

**TOWN OF VIENNA, VIRGINIA
RE-ADOPTION AND EXTENSION OF EMERGENCY ORDINANCE TO PERMIT
TEMPORARY WAIVERS OF ZONING REGULATIONS AND REVIEW FOR
BUSINESS OPERATIONS ADVERSLY EFFECTED BY THE ONGOING 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”) 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, the Governor, by and through his Executive Orders, specifically Executive Orders 61, 62, 65 and 67, has identified the Virginia Forward “phased” reopening plan and modified the previous suspension of certain business activity to permit limited business activity; and

WHEREAS, On May 8, 2020, the Governor of Virginia released the Safer at Home: Phase 1 guidelines, and subsequent Executive Orders issued by the Governor identify the business restrictions that remain in place, any continued required closures, and that the Northern Virginia region is expected to remain under business operation restrictions for the near future; 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 is expected to extend that Ordinance to March 31, 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, at its meeting of June 1, 2020, adopted this emergency ordinance in response to the disaster caused by the COVID-19 pandemic and deemed the action a reasonable, temporary and prudent method to enable Vienna businesses to operate consistent with the Governor's Executive Orders and further mitigate the adverse economic impact of the COVID-19 has had on Vienna businesses.

NOW, THEREFORE, BE IT ORDAINED by the Town Council for the Town of Vienna, Virginia:

1. That the Forward Virginia Guidelines for all Business Sectors document includes mandatory requirements to open businesses in phases.
 - a. In Phase III and subsequent Phases where commercial operations are covered by a Governor's Executive Order, if restaurants choose to open to dine-in customers, they may only do so in accordance with Virginia Department of Health Guidelines, as well as other state and local mandated public health precautions.
2. That upon submission of an application promulgated by the Department of Planning and Zoning, the Town Manager shall have the authority to issue temporary emergency outdoor commercial activity permits to existing Town of Vienna Businesses with a current and valid business license, as well as a diagram showing the onsite location of the proposed outdoor dining area or other commercial activity, and in doing so, may waive parts of the Town Code as they relate to the engaging of business activity outside of a wholly enclosed building, use of onsite sidewalks, and required parking areas for outdoor commercial activity. Specific regulations regarding signs, reviews required by the Board of Architectural Review, required parking spaces, and requirements for conditional use permits for outdoor dining or activities, may be waived in the discretion of the Town Manager. Outdoor commercial activity shall be

conducted only by commercial businesses located on the site for which the permit is being issued. Additionally, the Town Manager may revoke any temporary emergency outdoor commercial activity permit for violations of its terms or violations of the Forward Virginia Guidelines, and other state and/or local zoning, health and safety requirements.

3. OPERATION OF OUTDOOR BUSINESS

This emergency approval is valid only for establishments located in zoning districts where they are already approved to operate by right.

- a. No further administrative approval or conditional use permit, or any other approval is required as long as the outdoor activity complies with all of the terms and conditions of this emergency ordinance. To qualify under this emergency ordinance, an establishment must have a valid Business License.
- b. This emergency approval automatically expires upon the repeal or expiration of this emergency ordinance.
- c. Occupancy of the outdoor dining area(s) for any single establishment may not be the percentage of the occupancy loads specified on the establishment's Non-residential Use Permit/Certificate of Occupancy or Maximum Occupancy Certificate or as further limited by the VDH Guidelines or Executive Orders issued by the Governor.
- d. Seating area(s) must be accessible for disabled patrons.
- e. Any area used for outdoor dining or for other commercial activity must be clearly delineated by cordon, marking or other means, and must be located entirely on hard surfaces, such as existing patios, sidewalks, paved parking spaces.
- f. A permit from the Office of the Fire Marshal is required for any tent or tent area (aggregate area of multiple tents separated by less than 12 feet) that is larger than 900 square feet. The normal fee for such a permit has been waived by the Office of the Fire Marshal for any establishment applying under this ordinance. A single, temporary tent no larger than 900 square feet does not require a permit.
- g. Any tent must (1) be flame-resistant with appropriate labeling affixed to the tent material, (2) remain open on all sides, (3) be located at least 20 feet from any building, and (4) be securely anchored to prevent collapse or uplift during inclement weather.

- h. No cooking or open flame is permitted under any tent unless approved by the Office of the Fire Marshal.
- i. All tables, chairs, umbrellas, tents, lighting, and other accessories must be removable and maintained in good visual appearance and condition. The outdoor area must be kept free of trash and debris, and any trash containers must be removed or appropriately stored at the end of each business day.
- j. No outdoor dining area or other commercial activity may obstruct a fire lane or fire equipment.
- k. Except as waved under this Emergency Ordinance, all business operations must otherwise comply with all other state, local and Executive Orders issued by the Governor related to the sale of alcohol, health, and safety requirements.

IT IS FURTHER ORDAINED, that the provisions of this Re-Adopted and Extended Emergency Ordinance and any permit issued thereunder shall remain in full force until March 31, 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 past the current expiration date of September 30, 2020. 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.

IT IS FURTHER ORDAINED that notwithstanding any provision of law, regulation or policy to the contrary, 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 31st day of August 2020.

APPROVED

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Steven D. Briglia, Town Attorney