



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Dori Martin, Assistant City Attorney
Kathleen Dooley, City Attorney
DATE: **June 17, 2021** (for the June 22, 2021 Council Work Session)
SUBJECT: **Return to Pre-COVID-19 Operations**

As COVID-19 conditions continue to improve and infection rates decline, Governor Ralph Northam has announced that the State of Emergency declared over 15 months ago will be allowed to expire on June 30, 2021. Most of the Commonwealth's emergency regulations related to public and private gatherings, social distancing, and mask wearing have already been lifted, and the end of the state of emergency will mark the official return to pre-pandemic operations throughout Virginia.

The City of Fredericksburg has been operating under a Declaration of Local Emergency since March 16, 2020. Council confirmed the local declaration at a special meeting on March 20, 2020, authorizing the City Manager to take lawful actions and issue lawful emergency orders to protect the public health. While the local emergency has been in place, the City has been operating in accordance with its Emergency Operations Plan, and City public bodies have been using special procedures put in place to ensure continuity of government during the pandemic.

With the upcoming expiration of the COVID-19 State of Emergency throughout the Commonwealth, the time has come for the City to evaluate emergency conditions locally to determine when and how to wind down the City's emergency operations and ensure an orderly transition back to pre-pandemic practices and procedures. Two critical steps in the transition process will depend on Council consideration and action—ending the local emergency and repealing Ordinance 20-05, the Continuity of Government Ordinance.

Declaring the End of the Emergency

The City's local emergency declaration is not wholly dependent on the existence of a state of emergency declared by the governor. Rather, Virginia Code §44-146.21 authorizes the governing body to use its own judgment to determine whether all emergency actions have been taken. Nevertheless, the existence of a state of emergency provides an important justification for a local emergency, so that once the state of emergency is no longer in place, the local government must be able to provide a strong independent justification of why the local emergency should continue.

Recent declines in infection rates and in the number of new COVID-19 cases being reported, not only in the City of Fredericksburg, but in the Rappahannock Regional Health District as a whole, support a conclusion that emergency conditions related to COVID-19 have subsided. The City's public facilities are in the process of reopening, and capacity restrictions are being lifted for public meetings.

If these positive trends continue, the City Attorney's Office anticipates presenting a resolution declaring an end to the local emergency for Council's consideration at the July 13th City Council meeting. This date was selected in order to allow for the natural expiration of Governor Northam's State of Emergency, to give advance notice to the public, and to give City emergency personnel time to wind down their emergency plans.

Repealing the Continuity of Government Ordinance

Ordinance 20-05, An Ordinance to Address Continuity of City Government during the Pendency of a Pandemic Disaster, has been used by City Council, the City School Board, and many other local boards and commissions to enable them to conduct public business safely, effectively, and with transparency during the challenging circumstances of the pandemic.

The ordinance was enacted under the authority provided by Virginia Code § 15.2-1413 to implement methods and special procedures to ensure the continuity of City government through the end of the disaster. It includes provisions for remote meetings and suspends certain deadlines and procedures. Pursuant to state law, the ordinance includes an automatic expiration date of 6 months after the end of the pandemic disaster, which would be measured by the date the local emergency has ended.

However, as the emergency conditions related to the pandemic have subsided, the public health threat that necessitated the establishment of these special procedures has been significantly reduced. City public bodies are already beginning to meet again with a quorum physically assembled in one location; therefore, staff recommends that Council repeal the ordinance, based upon a determination that the COVID-19 pandemic no longer presents a threat to the City's ability to conduct its normal operations. In order to allow time for notice to the City staff, boards and commissions, and members of the public who will be affected by this change, we recommend that Council take this issue up at its July 13, 2021 meeting.

What Does This Mean?

While declaring the end of the local emergency is an important (and legally required) function of the governing body, the repeal of the Continuity of Government Ordinance will have the most noticeable effects on the ways in which we conduct public business in the City.

Reinstating Rules and Procedures. Ordinance 20-05 suspended several administrative requirements associated with meetings of the City Council, which we will now need to reinstate:

- Traditional quorum rules apply. The required meeting quorum may no longer be reduced due to absence of members for reasons associated with COVID-19.
- Agendas will return to the prescribed format set by Council resolution and will no longer be subject to modification by the Clerk of Council

- Suspension of the rules will again be required for an ordinance or resolution appropriating funds in excess of \$100,000 to be adopted on second reading on the same day as its introduction.

Restoring Deadlines. Deadlines requiring action by City personnel, including time frames for administrative review, were suspended for the duration of the pandemic to provide flexibility in cases of reduced staffing or environmental concerns. All deadlines under state and local law will be back in place.

Returning to In-person Public Meetings. Virtual public meetings will no longer be authorized, and the traditional rules mandated by the Virginia Freedom of Information Act will apply.

- Meetings shall be open to the public.
- Members will be expected to attend in person. Virginia Code § 2.2-3708.2 permits individual members of a public body to participate electronically only in limited circumstances if the public body's policies allow, including
 - Due to a temporary or permanent disability or medical condition that prevents the member's physical attendance, or
 - If the member is unable to attend due to a personal matter (members may participate electronically under this exception up to 2 times in a calendar year).
- Resolutions that have been adopted by boards and commissions to provide for electronic meetings will automatically expire.
- Public bodies are no longer required to accept written comments, but they may adopt a policy to continue doing so.
- Public bodies are no longer required to continue public hearings over a span of two meetings, though they may do so if circumstances warrant and in accordance with their regular meeting procedures.
- FOIA encourages making meetings available to the public via video livestream, and public bodies may continue doing so if resources permit.