

THE FRANKLIN COUNTY BOARD OF SUPERVISORS HELD AN EMERGENCY PHONE CONFERENCE MEETING ON FRIDAY, APRIL 10, 2020 AT 2:00 PM VIA PHONE CONFERENCE

THERE WERE PRESENT:

Mike Carter  
Tommy Cundiff  
Leland Mitchell  
Ronald Mitchell  
Ronnie Thompson  
Lorie Smith  
Tim Tatum

OTHERS PRESENT:

Christopher Whitlow, Interim County Administrator  
Jim Guynn, Legal Counsel  
Madeline L. Sefcik, Clerk

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Chairman Mitchell, called the meeting to order.

\*Roll call attendance was taken\*

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RATIFICATION OF THE DECLARATION OF EMERGENCY DATED 4/1/2020

The below was discussed.



#### DECLARATION OF A LOCAL EMERGENCY

WHEREAS, as the County Administrator and as the Director of Emergency Services of the County of Franklin I do hereby find that the Coronavirus (COVID-19) pandemic has the potential to seriously impact the County and its citizens by (i) the extensive illness and even death of significant numbers of the County's residents (ii) the disruption of the services provided to citizens due to the absenteeism of workers, including utility services (electricity, water, telephone, etc.) the delivery of public safety services (police, fire, medical, etc.) as well as financial activities and (iii) shortages and erratic delivery of critical goods, services and medicine, and I do find that the Coronavirus (COVID-19) pandemic has the potential to cause damage, loss, hardship or suffering to the citizens of Franklin County;

NOW, THEREFORE, PURSUANT TO THE PROVISIONS OF §44-146.21 OF THE CODE OF VIRGINIA, IT IS HEREBY PROCLAIMED that a local emergency exists throughout the County of Franklin;

AND, IT IS FURTHER PROCLAIMED AND ORDERED that the County's Comprehensive Emergency Management Plan is now in effect and during the existence of this local emergency the powers, functions, and duties of the Director of Emergency Services, the County Administrator and the Board of Supervisors of Franklin County shall be those prescribed by State law and the ordinances, resolutions, regulations and approved plans of the County of Franklin in order to mitigate the effects of this local emergency.

During the duration of the local emergency, the County Administrator may exercise all emergency powers, including but not limited to the following:

- (a) The power to direct emergency response activities by County departments including but not limited to the fire and rescue departments and by such emergency services personnel as the Administrator may designate or appoint.
- (b) The power to execute contracts for the emergency construction or repair of public facilities, without following the procedures of the Public Procurement Act and the Franklin County Code when the delay of advertising and public bidding might cause serious loss or injury to the County.
- (c) The power to purchase or lease goods and services that the Administrator deems necessary to the County's emergency response or for the repair of County facilities or both.
- (d) The power to lease real or personal property, or structures, that the Administrator deems necessary for the continued necessary operation of County government.
- (e) The power to promulgate rules and orders to implement and clarify the exercise of emergency powers.
- (f) The power to coordinate and implement mutual aid agreements with other localities and with the State and Federal governments.
- (g) The authority to marshal all necessary personnel, equipment and supplies from any department of the County to aid in carrying out the County's emergency operations plan.
- (h) The authority to implement a curfew and prohibit large gatherings of persons in order to protect the public peace, health, and safety of the County.
- (i) The power to delegate any or all of these duties to such other County officials as may be necessary to carry out the County's emergency operations plan.
- (j) The authority to take any and all steps necessary to protect the public peace, health, safety, and welfare of the County.

  
Christopher L. Whitlow, County Administrator &  
Director of Emergency Services

Dated: 4/1/20

### § 44-146.21. Declaration of local emergency

A. A local emergency may be declared by the local director of emergency management with the consent of the governing body of the political subdivision. In the event the governing body cannot convene due to the disaster or other exigent circumstances, the director, or in his absence, the deputy director, or in the absence of both the director and deputy director, any member of the governing body may declare the existence of a local emergency, subject to confirmation by the governing body at its next regularly scheduled meeting or at a special meeting within 45 days of the declaration, whichever occurs first. The governing body, when in its judgment all emergency actions have been taken, shall take appropriate action to end the declared emergency.

B. A declaration of a local emergency as defined in § 44-146.16 shall activate the local Emergency Operations Plan and authorize the furnishing of aid and assistance thereunder.

C. Whenever a local emergency has been declared, the director of emergency management of each political subdivision or any member of the governing body in the absence of the director, if so authorized by the governing body, may control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed 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 of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available. Whenever the Governor has declared a state of emergency, each political subdivision affected may, under the supervision and control of the Governor or his designated representative, enter into contracts and incur obligations necessary to combat such threatened or actual disaster beyond the capabilities of local government, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law pertaining to public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

D. No interjurisdictional agency or official thereof may declare a local emergency. However, an interjurisdictional agency of emergency management shall provide aid and services to the affected political subdivision authorizing such assistance in accordance with the agreement as a result of a local or state declaration.

E. None of the provisions of this chapter shall apply to the Emergency Disaster Relief provided by

the American Red Cross or other relief agency solely concerned with the provision of service at no cost to the citizens of the Commonwealth.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1976, c. 594; 1986, c. 24; 1990, c. 945; 1994, c. 75; 2000, c. 309; 2016, c. 555.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

General discussion ensued.

#### **(RESOLUTION #01-04-2020)**

BE IT THEREFORE RESOLVED, by the Board of Supervisors to ratify the above Declaration of Emergency including "emergency" language to be incorporated into items (d) and (f).

MOTION BY: Lorie Smith

SECONDED BY: Tim Tatum

VOTING ON THE MOTION WAS AS FOLLOWS:

AYES: Carter, Cundiff, L. Mitchell, R. Mitchell, Smith, Tatum, Thompson

\*Roll call vote was taken\*

CONSIDERATION OF 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

(ORDIANCE #02-04-2020)

**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 January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency in response to the spread of the novel coronavirus (COVID-19); 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 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 17, 2020, the Franklin County Board of Supervisors declared a local emergency as recommended by the County Administrator in his capacity as the local director of emergency management; and

**WHEREAS**, on April 1, 2020, the County Administrator as the local director of emergency management of Franklin County found that the Coronavirus (COVID-19) pandemic has the potential

to cause damage, loss, hardship or suffering to the citizens of Franklin County in accordance with the provisions of §44-146.21 of the Code of Virginia and thereby proclaimed that a local emergency exists throughout the County of Franklin; and

**WHEREAS**, the Board 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 after the disaster; 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 opining that localities have the authority during disasters to adopt ordinances to ensure the continuity of government in accord with the provisions of Section 15.2-1413 of the Code of Virginia; 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; and

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of the County of Franklin, Virginia:

A. Any regularly scheduled or regular meeting of any public bodies including the Board of Supervisors, the Planning Commission, Board of Zoning Appeals, Board of Equalization, 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 Bodies" and individually "Public Body"), may be canceled by the chair if there is no essential business that needs to occur or if conditions otherwise make it impractical to meet. Notice of the cancellation must be provided to the Public Body members and the public as soon as practicable.

B. In the alternative, any regularly scheduled or regular meeting of any Public Body may be held by solely electronic or telephonic means without a quorum of members physically present and without members of the public physically present, provided the following occurs:

1) The meeting is accessible to the public through live audio or video on the County's or Public Body's website, a dial-in telephone number, or a social media platform.

2) The agenda and public notice for the meeting must:

- a) include a statement that the meeting is being held using electronic means under this ordinance;
- b) contain specific information about how members of the public can access the meeting; and
- c) if there are any public hearing or public comment items, specifically identify how members of the public can provide comment, including one or more of the following: by e-mail, in writing, by telephone, through a social media platform, or via other electronic means.

3) The agenda is posted on the County's or Public Body's website at least three days prior to

the meeting, except that the agenda of any regularly scheduled meeting occurring within seven days of the adoption of this ordinance must be posted by two working days after adoption of this ordinance. Other materials associated with the meeting, if any, must be made available to the public at the same time they are provided to the Public Body members.

4) For public hearings and any items for which public comment is permitted, the following rules apply:

a) Normal rules of order apply with respect to requiring the name and home address of the commenter, that comments relate to the hearing or comment topic, that appropriate limits on the number of comments per person per item apply, and that comments be of reasonable length.

b) Public Bodies may allow public comments to be submitted via phone call, e-mail, or in writing, up until a reasonable time before the start of the meeting so long as those comments are provided to the Public Body members prior to any decision on an item.

c) If available, members of the public may provide comments through leaving a voicemail on a dedicated phone number up until a reasonable time before the start of the meeting so long as those comments are then provided to the Public Body members prior to any decision on an item.

d) If available, members of the public may provide comments through telephonic or interactive electronic means (call-in meeting access, social media platform) during the meeting so long as those comments are received by or provided to the Public Body members prior to any decision on an item.

e) The Public Body may choose to receive additional comments through any means for a period of time after the public hearing or public meeting, so long as it announces and publicizes that opportunity and those comments are provided to the Public Body members prior to any decision on an item.

f) All public comments must be made a part of the record of the Public Body either by being summarized in or included with the meeting minutes.

5) Any votes taken during the meeting must be taken by roll call, individually recording each

member's name and vote.

6) The minutes of any meeting under this ordinance must conform to the requirements of law, including identifying the forms of electronic communication used, the members participating and the means by which they participated, the opportunities for public access or participation, a summary of the public comments, if any, and the actions taken at the meeting.

C. Public Bodies may hold special meetings consistent with the provisions in (B) except that notice of the special meeting need only be provided at least three working days prior to the meeting, and the agenda and associated materials, if any, need to be made available to the public at the same time as they are made available to the Public Body members.

D. Public Bodies may hold emergency meetings consistent with Virginia Code § 2.2-3708.

E. Any item on an agenda for a regularly scheduled, regular, special, or emergency meeting held hereunder may be continued to a later date or time for the purpose of reviewing and considering comments from the public.

**IT IS FURTHER ORDAINED** that, notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by a Public Body, 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. This paragraph does not automatically extend any deadlines for the payment of taxes or filing of tax returns.

**IT IS FURTHER ORDAINED** that, the director of emergency management is empowered to restrict members of the public from entering or congregating around county-owned buildings, facilities, and real property as is reasonably necessary to ensure the health, safety, and welfare of the public or county staff. Moreover, the director of emergency management may cancel, postpone, or reschedule any events scheduled for any county-owned building, facility or property as necessary to

ensure the health, safety, and welfare of the public or county staff.

**IT IS FURTHER ORDAINED** that the provisions of this Emergency Ordinance shall remain in full force and effect for a period of up to 90 days, unless amended, rescinded, or readopted by the Board 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 after the disaster. Upon rescission by the Board 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

General clarifying questions were asked and answered.

MOTION BY: Tim Tatum  
SECONDED BY: Lorie Smith  
VOTING ON THE MOTION WAS AS FOLLOWS:  
AYES: Carter, Cundiff, L. Mitchell, R. Mitchell, Smith, Tatum, Thompson

\*Roll call vote was taken\*

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Mr. Whitlow reminded the Board there will be a Board of Supervisors Meeting on April 21, 2020 by means of video and or phone rather than in person.

*Chairman Mitchell recessed the Board until April 21, 2020 at 1:30 PM*