

BOARD OF SUPERVISORS MINUTES

MARCH 24, 2020

At a Special Meeting of the Orange County Board of Supervisors held on Tuesday, March 24, 2020, beginning at 10:30 a.m., in the Airport Conference Room, 11275 Aviation Way, Orange, Virginia. Present: James P. Crozier, Chairman; R. Mark Johnson, Vice Chairman; James K. White; S. Teel Goodwin (Remote); and Lee H. Frame. Also present: Brenda G. Garton, Interim County Administrator.

RE: REMOTE PARTICIPATION

Pursuant to the provision in the Board of Supervisors' Bylaws, the Board called Supervisor Goodwin so that he could participate in the meeting remotely. As such, the minutes are required to reflect that Supervisor Goodwin was calling from his residence, located at 11464 Rapidan Road, Orange, Virginia, and that he had bronchitis and was concerned with the spread of COVID-19. Supervisor Goodwin participated remotely for the entire meeting.

RE: CLOSED MEETING

At 10:41 a.m., Ms. Garton read the following motion authorizing Closed Meeting:

WHEREAS, the Orange County Board of Supervisors desired to discuss in Closed Meeting the following matter:

- Discussion, consideration, or interview of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the public body with respect to the County Administrator and the Interim County Administrator. - §2.2-3711(A)(1) of the Code of Virginia

WHEREAS, pursuant to §2.2-3711 (A)(1) of the Code of Virginia, such discussions may occur in Closed Meeting;

NOW, THEREFORE, BE IT RESOLVED, that the Orange County Board of Supervisors hereby authorized discussion of the aforesated matters in Closed Meeting.

On the motion of Mr. Frame, seconded by Mr. White, which carried by a vote of 5-0, the Board adopted the resolution authorizing Closed Meeting, as presented. Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

RE: RECESS FOR LUNCH

The Board recessed its meeting for lunch at 12:05 p.m.

RE: RECONVENE

The Board reconvened its meeting at 12:30 p.m.

RE: CERTIFICATION OF CLOSED MEETING

At 2:50 p.m., Ms. Garton read the following resolution certifying Closed Meeting:

WHEREAS, the Orange County Board of Supervisors has, this day, adjourned into Closed Meeting in accordance with a formal vote, and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, the Freedom of Information Act requires certification that such Closed Meeting was conducted in conformity with the law;

NOW, THEREFORE, BE IT RESOLVED, that the Orange County Board of Supervisors hereby certified that, to the best of each member's knowledge, i) only public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act were discussed in the Closed Meeting to which this certification applied, and ii) only such public business matters as were identified in the motion by which the said Closed Meeting was convened were heard, discussed or considered by it.

Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

RE: NEW BUSINESS

RE: ADOPTION OF AN EMERGENCY ORDINANCE TO ALLOW FOR CONTINUITY OF GOVERNMENT OPERATIONS DURING THE COVID-19 PANDEMIC

On the motion of Mr. Frame, seconded by Mr. White, which carried by a vote of 5-0, the Board adopted the following ordinance, as presented:

EMERGENCY ORDINANCE TO PERMIT PUBLIC BODIES OF ORANGE 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 COVID-19 PANDEMIC

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One (51) declaring a state of emergency for the Commonwealth of Virginia, rising from the novel coronavirus (COVID-19) pandemic; and

WHEREAS, Executive Order 51 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 physical 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 the County 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 COVID-19 pandemic is a disaster; and indeed, the Code of Virginia clearly contemplates that a "disaster" includes an "epidemic," as seen in Virginia Code §15.2-1724 (referring to "epidemic or other public disaster"); 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));

NOW, THEREFORE, BE IT ORDAINED, on this 24th day of March, 2020, that the Orange County Board of Supervisors hereby establishes the following:

1. The Board of Supervisors, the Planning Commission, and any other County board, commission, authority, 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 (Virginia Code §2.2-3708.2(A)(3)), or to address any other matter (pursuant to this ordinance adopted in conformance with Virginia Code §15.2-1413). When conducting a meeting by solely electronic means, the Board of Supervisors, Planning Commission, board, commission, authority, 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. To the maximum extent that it is practical and/or feasible, 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 applicable 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 the Governor's emergency declaration (not to exceed six months) by the Board of Supervisors, Planning Commission, or any other board, commission, authority, or public body shall be deemed continued for the duration the local emergency declaration (not to exceed six months), if the Board of Supervisors, Planning Commission, or other board, commission, authority, 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.
3. In the event that a public hearing matter is deemed by the applicable public body to present a critical government function essential to the 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 from the public. 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. All such comments shall be included as an addendum to the minutes of the public body.

4. 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.
5. The provisions of this ordinance shall cease in their operation six months after the adoption of this ordinance; but all ordinances, resolutions, agreements, contracts, or other decisions of public bodies made of this County at meetings held in accordance with the provisions of this ordinance shall continue in their effect.

Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

RE: EXTENSION OF DEADLINE FOR BOARD OF EQUALIZATION APPEALS

On the motion of Mr. Frame, seconded by Mr. Goodwin, which carried by a vote of 5-0, the Board extended the deadline to file an appeal to the Board of Equalization from March 31, 2020, to April 30, 2020, as presented.

Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

RE: ADJOURN

On the motion of Mr. Frame, seconded by Mr. White, which carried by a vote of 5-0, the Board adjourned the meeting at 3:00 p.m. Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

James P. Crozier, Chairman

Brenda G. Garton, Interim County Administrator