



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Dori Martin, Assistant City Attorney
Kathleen Dooley, City Attorney
DATE: July 8, 2021 (for the July 13, 2021 Council Meeting)
SUBJECT: **Return to Pre-COVID-19 Operations**

ISSUE

Should Council take action to end the COVID-19 Local Emergency and restore the City's Pre-COVID-19 processes and procedures?

RECOMMENDATION

Yes. City Council should

- 1) Adopt a resolution to end the Local Emergency declared on March 16, 2020 in response to the COVID-19 pandemic, and
- 2) Approve, on first and second read, an ordinance to repeal Ordinance 20-05, An Ordinance to Address Continuity of City Government during the Pendency of a Pandemic Disaster.

DISCUSSION

Due to continued improvement of conditions related to COVID-19 and a decline in infection rates, the State of Emergency declared by Governor Ralph Northam over 15 months ago was 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 were lifted prior to that date, and the end of the state of emergency has officially marked the 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 expiration of the COVID-19 State of Emergency throughout the Commonwealth, the time has come for the City 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 have been lifted for public meetings.

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 pass an ordinance at its July 13 legislative meeting with a delayed effective date of August 1, 2021.

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.

Per City Council direction at its June 22, 2021 work session, the City Council will continue to accept written comments for "Public Comment" and "Public Hearing" agenda items; however, Council will not continue to automatically postpone final action on public hearing items. The Clerk of Council will accept written comments until 1:30 p.m. on the date of the meeting (for both public comment and public hearings); the drop box method of delivery of comments will be terminated.

FISCAL IMPACT

None.



July 13, 2021
Regular Meeting
Resolution 21-__

MOTION:

SECOND:

RE: Declaring an End to the COVID-19 Local Emergency.

ACTION: APPROVED: Ayes: 0; Nays: 0

Governor Ralph S. Northam issued Emergency Order #51, declaring a state of emergency in Virginia in regard to the COVID-19 pandemic on March 12, 2020. On March 16, 2020, in accordance with Virginia Code §44-146.21 and City Code §26-36, the City Manager, as Fredericksburg's Director of Emergency Management, issued a Declaration of Local Emergency.

City Council confirmed the City Manager's declaration by resolution in a special meeting on March 20, 2020 and further directed the Manager to take lawful emergency actions as necessary to protect the public health and welfare.

Virginia continues to experience a significant decline in new COVID-19 cases and COVID-19 related hospitalizations. As public health metrics have continued to trend in a positive direction, the governor has ended all COVID-19 required mitigation measures and allowed the state of emergency to expire on June 30, 2021.

Due to significant decline in the spread of COVID-19 in Fredericksburg and the surrounding areas, the immediate threat to public health, safety, and welfare caused by the pandemic has subsided. All emergency actions have been taken, and it is now appropriate for City Council to end the declared emergency in the City of Fredericksburg.

Therefore, City Council hereby resolves that the local emergency declared March 16, 2020 and confirmed by City Council on March 20, 2020 is hereby declared as ended on this date, July 13, 2021.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 21-__, adopted at a meeting of the City Council held July 13, 2021, at which a quorum was present and voted.

***Tonya B. Lacey, MMC
Clerk of Council***



July 13, 2021
Regular Meeting
Ordinance No. 21-__

MOTION:

SECOND:

RE: An Ordinance to Repeal Ordinance 20-05, Addressing Continuity of Government during a Pandemic Disaster

ACTION: APPROVED: Ayes: 0; Nays: 0

FIRST READ: _____ SECOND READ: _____

IT IS HEREBY ORDAINED by the Fredericksburg City Council:

Section I. Purpose.

On March 16, 2020, in accordance with Virginia Code §44-146.21 and City Code §26-36, the City Manager, as Fredericksburg’s Director of Emergency Management, issued a Declaration of Local Emergency due to the COVID-19 pandemic. City Council confirmed that Declaration by approving Resolution 20-21, which found that COVID-19 posed a real and substantial threat to public health, constituting a disaster as defined by Virginia Code §44.1-146.16.

On April 7, 2020, City Council used its authority under Virginia Code § 15.2-1413 to enact an Ordinance 20-05, An Ordinance to Address Continuity of City Government during the Pendency of a Pandemic Disaster, implementing a number of special emergency procedures. This ordinance has been used throughout the emergency 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.

As emergency conditions related to the pandemic subside, the public health threat that has necessitated these emergency procedures has been significantly reduced. City Council finds that the COVID-19 pandemic no longer presents a threat to the City’s ability to conduct its normal government operations. Therefore, City Ordinance 20-05, An Ordinance to Address Continuity of City Government during the Pendency of a Pandemic Disaster is no longer needed and should be repealed.

Section II. Ordinance.

1. Ordinance 20-05, An Ordinance to Address Continuity of City Government during the Pendency of a Pandemic Disaster is hereby repealed in its entirety.

2. All resolutions that have been adopted by City of Fredericksburg boards and commissions to provide for remote public meetings under the authority of Ordinance 20-05 will expire automatically upon the effective date of this ordinance.

Section III. Effective Date.

This ordinance shall be effective on August 1, 2021.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 21-__, adopted at a meeting of the City Council held July 13, 2021, at which a quorum was present and voted.

***Tonya B. Lacey, MMC
Clerk of Council***