TOWN OF EMPIRE,

**COLORADO**

**ORDINANCE 259**

**An EMERGENCY Ordinance of the Town of EMPIRE, Colorado, ESTABLISHING REMOTE Meeting Procedures and Other EMERGENCY Changes IN RESPONSE TO THE COVID-19 PUBLIC HEALTH CRISIS**

**WHEREAS,** pursuant to Sections 31-15-401 and 31-23-301, C.R.S., the Town of Empire (“the Town”) has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its residents; and

**WHEREAS**, pursuant to C.R.S. Section 31-16-105 the Town has the authority to make and publish emergency ordinances; and

**WHEREAS,** the Town and its citizens are currently facing a significant public health emergency from Coronavirus disease 2019 (“COVID-19”), a highly infectious disease which can cause respiratory infections that may be severe, and which are potentially fatal; and

**WHEREAS**, Colorado Governor Jared Polis, by Executive Order D 2020 03, has declared a statewide disaster emergency due to the presence of COVID-19 in the state. The Executive Order identifies the potential for community spread and, among other things, activates disaster response and recovery aspects of applicable state, local, and interjurisdictional disaster emergency plans; and

**WHEREAS**, on March 13, 2020, the President of the United States declared the ongoing COVID-19 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 (the “Stafford Act”); and

**WHEREAS**, on March 17, 2020, the Board of Trustees of the Town of Empire (the “Board”) Declared an Emergency for 30 days under Resolution 20-08. On April 14th, 2020, the Mayor of Empire Declared an Emergency to effectively bridge the gap between 30-day declaration of Resolution 20-08 on March 17th, 2020 and the next regularly scheduled Board Meeting on April 21st, 2020. On April 21st, 2020 the Mayor of Empire Declared an Emergency for 30 days under Resolution 20-09; and

**WHEREAS**, as of May 12, 2020, there are 19,879 confirmed cases of COVID-19 in Colorado with 987 confirmed deaths; and; and

**WHEREAS**, the Town government must continue to operate during a local disaster or emergency, while taking measures to protect the health, safety, and welfare of its employees, officials, and the public; and

**WHEREAS**, the Town Ordinances does not currently provide for electronic remote meetings or otherwise provide for emergency meeting procedures; and

**WHEREAS**, it is in the best interests of the public health, safety, and welfare that the Ordinance implementing a remote meeting policy be passed; and

**WHEREAS**, The Board has conducted a public hearing to consider evidence and testimony concerning remote meetings thus providing adequate opportunity for interested citizens to be heard.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF EMPIRE, THAT:**

1. Declaration of Emergency. Pursuant to C.R.S. § 31-16-105, the Board of Trustees hereby finds, determines, and declares that this Ordinance is necessary for the immediate preservation of public peace, health and safety. Specifically, the immediate effectiveness of this Ordinance is necessary to respond to the public health emergency created by COVID-19 and to ensure the continued operation of the Board of Trustees and other Town of Empire boards.
2. Incorporation of Recitals. The recitals set forth above are incorporated as if set fully forth herein.
3. Emergency Meetings

(1) Emergency Meetings of the Board of Trustees. In the case of an emergency requiring immediate action of the Board of Trustees to protect public health, safety or welfare, the Board of Trustees may convene an emergency meeting without any advance public notice or with such limited advance public notice as the Mayor or other presiding officer finds feasible in the circumstances. At such emergency meeting, the Board of Trustees may take any action within its authority that is necessary for the immediate protection of public health, safety or welfare; provided however, that any action taken at the emergency meeting shall be effective only until the next meeting that complies with the advance notice requirements of the Colorado Open Meetings Law. At that next meeting, the Board of Trustees may ratify any action taken at the emergency meeting, if the action is not ratified it shall be deemed rescinded.

1. Remote Meetings During an Emergency
2. In the event an in-person quorum is unable to meet at the day, time, and place fixed by the rules and procedures of the Town Board of Trustees or other Town board because an in-person meeting is not practical or prudent due to an emergency affecting the Town, meetings may be conducted via remote participation. Meetings may be held by remote participation if all of the following conditions are met:

a. A local emergency has been declared under C.R.S. § 24-33.5-709 and LMC § 2-5-10 and

b. The Mayor determines that an in-person meeting is not practical or prudent, due to circumstances related to the local emergency affecting the Town; and

c. All participating members of the Board of Trustees, Commission, or Board, and at least one Town staff member, can hear one another or otherwise communicate with one another and can hear or read all discussion and testimony in a manner designed to provide maximum participation; and

d. Members of the public can hear the Board of Trustees, Commission, or Board proceedings and are afforded opportunities to participate in public comment; and

e. All votes are conducted by roll call; and

f. Minutes of the meeting are taken and promptly recorded, and such records are open to public inspection; and

g. To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, that some members of the Board of Trustees, Commission, or Board may participate electronically, and the right of the public to monitor the meeting from another location or thru electronic participation.

1. Remote Participation During a Non-Emergency Situation

Remote meeting participation during non-emergency situations shall be made available and shall be limited as follows:

* 1. A member of the Board of Trustees may listen by telephone or other electronic means to any Board of Trustees meeting. Such Trustee listening via telephone or other means shall be deemed present for purposes of determining a quorum, but only for meetings during which no quasi-judicial matters will be heard or considered. The Trustee may not participate in a quasi-judicial public hearing; however, the Trustee may monitor and listen to such a hearing. The Trustee may participate and vote in legislative and administrative matters.
  2. Remote participation during non-emergency situations is intended to be an infrequent or occasional substitution for physical attendance. For purposes of this Ordinance, Trustees shall be permitted to attend no more than three (3) regularly scheduled and posted Board meetings remotely during non-emergencies. For extenuating circumstances, the Board may vote to authorize a Trustee to attend additional meetings remotely.
  3. Remote participation under this Section extends to participation in executive sessions.

1. Emergency Quasi-Judicial Matters.
2. In the event that a pending application is scheduled for a public hearing that is quasi-judicial in nature during a declared emergency, the Town shall advise the applicant of such circumstances and present the applicant with options for proceeding with the application. Upon notice from the Town, the applicant shall authorize the Town, in writing, to proceed with one of the following options.

a. Conduct the public hearing under this policy with accommodations made for electronic participation by the public; or

b. Suspend any and all review and decisions deadlines until such time that the local emergency is lifted, and the Board of Trustees, Commission, or Board can schedule a meeting at which an in-person quorum will be present.

1. Executive Sessions.
2. In the event that the Board of Trustees holds an executive session pursuant to C.R.S §24-6-402 and conducted during a declared emergency, members are authorized to participate electronically. Any executive session conducted under this policy shall be recorded electronically as required by statute.
3. Should any one or more sections or provisions of this Ordinance enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.
4. Effective Date. This Ordinance shall take effect immediately and be published by title as provided by C.R.S. Section 31-16-105.

**PASSED AND ADOPTED BY THE EMPIRE BOARD OF TRUSTEES AS AN EMERGENCY ORDINANCE, THIS 19th DAY OF MAY 2020.**

TOWN OF EMPIRE, COLORADO

Wendy Koch, Mayor

ATTEST:

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# Jeanette Piel, Town Clerk