

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA**

**O-02-20**

At the regular meeting of the Board of Supervisors of the County of New Kent, in the Boardroom of the Administration Building in New Kent, Virginia, on the 11<sup>th</sup> day of May, 2020:

Present:	Vote:
Thomas W. Evelyn	Absent
C. Thomas Tiller, Jr.	Aye
Ronald P. Stiers	Aye
John N. Lockwood	Aye
Patricia A. Paige	Aye

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Motion was made by Mr. Tiller, which carried 4:0, to adopt the following resolution:

**ORDINANCE TO RE-ADOPT THE EMERGENCY  
ORDINANCE APPROVED BY THE BOARD OF  
SUPERVISORS ON MARCH 25, 2020 CONCERNING  
CONTINUITY OF GOVERNMENT OPERATIONS DURING  
THE DECLARED COVID-19 PANDEMIC UNDER  
SECTION 15.2-1413 OF THE CODE OF VIRGINIA AND TO  
EXTEND THE EXPIRATION DATE OF SAID ORDINANCE  
UNTIL NO LATER THAN SEPTEMBER 25, 2020.**

**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 13, 2020, the New Kent County Board of Supervisors confirmed the declaration of local emergency made by the local coordinator of emergency management on March 13, 2020; 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, 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 § 44-146.21(C) further provides that a local director of emergency management or any member of a governing body in his absence may upon the declaration of a 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**, 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 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; and

**WHEREAS**, the Board of Supervisors of New Kent County adopted emergency Ordinance O-01-20 on March 25, 2020 to effectuate temporary changes in certain deadlines and to modify public meeting and public hearing practices and procedures to address continuity of operation of government associated with the pandemic disaster; and

**WHEREAS**, Ordinance O-01-20 was adopted for a 60-day period and must be re-adopted pursuant to Section 15.2-1427 of the Code of Virginia prior to May 25, 2020.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of New Kent County, Virginia:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including the Board of Supervisors, the School Board, the Planning Commission, Board of Zoning Appeals, Board of Equalization, Economic Development Authority and all local and regional boards, commissions, committees and authorities created by the Board of Supervisors 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 3 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; 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 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 meeting 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.

**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.

**IT IS FURTHER ORDAINED**, that the provisions of this Ordinance shall expire on September 25, 2020, unless rescinded by the Board of Supervisors sooner. Upon rescission by the Board of Supervisors or automatic expiration as described herein, this ordinance shall terminate and normal practices and procedures of government shall resume.

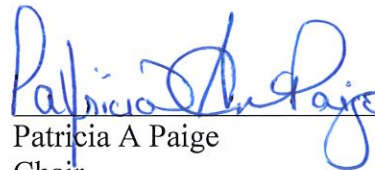
Nothing in this Ordinance shall prohibit Public Entities from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration.

This ordinance shall be effective upon its adoption.

Adopted this 11<sup>th</sup> day of May, 2020.



Rodney A. Hathaway  
County Administrator



Patricia A Paige  
Chair