State of South Carolina

Executive Department

FILED

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Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2020-16

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"); and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic 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, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned subsequently issued Executive Order Nos. 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, and 2020-14, initiating and directing various emergency measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

WHEREAS, based on recent developments, to include the continued spread of COVID-19, the resulting strain on healthcare resources, and the significant economic consequences for individuals and businesses in this State, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, notwithstanding the instructions and recommendations of state and federal public health officials, individuals have continued to patronize the State's beaches and access the State's public waterways without adhering to "social distancing" practices; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Emergency Access Restrictions for Public Beaches and Waters

To prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19 and to mitigate the potential impacts associated with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and in view of the fact that individuals have continued to patronize the State's beaches and access the State's public waterways without heeding the instructions of public health officials or adhering to appropriate "social distancing" practices, further action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that any and all public beach access points, to include any adjacent or associated public parking lots or other public facilities, shall be closed to public access for recreational purposes for the duration of the State of Emergency. Accordingly, I hereby suspend, in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law, any existing regulations that conflict or are otherwise inconsistent with this Order or "if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency," to include Regulation 30–11(D)(3) of the South Carolina Code of Regulations, which provides that DHEC "shall promote public access to the beaches of this state."

C. I hereby order and direct that any and all public piers, docks, wharfs, boat ramps, and boat landings providing public access to the public waters of this State, to include any adjacent or associated public parking lots or other public facilities, shall be closed to public access for recreational purposes for the duration of the State of Emergency. Subject to any further clarification, guidance, rules, regulations, or restrictions issued or promulgated by the South Carolina Department of Natural Resources ("DNR"), as authorized herein below, I further direct that the beaching or rafting of boats, whether on a sandbar, lakeshore, riverbank, or island, is prohibited for the duration of the State of Emergency. Vessels must remain underway at all times unless exigent circumstances exist. Anchoring to fish is allowed; however, rafting is prohibited under all circumstances. This Section does not apply to individuals possessing a current, valid commercial fishing license or permit to the extent such individuals may seek to utilize or rely upon public piers, docks, wharfs, boat ramps, or boat landings in connection with commercial fishing activities.

D. I hereby authorize and direct DNR, in consultation with DHEC and the Attorney General of South Carolina, to provide or issue any necessary and appropriate supplemental

guidance, rules, regulations, or restrictions regarding the application of this Section or the interpretation, application, or enforcement of section 16-7-10 of the South Carolina Code of Laws.

E. In accordance with article XIV, section 4 of the South Carolina Constitution, this Section does not enlarge or infringe upon the existing rights of individuals to access the navigable waters of this State or the rights of owners of private property adjacent to the public beaches or public waterways of this State; however, any such individuals are still subject to the provisions of prior and future Orders issued by the undersigned in connection with the State of Emergency, to include Executive Order No. 2020-13, as extended by Executive Order No. 2020-15, which expressly authorizes any and all 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 congregation or gathering is deemed to pose, or could pose, a threat to public health.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any

party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 30th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State