



AN ORDINANCE ADOPTED BY THE LANCASTER COUNTY BOARD OF SUPERVISORS

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 11, 2020, the World Health Organization declared the novel Coronavirus (COVID-19) outbreak a pandemic; and

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 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 18, 2020, in accordance with Virginia Code § 44-146.21, the local director of emergency management for Lancaster County declared a local emergency; and

WHEREAS, the Lancaster County Board of Supervisors convened a special meeting using electronic participation at 3:00 pm on April 1, 2020 and confirmed, pursuant to Virginia Code § 44-146.21 the declaration of emergency in Lancaster County; and

WHEREAS, the Board of Supervisors 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 “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 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 Lancaster 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, School Board, Planning Commission, Board of Zoning Appeals, Community Policy Management Team and all local and regional boards, commissions,

committees and authorities created by the Board of Supervisors or to which the Board of Supervisors appoints all or a portion of its members (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 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 and provided 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 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 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 is aware of how and when to present its views.

IT IS FURTHER ORDAINED, that, in order to ensure the health, safety and welfare of the public or county staff, the County Administrator of Lancaster County is empowered to restrict members of the public from entering or congregating around county- owned buildings, facilities and real property and may cancel, postpone or reschedule any events scheduled for any county- owned building, facility or property.

IT IS FURTHER ORDAINED, that to the extent of unobligated funds available in excess of appropriations in the approved budget, the County Administrator of Lancaster County is empowered to enter into contracts and incur obligations necessary to protect the health and safety of persons and property and to provide emergency assistance to persons affected by this disaster and may proceed with such contracts and expenditures without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring obligations, employing workers, renting equipment, purchasing supplies and materials, and other expenditures of public funds, provided, however that he shall keep the members of the Lancaster County Board of Supervisors apprised, in advance, of any such proposed expenditures.

IT IS FURTHER ORDAINED, that the County Administrator of Lancaster County may temporarily take any of the following actions: waive or reduce fees imposed by County Ordinance; waive enforcement, in whole or in part, of any County Ordinance and modify, limit, waive suspend or amend any County program, service, function, process or procedure on a uniform basis, provided, however, that he shall keep the members of the Lancaster County Board of Supervisors apprised, in advance, of any such proposed actions,


IT IS FURTHER ORDAINED, that each incorporated town within the boundaries of Lancaster County is encouraged, authorized and/or directed 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 of Supervisors 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 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.

Adopted this 1st day of April 2020

Attest: 

Don G. Gill
County Administrator