Legislation Details (With Text)

File #:	20-0901	**Name:**	
Type:	Ordinance	**Status:**	Agenda Ready
File created:	5/28/2020	**In control:**	City Council Legislative Meeting
On agenda:	6/9/2020	**Final action:**	
Title:	Introduction and First Reading. Consideration. Passage on First Reading of an Amended Ordinance to Ensure the Continuity of 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. [ROLL-CALL VOTE]		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. 20-901_Cover sheet for ordinance, 2. 20-901_Ordinance, 3. 20-0901_Attorney General Opinion		

Date	Ver.	Action By	Action	Result

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 4, 2020

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK B. JINKS, CITY MANAGER /s/
JOANNA ANDERSON, CITY ATTORNEY /s/

DOCKET TITLE:
Introduction and First Reading. Consideration. Passage on First Reading of an Amended Ordinance to Ensure the Continuity of 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. [ROLL-CALL VOTE]

ISSUE: Consideration of an amendment to the continuity of government ordinance implementing procedures and processes for public meetings and other public procedures during the COVID-19 pandemic disaster to update the background information and expiration date for the ordinance.

RECOMMENDATION: That City Council introduce the ordinance, pass the ordinance on first reading, and hold a public hearing on the ordinance on June 20, 2020, and after public hearing, adopt the ordinance on June

20, 2020.

DISCUSSION: On March 24, 2020, the City Council adopted an emergency ordinance for the continuity of government and on April 18, 2020, since the emergency still existed, the City Council adopted a regular ordinance for the continuity of government. The proposed amendment will leave the April 18, 2020 ordinance intact but will extend the expiration date to six (6) months from the termination of State of the Local Emergency as allowed by Section 15.2-1413 of the Virginia Code. The previous ordinance expires at the termination of the Declaration of Local Emergency. It is possible that the provisions of this ordinance will be needed after the declaration has expired in order to give time for certain procedures to wind down or transition back to more traditional approaches. The state code allows such ordinances to extend for six months after the disaster which can be reasonably interpreted in this circumstance to be when the Declaration of local Emergency expires. The proposed amendment also updates the background whereas clauses in the ordinance to incorporate the extended Declaration of Local Emergency and to update some of the Governor's actions.

BACKGROUND: On March 20, 2020, the Attorney General issued an opinion that gave local governments additional guidance regarding processes and procedures that may be altered during an emergency such as the COVID-19 pandemic disaster. As he described, VFOIA has an emergency provision that allows public bodies to hold electronic meetings without a quorum in the room to address the emergency causing the need for the emergency procedure. He went on to add that addressing the emergency could include decisions that come before a public body that must be made immediately and where failure to do so could result in "irrevocable public harm." *See* Attorney General Opinion #20-011. Additionally, the Attorney General points out that Section 15.2-1413 of the Virginia Code allows local governments to adopt an ordinance regarding the continuity of government to allow the government to continue certain operations during a "disaster". *See id*. His opinion is that since the Governor's declaration of emergency concludes that the COVID-19 pandemic is a disaster, that Section 15.2-1413 is invoked. *See id*.

However, the Attorney General is very clear that although there are emergency provisions that the local government may utilize during this emergency, there are limitations on the subject matter that should be discussed using these emergency processes. Localities need to continue to be conscious of the importance of the VFOIA open meeting rules and their purpose of allowing as much open government as possible. Therefore, the docket items considered at electronic meetings without a quorum present should be limited to those about the COVID-19 pandemic disaster and any necessary response thereto and those items of the public body's regular business that are necessary to prevent irreparable harm to the public and to continue the government function. This would include budget, appropriation, and tax discussions and actions; and actions related to ensuring the ongoing continuity of government during the COVID-19 crisis

The continuity of government ordinance provides an additional mechanism for the City Council and other public bodies to meet electronically without a quorum in the room given that the circumstances of COVID-19 pandemic may make it unsafe to meet in person. As always, public bodies must adhere to the requirements of the Virginia Freedom of Information Act (VFOIA) and allow public access to meetings to the greatest extent possible. Therefore, the dockets for the electronic meetings without a quorum in the room will be limited to just those items necessary to be discussed and decided immediately and all other matters should be deferred until after the emergency is over and normal meeting procedures can resume. Additionally, for those meetings that are necessary, the public needs to be provided with access to the meeting to the greatest extent possible by electronic means and notice for the meeting must continue to meet requirements in VFOIA.

The ordinance also addresses other important procedural matter such as:

1. A practice to allow current appointees for appointments to City Code established boards and

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commission that expire during the emergency period to hold over until their successor is appointed by City Council; and

2. A provision providing authority for the Director of Emergency Management to waive penalties, enforcement of codes or city programs and services where necessary to properly allocate resources and ensure public safety during the emergency and where not prohibited by state and federal law.

FISCAL IMPACT: N/A

ATTACHMENTS:

Attachment 1: Coversheet for Continuity of Government Ordinance
Attachment 2: Continuity of Government Ordinance
Attachment 3: March 20, 2020 Opinion of the Attorney General