Town Of
Briarcliffe Acres

Ordinance #2020.02
Reading 04.06.2020

STATE OF SOUTH CAROLINA	)	**An Ordinance providing Emergency**
COUNTY OF HORRY	)	**procedures for Public Meetings in**
TOWN OF BRIARCLIFFE ACRES	)	**the Town of Briarcliffe Acres during**
	)	**the continuance of the Coronavirus**
	)	**epidemic**

WHEREAS, 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") poses an actual or imminent public health emergency for the State;

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

WHEREAS, the President's Coronavirus Guidelines for America recommend avoidance of social gatherings in groups of more than ten people;

WHEREAS, on March 23, 2020, the Governor issued Executive Order 2020-13, which authorizes 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 recommended observance of social distancing, including the maintenance of safe zones of at least six feet between individuals;

WHEREAS, the Town of Briarcliffe Acres is required to conduct public meetings in order to discharge its official duties;

WHEREAS, the Town of Briarcliffe Acres has determined that conducting meetings in the ordinary course and in the usual manner 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 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);

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 Council of the Town of Briarcliffe Acres now desires to authorize and to establish protocols for conducting meetings during the continuance of the COVID-19 crisis by telephone or other electronic means;

WHEREAS, the President's declaration determined that the ongoing COVID-19 pandemic is of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act");

WHEREAS, the Mayor cited a State of Emergency in the Municipality on March 15, 2020.

WHEREAS, S.C. Code § 5-7-250(d) provides that "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;" and

WHEREAS, this Ordinance has been approved by at least two-thirds of the Councilmembers present at the meeting in which it was considered;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Briarcliffe Acres as follows:

Section 1. Remote Meetings During the COVID-19 Crisis. 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 Municipality (collectively, "Boards and Commissions"). For a period beginning on the date of enactment of this Ordinance and continuing until the sixty-first day following such enactment (the "Emergency Term"), the Council and the governing bodies of all of its Boards and Commissions (which governing bodies, including the Council, are referred to herein as the "Governing Body") shall be entitled to conduct all regular and special meetings by telephone or other electronic means, provided that:

a) Members of the Governing Body attending by electronic means shall be able to hear any and all comments made by the public, staff, and other members of the Governing Body;

b) All public participants and attendees, staff, and other members of the Governing Body shall be able to hear the comments, motions, and votes of all of the members of the Governing Body attending such meeting by electronic means, as well as those of any officials or staff required to speak at such meeting;

c) Other than establishing the electronic connections, there shall be no communications among the members of the Governing Body attending electronically, unless such communication is part of the meeting and can be heard by all public participants and attendees; and

d) The comments, motions, and votes of the members of the Governing Body attending electronically shall be recorded in the minutes of the meeting, and the meeting itself shall be recorded in the same manner as would a physical meeting of the body.

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

Section 2. Meeting Protocols. In conducting meetings by telephone or other electronic means, the Town Council or the appointed committee will observe the following protocols:

a) Immediately after calling the meeting to order, the presiding officer shall poll the members of the Council or the Committee to confirm attendance.

b) Any vote of the Governing Body must be conducted by individual voice vote of the members of the Governing Body, who shall verbally indicate their vote on any matter by stating "yay" or "nay." All individual votes shall be recorded by the clerk, secretary, or presiding officers, as appropriate.

c) All members of the Governing Body, officials, staff, and presenters should identify themselves and be recognized prior to speaking.

d) Members of the Governing Body shall strictly comply with the ordinary procedural rules, standards of decorum, and good practices applicable to physical meetings of the Governing Body, particularly as such rules and standards apply to being recognized by the presiding officer, in order to preserve order and allow for the effectiveness of electronic meetings.

e) With respect to any electronic meeting, any public comment periods provided for by the Council are hereby suspended. Members of the public may submit written public comments by email to the Clerk two hours prior to the meeting which will enable distribution to the members of the Council.

Section 3. 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 Emergency Term, and notwithstanding any other provision of applicable State or local law, a member attending a meeting of Council or any of its Boards and Commissions by 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.

Section 4. Suspension of Contrary Local Provisions. During the Emergency Term, any ordinance, resolution, policy, or bylaw of the Governing Body that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

Section 5. Immediate and Concurrent Application Due to Emergency. Given the immediate threat to the public health, safety, and welfare presented by physical gatherings during the COVID-19 crisis, this Ordinance has been enacted at an electronic meeting in accordance with the Participation Requirements and the protocols set forth herein. Notwithstanding any contrary provision of State or local law, the procedures approved herein shall be effective immediately and concurrently and shall apply to the enactment of this Ordinance, which shall be deemed to have been validly enacted as set forth herein.

Section 6. State of Emergency; FEMA Declaration. Council hereby finds and determines, as a fact and after due investigation, that the spread of COVID-19 presents an imminent threat to the public safety, health, and welfare within and around the Municipality. Council further finds and determines that the nature of the COVID-19 threat requires extraordinary and temporary measures to support adequate social distancing. Furthermore, Council recognizes that in accordance with section 502 of the Stafford Act, eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under Category B of FEMA's Public Assistance program, including necessary emergency protective measures for activities taken in response to the COVID-19 incident. Council hereby declares that a state of emergency exists within the Municipality for purposes of applying for and receiving such reimbursement.

Section 7. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Ordinance shall expire automatically as of the sixty-first day following the date of enactment. Notwithstanding the foregoing, however, Council may extend the Emergency Term by ordinance enacted in accordance with the meeting protocols contained in Sections 1, 2, and 3 hereof for one or more additional terms, each of no more than sixty days, provided that the aggregate duration of the Emergency Term, including all such extensions, does not exceed six months.

/s/ Huston Huffman
Mayor

Council:

/s/ Margaret Bell
/s/ David Buonviri
/s/ Brian Palliser
/s/ John Wylie

Attest:

Town Clerk