

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	April 19, 2021
Action Required:	Adoption of Ordinance on First Reading by 4/5 Vote
Presenter:	Lisa Robertson, Chief Deputy/ Acting City Attorney
Staff Contacts:	Charles P. Boyles, II, City Manager; Lisa Robertson; Brian Wheeler
Title:	Updated Continuity of Government Ordinance (For the period 4/19/2021 through 10/19/2021)

Background:

The City Council has authorized actions necessary to address the COVID-19 Pandemic using various legal processes and procedures.

- (1) **Local Public Health Ordinance, as authorized by City Charter §14(5)**. Over the course of the past year, the City has maintained a special local ordinance establishing more restrictive requirements, in some regards, than those set out in the Governor's Executive Orders ("Local Public Health Ordinance").

Separately, on your 4/19/2021 agenda you are also considering an ordinance that would repeal your Local Public Health Ordinance, in favor of following the restrictions and guidelines within the Governor's Executive Orders.

- (2) **Continuity of Government Ordinance, as authorized by Virginia Code §15.2-1413**. The Proposed Continuity of Government Ordinance attached to this Agenda Memo allows City Council to authorize actions that it deems necessary to assure continuity of government during the continuing state of disaster that has been declared at state and local levels. (A continuity of Government Ordinance (CGO) may not continue in effect for longer than six (6) months at a time. Originally City Council adopted the CGO on March 25, 2020 (#O-20-049) and amended and extended it on September 8 (#O-20-117) and October 19, 2020 (#O-20-135)). The previously

enacted CGO will expire if you do not reenact it on your 4/19/2021 agenda.

(3) **Other Ordinances and Resolution(s).**

- a. Resolution #R20-035 (3/12/2020) authorizing the City Manager to Declare a Local Emergency. (On that same date, the City Manager, in his capacity as Director of Emergency Management, issued the Public Safety Order that serves as the actual Declaration).
- b. Resolution #R-20-045 (3/16/2020) granting the Haven permission to operate without regard to certain zoning (special use permit) conditions until such time as City Council discontinues the local state of emergency.
- c. #O-20-047 (3/16/2020): Ordinance Extending Mandatory Review Periods

Discussion:

Under Virginia Code §44-146.21 the City’s locally-declared state of emergency will continue in effect until City Council determines, in its judgment, that “all emergency actions have been taken.” So long as the locally declared state of emergency/ disaster continues, Va. Code §15.2-1413 authorizes City Council to enact an ordinance that provides a method to assure continuity in local government operations (with resumption of normal government operations by the end of a six-month period)—notwithstanding any contrary provision of [state] law, general or special. Since the local COVID-19 emergency/ disaster continues, City Council must also re-enact a CGO for another 6-month period if it wishes to allow actions to be taken to protect City employees and members of the public during their day-to-day interactions.

The CGO primarily deals with how public meetings may take place, extension of mandatory deadlines, and fees for City-owned areas used by businesses as outdoor cafés. The attached proposed Ordinance brings the various ordinances enacted by Council into one integrated CGO that will be effective for up to 6 months after its adoption. Relative to the outdoor café spaces, the attached proposed Ordinance would extend the fee reduction through October 2021.

The attached ordinance authorizes public meetings to continue to occur only via electronic means for so long as the locally declared state of emergency continues.

Alignment with Council Vision Areas and Strategic Plan: N/A

Community Engagement: N/A

Budgetary Impact: N/A

Recommendation: We recommend adoption of the attached Continuity of Government Ordinance, to be effective through October 19, 2021 unless City Council sooner determines that the local disaster/ emergency declaration can be terminated because all emergency actions have been taken.

Alternatives: None of which staff is aware at this time.

Attachment (1): Proposed Continuity of Government Ordinance

ORDINANCE

TO ASSURE CONTINUITY OF GOVERNMENT DURING THE COVID-19 PANDEMIC DISASTER BY ENACTING TEMPORARY CHANGES IN CERTAIN DEADLINES, MODIFYING PUBLIC MEETING AND PUBLIC HEARING PRACTICES AND PROCEDURES, AND AUTHORIZING OTHER EMERGENCY ACTIONS NECESSARY TO ASSURE SAFE AND EFFICIENT GOVERNMENT OPERATIONS

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, the Governor's 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 this public health emergency continues to be recognized as an emergency and a disaster through the Governor's Fourth Amended Executive Order Seventy Two and Order of Public Health Emergency Nine (March 23, 2021, made effective April 1, 2021); and

WHEREAS, the Governor's Executive Orders order 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, by Public Safety Order dated March 12, 2020, the City Manager/ Director of Emergency Management declared a state of local emergency based a threat to the public

health and safety of the residents of Charlottesville resulting from the communicable and infectious COVID-19 virus, which threat was and continues to be an emergency as defined in Virginia Code § 44-146.16; and

WHEREAS, the Council finds that the COVID-19 virus constitutes a real, substantial and continuing threat to public health and safety and constitutes a “disaster” as defined by Virginia Code §44-146.16, said virus being a “communicable disease of public health threat;” and

WHEREAS, by Ordinance # O-20-135 City Council amended and extended its continuity of government ordinance previously enacted by Council on March 25, 2020, as amended and re-enacted on September 8, 2020 and October 19, 2020, and City Council now desires to amend and re-enact its continuity of government ordinance to address the needs of City government operations as anticipated during the next six months;

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to assure continuity of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, Virginia Code § 2.2-3708.2(A)(3) allows, under certain procedural requirements including public notice and access, that members of City Council 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”) allow properly claimed exemptions provided under either under that Act or any other statute; and

WHEREAS, The Attorney General of Virginia issued an opinion dated March 20, 2020 stating that localities have the authority during disasters to adopt ordinances to ensure the continuity of government; and

WHEREAS, this Ordinance is enacted in response to the disaster caused by the COVID-19 pandemic; it promotes public health, safety and welfare and is consistent with the laws 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 Council of the City of Charlottesville, Virginia:

1. **THAT** the continuing COVID-19 pandemic makes it unsafe for public bodies to conduct their meetings in accordance with normal practices and procedures, because such practices and procedures require the physical presence of members of a public body and members of the public within the same room and meeting facilities may not allow adequate measures to be taken in accordance with public health requirements and guidelines. For the purposes of this Ordinance the term “public body” means the City Council, and every board, commission, or agency of the City of Charlottesville, including any committee, subcommittee, or other entity, however designated, created by City Council to perform delegated functions of City Council or to advise the City Council (each, individually, a “Public Body”); and

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 the City government during the continuing COVID-19 emergency and disaster:

- a. Any meeting or activities which normally would require the physical presence of a quorum of members of a Public Body may be held only through real time electronic means (including audio, telephonic, video or other practical electronic medium) without a quorum physically present in one location, and
- b. The City Manager is hereby authorized to restrict the number of electronic meetings each Public Body may conduct each calendar month, based on the capacity and availability of the City staff who are capable and qualified to support the meeting to ensure compliance with this Ordinance, and
- c. Prior to holding any such electronic meeting, the Public Body shall provide public notice of at least 3 days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment, and
- d. Any such electronic meeting of a Public Body shall state on its agenda the location at which members of the public can obtain information as to the means by which the public may access and participate in such electronic meeting, and
- e. Any such electronic meeting of a Public Body shall be open to electronic participation by the public and closed to in-person participation by the public, and each electronic meeting shall be conducted in a manner designed to maximize public participation, and
- f. A video recording of all electronic meetings shall be made available on the City's website within 3 business days following each electronic meeting, and
- g. With respect to any matter which requires a public hearing, the public hearing may be conducted by an open public comment period called for during an electronic meeting, as well as by submission of written comments to the Clerk of City Council prior to, during and for five (5) business days after the electronic meeting. Notice of the public hearing

shall be posted on the City's website at least 5 business days prior to the date of the public hearing.

- h. The minutes of all electronic meetings shall conform to the requirements of law, shall identify how the meeting was conducted, the identity of the members participating, and shall specify what actions were taken at the meeting. A Public Body may approve minutes of an electronic meeting at a subsequent electronic meeting; and
- i. Any provision of Va. Code §2.2-3708.2 requiring the Public Body's approval of electronic participation due to a member's personal matter or medical condition shall not apply for the duration of the local emergency declaration.

3. **THAT** the following fees relating to use of City property are adjusted:

- a. The café permit fee assessed pursuant to Charlottesville City Code Sec. 28-214(c) be and hereby is waived for the months of March and April 2020, and
- b. The café permit fee assessed pursuant to Charlottesville City Code Sec. 28-214(c) be and hereby is reduced by fifty percent (50%) for the months of May through December 2020 and the months of January through October 2021, and
- c. The City Manager may grant a credit to any café permit holder who paid the full amount of its café permit fees during any of the months referenced in 3.a or 3.b, above, said credit to be calculated in accordance with 3.a and 3.b, above and applied within a permit year designated by the City Manager, and
- d. The rental fee assessed pursuant to Charlottesville City Code Sec. 28-5 and City Council's approved fee schedule (fees for City parking spaces used for outdoor dining)

shall be reduced by fifty percent (50%) for the months of May through December of 2020 and January through October of 2021.

IT IS FURTHER ORDAINED THAT, notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by a Public Body or any City officers (including Constitutional Officers) or City employees, within a period of 60 or fewer days, shall be suspended during this emergency and disaster. The Public Bodies, and the City's officers and employees, are encouraged to take all such action as is practical and appropriate to meet those deadlines; however, failure to meet any such deadlines shall not constitute or be deemed to be a default, violation, approval, official recommendation or other action.

IT IS FURTHER ORDAINED THAT any scheduled non-emergency public hearings and action items of a Public Body may be postponed to a date certain if, in the judgment of the Public Body, it would be in the best interests of the public to do so, provided that public notice is given so that the public are aware of how and when to present their views.

IT IS FURTHER ORDAINED THAT this Ordinance shall not operate to preclude any authority whose governing board is appointed by this City Council from making its own decisions and rules regarding the conduct of its meetings either electronically or by means of having a quorum physically assembled, so long as those meetings are in compliance with applicable Executive Orders of the Governor of Virginia and any local ordinance which may be enacted by this Council to impose restrictions necessary to prevent the spreading of the COVID-19 virus within the City of Charlottesville; however, any such authority may also elect to conduct its meetings electronically as a Public Body within the purview of this Ordinance.

IT IS FURTHER ORDAINED THAT actions authorized by this Council within Resolution # R-20-045 (special zoning accommodations for The Haven), or within any

ordinance(s) provided to facilitate the safe conduct of elections within the City of Charlottesville, are hereby ratified and continued, in accordance with the terms set forth in said Resolution or ordinances.

IT IS FURTHER ORDAINED THAT the continuity of government ordinance adopted on March 25, 2020, as amended and re-enacted on September 8, 2020 and October 19, 2020, is hereby repealed.

IT IS FURTHER ORDAINED THAT a continuing emergency exists, and the City Manager's Declaration of a local emergency, authorized by resolution of this City Council on March 12, 2020 (#R-20-035) remains in effect; the various actions referred to within this Ordinance are necessary to be taken to address the emergency, and this Ordinance shall be effective immediately upon its adoption.

IT IS FURTHER ORDAINED THAT pursuant to Charlottesville City Code §2-96, by a four-fifths vote of City Council, this Ordinance is enacted on the date of its introduction, and this Ordinance shall remain in full force and effect until midnight on October 20, 2021 unless City Council sooner: (i) adopts an ordinance to repeal this Ordinance and to end the locally-declared emergency, or (ii) adopts an ordinance to amend and re-enact this Ordinance, as may be necessary to authorize actions necessary to address the state of emergency continuing beyond October 19, 2021.