

MOTION:

SECOND:

RE: AUTHORIZING THE ADOPTION OF PROCEDURES FOR ELECTRONIC PUBLIC MEETINGS AND PUBLIC HEARINGS DURING COVID-19 PANDAMIC DISASTER

ACTION:

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 31, 2020, the Board of County Supervisors, the governing body of Prince William County ("Board") confirmed the declaration of local emergency made by the local director of emergency management on March 16, 2020, specifically finding that the COVID-19 Pandemic constitutes a "disaster" as defined in Va. Code § 44-146.16, being a "communicable disease of public health threat"; and

WHEREAS, Va. 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 (6) months; and

WHEREAS, on March 31, 2020, the Board, pursuant to Virginia Code §15.2-1413, adopted 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 ("Emergency Ordinance"); and

WHEREAS, through its Emergency Ordinance, the Board again specifically found that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a "disaster" as defined by Va. Code § 44-146.16, being a "communicable disease of public health threat," (a copy of which is attached hereto), and

WHEREAS, through its Emergency Ordinance, the Board further found that the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies, including the Board and all local and regional boards, commissions, committees and authorities created by the Board or to which the Board 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 and authorized the holdings of meetings through electronic means without a quorum of the members physically present in a single location; and

WHEREAS, through its Emergency Ordinance, the Board, to the extent permitted by law, adopted certain procedures to ensure the continuity of government during the COVID-19 Pandemic disaster ("Continuity Procedures"), suspended any deadlines applicable to Public Entities and their staff during the COVID-19 disaster, and authorized Public Entities, at their discretion, to postpone non- emergency public hearings and action items during the disaster; and

WHEREAS, the Potomac and Rappahannock Transportation Commission, being a public body [created by the Board pursuant to Va. Code § 33.2-1900 and some of whose members are appointed by the Board] is a Public Entity included within the scope of the Emergency Ordinance, and is specifically identified therein; and

WHEREAS, enacted Budget Bill amendments HB 29 and HB 30, in April 2020, provide additional authority for any public body, including any state, local, [or] regional body, to meet by electronic communication without a quorum physically assembled in one location when the Governor has declared a state of emergency; and

NOW, THEREFORE, BE IT RESOLVED that the Potomac and Rappahannock Transportation Commission ("Commission") hereby incorporates by reference the Emergency Ordinance provisions and Continuity Procedures that authorize the holding of electronic meetings; and

BE IT FURTHER RESOLVED that the nature of the declared emergency makes it impracticable and unsafe for the Commission to assemble in a single location during the COVID-19 pandemic; and

BE IT FURTHER RESOLVED that the purpose of the meeting is to discuss or transact business statutorily required or necessary to continue operations of the Commission and the discharge of the Commission's lawful purposes, duties, and responsibilities; and

BE IT FURTHER RESOLVED that the Commission hereby authorizes and directs its officers and staff to take all steps reasonably necessary or appropriate to implement applicable Continuity Procedures and to develop any specific procedures as applicable and appropriate for the Commission in holdings any electronic meetings when a quorum is not physically present to include public notice and access to the meetings in accordance with HB 29 and 30; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon adoption and this Resolution and the Emergency Ordinance provisions and Continuity Procedures that authorize the holding of electronic meetings shall remain in effect during the declared emergency and the pendency of the Emergency Ordinance including for any applicable period upon the re-adoption of the Emergency Ordinance by Board.

Votes: Ayes: Abstain: Nays:

Absent from Vote:

Alternate Present Not Voting:

Absent from Meeting:

MOTION: BAILEY

**March 31, 2020
Regular Meeting
Ord. No. 20-10**

SECOND: FRANKLIN

RE: ADOPT EMERGENCY ORDINANCE TO PROVIDE CONTINUITY OF GOVERNMENT IN THE EVENT OF AN ENEMY ATTACK OR OTHER DISASTER; DIRECT THE CLERK OF THE BOARD TO ADVERTISE AND SCHEDULE A PUBLIC HEARING TO CONSIDER RE-ADOPTION OF THIS ORDINANCE ON A PERMANENT BASIS; FIND THAT A DISASTER EXISTS CREATED BY COVID-19 AND INVOKE THIS EMERGENCY ORDINANCE TO PROVIDE CONTINUITY OF GOVERNMENT DURING THE COVID-19 DISASTER

ACTION: APPROVED

WHEREAS, the Virginia General Assembly recognizes that the Prince William Board of County Supervisors ("Board") must continue to govern in emergency circumstances to secure and promote the health, safety, and general welfare of the County and members of the public, and in doing so enacted Section 15.2-1413, VA Code Ann., which states: "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, pursuant to Section 15.2-1427, VA Code Ann., the Board may adopt emergency ordinances without prior notice, provided the emergency ordinance shall not be enforced for more than sixty (60) days unless readopted in conformity with the provisions of the Virginia Code; and

WHEREAS, the Board of County Supervisors wishes to adopt an emergency ordinance to provide continuity of government in the event of an enemy attack or other disaster; and

WHEREAS, on January 31, 2020, the United States Health and Human Services Secretary declared a public health emergency for the entire United States to aid the healthcare community in responding to Novel Coronavirus, (COVID-19); and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID- 19 outbreak a pandemic; and

WHEREAS, on March 12, 2020, Governor Ralph S. Northam declared a state of emergency in the Commonwealth of Virginia due to COVID-19, a communicable disease of public health threat, and issued Executive Order Fifty-One and acknowledged the existence of a disaster as defined by Virginia Code Section 44-146.13, *et. seq.*, arising from the public health threat presented by a communicable disease anticipated to spread; and

March 31, 2020
Regular Meeting
Ord. No. 20-10
Page Two

WHEREAS, on March 13, 2020, Donald J. Trump, the President of the United States, found and proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020; and

WHEREAS, on March 16, 2020 the County Executive, acting in his capacity as Director of Emergency Management, declared a local emergency for Prince William County, which was required to be confirmed by the Board at its next regular, special, or emergency meeting called within forty-five days of the County Executive's action; and

WHEREAS, on March 17, 2020, Governor Northam and the State Health Commissioner declared a public health crisis due to COVID-19 and required/mandated all restaurants, fitness centers and theatres to reduce seating capacity to 10 patrons, or close, which order/declaration was subsequently amended; 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, there have been multiple confirmed cases of COVID-19 among Prince William County residents; and

WHEREAS, on March 31, 2020, the Prince William County Board of County Supervisors confirmed the Declaration of Local Emergency and amended the Declaration to include a finding that the anticipated effects of COVID-19 constitute a disaster for the entirety of Prince William County, as that term is described in Sections 15.2-1413 and 44-146.13, *et. seq.*, VA Code Ann.; and

WHEREAS, on March 20, 2020, the Virginia Attorney General affirmed that Section 15.2-1413, VA Code Ann., authorizes the Board to, by ordinance, provide a method at variance with general or special laws to assure continuity of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, Virginia Code Section 2.2-3708.2(A)(3) allows, under certain procedural requirements, including public notice and access, that members of Board of County 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 are limited only by a properly claimed exemption provided under that Act or "any other statute;" and

WHEREAS, the infectious nature of COVID-19 may make it unsafe to physically assemble a quorum of this Board or any entity listed below, in a single location, and/or to assemble members of the public in a single location, making it difficult or impossible for this Board, or the entities listed below to conduct meetings in accordance with normal practices and procedures; and

WHEREAS, the Board recognizes and finds that emergency action is necessary at this time, and the Board finds that such emergency ordinance secures and promotes the health, safety, and general welfare of the County and members of the public; and

WHEREAS, this Ordinance establishes methods to assure continuity in Prince William County Government, including the Board of County Supervisors' procedures for meetings during an enemy attack, a disaster, crisis or emergency, and during the COVID-19 emergency. These provisions are intended to ensure the Board's ability to conduct necessary public business in a manner consistent with Virginia state law and federal, state and local health directives and guidance, all while maintaining transparency and public participation to the greatest extent feasible;

NOW, THEREFORE, BE IT ORDAINED that in accordance with Section 15.2-1413, VA Code Ann., notwithstanding any contrary provision of law, general or special, the following emergency procedures are adopted to ensure continuity of government during the pendency of the enemy attack or other disaster, and the Prince William Board of County Supervisors hereby adopts this Emergency Continuity of Government Ordinance to be utilized upon a finding by the Board of a specific enemy attack or disaster, in accordance with the Virginia Code;

BE IT FURTHER ORDAINED that the Board finds an emergency exists and this Ordinance shall be effective immediately upon adoption of this Ordinance and shall be effective for sixty (60) days unless sooner readopted, amended, or repealed by the Board of County Supervisors;

BE IT FURTHER ORDAINED that the Board hereby directs its Clerk to duly advertise and schedule a public hearing, if practicable, before the expiration of sixty (60) days from the date of this emergency Ordinance, for the purpose of considering the re-adoption of this Ordinance on a permanent basis;

BE IT FURTHER ORDAINED that pursuant to this Emergency Continuity of Government Ordinance, when the Board finds there is an enemy attack or disaster such that this Emergency Continuity of Government Ordinance shall be invoked, the following procedural provisions, in consultation with the County Attorney's Office, shall apply:

March 31, 2020
Regular Meeting
Ord. No. 20-10
Page Four

1. For any meeting at which the Board or other entities listed below transacts public business with any purpose other than addressing the attack, emergency, crisis, or disaster, or assuring the continuity of government, the Board and the entities listed below will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act; and
2. Meetings of the Board, and to the extent allowed by law, all local public bodies, boards, commissions, committees, authorities, and other public bodies that are appointed by and report to the Board, that are necessary for the continuity of its government, may be held through electronic communication means without a quorum of members physically present in a single location, provided that, to the extent possible, notice of such meetings is given in accordance with applicable laws; and
3. To the extent allowed by law, meetings of all local public bodies, boards, commissions, committees, authorities and other public bodies that are necessary for the continuity of County government, to include, but not limited to, the Prince William County School Board, the Prince William County Service Authority, the Prince William-Manassas Regional Jail Board, the Potomac and Rappahannock Transportation Commission, the Virginia Railway Express Operations Board, the Northern Virginia Transportation Authority, and the Industrial Development Authority, may be held through electronic communication means without a quorum of members physically present in a single location, and any County appointee, designee, or representative to such entities are authorized to participate in such meeting electronically, provided that notice of such meetings is given in accordance with applicable laws; and
4. Such meetings that are necessary for the continuity of County government may be scheduled when adopted by resolution during a meeting, may be held in lieu of a previously scheduled meeting, or may be held in the same manner as other regular, special or emergency meetings; and
5. Such meetings, subject to Federal and State health and safety standards and guidance, may be held without permitting members of the public to be physically present in a central location or in the same physical location as the Board or any of the entities listed above, so long as alternative arrangements for public access to such meetings and public participation in such meetings are made. Such alternative public access may be electronic, including, but not limited to, audio, telephonic, or video broadcast; and
6. In no event shall any action taken by the Board or the other entities listed above in any regular, emergency, special or electronic meeting unless a quorum is participating in the meeting; and

7. Before any action may be taken on any item at a meeting for the continuity of government, the Board and the entities listed above must first approve that the item or items are necessary to address the attack, emergency, crisis or disaster, or to assure the continuity of government and that the usual procedures cannot be implemented safely or practically. A motion may be made and voted upon before each item or as to the entire agenda, as may be determined by the Chair; and
8. For any such matter requiring a public hearing by law, public comment will be solicited and received via written or electronic communication prior to the vote on the matter. All such comments will be provided to the members of the Board and made a part of the record of the meeting; and
9. Notwithstanding the foregoing, the Board and entities listed above may, at their election, conduct previously scheduled regular meetings, emergency meetings, or special meetings and act upon scheduled or purposed agenda items before them for the duration of the attack, crisis, disaster, and/or emergency declaration thereafter, under normal procedures or by solely electronic means in compliance with public notice, access, and other requirements of Virginia Code Section 2.2- 3708.2(A)(3) to the extent practicable; and
10. Notwithstanding any provision of law, regulation, or public policy to the contrary, any deadlines requiring action by the Board and entities listed above, its officers (including Constitutional Officers) and employees of its organization shall be suspended during this attack, emergency, crisis and/or disaster, however, the Board and the entities listed above, 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; and
11. Each incorporated town within the boundaries of Prince William County, Virginia is encouraged, authorized and/or directed to declare its own state of local emergency or 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; and
12. During the continuance of the attack, crisis, disaster, and/or emergency, the Board and the entities listed above may alter meeting schedules as needed to protect the safety and health of the members of the entity, staff, and members of the public; and
13. Agenda items that are scheduled to be heard by the Board or the entities listed above that are not deemed necessary for operation of the government during the duration of the attack, crisis, disaster, and/or emergency shall be deemed continued for the duration of the Declaration of Local Emergency not to exceed six (6) months, if the Board or the entities listed above do not take action on the agenda item during the referenced timeframe. This may include those agenda items for which federal, State or County law or regulation requires an affirmative action to be taken within a statutorily mandated timeframe and the failure to act can be deemed an approval; and

14. Any land use matter which is not acted upon by the Board or Planning Commission during the attack/disaster/crisis/emergency shall be continued for the duration of the attack/disaster/crisis/emergency, including, but not limited to, any matter which is subject to a federal, State, or County time requirement and is or may be deemed approved if not acted upon in a certain time period; and
15. Any policy, process, procedure, or matter which requires the physical presence of the public in a County building which the County Executive has declared or in the future declares to be closed to the public, is hereby suspended; and
16. Any policies or procedures previously adopted by the Board are suspended to the extent they are inconsistent with this Ordinance, including, but not limited to, the Board's Rules of Procedure; and

BE IT FURTHER ORDAINED that pursuant to this Emergency Continuity of Government Ordinance, when the Board finds there is an enemy attack or disaster such that this Emergency Continuity of Government Ordinance shall be invoked, the following delegation provisions, in consultation with, and approved as to form by, the County Attorney's Office, shall apply and the County Executive will provide advance written and/or verbal notice to the Board members whenever possible under the circumstances of his intent to take such action(s):

1. The County Executive is authorized to apply for any federal or State funding, reimbursement, or aid related to the attack, crisis, disaster, or emergency and its impacts on the County, and its businesses and residents; and
2. Consistent with a Declaration of Local Emergency, the Governor's State of Emergency Declaration, and Sections 15.2-1413 and 44-146.13, *et. seq.*, of the Code of Virginia, the County Executive in his role as the local Director of Emergency Management may proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to performance of public work, including, but not limited to, altering schedules, providing programming, paying bills, engaging contractors, hiring employees, and taking any other steps necessary to react to the attack, emergency, crisis, and/or disaster to operate government effectively in the name of the governing body, take steps to address the disaster, and adjust processes and procedures; and
3. The County Executive is authorized to advertise any public hearing without prior Board authorization to do so; and
4. The County Executive is authorized to approve the preliminary and final design and/or plans for any capital project (i) which is in the then-current, approved capital improvement program, or (ii) when the Board has budgeted and appropriated sufficient funds; including, but not limited to, transportation, parks and recreation, and the animal shelter; and

5. The County Executive is authorized to apply for any federal, State, or NVT A funding for any capital project (i) which is in the then-current, approved capital improvement program, or (ii) when the Board has previously approved and authorized an application for funding for the same or substantially similar project; however, this delegation is subject to Board acceptance, approval, budget, and appropriation of any funding; and
6. To the extent allowed by law, the County Executive is authorized to grant and execute a license, right-of-entry, temporary construction easement and/or permanent utility easement on County-owned property which he determines is necessary for any (i) County capital project, (ii) economic development project, or (iii) VDOT project; and
7. To the extent allowed by law and with the Chair's written agreement (which includes email), the County Executive is authorized to execute, on the Board's behalf, any document which the Board has previously approved and (i) authorized the Chair to execute, or (ii) not designated a specific individual to execute; and
8. To the extent allowed by law, the County Executive and Finance Director are authorized to apply for, participate in, and execute any document(s) related to any bond issuance which (i) the Board has previously approved, or (ii) is for a capital project in the then-current, approved capital improvement program; and
9. The Clerk to the Board is authorized to advertise any public hearing in any newspaper and under any terms as she deems in the best interest of the County to meet any federal, State, or County notice requirements; and
10. Authorize the County Executive, the County Attorney, or their designees to act reasonably in the public interest to alter schedules, provide programming, pay bills, engage contractors, hire employees, and take any other steps necessary to react to the attack/disaster/crisis/emergency and operate government effectively in the name of the governing body, take steps to address the attack/disaster/crisis/emergency, and adjust processes and procedures in keeping with CDC and Virginia Department of Health regulations and guidance, consistent with the declaration of local emergency, the Governor's state of emergency declaration, and the continuity of local government ordinance; and
11. The Board confirms the County Executive's existing authority to waive, suspend, or modify the Personnel Policy, including, but not limited to, policies for additional compensation during emergency situations, when the County Executive deems it is in the best interest of the County to do so, in compliance with applicable federal and State laws and regulations; and

12. The Board authorizes the County Executive to set, extend or otherwise modify performance deadlines on economic development projects already contained in performance agreements, and unless the development agreement is part of the sale of County-owned property which would require a public hearing, the Board delegates to and authorizes the County Executive to approve development agreements; and
13. The Board authorizes the County Executive to enter into leases, except for those leases which require a public hearing; and
14. Except for those grants which require specific approval of the Board, the Board authorizes the County Executive to sign and accept grants on behalf of the Board when deemed essential to the management of the County during the Commonwealth and Local Declarations of Emergency and that delaying the submission would create negative impacts on the County; and
15. The Board amends the authority granted to the County Executive in Resolution No. 08-580 from \$500,000 to \$3.5 million for purposes of acquiring needed right-of-way and easements for transportation projects; and

BE IT FURTHER ORDAINED that nothing in this Emergency Ordinance shall prohibit the Board and the entities listed above from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration;

BE IT FURTHER ORDAINED that due to the COVID-19, the Board hereby finds that a disaster exists pursuant to Sections 15.2-1413 and 44-146.13, *et. seq.*, VA Code Ann., and hereby invokes this Emergency Continuity of Government Ordinance and all its provisions during the pendency of the attack, emergency, crisis, and disaster created by COVID-19;

BE IT FURTHER ORDAINED that the Board hereby authorizes the County's Director of Emergency Management to continue to take those actions authorized by law, this Ordinance, and further action(s) by the Board to address the COVID-19 emergency, attack, crisis, and disaster;

BE IT FURTHER ORDAINED that the provisions in this Ordinance pertaining to the COVID-19 emergency, crisis, attack and disaster shall be in effect until repealed by this Board for a period not exceeding six months from the Declaration of a Local Emergency. Upon repeal or expiration of this Ordinance, the matters referenced therein shall resume operation in accordance with normal practices and procedures.

March 31, 2020
Regular Meeting
Ord. No. 20-10
Page Nine

Votes:

Ayes: Angry, Bailey, Boddye, Candland, Franklin, Lawson, Vega, Wheeler

Nays: None

Absent from Vote: None

Absent from Meeting: None

For Information:

County Attorney

County Executive

ATTEST: _____

A handwritten signature in blue ink, reading "Andrea P. Madden", is written over a horizontal line.

Clerk to the Board