Emergency Ordinance to Ensure the Continuity of Government

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Enabling Authority

**Virginia Code § 15.2-1413:**

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.

**Virginia Code § 15.2-1427(F):**

. . . In counties, emergency ordinances may be adopted without prior notice; however, no such ordinance shall be enforced for more than sixty days unless readopted in conformity with the provisions of this Code.
Sections

1. Purpose
2. Authority
3. Scope
4. Essential Governmental Functions
5. Succession
6. Public Meetings
7. Deadlines
8. Duration
10. Effect of this Ordinance on the Powers of the Director of Emergency Management
11. Superseding Prior Continuity of Government Ordinances
12. Severability
13. Liberal Construction
Sec. 4. Essential Governmental Functions

• Virginia Code § 15.2-1413 does not define the phrase “continuity in its government”

• In a footnote, the Attorney General’s March 20, 2020 opinion stated that emergency management laws and regulations typically refer to “continuity of government” as “coordinated efforts to ensure the continuation of essential functions during an emergency”

• Section 4 identifies the essential functions provided by the County and the related public bodies in order to address the “continuity in its government” clause in Virginia Code § 15.2-1413

• The ordinance is intended to ensure that the identified essential functions are able to continue
Sec. 5. Succession

• COVID-19 may leave many of us temporarily unable to participate in County government

• Continuity of government requires that a plan be in place to ensure that there are people in place to make decisions and provide legislative, executive, and departmental leadership
Sec. 5. Succession

For elected officials, the proposed regulations follow Virginia Code § 24.2-228 which allows remaining Board members to fill vacancies by appointing successors when vacancies occur. The modifications to Virginia Code § 24.2-228 are:

• **Filling vacancies:** Allowing Supervisors to fill a vacancy by appointing a successor outside of the magisterial district if a qualified voter from the magisterial district cannot be found after reasonable effort

• **Voting by appointees:** Clarifying that an appointed Supervisor can vote on those matters requiring a majority vote of the elected members

• **Holding over:** If circumstances do not allow a general election to be held, expressly allowing Supervisors whose terms expire to hold over until a successor is appointed

• **Temporary appointments:** Allowing temporary appointments to be made under limited circumstances to achieve a quorum
Sec. 5. Succession

For appointed officers when officers and their deputies are incapacitated:

- **Board appointments**: Authorizes the Board to appoint any person deemed qualified to act as Acting County Executive, Acting County Attorney, and Acting Clerk.

- **County Executive appointments**: Authorizes the County Executive to appoint any person deemed qualified to act as acting department head.
Sec. 6. Public Meetings

- **Format**: Allows the County’s public bodies to meet electronically without a quorum being physically assembled (subsection B)

- **Agendas**: Requires additional information to be stated on an agenda, including identifying the opportunities for the public to participate (subsection C)

- **Notice**: Requires additional information to be stated in the notice, including identifying the persons responsible for receiving public comment and identifying the opportunities for the public to participate (subsection D)

- **Statement by the Chair**: Requires a statement by the Chair at the beginning of the meeting that includes the information referred to above in the notice (subsection E)

- **Public participation**: Requires that electronic meetings be open to public participation and describes how that participation occurs (subsection F)
Sec. 6. Public Meetings

• **Postponing certain matters**: Allows any non-emergency public hearing and action item to be postponed (subsection G)

• **Quorum**: Reduces the Board quorum from four to three if three Supervisors are sick from the COVID-19 virus and are unable to participate in a meeting and the Board is unable to make a temporary appointment (subsection H)
  
  ➢ This provision is modeled after Virginia Code § 2.2-3112(D), which is in the Virginia Conflict of Interests Act, that reduces the number of members required for a quorum if the other members are unable to participate because they are disqualified by a conflict of interest

• **Voting**: Because State law imposes various voting requirements for an action to be taken (e.g., majority of those present and voting, supermajorities, majority of the elected members) and those requirements may prevent Board action, this subsection:
  
  ➢ Establishes strict criteria as to when action can be taken by those present and voting, regardless of the voting requirements imposed by State law
  ➢ Provides that “participating” satisfies being “present” (subsection I)
Sec. 6. Public Meetings

- **Closed meetings**: Adds one purpose for going into a closed meeting:
  
  To discuss plans to protect the public health and safety as it relates to the COVID-19 disaster and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters (subsection J)

- **Minutes**: Adds the requirement that the minutes reflect how the meeting was conducted (e.g., electronically) (subsection K)

- **Recordings**: Requires that those public bodies required to have minutes also record their meetings (subsection L)

- **Other requirements not modified**: Provides that any other rules applicable to public meetings not required in the ordinance will continue to apply (subsection M)
Sec. 7. Deadlines

To provide flexibility, some deadlines would be extended beyond the dates required under current laws:

• Fixing the tax rates

• Approving the budget

• Filing returns and paying taxes on certain personal property employed in a trade or business
  ➢ Extends the return date from May 1 to June 1 and the tax due date from June 5 to June 30

• Land use applications

• Requests for records under the Freedom of Information Act
Sec. 7. Deadlines

• “Hold harmless” provision excuses the County if it fails to meet a deadline, and that a failure does not constitute a default, violation, approval, recommendation

• Expressly acknowledges that other deadlines may be extended in separate ordinances
Sec. 8. Duration

- Virginia Code § 15.2-1413 requires that the ordinance is limited in its effect “to a period not exceeding six months after [the] disaster . . .”

- Because this ordinance is an emergency ordinance, it is valid for only 60 days

- The non-emergency version of this ordinance that the Board will consider on April 15 will extend the ordinance’s duration as provided by Virginia Code § 15.2-1413
Sec. 9. Method for Resuming Normal Governmental Operations

• Virginia Code § 15.2-1413 requires that a continuity of government ordinance “provide for a method for the resumption of normal governmental authority”

• Section 9 provides that normal governmental operations will resume after:
  • The Director of Emergency Management reports to the Board that all emergency actions that can be taken have been taken;
  • The Governor ends the state of emergency; and
  • The State Health Commissioner declares that it is safe for people to once again gather, or words to that effect.
The Other Sections

1. Purpose
2. Authority
3. Scope

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10. Effect of this Ordinance on the Powers of the Director of Emergency Management
11. Superseding Prior Continuity of Government Ordinances
12. Severability
13. Liberal Construction
Recommended Action and Next Steps

**Recommended motion:**

“I move that the Board adopt Emergency Ordinance No. 20-E(2)”

**Next steps**

Staff will return to the Board at its April 15 meeting for the Board to consider this ordinance for adoption as a non-emergency ordinance, with any necessary revisions that are identified between now and then.