



Legislation Text

File #: 20-0235, **Version:** 1

Ordinance of the Council of the City of Hampton, Virginia, To Continue Emergency Procedures to Ensure Continuity of City Government Caused by the COVID-19 Pandemic

PURPOSE/BACKGROUND:

On March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One (51) declaring a state of emergency for the Commonwealth of Virginia arising from the novel coronavirus (COVID-19) pandemic. Executive Order Fifty-One (51) acknowledged the existence of a disaster as defined by Virginia Code Section 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread. Executive Order Fifty-One (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.

The City Manager, in her capacity as Director of Emergency Management, issued a declaration of a local emergency on March 13, 2020, as the spread of the virus known as COVID-19 constituted an imminent threat of disaster and a real and substantial threat to the health and safety of persons and property in the City. Subsequent to that declaration of a local emergency dated March 13, 2020, and as additional knowledge of the rapidly expanding impacts of COVID-19 became known, the City Manager, on March 17, 2020, amended and restated the declaration of a local emergency. City Council by Resolution confirmed the City Manager’s declaration of emergency and adopted a Continuity of Government Ordinance, thus affirming the existence of a disaster and declared and confirmed a state of emergency throughout the entire City that remains active. There have been and continue to be confirmed cases of COVID-19 in the Hampton Roads region.

Federal, state and local officials advise that a second wave of COVID-19 in the fall and winter months is likely. As such, increased restrictions on assembly imposed by state and federal guidelines on the Council, including its boards, authorities, commissions and committees, and on the public, may go into effect and it is important for the Council to convene in a manner that is safe for all. Renewal of this Ordinance is required for Council to adopt alternative procedures for meetings, including but not limited to meeting by telephonic and electronic means, during this emergency and to remain in compliance with the federal and state guidelines imposed during this disaster. Renewal of this Ordinance provides a method to assure continuity in the City’s government during this disaster.

Discussion:

See Purpose/Background above.

Impact:

See Purpose/Background above.

Recommendation:

Staff recommends approval.

WHEREAS, on January 31, 2020, the United States Health and Human Services Secretary declared a public health emergency for the entire United States to aid the healthcare community in responding to COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic;

WHEREAS, on March 12, 2020, Governor Ralph Northam declared a state of emergency in the Commonwealth of Virginia in response to the continued spread of COVID-19, and declared the anticipated effects of COVID-19 to be a disaster as described in Section 44-146.16 of the Code of Virginia, 1950, as amended;

WHEREAS, health officials at the federal, state and local level have repeatedly advised that gatherings of people can spread the illness and prolong the disaster caused by the COVID-19 pandemic;

WHEREAS, there have been and continue to be confirmed cases of COVID-19 in the Hampton Roads region;

WHEREAS, Section 44-146.21 of the Code of Virginia, 1950, as amended, prescribes necessary actions precedent to a declaration of a local emergency;

WHEREAS, the City of Hampton designates the City Manager as the Director of Emergency Management;

WHEREAS, Virginia Code Section 44-146.21 prescribes two methods for declaring an emergency: the first is accomplished by the local Director of Emergency Management with the consent of the governing body; the second is accomplished by the Director of Emergency Management without the initial consent of the governing body, but such declaration must be confirmed by the governing body at its next regularly scheduled meeting or at a special meeting within 45 days of the declaration, whichever occurs first;

WHEREAS, it was necessary and proper for the City Manager, acting in her capacity as Director of Emergency Management, to, on March 13, 2020, and as amended and restated on March 17, 2020, declare a local emergency and disaster in Hampton, Virginia, arising from the Novel Coronavirus ("COVID-19");

WHEREAS, the Hampton City Council confirmed the City Manager's declaration by resolution approved on March 17, 2020, pursuant to Section 44-146.21(A) of the Code of Virginia, and that local emergency continues;

WHEREAS, the Council understands and acknowledges that the public health threat posed by COVID-19 constitutes a real and substantial threat to health and safety of persons and property in the City of Hampton, Virginia; that it necessitated a declaration of local emergency; that the limitations on physical assembly of persons are urgently necessary to protect the public health; and that the Council and other City boards, commissions and public bodies must conduct themselves accordingly;

WHEREAS, Section 44-146.21(C) of the Code of Virginia provides a local director of emergency management or any member of a governing body in the absence of the director 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 the performance of public work"; and

WHEREAS, Section 15.2-1413 of the Code of Virginia authorizes any locality to, by ordinance, provide a method to assure continuity in its government in the event of a disaster;

WHEREAS, the Hampton City Council adopted an emergency continuity of government ordinance on March 17, 2020 which, by its terms was effective for the earlier of six months from adoption or the end of the local emergency; and

WHEREAS, by readoption of this ordinance the City ensures that emergency continuity of government measures will remain in effect until the earlier of its repeal or the end of the declaration of the local emergency;

WHEREAS, outbreaks of the virus have occurred in different areas of the United States, and health experts warn of the possibility of a second wave of the pandemic during the fall and winter months; and

WHEREAS, health officials at the federal, state and local level continue to advise that large gatherings of people can spread the illness and prolong the disaster caused by the COVID-19 pandemic;

WHEREAS, the Hampton City Council wishes to ensure the continuity of City government during the remainder of the COVID-19 pandemic; and

WHEREAS, the Hampton City Council determines that the continuity of City government and provision of critical local services require adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Hampton, Virginia:

1. That it hereby acknowledges that on March 17, 2020, the Council passed a Resolution confirming and ratifying the Declaration of Emergency made on March 13, 2020, by the City Manager acting as Director of Emergency Management, and the Amended and Restated Declaration of a Local Emergency made on March 17, 2020.

2. That it acknowledges that a declaration of a local emergency empowered and empowers the Director of Emergency Management with special authority and duties, said authority and duties being defined by the Charter of the City and by the laws, rules, regulations and plans of

the United States of America, the Commonwealth of Virginia and the City of Hampton.

3. That it acknowledges that when, in the judgment of this Council, all needed emergency actions have been taken, appropriate action to end the declared local emergency will be taken.

4. That the infectious nature of COVID-19 makes it unsafe to assemble a quorum of this Council in a single location, or to assemble members of the public in a single location, making it difficult or impossible for this Council and the City's boards and commissions to conduct meetings in accordance with normal practices and procedures. In accordance with Section 15.2-1413 of the Code of Virginia, 1950, as amended, notwithstanding any contrary provision of law, general or special, the following emergency procedures are adopted to ensure continuity of government during the pendency of the emergency and disaster created by COVID-19:

a. That any process, procedure, matter or transaction which typically allows for the physical presence of the public in a city building or on city premises that the City Manager has declared or in the future declares to be closed to the public is hereby suspended unless conducted in accordance with this ordinance or other provision of law.

b. Meetings of the Council and other City boards, authorities, committees and commissions may be held through electronic communication means without a quorum of members physically present in a single location, in accordance with the provisions of Virginia Code Section 2.2-3708.2(A)(3), including the public notice requirements, and at such a meeting held through electronic communication means may consider any item of business deemed essential by the Council to the continuity of government or to address the emergency. For meetings held electronically, pursuant to Virginia Code Section 2.2-3708.2(A)(1) and (A)(2), any matters which may properly come before the body may be considered. Notwithstanding the foregoing, the City Council or other city board, authority, committee or commission may modify or dispense with those requirements to the extent necessary or practicable to address the state of emergency and disaster caused by the COVID-19 pandemic.

c. Such meetings may be held without permitting members of the public to be physically present in a central location or in the same physical location as any of the Council, board, or commission members, so long as alternative arrangements for public access to such meetings are made. Such alternative public access may be electronic, including but not limited to audio, telephonic, or video broadcast.

d. For any matter requiring a public hearing by law, public comment will be solicited and received via written means prior to the vote on such matter. Public comments may also be solicited and, if so solicited, received via electronic and/or telephonic means if possible and practical. All such comments will be provided to the members of the body and made a part of the record of such meeting.

5. That the provisions in the aforesaid Section 4 of this ordinance shall be in effect until the earlier of its repeal by this Council or the end of the local Declaration of Emergency by resolution of the City Council. Upon repeal or expiration of the aforesaid Section 4, the matters referenced therein shall resume operation in accordance with normal practices and procedures.

6. That the City Manager is authorized to take actions objectively reasonable and

necessary in the public health interest to alter schedules, provide programming, pay bills, engage contractors, hire employees, and adjust other administrative processes and procedures to address the disaster, all in keeping with the U.S. Centers for Disease Control and Virginia Department of Health guidance/directives, and consistent with State and Local Declarations of Emergency.

7. That any agenda items scheduled or proposed to be considered by the Council and other City boards, commissions and authorities, for the duration of the local emergency declaration but not to exceed six (6) months, are deemed continued if the body does not take action on the item during that time, including those items for which applicable law requires an affirmative action to be taken with-in a particular time and failure to act is deemed approval.

8. That this ordinance shall be in effect on and after the date of its adoption, September 9, 2020.

BE IT FURTHER ORDAINED that City Council reserves the right by subsequently enacted ordinance to rescind or amend this ordinance.