

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG) ORDINANCE NO.: 2020-_____

AN ORDINANCE MAKING PERMANENT CERTAIN MEASURES TAKEN IN RESPONSE TO A BAMBERG COUNTY COUNCIL DECLARATION OF A STATE OF EMERGENCY IN BAMBERG COUNTY, SOUTH CAROLINA IN RESPONSE TO THE PUBLIC SAFETY AND HEALTH THREAT OF THE NOVEL CORONAVIRUS (COVID-19”), AND IMPLEMENTING CERTAIN OTHER MEASURES TO ENABLE MORE EFFECTIVE MEANS OF DELIVERING GOVERNMENT SERVICE TO THE CITIZENS OF BAMBERG COUNTY, INCLUDING, WITHOUT LIMITATION, THE PERMANENT AUTHORIZATION OF THE CONDUCT OF PUBLIC MEETINGS IN BAMBERG COUNTY BY ELECTRONIC MEANS; AND OTHER MATTERS RELATING THERETO.

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constituted a national emergency, which began on March 1, 2020;

WHEREAS, also on March 13, 2020, the Governor of the State of South Carolina issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus (“COVID-19”) posed an actual or imminent public health emergency for the State of South Carolina;

WHEREAS, on March 23, 2020, the Governor issued Executive Order 2020-13, which authorized law enforcement officers of the State, or any political subdivision thereof “to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health;”

WHEREAS, the President, the Governor, and public health authorities have all recommended observance of social distancing, including the maintenance of safe zones of at least six feet between individuals, in gatherings during the Covid-19 emergency, as a means of protection of individuals during the emergency;

WHEREAS, the County of Bamberg, South Carolina (the “County”) is required to meet in public in order to discharge its official duties;

WHEREAS, the County has determined that conducting meetings in the ordinary course and in the usual manner during the Covid-19 emergency would create a public health hazard by involving a gathering of more than three people and in which minimum social distancing could not be reliably observed;

WHEREAS, the County has determined that conducting meetings in the ordinary course and in the usual manner may not be appropriate or safe during other types of emergencies, as well;

WHEREAS, the South Carolina Freedom of Information Act (“SC FOIA”) defines “meeting” as “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power,” S.C. Code § 30-4-20(d) (emphasis added);

WHEREAS, the South Carolina Attorney General has opined that “in the absence of a statute requiring it to meet physically in a certain place, [SC FOIA] authorizes a public body to meet by means of a telephone conference call so long as the public body complies with the other provisions of the South Carolina Freedom of Information Act,” *Op. S.C. Att’y Gen.*, 2007 WL 1651329, at 2 (May 18, 2007); *see also Op. S.C. Att’y Gen.*, 2012 WL 3875118 (August 28, 2012);

WHEREAS, the County Council of the County (the “County Council”) established protocols for conducting meetings during the continuance of the COVID-19 crisis by telephone or other electronic means, which protocols can be followed by County Council in any other situation where conduct of a physical, on-site meeting is not possible or recommended, due to safety or other considerations and without the declaration of an emergency;

WHEREAS, the Council also needs and desires to address other emergent matters which have come to the Council’s attention during the state and national emergency which can be addressed and implemented permanently in order to protect the life, safety, health, welfare, and property of its citizens and visitors, not just when a public emergency has been declared, but in other circumstances as well:

NOW, THEREFORE, BE IT ORDAINED that Bamberg County, South Carolina, acting by and through its governing body, the Bamberg County Council, hereby accepts the entire preamble of this Ordinance as findings of the County with regard to emergent circumstances necessitating development of an emergency action plan, to be in place and ready to implement, in the event of an emergency in the County, declared by County Council, or by the Governor of the State of South Carolina or higher authority, either for the County, alone, or statewide (a “Declared Emergency”), and justifying the implementation of certain measures required by the Covid-19 emergency as permanent authorizations of County Council, to be applicable at all times in the County, in the event of a declared emergency and otherwise. Therefore, Bamberg County Council, in meeting duly assembled, hereby ordains as follows:

1. The County Administrator and all County staff are authorized to take any lawful necessary actions and use all available resources for protection of the health, safety and welfare of Bamberg County citizens and visitors, including but not limited to the following, each of which is hereby authorized and directed and ordered:

a. Utilize all available resources of county government as reasonably necessary and as funds are available to cope with Declared Emergencies in Bamberg County; and

b. Transfer the direction, personnel, or functions of county departments and agencies or units thereof for purposes of facilitating or performing emergency services, as necessary or desirable, in the event of, and during the term of a Declared Emergency; and

c. Compel performance by government officials and employees of the duties and functions assigned in the county emergency plan or the Administrator's directives thereunder, in the event of, and during the term of a Declared Emergency; and

d. Suspend the production of records portions of the South Carolina Freedom of Information Act and any other portion of that Act which would interfere with the implementation of this Ordinance or the Administrator's actions hereunder due to lack of personnel in the event of, and during the term of a Declared Emergency; however, all parts and portions of the Freedom of Information Act which can be maintained under emergency conditions shall remain in force and effect, wherever possible; and

e. Suspend all other County government operations, and responses, which cannot reasonably be conducted under the emergency circumstances, because of the lack of personnel in County offices, or otherwise, in the event of, and during the term of a Declared Emergency; and

f. Take any and all other actions deemed necessary by the Administrator or his appointees, for the preservation of the health, safety and welfare of citizens, residents, and visitors of and to Bamberg County, South Carolina, and their property, in the event of, and during the term of a Declared Emergency; and

g. Take any and all of the actions and procedures described above, with or without the necessity of a Declared Emergency, when such actions and procedures do not require the existence of a Declared Emergency under State law, when necessary and appropriate for the more effective governance of Bamberg County; and

h. When an emergency has been declared by County Council, the emergency can be declared terminated by County Council by simple motion, or by legislative document (resolution or ordinance) of the County.

2. All citizens and residents of, and visitors to Bamberg County are requested, and directed to vigorously and zealously abide by and comply with the orders, directives, and information passed by the President of the United States and the Governor of South Carolina and their respective staffs, the Centers for Disease Control, the South Carolina Department of Health and Environmental Control, and all other lawfully created state and federal agencies, pertaining to any such Declared Emergency, whether Covid-19 or otherwise.

3. All orders, ordinances, resolutions, and normal procedures and parts of the Bamberg County Code of Ordinances in conflict herewith, or which would hinder the application and use of emergency procedures pursuant hereto or otherwise, are hereby ordered to be suspended in the event of, and during the term of a Declared Emergency.

4. In addition, all meetings of Bamberg County and any of its boards, commissions, or other public and non-public bodies may be conducted electronically, using all available electronic means, while still being conducted and broadcast in such a manner as to honor the letter, spirit, and intent of the South Carolina Freedom of Information Act to the greatest degree possible, given the circumstances and the resources available, and specifically with heed to the limitations on meeting size provided herein and by other state and national directives. This directive applies in the case of, and during the term of a Declared Emergency, or at any other time in which meeting by electronic means is determined by the Chairman of County Council, in conjunction with input from the County Administrator, to be preferable to on-site meeting for the good of the County and the citizens of the County. Specific guidelines for the conduct of public meetings by electronic means are provided in Attachment A, hereto, the terms of which are hereby incorporated by reference thereto as fully as if quoted herein verbatim.

5. All other terms and provisions of the Bamberg County Code of Ordinances not superseded or suspended hereby or by the emergency measures and actions authorized hereby, directly or indirectly, by necessity, shall remain in full force and effect.

6. This Ordinance shall take effect immediately upon enactment, following three readings and duly noticed public hearing.

7. Should any part or provision of this ordinance be declared unconstitutional or otherwise unenforceable by final order of any court of competent jurisdiction, such order will have no force or effect on any other part or provision, all of which are, and shall remain, separate and separable.

ENACTED AND EFFECTIVE in meeting, duly assembled, this ____ day of _____, 2020.

ATTEST:

Joey R. Preston
County Administrator
Bamberg County

Sharon Hammond, Chairwoman
Bamberg County Council

Rose Shepherd
Clerk to Council, Bamberg County

ATTACHMENT A

Section 1. Remote Meetings of Public Bodies in Bamberg County. The provisions of this Section shall apply to Council and to any and all boards, commissions, committees, or other subsidiary, related, or delegated bodies of the County (collectively, “Boards and Commissions”). Beginning on the date of enactment of this Ordinance, the Council and all of its Boards and Commissions shall be entitled to conduct all regular and special meetings by telephone or other electronic means, provided that:

- a) Members attending by electronic means shall be able to hear any and all comments made by the public, staff, and other council members;
- b) All public participants and attendees, staff, and other members shall be able to hear the comments, motions, and votes of the members attending such meeting by electronic means;
- c) Other than establishing the electronic connections, there shall be no communications among the members attending electronically, unless such communication is part of the meeting and can be heard by all public participants or attendees; and
- d) The comments, motions, and votes of the members attending electronically shall be recorded in the minutes of the meeting.

Collectively, these conditions are referred to as the “Participation Requirements.”

Section 2. Physical Presence Not Required to be Counted as Part of a Quorum. The provisions of this section shall apply to Council and to all of its Boards and Commissions. During the duration of this Ordinance and its provisions, a member attending a meeting of Council or any of its Boards and Commissions by telephone or electronic means in compliance with the Participation Requirements, whether physically present or not, shall be counted as present in determining the quorum for such meeting.

