



**Carlos Hernandez**  
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Council President

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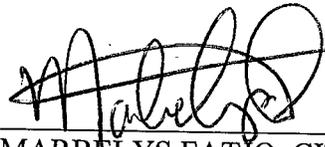
# City of Hialeah

TO: SERGIO VELAZQUEZ, CHIEF  
HIALEAH POLICE DEPARTMENT

DATE: April 16, 2020

TIME: 12:05 P.M.

FROM:   
MAYOR CARLOS HERNANDEZ

ATTEST:   
MARBELYS FATJO, CITY CLERK

**ORDER ON EMERGENCY ACTION CLOSING BUSINESS PREMISES AND POST-SUSPENSION OR POST-REVOCATION HEARING PURSUANT TO HIALEAH, FLA. CODE §86-56; DELEGATION OF POWERS; MEETING GUIDELINES AND PROCEDURES USING COMMUNICATIONS MEDIA TECHNOLOGY IN RESPONSE TO COVID19**

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued Executive Order Number 20-52 declaring a state of emergency for the State of Florida as a result of the threat of the spread of Coronavirus Disease 2019 (COVID-19); and

WHEREAS, on March 11, 2020, County Mayor Carlos Gimenez also declared a countywide state of emergency in response to the first reported case of coronavirus infection in Miami-Dade County; and

WHEREAS, on Monday, March 16, 2020 at 10:23 a.m. I declared a State of Local Emergency for the City of Hialeah, Florida in response to the threat to the public's health, well-being and life posed by COVID-19, said order having been extended continuously since then; and

WHEREAS, President Donald J. Trump has extended the application of social distancing guidelines in all aspects of society until April 30, 2020 to deter community spread and flatten the curve of demand on healthcare services through a rise in new cases; and

WHEREAS, the County has adopted SAFET AT HOME protocols enforced in our City through our police department; and

WHEREAS, the Governor has also issued "safer at home" orders requiring that the public remain in the safety of their homes and reduce unnecessary social contact; and

WHEREAS, in addition, many cities in the County have issued curfews to further reduce unnecessary people to people contact with few exceptions; and

WHEREAS, in an effort to continue to stop the spread of the virus the CDC now recommends that individuals use face coverings in public where it is difficult to observe the recommended distancing measures between people, such as in pharmacies, groceries and food service business establishments; and

WHEREAS, in response to the new guidelines, many cities in Miami-Dade and Broward County have issued emergency orders requiring individuals use cloth face coverings; and

WHEREAS, on April 4, 2020, Miami-Dade County issued Emergency Order 19-20 encouraging the use of cloth masks; and

WHEREAS, the provisions of the State and County Emergency Orders are minimum standards and municipalities may impose stricter standards;

WHEREAS, the highest risk of exposure and infection by COVID-19 is precisely in close person to person contact;

WHEREAS, in response, I have ordered a curfew in the City of Hialeah as of March 30, 2020 which remains in effect and on April 9, 2020, I ordered further restrictions on the use of walk-up service windows and required mandatory use of masks by the public;

WHEREAS, we continue to enforce all emergency order issued by the Governor and County Mayor and public health protection measures; and

WHEREAS, notwithstanding the public health crisis, rise in infections, resulting deaths and continuing risk to life from COVID-19, unscrupulous business operators continue to operate business in violation of these public health measures, as a sign of indifference to health, safety and welfare of employees and the general public, as an affront on the authority of all public health officials and continue to imperil the lives of people in this community and undermine ordered society;

WHEREAS, we remain in a state of emergency at every level of government; and

WHEREAS, the City continues to take action to slow the spread and reduce the impact of the disease to protect its residents;

THEREFORE, in response to the impending risk to the life, health, safety and welfare posed by Coronavirus Disease 2019 (COVID-19) to our citizenry and pursuant to the authority set forth in Florida Statutes §252.38 and in furtherance of all national, state, county and local emergency orders issued to date;

In order to safeguard the life, health, safety and welfare of the residents of the City of Hialeah; and

In an attempt to slow the spread and mitigate the potential impact of Coronavirus Disease;

EFFECTIVE IMMEDIATELY:

1. All administrative authority vested in the local business tax administrator or licensing administrator pursuant to Article II, in Chapter 86 of the Hialeah, Fla. Code of Ordinances to take emergency action, order the cessation or closure of business, suspend or revoke business tax

receipts for violations of any applicable Emergency or Executive Order issued in response to COVID-19 during the pendency of a declared state of emergency by the President, the Governor of the State, Miami-Dade County Mayor or I, in the City of Hialeah, is hereby delegated to the Chief of Police.

2. The Procedures for Emergency Virtual Hearings before the City Council for the City of Hialeah, Florida upon issuance of a Notice of Suspension or Revocation Pursuant to Hialeah, Fla. code §§86-56 and 86-57 requiring the cessation of business, closure of premises and the suspension or revocation of business tax receipts attached as “Exhibit A” are hereby adopted.

3. These Procedures shall take effect concurrent with the execution of this Order and remain in effect until this Order is rescinded. This Order shall remain in effect for the period of time the City’s declaration of emergency remains in effect.

4. This Emergency Order shall be strictly adhered to at all times while the City’s declaration of emergency remains in effect and enforceable pursuant to Florida law.

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**PROCEDURES FOR EMERGENCY VIRTUAL HEARINGS  
BEFORE THE HIALEAH CITY COUNCIL UPON  
ISSUANCE OF A NOTICE OF SUSPENSION OR  
REVOCATION PURSUANT TO HIALEAH, FLA. CODE  
§§86-56 AND 86-57 REQUIRING THE CESSATION OF  
BUSINESS, CLOSURE OF PREMISES AND THE  
SUSPENSION OR REVOCATION OF BUSINESS TAX  
RECEIPTS TO PROTECT THE PUBLIC HEALTH,  
SAFETY AND WELFARE IN RESPONSE TO COVID19.**

Pursuant to emergency management powers as set forth in F.S. §§252.31-252.90, Governor Ron DeSantis issued Executive Order 20-69 on March 20, 2020, suspending the legal requirements that a quorum of the legislative body holding a public meeting be met in-person and the meeting be held at a physical location accessible to the public for the duration of the State's Declaration of Emergency issued on March 9, 2020 as a result of the COVID-19 pandemic affecting the State of Florida. Executive Order 20-69 allows local governments to use communications media technology to hold public meetings during the public health emergency as a result of COVID-19, in order to protect the health, welfare and safety of the public, including public officials, from being exposed to COVID-19 and meet the requirements of the Sunshine Law.

The following minimum Procedures for Virtual Public Hearings of the City Council using Communications Media Technology in Response to COVID-19 shall be used to conduct post-suspension or post-revocation hearings for emergency action that may be necessitated on the issuance of a Notice of Suspension or Revocation of Business Tax Receipt to operate in the city pursuant to Hialeah, Fla. Code §86-57. These Procedures shall supplement the procedures provided by Chapter 86, Article II of the Hialeah Code of Ordinances and shall only supersede any procedural requirements set forth in Chapter 86 and in particular §§86-56 and 86-57, to the extent any conflict exists or the procedural requirements cannot be met as a result of the public health emergency.

**I. INTRODUCTION**

Where emergency action is necessary as provided under Hialeah, Fla. Code §86-57, upon issuance of a Notice of Suspension or Notice of Revocation of Business Tax Receipt to a business licensed pursuant to Chapter 86 of the Hialeah Code of Ordinances, a post deprivation hearing shall be conducted as provided herein. The business operator to which a Notice has been issued shall attend the scheduled special virtual hearing before the City Council who shall consider whether the action of the city shall be sustained or rescinded and allow the business to continue to operate. If the Respondent business operator fails to appear at the hearing, the City Council shall proceed to hear the City's case and render its decision as required by §86-56(c)(7). These procedures may be amended or waived by agreement of the parties.

**II. NOTICE**

Pursuant to the Mayor's Emergency Order adopting these Procedures, the Chief of Police shall have authority to order the cessation of business under Hialeah, Fla. Code §86-57 based on objective facts and circumstances supporting the suspension or revocation of a business tax receipt on any of the stated grounds set forth in Hialeah, Fla. Code §86-54(a)(1)-(16). The notice

shall be in writing and served upon the business tax receipt holder by certified mail, return receipt requested, to the address listed on the business tax receipt or hand-delivery, and by posting a copy of the notice ordering the closure and cessation of business on the business premises. Upon closure of a business, the city shall set the matter for emergency hearing before the City Council within fifteen (15) calendar days of the emergency action or at a special virtual meeting of the City Council if one has been scheduled with no less than five (5) calendar days' notice to the Respondent business tax receipt holder, whichever occurs first, unless the hearing or time periods are waived in writing by the business tax receipt holder. Notice of the emergency hearing shall be served upon the business tax receipt holder in the same manner as provided for in this paragraph for the order of closure and Notice of Suspension or Revocation of business tax receipt.

### **III. DUE PROCESS OR REASONABLE OPPORTUNITY TO BE HEARD**

#### **a. Appearance at Hearing**

Except for the City's prosecutor and Respondent business tax receipt holder, or Respondent's counsel, all required meeting participants shall appear at special virtual hearing through a web-based platform using video. Except for the Councilmembers, the video function shall remain on uninterrupted for all other participants throughout the meeting. Except for the Councilmembers, all other participants shall remain muted and shall wait to be called upon to speak. All participants shall maintain decorum and conduct themselves civilly throughout the meeting including being mindful of the images projected through their video feed.

The City's prosecutor and Respondent business tax receipt holder and counsel, if any, shall be present in Chambers during the hearing to facilitate the presentation, reference, and submission of evidence to the City Clerk for the record and exchange of evidence with opposing side. The City Clerk shall provide the meeting's unique resource locator ("url") and all other necessary information to the parties to enable the parties and the parties' witnesses to join the meeting no less than twenty-four (24) hours prior to the meeting. The City shall provide a computer for the Respondent's use in Chambers. Members of the City Council and all other witnesses called by either side will be required to appear remotely through the meeting's web-based platform using video. If necessary, the City will provide an alternate access point at City Hall to enable the Respondent business tax receipt holder to present witnesses who may not have internet access, smart device or who cannot otherwise access the web-based platform for this purpose. The request for an alternative access point shall be made to the City Clerk no less than two (2) business days prior to the scheduled hearing. Any witness appearing at City Hall shall be released once their testimony has been taken and are no longer needed.

#### **b. Order of Proceeding**

The proceeding shall be informal. Strict rules of evidence shall not apply. The City shall bear the burden of proof and present first. The City shall make an opening argument, call witnesses, and present evidence. The Respondent shall then be allowed to make an opening argument, call witnesses, including calling on any City witness for cross examination, and present evidence. The City shall then be allowed to call on any Respondent witness for cross examination. When presentation of testimony and evidence has concluded, the City shall make a closing argument followed by Respondent. The City may then offer a rebuttal argument.

**c. Presentation of Testimony**

Each side shall prepare a list of witnesses the party intends to call on to testify, identifying each by their full name, address, phone number, e-mail address and a summary of the testimony to be provided by each, and submit it to the City Clerk no later than two (2) business days prior to the hearing date. The City Clerk shall distribute the lists to the City Council and the other side no later than one business day prior to the hearing date. Witnesses not on the list will only be allowed to appear and testify at the hearing at the discretion of the City Council and the requirement of minimum due process for quasi-judicial hearings.

It shall be the responsibility of each side to ensure that their respective witnesses join the meeting and have the technical capabilities to effectively participate. Each side shall be responsible to provide a translator if one is required. The City Clerk shall swear all witnesses in prior to their testimony. There will be no sequestration of witnesses.

**d. Presentation of Evidence**

Each side shall prepare an Exhibits list identifying all non-testimonial materials the party intends to submit as evidence. All non-testimonial evidence, such as documents or photographs, demonstrative or any other evidence relied upon by either party to be used during any portion of the party's presentation of their case shall be submitted through electronic means to the City Clerk by email or by mail on a portable memory device no less than two business days prior to the hearing. Each item of evidence shall be listed as a separate Exhibit, be individually marked by the party submitting the evidence and briefly described on the list. The City shall use letters (A,B,C,...) to identify each item of evidence and the Respondent shall use numbers (1,2,3,...). The City Clerk shall distribute the Exhibits list and evidentiary materials to members of the City Council and to both sides no later than one business day prior to the meeting and upload them to the meeting platform. The parties may present or use any evidence submitted by either side using the technical capabilities of the meeting platform such as sharing screen with the meeting participants which shall be controlled by the meeting moderator. Only the evidence submitted to the City Clerk shall be used and relied upon by the parties. Any evidence not submitted in advance of the meeting as required by this paragraph shall only be admitted at the hearing at the discretion of the City Council consistent with generally accepted legal principles governing the admission of evidence in administrative proceedings and the requirement of minimum due process for quasi-judicial hearings. If admitted, the evidence shall be first submitted to the Clerk by either counsel while in Chambers. The Clerk shall then mark the evidence sequentially using the references assigned to each side and distribute the evidence by email to the Councilmembers. The meeting shall resume when the Councilmembers have had an opportunity to review it. At which point, the parties will then be able to use or present the evidence in the proceeding.

When the physical characteristics of an item of evidence do not allow for electronic submission, the party proffering the evidence shall submit digital photographs of the evidence to distribute to the meeting participants as required for all other evidence and the actual item shall be presented to the Clerk at the hearing in Chambers. The City Council shall hear and make all decisions on matters of procedure, including related to the submission of evidence, if the parties cannot reach agreement, prior to any decision on the merits of the matter is made.



## **PUBLIC PARTICIPATION**

Consistent with Florida Statutes §286.0114(3)(d), members of the public will not be given an opportunity to be heard during this hearing. All other public meeting requirements shall be governed by the Procedures for Virtual Public Meetings of the City Council for the City of Hialeah, Florida using communications media technology in response to COVID-19 adopted by Hialeah, Fla. Resolution 2020-48 (April 14, 2020).

## **OTHER INFORMATION**

The City Clerk, Marbelys Fatjo, may be contacted by email at [mrubio@hialeahfl.gov](mailto:mrubio@hialeahfl.gov) , by telephone at (305) 883-5820 or by mail at City of Hialeah, Florida; City Hall-Office of the City Clerk; 501 Palm Avenue, 3<sup>rd</sup> Floor; Hialeah, Florida 33010.

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