

**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.