

**TOWN OF VIENNA, VIRGINIA**  
**EMERGENCY ORDINANCE TO EFFECTUATE TEMPORARY CHANGES IN**  
**CERTAIN DEADLINES AND TO MODIFY PUBLIC MEETING AND PUBLIC**  
**HEARING PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF**  
**OPERATIONS ASSOCIATED WITH 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 24, 2020, the Fairfax County Board of Supervisors confirmed the declaration of local emergency made by the County Executive/Director of Emergency Management on March 17, 2020 and adopted a Continuity of Government Ordinance in accordance with Virginia Code § 15.2-1431; and

**WHEREAS**, the Town of Vienna, pursuant to Virginia Code §44-146.14, *et seq.* the Town of Vienna coordinates its emergency response with the Fairfax County Director of Emergency Management; and

**WHEREAS**, the Town Council for the Town of Vienna (“Town Council”) enacted a Continuity of Government Ordinance on March 30, 2020, and subsequently readopted it on April 13, 2020, to expire on September 30, 2020; and

**WHEREAS**, the Commonwealth of Virginia remains in a state of emergency due the public health emergency caused by the COVID-19 pandemic; and

**WHEREAS**, the Town Council for the (“Town Council”) finds that COVID-19 continues to constitute 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 Town 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, Health Commissioner of the Commonwealth of Virginia, and the President of the United States have recommended continued limits and restrictions on public gatherings; 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 emergency 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, BE IT ORDAINED** by the Town Council for the Town of Vienna, Virginia:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the Town Council, the Planning Commission, Board of Zoning Appeals, Board of Architectural Review and all other advisory boards and commissions created by the Town Council or to which the Town 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
  - b. Prior to holding any such electronic meeting, the Public Entity shall provide public notice of at least 3 days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment; and
  - c. 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
  - d. 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
  - e. For any matters requiring a public hearing, public comment may be solicited by electronic means or in writing in advance and shall also be solicited through telephonic means prior to the meeting and 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

- f. 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 the Town of Vienna hereby declares a state of emergency in the Town of Vienna and incorporates by reference the Fairfax County's declaration of a local state of emergency and disaster.

**IT IS FURTHER ORDAINED**, that the provisions of this Emergency Ordinance shall remain in full force and effect from the expiration of the Town's previously adopted Continuity of Government Ordinance, September 30, 2020, until March 30, 2021, unless amended, rescinded or readopted by the Town Council in conformity with the notice provisions set forth in Town Code §9.1.1 but in no event shall such ordinance be effective for more than 6 months.

Upon rescission by the Town Council or automatic expiration as described herein, this emergency ordinance shall terminate and normal practices and procedures of government shall resume.

Nothing in this Emergency 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.

An emergency is deemed to exist, and this ordinance shall be effective upon its adoption.

**ADOPTED** by the Town Council for the Town of Vienna, Virginia, this 31<sup>st</sup> day of August 2020.

APPROVED

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Linda J. Seeman, Mayor

ATTEST:

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APPROVED AS TO FORM:

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Steven D. Briglia, Town Attorney