the public on any agenda item, and may further direct that members of the public be permitted to comment by such electronic means as may be available and in conformance to the procedures specified in the Attorney General's advisory.
5. Any meeting conducted pursuant to any of the provisions identified herein, except any duly-approved executive session, shall be recorded in its entirety, by audio or visual means and copies shall be made available to members of the public as soon as reasonably possible upon payment of any reasonable copying cost. The staff shall not require that any person submit a request for Inspection of Public Records in order to request a copy, and the Municipal Clerk may waive the fee requirement as deemed appropriate.
6. The Chief Procurement Officer is directed to inquire into the acquisition by purchase, lease, loan, donation or other means of electronic equipment for the purpose of broadcasting meetings as identified herein. The Chief Procurement Officer is authorized to exercise the emergency procurement provisions of the New Mexico Procurement Code in order to facilitate any such procurement.
7. All authority assigned to the Mayor by this Resolution may be exercised by the Mayor Pro Tem in the Mayor's absence or by such other member of the Governing Body as may be presiding at any meeting of the Governing Body.
8. The City Council shall have the authority to override, amend or reverse any of the actions of the Mayor authorized herein by majority vote of a quorum of the council.
9. The implementation of any action authorized herein shall be posted by public notice and included on any relevant agenda, provided, that any such action occurring during the course of a public meeting may be taken as deemed necessary without advance notice, and provided further that any such action shall be posted by public notice as soon thereafter as reasonably possible.

10. The provisions of this Resolution shall be effective immediately upon adoption and shall remain in effect for so long as the Governor’s declaration of a public health emergency remains in effect, unless rescinded sooner by the Governing Body.

11. The Municipal Clerk is directed to post executed copies of this Resolution in all places that official notices of the Governing Body are posted.

**PASSED, APPROVED AND ADOPTED** by the Governing Body of the City of Rio Communities on this 30<sup>th</sup> day of March 2020.

**City of Rio Communities Governing Body**

\_\_\_\_\_  
Mark Gwinn,  
Mayor

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Margaret (Peggy) Gutjahr,  
Councilor Mayor Pro-tem

\_\_\_\_\_  
Bill Brown,  
Councilor

\_\_\_\_\_  
Joshua Ramsell,  
Councilor

\_\_\_\_\_  
Jim Winters,  
Councilor

ATTEST:

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Elizabeth (Lisa) Adair,  
Municipal Clerk