State of South Carolina

Executive Department

FILED

APR 2 0 2020

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2020-28

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("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, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in addition to declaring a State of Emergency on March 13, 2020, the undersigned also issued Executive Order Nos. 2020-07, 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 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned's request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new State of Emergency based on a determination that COVID-19 posed an actual and ongoing public health threat to the State of South Carolina and extending the provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, in further proactively preparing for and promptly responding to the ongoing and evolving emergency, the undersigned subsequently issued Executive Order Nos. 2020-16, 2020-17, 2020-18, 2020-19, 2020-21, and 2020-22, initiating and directing additional extraordinary measures deemed necessary and appropriate to cope with the public health threats and dangers and to address the resulting strain on healthcare resources, the economic consequences for individuals and businesses, and the various other significant impacts associated with COVID-19; and

WHEREAS, on April 12, 2020, the undersigned issued Executive Order No. 2020-23, declaring an additional State of Emergency based on new facts and circumstances and a determination that the accelerated spread of COVID-19 throughout the State posed a different and distinct public health threat to the State of South Carolina and extending provisions of certain of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on April 16, 2020, the undersigned issued Executive Order No. 2020-25, modifying certain emergency restrictions related to the public waters of the State to facilitate authorized outdoor exercise and recreational activities in accordance with Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as modifying and extending previous emergency measures pertaining to unemployment claims and benefits; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; 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, the State of South Carolina must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously beginning the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; 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 evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the modification of certain extraordinary measures employed to cope with the existing or anticipated situation, to include mitigating the significant economic and other impacts and burdens on individuals, families, and businesses and providing appropriate flexibility and relief to facilitate 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. Modification of Emergency Restrictions for Public Beaches and Waters to Account for Home or Work Order

To facilitate authorized outdoor exercise and recreational activities in accordance with the provisions of Section 1 of Executive Order No. 2020-21 (Home or Work Order), as extended by Executive Order No. 2020-23, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby modify and amend the provisions of Section 1(B) of Executive Order No. 2020-16 (Emergency Access Restrictions for Public Beaches and Waters), as extended by Executive Order No. 2020-23, effective Tuesday, April 21, 2020, at 12:00 p.m., to rescind the order and directive 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. Notwithstanding the foregoing, I hereby authorize any agency, department, county, municipality, or political subdivision of the State owning, operating, managing, or otherwise having jurisdiction and control over any such public beach access points to close, in whole or in part, or otherwise restrict the use of any such public beach access points, to include any adjacent or associated public parking lots or other public facilities, if it is determined that such action is necessary to preserve or protect public health. This authorization shall remain in effect for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded by subsequent Order.

B. I hereby modify and amend the provisions of Section 1(C) of Executive Order No. 2020-16 (Emergency Access Restrictions for Public Beaches and Waters), as extended by Executive Order No. 2020-23 and modified by Section 1(A) of Executive Order No. 2020-25 (Modification of Emergency Restrictions for Public Waters to Account for Home or Work Order), effective Tuesday, April 21, 2020, at 12:00 p.m., to rescind the order and directive that any and all public piers, docks, or wharfs 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. Notwithstanding the foregoing, I hereby authorize any agency, department, county, municipality, or political subdivision of the State owning, operating, managing, or otherwise having jurisdiction and control over any such public piers, docks, or wharfs to close, in whole or in part, or otherwise restrict the

use of any such public piers, docks, or wharfs, to include any adjacent or associated public parking lots or other public facilities, if it is determined that such action is necessary to preserve or protect public health. This authorization shall remain in effect for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded by subsequent Order.

C. This Section shall not be construed to modify, amend, or otherwise alter the terms and provisions of Executive Order No. 2020-16, as modified by Executive Order No. 2020-25, with regard to public boat ramps and boat landings providing public access to the public waters of this State.

D. In accordance with Section 1 of Executive Order No. 2020-21, any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice "social distancing" in accordance with Centers for Disease Control and Prevention ("CDC") guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, as defined therein, except as expressly authorized. Pursuant to Section 1(E) of Executive Order No. 2020-21, individuals are permitted to "[e]ngag[e] in outdoor exercise or recreational activities, provided that a minimum distance of six (6) feet is maintained during such activities between all persons who are not occupants of the same Residence."

E. Notwithstanding the foregoing, 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. 2020-23, 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.

F. I further expressly authorize the South Carolina Department of Natural Resources ("DNR") and the South Carolina Department of Health and Environmental Control ("DHEC"), as applicable, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 2. Incremental Modification of Non-Essential Business Closures

To begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization, while also continuing to implement further proactive measures to provide for and ensure the health, safety, security, and welfare of the people of this State, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby modify and amend the provisions of Executive Order No. 2020-18 and Executive Order No. 2020-21, as extended by Executive Order No. 2020-23, to authorize the following businesses, venues, facilities, services, and activities, which were previously deemed

"non-essential" and directed to close to non-employees and not to open for access or use by the public, or not to take place, as applicable, in accordance with Executive Order No. 2020-18, to re-open to non-employees and for access or use by the public, subject to the emergency rules and restrictions set forth below, effective Monday, April 20, 2020, at 5:00 p.m.:

1. Retail stores as follows:
   (a) Furniture and home-furnishings stores
   (b) Clothing, shoe, and clothing-accessory stores
   (c) Jewelry, luggage, and leather goods stores
   (d) Department stores, with the exception of hardware and home-improvement stores
   (e) Sporting goods stores
   (f) Book, craft, and music stores
   (g) Flea markets
   (h) Florists and flower stores

B. I hereby order and direct that effective Monday, April 20, 2020, at 5:00 p.m., any retail business identified by general description above, or previously authorized to continue operations pursuant to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated by the South Carolina Department of Commerce ("Department") in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18, shall be subject to the following emergency rules and restrictions in addition to any other applicable provisions of this Order or any prior Order:

1. Emergency Maximum Occupancy Rate. The business shall limit the number of customers allowed to enter and simultaneously occupy the premises so as not to exceed five (5) customers per 1,000 square feet of retail space, or twenty percent (20%) of the occupancy limit as determined by the fire marshal, whichever is less.

2. Social Distancing Practices. The business shall not knowingly allow customers, patrons, or other guests to congregate within six (6) feet of one another, exclusive of family units.

3. Sanitation. The business shall implement all reasonable steps to comply with any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials.

C. In accordance with Section 1(H) of Executive Order No. 2020-21, and subject to the emergency rules and restrictions set forth herein, this Section does not prohibit retail stores from fulfilling online or telephone orders or providing alternate means of purchasing or delivering products or services—to include curbside purchase, pickup, or delivery and home or off-site delivery—provided that such options or measures can be implemented in a manner that facilitates and maintains effective "social distancing" and is consistent with any applicable guidance issued by state and federal public health and safety officials.

D. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the sale or transportation of firearms or ammunition or any component thereof.

E. Notwithstanding the foregoing, any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective "social distancing" practices. As applicable and to the maximum extent possible, to further promote "social distancing," facilitate self-isolation, and otherwise prevent potential exposure to COVID-19, businesses and organizations are also encouraged to utilize telecommuting or work-from-home options for employees and to provide alternate means of purchasing and delivering products and services, to include online or telephone orders and curbside or off-site deliveries, and individuals are encouraged to utilize such options to support businesses in this State during the ongoing public health emergency.

F. Except as expressly provided herein, this Section shall not be construed to modify, amend, or otherwise alter the provisions of any prior or future Orders issued by the undersigned in connection with the State of Emergency and does not repeal, by implication or otherwise, the remaining terms and provisions of, *inter alia*, Executive Order No. 2020-21, Executive Order No. 2020-18, and Executive Order No. 2020-10, as extended by Executive Order No. 2020-23. The aforementioned Orders shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order.

G. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the authority of the undersigned or the Department to issue, provide, or promulgate any necessary and appropriate additional or supplemental clarification, guidance, rules, regulations, or restrictions regarding the provisions of this Order or of Executive Order No. 2020-18 or Executive Order No. 2020-21. I further expressly authorize the Office of the Governor ("Office") to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

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.

B. 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.

C. 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.

D. 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 20th DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State