



Legislation Text

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City of Alexandria, Virginia

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MEMORANDUM

**DATE:** APRIL 8, 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 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.

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**ISSUE:** Consideration of an emergency ordinance to implement procedures and processes for public meetings and other public procedures during the COVID-19 pandemic disaster.

**RECOMMENDATION:** That City Council introduce the ordinance, pass the ordinance on first reading, and hold a public hearing on the ordinance on April 18, 2020, and after public hearing, adopt the ordinance on April 18, 2020.

**DISCUSSION:** On March 24, 2020, the City Council adopted an emergency ordinance for the continuity of government. Since the City Council has a regular meeting scheduled and the need for the emergency ordinance still exists, the ordinance is being re-introduced as a regular ordinance rather than an emergency ordinance for City Council's consideration.

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 changes from the emergency ordinance are highlighted in yellow in the attached ordinance and can be summarized as follows:

1. Minor language changes to clarify the regional boards and commissions;
2. The addition of a sentence making clear that topics for the electronic meetings are limited to matters necessary for the continuity of government;
3. A new provision that allows current appointees for appointments to City Code established boards and commission that expire during the emergency period to hold over until their successor is appointed by City Council; and
4. A new 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, ensure public safety during the emergency and address impacts the emergency has to businesses, where not prohibited by state and federal law.

**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 VFIA 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.

**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