Legislation Details (With Text)

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Title:	To assure the continuity of government during the disaster resulting from the COVID-19 pandemic by modifying the practices and procedures of public bodies to permit electronic meetings as authorized by Va. Code § 15.2-1413.				
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Date	Ver.	Action By	Action	Result
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To assure the continuity of government during the disaster resulting from the COVID-19 pandemic by modifying the practices and procedures of public bodies to permit electronic meetings as authorized by Va. Code § 15.2-1413.

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services determined pursuant to section 319 of the Public Health Service Act, 42 U.S.C. § 247d (2018), that a public health emergency exists as a result of confirmed cases of 2019 Novel Coronavirus; and

WHEREAS, on March 12, 2020, the Governor of Virginia issued Executive Order No. 51 (2020) declaring pursuant to sections 44-146.17 and 44-75.1 of the Code of Virginia (1950), as amended, that a state of emergency exists as a result of the spread of COVID-19, a disease caused by this coronavirus; and

WHEREAS, Executive Order No. 51 (2020) acknowledges that COVID-19 is a communicable disease of public health threat and that its anticipated effects constitute a disaster as described in section 44-146.16 of the Code of Virginia (1950), as amended, and orders the implementation of the Virginia Emergency Operations Plan, the activation of the Virginia Emergency Operations Plan to coordinate the provision of assistance to local governments, and authorization for state executive branch agencies to “waive any statute or regulation” as appropriate; and

WHEREAS, on March 13, 2020, pursuant to section 201 of the National Emergencies Act, 50 U.S.C. § 1621 (2018), and section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5191 (2018), the President of the United States of America declared a national emergency as a result of the spread of COVID-19; and

WHEREAS, the Mayor of the City of Richmond, as the City's Director of Emergency Management, declared a local emergency pursuant to section 44-146.21(A) of the Code of Virginia (1950), as amended, as a result of the spread of COVID-19; and

WHEREAS, by Resolution No. 2020-R025, adopted March 16, 2020, the Council of the City of Richmond consented, as required by section 44-146.21(A) of the Code of Virginia (1950), as amended, to the declaration made by the Mayor of the City of Richmond in his role as Director of Emergency Management that a local emergency exists in the city of Richmond due to the spread of COVID-19; and

WHEREAS, section 44-146.21(C) of the Code of Virginia (1950), as amended, authorizes the Mayor of the City of Richmond, as the City's Director of Emergency Management pursuant to section 44-146.19(B)(1) of the Code of Virginia (1950), as amended, to

> 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 of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available,

among other emergency powers; and

WHEREAS, section 15.2-1413 of the Code of Virginia (1950), as amended, provides that "[n]otwithstanding any contrary provision of law, general or special, any locality may, by ordinance, provide a method to assure continuity in its government, in the event of an enemy attack or other disaster" and that "[s]uch ordinance shall be limited in its effect to

a period not exceeding six months after any such attack or disaster and shall provide for a method for the resumption of normal governmental authority by the end of the six-month period;" and

WHEREAS, the Attorney General of Virginia issued an opinion dated March 20, 2020, concluding that any locality may adopt an ordinance to "provide a method to assure continuity in its government" at a public meeting "held electronically and without a quorum of members physically assembled" if held in compliance with section 2.2-3708.2(A)(3) of the Code of Virginia (1950), as amended, and other applicable law; and

WHEREAS, on March 23, 2020, the Governor of Virginia issued Executive Order No. 53 (2020), which ordered that "[e]ffective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, all public and private in person [sic] gatherings of 10 [sic] or more individuals are prohibited;" and

WHEREAS, on March 30, 2020, the Governor of Virginia issued Executive Order No. 55 (2020), which imposed criminal penalties for violation of the prohibition on "[a]ll public and private in-person gatherings of more than ten individuals," among other prohibitions; and

WHEREAS, the Council finds that COVID-19 is a communicable disease of public health threat, that the effects of COVID-19 constitute a "disaster" as defined by section 44-146.16 of the Code of Virginia (1950), as amended, and that the spread of COVID-19 makes it unsafe for a quorum of public bodies to assemble in one location or for public bodies to conduct meetings in accordance with normal legal requirements, practices, and procedures; and

WHEREAS, the Council now desires to adopt this ordinance to address the emergency presented by the spread of COVID-19 and provide a method to assure continuity in the City's government occasioned by the disaster presented by the spread of COVID-19;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That, in accordance with and pursuant to the authority granted by section 15.2-1413 of the Code of

Virginia (1950), as amended, and notwithstanding any contrary provision of law, general or special, the following provisions shall apply:

A. **Purpose.** The purpose of this ordinance is to ensure the continuity of government by providing legal means by which public bodies may discuss and transact public business in compliance with "social distancing" requirements imposed by governmental authorities during the disaster.

B. **Definitions.** For purposes of this ordinance, the terms defined below shall have the meanings ascribed to them by this subsection (B).

1. ***City.*** "City" means the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia.

2. ***Disaster.*** "Disaster" means the spread of COVID-19 described as a disaster under applicable law in Executive Order No. 51 (2020), issued by the Governor of Virginia on March 12, 2020.

3. ***Electronic Communication.*** "Electronic communication" has the meaning set forth in section 2.2-3701 of the Code of Virginia (1950), as amended.

4. ***Electronic Meeting.*** "Electronic meeting" means an assemblage of as many as three members or a quorum, if less than three, of the constituent membership of a public body held solely through real-time electronic communication means without a quorum of the public body physically assembled at one location.

5. ***Public Body.*** "Public body" means any local or regional authority, board, commission, or other collegial body, or any committee or subcommittee thereof, that is subject to the meeting-related provisions of the Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700-2.2-3715 (2019), and

   a. That the City Council of the City or the Mayor of the City created in accordance with applicable law;

b. To which the City Council of the City or the Mayor of the City appoints all or some of the members;

c. That is identified as a blended or discrete component unit of the City in the City's 2019 Comprehensive Annual Financial Report; or

d. That operates within the corporate boundaries of the city of Richmond.

For the avoidance of doubt, the term "public body" includes, without limitation, the City Council of the City, the School Board of the City of Richmond, the City Planning Commission, the Board of Zoning Appeals, and the Board of Equalization.

C. **Meeting Procedures.** While this ordinance is in force and effect, the following provisions apply to all public bodies:

1. ***Authorization.***

a. Any public body may discuss or transact public business at an electronic meeting that complies with the meeting procedures set forth in this ordinance.

b. Each public body may adopt additional procedures or rules consistent with this ordinance to aid in the orderly conduct of any electronic meeting held pursuant to this ordinance, including such additional requirements as may afford every opportunity to citizens to witness the operations of government.

c. No provision of this ordinance shall be interpreted or construed to require any public body to hold an electronic meeting or to prevent any public body from postponing to a date certain any item of business before it for consideration provided that the public body provides public notice of such postponement sufficient to inform citizens of how and when to present their views on that item of business.

d. No electronic meeting conducted pursuant to this ordinance shall be (i) subject to the limitation set forth in section 2.2-3708.2 of the Code of Virginia (1950), as amended, on the number of meetings in a calendar year in which a member of a public body may participate by electronic communication means or (ii) deemed to count against that limitation.

e. Each public body must determine, in consultation with its legal counsel, whether and the extent to which this ordinance confers legal authority on that public body.

2. ***Notice.*** The following notice requirements shall apply to electronic meetings in lieu of those set forth in the Virginia Freedom of Information Act:

a. Prior to holding an electronic meeting, the public body shall provide notice to the public of the meeting using the best available method given the nature of the disaster.

b. The public body shall provide the notice required by this ordinance for any regular meeting held as an electronic meeting at least three working days prior to the electronic meeting. The public body shall provide the notice required by this ordinance for any special meeting or emergency meeting held as an electronic meeting contemporaneously with the notice provided to the members of the public body.

c. The notice must:

(1) State the date and time of the meeting;

(2) State that the meeting will be held as an electronic meeting pursuant to and in compliance with this ordinance;

(3) State when and how the public may obtain electronically a copy of the agenda for the meeting;

(4) Describe how the public may listen to and, if possible, observe the meeting in real-time;

(5) Describe whether and how the public may participate in or otherwise offer comment before or during the meeting; and

(6) Identify the person or persons responsible for receiving comments from the public.

3. ***Agenda.*** The agenda for each electronic meeting must include text that does the following:

a. States that the meeting will be held as an electronic meeting pursuant to and in compliance with this ordinance;

b. Describes whether and how the public may participate in or otherwise offer comment before or during the meeting; and

c. Identifies the person or persons responsible for receiving comments from the public.

4. ***Announcement.*** At the beginning of the electronic meeting, the presiding officer of the public body, or any administrator, clerk, or secretary of the public body at the option of the presiding officer, shall make an oral announcement that does the following:

a. States that the meeting is being held as an electronic meeting pursuant to and in compliance with this ordinance;

b. Summarizes briefly the notice of the meeting provided to the public;

c. Describes whether and how the public may participate in the meeting, including whether and how public comment will be permitted and public hearings will be conducted;

d. Identifies the person or persons responsible for receiving comments from the public; and

e. Identifies each member of the public body who is electronically or physically present.

5. ***Public Participation.*** The following shall govern public participation in electronic meetings of public bodies pursuant to this ordinance:

a. Any electronic meeting of the public body shall be open to participation through electronic communication means by the public and closed to in-person participation by the public.

b. The public body shall ensure that the public may listen to and, if possible, observe the electronic meeting through electronic communication means.

c. If the public body provides for public comment when a public hearing is not required, the public body may provide that such public comment must be solicited only by electronic communication means in advance of the meeting, and the public body shall include all public comments received by such electronic communication means in advance of the meeting in the record of that meeting.

d. If the public body must hold a public hearing on a matter, the public body may solicit comment via electronic communication means in advance of the meeting and shall solicit public comment through telephonic or other electronic communication means during the course of the meeting. At or before the meeting, the public body shall furnish all of its members with any public comments received in advance of the meeting in accordance with the procedures described by the public body in its notice of the meeting. The public body shall include all public comments received in writing in advance of the meeting or during the course of the meeting in the record of that meeting.

6. ***Voting.*** Each vote taken during an electronic meeting must be a roll call vote, with each member's name and vote recorded in the minutes of that meeting.

7. ***Minutes.*** A public body may approve the minutes of an electronic meeting at a subsequent electronic meeting or at a subsequent meeting that is not an electronic meeting. The minutes of each electronic meeting must conform to all requirements of law. In addition, the minutes of each electronic meeting must identify:

a. The fact that the meeting was held as an electronic meeting pursuant to this ordinance due to the disaster represented by the spread of COVID-19;

b. The type of electronic communication means by which the meeting was held; and

c. Each member of the public body who participated in or monitored the meeting by electronic communication means.

D. **Severability.** The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if the valid judgment of a court of competent jurisdiction declares any section, paragraph, sentence, clause, or phrase of this ordinance, or the application thereof to any person or circumstances, to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity any of the remaining sections, paragraphs, sentences, clauses, and phrases of this ordinance, or the application thereof to any person or circumstances, that can be given effect without the unconstitutional or invalid sections, paragraphs, sentences, clauses, or phrases unless it is apparent that two or more sections, paragraphs, sentences, clauses, or phrases must operate in accord with one another.

E. **Expiration.** This ordinance shall expire on September 12, 2020, unless extended or rescinded by ordinance adopted by the City Council of the City prior to September 12, 2020. Upon its expiration or rescission, this ordinance shall no longer have any force or effect, and the laws, regulations, and rules applicable to each public body prior to the adoption of this ordinance shall thereafter be applicable to that public body.

§ 2. This ordinance shall be in force and effect upon adoption