

ORDINANCE NO. 5276

AN ORDINANCE TO ENSURE THE CONTINUITY OF THE CITY GOVERNMENT, IMPLEMENTING EMERGENCY PROCEDURES, MODIFYING PUBLIC MEETING REQUIREMENTS AND PUBLIC PRACTICES AND PROCEDURES IN ORDER TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH THE COVID-19 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 14, 2020, effective at 5:00 p.m. and extending through June 10, 2020, at 5:00 p.m., or as may be amended by the City Council (the “Emergency Period”), the City Manager, in his capacity as Director of Emergency Management, issued a Declaration of Local Emergency (the “City Declaration”) applicable throughout the entire City of Alexandria, Virginia (the “City”), pursuant to authority granted pursuant to City Code Section 4-3-5, Virginia Code Sections 44-146.21 and 15.2-1413, which City Declaration was unanimously consented to by the City Council on March 14, 2020, pursuant to City Resolution No.2928, as required by applicable law; and

WHEREAS, the City Council 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 to exceed six months; 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 the City Council 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, THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the City Council, the School Board, the Planning Commission and all local and regional boards, commissions, committees and authorities created by the

City Council, or on which the City Council has a member, or to which the City Council 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 any City of Alexandria appointee, designee, or representative to such Public Entities are authorized to participate in such meeting electronically ; and
 - b. The docket items to be discussed at such electronic meetings shall be limited to those topics 1) necessary for the continuity of the government; 2) authorized pursuant to Section 2.2-3708.2(A)(3) of the Code of Virginia; or 3) authorized pursuant to any other authority the Commonwealth may provide to localities for electronic meetings without a quorum physically assembled after this ordinance is adopted; and
 - c. Prior to holding any such electronic meeting, except for emergency meetings, the Public Entity shall provide public notice of at least three days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment; and
 - d. 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
 - e. 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

- f. For any matters requiring a 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
- g. The minutes of all electronic meeting 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 certain provided that public notice is given so that the public are aware of how and when to present their views.

IT IS FURTHER ORDAINED, that for any appointments made by the City Council to boards and commissions established in the City Code that may expire during the Emergency Period, the current appointee in the expiring position shall continue to hold office until his/her successor is appointed and qualified.

IT IS FURTHER ORDAINED, that the City's Director of Emergency Management may take any of the following actions on a temporary basis in order to properly allocate City resources, ensure the safety of the public, and address impacts to the business community by the emergency: (1) waive or reduce fees or penalty or interest imposed by any City ordinance; (2) waive enforcement, in whole or in part, of any City ordinance; or (3) modify, limit, waive,

suspend, or amend any City program, service, function, process, or procedure, unless prohibited by State or Federal law. The Director must apply the action uniformly for similar situations and not on a case-by-case basis. The Director's actions taken pursuant to this paragraph will be effective only until the next regular meeting of the City Council, at which time the Council may ratify and extend the time for which the Director's action remains in effect; and

IT IS FURTHER ORDAINED, that the provisions of this Ordinance shall remain in full force and effect for the duration of the Emergency Period, unless amended, rescinded or readopted by the City Council but in no event shall such ordinance be effective for more than six months from the date of adoption. Upon rescission by the City Council 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.

That this ordinance shall be effective upon its adoption.

JUSTIN M. WILSON
Mayor

Final Passage: April 18, 2020