



MEMORANDUM

TO: Fredericksburg City Council

FROM: Kathleen Dooley, City Attorney

DATE: April 8, 2020

RE: Continuity of government during the COVID-19 Pandemic
Reprise of staff report at April 7, 2020 City Council meeting

Issue:

The audio of the City Council meeting, held April 7, 2020 at 4:00 p.m., was not functioning at the time I made the staff report in support of the adoption of Ordinance 20-05, the continuity of government ordinance. While a written staff report was included in the meeting agenda packet, it is still very important to communicate to the public the information that City Council heard at the meeting. I will attempt to recreate in writing the verbal staff report I provided at the April 7, 2020 meeting, as faithfully as possible. I used the attached presentation notes to prepare this memo.

Staff report to City Council:

- **Statutory authority:**

Virginia Code §15.2-1413 authorizes the governing bodies of Virginia localities to adopt an ordinance to provide a method to assure continuity in government, in the event of a disaster. This statute includes the language “notwithstanding any contrary provision of law,” which confers special authority on the governing body to adopt measures that conflict with state law.

Virginia Attorney General Mark Herring issued guidance on the scope of local government authority under §15.2-1413 in an opinion issued on March 20, 2020. There, he reiterated that the ordinance must be adopted in a meeting that complies with the Freedom of Information Act (including an e-meeting without a quorum physically assembled, as in this meeting). The Attorney General advised localities that an exercise of this authority should be “carefully limited in scope” to assure continuity in government – the continuation of the essential functions of government during the emergency. The duration of the ordinance is limited to a period of six months after the disaster.

- **Application to COVID-19 public health emergency – authorizing virtual meetings.**

The COVID-19 public health emergency limits or prohibits gatherings of people, in order to slow or limit the spread of the virus. This limitation or prohibition is not consistent with the public meeting requirements of the Virginia Freedom of Information Act (FOIA). The normal public meeting setup, with members of City Council sitting around the dais with City staff, and members of the public present in the Council Chambers public seating area, is not safe at this time. Under FOIA, a public body may conduct an e-meeting during an emergency, but only for the limited purpose of addressing the emergency. This limited authority is not sufficient to permit City Council to conduct essential public business for the time period when meeting in-person will be unsafe, business that will include, for example, the adoption of the annual budget.

The same is true for other local and regional public bodies.

Therefore, the proposed continuity of government ordinance authorizes e-meetings of the City Council and local and regional public bodies for continuity of government purposes, to conduct essential public business (not restricted to addressing the emergency directly). The ordinance applies to local and regional public bodies either created by City Council or with members appointed by City Council, which are referred to as “Public Entities” in the ordinance. The School Board is specifically named in the ordinance as a “Public Entity” authorized to continue to meet to conduct essential public business by e-meeting.

The ordinance also provides for continued public access to meetings and public participation, where appropriate. Public comment for City Council meetings will be received through three methods: (1) hard copy drop-off at the Deposit Box at the front of City Hall, (2) via U.S. Mail,

or (3) via e-mail to the Clerk of Council. Comments must be received at least an hour before the beginning of the meeting.

The ordinance provides similar procedures for public hearings. Public hearing comments would be received in the same three ways. The public body would open the public hearing at its first meeting, then continue the public comment period until sometime after its first meeting. The public body would not vote on the matter until the next meeting. The reasoning behind this procedure is that the public typically has the opportunity to hear the staff report before it comments on a public hearing item. The public also hears the comments of other speakers on a public hearing item. By postponing action until the next meeting, and by holding the public comment period open for a time after the first public meeting, the public body will provide the public a near-equivalent opportunity to comment on public hearing items.

- **Other topics addressed by the ordinance.**

The ordinance also addresses some additional topics. With respect to City Council meeting procedures, the ordinance suspends the requirement that Council vote to suspend the rules, when it wishes to vote on an ordinance on first and second reading at the same meeting. This proposal is for the convenience of City Council and to avoid “cluttering up” City Council meetings, especially since every motion requires a roll call vote. For example, on today’s meeting agenda, this ordinance is proposed for first and second reading, as are two of the tax relief ordinances (for excise taxes and personal property taxes). The third tax relief ordinance – related to the general reassessment of real estate taxes – is only proposed for first reading at this meeting. With this ordinance, City Council could vote on an item on first and second reading at the same meeting, without the intervening motion to suspend the rules. (City Council asked whether the ordinance suspended the requirement to adopt ordinances on two readings. The response was “no,” ordinances still require two readings, but both readings could take place at the same meeting without suspending the rules.)

With respect to the deadlines that apply to City staff and the Commissioner of Revenue and Treasurer, the ordinance encourages efforts to comply with these deadlines. However, if the City cannot meet the deadline due to COVID, then it is suspended. This aspect of the ordinance lays the ground work for the tax relief measures City Council will consider later on this meeting agenda.

- **Correction to the ordinance.**

Finally, we detected an error in Article III, Section 2-5, which, as drafted, states that the public meeting agenda will “identify Public Entity members physically and/or electronically present.” When the meeting agenda is first published, we will not know which members will be present at the meeting when it is convened. Therefore we recommend that Council adopt the ordinance with this language stricken from Article III, Section 2-5.

We recommend that City Council adopt this ordinance with this correction on first and second reading at this meeting.