

**BOARD OF SUPERVISORS  
BUSINESS MEETING  
ACTION ITEM**

**SUBJECT:** **Proposed Re-adoption of the Continuity of Government  
Emergency Ordinance**

**ELECTION DISTRICT(S):** Countywide

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

**STAFF CONTACT(S):** David Street, County Administration  
Leo Rogers, County Attorney

**PURPOSE:** To consider re-adopting the Emergency Ordinance to Suspend Certain Deadlines and Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations During COVID-19 Pandemic Disaster (Continuity of Government Emergency Ordinance) as a means to continue to allow the Board of Supervisors (Board) and other public bodies within the County to conduct electronic meetings in response to the COVID-19 Pandemic. If this Emergency Ordinance is approved by the Board, staff will advertise the ordinance for Public Hearing in October, 2020.

**RECOMMENDATION(S):** Staff recommends that the Board adopt the proposed Continuity of Government Emergency Ordinance included as Attachment 1.

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**BACKGROUND:** Virginia Code § 15.2-1413 authorizes localities, by ordinance, to provide a method to assure continuity of government in the event of a disaster. Acting pursuant to that authority, on April 15, 2020, the Board adopted the Continuity of Government Ordinance, which enabled the Board and other public entities within the County to conduct electronic public meetings during the COVID-19 Pandemic. On July 15, 2020, the Board repealed the Continuity of Government Ordinance effective September 15, 2020. The purpose of the future repeal date was to allow the Board opportunity to evaluate the situation and respond should circumstances within the County merit additional action. Additional detailed information regarding the specific provisions of the Continuity of Government Ordinance and the Emergency Ordinance that preceded it can be found online:

- [March 25, 2020 Emergency Meeting Item 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](#)

- [April 15, 2020 Public Hearing Item 7: Proposed Ordinance to Suspend Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations During COVID-19 Pandemic Disaster](#)
- [July 15, 2020 Public Hearing Item 7: Proposed Rescission and Repeal of Ordinance Adopted on April 15, 2020 to Address Continuity of Operations During COVID-19 Pandemic Disaster](#)

The provisions of the Continuity of Government Emergency Ordinance proposed in Attachment 1 are substantially similar to the ordinance adopted by the Board on April 15, 2020. In short, the ordinance allows public bodies to meet by electronic means without a physical quorum present; be open to electronic attendance or participation by the public; requires electronic meetings be noticed as such at least three days prior to the meeting; and provides for certain other requirements relative to the maintenance of the public record for electronic meetings. These requirements are noted in detail beginning on page 3 of Attachment 1 and discussed in greater detail in the Board items noted above.

**ISSUES:** Since July 2020, staff have worked to prepare the Board and its various Advisory Boards, Commissions, and Committees (Advisory Bodies) to safely resume in-person meetings. To that end, over the August recess, the Board Room was outfitted with additional safety precautions, including expansion of the dais to allow for additional physical distancing between and separation by glass of Board members. Staff have taken additional steps to ensure that the Board Room is as safe as possible, including posting a mask/face covering requirement as a part of the Government Center's Building Rules and lowering the room capacity of the Board Room.

Staff reviewed other available County facilities that may be adequate to host public meetings. Due to the lower room capacities established to implement social distancing protocols, there are very few rooms that could adequately accommodate in-person, public meetings of the Board's Advisory Bodies and effectively implement social distancing requirements. It is worth noting that some of the Board's Advisory Bodies have a significant number of members, making their meetings more difficult to place in a location that can also accommodate the public and social distancing and that also has adequate facilities/equipment to conduct a public meeting. For example, the Fiscal Impact Committee has 14 members; the Advisory Commission on Youth has 19 members (including standing representatives); and the Zoning Ordinance Action Group has 15 members.

Further, other public bodies have indicated to staff that they wish to continue meeting by electronic means given the current climate relative to COVID-19, including staff supporting the Loudoun Water Board and School Board. As such, staff recommends that the Board adopt a new Continuity of Government Ordinance. The operative provisions of the Continuity of Government Emergency Ordinance found as Attachment 1 to this item are nearly identical to the ordinance the Board previously adopted on April 15, 2020. However, the recitals have been updated to reflect changed circumstances and actions that have occurred since that date.

Staff proposes re-adoption of this ordinance as an Emergency Ordinance as to minimize potential disruption to the activities of those public bodies that have expressed a desire to continue to meet

by electronic means. Under a normal ordinance adoption process, there would be a gap between the current ordinance repealing effective September 15, 2020, and the Board's October Public Hearings and Business Meetings. Pursuant to Virginia Code § 15.2-1427(F), an emergency ordinance is effective for no longer than sixty days, unless it is re-adopted or amended by the Board following requisite public notice. Staffs intention is to, should the Board approve this emergency ordinance, advertise and prepare the ordinance for adoption by the County's usual means.

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

**ALTERNATIVES:** The Board may adopt the Continuity of Government Emergency Ordinance and maintain modified procedures for public meetings and hearings during the COVID-19 disaster and suspending deadlines applicable to County government and Public Entities and their respective officers, and employees or the Board may take no action and allow the ordinance to expire on September 15, 2020.

**DRAFT MOTIONS:**

1. I move that the Board of Supervisors adopt the Emergency Ordinance to Suspend Certain Deadlines and Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations During COVID-19 Pandemic Disaster included as Attachment 1 to the Board of Supervisors September 15, 2020 Business Meeting Action Item.

OR

2. I move an alternate motion.

**ATTACHMENT(S):**

1. Proposed Emergency Ordinance to Suspend Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations during the COVID-19 Pandemic Disaster

**READOPTED EMERGENCY ORDINANCE TO SUSPEND CERTAIN DEADLINES AND TO MODIFY PUBLIC MEETING AND PUBLIC HEARING PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF OPERATIONS DURING COVID-19 PANDEMIC DISASTER.**

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

**WHEREAS**, Executive Order Fifty-One acknowledged that the anticipated effects of COVID-19 constitute a disaster as defined by Virginia Code § 44-146.16; and

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

**WHEREAS**, on April 15, 2020, acting pursuant to Virginia Code § 15.2-1413, the Board adopted an Ordinance to Suspend Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations During COVID-19 Pandemic Disaster (“Continuity Ordinance”); and

**WHEREAS**, in an effort to slow the spread of COVID-19, the Continuity Ordinance enabled the Board and other public entities within Loudoun County to conduct electronic public meetings, without the need to assemble a physical quorum in a central meeting location; and

**WHEREAS**, in accordance with Executive Order Sixty-Two, Loudoun County entered “Phase One” of the Commonwealth’s reopening plan on May 29, 2020; a Temporary Stay at Home Order previously issued by Governor Northam expired on June 5, 2020; and the County

has now progressed to “Phase Three” of reopening; as a result, the restrictions of the prior Executive Orders have gradually eased over time; and

**WHEREAS**, in consideration of the ongoing reopening process throughout the Commonwealth, on July 15, 2020, the Board repealed the Continuity Ordinance effective September 15, 2020, with the intent that public entities within the County would be able to resume in-person public meetings, with appropriate physical distancing; and

**WHEREAS**, notwithstanding the ongoing reopening process, Executive Order Fifty-One remains in effect and, as amended on May 26, 2020, specifically acknowledges that a state of emergency continues to exist in the Commonwealth due to the effects of COVID-19; furthermore, Executive Order Sixty-One continues to acknowledge that everyone, particularly those who may be more vulnerable to the virus are *safer* at home; and

**WHEREAS**, some public entities in the County have been able to resume in-person public meetings in a manner that allows appropriate physical distancing for all participants, including the public; but the County does not have adequate space to accommodate all public entities with physical distancing, especially those entities with larger memberships; and

**WHEREAS**, there are many individuals in the County, including some members of various public entities, who may be particularly vulnerable to the virus and for whom it is safer to continue remote participation in public meetings while the state of emergency remains in effect; and

**WHEREAS**, public entities such as the School Board, Loudoun Water and others directly involved in the response to COVID-19 have been meeting remotely; such entities have an urgent need to retain their ability to meet remotely in order to ensure that there is no interruption to essential governmental operations and to the COVID-19 response; and

**WHEREAS**, the Board finds that COVID-19 constitutes a real and substantial threat to public health and safety, and that it constitutes a disaster as defined in Virginia Code § 44-146.16; and

**WHEREAS**, pursuant to Virginia Code § 15.2-1427(F), the Board is authorized to adopt an emergency ordinance without prior notice, provided that such ordinance shall not be in effect for more than sixty days unless readopted in conformity with the provisions of Code; and

**WHEREAS**, this emergency Ordinance in response to 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 as follows:

1. That the COVID-19 pandemic makes it unsafe for public entities to assemble a quorum in a single location without appropriate social distancing, and to otherwise conduct meetings in accordance with normal practices and procedures. As used herein, public entities includes the Board, the School Board, Loudoun Water, the Planning Commission, and all other 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”).
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 operations during the COVID-19 pandemic:
  - a. Any meeting or activities that require the physical presence of members of a Public Entity 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 (“Electronic Meeting”); and
- b. Prior to holding an Electronic Meeting, the Public Entity shall provide public notice at least three days in advance of the Electronic Meeting, except for emergency meetings, identifying how the public may view the meeting and how the public may participate and offer comment, if applicable; and
  - c. The agenda for any Electronic Meeting of a Public Entity shall state that the meeting is being held pursuant to and in compliance with this Ordinance; identify the persons responsible for receiving public comment; and identify opportunities for the public to access and to participate in the Electronic Meeting. This information shall be restated at the beginning of an Electronic Meeting, and the members of the Public Entity who are physically and/or electronically present shall be identified; and
  - d. An Electronic meeting of a Public Entity shall be open to electronic attendance or participation by the public and may be closed to in-person attendance or participation by the public; and
  - e. For any matters requiring a public hearing, public comment may be solicited by electronic or other means in advance, and through telephonic or other electronic means during the Electronic Meeting. All advance 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 through incorporation into the minutes or otherwise; 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; and

- g. Notwithstanding any existing rules of order or bylaws, each Public Entity may authorize or adopt temporary procedures as necessary and appropriate to implement the provisions of this Ordinance.

**IT IS FURTHER ORDAINED** that notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by the County, a Public Entity, or their respective officers (including Constitutional Officers) and employees shall be suspended during the COVID-19 pandemic; however, the County, the Public Entities, and their respective officers and employees 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, ratification or recommendation, or result in any other automatic action or consequence.

**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. 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 Ordinance shall prohibit Public Entities from holding in-person public meetings, or from allowing in-person public comment, provided that public health and safety measures, as well as social distancing, are taken into consideration.

This Ordinance shall be effective upon its adoption and may be known as the Readopted Emergency Continuity Ordinance.

**ADOPTED** by the Board of Supervisors of Loudoun County, Virginia, this \_\_\_\_ day of September, 2020.

APPROVED

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Phyllis J. Randall, Chairman

ATTEST:

APPROVED AS TO FORM:

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Tim Hemstreet, Clerk to the Board of Supervisors

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Leo P. Rogers, County Attorney