

Issue Analysis Form

Date: April 14, 2020
Item: Emergency Continuity of Operations Associated with Pandemic Disaster Ordinance
Lead Department(s): County Attorney
Contact Person(s): Dan Whitten



Description and Current Status

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. 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. 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. On March 16, 2020, the Prince George County Director of Emergency Management declared a local state of emergency in Prince George County pursuant to Virginia Code Section 44-146.21.

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.

The Board of Supervisors of Prince George County, Virginia finds that emergency measures are necessary to mitigate the spread of COVID-19 and protect the health, safety, and welfare of residents and employees, while still providing for government operations to continue during this state of emergency.

Virginia Code Section 15.2-1413 provides that 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. The Attorney General of Virginia issued an opinion dated March 20, 2020, that localities have the authority during disaster to adopt ordinances to ensure the continuity of government. The Board of Supervisors also has the inherent authority to vary the county's policies, procedures and practices to assure the continuity of government operations.

The emergency ordinance gives the Board of Supervisors the option to meet electronically when decisions must be made immediately where failure to do so could result in irrevocable public harm.

A draft emergency ordinance is attached for consideration; a motion approving the emergency ordinance is requested.

The emergency ordinance shall be effective immediately. This ordinance will expire after 60 days unless re-adopted by the Board of Supervisors after public notice in

accordance with Virginia Code Section 15.2-1427(F). In no event shall the ordinance be effective for more than 6 months.

Sample Motion: I move that the Board approve the 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.

Government Path

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| Does this require IDA action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require BZA action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does This require Planning Commission Action? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does this require Board of Supervisors action? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does this require a public hearing? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| If so, before what date? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Fiscal Impact Statement

County Impact

Notes

**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 16, 2020 at 08:41:37, in accordance with Virginia Code § 44-146.21, the Prince George County Director of Emergency Management declared a local state of emergency in Prince George County.

WHEREAS, on April 14, 2020, the Board of Supervisors of Prince George County, Virginia confirmed, pursuant to Virginia Code § 44-146.21 the declaration of local emergency made by the local director of emergency management on March 16, 2020; and

WHEREAS, the Board of Supervisors of Prince George County, Virginia 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, while the Board of Supervisors values transparency in government and public engagement, it also finds that emergency measures are necessary to mitigate the spread of COVID-19 and to protect the health, safety, and welfare of residents and employees, while still providing for government operations to continue during this state of emergency; 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 of Supervisors of Prince George County, Virginia 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, Virginia Code § 15.2-1200 provides the county with authority to adopt necessary regulations to prevent the spread of contagious diseases among its residents; and

WHEREAS, the Board of Supervisors also has the inherent authority to vary the county’s policies, procedures and practices to assure the continuity of government operations; 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 Prince George County, Virginia:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the Board of Supervisors, the Planning Commission, Board of Zoning Appeals, Board of Equalization (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, where decisions must be made immediately and where failure to do so could result in irrevocable public harm, 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 3 days in advance of the electronic meeting 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 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.

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 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 of Supervisors of Prince George County, Virginia 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 6 months. Upon rescission by the Board of Supervisors of Prince George County, Virginia 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.

This ordinance shall expire after 60 days unless re-adopted by the Board of Supervisors after public notice.

APPROVED:

Chairman, Board of Supervisors

CERTIFICATE OF VOTES

Record of the roll-call vote by the Board of Supervisors of Prince George County, on the Ordinance entitled **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** adopted by the Board of Supervisors of Prince George County, by a roll-call vote at a regular meeting held on April 14, 2020, at which a quorum was present and acting and after a public hearing thereof on the same date. The recorded roll-call vote of the Board of Supervisors was as follows:

	AYE	NAY	ABSTAIN	ABSENT

[SEAL]

Dated: _____

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County Administrator, Prince George County