

March 25, 2020

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, March 25, 2020, at 6:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. Due to the novel coronavirus (COVID-19) pandemic, the agenda and attendees were held to a minimum. The following members were present:

- BRENT V. TRUMBO, Election District #1
- SALLIE WOLFE-GARRISON, Election District #2
- RICK L. CHANDLER, Election District #3
- WILLIAM B. KYGER, JR., Election District #4
- MICHAEL A. BREEDEN, Election District #5

Also present:

- STEPHEN G. KING, County Administrator
- THOMAS H. MILLER, JR., County Attorney
- CASEY B. ARMSTRONG, Assistant County Administrator

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**CALL TO ORDER.**

Chairman Kyger called the meeting to order at 6:00 p.m. and explained that the meeting was being conducted in a different format that will only be used during emergency situations, such as the COVID-19 virus. The normal meeting format will resume once the emergency is lifted. Chairman Kyger noted some slight changes may be necessary as the County learns more. He expressed appreciation to the Technology staff for making the video transmission available via Zoom so citizens can view and hear the Board meeting from home.

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**INVOCATION  
PLEDGE OF ALLEGIANCE.**

Supervisor Wolfe-Garrison provided the Invocation and County Attorney Thomas H. Miller, Jr. led the Pledge of Allegiance.

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**FORMAT OF MEETING.**

Administrator King explained that the Board was holding a public meeting and ten citizens could attend the meeting in person. He indicated the public hearings originally scheduled during the March 25, 2020 meeting were not being conducted because of COVID-19 and the Governor’s requirement to limit person-to-person contact in an attempt to prevent the spread of the virus.

Administrator King noted the next Board meeting will be held on April 8, 2020. At that meeting, in addition to any business that needs to be heard, there will be a public hearing on the proposed FY2020-2021 budget. Staff recommends opening the public comment period early. If the Board agrees with receiving emails and public comments early, staff will determine how to make that happen. Citizens can provide emails and letters to the Board prior to the meeting. During the meeting, citizens may be able to provide comments via Zoom. There will be limited capacity for citizens to attend the April 8, 2020 meeting, as the County will ensure there is proper distance between the attendees. Staff may develop a schedule to allow a small group of citizens to attend the meeting at a set time, and permit a different group of citizens to join the meeting after the previous

group leaves the meeting. The details will need to be determined based on restrictions that may apply at the time and the limitations of technology.

As County Administrator, Mr. King serves as Rockingham County’s Director of Emergency Management. Mr. Miller indicated Mr. King is knowledgeable about public health and safety, and the County is determined to follow the required guidelines.

Chairman Kyger noted the Board plans to ratify a resolution declaring a local emergency. In doing so, the Board will abide by the state statute and provide Administrator King the authority to manage the Rockingham County government during the COVID-19 emergency, including how Board members conduct public business. Administrator King will make decisions regarding the nature of the public emergency based upon proper consultation with legal counsel, the Virginia Department of Health and other officials and state agencies. This is being done to keep all citizens’ health and safety in the forefront. The decision regarding how this will be accomplished and limitations for citizens will fall under the purview and guidance of the County Administrator until the COVID-19 pandemic is officially over.

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**APPROVAL OF MINUTES.**

On motion by Supervisor Trumbo, seconded by Supervisor Chandler and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board approved the minutes of the regular meeting of March 11, 2020.

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**INTENT TO ADOPT – RESOLUTION DECLARING A LOCAL EMERGENCY AND DISASTER EXISTS IN ROCKINGHAM COUNTY, VIRGINIA.**

Chairman Kyger explained that the emergency has already been declared and has been in effect. He read the Resolution, which requires ratification by the Board.

On motion by Supervisor Breedon, seconded by Supervisor Chandler, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board ratified the emergency as outlined in the following Resolution:

**RESOLUTION DECLARING A LOCAL EMERGENCY AND DISASTER EXISTS IN ROCKINGHAM COUNTY, VIRGINIA**

WHEREAS, the Board of Supervisors of ROCKINGHAM COUNTY, Virginia, does hereby find as follows:

1. That due to the outbreak of COVID-19, recognized around the world as a pandemic, ROCKINGHAM COUNTY, including the towns therein, is facing a condition of extreme peril to the lives, health, safety and property of the residents of ROCKINGHAM COUNTY;
2. That as a result of this extreme peril, the *proclamation* of the existence of an emergency and disaster is necessary to permit the full powers of government to deal effectively with this condition of peril.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Supervisors of ROCKINGHAM COUNTY, Virginia, proclaims, for purposes of state and federal law, that a local emergency and disaster now exists throughout ROCKINGHAM COUNTY and the towns therein; and

IT IS FURTHER RESOLVED, PROCLAIMED AND ORDERED that during the existence of this emergency and disaster the powers, functions, and duties of the Director of Emergency Management and the Emergency Management organization and functions of ROCKINGHAM COUNTY shall be those prescribed by the laws of the Commonwealth of

Virginia and the ordinances, resolutions, and approved plans of ROCKINGHAM COUNTY in order to mitigate the effects of said emergency.

Dated: March 25, 2020

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**INTENT TO ADOPT EMERGENCY ORDINANCE ON CONTINUITY OF GOVERNMENT.**

Mr. Miller reviewed the draft Intent to Adopt an Emergency Ordinance to Effectuate Continuity of the Government of Rockingham County, Virginia.

He noted state statutes are drafted following the aftermath of a flood that may last days; they are not drafted with the idea of a pandemic that may last weeks or months. A model ordinance was prepared by the Local Government Attorneys Association of Virginia, with a few local modifications to fit the County’s particular situation.

Mr. Miller indicated staff was recommending the Board adopt the ordinance on an emergency basis, but reaffirm the adoption of it within sixty days with regular notice and regular proceedings. It is proposed that be done at the April 8, 2020 Board meeting, Mr. Miller said. There will be public notice of the intent to readopt and ratify the Emergency Ordinance to Effectuate Continuity of the Government of Rockingham County, Virginia.

Supervisor Wolfe-Garrison asked about the differentiating time frame of the recitals on page 2 of the emergency ordinance that refer to continuity of government for a period not to exceed six months; and page 7, which indicates the provisions will remain in effect for 60 days.

Mr. Miller responded that the recital Supervisor Wolfe-Garrison was referring to is not “action taking”. The recital indicates the state code section can go up to a period not to exceed six months. Staff recommends including 60 days, but it could go six months, he said.

Chairman Kyger noted this is a very complicated and very important action that the Board is about to take. It will allow government to continue to govern. During times of emergency and crisis, it is essential to let government govern, he said. This action is not a regulation; it is simply to clarify how Rockingham County will conduct business for the next sixty days, and allow for the continuation of vital public health and safety services for the citizens of Rockingham County, to be directed by Director of Emergency Management Stephen King, Deputy Director of Emergency Management Casey Armstrong and Emergency Management Coordinator Fire Chief Jeremy Holloway.

Chairman Kyger requested that questions be sent to Board members via email so they can be forwarded to County Administrator King for his consultation and advice before the Board responds regarding any definitive action. Since the official spokesperson technically has been Mr. King, he asked Board Members to channel any questions received through Administrator King.

Chairman Kyger indicated Administrator King and Board members reviewed and provided feedback regarding a letter he prepared to be placed on the County website and provided to various media. He asked that citizens read the letter, which contains information regarding what is being asked of them.

On motion by Supervisor Trumbo, seconded by Supervisor Chandler, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board adopted the following Emergency Ordinance to Effectuate Continuity of Government:

**EMERGENCY ORDINANCE TO EFFECTUATE  
CONTINUITY OF GOVERNMENT  
OF  
ROCKINGHAM COUNTY, VIRGINIA**

**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 23, 2020, the Governor issued Executive Order Fifty-three, which gave direction and guidance on public and private in-person gatherings; 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 25, 2020, the Board of Supervisors of Rockingham County, Virginia (“the Board”) confirmed the declaration of local emergency made by the local director of emergency management on March 14, 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 “protect the health and safety of persons . . . and 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 Rockingham County, Virginia:

1. That the COVID-19 pandemic makes it unsafe for groups of people to assemble in one location including groups of people assembling for purposes of conducting meetings of public bodies. Public bodies, for purposes of this Ordinance, include the Board of Supervisors, the School Board, the Planning Commission, Board of Zoning Appeals, Board of Equalization, Economic Develop Authority, public utility authorities such as water, sewer and stormwater management authorities, and all local and regional boards, commissions, committees and authorities created by the Board or to which the Board appoints or nominates all or a portion of its members (collectively “Public Entities” and individually “Public Entity”). The COVID-19 pandemic makes it unsafe for Public Entities to conduct meetings in accordance with normal practices and procedures, including, at the discretion of each Public Entity, assembling a quorum together in one physical location.

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. In the event a Public Entity determines it can safely assemble a quorum in one location, the Chairman or Clerk, or designee, of the Public Entity shall cause the room in which it meets to be arranged and populated in a manner to best comply with social distancing guidelines set forth at the time of the meeting by responsible state and federal public health entities, and in consultation with and pursuant to the recommendations of the County’s Director of Emergency Management. At the time of adoption of this Ordinance, those guidelines, as they are to be applied to public meetings, prefer a gathering of no more than ten (10) persons at any one time, but allow for, in various situations, no more than ten (10) persons from the public, with Public Entity members and minimally necessary staff not counting toward the total of ten (10), and in all cases maintaining to the greatest extent possible a separation of six (6) feet between people. Public Entities conducting meetings pursuant to the limited physical attendance anticipated in this subparagraph shall make arrangements with County Information Technology (IT) staff to provide for participation by real time electronic means, including participation in public hearings, as more fully described in the following subparagraphs that address meeting by electronic means only.

B. In the event a Public Entity determines assembling a quorum in one location is unsafe, 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

1. 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

2. 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; note whether Public Entity members were physically 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

3. 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

4. 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

5. The minutes of all electronic meetings 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 Public Entities shall give all due consideration to postponing taking action on any matter that is not essential to providing for continuity in government until such time as normal procedures and practices may resume. What is essential to providing continuity shall be left to the reasonable determination of the Public Entity and, in the case of a Public Entity that acts as a legislative body, the determination of being essential shall be considered a legislative determination, as understood in Virginia law, and shall stand unless shown to be clearly unreasonable, arbitrary and capricious.

**IT IS FURTHER ORDAINED** that notwithstanding any provision of law, regulation, policy, or contract 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 and non-essential public hearings and action items of Public Entities may be postponed and that public notice shall be 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 Rockingham County are encouraged and authorized 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 set forth 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, as set forth above.

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

**ADOPTED AND EFFECTIVE** this 25<sup>th</sup> day of March, 2020.

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Chairman Kyger stated the County will follow the guidance in the ordinance for at least the next sixty days.

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**CONSIDERATION OF RESOLUTION REQUESTING DELAY OF 2020 CENSUS.**

Chairman Kyger previously asked for consideration of a resolution requesting that the 2020 Census be delayed. Since his request, the Bureau of Census extended the Census deadline to August 14, 2020, and they are considering a further extension, he said.

Chairman Kyger encouraged citizens to provide their census information on-line or request a form by mail. He apologized that the locations established to make it convenient for citizens to provide census information electronically are not currently available. He suggested citizens use their cell phones or ask a relative, friend or neighbor who has a computer to assist them. Chairman Kyger said completing the Census is very important and is part of the continuity of government.

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**STAFF REPORTS.**

Chairman Kyger asked for a motion of consent to adopt all staff reports and committee reports. Supervisor Chandler noted the two action items under staff reports on the agenda will be addressed.

On motion by Supervisor Chandler, seconded by Supervisor Breeden, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; all the staff reports and committee reports on the agenda, except for the two items which required action were adopted by consent.

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**FINANCE DIRECTOR’S STAFF REPORT.**

On motion by Supervisor Breeden, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board declared the following items surplus to be disposed of through the public surplus auction:

**Items to Declare Surplus – March 2020**

Description	Quantity
2008 Honda Accord	1
2012 Jeep Liberty	1
2012 Jeep Liberty	1
2008 Ford Crown Victoria	1
2011 Ford Crown Victoria	1
2005 Chevrolet Blazer	1
2000 Jeep Cherokee	1
1998 Ford F150	1
1995 Jeep Cherokee	1
2007 Ford Explorer	1
2001 Dodge Ram 2500	1
2000 Chevrolet K2500	1
2003 Dodge Ram 1500	1
2001 Lexus GS430	1
2004 Dodge Intrepid	1

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**PUBLIC WORKS COMMITTEE REPORT.**

On motion by Supervisor Chandler, seconded by Supervisor Trumbo, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board authorized staff to accept the \$397,170 bid from Baker Roofing Company to replace the elevated portion of the Rockingham/Harrisonburg Regional Jail roof.

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**CLOSED MEETING.**

On motion by Supervisor Wolfe-Garrison, seconded by Supervisor Chandler, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board recessed the meeting from 6:35 p.m. to 7:27 p.m., for a closed meeting pursuant to Section 2.2-3711.A(3), Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body; and (7), Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body.

Chairman Kyger announced that no action would be taken when the Board comes out of the closed meeting. He explained that the Board will vote to affirm the Board only discussed the items for which it went into the closed meeting. Following that there will be a declaration to recess the meeting before or until the meeting on April 8, 2020. The meeting will not be adjourned; it will be recessed in case the Board needs to meet before April 8, 2020. If the Board does not need to meet as a group or body, at the beginning of the April 8, 2020 meeting, this meeting of March 25, 2020 will be adjourned. The media will be notified if there are any meetings before April 8, 2020, Chairman Kyger said.

MOTION: SUPERVISOR CHANDLER  
SECOND: SUPERVISOR TRUMBO

RESOLUTION NO: 20-03  
MEETING DATE: March 25, 2020

**CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Rockingham County Board of Supervisors has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board of Supervisors that such Closed Meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies; and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Board of Supervisors.

VOTE:  
AYES: BREEDEN, CHANDLER, KYGER, TRUMBO, WOLFE-GARRISON  
NAYS: NONE  
ABSENT:

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**RECESS.**

Chairman Kyger recessed the meeting at 7:28 p.m.

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Chairman