

**TOWN OF VIENNA, VIRGINIA
EMERGENCY ORDINANCE TO PERMIT TEMPORARY WAIVERS OF ZONING
REGULATIONS AND REVIEW FOR PUBLIC, SEMI-PUBLIC AND PRIVATE
INSTITUTIONS ADVERSELY 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, On March 31, 2020, in recognition of the local, state and nationwide emergency, the Town Council for the Town of Vienna adopted an emergency continuity of

operations ordinance to provide modifications to the public meeting and public hearing practices and procedures necessary to permit continued operation of the governing body, and to permit the timely adoption of ordinances necessary to address the Covid-19 pandemic disaster; 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, On July 1, 2020, the Governor of Virginia released the Safer at Home: Phase 3 guidelines, and Executive Orders issued by the Governor identify the business restrictions that remain in place, and any continued required closures; and

WHEREAS, this emergency ordinance in response to the disaster caused by the COVID-19 pandemic is deemed 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 Virginia Department of Labor and Industry (DOLI), Virginia Occupational Safety and Health (VOSH), has adopted an emergency temporary standard (ETS) 16VAC25-220 to establish requirements for employers to control, prevent, and mitigate the spread of the coronavirus (COVID-19) that became effective on July 27, 2020, with a permanent standard expected to be adopted within six months.

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 outdoor operations permits to qualified Town of Vienna public, private, and semi-public institutions including, but not limited to, churches, schools, golf courses, country clubs, private clubs, and similar recreational uses in all zoning districts, with a current and valid certificate of occupancy, business license, if applicable, as well as a diagram showing the onsite location of proposed temporary outdoor operation; and, in doing so, may waive parts of the Town Code as they relate to activity outside of a wholly enclosed building. Specific regulations regarding signs, reviews required by the Board of Architectural Review, required parking spaces, and requirements for amended certificate of occupancy, may be waived in the discretion of the Town Manager. Additionally, the Town Manager may revoke any temporary permit for violations of its terms or violations of any state and/or local zoning, health and safety requirements.

3. TEMPORARY OUTDOOR OPERATIONS

This emergency approval is valid only for establishments located in zoning districts where the uses are already approved to operate by right or a previously issued conditional use permit.

- a. No further administrative approval or conditional use permit, or any other approval is required as long as the outdoor operations complies with all of the terms and conditions of this emergency ordinance.
- b. This emergency approval automatically expires upon the repeal or expiration of this emergency ordinance.

- c. Occupancy of the outdoor area(s) for any single establishment may not exceed the occupancy loads specified on the establishment's 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 operations must be clearly delineated.
- 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. 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 operations may obstruct a fire lane or fire equipment.
- k. Except as waved under this Emergency Ordinance, all outdoor 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 Emergency Ordinance shall remain in full force and effect until July 4, 2021, unless extended, 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 January 31, 2021. 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 4th day of January 2021.

APPROVED

Linda Colbert, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Steven D. Briglia, Town Attorney