

ORDINANCE NO. 2020- _____

AN ORDINANCE IMPLEMENTING EMERGENCY PROCEDURES TO ENSURE CONTINUITY OF CITY GOVERNMENT AND, IN PARTICULAR, TO MODIFY PUBLIC MEETING AND PUBLIC PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH THE COVID-19 PANDEMIC DISASTER

WHEREAS, on March 12, 2020, the Governor of Virginia issued Executive Order Fifty-One (the “Governor’s Executive Order”) declaring a state of emergency for the Commonwealth of Virginia arising from the COVID-19 pandemic and further acknowledging the existence of a disaster, as defined by Virginia Code § 44-146.16, arising from the public health threat presented by this spreading communicable disease; and

WHEREAS, on March 16, 2020, effective at 10:00 a.m. and extending through June 10, 2020, at 12:01 a.m. (the “Emergency Period”), the City Manager, in his capacity of Director of Emergency Management, issued a Declaration of Local Emergency – COVID-19 (the “City Declaration”) applicable throughout the entire City of Fairfax, Virginia (the “City”), pursuant to authority granted pursuant to City Code § 33-11, and Virginia Code §§ 44-146.21 and 15.2-1413, which City Declaration was unanimously consented to the by the City Council on March 17, 2020, pursuant to City Resolution No. R-20-07, as required by applicable law; and

WHEREAS, there have been confirmed and suspected cases of COVID-19 within the Commonwealth of Virginia and the City, specifically; and

WHEREAS, Virginia Code § 15.2-1413 provides specific authorization for any locality to, by ordinance, provide a method at variance with general or special laws to assure continuity of government in the event of a disaster; and

WHEREAS, the COVID-19 pandemic and local outbreaks of COVID-19 constitute an emergency and disaster as contemplated by Virginia Code § 15.2-1413; and

WHEREAS, Virginia Code § 2.2-3708.2(A)(3) allows, under certain procedural requirements including public notice and access, that members of City Council may convene solely by electronic means “to address the emergency;” 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 or “any other statute;” and

WHEREAS, current guidance has recommended suspension of public gatherings where possible and the recommendations may be further modified or public gatherings may be prohibited in their entirety, depending on the evolving nature of this emergency and disaster.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fairfax that any process, procedure or matter which requires the physical presence of the public in a city building or facility that the City Director of Emergency Management or other authority with jurisdiction over such building or facility has declared, or in the future may declare, to be closed to the public is hereby suspended during the pendency of the City Declaration; and

IT IS FURTHER ORDAINED that:

- a. Agenda items scheduled, or proposed to be considered, during the pendency of the City Declaration, by the City Council, Planning Commission or any other City board or commission, shall be deemed continued for the duration of the local emergency under the City Declaration, but only if the City Council, Planning Commission or other City board or commission, as applicable, does not take action on the agenda item during the Emergency Period. This shall include those agenda items for which state and/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;
- b. Meetings of the City Council, Planning Commission or any other City boards and commissions may be held through electronic communications means with or without a quorum of members physically present in a single location, provided that notice of such meeting(s) continues to be given in accordance with applicable laws;
- c. Notwithstanding the foregoing, the City Council, Planning Commission or any other City boards and commissions may, at their election and in their sole discretion, continue to conduct previously scheduled meetings or special or emergency meetings and act upon scheduled or proposed agenda items before them for the duration of the City Declaration under normal procedures or by solely electronic means in compliance with public notice, access, and other requirements of Virginia Code § 2.2-3708.2(A)(3) to the extent practicable;

- d. Such meetings may be held without permitting members of the public to be physically present in a central location or in the same physical location as any or all of the City Council, Planning Commission, board or commission members, so long as alternative arrangements, reasonable under the circumstances, for public access to such meetings are made. Such alternative arrangements may include, but not be limited to, any one or combination of electronic means, including but not limited to video, audio or telephonic broadcast.
- e. In the event that an agenda item requires a public hearing under applicable law, public comment and input will be solicited and received by written means prior to vote on such matter. Public comments may also be solicited and received by electronic and/or telephonic means if possible and practical, and any such comments shall be provided to members and made a part of the record of such meeting.

IT IS FURTHER ORDAINED that City Council reserves the right by subsequently enacted ordinance to rescind or amend this ordinance. This ordinance is enacted pursuant to the authority granted by City Charter § 5.6(e), and the City Council hereby finds and declares that this ordinance is pertinent to the emergency declared in the City Declaration.

This ordinance shall be effective upon its adoption and shall be operative until repealed or modified by the City Council, or as otherwise provided by law.

INTRODUCED:

PUBLIC HEARING:

ADOPTED:

Mayor

Date

ATTEST:

City Clerk

VOTE:

Councilmember DeMarco _____
Councilmember Lim _____
Councilmember Miller _____
Councilmember Passey _____
Councilmember Stehle _____
Councilmember Yi _____

SAMPLE MOTION

“I MOVE TO INTRODUCE AN ORDINANCE IMPLEMENTING EMERGENCY PROCEDURES TO ENSURE CONTINUITY OF GOVERNMENT AND, IN PARTICULAR, TO MODIFY PUBLIC MEETING AND PUBLIC PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH THE COVID-19 PANDEMIC DISASTER.

I FURTHER MOVE TO WAIVE THE FIRST READING AND TO ENACT THE ORDINANCE AS PRESENTED.”