

Emergency Ordinance to Allow for the Continuity of Government Operations During the Pandemic, including Altering the Process for Conducting Public Meetings; Restricting the Use of Public Buildings or Facilities; Providing Additional Powers to the Director of Emergency Management to Incur Costs, Waive Procedures, and Take Other Temporary Actions; and Suspending Deadlines and Procedures

WHEREAS, on January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency in response to the spread of the novel coronavirus (COVID-19); and

WHEREAS, on March 12, 2020, the Governor, in Executive Order Fifty-One, declared a state of emergency in the Commonwealth of Virginia, acknowledging the spread of COVID-19 as a disaster as defined in Virginia Code § 44-146.16; and

WHEREAS, Executive Order Fifty-One authorized local governments to render appropriate assistance and to alleviate conditions, as appropriate, to prepare for and mitigate the effects of the virus; and

WHEREAS, on March 13, 2020, the President of the United States found and declared the outbreak of COVID-19 to constitute a national emergency, beginning March 1, 2020; and

WHEREAS, on March 17 and 23, the Governor requested and then directed Virginians to avoid non-essential gatherings of more than 10 people; and

WHEREAS, the Russell County Board of Supervisors held a special called meeting on March 17, 2020 Board determined that COVID-19 constituted a “disaster” as contemplated in section 15.2-1413 of the Code of Virginia of 1950, as amended and pursuant to Virginia Code § 44-146.21, declared a local state of emergency in Russell County; and

WHEREAS, the Board of Supervisors has determined that COVID-19 constitutes a communicable disease of public health threat which has caused a disaster as those terms are defined in Virginia Code § 44-146.16; and

WHEREAS, while the Board of Supervisors values transparency in government and public engagement, it also finds that emergency measures are necessary to mitigate the spread of COVID-19 and to protect the health, safety, and welfare of residents and employees, while still providing for government operations to continue during this state of emergency; and

WHEREAS, Virginia Code § 15.2-1413 provides that the Board of Supervisors, notwithstanding any contrary provision of law, may adopt an ordinance to assure the continuity of government operations during this disaster and for up to six months; and

WHEREAS, Virginia Code § 44-146.21 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 for mandatory constitutional requirements; 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, the Board of Supervisors also has the inherent authority to vary the county's policies, procedures, and practices to assure the continuity of government operations; and

WHEREAS, government operations includes the work of the Board of Supervisors and other local public bodies, and the personnel who work for or on behalf of local public bodies; 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 of Supervisors may convene solely by electronic mean "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 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 the government; and

WHEREAS, this emergency ordinance in response to the disaster caused by the COVID-19 pandemic promotes the public health, safety, and welfare, and its adoption is consistent with the law of the Commonwealth of Virginia, the Virginia Constitution and the United States Constitution.

NOW, THEREFORE, BE IT ORDAINED, that this uncodified ordinance is hereby enacted as follows:

An Emergency Ordinance Allowing for the Continuity of Government Operations During the Pandemic

Sec. 1. Purpose; Effective Date; Expiration

This ordinance allows for variances from state laws and county ordinances in order to protect the health, safety, and welfare of residents and employees from the spread of COVID-19 while still providing for government operations to continue during this state of emergency.

The operation of government includes management of all county facilities, management of the school system, and the work of all local boards, including the Board of Supervisors, the Russell County School Board, the Russell County Industrial Development Authority, the Russell County Public Service Authority, the Russell County Department of Social Services, and any other local or regional board, commission, committee, or authority created by the board of supervisors or to which the board of supervisors appoints or recommends for appointment all or a portion of its members (collectively "Public Bodies" and individually "Public Body"), including employees

who work for or on behalf of any Public Body. Accordingly, the provisions of this emergency ordinance applies to all such “Public Bodies”.

At this time, public health experts recommend against assembling groups of people in confined spaces. Accordingly, this ordinance contains modifications for public meetings which should be followed while it is deemed unwise or unsafe to gather in one location a quorum for any Public Bodies, or to invite members of the public to physically gather together for public meetings.

Moreover, the spread of COVID-19 may make it impossible or impractical for government operations to meet all normally imposed deadlines, regulations, and time frames, or to comport, in some instances, with lengthy procedures and processes such as procurement or employment processes.

This emergency ordinance is effective immediately and will remain in effect for 60 days unless amended, rescinded, or readopted in conformity with the notice provisions of Virginia Code § 15.2-1427; however, in no event will the ordinance be effective for more than six months from the effective date of this ordinance. At the end of the six months, if a state of emergency still exists then this ordinance may be renewed the same way it was originally enacted. Upon repeal or expiration of this ordinance, normal government operations will resume.

Sec. 2. Public Meetings and Public Hearings

A. Any regularly scheduled or regular meeting of any Public Body may be canceled by the chair if there is no essential business that needs to occur or if conditions otherwise make it impractical to meet. Notice of the cancellation must be provided to the Public Body members and the public as soon as practicable.

B. In the alternative, any regularly scheduled or regular meeting of any Public Body may be held by solely electronic or telephonic means without a quorum of members physically present and without members of the public physically present, provided the following occurs:

1) 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. The meeting is accessible to the public through live audio or video on the County’s or Public Body’s website, a dial-in telephone number, or a social media platform.

- 2) The agenda and public notice for the meeting must:
 - a) include a statement that the meeting is being held using electronic means under this ordinance;
 - b) contain specific information about how members of the public can access the meeting; and
 - c) if there are any public hearing or public comment items, specifically identify how members of the public can provide comment, including one or more of the following: by e-mail, in writing, by telephone, through a social media platform, or via other electronic means.

3) The agenda is posted on the County's or Public Body's website at least three days prior to the meeting. Other materials associated with the meeting, if any, must be made available to the public at the same time they are provided to the Public Body members.

4) For public hearings and any items for which public comment is permitted, the following rules apply:

- a) Normal rules of order apply with respect to requiring the name and home address of the commenter, that comments relate to the hearing or comment topic, that appropriate limits on the number of comments per person per item apply, and that comments be of reasonable length.
- b) Public Bodies may allow public comments to be submitted via phone call, e-mail, or in writing, up until a reasonable time before the start of the meeting so long as those comments are provided to the Public Body members prior to any decision on an item.
- c) If available, members of the public may provide comments through leaving a voicemail on a dedicated phone number up until a reasonable time before the start of the meeting so long as those comments are then provided to the Public Body members prior to any decision on an item.
- d) If available, members of the public may provide comments through telephonic or interactive electronic means (call-in meeting access, social media platform) during the meeting so long as those comments are received by or provided to the Public Body members prior to any decision on an item.
- e) The Public Body may choose to receive additional comments through any means for a period of time after the public hearing or public meeting, so long as it announces and publicizes that opportunity and those comments are provided to the Public Body members prior to any decision on an item.
- f) All public comments must be made a part of the record of the Public Body either by being summarized in or included with the meeting minutes.

5) Any votes taken during the meeting must be taken by roll call, individually recording each member's name and vote.

6) The minutes of any meeting under this ordinance must conform to the requirements of law, including identifying the forms of electronic communication used, the members participating and the means by which they participated, the opportunities for public access or participation, a summary of the public comments, if any, and the actions 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.

C. Public Bodies may hold special meetings consistent with the provisions in (B) except that notice of the special meeting need only be provided at least three working days prior to the meeting, and the agenda and associated materials, if any, need to be made available to the public at the same time as they are made available to the Public Body members.

D. Public Bodies may hold emergency meetings consistent with Virginia Code § 2.2-3708.

E. Any item on an agenda for a regularly scheduled, regular, special, or emergency meeting held hereunder may be continued to a later date or time for the purpose of reviewing and considering comments from the public.

F. Non-emergency public hearings and action items of Public Bodies 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.

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

Sec. 3. Public Buildings, Facilities, Real Property and Events

The director of emergency management is empowered to restrict members of 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 or county staff. Moreover, the director of emergency management 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 or county staff.

Sec. 4. Additional powers of director of emergency management

A. *Funding and Contracts.* To the extent of unobligated funds available in excess of appropriations in the approved budget, the director of emergency management may enter into contracts and incur obligations necessary to protect the health and safety of persons and property, and to provide emergency assistance to persons affected by this disaster.

B. *Procedures.* The director of emergency management may proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring obligations, employing workers, renting equipment, purchasing supplies and materials, and other expenditures of public funds.

C. *Other Temporary Actions.* The director of emergency management may temporarily take any of the following actions: waive or reduce fees imposed by county ordinance; waive enforcement, in whole or in part, of any county ordinance; and modify, limit, waive, suspend, or amend any county program, service, function, process, or procedure. The director must apply the action uniformly for similar situations and not on a case-by-case basis. The director's actions will only be effective until the next regular meeting of the board of supervisors. The board of supervisors may ratify and extend the time for which the director's action remains in effect.

Sec. 5. Suspension of Deadlines, Time Frames, and Procedures

County personnel are encouraged to take action as is practical and appropriate to meet deadlines or time frames established under state law or county ordinances, however, notwithstanding any provision of law, regulation, or policy to the contrary, any deadlines requiring action by the county, any Public Body, or county employees are suspended. Time frames for review or expedited reviews are also suspended. Failure to meet any deadline or time frame will not constitute a default, violation, approval, ratification, or recommendation. Any policies or procedures inconsistent with this ordinance are hereby suspended.

Sec. 6 Adoption by Incorporated Towns within the Boundaries of Russell County

Each incorporated town within the boundaries of Russell County are encouraged, authorized and/or directed to declare its own state of local emergency and disaster or incorporate by reference the County's local state of emergency and disaster and to adopt an ordinance for the continuity of town government.

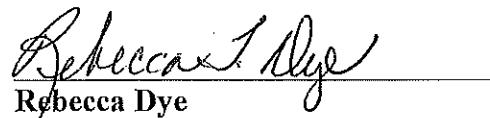
Sec. 7 Validity and Duration of Ordinance and Resumption of Normal Governmental Authority

The provisions herein are presumptively valid, however in the event that any provision of this ordinance is declared to be invalid by a court of competent jurisdiction all remaining provisions shall not be invalidated and remain in full force and effect. 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 Russell County Board of Supervisors 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 6 months after the conclusion of the disaster. Upon rescission by the Russell County Board of Supervisors or automatic expiration as described herein, this emergency ordinance shall terminate and normal practices and procedures of government shall resume.

2. This ordinance shall be effective upon adoption.

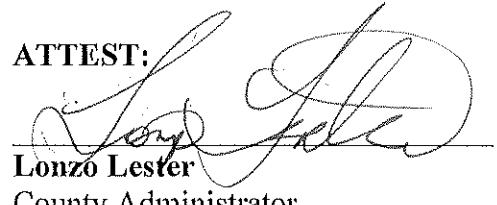
ADOPTED by the Russell County Board of Supervisors.

APPROVED



Rebecca Dye
Chairperson

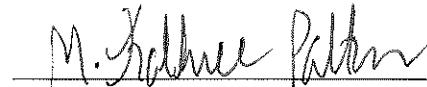
ATTEST:



Lonzo Lester

County Administrator

APPROVED AS TO FORM:



M. Katherine Patton

M. Katherine Patton

County Attorney