

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 (E.O. 51) 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, E.O. 51 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 worldwide pandemic; and

WHEREAS, on March 16, 2020, the Board of Supervisors of Botetourt County declared a local emergency; and

WHEREAS, the Board 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, Virginia Code § 15.2-1413 provides that the Board may, notwithstanding any contrary provision of law, adopt an ordinance to assure continuity of government operations during the disaster and for a period not to exceed six months following the disaster; and

WHEREAS, Virginia Code § 15.2-1200 provides the county with authority to adopt necessary regulations to prevent the spread of contagious diseases among its residents; and

WHEREAS, Virginia Code § 44-146.21(C) further provides that the locality may, during a declared 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 the Board 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 and Health Commissioner of the Commonwealth of Virginia and the President of the United States have recommended suspension of public gatherings of more than ten attendees; 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 Board of Supervisors of Botetourt County, Virginia:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies and the number of citizens who customarily attend public meetings and public hearings of such public bodies, including the Board, the School Board, the Planning Commission, Board of Zoning Appeals, Board of Equalization, Economic Development Authority Board of Directors, and all local and regional boards, commissions, committees and authorities created by the Board or to which the Board 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 three 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,

- and whether they are physically 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 to in-person participation by the public to the extent that such in-person participation is consistent with good public health and guidance from state and federal authorities; and, otherwise, shall be 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 in advance and shall also be solicited through telephonic or 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 meetings 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. This extension of time is applied to, without limitation, action on administrative permits such as zoning permits, subdivision plats, site plans, erosion and sediment control plans, stormwater management plans, and similar deadlines. Likewise, any Board agenda item scheduled or proposed to be scheduled during the duration of the disaster shall be deemed continued for the duration of the effectiveness of this Ordinance, if the Public Entity does not take action on the agenda item during that timeframe, including those agenda items for which state or local law requires an affirmative action to be taken within a mandated timeframe and the failure to act otherwise would be deemed an approval.

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. Specifically, the chair of any Public Entity is given the authority to reschedule public hearings or hold public hearings in alternative venues within the County so as to ensure public participation consistent with public health.

IT IS FURTHER ORDAINED that the provisions of this Emergency Ordinance shall remain in full force and effect for a period of 60 days, unless amended, rescinded or readopted by the Board in conformity with the notice provisions set forth in Virginia Code §15.2-1427 but in no event shall such ordinance be effective for more than six months following the conclusion of the disaster. Upon repeal by the Board 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 the policies, procedures, and meeting guidelines adopted by any Public Entity are suspended to the extent they are inconsistent with this Ordinance.

IT IS FURTHER ORDAINED that the County Administrator is authorized and directed to restrict the public from entering or congregating around County-owned buildings, facilities, and real property as is reasonably necessary to ensure the health, safety, and welfare of the public and County staff. The County Administrator may cancel, postpone, or reschedule any events scheduled for any County-owned building, facility, or property as necessary to ensure the health, safety, and welfare of the public and County staff.

Nothing in this Ordinance shall prohibit Public Entities from holding in-person public meetings and/or public hearings 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 Botetourt County Board of Supervisors on this ____ day of April, 2020.

APPROVED:

Billy S. Martin, Sr.
Chairman, Board of Supervisors

Name	Vote
Billy S. Martin, Sr., Chairman, Blue Ridge District	
Dr. Donald M. "Mac" Scothorn, Vice-Chair, Valley District	
Steve Clinton, Amsterdam District	
I. Ray Sloan, Buchanan District	
Dr. Richard Bailey, Fincastle District	

ATTEST:

Gary P. Larrowe
Clerk to the Board of Supervisors

APPROVED AS TO FORM:

Michael W.S. Lockaby
County Attorney