

# Issue Analysis Form

**Date:** September 8, 2020  
Continuity of Operations  
Associated with Pandemic  
Disaster Ordinance

**Item:**

**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.

On May 26, 2020, after public notice, the Board of Supervisors of Prince George County re-adopted the Emergency Continuity of Operations Associated with Pandemic Disaster Ordinance. This ordinance will expire on October 14, 2020 unless amended, rescinded or re-adopted by the Board of Supervisors after public notice in accordance with Virginia Code Section 15.2-1427(F).

Our office recommends the re-adoption of the Ordinance since the local state of emergency is still in effect.

Under the re-adopted Continuity Ordinance, the County Administrator is authorized to (i) modify, limit or suspend County programs, functions or services as needed to ensure the effective continuity of government; (ii) restrict County staff and public from entering or congregating around County-owned buildings, facilities and real property as necessary to ensure the health, safety and welfare of the public and staff; and (iii)

Regulate the use of such buildings, facilities and real property for the public health, safety and welfare.

A draft ordinance is attached for consideration; a motion advertising 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 advertisement of 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?                  | <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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| If so, before what date?                       | <input type="checkbox"/> Yes            | <input type="checkbox"/> 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**, on May 26, 2020, the emergency ordinance was re-adopted by the Board of Supervisors after public notice in accordance with Virginia Code § 15.2-1427(F); and

**WHEREAS**, the provisions of the continuity ordinance remain in full force and effect for a period of 6 months until October 14, 2020, unless amended, rescinded or readopted by the Board of Supervisors of Prince George County.

**WHEREAS**, the Board of Supervisors of Prince George County, Virginia finds that COVID-19 continues to constitute a real and substantial threat to public health and safety and

continues to constitute 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 still 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 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 County Administrator is authorized to (i) modify, limit or suspend County programs, functions or services as needed to ensure the effective continuity of government; (ii) restrict County staff and the public from entering or congregating around County-owned buildings, facilities and real property as necessary to ensure the health, safety and welfare of the public and staff; and (iii) regulate the use of such buildings, facilities and real property for the public health, safety and welfare.

IT IS FURTHER ORDAINED, that the provisions of this ordinance shall remain in full force and effect until the earlier of its repeal or six months from the date of adoption. The ordinance may be readopted if the Board deems it necessary. Upon repeal or expiration of this ordinance, normal practices and procedures of government shall resume.

IT IS FURTHER ORDAINED that nothing in this ordinance shall prohibit Public Bodies from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration.

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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 September 22, 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:

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>

[SEAL]

Dated: \_\_\_\_\_

\_\_\_\_\_  
County Administrator, Prince George County

Board of Supervisors  
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 8th day of September, 2020:

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Present:

Donald Hunter, Chairman  
Alan R. Carmichael, Vice-Chair  
Floyd M. Brown, Jr.  
Marlene J. Waymack  
T. J. Webb

Vote:

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On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, which carried unanimously, the following Resolution was adopted:

RESOLUTION; AUTHORITY TO ADVERTISE AN 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

NOW, THEREFORE, BE IT RESOLVED That the Board of Supervisors of the County of Prince George this 8<sup>th</sup> day of September, 2020, does hereby authorize the advertisement of a public hearing for an 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.

A Copy Teste:

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Percy C. Ashcraft  
County Administrator