

ORDINANCE 2020-04

AN ORDINANCE OF POLK CITY, FLORIDA, AMENDING THE POLK CITY CODE OF ORDINANCES (THE "CITY CODE"); CREATING CHAPTER 7 IN THE CITY CODE; TO PROVIDE FOR CIVIL EMERGENCIES; REPEALING ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. COMMISSION FINDINGS. In adopting this Ordinance and modifying the Polk City Code and the therein-incorporated Unified Land Development Code, the City Commission of Polk City, Florida, hereby makes the following findings:

(1) Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.

(2) 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.

(3) Governor DeSantis issued Executive Order No. 20-52, attached hereto as Exhibit "A" and incorporated herein by reference declaring that a State of Emergency exists in every county in the State of Florida as a consequence of Coronavirus Disease 2019 (COVID-19), a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.

(4) 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.

(5) 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.

(6) The World Health Organization declared COVID-19 a Public Health Emergency of International Concern.

(7) On March 13, 2020, the President of the United States issued a national emergency declaration regarding COVID-19.

(8) 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 Polk City, Florida.

(9) Florida law, including §§ 286.011 and 166.041, Florida Statutes, 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”).

(10) 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.

(11) 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.”

(12) 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.

(13) 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.

(14) The City Commission finds that 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, both now and if there are future similar pandemic events.

(15) 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.

(16) Section 252.38, Florida Statutes, provides for emergency management powers of political subdivisions of the State of Florida, including, without limitation, counties such as Polk County, and municipalities such as Wauchula (the “City”).

(17) Pursuant to Section 252.38(3)(a), Florida Statutes, the Legislature has empowered municipalities to declare a state of local emergency.

(18) In order to mitigate or prevent these impacts, on March 16, 2020, the City Commission then found that it is necessary to declare a state of emergency within the entire incorporated limits of the Polk City pursuant to the City's Charter, Chapter 252, Florida Statutes, through the adoption of Resolution No. 2020-02 (the "March 16 Resolution").

(19) The City Commission also possesses broad home rule powers that authorize it to protect the public health, safety, and welfare, declare emergencies, and protect its citizens, and has by those powers adopted emergency ordinance nos. 2020-02 and 2020-03 on April 3, 2020, to enable it to declare civil emergencies and to hold commission meetings using communications media technology.

(20) To amend, extend, and update its March 16 Resolution to invoke its home rule powers for the purpose of better protecting the lives of its citizens, residents, employees, and visitors in order to mitigate or prevent these impacts, on April 3, 2020, the City Commission then found that it is necessary to approve Resolution No. 2020-03 pursuant to the City's Charter, Chapter 252, Florida Statutes, 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.

(21) By their terms, emergency ordinance nos. 2020-02 and 2020-03, will expire on or before August 31, 2020.

(22) The City now wishes to adopt permanent replacements for these two emergency ordinances that can be permanently codified.

SECTION 2. CREATION OF CHAPTER 7, CITY CODE. Chapter 7 of the Code of Ordinances, Polk City, Florida, is hereby amended to read as follows:

"Chapter 7 - CIVIL EMERGENCIES

Sec. 7-1. - Intent.

- (a) It is the intent of this chapter to provide the necessary organization, powers and authority to enable the timely and effective use of all available city resources to prepare for, respond to, and recover from emergencies, natural and manmade, likely to affect the security, safety or health of the city and its residents, whether such events occur within or without the corporate limits of the city.
- (b) Nothing in this chapter shall be intended to relieve city departments of their normally assigned duties, responsibilities and functions.
- (c) Nothing in this chapter shall be construed as a delegation of authority to abridge or diminish the legislative or administrative powers of the city commission.

Sec. 7-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency or state of emergency means a condition which threatens or adversely affects the public health, safety or security and which is or threatens to be beyond the control of those public and private agencies normally responsible for the management of such a condition resulting from an act or threatened act of war, riot, terrorism, mob or other act of violence; from a weather event such as flood, hurricane or tornado; from a disruption of the city's utility system; or from any other cause.

Normal average retail price means the price at retail for merchandise, goods or services at which similar merchandise, goods or services were being sold during the 90 days immediately preceding a declaration of public emergency.

Sec. 7-3. - Applicability of provisions.

All officers, employees, contractors, vendors, boards, commission, authorities and other agencies of the city are subject to the provisions of this chapter.

Sec. 7-4. - Powers, duties and responsibilities.

The city manager shall have the following powers, duties and responsibilities:

- (1) To declare a state of emergency or to recommend the declaration of a state of emergency by the city commission, and to inform the city commission of the reasons for and status of events requiring the declaration;
- (2) To direct the creation, revision and exercise of emergency response plans conforming to state and county emergency plans for the mitigation of, preparation for, response to, and recovery from emergencies;
- (3) To direct the efforts of the various city departments in the preparation for, response to and recovery from emergency conditions; and
- (4) To promulgate emergency regulations necessary for the protection of life and property, establishment of public order and control of adverse conditions affecting public welfare resulting from an emergency.

Sec. 7-5. - Declaration of a state of emergency.

- (a) The city commission, mayor, mayor pro tem, city manager and assistant city manager, in the order named, shall have the authority to declare a state of emergency by proclamation. Upon the absence or unavailability of the mayor, the mayor pro tem may issue such a declaration and, upon the absence or unavailability of the mayor and the mayor pro tem, the city manager or, upon the absence or unavailability of the city manager, the assistant city manager may issue such a declaration.
- (b) Any declaration of a state of emergency and all emergency regulations activated under the provisions of this chapter shall be confirmed by the city commission by resolution within five working days of such declaration or at the next regularly

scheduled meeting of the city commission, whichever occurs first, unless the nature of the emergency renders a meeting of the city commission extremely impractical. Confirmation of the emergency declaration shall disclose the reasons for, anticipated impacts of, actions proposed and taken to manage the emergency, and other pertinent data relating to the emergency requiring the declaration.

(c) Emergency resolutions authorized by this chapter shall include, but are not limited to the following subjects:

(1) Evacuation.

(2) Curfews; declaration of areas off-limits.

(3) Suspension or regulation of sale of alcoholic beverages, explosives or combustibles.

(4) Prohibiting the sales of merchandise, goods or services at more than the normal average retail price.

(5) Water use restrictions.

(6) Suspension of local building regulations.

(7) Rationing of fuel, ice and other essentials.

(8) Emergency procurement procedures.

(9) Temporary modification of personnel policies.

(10) Temporary suspension or modification of utility rates, fees, charges, billing, termination, and/or service policies set by ordinance or resolution.

(d) A declaration of a state of emergency shall activate the emergency plans applicable to the city.

(e) A state of emergency, when declared as provided herein, shall continue in effect from day to day until declared to be terminated.

(f) Upon the declaration of a state of emergency, the city manager shall post a written notice of such declaration upon the main bulletin board in the city hall, and shall notify by telephone each newspaper of general circulation within the city.

Sec. 7-6. - Termination of a state of emergency.

A state of emergency shall be terminated upon the certification of the officer or agency requesting the declaration of the state of emergency that the conditions leading to or causing the emergency conditions no longer exist and that the city's agencies and departments are able to manage the situation without extraordinary assistance. Notice of such termination shall be made to the public by the city manager by the same means as the notice of the declaration of the state of emergency.

Sec. 7-7. - Weather emergencies.

(a) A state of emergency may be declared because of weather conditions when the National Weather Service or a state, county or local emergency management agency informs the city or the public that emergency conditions resulting from

meteorological conditions are present or are imminent. Meteorological conditions covered by this section include, but are not limited to, hurricanes, floods, tornadoes or other severe weather conditions and the results therefrom.

- (b) Declaration of a state of emergency because of weather conditions shall authorize the issuance of emergency resolutions provided for in subsections 7-5(c)(1)—(8), as may be required.

Sec. 7-8. - Police emergencies.

- (a) A state of emergency may be declared because of civil unrest when the chief of police certifies to the city manager that an emergency condition arising from hostile actions of others, armed or unarmed, requires extraordinary measures for control, including but not limited to curfew; blockade; proscription of the sale of firearms and other weapons, alcoholic beverages, explosives and combustibles; evacuation and other like actions.

- (b) Declaration of a state of emergency because of civil unrest shall authorize the issuance of emergency resolutions provided for in subsections 7-5(c)(1), (2), (3), (4) and (8), as may be required.

Sec. 7-9. - Utility emergencies.

- (a) A state of emergency may be declared because of utility conditions when the director of the electric and water utilities department certifies to the city manager that:

(1) A condition exists or is imminent that endangers the safety, potability, quantity, availability, transmission, distribution, treatment, or storage of water through or within the city water utility system; or

(2) A condition exists or is imminent that endangers the safety, quality, availability, transmission or distribution of electricity through or within the city's electric utility system; and

(3) Extraordinary actions to control and correct the situation are required, including but not limited to emergency purchase, call-in of off-duty personnel, assistance by other communities and agencies, and other like actions.

- (b) Declaration of a state of emergency because of utility conditions shall authorize the issuance of emergency resolutions provided for in subsections 7-5(c)(1), (2), (5) and (8), as may be required.

Sec. 7-10. - Fire emergencies.

- (a) A state of emergency may be declared because of fire when the fire chief certifies to the city manager that an actual or potential condition arising from fire, explosion, chemical spill, building or bridge collapse, or plane, train or other vehicle accident requires extraordinary measures for control, including but not limited to calling out of off-duty and reserve personnel, evacuation, and other like actions.

(b) Declaration of a state of emergency because of fire shall authorize the issuance of emergency resolutions provided for in subsections 7-5(c)(1), (2), (5) and (8), as may be required.

Sec. 7-11. - Suspension of local building regulations.

The city manager may authorize the suspension of local building regulations during and following a declared state of emergency when the chief building official certifies that such action is necessary to the expeditious restoration of property damaged by the emergency event. Such suspension of building regulations may be applied on a case-by-case basis as required to remedy specific conditions and to facilitate the provision of emergency housing to disaster victims. The chief building official shall specify the provisions of the building code to be suspended and the reasons therefore when certifying the necessity of such suspension to the city manager.

Sec. 7-12. - Certification of emergency conditions.

A certification of emergency conditions to the city manager may be verbal, but each verbal certification shall be confirmed in writing within 24 hours following an emergency declaration.

Sec. 7-13. – 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 using communications media technology;

b) promulgate rules of procedure that will ensure compliance with the Sunshine Law and other relevant laws and statutes;

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 and only if (1) an emergency is declared based upon an infectious disease, (2) the Governor or the State Legislature has authorized the use of CMT or otherwise waived the “in person” quorum requirement, (3) the meeting be properly noticed, (4) minutes be taken, and (5) the public be permitted to attend via technology such as teleconferencing or web-based conferencing.”

SECTION 3. 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.

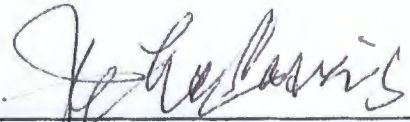
SECTION 4. CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed, replaced, and superseded to the extent of such conflict, including but not limited to Ordinance nos. 2020-02 and 2020-03.

SECTION 6. INCLUSION INTO CITY CODE. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect in accordance with general law.

INTRODUCED AND PASSED on FIRST READING, this 30th day of April, 2020.

POLK CITY, FLORIDA



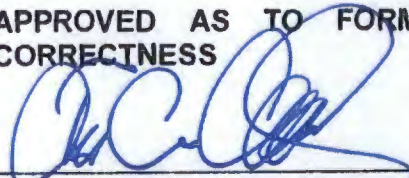
Joe LaCascia, Mayor

ATTEST:



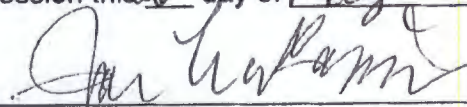
Patricia Jackson, City Manager/Clerk

APPROVED AS TO FORM AND
CORRECTNESS




Thomas A. Cloud, City Attorney

PASSED AND DULY ADOPTED ON SECOND READING, with a quorum present and voting by the City Commission of Polk City, Florida meeting in Regular Session this 20th day of May, 2020.



Joe LaCascia, Mayor

ATTEST:



Patricia Jackson, City Manager/Clerk