

# County of Dinwiddie Board of Supervisors

## BOARD OF SUPERVISORS

DANIEL D. LEE  
BRENDA EBON-BONNER  
HARRISON A. MOODY  
DR. MARK E. MOORE  
WILLIAM D. CHAVIS



## COUNTY ADMINISTRATOR

W. KEVIN MASSENGILL

April 14, 2020  
Special Meeting  
6:00 PM

To access this meeting remotely, please call in using the following information: 1-844-992-4726, Access Code/Meeting Number 793 873 712. Participants will remain muted throughout the call. If you would like to submit comments for the public hearing or for the citizen comment period without attending the meeting, please submit them via email to [swray@dinwiddieva.us](mailto:swray@dinwiddieva.us) or by telephone at 804-469-4500, option 1, extension 2103 by 5:00 PM on Monday, April 13, 2020. There is also a citizen input form that can be found at <http://www.dinwiddieva.us/984/Public-Notice>. A link to the modified public meeting process can also be found at the above link.

### 1. ROLL CALL

### 2. INVOCATION

### 3. PLEDGE OF ALLEGIANCE

### 4. AMENDMENTS TO AGENDA

### 5. PUBLIC HEARING:

#### **A. 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**

*Tyler Southall, County Attorney*

Documents:

[Memo-Continuity Ordinance.pdf](#)

[Dinwiddie Ordinance on Continuity of Government Ordinance.pdf](#)

### 6. CITIZEN COMMENTS (3 MINUTES)

### 7. BOARD MEMBER COMMENTS

### 8. ADJOURNMENT



## Dinwiddie County Attorney's Office

14010 Boydton Plank Road

Dinwiddie, Virginia 23841

Phone: 804-469-4500

FAX: 804-469-5322

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### **MEMORANDUM**

TO: Board of Supervisors

FROM: Tyler Southall, County Attorney

DATE: April 14, 2020

SUBJECT: 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

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#### **Background**

On March 12, 2020, the Governor of Virginia declared a state of emergency due to the pandemic caused by the novel coronavirus, known as SARS-CoV-2 or COVID-19. On March 13, the President of the United States declared a national emergency, effective as of March 1, 2020. On March 16, 2020, the director of emergency management for Dinwiddie County declared a local emergency, which was ratified by the Board of Supervisors on March 17. Since that time, the Health Department has publicly confirmed the existence of multiple cases of COVID-19 in Dinwiddie County.

On March 20, 2020, the Attorney General of Virginia released an opinion. In that opinion the Attorney General noted that the Virginia Code Section 15.2-1413 provided a mechanism for ensuring continuity of government. Virginia Code Section 15.2-1413 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." The Attorney General stated that he believed that the COVID-19 pandemic constituted a "disaster" and that a locality could approve an ordinance "carefully limited in scope" that "allow[ed] the locality 'to assure continuity in its government' during the current emergency."

The Dinwiddie County Attorney's Office has prepared an ordinance that is closely based on the model ordinance prepared by the Local Government Attorneys of Virginia. The ordinance:

- Would be temporary, lasting until the earliest of (1) six months, (2) the Governor declares that the COVID-19 emergency has ended, or (3) the Board repeals, amends, or modifies the ordinance. If an extension of the ordinance were required at the end of six months, a new ordinance would have to be approved;
- Would allow the Board of Supervisors, as well as other boards and commissions to include the IDA, the Water Authority, the School Board, the Planning Commission, the Airport Authority, and others to meet for essential government purposes related to the continuity of government without a quorum present;
- Would create procedures to govern any such electronic meetings;
- Would allow for electronic public hearings;
- Would allow for deadlines requiring actions of Dinwiddie County or its constitutional officers to be suspended (although it would encourage the keeping of deadlines), which would keep the County from running afoul of deadlines in an environment where COVID-19 has disrupted operations;
- Would allow for non-emergency public hearings and action items to be postponed (although the ordinance wouldn't necessarily require postponement);
- Would still allow for boards and commissions to meet in person if it can be done safely and with social distancing guidelines followed;
- Would encourage the Town of McKenney to declare a local emergency and ensure continuity in its government; and
- Would declare COVID-19 to be a disaster, without which it would be difficult to have an ordinance under Virginia Code Section 15.2-1413.

### **Recommendation**

In light of the situation the County finds itself in, the County Attorney's Office recommends approval of the ordinance. A resolution has been prepared to assist.

### **Resolution**

After a public hearing is held, the Board may vote on the below resolution to approve or disapprove the ordinance.

BE IT THEREFORE RESOLVED, that the Board of Supervisors does hereby adopt and ordain the 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 in the form presented.

**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 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 Board of Supervisors of Dinwiddie County, Virginia (the “BOARD”) confirmed the declaration of local emergency made by the local director of emergency management on March 16, 2020; 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 exceeding six months after the disaster and shall provide a method for the resumption of normal governmental authority by the end of the six month period; 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 BOARD 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 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 Dinwiddie County, Virginia:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the BOARD, the School Board, the Planning Commission, Board of Zoning Appeals, the Industrial Development Authority, the Dinwiddie County Water Authority, the Dinwiddie Airport and Industrial Authority, the Architectural Review Board, the Social Services Advisory Board, the Community Planning and Management Team, 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.
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, unless an additional emergency requires otherwise; 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 an electronic public hearing, public comment may be solicited by electronic means in advance and shall also be solicited 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 provided that public notice is given so that the public is aware of how and when to present their views.

**IT IS FURTHER ORDAINED**, that the incorporated town within the boundaries of Dinwiddie 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.

**BE IT FURTHER ORDAINED**, that the BOARD's March 17, 2020 Resolution Declaring a Local Emergency is hereby expanded to declare the COVID-19 outbreak to be a disaster as further set forth in this Ordinance.

**IT IS FURTHER ORDAINED**, that the provisions of this Ordinance shall remain in full force and effect until the sooner of (1) October 14, 2020 or (2) the date upon which the Governor of Virginia declares the state of emergency caused by COVID-19 to have ended, 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 from the end of the disaster. Upon rescission by the BOARD or automatic expiration as described herein, this ordinance shall terminate and normal practices and procedures of government shall resume.

Nothing in this 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** by the Board of Supervisors of Dinwiddie County, Virginia on April 14, 2020.