



**APPOMATTOX COUNTY  
BOARD OF SUPERVISORS**

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**AN ORDINANCE TO PERMIT PUBLIC BODIES OF THE COUNTY TO ASSEMBLE ELECTRONICALLY, TO MODIFY PUBLIC MEETING AND PUBLIC HEARING PRACTICES AND PROCEDURES, TO EFFECTUATE TEMPORARY CHANGES IN CERTAIN DEADLINES, AND TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH THE 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 rising from the novel coronavirus (COVID-19) pandemic; 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**, 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 a county may convene solely by electronic means “without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency,” but only if “the purpose of the meeting is to address the emergency”; and

**WHEREAS**, the catastrophic nature of the declared emergency makes it impracticable and unsafe for certain public bodies of the County to assemble a quorum in a single location; and

**WHEREAS**, the open public meeting requirements of the Virginia Freedom of Information Act are limited only by a properly claimed exemption provided under that Act of “any other statute”; and

**WHEREAS** federal and state guidance from the President of the United States and the Governor of Virginia have recommended suspension of public gatherings of more than ten persons; and

**WHEREAS**, it is imperative that the Board of Supervisors and other public bodies of this county would be capable of continuing to assemble, both to address the emergency and to carry on the ordinary functions of government; and

**WHEREAS**, Virginia Code § 15.2-1413 provides as follows: “Notwithstanding any contrary provision of law, general or special, any locality may, by ordinance, provide a method to assure continuity in its government, in the event of an enemy attack or other disaster. Such ordinance shall be limited in its effect to a period not exceeding six months after any such attack

or disaster and shall provide for a method for the resumption of normal governmental authority by the end of the six-month period”; and

**WHEREAS**, the Code of Virginia clearly contemplates that a “disaster” includes an “epidemic,” as seen in Va. Code § 15.2-1724; and the courts of Virginia have held that “[w]hen attempting to define terms in one part of the Code,” the words should be read with “a view toward harmonizing it with other statutes,” because “the Code of Virginia is one body of law.” *Marsh v. Commonwealth*, 32 Va. App. 669, 677, 530 S.E.2d 425, 430 (2000) (quoting *Branch v. Commonwealth*, 14 Va. App. 836, 839, 419 S.E.2d 422, 425 (1992)); and

**WHEREAS**, on Friday, March 13, 2020, the County’s Director of Emergency Management issued a Declaration of Emergency, applicable throughout the entire County of Appomattox, Virginia pursuant to Virginia Code §§ 44-146.21 and 15.2-1413; and

**WHEREAS**, Virginia Code § § 44-146.21(C) provides that a local director of emergency management 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

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of the County of Appomattox, that:

1. The Board of Supervisors, the Planning Commission, and any other County board, commission, or public body may, at their election, conduct any meetings and act upon agenda items before them for the duration of the emergency declaration thereafter, whether under normal procedures or by solely electronic means, whether to address the present state of emergency (Va. Code § 2.2-3708.2(A)(3)), or to address any other matter (pursuant to this ordinance adopted in conformance with Va. Code § § 15.2-1413). When conducting a meeting by solely electronic means, the Board of Supervisors, Planning Commission, board, commission, or other public body shall nonetheless:
  - a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;
  - b. Make arrangements for public access to such meeting, whether physically or electronically;
  - c. State in the minutes the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held; and
  - d. Otherwise comply with the provisions of Virginia Code § 2.2-3708.2 (except for any requirement that would otherwise require a quorum of the public body to be physically assembled).

2. Agenda items scheduled or proposed to be considered for the duration of Governor Ralph S. Northam’s Emergency Declaration not to exceed six (6) months by the Board of Supervisors, Planning Commission, or any other County board, commission, or public body shall be deemed continued for the duration the local

emergency declaration not to exceed six (6) months, if the Board of Supervisors, Planning Commission, or other County board, commission, or public body does not take action on the agenda item during the referenced timeframe, including those agenda items for which state or local law requires an affirmative action to be taken within a statutorily-mandated timeframe and the failure to act can be deemed an approval; and

3. In the event that a public hearing matter is deemed by the applicable public body to present a critical government function essential to continuity of government for the duration of the emergency declaration, the public hearing may be conducted by an open public comment period called for during an electronic meeting, in which case, action by the governing body shall be continued to a subsequent meeting pending receipt of such comments. Public comments shall be received by written submittal (including but not limited to email) delivered to the clerk of the Board or designee during the period stated in the call for public comments which comment period shall be a minimum of six calendar days.

4. The Director of Emergency Management's Declaration of Emergency is hereby ratified, pursuant to subsection A of Va. Code § 44-146.21.

5. An emergency is deemed to exist, and this entire ordinance shall be effective upon its adoption. The Board of Supervisors reserves the right by subsequently enacted ordinance to rescind or amend this ordinance.

6. When the state of emergency declared by the Governor is no longer in effect, the provisions of this ordinance shall cease in their operation; but all ordinances, resolutions, agreements, contracts, or other decisions of public bodies made by public bodies of this County at meetings held in accordance with the provisions of this resolution shall continue in their effect.

ADOPTED by the Board of Supervisors of Appomattox County on this \_\_\_\_ day of March, 2020.

APPROVED:

\_\_\_\_\_  
Chairman of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM: