

## **EMERGENCY ORDINANCE 20-1**

An emergency ordinance to establish methods to assure continuity in Colonial Heights City Government and the conduct of City Council meetings and certain other meetings during the Novel Coronavirus (COVID-19) emergency.

### **BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLONIAL HEIGHTS:**

#### **1. That the following uncodified ordinance is hereby approved:**

##### **A. Purpose of the Ordinance**

This ordinance establishes methods to assure continuity in Colonial Heights City Government, including City Council procedures for meetings, during the Novel Coronavirus (COVID-19) emergency. These provisions are intended to ensure the City Council's ability to conduct necessary public business in a manner consistent with Virginia law and federal, state, and local health directives and guidance, all while maintaining transparency and public participation to the greatest extent feasible.

This ordinance is being adopted in response to the COVID-19 outbreak. On March 1, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, the President of the United States declared the COVID-19 outbreak in the United States a National Emergency beginning on March 1, 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of Emergency due to Novel Coronavirus (COVID-19). The Governor declared the emergency "to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat"; and he found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in §§ 44-146.16 of the Code of Virginia." The Governor's Declaration of a State of Emergency remains in effect until June 10, 2020, unless amended or rescinded. Effective March 16, 2020, Governor Northam and the State Health Commissioner jointly issued an Order declaring a state public health emergency.

On March 16, 2020, the Colonial Heights Director of Emergency Services declared the existence of a local emergency; and on March 17, 2020, the City Council, in Resolution No. 20-17, consented to and confirmed the Director's declaration of a local emergency. The state of local emergency began on March 16, 2020, and ends on June 10, 2020.

The Public Health Emergency Order issued jointly by the Governor and the State Health Commissioner effective March 16, 2020, consistent with all other expert opinion, observes that COVID-19 spreads from person to person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person. No vaccine exists at this time.

##### **B. State and City Statutory Authority for the Ordinance**

Virginia Code § 15.2-1413 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." The Governor's Declaration of a State of Emergency found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia."

Section 4.11 of the Colonial Heights City Charter specifies that the City Council may approve, after only one reading, an emergency ordinance “for the immediate preservation of the public peace, property, health or safety or providing for the daily operation of a municipal department...” Such an emergency ordinance shall be effective for a maximum of 60 days.

Paragraph A.1 of Virginia Code § 2.2-3708.2 allows a member of the City Council to participate in a meeting via electronic communications if (1) the City Council has a written policy allowing for such electronic participation; (2) a quorum of the City Council is physically assembled at a primary meeting location; (3) the Council makes arrangements for the voice of the remote participant to be heard by all persons at the primary location; and (4) the member requesting remote participation is unable to attend the meeting due either to a temporary or permanent disability or other medical condition that prevents the member’s physical attendance, or to a personal matter that is identified with specificity. On April 14, 2020, the Council adopted an electronic communications policy pursuant to § 2.2-3708.2.

Paragraph A.3 of Virginia Code § 2.2-3708.2 allows the City Council to meet via electronic communications without a quorum physically assembled together “when the Governor has declared a state of emergency,” it is impracticable or unsafe to assemble a quorum of the Council in a single location, and the meeting’s purpose is to address the emergency. Public notice must be provided using the best available method, given the nature of the emergency; and it must be provided contemporaneously with the notice provided to the Council members. Finally, arrangements must be made for the public to access the meeting.

### **C. Definitions**

“Continuity in Colonial Heights City Government” includes, without limitation, those actions, and the coordination of actions, which are necessary to assure the continuation of the City’s essential functions and services.

“Emergency” means the outbreak of the respiratory illness referred to as the Novel Coronavirus or COVID-19, as described in the Governor’s Declaration of a State of Emergency and the Declaration of Local Emergency, and the spread and effects of COVID-19, which constitute a disaster as defined in Virginia Code § 44-146.16.

“Electronic communication” means the use of technology having electrical, telephonic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

“Meeting” means a regular meeting of the City Council as established on the schedule the City Council approved at its January 14, 2020 regular meeting and any special meeting the Code of Virginia allows. “Meeting” shall also mean a regular or special meeting of any other board, commission, or other Colonial Heights City Government entity whose members the City Council appoints; which includes but is not limited to the Planning Commission, the Board of Zoning Appeals, and the Economic Development Authority. “Meeting” shall also mean a regular or special meeting of the Colonial Heights School Board.

“Usual procedures” means the requirements and procedures established by the Virginia Freedom of Information Act for public meetings, including remote participation by a Council member as long as a quorum of the Council is physically assembled at the meeting location, as allowed by Paragraph A.1 of Virginia Code § 2.2-3708.2 and the policy the Council adopted on April 14, 2020.

## **D. City Council Meeting Procedures**

1. For any meeting at which the City Council transacts public business for any purpose other than addressing the COVID-19 emergency or assuring continuity in Colonial Heights City Government, the City Council will meet in accordance with all usual procedures the Virginia Freedom of Information Act specifies.

2. If the purpose of a City Council meeting is to address the COVID-19 emergency, the City Council will meet in accordance with all usual procedures the Virginia Freedom of Information Act specifies, unless the Mayor determines that the nature of the declared emergency makes it impractical or unsafe to physically assemble a quorum at one location, in which case the Council will meet in accordance with the procedures that Paragraph A.3 of Virginia Code § 2.2-3708.2 establish. No action will be taken by the Council in an electronic meeting unless a quorum is participating remotely. In conducting an electronic meeting under Paragraph A.3 of Virginia Code § 2.2-3708.2, the Council will state on the record the nature of the emergency, the fact that the meeting is being held electronically, and the type of electronic communication being used; and the Council will make arrangements for public access to the meeting.

3. (A) If any meeting or any part of a meeting of the City Council is conducted for the purpose of assuring continuity in Colonial Heights City Government, the Council will meet to the extent possible in accordance with all usual procedures the Virginia Freedom of Information Act specifies.

(B) If the Mayor determines that items proposed to be considered at a City Council meeting are necessary to assure continuity in Colonial Heights City Government and the usual procedures cannot be implemented safely or practically, then pursuant to Virginia Code § 15.2-1413, the City Council will conduct any meeting to consider the items as follows:

(1) The meeting will be held through electronic communication means without a quorum of members physically assembled at one location, after notice of the meeting is given in accordance with applicable law. The City Council will take no action in an electronic meeting unless a quorum is participating remotely.

(2) The meeting may be held without permitting members of the public to be physically present in the same location as any of the Council members, but alternative arrangements for public access will be made. Such alternative public access may be through electronic communication, including but not limited to audio, telephonic, or video broadcast.

(3) Before action may be taken on any agenda item or items, the Council must first approve that the item or items are necessary to assure continuity in Colonial Heights City Government and that the usual procedures cannot be implemented safely or practically. A motion will be made and voted upon before each item or as to the entire agenda, as the Mayor determines.

(4) For any agenda item requiring a public hearing by law, public comment will be solicited and received via written or electronic communication prior to the vote on the item. Council members will be provided with all comments, and the comments will be made a part of the record of the meeting.

**E. Meeting Procedures of Other City Entities**

The meeting procedures specified in Subsection D, applicable to the City Council, shall also apply to meetings of any other City board, commission, or other entity whose members the Council appoints; including but not limited to the Planning Commission, the Board of Zoning Appeals, and the Economic Development Authority. Any decision the Mayor is authorized to make under Subsection D shall be made by the Chairman of the board, commission, or other entity. Also, the meeting procedures specified in Subsection D, applicable to the City Council, shall also apply to meetings of the Colonial Heights School Board. Any decision the Mayor is authorized to make under Subsection D shall be made by the School Board Chairman.

**F. Suspension of Certain Rules, Bylaws, Laws, Regulations, Policies, and Deadlines**

1. Any rules of procedure and policies that the Council has previously adopted are suspended if they are inconsistent with this ordinance.

2. Any rules of procedure, bylaws, or policies that any board, commission, or other entity referenced in Subsection E herein has previously adopted are suspended if they are inconsistent with this ordinance.

3. Notwithstanding any provision of law, regulation, or public policy to the contrary, any deadlines requiring action by the Council, or a board, commission, or other entity referenced in Subsection E herein, shall be suspended; provided however, that the Council and the boards, commissions, or other entities, and the officers and employees thereof, shall take any practical and appropriate action to comply with the deadlines. Failure to meet any such deadline shall not constitute a default, violation, approval, or recommendation.

**2. That this ordinance shall become effective upon approval, pursuant to Section 4.11 of the Colonial Heights City Charter.**

**3. That this ordinance shall be in effect through June 10, 2020.**

Approved:

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

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I certify that the above emergency ordinance was:

Adopted on \_\_\_\_\_.

Ayes: \_\_\_\_\_. Nays: \_\_\_\_\_. Absent: \_\_\_\_\_. Abstain: \_\_\_\_\_.

The Honorable Michael A. Cherry, Councilman: \_\_\_\_\_.

The Honorable Kenneth B. Frenier, Councilman: \_\_\_\_\_.

The Honorable W. Joe Green, Jr., Councilman: \_\_\_\_\_.

The Honorable John E. Piotrowski, Councilman: \_\_\_\_\_.

The Honorable John T. Wood, Councilman: \_\_\_\_\_.

The Honorable Elizabeth G. Luck, Vice Mayor: \_\_\_\_\_.

The Honorable T. Gregory Kochuba, Mayor: \_\_\_\_\_.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney