

| ACTIONS  |   |                               |
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| Board of Supervisors Meeting of November 18, 2020  |   |                               |
|  |   | November 19, 2020             |
| AGENDA ITEM/ACTION   | ASSIGNMENT  | VIDEO                         |
| 1. Call to Order. <ul style="list-style-type: none"> <li>Meeting was called to order at 1:00 p.m., by the Chair, Mr. Gallaway. All BOS members were present. Also present were Jeff Richardson, Greg Kamptner, Claudette Borgersen and Travis Morris.</li> </ul>   |   | <a href="#">Link to Video</a> |
| 4. Adoption of Final Agenda. <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> the final agenda as amended.</li> </ul>   |   |                               |
| 5. Brief Announcements by Board Members.<br><u>Ann Mallek:</u> <ul style="list-style-type: none"> <li>Encouraged citizens to visit the online Artisan Studio Tour at <a href="http://www.artisanstudiotour.com">www.artisanstudiotour.com</a> which will run until the end of 2020. Mentioned that there is an effort by the NACo Arts and Culture Commission to collect images and videos from localities on ways that artisans are helping to heal their communities.</li> <li>Mentioned that the Crozet Master Plan work is continuing with many new concepts being introduced by staff.</li> <li>Announced she is holding a virtual town hall on November 19, 2020 at 7pm and requested questions be sent to her in advance.</li> </ul> <u>Donna Price:</u> <ul style="list-style-type: none"> <li>Announced she will be holding a virtual town hall on December 1, 2020 at 7pm.</li> </ul> <u>Bea LaPisto-Kirtley:</u> <ul style="list-style-type: none"> <li>Thanked the Electoral Board for their hard work on the presidential election.</li> <li>Congratulated Grace on her one-year anniversary in the Board of Supervisors office.</li> </ul> <u>Liz Palmer:</u> <ul style="list-style-type: none"> <li>Congratulated Grace on her one-year anniversary in the Board of Supervisors office and expressed her appreciation to the Clerk's office.</li> </ul> |   |                               |
| 6. Proclamations and Recognitions. <ul style="list-style-type: none"> <li>a. Proclamation in Support of Front-Line Workers. <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> proclamation.</li> </ul> </li> </ul>   | (Attachment 1)  |                               |
| 7. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board. <ul style="list-style-type: none"> <li><u>Gary Grant</u>, spoke towards questions submitted to the Albemarle County Board of Supervisors.</li> <li><u>Abigail Turner</u>, spoke on behalf of the Albemarle County Democratic Party in celebration of the elections operations. She congratulated the electoral Board and thanked various county staff for their work which facilitated voting efforts.</li> </ul>   |   |                               |
| 8.3 Stream Health Initiative Update. <ul style="list-style-type: none"> <li><b>DISCUSSED.</b></li> </ul>   |   |                               |
| 9. Confederate Memorial Time Capsule Presentation. <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> Resolution to approve the University of Virginia library Deed of Gift Agreement and to authorize the County Executive to sign the Agreement.</li> </ul>   | <u>Clerk:</u> Forward copy of signed resolution to County Attorney's office. (Attachment 2) |                               |

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|      |   | County Attorney: Provide Clerk with recorded Deed of Gift. (Attachment 3)   |
| 10.a | <b>Work Session:</b> Strategic Plan Progress Update.<br>• <b>HELD.</b>  |   |
| 10.b | <b>Work Session:</b> Capital Planning.<br>• <b>HELD.</b>  |   |
|      | <b>Recess.</b> The Board recessed at 3:35 p.m., and reconvened at 3:50 p.m.   |   |
| 11.  | <b>Presentation:</b> Code Compliance Program Information Session.<br>• <b>RECEIVED.</b>   |   |
| 12.  | Closed Meeting.<br>• At 4:47 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:<br>• Under Subsection (1), to discuss and consider the future assignment and performance of the Clerk of the Board; and<br>• Under Subsection (5), to discuss a prospective business in an emerging industry where no previous announcement has been made of the business locating its facilities in the community; and<br>• Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation involving a Virginia corporation where consultation or briefing in an open meeting would adversely affect the litigating posture of the County and the Board; and<br>• Under Subsection (8), to consult with and be briefed by legal counsel requiring the provision of legal advice by counsel regarding volunteer emergency medical service providers in the County. |   |
| 13.  | Certify Closed Meeting.<br>• At 6:03 p.m., the Board reconvened into open meeting and certified the closed meeting.   |   |
|      | <b>Non-Agenda.</b><br>• By a vote of 6:0, <b>AUTHORIZED</b> the chair to sign a letter, on behalf of the Board, to the Virginia Board of Pharmacy Ad Hoc Committee in support of Holistic Virginia, LLC's application for a pharmaceutical processor permit in Albemarle County.  |   |
| 14.  | From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.<br>• There were none.   |   |
| 15.  | <b>Presentation:</b> Thomas Jefferson Health District COVID-19 Update.<br>• <b>RECEIVED.</b>  |   |
| 16.  | <b>Pb. Hrg.: Ordinance to Amend Section 9, Succession to Ordinance No. 20-E(5) and Duration, of an Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19.</b><br>• By a vote of 6:0, <b>ADOPTED</b> ordinance.  | Clerk: Forward copy of signed ordinance to County Executive's office and County Attorney's office. (Attachment 4) |
| 17.  | From the Board: Committee Reports and Matters Not Listed on the Agenda.<br>a. Amendment to the Board's Operating Procedures.  |   |

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| <ul style="list-style-type: none"> <li>• <b>CONSENSUS</b></li> <li>b. Broadband Uses</li> <li>• Discussed</li> <li>c. Boards and Commissions</li> <li>• <b>CONSENSUS</b></li> </ul>   |  |  |
| 18. From the County Executive: Report on Matters Not Listed on the Agenda.<br><u>Jeff Richardson:</u> <ul style="list-style-type: none"> <li>• Presented the November County Executive's report.</li> </ul> <u>Trevor Henry:</u> <ul style="list-style-type: none"> <li>• Updated the Board on rental space in the Crozet Library and a potential new lease.</li> <li>• Liz Palmer requested clarification of some of the language in the "Front-Line Workers" proclamation.</li> </ul> |  |  |
| Closed Meeting. <ul style="list-style-type: none"> <li>• At 7:50 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:</li> <li>• Under Subsection (1), to discuss and consider the future assignment and performance of the Clerk of the Board.</li> </ul>   |  |  |
| Certify Closed Meeting. <ul style="list-style-type: none"> <li>• At 8:24 p.m., the Board reconvened into open meeting and certified the closed meeting.</li> </ul>  |  |  |
| 19. Adjourn to November 18, 2020, 1:00 p.m., electronic meeting pursuant to Ordinance No. 20-A(16). <ul style="list-style-type: none"> <li>• The meeting was adjourned at 8:25 p.m.</li> </ul>  |  |  |

ckb/tom

Attachment 1 – Proclamation in Support of Front-Line Workers

Attachment 2 – Resolution to Approve A Deed of Gift Agreement with the University of Virginia Library

Attachment 3 – Deed of Gift

Attachment 4 – Ordinance No. 20-E(7)

**Proclamation in Support of Front-Line Workers**

**WHEREAS**, Albemarle County recognizes that front-line workers during the COVID-19 pandemic are vital for the core functions of the economy and our community; and

**WHEREAS**, regionally front-line workers receive lower wages on average, and come disproportionately from socio-economically disadvantaged groups compared to the overall workforce; and

**WHEREAS**, we have an opportunity for our region to emerge from COVID recovery with an increased focus on ensuring safe and equitable conditions for frontline workers; and

**WHEREAS**, the Board of Supervisors supports the ideals of our regional partners (community-based advocates from the Equity Center Local Steering Committee, Network 2 Work, and UVA President's Council on Community-University Partnerships) to establish a regional standard of fair and equitable treatment of front-line workers; and

**WHEREAS**, the leadership of Albemarle County Local Government has taken considerable steps in alignment with the aim of supporting front-line workers including:

- Health and Safety Protections
- Educating workers and managers on COVID safety
- Financial pandemic risk recognition
- Paid leave and flexible schedules
- Support for wrap around-services and child/family care
- Affordable health care; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle County Board of Supervisors do continue to affirm our commitment to our front-line workers and to supporting through our actions and our partnerships the promotion of an equitable and inclusive Albemarle County.

*Signed this 18th day of November 2020.*

**RESOLUTION TO APPROVE A DEED OF GIFT AGREEMENT  
WITH THE UNIVERSITY OF VIRGINIA LIBRARY**

**WHEREAS**, the At Ready Civil War Memorial was removed from the court square site on September 20, 2020, followed by the removal of a time capsule from a cavity in the ground where the monument stood; and

**WHEREAS**, the time capsule was transported to the UVA Special Collections lab for assessment and recovery of its contents, where the evaluation of the time capsule contents revealed that the majority of paper contents had been bathed in ground water and subjected to large insect activity, and most likely bacterial activity; and

**WHEREAS**, the UVA Special Collections staff have spent considerable time working to salvage as much of the time capsule contents as possible, but the optimal recovery and exhibition of the time capsule contents will require significant preservation capacity, specialized digital and physical resources, and considerable expertise, and UVA Special Collections has expressed a willingness to take responsibility for the long-term investment needed to keep the time capsule contents available and accessible for community use; and

**WHEREAS**, the Board is authorized by Virginia Code § 15.2-953 to make a gift of personal property to the University of Virginia.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves a Deed of Gift Agreement between the County and the University of Virginia Library for the preservation of the time capsule contents from the At Ready Memorial site, and authorizes the County Executive to execute a Deed of Gift Agreement on behalf of the County once it has been approved as to substance and form by the County Attorney.

DEED OF GIFT**1. Transfer of Ownership**

I (we), Albemarle County Board of Supervisors of [401 McIntire Rd, Charlottesville, VA 22903] ("Donor") hereby donate and convey to the Rector and Visitors of the University of Virginia, on behalf of and for the benefit of the University of Virginia Library (the "Library" or "University," as appropriate), all rights, title, and interest that I (we) possess in the materials described on Exhibit A to this Deed of Gift (the "Donated Materials"), except as noted in this Deed of Gift.

By signing this Deed, Donor understands and agrees that the location, retention, cataloging, preservation, and disposition of the Donated Materials by the University will be conducted in the University's sole discretion, in accordance with University policy and practice and applicable law. Common discretionary uses by the University include, but are not limited to, exhibition, display, copying (including digitization) for preservation, archival and access purposes, storage, and making works available (including online) for research and scholarship. Donor acknowledges that the Library may dispose of any Donated Materials not selected for permanent retention without further notice to Donor. Retained Donated Materials shall be made accessible for research, subject to the terms and conditions, if any, stated on attached Exhibit A. Any Donated Materials in digital form ("Digital Donated Materials") will be transferred in accordance with the terms and conditions stated on attached Exhibit B.

**2. Copyright****A. Current copyright ownership and control**

To the best of my knowledge, (please select *only one* of the following statements):

- ☐ Donor owns **all** copyrights in the Donated Materials (i.e., all works were created by Donor, or Donor acquired the copyrights in all Donated Materials.)
- ☐ Donor owns **some** of the copyrights in the Donated Materials (i.e., some of the Donated Materials were created by Donor, or Donor acquired the copyrights in some of the Donated Materials, but the Donated Materials also contain works for which other persons or entities control the copyrights.)
- ☐ Donor owns **none** of the copyright(s) in the Donated Materials (i.e., all of the Donated Materials were created by other persons or entities, or the rights are controlled by other persons or entities, or they are in the public domain and not covered by any copyrights).

Further information about the control of copyrights in the Donated Materials, including identification of which elements of the Donated Materials are subject to Donor's copyright, is found in Exhibit A.

**B. Transfer of copyright ownership:**

Please select *only one* of the following options.

- ☐ Donor does not hold any copyrights in the Donated Materials. (Either all copyrights in Donated Materials are controlled by third-parties or else Donated Materials are free of copyright and in the public domain.)
- ☐ Donor irrevocably assigns to the University any and all copyrights Donor owns in the Donated Materials.
- ☐ Donor retains full ownership of any and all copyrights Donor currently owns in the Donated Materials, but Donor grants the University a nonexclusive right to authorize all uses of these materials for non-commercial research, scholarly, or other educational purposes pursuant to a Creative Commons Attribution, Noncommercial license.

☐ Donor retains full ownership of any and all copyrights Donor currently owns in the Donated materials and does not transfer or intend to transfer copyright ownership to the University.

Regardless of Donor's above choice as to transfer of copyright ownership, Donor acknowledges that no term or provision of this Deed of Gift shall be interpreted to limit or restrict the rights of the University or users of the Donated Materials as provided by copyright law, including fair use.

**3. Exclusivity (Typically applies where donor retains a copy, as in digital files or manuscripts—leave blank if inapplicable)**

☐ Donor agrees not to sell, donate, or deposit the Materials, including digital files or copies, at or to any other institution.

**4. Donor Estimate of Value**

Please enter an estimated value of your gift:    \$ \_\_\_\_\_

**SIGNATURE OF DONOR:**

I (we) represent and warrant that I am (we are) the sole owner(s) of the materials described above; that I (we) have full right, power, and authority to give the materials to the University; and that the information I (we) have provided is accurate. The terms of this Deed of Gift shall apply to all of the Donated Materials described on Exhibit A and on any subsequently delivered Exhibit notwithstanding that some materials may be delivered before or after the date of this Deed of Gift.

Signed:

Signed:

\_\_\_\_\_  
(Donor Signature)

\_\_\_\_\_  
(Donor Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**RECEIPT OF GIFT** (to be filled out by library staff):

This gift was received by the library on the \_\_\_\_ day of \_\_\_\_, 2020

**RECOMMENDATION**

This gift is recommended for acceptance.

**ACCEPTANCE BY UNIVERSITY**

This gift is accepted on behalf of the Rector and Visitors of The University of Virginia by Gift Processing Services.

\_\_\_\_\_  
(Authorized Library Signature)

\_\_\_\_\_  
(Director Of Gift Processing Services)

\_\_\_\_\_  
(Printed Name & Title)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

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EXHIBIT A TO DEED OF GIFT

Description of Donated Materials (including any Digital Donated Materials) and  
Copyrights Therein



EXHIBIT B TO DEED OF GIFT

## Terms and Conditions Applicable to Digital Materials Transfer

## 1. Transfer and Ownership of Original or Duplicate Digital Donated Materials

- ☐ **OPTION A – Carrier media donation:** The Donor hereby delivers into the permanent care and custody of the University the physical carrier media identified below, which contains Digital Donated Materials, which is attached hereto and made a part of the agreement; the Donor thereby grants the University the right to create exact duplicates of the Materials in print, audio, web, video, optical disc, photographic, digital and/or film format on said carrier media, which will include all system files, deleted files, or other hidden data; the Donor hereby warrants and guarantees that he/she has good title to the said Digital Donated Materials, and agrees to hold harmless and indemnify the University from all claims or damages arising out of any alleged defect in Donor's title to said Digital Donated Materials. The University will have ongoing ownership of the Materials and any copies made of the Digital Donated Materials.

Description of physical carrier media: \_\_\_\_\_

\_\_\_\_\_ (Donor initials)

- ☐ **OPTION B – Carrier media loan:** The Donor hereby agrees to allow the University to make exact duplicates of the Digital Donated Materials held on the physical carrier media identified below for the University's permanent use and possession. The Donor hereby warrants and guarantees that he/she has good title to the said materials, and agrees to hold harmless and indemnify the University from all claims or damages arising out of any alleged defect in Donor's title to said Digital Donated Materials. The University will have ongoing ownership of its copies of the Digital Donated Materials. The University will make arrangements with the Donors to receive the Digital Donated Materials in Charlottesville. While in the University's custody, the Digital Donated Materials will receive the same care and attention they would receive as the property of the University, but it is hereby understood and agreed that the University shall not be deemed responsible for any loss or damage to the Digital Donated Materials. The Donor shall bear all risk of loss to the said Digital Donated Materials, resulting from fire, flood, and other casualty, and shall be solely responsible for insuring said Digital Donated Materials against the same. Digital Donated Materials that the Donor will retrieve after University copies have been made shall be made available for pick up by the University no later than \_\_\_\_\_ days from the date of deposit with the University for copying.

Description of physical carrier media: \_\_\_\_\_

\_\_\_\_\_ (Donor initials)

- ☐ **OPTION C – File transfer:** The Donor hereby agrees to allow the University to make exact duplicates of the Digital Donated Materials on the [ ] day of [month] using [transfer method, such as Dropbox, or hard drive transfer, etc.]. The Donor hereby warrants and guarantees that he/she has good title to the Digital Donated Materials, and agrees to hold harmless and indemnify the University from all claims or damages arising out of any alleged defect in Donor's title to said Digital Donated Materials. The University will have ongoing ownership then of this copy of the Digital Donated Materials.

\_\_\_\_\_ (Donor initials)

## **2. Data Access; Passwords and Encryption**

Donor grants the University the right to access all data from the Digital Donated Materials, including deleted files, log files, and systems files, and content protected by passwords or encryption. Donor understands and agrees that the University may utilize methods to bypass or unlock passwords and/or encryption protections in order to gain access to the data for preservation and scholarly purposes. Any restrictions on access to the Digital Donated Materials requested by the Donor will apply to any such recovered information.

## **3. Restrictions**

The Donor reserves the right to restrict access to specific portions of the digital material for a limited term, provided such material and restrictions are identified in Exhibit A – Terms and Conditions Applicable to Donated Materials.

## ORDINANCE NO. 20-E(7)

AN EMERGENCY ORDINANCE TO AMEND SECTION 2, AUTHORITY, SECTION 3, DEFINITIONS, SECTION 5, LIMITATION ON THE NUMBER OF ATTENDEES AT GATHERINGS, SECTION 6, FACE COVERINGS, SECTION 8, PENALTIES, AND SECTION 9, SUCCESSION, TO ORDINANCE NO. 20-E(5) AND DURATION, OF AN ORDINANCE TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY REFERRED TO AS COVID-19

**WHEREAS**, on March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19, a pandemic (for reference in this ordinance, this virus and the disease that it causes are referred to as “COVID-19”); and

**WHEREAS**, on March 12, 2020, the County Executive, acting as the Director of Emergency Management, declared a local emergency because of the COVID-19 pandemic pursuant to his authority under Virginia Code § 44-146.21, and this declaration was confirmed by the Board of Supervisors on March 17, 2020; and

**WHEREAS**, also on March 12, 2020, Governor Ralph S. Northam issued Executive Order Number Fifty-One (“EO 51”) declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a “disaster” as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a national emergency in response to the spread of COVID-19; and

**WHEREAS**, COVID-19 spreads person to person and, at this time, it appears that COVID-19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet); and

**WHEREAS**, COVID-19 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunity<sup>ii</sup>; and

**WHEREAS**, at this time, there is no known cure, no effective treatment of widespread application<sup>iii</sup>, no approved vaccine, and because people may be infected but asymptomatic, they may unwittingly infect others<sup>iv</sup>; and

**WHEREAS**, the World Health Organization, the United States Centers for Disease Control and Prevention (“Centers for Disease Control”) and the Virginia Department of Health have identified several behaviors and practices that are fundamental in controlling the spread of COVID-19 in the community: frequently washing hands, sanitizing frequently touched surfaces, wearing a cloth face covering when in public, maintaining a separation of at least six feet between people (“social distancing” or “physical distancing”), limiting the size of gatherings in public places, and limiting the duration of gatherings<sup>v</sup>; and

**WHEREAS**, with respect to people wearing face coverings when in public, current evidence suggests that transmission of COVID-19 occurs primarily between people through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions, or through their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings; and some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in food establishments, or in fitness classes<sup>vi</sup>; and

**WHEREAS**, according to the World Health Organization, fabric face coverings, “if made and worn properly, can serve as a barrier to droplets expelled from the wearer into the air and environment,” however, these face coverings “must be used as part of a comprehensive package of preventive measures, which includes frequent hand hygiene, physical distancing when possible, respiratory etiquette, environmental cleaning and disinfection,” and recommended precautions also include “avoiding indoor crowded gatherings as much as possible, in particular when physical distancing is not feasible, and ensuring good environmental ventilation in any closed setting”<sup>vii</sup>; and

**WHEREAS**, the World Health Organization advises that people take a number of precautions, including: (i) maintaining social distancing because when someone coughs, sneezes, or speaks they spray small liquid droplets from their nose or mouth which may contain virus, and if other persons are too close, they can breathe

in the droplets, including the COVID-19 virus, if the person coughing, sneezing, or speaking has the disease; and (ii) avoiding crowded places because when people are in crowds, they are more likely to come into close contact with someone that has COVID-19 and it is more difficult to maintain social distancing<sup>viii</sup>; and

**WHEREAS**, the Centers for Disease Control caution that: (i) the more people a person interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading; (ii) the higher level of community transmission in the area that a gathering is being held, the higher the risk of COVID-19 spreading during the gathering; and (iii) large in-person gatherings where it is difficult for persons to remain spaced at least six feet apart and attendees travel from outside the local area pose the highest risk of COVID-19 spreading<sup>ix</sup>; and

**WHEREAS**, the Centers for Disease Control state that cloth face coverings are strongly encouraged in settings where persons might raise their voice (e.g., shouting, chanting, singing)<sup>x</sup>; and

**WHEREAS**, the Centers for Disease Control advise, in restaurants: (i) wearing cloth face coverings when less than six feet apart from other people or indoors; (ii) wearing face coverings as much as possible when not eating; (iii) maintaining a proper social distancing if persons are sitting with others who do not live with the person; and (iv) sitting outside when possible<sup>xi</sup>; and

**WHEREAS**, for these and related reasons, the Virginia Department of Health has stated that those businesses that operate indoors and at higher capacity, where physical distancing “recommendations” are not observed, sharing objects is permitted, and persons are not wearing cloth face coverings, create higher risk for the transmission of COVID-19<sup>xii</sup>; and

**WHEREAS**, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; as of the date of adoption of this ordinance, “Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)” (collectively referred to as “EO 67”)<sup>xiii</sup>, which became effective at 12:00 a.m. on July 1, 2020, is in effect; and

**WHEREAS**, as of July 21, 2020, the spread of COVID-19 in the Commonwealth, in the Thomas Jefferson Health District of which the County is a member, and in the County itself, had been increasing since late June, shortly before EO 67 moved the Commonwealth into “Phase 3” of its reopening plan, the curve in the positivity rate of persons tested for COVID-19 was no longer flattened, and the community was currently experiencing more transmission of COVID-19; and

**WHEREAS**, on July 27, 2020, the Board of Supervisors adopted Ordinance No. 20-E(5), “An Emergency Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19 (the “Ordinance”), which became effective August 1, established regulations pertaining to: (1) the maximum indoor occupancy allowed at restaurants, farm wineries, limited breweries, and limited distilleries; (2) the maximum size of public and private gatherings; and (3) the requirement for persons to wear face coverings in public places; and

**WHEREAS**, as of September 7, Virginia’s 7.30 percent positivity rate in COVID-19 testing over a 14-day period exceeded the World Health Organization’s recommendation that the positivity rate remain at 5 percent or lower for at least 14 days before governments lift public health and social measures (“re-open”)<sup>xiv</sup>; the seven-day positivity rate in the Thomas Jefferson Health District was 6.4 percent<sup>xv</sup>; the community had just entered an uncertain period with approximately 4,400 students having returned to the University of Virginia to live on grounds since September 3, and in-person instruction beginning at the University on September 8.<sup>xvi</sup>

**WHEREAS**, on September 16, 2020, following a duly noticed public hearing, the Board of Supervisors adopted Ordinance No. 20-A(13), “An Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19”; and

**WHEREAS**, as of November 9, 2020, the seven-day positivity rate in the Thomas Jefferson Health District was 1.7%; nationwide, as of November 9, 2020, new daily cases rose 29.1%, new daily reported deaths rose 20.9%, and hospitalizations rose 18.5%, all over the prior week, and the positivity rate among reported tests was 8%;<sup>xvii</sup> and all states and territories, with the exception of Puerto Rico, including Virginia (+10%, in addition to 21% the week before), reported increases in cases over the prior week<sup>xviii</sup>, and public health experts warn that, during the coming winter, with people spending much more time indoors and in drier air, will bring on a new surge in COVID-19 cases unless gatherings are limited, physical distancing is maintained, and face coverings are worn<sup>xix</sup>; and

**WHEREAS**, the Board of Supervisors had on its agenda for November 18, 2020 a public hearing on the question of extending Ordinance No. 20-A(13) from November 18, 2020 to January 20, 2021; and

**WHEREAS**, on November 13, 2020, Governor Northam issued amended EO 63 and EO 67, and the introduction to EO 67 states that the “statewide percent test positivity rate is at 6.5%, an increase from 4.3% approximately one month ago,” that all “five health regions report a positivity rate over five percent and hospitalizations have increased statewide by more than 35 percent in the last four weeks,” that “[c]ase investigation interviews show a pattern of increased socialization with extended (non-household) family members and friends,” that “[r]ecent scientific literature suggests indoor settings contribute to community transmission,” and that “[m]odeling data demonstrates that large gatherings substantially increase transmission of the virus.”<sup>xx</sup>

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of the County of Albemarle, Virginia, that:

### **Sec. 1. Purpose**

For the reasons stated in the recitals, the purpose of this ordinance is to prevent the spread of COVID-19.

### **Sec. 2. Authority**

This ordinance is authorized by Virginia Code § 15.2-1200, which enables the County, through its Board of Supervisors, to adopt “necessary regulations to prevent the spread of contagious diseases among persons . . .” that “are not inconsistent with the general laws of the Commonwealth.” This ordinance is adopted as an emergency ordinance pursuant to Virginia Code § 15.2-1427(F).

### **Sec. 3. Definitions**

The following definitions apply to this ordinance:

- A. “Entertainment and amusement businesses” includes performing arts venues, concert venues, sports venues, movie theaters, museums, aquariums, fairs, carnivals, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, amusement parks, and zoos.
- B. “Expressive activity” means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.
- C. “Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (*i.e.*, the person’s nose and mouth).
- D. “Farm winery” means an establishment that is required to be licensed as a farm winery under Virginia Code § 4.1-207.
- E. “Food establishment” means a food establishment as defined in 12VAC5-421-10 and the term includes, but is not limited, any place where food is prepared for service to the public on or off the premises, or any place where food is served, including restaurants, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs. For purposes of this ordinance, “food establishment” does not include kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under Virginia Code § 53.1-68.
- F. “Gathering” includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors. The presence of more than 25 persons performing functions of their employment or assembled in an educational instructional setting is not a “gathering.”
- G. “Limited brewery” means an establishment that is required to be licensed as a limited brewery under Virginia Code § 4.1-208.
- H. “Limited distillery” means an establishment for which a limited distiller’s license is required under Virginia Code § 4.1-206.

- I. "Public place" means: (i) any indoor place generally open to the public, including, but not limited to, retail stores, food establishments, theaters, personal care and personal grooming services, and transportation other than a personal vehicle; or (ii) any outdoor place where at least six feet of physical distancing between persons not living in the same household cannot be maintained. "Public place" does not include a person's residence or personal vehicle, institutions of higher education and other schools, fitness and other exercise facilities, religious institutions, indoor shooting ranges, and the County courthouse buildings.

**Sec. 4. Limitation on the Number of Persons at Food Establishments, Farm Wineries, Limited Breweries, and Limited Distilleries**

- A. *Indoor occupancy.* Indoor occupancy at food establishments, farm wineries, limited breweries, and limited distilleries must not be more than 50 percent of the lowest occupancy load on the certificate of occupancy issued by the County of Albemarle. If the building or structure does not have an occupancy load established on a certificate of occupancy issued by the County of Albemarle, indoor occupancy must not be more than 50 persons.
- B. *Persons at gathering are counted.* Persons participating in or attending a gathering who are indoors count towards the occupancy limits established by this section.
- C. *Persons working not counted.* Persons working at food establishments, farm wineries, limited breweries, or limited distilleries, either as employees or independent contractors, do not count towards the occupancy limits established by this section.
- D. *State requirements, recommendations, and guidance.* Except as provided in Sections 4(A), (B), and (C), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing that apply to food establishments, farm wineries, limited breweries, and limited distilleries established in EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

**Sec. 5. Limitation of the Number of Attendees at Gatherings**

- A. *Generally.* All public and private in-person gatherings of more than 25 persons are prohibited, except as provided in Sections 5(B), (C), and (D).
- B. *Entertainment and amusement businesses.* The total number of attendees (including both participants and spectators) at entertainment and amusement businesses cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons. Private bookings at entertainment and amusement businesses are subject to the 25-person limitation in Section 5(A).
- C. *Recreational sports.* The total number of spectators at indoor and outdoor recreational sports activities cannot exceed the lesser of 30 percent of the occupancy load of the certificate of occupancy for the venue, if applicable, or 25 spectators per field. Races or marathons may have up to 250 participants, provided staggered starts separate runners into groups of 25 persons or less.
- D. *Religious services.* Persons may attend religious services of more than 25 persons, provided that social gatherings held in connection with a religious service are subject to the 25-person limitation in Section 5(A).
- E. *State requirements, recommendations, and guidance.* Sections 5(A), (B), (C), and (D) incorporate the requirements of EO 67, however this section does not affect any other applicable requirement, recommendation, or guidance in EO 67 including, but not limited to, those requiring or recommending physical distancing pertaining to entertainment and amusement businesses, recreational sports, and religious services. This section also does not affect any requirement, recommendation, or guidance pertaining to business sectors and other events and activities subject to EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

**Sec. 6. Face Coverings**

- A. *Face coverings required.* Face coverings must be worn by all persons in public places except as provided in Sections 6(B) and (C).
- B. *Persons not required to wear face coverings.* Face coverings are not required to be worn by the following persons:

1. *Children.* Children four years of age or under.
  2. *Wearing face covering poses certain risks.* Persons for whom wearing a face covering poses a bona fide and substantial mental or physical health risk, such as persons who have trouble breathing, or poses a safety or security risk to persons who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance. For this exception to apply to any person claiming that wearing a face covering poses a substantial mental or physical health risk: (i) the person must present a valid document from a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services, including mental health services, consistent with State law, specifying the medical necessity for not wearing a face covering and the date on which the person may begin wearing a face covering again; and (ii) the public place is unable to provide goods, services, or activities outdoors to the person or to the adult accompanying a child four years of age or under.
  3. *Certain employees.* On-duty employees covered by workplace safety regulations promulgated by the State Safety and Health Codes Board, or by face covering rules established by an applicable Executive Order of the Governor or an Order of Public Health Emergency by the State Health Commissioner.
- C. *Circumstances when face coverings are not required to be worn by any persons.* Face coverings are not required to be worn by any persons in the following circumstances:
1. *Outdoor activities.* While persons are engaged in outdoor activities in public places such as parks and other open spaces, provided that minimum physical distancing established by any applicable Executive Order of the Governor or Order of Public Health Emergency of the State Health Commissioner is maintained.
  2. *Eating or drinking.* While a person is eating food or drinking a beverage.
  3. *End of waiver of Virginia Code § 18.2-422.* When the waiver of Virginia Code § 18.2-422, currently established in EO 67, Section (D)(2), or as it may be further amended or superseded, ends.
- D. *Responsibility of adults accompanying minors.* Adults accompanying minors should use their best judgment regarding placing face coverings on any minor between the ages of two through four in public places. Adults accompanying minors between the ages of five through 17 must use reasonable efforts to prompt the minor to wear face coverings while in public places.

## **Sec. 7. Effect of More Restrictive Executive Order or Order of Public Health Emergency**

Section 4, 5, or 6 does not apply when a more restrictive requirement in an Executive Order or an Order of Public Health Emergency is in effect.

## **Sec. 8. Penalties**

- A. *Penalty for violation of Section 4.* A violation of Section 4 by the owner of the food establishment, farm winery, limited brewery, or limited distillery, and any manager or assistant manager, however titled, responsible for the operation and management of the food establishment, farm winery, limited brewery, or limited distillery on the date of the violation, is punishable as a Class 3 misdemeanor. Section 4(D) is not enforced pursuant to this ordinance.
- B. *Penalty for violation of Section 5.* A violation of Section 5 by the owner or tenant of the private property on which the gathering is located, is punishable as a Class 1 misdemeanor. A violation of Section 5 by any person attending the gathering, after first being warned by a law enforcement officer to disperse from the gathering because it exceeds the limitation for a gathering and having failed to disperse after a reasonable period of time not to exceed two minutes, is punishable as a Class 1 misdemeanor.
- C. *Penalty for violation of Section 6.* A violation of Section 6 by any person subject to its requirements is punishable as a Class 1 misdemeanor. No person under the age of 18 is subject to a criminal penalty for failing to wear a face covering.
- D. *Injunctive relief.* The County, the Board of Supervisors, and any County officer authorized by law, may seek to enjoin the continuing violation of any provision of this ordinance by bringing a proceeding for an injunction in any court of competent jurisdiction.

## **Sec 9. Succession to Ordinance No. 20-A(13) and Duration**

This ordinance succeeds and supersedes Ordinance No. 20-A(13) on and after November 18, 2020, and continues in full force and effect for 60 days from November 18, 2020 until and including January 16, 2021 unless it is amended, superseded, or repealed on or before that date.

## **Sec. 10. Effect of this Ordinance on the Powers of the Director of Emergency Management**

This ordinance does not affect the powers of the County Executive, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster.

## **Sec. 11. Severability**

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

**State law reference – Va. Code §§ 15.2-1200, 15.2-1427(F), 15.2-1429, 15.2-1432, 18.2-11.**

<sup>i</sup> *Xponential Fitness v. Arizona*, No. CV-20-01310-PHX-DJH, 2020 WL 3971908, at \*1 (D. Ariz. July 14, 2020) and cases and authorities cited therein.

<sup>ii</sup> *Xponential Fitness v. Arizona*, No. CV-20-01310-PHX-DJH, 2020 WL 3971908, at \*1 (D. Ariz. July 14, 2020) and cases and authorities cited therein.

<sup>iii</sup> <https://www.covid19treatmentguidelines.nih.gov/whats-new/> (use of remdesivir approved for certain patients on October 22, 2020); <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-monoclonal-antibody-treatment-covid-19> (use of investigational monoclonal antibody therapy bamlanivimab approved for certain patients on November 9, 2020).

<sup>iv</sup> *South Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (May 29, 2020) (Roberts concurring in denial of application for injunctive relief); on the fact that there is no effective treatment as of the date of this ordinance, see also [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EAlaQobChMI9IvSvJPk6qIVGrbICh2TYw9QEAAAYASAAEgKjDfD\\_BwE#medicines](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EAlaQobChMI9IvSvJPk6qIVGrbICh2TYw9QEAAAYASAAEgKjDfD_BwE#medicines); <https://www.health.harvard.edu/diseases-and-conditions/treatments-for-covid-19>; <https://www.mayoclinic.org/diseases-conditions/coronavirus/diagnosis-treatment/drc-20479976>.

<sup>v</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> and <https://www.vdh.virginia.gov/coronavirus/#COVID-19-resources> and links therein.

<sup>vi</sup> World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>vii</sup> World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; see also Statement of Dr. Michael Ryan, World Health Organization COVID-19 Virtual Press Conference, transcript page 12, [https://www.who.int/docs/default-source/coronaviruse/transcripts/covid-19-virtual-press-conference-17-july.pdf?sfvrsn=dd7f91a1\\_0](https://www.who.int/docs/default-source/coronaviruse/transcripts/covid-19-virtual-press-conference-17-july.pdf?sfvrsn=dd7f91a1_0) ("So it's all about the setting, it is about the duration you spend in that setting and it's about the intensity of the activities that you participate in in that setting and when you get into a particular setting, a very overcrowded situation in an indoor environment then effectively all bets are off because so many of the modes of transmission come into play; the aerosol route, the airborne route, the fomite or contamination route. So the more close you are to other people, the more you are inside, the more the activity is intense or involves very close social contact the more that multiple modes of transmission come into play. So in that sense it is about you understanding your risk, it is about you managing that risk and being aware of the situation that you find yourself in personally and reducing that risk for you, for your family, for your children and for your community. It is important, as I've said previously, that governments communicate those risks very, very carefully and it is also important that providers, authorities and others ensure that those environments are as safe as possible and that the risks are also managed.")

<sup>viii</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>.

<sup>ix</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>; see also <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

<sup>x</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>.

<sup>xi</sup> <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

<sup>xii</sup> <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>.

<sup>xiii</sup> [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf).

<sup>xiv</sup> <https://coronavirus.jhu.edu/testing/testing-positivity>

<sup>xv</sup> <https://www.vdh.virginia.gov/thomas-jefferson/tjhd-covid-19-data-portal/>

<sup>xvi</sup> <https://www.cavalierdaily.com/article/2020/08/there-are-no-risk-free-paths-u-va-announces-no-changes-to-fall-semester-plans-for-in-person-instruction>

<sup>xvii</sup> <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

<sup>xviii</sup> <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

<sup>xix</sup> <https://www.scientificamerican.com/article/why-covid-outbreaks-could-worsen-this-winter/>;

<https://www.forbes.com/sites/robertglatter/2020/10/25/dry-air-indoors-will-increase-transmission-of-covid-19-as-winter-approaches/?sh=1ce4e74720ee>; <https://blogs.webmd.com/public-health/20201019/will-covid19-get-worse-in-the-winter>

<sup>xx</sup> <https://www.governor.virginia.gov/executive-actions/>