

CITY OF GROSSE POINTE WOODS
Electronic Committee-of-the-Whole Agenda
Monday, November 16, 2020
6:45 p.m.

Mayor Robert E. Novitke has called a meeting of the City Council, meeting as a Committee-of-the-Whole. The meeting will be conducted by video (Zoom) and telephone conference in accordance with the City of Grosse Pointe Woods City Council Resolution adopted May 4, 2020. This notice is being provided to ensure that those wishing to participate in the meeting have an opportunity to do so. Additional instructions are listed below.

Join Zoom Meeting:

<https://zoom.us/j/99605221053?pwd=SS9wVkpSRTZ1NXFjbEx3S1lxZzkydz09>

Meeting ID: 996 0522 1053

Passcode: 924751

Join by phone:

Dial by your location

888 788 0099 US Toll-free

877 853 5247 US Toll-free

Meeting ID: 996 0522 1053

Passcode: 924751

Facilitator's Statement.

1. CALL TO ORDER
2. ROLL CALL
3. ACCEPTANCE OF AGENDA
4. REMOTE MEETINGS
 - A. Letter 11/11/20 – City Attorney
 - B. Legal Opinion re: Remote Meetings/P.A. 228 of 2020 11/11/20 – City Attorney
 - C. Declaration of State of Disaster Pursuant to the Emergency Act, MCL 30.401 ET SEQ and Grosse Pointe Woods City Code Sections 18-19 through 18-28.
 - D. Resolution Confirming Declaration of State of Disaster and Establishing Rules for Remote Attendance and Participation at Public Meetings by the Grosse Pointe Woods City Council, Other City Public Bodies, and Members of the Public Due to the Coronavirus Pandemic Based on Enactment of Public Act 228 of 2020
5. NEW BUSINESS/PUBLIC COMMENT
6. ADJOURNMENT

**Lisa Kay Hathaway, MiPMC-3/MMC
City Clerk**

**IN ACCORDANCE WITH PUBLIC ACT 267 (OPEN MEETINGS ACT)
POSTED AND COPIES GIVEN TO NEWSPAPERS**

The City of Grosse Pointe Woods will provide necessary, reasonable auxiliary aids and services to individuals with disabilities. Closed captioning and audio will be provided for all electronic meetings. All additional requests must be made in advance of a meeting.

Instructions for meeting participation

1. To join through Zoom: The meeting may be joined by clicking on the link provided on the agenda at the start time posted on the agenda, enter the meeting identification number, and password. Zoom may provide a couple of additional instructions for first time use. As an alternative to using the link, accessibility to the meeting may be obtained by using the browser at join.zoom.us. If having trouble logging in, try a different browser e.g. Chrome.

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<https://zoom.us/j/99605221053?pwd=SS9wVkpSRTZ1NXFjbEx3S1lxZzkydz09>

Meeting ID: 996 0522 1053

Passcode: 924751

2. Join by telephone: Dial the toll-free conferencing number provided and enter the meeting identification number, and password. Dial *9 to be heard under Public Comment.

Join by phone:

Dial by your location

888 788 0099 US Toll-free

877 853 5247 US Toll-free

Meeting ID: 996 0522 1053

Passcode: 924751

In an effort to alleviate feedback and disruption of the meeting, choose one of the media options, either phone or Zoom, not both.

Meeting notices are posted on the City of Grosse Pointe Woods website home page at www.gpwmi.us and the on-line calendar, both containing a link to the agenda. The agenda contains all pertinent information including business to be conducted at the meeting, a hyperlink to participate using Zoom, and call-in telephone number with necessary meeting identification, and a password. Agendas will also be posted on six (6) City bulletin boards along Mack Avenue.

The following are procedures by which persons may contact members of the public body to provide input or ask questions:

1. To assist with meeting flow and organization, all public comment will be taken at the end of the meeting unless it is moved to a different location on the agenda upon a consensus of the Committee;
2. The phone-in audience, when making public comment please state your name (optional) when called upon;

3. Audience participants will be muted upon entry and will have a chance to speak during the public comment portion of the meeting at the end of the agenda, at which time the microphones will be unmuted.
4. Those joining by Zoom will also be muted and may use the virtual raised “hand” to request to be heard under Public Comment.
5. Those joining by telephone need to dial in using the phone number provided on the agenda. When prompted, enter the meeting number and the password also located on the agenda. Dial *9 to be heard under Public Comment.
6. The published agenda invites participants from the community to provide written questions, comments, and concerns in advance of the meeting to any Elected Official or the City Clerk regarding relevant City business and may be read under Public Comment. Emails may be sent to:

Mayor Robert E. Novitke	mayornovitke@comcast.net	586 899-2082
Art Bryant, Council Member	arthurwbryant@gmail.com	313 885-2174
Ken Gafa, Council Member	kgafa@comcast.net	313 580-0027
Vicki Granger, Council Member	grangergpw@aol.com	313 460-5250
Mike Koester, Council Member	koester.gpw@gmail.com	313 655-4190
Todd McConaghy, Council Member	todd.mcconaghygpw@yahoo.com	248 765-0628
George McMullen, Council Member	george@grmcmullen.net	313 549-6363
Lisa Hathaway, City Clerk	lhathaway@gpwmi.us	313 343-2447

You may contact Lisa Hathaway, City Clerk, at lhathaway@gpwmi.us should you have any questions prior to the meeting starting.

cc:

Council – 7
Berschback
Smith

Hathaway
Rec. Secretary
Email Group

Media - Email
Post -8
File

<p>NOTE TO PETITIONERS: YOU, OR A REPRESENTATIVE, ARE REQUESTED TO BE IN ATTENDANCE AT THE MEETING SHOULD COUNCIL HAVE QUESTIONS REGARDING YOUR REQUEST</p>
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CHARLES T. BERSCHBACK

ATTORNEY AT LAW

24053 EAST JEFFERSON AVENUE

ST. CLAIR SHORES, MICHIGAN 48080-1530

(586) 777-0400

FAX (586) 777-0430

blbwlaw@yahoo.com

November 11, 2020

The Honorable Mayor and City Council
City of Grosse Pointe Woods
20025 Mack Plaza
Grosse Pointe Woods, MI 48236

RECEIVED
NOV 12 2020
CITY OF GROSSE POINTE WOODS
CLERK'S DEPARTMENT

RE: Remote Meetings
Based on enactment of PA 228 of 2020, MCL 15.263(A)

Dear Mayor and Council:

This is scheduled as an agenda item for both a COW meeting at 6:45 p.m. and the regular Council meeting immediately thereafter on November 16, 2020.

I have attached the following supporting documents:

1. Legal Opinion summarizing the new Act authorizing continued remote meetings under certain circumstances.
2. Proposed declaration of State of Disaster. (This is require for continued remote meeting after December 31, 2020).
3. Proposed Resolution confirming the Declaration of State of Disaster and setting forth new rules for continued remote attendance after December 31, 2020.

Procedurally, if the Council chooses to implement these new rules, the Mayor would first indicate his intention to declare a state of disaster and should in fact declare a state of disaster at the Council meeting on November 16, 2020. Immediately following, it would be the prerogative of Council to adopt the Resolution confirming the Declaration of State of Disaster and establishing rules for remote attendance and participation at public meetings.

General discussion can occur on all of these issues simultaneously. My point is that once discussion is completed on all of these issues, the Mayor has the discretion to declare the State of Disaster, and then the Council votes as a group on the Resolution.

Please feel free to call at any time regarding these issues. Thank you.

Very truly yours,



CHARLES T. BERSCHBACK

CTB:nmg

Enclosures

cc: Bruce Smith

Lisa K. Hathaway Tutag

4B

CHARLES T. BERSCHBACK

ATTORNEY AT LAW

24053 EAST JEFFERSON AVENUE

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November 11, 2020

Honorable Mayor and Council
City of Grosse Pointe Woods
20025 Mack Plaza
Grosse Pointe Woods, MI 48236

NOVEMBER 16, 2020
COW AGENDA @ 6:45 p.m. AND
COUNCIL AGENDA @ 7:00 p.m.

LEGAL OPINION

RE: Remote Meetings / P.A. 228 of 2020

On October 13, 2020, the Michigan Senate concurred in House revisions to Senate Bill 1108. The bill has now been signed by the Governor as P.A. 228 of 2020, MCL 15.263(a). MML summarized the new law as follows:

- Retroactive application to March 18, 2020 to cover virtual meetings and Council actions that have taken place since then.
- Allows for the continuation of virtual meetings “for any circumstances” through December 31, 2020.
- Allows for continued remote participation between January 1, 2021 - December 31, 2021 for specified circumstances including military duty, a medical condition, or a statewide or local state of emergency or state of disaster that would risk personal health or safety of the members of the public or the public body if the meeting were held in person.
- After December 31, 2020, any member not on military duty or member that does not have a medical condition must be physically present at the meeting (unless a local state of emergency or disaster has been declared).
- Requires members of the public body attending a meeting remotely after December 31, 2020 to declare, and be included in the meeting minutes, that the member is attending remotely and from where (city and state).

This Legal Opinion is intended to provide the City Council with a summary of the new Act, and options and requirements for continuing to conduct remote meetings from January 1, 2021 through December 31, 2021.

1. Although there was some discussion between City Attorneys regarding the possible need for a resolution reaffirming all prior actions of Council taken under the prior Executive Orders, this new Act clarifies it is not necessary. The new Act references procedures used under the Executive Orders which allow two way communication, so that members of the public body can hear and be heard by other members of the public body, and public participants can hear the public body and be heard by the public body. Accordingly, the new Act provides that meetings held “retroactive to March 18, 2020”, and future meetings held before December 31, 2020, are appropriate.
2. The Act then provides the time period through the end of 2020 to allow City Councils to adopt new procedures to continue to meet remotely from January 1, 2021 through December 31, 2021. By 2022, procedures must be in place to accommodate members on military duty.
3. For remote meetings after January 1, 2021, remote participation by members could be based on military duty, or a medical condition. However, a broader option involves declaration of a statewide or “local state of emergency or state of disaster.” Our municipal Code, like a vast majority of city codes in the State of Michigan, have sections dealing with procedures to be utilized during periods of emergency or disaster. See Code Section 18-19 through 18-28. “Disaster” under our Code means “an occurrence or threat of wide spread or severe damage, injury, or loss of life or property resulting from a natural or manmade cause including, but not limited to . . . epidemic”. Note that the Resolution references requirements found in MCL 30.401 (The Michigan Emergency Management Act) and our Code that the Council has the power to determine when the state of disaster should end.
4. Section 18-21 designates the Mayor, as executive head of the city government, as the “director” of disaster relief who shall be responsible for its administration and operation, working through the City Administrator as the “coordinator.”
5. Section 18-23 indicates that although the Mayor exercises the emergency power and authority, the Mayor shall convene the Council to perform its legislative and administrative duties as the situation demands and that “nothing in the article shall be construed as abridging or curtailing the powers of the council unless specifically provided in this article.”
6. Although this is not your typical disaster due to floods, civil unrest, etc., it was clearly the type of “local state of emergency or state of disaster” contemplated by the legislature in P.A. 228 to allowing cities to continue to meet remotely from January 1, 2021 through December 31, 2021.

7. If a state of emergency or disaster is not declared for meetings occurring after January 1, 2021, then the only accommodation to meet remotely is based on military duty or a medical condition. In any event, starting January 1, 2022, the only allowance for remote meeting is based on the military duty exception.
8. The Act has procedural directions regarding posting of public meetings and other required notices. I will work with City Administration to assure any updates or modifications are made. We are already following a vast majority of these rules.

In short, now that the Governor has signed the new Act proposed by the legislature, virtual or remote participation currently in place is allowed by law through December 31, 2020. Revised procedures need to be in place on or before that date to allow continued remote participation.

From a procedural standpoint, if the Council elects to continue to allow remote participation after January 1, 2021, a document would need to be signed by the Mayor declaring a state of disaster. See attached. At the same time, a new resolution (similar to the Resolution passed by Council on May 7, 2020) establishing the new rules for remote attendance based on enactment of Public Act 228 should be passed by the City Council. See attached. A vast majority of the existing rules already in place will remain the same. They will be updated to comply with the new Act.

Very truly yours,



CHARLES T. BERSCHBACK

CTB:nmg

cc: Bruce Smith
Lisa K. Hathaway

CITY OF GROSSE POINTE WOODS

**DECLARATION OF STATE OF DISASTER
PURSUANT TO THE EMERGENCY ACT, MCL 30.401 ET SEQ AND
GROSSE POINTE WOODS CITY CODE SECTIONS 18-19 THROUGH 18-28**

WHEREAS, on March 10, 2020, Governor Whitmer declared a state of emergency as a result of the Coronavirus (COVID-19) outbreak; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency as a result of the COVID-19 outbreak; and

WHEREAS, the Michigan Department of Health and Human Services (MDHHS) issued Interim Recommendations for COVID-19 Community Mitigation Strategies; and

WHEREAS, such strategies include implementing social distancing measures, including limiting in-person meetings, and limiting large work-related gatherings; and

WHEREAS, on March 18, 2020, Governor Whitmer issued certain Executive Orders relating to physical presence of members at meetings and hearings of public bodies so as to enable public bodies to continue to conduct public business during the COVID-19 emergency and so as to enable the general public to continue to participate in government decision making without unduly compromising public health, safety, and welfare; and

WHEREAS, on October 2, 2020, the Michigan Supreme Court entered an Order vacating Governor Whitmer's Executive Orders, including those relating to remote meetings under the Open Meetings Act (OMA); and

WHEREAS, on October 9, 2020, the Director of Michigan Department of Health and Human Services (MDHHS) entered an Order under MCL 333.2253(1), which continued to require specific procedures to be followed during the epidemic to insure the continuation of essential public health services and enforcement of health laws; and

WHEREAS, on October 16, 2020, Governor Whitmer signed into law Public Act 228 of 2020, amending MCL 15.263 regarding remote participation in public meetings under the OMA; and

WHEREAS, the MDHHS in a release dated October 14, 2020 noted that positive COVID-19 cases and hospitalizations in Michigan have recently trended upward and that the recent increase in cases, along with people gathering indoors more frequently due to cooler weather, creates a risk of greater community spread; and

WHEREAS, not allowing remote public meetings would risk the personal health or safety of members of the public or the public body if meetings were held in person; and

WHEREAS, the City has in place an Emergency Preparedness Ordinance, Section 18-19, *et seq.*, of the City Code, that contemplates the declaration of a State of Disaster under certain circumstances; and

WHEREAS, such ordinance refers to the Michigan Emergency Management Act, Act 390 of 1976, being MCL 30.401, *et seq.*, which provides for similar authority.

NOW, THEREFORE, pursuant to the authority vested by the above referenced statutes and code sections, as Mayor of the City of Grosse Pointe Woods, I hereby exercise the emergency power and authority as specified and declare a State of Disaster exists in the City of Grosse Pointe Woods.

This Declaration shall remain in effect until December 31, 2021, or until the risks presented by COVID-19 have passed as determined by City Council based on federal, state, or county orders, directives, guidelines, and recommendations.

MAYOR ROBERT E. NOVITKE
City of Grosse Pointe Woods

Dated: _____

**RESOLUTION
CONFIRMING DECLARATION OF STATE OF DISASTER
AND
ESTABLISHING RULES FOR REMOTE ATTENDANCE AND PARTICIPATION AT
PUBLIC MEETINGS BY THE GROSSE POINTE WOODS CITY COUNCIL, OTHER
CITY PUBLIC BODIES, AND MEMBERS OF THE PUBLIC DUE TO THE
CORONAVIRUS PANDEMIC
BASED ON ENACTMENT OF PUBLIC ACT 228 of 2020**

Minutes of a regular meeting of the City Council of the City of Grosse Pointe Woods, State of Michigan (the "City"), held electronically on _____, 2020, at 7:00 p.m., prevailing Eastern Time.

PRESENT: Mayor Novitke
Council Members

ABSENT: Council Member(s)

The following preamble and resolution was offered by Council Member _____, and seconded by Council Member _____:

WHEREAS, on March 10, 2020, Governor Whitmer declared a state of emergency as a result of the Coronavirus (COVID-19) outbreak; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency as a result of the COVID-19 outbreak; and

WHEREAS, the Michigan Department of Health and Human Services (MDHHS) issued Interim Recommendations for COVID-19 Community Mitigation Strategies; and

WHEREAS, such strategies include implementing social distancing measures, including limiting in-person meetings, and limiting large work-related gatherings; and

WHEREAS, on March 18, 2020, Governor Whitmer issued certain Executive Orders relating to physical presence of members at meetings and hearings of public bodies so as to enable public bodies to continue to conduct public business during the COVID-19 emergency and so as to enable the general public to continue to participate in government decision making without unduly compromising public health, safety, and welfare; and

WHEREAS, on October 2, 2020, the Michigan Supreme Court entered an Order vacating Governor Whitmer's Executive Orders, including those relating to remote meetings under the Open Meetings Act (OMA); and

WHEREAS, on October 9, 2020, the Director of Michigan Department of Health and Human Services (MDHHS) entered an Order under MCL 333.2253(1), which continued to require specific procedures to be followed during the epidemic to insure the continuation of essential public health services and enforcement of health laws; and

WHEREAS, on October 16, 2020, as a result of the enactment of Senate Bill 1108, Governor Whitmer signed into law Public Act 228 of 2020, amending MCL 15.263 regarding remote participation in public meetings under the OMA; and

WHEREAS, Public Act 228 requires a public body to establish procedures to allow remote participation to accommodate the absence of any member of the public body due to (1) active military duty; (2) a medical condition; or (3) the existence of a state or local State of Emergency or State of Disaster declared by a local official—which such accommodations shall be made until December 31, 2021 (after such date only military duty shall be accommodated); and

WHEREAS, the MDHHS in a release dated October 14, 2020 noted that positive COVID-19 cases and hospitalizations in Michigan have recently trended upward and that the recent increase in cases, along with people gathering indoors more frequently due to cooler weather, creates a risk of greater community spread; and

WHEREAS, to implement MDHHS's mitigation strategies and allow the City Council and all other City boards, commissions, and committees (hereinafter referred to collectively as "Public Bodies") to continue to conduct public business, and to allow City Officials, City Employees, and the public to attend meetings of the Public Bodies remotely, consistent with Public Act 228, and consistent with the City Council's ability to amend its own Rules of Order of Common Council, the Grosse Pointe Woods City Council desires to establish rules regarding remote attendance set forth in this Resolution; and

WHEREAS, in order to facilitate continued remote participation at public meetings in light of the recent enactment of Public Act 228, the Mayor of the City of Grosse Pointe Woods has declared a state of disaster, as authorized by the Emergency Management Act, MCL 30.401 *et. seq.*, and Grosse Pointe Woods Municipal Code Sections 18-19 through 18-28, which the City Council has determined to confirm; and

WHEREAS, the City Council in light of P.A. 228 and the declaration of disaster intends to replace the existing procedures adopted by this Council on May 7, 2020 with the following new procedures to avoid risking the personal health or safety of members of the public or the public body if meetings were held in person.

NOW, THEREFORE, IT IS RESOLVED as follows:

I. CONFIRMATION OF STATE OF DISASTER

The City Council hereby confirms the State of Disaster declared by the Mayor by Resolution dated November 16, 2020.

1. The City Council authorizes the Emergency Management Coordinator and/or City Administrator (as applicable) to take appropriate measures, in his discretion, to respond to or protect City citizens, businesses, and personnel from the declared State of Disaster by adopting and enforcing all appropriate measures, including but not limited to: (a) taking actions necessary to comply with a federal, state, or county order or directive that is binding on the City; and (b) limiting City meetings and functions to those required by law.
2. This Declaration shall remain in effect until December 31, 2021, or until the clear and present danger of COVID-19 has passed as determined by City Council based on federal, state, and county orders, directives, guidelines, and recommendations.

II. ESTABLISHMENT OF RULES FOR REMOTE ATTENDANCE AND PARTICIPATION AT PUBLIC MEETINGS

The City Council immediately authorizes its members, City Officials, City employees, members of other Public Bodies, and members of the public to attend all meetings of Public Bodies by telephone or Zoom consistent with PA 228, and hereby adopts the following Rules:

A. NOTICE OF MEETINGS:

1. For every meeting to be held remotely during the declared State of Disaster and pursuant to this Resolution, the City Clerk shall post the appropriate notice consistent with the Open Meetings Act, as amended by PA 228, and the City Code.

B. CONDUCT OF THE MEETING:

1. A meeting of a public body held electronically under this section must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period.
2. As permitted by Public Act 228, a physical place is not required for an electronically-held meeting. A member's remote attendance shall be considered attendance for the purpose of establishing a quorum.
3. Any vote by a member participating remotely pursuant to this resolution shall be counted in the total number of votes for any matter and shall not be held invalid for the reason that it was cast by a member remotely.
4. Roll call votes shall be taken if it is clear that the vote was not unanimous, or in any event, at the request of the Chair or City Clerk.

5. At each initial roll call, each member participating shall, if participating remotely, indicate that he or she is participating remotely and indicate the city and state presently located.
6. For closed sessions conducted under this policy, each member and authorized attendee of the closed session shall not allow anyone else to hear or view the closed session.
7. Emails, texting, or other forms of electronic communication by or between members during the meeting shall not be allowed.
8. Agenda items regarding Pledge of Allegiance to the Flag and Recognition of Commission Members are temporarily suspended.
9. All other requirements contained in Public Act 228 shall be followed.

C. ATTENDANCE BY MEMBERS OF THE PUBLIC:

1. If any member of the public is attending remotely, each member of the public shall be provided an opportunity to provide public comment during the public comment portion of the agenda. The Chair will first request comment from the public, and then may request comment from Council Members.

D. EFFECTIVE DATE AND TERM:

1. This Resolution and procedures shall take effect January 1, 2021 and remain in effect until modified by the City Council or until the declared State of Disaster expires or is terminated by Council. If neither of those events occurs, then this Resolution and procedures shall terminate automatically on December 31, 2021. Before the automatic termination on December 31, 2021, or if the State of Disaster expires or is terminated before that date, the City Council shall amend this Resolution and procedures to accommodate and provide for remote participation by members absent due to military duty only.

This Resolution is intended to establish rules for and authorize participation by remote access by all members of City of Grosse Pointe Woods Public Bodies and attendance by remote access by members of the public at all meetings of the City's public bodies in the interest of the public health, safety, and welfare during the COVID-19 epidemic and thereafter, while preserving meaningful access to meetings and communication for Public Body members and members of the public.

AYES:

NAYS:

ABSENT:

RESOLUTION DECLARED ADOPTED.