

Issue Analysis Form



Date: May 26, 2020
Continuity of Operations
Associated with Pandemic
Item: 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.

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.

On April 14, 2020, the Board of Supervisors of Prince George County adopted an Emergency Continuity of Operations Associated with Pandemic Disaster Ordinance. This ordinance would expire in 60 days unless re-adopted by the Board of Supervisors after public notice in accordance with Virginia Code Section 15.2-1427(F).

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

In no event shall the ordinance be effective for more than 6 months.

Sample Motion: I move that the Board approve the 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 the Pandemic Disaster.

Government Path

- Does this require IDA action? Yes No
- Does this require BZA action? Yes No
- Does This require Planning Commission Action? Yes No
- Does this require Board of Supervisors action? Yes No
- Does this require a public hearing? Yes No
- If so, before what date? Yes No

Fiscal Impact Statement

County Impact

Notes

**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 9, 2020, the Board of Supervisors of Prince George County, Virginia confirmed, pursuant to Virginia Code § 44-146.21 the amended declaration of local emergency made by the local director of emergency management on March 16, 2020; and

WHEREAS, on April 14, 2020, the Board of Supervisors of Prince George County, Virginia adopted an emergency ordinance for continuity of operations associated with the pandemic disaster; and

WHEREAS, the emergency ordinance would expire in 60 days unless re-adopted by the Board of Supervisors after public notice in accordance with Virginia Code § 15.2-1427(F); 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, on March 23, 2020, Governor Northam issued Executive Order Number Fifty-Three which among other items further restricts the number of persons who can gather in one place in public or private to less than 10 people; pursuant to Section 9(e) of this Executive Order, nothing in the order shall limit the operation of government; 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 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 Industrial Development Authority, 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 essential functions need to be considered, 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 ordinance shall remain in full force and effect for a period of 6 months unless amended, rescinded or readopted by the Board of Supervisors of Prince George County. Upon rescission by the Board of Supervisors of Prince George County, Virginia 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 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 **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 May 26, 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: _____

County Administrator, Prince George County

**NOTICE OF
PUBLIC HEARING
COUNTY OF PRINCE
GEORGE**

Notice is hereby given to all interested persons that the Prince George Board of Supervisors will hold a public hearing on May 26, 2020 beginning at 7:30 p.m. in the Board of Supervisors Meeting Room, Third Floor of the County Administration Building, 6602 Courts Drive, Prince George, Virginia, (located at the intersection of Laurel Springs Road and Courts Drive in the County Government Complex) pursuant to § 15.2-1427, Code of Virginia (1950), as amended, to consider:

Re-adoption of an 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.

Re-adoption of an Emergency Ordinance to Waive Penalty and Interest Until August 31, 2020 on Real Estate Taxes, Personal Property Taxes and Stormwater Utility Fees.

Re-adoption of an Emergency Ordinance to Waive Penalties and Interest for Payments for Water and Wastewater Services.

Re-adoption of an Emergency Ordinance to Waive Penalties and Interest until August 20, 2020 on Meals Taxes and Transient Occupancy Taxes.

Copies of the proposed Ordinances are available for review in the County Administrator's Office (Tel. 722-8600), 6602 Courts Drive, Prince George, Virginia. All interested persons shall be given an opportunity to be heard.

Percy C. Ashcraft
County Administrator