

## EMERGENCY ORDINANCE 2021-01

**AN ORDINANCE OF THE 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.**

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

**SECTION 1. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT.** In adopting this Ordinance, the City Commission of the Polk City (the "City Commission") hereby makes and expresses the following findings, purposes, and intent:

1. 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.
2. 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.
3. 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.
4. 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.
5. As recently as December 29, 2020, the Governor extended the state's State of Emergency to February 26, 2021, by Executive Order No. 20-316.
6. Since that time, millions more Americans have become infected with COVID-19, and thousands more Americans have died from COVID-19.
7. At the end of 2020, more than 22,500,000 million Americans had become infected and nearly 400,000 had died of the highly contagious disease.
8. In Florida alone, almost 1.5 million have been stricken, with more than 23,000 fatalities.
9. Florida is experiencing a spike in infections and deaths from COVID-19 that exceeds the spike that occurred during the summer of 2020.

10. In the last seven days, Florida has experienced 109,000 more infections despite the availability of vaccines.

11. The distribution of vaccines in Florida has been plagued by limited supply, a lack of overall state distribution plan that does not completely follow CDC guidelines, and a failure to rapidly deliver even those supplies of vaccines that are available.

12. COVID-19 has created or imminently threatens to create conditions that has severely affect the public health, safety, welfare and security of the citizens, residents and visitors of the Polk City, Florida, for almost a year.

13. 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.

14. 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.

15. From March through October, 2020, either in accordance with Florida Governor Executive Orders or City Emergency Ordinances 2020-02, 2020-03, and Ordinance 2020-04, the City has been conducting public meetings by use of communication media technology (CMT).

16. To reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention ("CDC") recommends implementation of community mitigation strategies to increase containment of the virus.

17. The current outbreak of 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 public officials, City personnel, or members of the public to a risk of infection, while ensuring public access and open government.

18. Florida law, including Article 1, Section 24 (b) Florida Constitution, and 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").

19. 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.



20. 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.”

21. 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 CMT such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes. EO 20-69 was extended on several occasions reflecting the continued state of emergency and threat to the public when gathering to attend public meetings but the extension ended November 1, 2020 and there is no indication of additional extension. The City Commission finds that further extension is justified, but has no authority to compel the Governor to act.

22. Section 4 D of Governor DeSantis’ Executive Order 20-52 expressly authorizes the City Commission to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in accordance with section 252.38, Florida Statutes.

23. Chapter 252, Florida Statutes, among other things, confers upon the City Commission the emergency powers provided for in Chapter 252 in order to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state; and to “make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of ss. 252.31-252.90, but which are not inconsistent with any orders or rules adopted by the division or by any state agency exercising a power delegated to it by the Governor or the division.” Section 252.46(1), Florida Statutes.

24. 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.

25. There is no statute, Charter provision, or ordinance that defines “present” as physically within the walls of the City Hall chambers. Webster’s Dictionary includes “in attendance” as a meaning of “present”.

26. Section C-11 B and C of the City Charter provides: “The Commission shall determine its own rules of procedure and the Mayor-Commissioner shall set the order of business for each meeting. The City Clerk shall record and maintain detailed official records of City meetings. Voting on ordinances and resolution shall be by roll call and shall be recorded in the official records. A majority of the Commission shall constitute a quorum; but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Commission. No action of the Commission, except as otherwise provided



in the preceding sentence, shall be valid or binding unless adopted by the affirmative vote of the majority of a quorum present.”

27. The Charter does not define “presence” as physical presence in a particular room or building, and does not prohibit attendance at the meeting of City Commissioners by electronic media and the City Commission finds that its attendance requirement for the purpose of establishing a quorum, participating and voting can be satisfied by in-person physical or CMT attendance. This same rule of attendance applies to any City Board or Committee meetings and quasi-judicial hearings.

28. There is no intrinsic evil to telephonic or CMT attendance to achieve a quorum. Consequently, the “preemption” of phone or CMT attendance, if it exists, must be expressly set forth in the Florida Constitution or general or special law, not vaguely and ambiguously implied. Thus, the City Commission finds that no preemption exists in state law.

29. The City Commission previously adopted Ordinance No. 2020-09 (codified in Section 7-13 of the City Code) which specifically authorizes the scheduling of virtual meetings using CMT without the need for the physical presence of either commissioners, staff, city citizens, or the general public.

30. 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, Polk City 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.

31. The City Commission finds that to fail to take action under these circumstances is a reckless and needless disregard of human life.

**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 by virtue of an infectious disease 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.

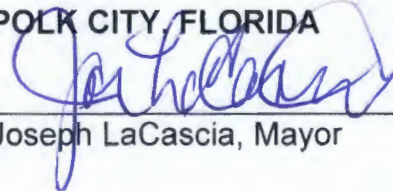
**SECTION 4. SEVERABILITY.** If any provision of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision, and to that end, the provisions of this ordinance are 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 continue until the expiration of Executive Order #20-52, including any extension. 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 19th day of January, 2021.

POLK CITY, FLORIDA



---

Joseph LaCascia, Mayor

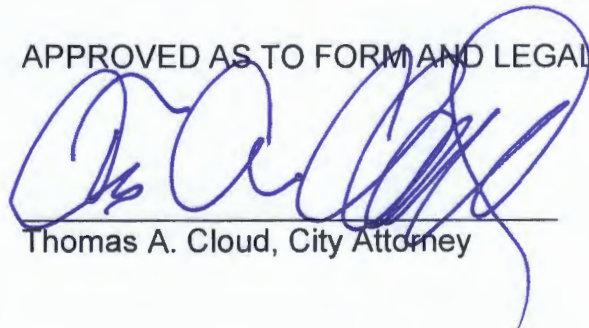
ATTEST:



---

Patricia R. Jackson, City Manager/ Clerk

APPROVED AS TO FORM AND LEGALITY:



---

Thomas A. Cloud, City Attorney