

**BOARD OF SUPERVISORS
PUBLIC HEARING
STAFF REPORT**

SUBJECT: **Proposed Readoption of 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**

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 readopting the 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 Continuity 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. This proposed ordinance would supersede and replace the Readopted Emergency Continuity Ordinance adopted by the Board at the September 15, 2020, Board Business Meeting, and would expire in April, 2021.

RECOMMENDATION(S): Staff recommends that the Board adopt the proposed Readopted Continuity Ordinance included as Attachment 1.

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 a Continuity 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 On July 15, 2020, the Board repealed the Continuity Ordinance effective September 15, 2020. The purpose of the future repeal date was to allow the Board the opportunity to evaluate the situation and respond should circumstances within the County merit additional action. At the Board Business Meeting on September 15, 2020, the Board approved a Readopted Emergency Continuity Ordinance. Emergency ordinances are valid for no longer than sixty days unless readopted in conformity with the notice provisions of the Code of Virginia. The proposed Readopted Continuity Ordinance would supersede and replace the Readopted Emergency Continuity Ordinance approved on September 15, 2020 and, in accordance with Virginia Code §

15.2-1413, would remain in effect for six months unless otherwise rescinded, extended, or readopted by the Board.

Additional detailed information regarding the specific provisions of the original Continuity 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](#)
- [September 15, 2020 Business Meeting Action Item 4: Proposed Re-adoption of the Continuity of Government Ordinance](#)

The operative provisions of the Readopted Continuity Ordinance found as Attachment 1 to this item are nearly identical to the ordinance the Board previously adopted on April 15, 2020 and the emergency ordinance adopted on September 15, 2020. However, as with the September 15 emergency ordinance, the recitals have been updated to reflect changed circumstances and actions that have occurred since that date. 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.

ISSUES: This ordinance will be in effect for six months (11:59 PM April 13, 2021) or until repealed or extended. Should the circumstances of the COVID-19 Pandemic merit a repeal or extension of the Readopted Continuity Ordinance prior to April 2021, staff will bring an item for the Board's consideration.

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

ALTERNATIVES: The Board may adopt the proposed Readopted Continuity Ordinance, maintaining 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 Readopted Emergency Continuity Ordinance to expire on November 14, 2020 (sixty days after adoption).

DRAFT MOTIONS:

1a. I move that the Board of Supervisors suspend the rules.

AND

1b. I move that the Board of Supervisors adopt the Readopted 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 included as Attachment 1 to the October 14, 2020, Board of Supervisors Public Hearing Staff Report.

OR

2. I move an alternate motion.

ATTACHMENT(S):

1. Proposed Readopted 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 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, on September 15, 2020, the Board readopted an 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 (“Readopted Emergency Continuity Ordinance”) pursuant to Virginia Code § 15.2-1413, which ordinance was adopted without prior notice and, therefore, in accordance with Virginia Code § 15.2-1427(F) is effective for no longer than sixty days; 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, this 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, following notice and public hearing in accordance with Virginia Code § 15.2-1427(F):

1. That the COVID-19 pandemic makes it unsafe for public entities to assemble a quorum in a single location without appropriate physical distancing, and to otherwise conduct meetings in accordance with normal practices and procedures. As used herein, public entities include 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, if applicable; and identify opportunities for the public to access and, if applicable, 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 this Ordinance shall supersede and replace the Readopted Emergency Continuity Ordinance adopted by the Board on September 15, 2020, and that this Ordinance shall remain in full force and effect for a period of six months unless otherwise rescinded, extended or readopted by the Board. Upon rescission by the Board or automatic expiration as described herein, this 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 physical distancing, are taken into consideration.

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

ADOPTED by the Board of Supervisors of Loudoun County, Virginia, this ___ day of October, 2020.

APPROVED

Phyllis J. Randall, Chairman

ATTEST:

APPROVED AS TO FORM:

Tim Hemstreet, Clerk to the Board of Supervisors

Leo P. Rogers, County Attorney