

EMERGENCY ORDINANCE NO: 20-03

AN ORDINANCE OF POLK CITY, FLORIDA, AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR ELECTRONIC ATTENDANCE BY ELECTED AND APPOINTED OFFICIALS AT CITY MEETINGS DURING PERIODS OF A DECLARED PUBLIC HEALTH EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency; and,

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19; and,

WHEREAS, on March 9, 2020, Governor DeSantis declared that a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19; and,

WHEREAS, in order to mitigate or prevent these impacts, on March 16, 2020, the City Commission of Polk City, Florida, found it necessary to declare a state of emergency within the entire incorporated limits of Polk City, Florida pursuant to the City's Charter, and the City's home rule authority, including that set forth in Article VIII, Section 2(b), Florida Constitution, Chapter 252 and Section 166.021, Florida Statutes; and,

WHEREAS, the current outbreak of Coronavirus (COVID-19) has made the City Commission acutely aware that provisions must be made to ensure that the business of municipal governance can occur without unnecessarily exposing either City personnel or members of the public to a risk of infection while ensuring public access and open government; and,

WHEREAS, Florida law, including Florida Statutes Sections 286.011 and 166.041, requires that meetings of elected and appointed officials ("Bodies"), for the conduct of public business, must be held following procedures (notice, access of meetings, opportunity to be heard, the taking of minutes, etc.) that ensure that the public is able to participate in and be aware of the decision making process (the "Sunshine Law"); and,

WHEREAS, previously, when asked whether a public body complies with the Sunshine Law when one or more members of the Body wish to participate in a meeting electronically from a remote location, the Florida Attorney General ("AG") has opined that a quorum of the Body must be physically present in order to allow

a member, who due to “extraordinary circumstances” is unable to physically attend the meeting, to appear and participate electronically; and,

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

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order Number 20-69 which suspends any Florida Statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place and permits local government bodies to utilize communications media technology such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes; and,

WHEREAS, COVID-19 has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare and security of the citizens, residents and visitors of the City of Wauchula, Florida; and,

WHEREAS, the City Commission finds there is a clear and present danger in holding a public “in person” meeting for those attending and those who come in contact with those attending; and,

WHEREAS, the technology exists to conduct public meetings using technology in which the City can comply with the provisions of the Sunshine Law while preserving human life; and,

WHEREAS, the City Commission finds that it is in the best interest of the personnel and citizens of the City to authorize the City Manager to provide, when he/she determines appropriate, for the City Commission and members of the various Boards and Committees to be able to attend meetings electronically during a declared public health emergency Wauchula pursuant to the City’s Charter, 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.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF POLK CITY, FLORIDA:

SECTION 1. LEGISLATIVE FINDINGS. The above recitals represent the legislative findings of Polk City, Florida, relative to the provisions of this Ordinance and are incorporated herein by reference.

SECTION 2. DECLARATION OF EMERGENCY. Pursuant to state law and based upon the Legislative Findings set forth in the above-stated Recitals, the City Commission of Polk City hereby finds and declares that an emergency exists requiring immediate action by the City Commission. By virtue of the threat to public health and safety 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, which can only be accomplished by the adoption of this Emergency Ordinance

SECTION 3. LIMITED AUTHORIZATION FOR PUBLIC MEETINGS WITHOUT PHYSICAL PRESENCE. The City Manager is hereby authorized, pursuant to the Home Rule authority of the City Commission, during a declared public health emergency to:

- a) arrange for the City Commission to meet 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 the City Commission members if an emergency is declared based upon an infectious disease, and only so long as (1) the meeting be properly noticed, (2) minutes be taken, and (3) the public be permitted to attend via technology such as teleconferencing or web-based conferencing.

SECTION 4. SEVERABILITY. If any provision of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision, and to that end, the provisions of this ordinance are hereby declared severable.

SECTION 5. CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. EFFECTIVE DATE. This emergency ordinance shall take effect immediately upon its passage, and shall expire on August 31, 2020. Nothing contained in this ordinance shall give rise to any vested rights, equitable estoppel, or claim for continuing any specific land use.

INTRODUCED AND PASSED AS AN EMERGENCY ORDINANCE this ___th day of April, 2020.

POLK CITY, FLORIDA

—
Joe LaCascia, Mayor

ATTEST:

Patricia R. Jackson, City Clerk

APPROVED AS TO FORM AND
LEGALITY:

—
Thomas A. Cloud, Esquire
City Attorney