

**BOARD OF SUPERVISORS  
EMERGENCY BUSINESS MEETING  
ACTION ITEM**

**SUBJECT:** **Proposed Emergency Ordinance to Effectuate Temporary Changes in Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations Associated with Pandemic Disaster**

**ELECTION DISTRICT(S):** Countywide

**CRITICAL ACTION DATE:** At the pleasure of the Board

**STAFF CONTACT(S):** Tim Hemstreet, County Administrator  
Leo Rogers, County Attorney

**PURPOSE:** To consider adoption of an emergency ordinance that will allow the Board of Supervisors (“Board”), the School Board and other local and regional bodies, including their respective officers and staff, to maintain continuity of government and operations during the pendency of the COVID-19 pandemic disaster.

**RECOMMENDATION(S):** **Staff** recommends that the Board adopt the proposed emergency ordinance included as Attachment 1.

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**BACKGROUND:** On March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a statement of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic. In Executive Order Fifty-One, the Governor expressly acknowledged that the anticipated effects of COVID-19 constitute a “disaster” as defined in Virginia Code § [44-146.21](#). In recent weeks, state and local governmental and health officials have issued guidance advising or directing that in-person gatherings of 10 or more persons should be avoided or prohibited, and advising individuals to maintain “social distancing” of at least 6 feet. On March 23, 2020, the Governor issued Executive Order Fifty-Three, which expressly prohibits “public or private in person gathers of 10 or more individuals.”

On March 16, 2020, the County Administrator, acting as the Director of Emergency Management, declared a local emergency due to the COVID-19 Pandemic. On March 17, 2020, the Board adopted a Resolution Confirming Declaration of Local Emergency, specifically finding that the COVID-19 Pandemic constitutes a “disaster” as defined in Virginia Code § [44-146.16](#), being a “communicable disease of public health threat.” Virginia Code § [15.2-1413](#) provides that notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to

assure continuity of government in the event of a disaster for a period not to exceed six months. On March 20, 2020, Attorney General Mark R. Herring issued an opinion confirming that localities have authority to adopt ordinances to assure continuity in government during the current disaster, and that such ordinances may authorize departures from otherwise-governing state law.

The proposed emergency ordinance included as Attachment 1 reflects an acknowledgement that the COVID-19 Pandemic makes it unsafe for public bodies to assemble a quorum in one location, or to conduct meetings in accordance with normal practices and procedures. Therefore, the proposed emergency ordinance prescribes emergency procedures for the conduct of public meetings and public hearings during the COVID-19 Pandemic, which would be applicable to the Board, School Board, Planning Commission and all local and regional bodies, commissions, committees and authorities created by the Board or to which the Board appoints all or a portion of the members (collectively, "Public Entities"). The proposed emergency procedures are as follows:

- a. Any meeting or activities which require the physical presence of members of the Public Entities may be held through real time electronic means (including audio, telephonic, video or other practical electronic medium) without a quorum physically present in one location; and
- b. Prior to holding any such electronic meeting, the Public Entity shall provide public notice of at least three days in advance of the electronic meeting, except for emergency meetings, identifying how the public may participate or otherwise offer comment; and
- c. Any such electronic meeting of Public Entities shall state on its agenda and at the beginning of such meeting that it is being held pursuant to and in compliance with this Emergency Ordinance; identify Public Entity members physically and/or electronically present; identify the persons responsible for receiving public comment; and identify notice of the opportunities for the public to access and participate in such electronic meeting; and
- d. Any such electronic meeting of the Public Entities shall be open to electronic participation by the public and closed to in-person participation by the public; and
- e. For any matters requiring a public hearing, public comment may be solicited by electronic means in advance and shall also be solicited through telephonic or other electronic means during the course of the electronic meeting. All such public comments will be provided to members of the Public Entity at or before the electronic meeting and made part of the record for such meeting; and
- f. The minutes of all electronic meeting shall conform to the requirements of law, identify how the meeting was conducted, members participating, and specify

what actions were taken at the meeting. The Public Entities may approve minutes of an electronic meeting at a subsequent electronic meeting and shall later approve all such minutes at a regular or special meeting after the emergency and disaster has ended.

In addition, the proposed emergency ordinance would suspend deadlines applicable to a Public Entity and its officers (including constitutional officers) and staff during the COVID-19 disaster, and authorize Public Entities, at their discretion, to postpone non-emergency public hearings requiring action by a Public Entity during the COVID-19 disaster.

**ISSUES:** Pursuant to Virginia Code § [15.2-1427\(F\)](#), the Board may adopt an emergency ordinance without prior notice. However an emergency ordinance adopted without prior notice may be effective for only 60 days, unless it is readopted in accordance with the notice otherwise required by Code § 15.2-1427. Upon adoption of the emergency ordinance, staff will advertise a public hearing for April 15, 2020, to consider adoption of a continuity of government ordinance. In accordance with Code § 15.2-1413, that ordinance shall be effective for no longer than six months.

Staff has prepared a template resolution that could be adopted by individual Public Entities to avail themselves of the modified procedures prescribed in the proposed emergency ordinance. (Attachment 2). If the proposed emergency ordinance is adopted by the Board, the appropriate staff liaisons can work with each Public Entity to adapt the template resolution, as may be necessary.

**FISCAL IMPACT:** There is no fiscal impact associated with this item.

**ALTERNATIVES:** The Board may adopt the proposed emergency ordinance, modifying procedures for public meetings and public hearings during the COVID-19 disaster. The proposed order also suspends deadlines required by law, regulation and policy and defers any consequence for failing to meet such deadlines. If the Board chooses not to adopt the ordinance, then the Board and other Public Entities must continue to assemble a quorum in one location for their public hearings and meetings during the COVID-19 Pandemic disaster and permit the public to attend those meetings in-person. In the event Public Entities fail to meet any deadlines, the consequences for failing to meet such deadline will occur.

**DRAFT MOTIONS:**

1. I move that the Board of Supervisors adopt the Proposed Emergency Ordinance to Effectuate Temporary Changes in Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations Associated with Pandemic Disaster, included as Attachment 1 to the Board of Supervisors March 25, 2020 Emergency Business Meeting Action Item.

OR

2. I move an alternative motion.

**ATTACHMENT(S):**

1. Proposed Emergency Ordinance to Effectuate Temporary Changes in Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations Associated with Pandemic Disaster
2. Template Resolution for Public Entities

**EMERGENCY ORDINANCE TO EFFECTUATE TEMPORARY CHANGES IN CERTAIN DEADLINES AND TO MODIFY PUBLIC MEETING AND PUBLIC HEARING PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH PANDEMIC DISASTER.**

**WHEREAS**, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic; and

**WHEREAS**, Executive Order Fifty-One acknowledged the existence of a public health emergency which constitutes a disaster as defined by Virginia Code § 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread; and

**WHEREAS**, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive “any state requirement or regulation” as appropriate; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a national emergency, beginning March 1, 2020, in response to the spread of COVID-19; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

**WHEREAS**, on March 17, 2020, the Board of Supervisors of Loudoun County, Virginia (“Board”) confirmed the declaration of local emergency made by the County Administrator acting as the director of emergency management on March 16, 2020; and

**WHEREAS**, the Board finds that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code §44-146.16 being a “communicable disease of public health threat;” and

**WHEREAS**, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to assure continuity of government in the event of a disaster for a period not to exceed six months; and

**WHEREAS**, Virginia Code § 44-146.21(C) further provides that a local director of emergency management or any member of a governing body in his absence may upon the declaration of a local emergency “proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to performance of public work;” and

**WHEREAS**, Virginia Code § 2.2-3708.2(A)(3) allows, under certain procedural requirements including public notice and access, that members of the Board may convene solely by electronic means “to address the emergency;” and

**WHEREAS**, the open public meeting requirements of the Virginia Freedom of Information Act (“FOIA”) are limited only by a properly claimed exemption provided under that Act or “any other statute;” and

**WHEREAS**, the Governor and Health Commissioner of the Commonwealth of Virginia and the President of the United States have recommended suspension of public gatherings of more than ten attendees; and

**WHEREAS**, the Attorney General of Virginia issued an opinion dated March 20, 2020 stating that localities have the authority during disasters to adopt ordinances to ensure the continuity of government; and

**WHEREAS**, this emergency ordinance in response to the disaster caused by the COVID-19 pandemic promotes public health, safety and welfare and is consistent with the law of the Commonwealth of Virginia, the Constitution of Virginia and the Constitution of the United States of America.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of Loudoun County, Virginia:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the Board, the School Board, the Planning Commission and all local and regional boards, commissions, committees and authorities created by the Board or, on which the Board has a member, or to which the Board appoints all or a portion of its members (collectively “Public Entities” and individually “Public Entity”), or for such Public Entities to conduct meetings in accordance with normal practices and procedures.
2. That in accordance with Virginia Code § 15.2-1413, and notwithstanding any contrary provision of law, general or special, the following emergency procedures are adopted to ensure the continuity of government during this emergency and disaster:
  - a. Any meeting or activities which require the physical presence of members of the Public Entities may be held through real time electronic means (including audio, telephonic, video or other practical electronic medium) without a quorum physically present in one location; and

- b. Prior to holding any such electronic meeting, the Public Entity shall provide public notice of at least three days in advance of the electronic meeting, except for emergency meetings, identifying how the public may participate or otherwise offer comment; and
- c. Any such electronic meeting of Public Entities shall state on its agenda and at the beginning of such meeting that it is being held pursuant to and in compliance with this Ordinance; identify Public Entity members physically and/or electronically present; identify the persons responsible for receiving public comment; and identify notice of the opportunities for the public to access and participate in such electronic meeting; and
- d. Any such electronic meeting of a Public Entity shall be open to electronic participation by the public and closed to in-person participation by the public; and
- e. For any matters requiring a public hearing, public comment may be solicited by electronic means in advance and shall also be solicited through telephonic or other electronic means during the course of the electronic meeting. All such public comments will be provided to members of the Public Entity at or before the electronic meeting and made part of the record for such meeting; and
- f. The minutes of all electronic meetings shall conform to the requirements of law, identify how the meeting was conducted, identify members participating, and specify what actions were taken at the meeting. A Public Entity may approve minutes of an electronic meeting at a subsequent electronic meeting and shall later approve all such minutes at a regular or special meeting after the emergency and disaster has ended.

**IT IS FURTHER ORDAINED** that notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by a Public Entity, its officers (including Constitutional Officers) and employees of its organization shall be suspended during this emergency and disaster, however, the Public Entities, officers and employees thereof are encouraged to take such action as is practical and appropriate to meet those deadlines. Failure to meet any such deadlines shall not constitute a default, violation, approval, recommendation or otherwise.

**IT IS FURTHER ORDAINED**, that non-emergency public hearings and action items of Public Entities may be postponed to a date certain provided that public notice is given so that the public are aware of how and when to present their views.

**IT IS FURTHER ORDAINED**, that each incorporated town within the boundaries of Loudoun County, Virginia is encouraged, authorized and/or directed to declare its own state of local emergency and disaster or incorporate by reference the County's local state of emergency and disaster and to adopt an ordinance for the continuity of town government.

**IT IS FURTHER ORDAINED**, that the provisions of this Emergency Ordinance shall remain in full force and effect for a period of 60 days, unless amended, rescinded or readopted by the Board in conformity with the notice provisions set forth in Virginia Code §15.2-1427 but in no event shall such ordinance be effective for more than six months. Upon rescission by the Board or automatic expiration as described herein, this emergency ordinance shall terminate and normal practices and procedures of government shall resume.

Nothing in this Emergency Ordinance shall prohibit Public Entities from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration.

An emergency is deemed to exist, and this ordinance shall be effective upon its adoption.

**ADOPTED** by the Board of Supervisors this \_\_\_ day of March, 2020.

APPROVED

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Phyllis J. Randall, Chairman

ATTEST:

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Tim Hemstreet, Clerk to the Board of Supervisors

APPROVED AS TO FORM:

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Leo P. Rogers, County Attorney

**RESOLUTION OF [NAME OF PUBLIC ENTITY]**

**AUTHORIZING THE ADOPTION OF PROCEDURES FOR ELECTRONIC PUBLIC MEETINGS AND PUBLIC HEARINGS TO ENSURE THE CONTINUITY OF GOVERNMENT DURING THE COVID-19 PANDEMIC DISASTER**

**WHEREAS**, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic; and

**WHEREAS**, Executive Order Fifty-One acknowledged the existence of a public health emergency which constitutes a disaster as defined by Virginia Code § 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread; and

**WHEREAS**, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive “any state requirement or regulation” as appropriate; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a national emergency, beginning March 1, 2020, in response to the spread of COVID-19; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

**WHEREAS**, on March 17, 2020, the Board of Supervisors of Loudoun County, Virginia (“Board”) confirmed the declaration of local emergency made by the County Administrator acting as the local director of emergency management on March 16, 2020, specifically finding that the COVID-19 pandemic constitutes a “disaster” as defined in Virginia Code § 44-146.16, being a “communicable disease of public health threat”; and

**WHEREAS**, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to assure continuity of government in the event of a disaster for a period not to exceed six months; and

**WHEREAS**, on [DATE], the Board, pursuant to Virginia Code § 15.2-1413, adopted an Emergency Ordinance to Effectuate Temporary Changes in Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations Associated with Pandemic Disaster (“Emergency Ordinance”); and

**WHEREAS**, through its Emergency Ordinance, the Board specifically found that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code §44-146.16, being a “communicable disease of public health threat” and

**WHEREAS**, through its Emergency Ordinance, the Board further found that the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the Board, the School Board, the Planning Commission and all local and regional boards, commissions, committees and authorities created by the Board or to which the Board appoints all or a portion of its members (collectively “Public Entities” and individually “Public Entity”), or for such Public Entities to conduct meetings in accordance with normal practices and procedures; and

**WHEREAS**, through its Emergency Ordinance, the Board adopted certain procedures to ensure the continuity of government during the COVID-19 pandemic disaster (“Continuity Procedures”), suspended any deadlines applicable to Public Entities and their staff during the

COVID-19 disaster, and authorized Public Entities, at their discretion, to postpone non-emergency public hearings and action items during the disaster; and

**WHEREAS**, the [NAME OF LOCAL OR REGIONAL PUBLIC ENTITY], being a public body [CREATED BY THE BOARD PURSUANT TO (APPICABLE CODE SECTION) AND/OR WHOSE MEMBERS ARE APPOINTED BY BOARD/COUNCIL] is a Public Entity included within the scope of the Emergency Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** that the [NAME OF LOCAL OR REGIONAL PUBLIC ENTITY] hereby incorporates by reference and adopts the Continuity Procedures prescribed in the Emergency Ordinance, a copy of which is attached hereto; and

**BE IT FURTHER RESOLVED** that the [NAME OF LOCAL OR REGIONAL PUBLIC ENTITY] hereby authorizes and directs its officers and staff to take all steps reasonably necessary or appropriate to implement such Continuity Procedures and to develop any specific procedures as applicable and appropriate for the [NAME OF LOCAL OR REGIONAL PUBLIC ENTITY], provided that such specific procedures are consistent with the terms and conditions of the Emergency Ordinance; and

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon adoption and shall remain in effect during the pendency of the Emergency Ordinance including for any applicable period upon the re-adoption of such Ordinance by the Board.

**ADOPTED** by the \_\_\_\_\_.

APPROVED

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ATTEST:

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APPROVED AS TO FORM:

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