

COUNTY OF NEWBERRY )

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ORDINANCE NO. 02-04-21

STATE OF SOUTH CAROLINA )

**AN EMERGENCY ORDINANCE TO SUSPEND TEMPORARILY THE NORMAL OPERATING PROCEDURES APPLICABLE TO THE MEETINGS OF THE NEWBERRY COUNTY JOINT PLANNING COMMISSION AND THE NEWBERRY COUNTY BOARD OF ZONING APPEALS, TO DECLARE A STATE OF EMERGENCY WITH REGARD THEIR CONTINUED ABILITY TO CONDUCT NECESSARY BUSINESS OF THE COUNTY, TO PROVIDE FOR EMERGENCY PROCEDURES FOR PUBLIC MEETINGS OF THE JOINT PLANNING COMMISSION AND THE BOARD OF ZONING APPEALS DURING SAID EMERGENCY, AND TO PROVIDE FOR THE CONTINUATION OF SAID PROCEDURES UPON EXTENSION OF THIS ORDINANCE BY COUNTY COUNCIL**

**WHEREAS**, on March 13, 2020, the Governor of the State of South Carolina, (“State”) 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; and

**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; and

**WHEREAS**, the President, the Governor, and public health authorities have recommended observation of social distancing, including the maintenance of safe zones of at least six (6) feet between individuals; and

**WHEREAS**, the Newberry County Council (“Council”) appointed Joint Planning Commission (“JPC”) and Board of Zoning Appeals (“BZA”) are required to conduct public meetings in order to discharge their official duties; and

**WHEREAS**, as of February 3, 2021, the South Carolina Department of Health and Environmental Control (“SCDHEC”) reported a total of 402,361 confirmed cases in South Carolina with 6,663 confirmed deaths, and Newberry County is currently classified as a “High Incidence level County”; and

**WHEREAS**, Council has determined that conducting meetings in the ordinary course and usual manner would create a public hazard by involving a gathering in which minimum social distancing would not be reliably complied with; and

**WHEREAS**, the South Carolina Freedom of Information Act (“FOIA”) defines “meetings” 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 which the public body has supervision, control, jurisdiction or advisory power, [SC Code § 30-4-20-(d)], emphasis added; and

**WHEREAS**, the South Carolina Attorney General has opined that “in the absence of a statute requiring it to meet physically in a certain place, [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”; and

**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 (“Stafford Act”); and

**WHEREAS**, Council desires to establish that a state of emergency continues to exist in the County for the purposes of reimbursement under the Stafford Act; and

**WHEREAS**, SC Code 4-9-130 provides that “To 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 designated as such and shall contain a declaration that an emergency exists and describe the emergency. 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 Council members present at the meeting during which it was considered.

**NOW, THEREFORE BE IT ORDAINED AS FOLLOWS:**

**Section 1. Remote meetings during the COVID-19 Crisis**

The provision of this Section shall apply to the JPC and BZA for a period beginning on the date of enactment of this Ordinance and continuing until the sixty-first day following such enactment (“Emergency Term”), Members of the JPC and BZA shall be entitled to conduct all regular and special meetings by telephone or other electronic means, provided that:

- a. Those Members of the JPC and BZA attending by electronic means shall be able to hear any and all comments made by the public, staff, and other members of the JPC and BZA; and
- b. All public participants and attendees, staff, and other members of the JPC and BZA shall be able to hear the comments, motions, and votes of all the members of the JPC and BZA attending such meeting by electronic means, as well as those of any officials or staff required to speak at such meeting; and
- c. Other than establishing electronic connections, there shall be no communications among the members of the JPC and BZA 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 JPC and BZA 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**

- a. Immediately after calling the meeting to order, the presiding officer shall poll the members of the JPC and BZA to confirm attendance.
- b. Any vote of the JPC and BZA must be conducted by individual voice vote of the members of the JPC and BZA, who shall verbally indicate their vote on any matter by stating ‘yea” or “nay.” All individual votes shall be recorded by the secretary or presiding officer, as appropriate.
- c. All members of the JPC and BZA, officials, staff, and presenters should identify themselves and be recognized prior to speaking.
- d. Members of the JPC and BZA shall strictly comply with the ordinary procedural rules, standards of decorum and good practices applicable to physical meetings of the JPC and BZA, particularly as such rules and standards apply to being recognized by the presiding office, 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 local ordinance, resolution, policy, or bylaws are hereby suspended. Members of the public may submit written public comments which shall be distributed to the members of the JPC and BZA.

### **Section 3. Physical Presence Not Required to be Counted as Part of a Quorum**

The provisions of this section shall apply to JPC and BZA. During the Emergency Term, and notwithstanding any other provision of applicable State or local law, a member attending a meeting of JPC and BZA 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 JPC and BZA that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

### **Section 5. State of Emergency; FEMA Declaration**

Council hereby finds and determines, as a fact after due investigation, that the spread of COVID-19 presents an imminent threat to the public safety, health, and welfare within and around Newberry County. Council further finds and determines that the nature of the COVID -19 threat requires extraordinary and temporary measures to support 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 County for purposes of applying for and receiving such reimbursement.

### **Section 6. Expiration of Ordinances; Expiration of Emergency Term**

As provided by SC Code § 4-9-130, this Ordinance shall expire automatically as of the sixty-first day following the date of enactment. However, Council may extend this Emergency Ordinance term by ordinance enacted in accordance with protocols contained in Sections 1, 2, and 3 hereof.

**AND IT IS SO ORDAINED by Newberry County Council this \_\_\_\_ day of February 2021, in meeting duly assembled at Newberry, South Carolina.**

**NEWBERRY COUNTY COUNCIL**

**By:**

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**Henry H. Livingston III, Chairman**

**Reviewed and Approved as to Form:**

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**A.J. Tothacer Jr., County Attorney**

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**Wayne Adams, County Administrator**

**(SEAL)**

**Attest:**

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**Susan C. Fellers, Clerk to Council**

**First Reading: February , 2021**