

ACTIONS
Board of Supervisors Meeting of April 7, 2021

April 8, 2021

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>	<u>VIDEO</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> 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. 		Link to video
<p>4. Adoption of Final Agenda.</p> <ul style="list-style-type: none"> PULLED, consent agenda item #8.2. PULLED, consent agenda item #8.3. ADDED for discussion to item #19, Matters from the Board Community Developments plans regarding updating the County Code in tandem with the Comprehensive Plan. By a vote of 6:0, ADOPTED final agenda as amended. 		
<p>5. Brief Announcements by Board Members.</p> <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> Remarked that March was Women's History Month and that Virginia has more women veterans than any other state at the country at over 163,000. Commented that she loved the Stream Health presentation that the Jack Jouett 6th graders made and encouraged reading the Natural Heritage Committee report. She recommended that everyone to go to the James Streamside Program link in the NHC report to see what needs work. Encouraged community members to call 811 before they dig to get Miss Utility to come and mark the lines. Announced that the Virginia Small Business group is opening applications on April 8 for the Shuttered Venue Operations Grant. Announced that Nelson County will be starting the eastern parking lot expansion at the Blue Ridge Tunnel on Monday, April 12 and would last for three weeks. She commented that anyone visiting the tunnel during April should use the western portal parking and walk the trail to go to the tunnel, as the eastern portal will be closed until this parking lot has increased in size. <p><u>Bea LaPisto-Kirtley:</u></p> <ul style="list-style-type: none"> Commented that she is working with a small group of scouts, and with the County, to get about 1,000 Milkweed planted for the monarch butterflies. <p><u>Donna Price:</u></p> <ul style="list-style-type: none"> Expressed her appreciation to Mr. Gary O'Connell, Albemarle County Service Authority, and Rivanna Water and Sewer Authority for the tour last week of their facilities. <p><u>Diantha McKeel:</u></p> <ul style="list-style-type: none"> Echoed the comments regarding the Jouett presentations and that news that came out of 		

<p>those presentations was that the public school system is very excited to work with the Board on litter and the litter campaign.</p> <p><u>Ned Gallaway:</u></p> <ul style="list-style-type: none"> • Commented that community members had attended his Rio District townhall as well as the joint townhall with Ms. Mallek. He said there was follow-up and good conversations about the Rio Corridor and some budget items, and he thanked those who attended. 		
<p>6. Proclamations and Recognitions.</p> <p>a. Proclamation Recognizing Thomas Jefferson's Birthday.</p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED proclamation and presented to Cauline Yates. 	(Attachment 1)	
<p>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.</p> <ul style="list-style-type: none"> • <u>Gary Grant</u>, Rio District, spoke towards the Albemarle County FY22 Budget. • <u>Rex Linville</u>, Piedmont Environmental Council (PEC) and resident of the Samuel Miller District, spoke towards the Albemarle County land conservation program. 		
<p>8.1 Authorize a Public Hearing to consider Crozet Sports Community Foundation Lease for a Portion of the Crozet Library.</p> <ul style="list-style-type: none"> • SCHEDULED public hearing to receive comments from the public regarding the proposed lease between the County and the CSCF. 	<u>Clerk:</u> Schedule on agenda and advertise in Daily Progress.	
<p>8.2 SE202100002 Ivy Proper – Special Exception for Disturbance of Critical Slopes.</p> <ul style="list-style-type: none"> • By a vote of 6:0, DEFERRED to May 5, 2021 at the request of the applicant. 	<u>Clerk:</u> Schedule on May 5, 2021 agenda.	
<p>8.3 Stream Health Initiative Project Update.</p> <ul style="list-style-type: none"> • DISCUSSED. 		
<p>9. SE202100003 Warren Mill Homestay Special Exception.</p> <ul style="list-style-type: none"> • By a vote of 6:0, DEFERRED to a future agenda. 	<u>Rebecca Ragsdale:</u> Notify Clerk when ready to schedule. <u>Clerk:</u> Schedule when ready.	
<p>10. SE202100006 Homestay Special Exception Georgetown Way (Bradford).</p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED Resolution to approve the special exception with the conditions contained therein. 	<u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 2)	
<p>11. Work Session: Crozet Master Plan Update - Draft Land Use Chapter.</p> <ul style="list-style-type: none"> • HELD. 		
<p>Recess. The Board recessed at 3:42 p.m., and reconvened at 3:58 p.m.</p>		
<p>12. Presentation: County Transportation Planner Quarterly Report.</p> <ul style="list-style-type: none"> • RECEIVED. 		
<p>13. Presentation: Virginia Department of Transportation (VDOT) Quarterly Report.</p> <ul style="list-style-type: none"> • RECEIVED. 		
<p>14. Closed Meeting.</p>		

<ul style="list-style-type: none"> • At 5:00 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia: • Under Subsection (1), to discuss and consider appointments to the Board of Equalization, the Rivanna Water and Sewer Authority, the Rivanna Solid Waste Authority, the Thomas Jefferson Planning District Commission corporate board, seven advisory committees, and one task force; and • Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation involving real estate tax assessments. 		
<p>15. Certified Closed Meeting.</p> <ul style="list-style-type: none"> • At 6:00 p.m., the Board reconvened into open meeting and certified the closed meeting. 		
<p>16. Boards and Commissions.</p> <p>a. Vacancies and Appointments:</p> <ul style="list-style-type: none"> • APPOINTED, Ms. Leigh Kirchner to the Agricultural & Forestal District Advisory Committee with said term to expire April 17, 2024. • REAPPOINTED, Mr. Shawn Bird and Mr. Timothy Kunkel to the Crozet Community Advisory Committee with said terms to expire March 31, 2023. • APPOINTED, Mr. Michael Monaco to the Crozet Community Advisory Committee with said term to expire March 31, 2023. • REAPPOINTED, Mr. David Van Roijen to the Equalization Board as the Samuel Miller District representative with said term to expire December 31, 2021. • APPOINTED, Mr. Peter Daniel to the Historic Preservation Committee with said term to expire June 4, 2023. • APPOINTED, Ms. Emma Andrews to the Natural Heritage Committee to fill an unexpired term ending September 30, 2021. • APPOINTED, Mr. Christopher Rembold to the Places 29 (Hydraulic) Community Advisory Committee with said term to expire August 5, 2023. • APPOINTED, Mr. Steven Cameron, Ms. Virginia Newton, and Ms. Karen Gavrilovic to the Places 29 (North) Community Advisory Committee with said term to expire August 5, 2023. • REAPPOINTED, Mr. Jeff Richardson and Mr. Lance Stewart to the Rivanna Solid Waste Authority with said terms to expire April 1, 2023. • REAPPOINTED, Mr. Jeff Richardson and Mr. Gary O'Connell to the Rivanna Water and Sewer Authority with said terms to expire April 1, 2023. • APPOINTED, Mr. Peter Daniel to the Route 250 West Task Force to fill an unexpired term ending September 5, 2021. • APPOINTED, Mr. Stuart Harris to the Solid Waste Advisory Committee to fill an unexpired term ending May 31, 2023. 	<p><u>Clerk</u>: Prepare appointment/reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.</p>	
<p>17. From the Public: Matters Not Listed for Public</p>		

	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"> • There were none. 	
18.	<u>Pb. Hrg.: An Ordinance to Authorize the One-Time Payment of a Monetary Bonus to Employees of the County of Albemarle, Virginia.</u> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED ordinance. 	<u>Clerk:</u> Forward copy of signed ordinance to Human Resources, Finance and Budget, and County Attorney's office. (Attachment 3)
19.	<u>Pb. Hrg.: FY 2021 Budget Amendment and Appropriations.</u> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED Resolution to approve the appropriations #2021055, #2021056, #2021057, #2021058, and #2021059 for local government and school projects and programs. 	<u>Clerk:</u> Forward copy of signed resolution to Budget and Finance and County Attorney's office. (Attachment 4)
20.	<u>Pb. Hrg.: An Ordinance to Amend Article 2, Other Licenses, of Chapter 8, Licenses, of the Code of the County of Albemarle, Virginia.</u> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED ordinance. 	<u>Clerk:</u> Forward copy of signed ordinance to Finance and Budget and County Attorney's office. (Attachment 5)
21.	<u>Pb. Hrg.: Emergency Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19.</u> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED Emergency Ordinance as amended. 	<u>Clerk:</u> Forward copy of signed ordinance to County Executive's office and County Attorney's office. (Attachment 6)
22.	From the Board: Committee Reports and Matters Not Listed on the Agenda. <p>a. Discussion: Community Developments Plans regarding Updating the County Code in Tandem with the Comprehensive Plan.</p> <ul style="list-style-type: none"> • HELD. <u>Donna Price:</u> <ul style="list-style-type: none"> • Commented that she was so appreciative of the work everyone has done to help protect people during this pandemic and reminded and encouraged everyone to wear their masks and maintain their social distancing. <u>Diantha McKeel:</u> <ul style="list-style-type: none"> • Commented that before the Board appointed another at-large between the City and the County she wanted to address the protocol for appointing at-large representations on the committees that they share. 	<u>Greg Kamptner:</u> Advise as requested.
23.	From the County Executive: Report on Matters Not Listed on the Agenda. <u>Jeff Richardson:</u> <ul style="list-style-type: none"> • Announced that the 2020 Albemarle County Community Report will be published the next week. 	
24.	Adjourn to April 21, 2021, 1:00 p.m., electronic meeting pursuant to Ordinance No. 20-A(16). <ul style="list-style-type: none"> • The meeting was adjourned at 7:07 p.m. 	

ckb/tom

- Attachment 1 – Proclamation Recognizing Thomas Jefferson's Birthday
- Attachment 2 – Resolution to Approve Special Exception for SE2021-00006 Georgetown Way Homestay
- Attachment 3 – Ordinance No. 21-A(4)
- Attachment 4 – Resolution to Approve Additional FY 2021 Appropriations
- Attachment 5 – Ordinance No. 21-8(1)
- Attachment 6 – Emergency Ordinance No. 21-E(1)

Proclamation Recognizing Thomas Jefferson's Birthday

WHEREAS, Thomas Jefferson was born in Albemarle County on April 13, 1743; and

WHEREAS, Albemarle County Board of Supervisors, as part of their Community Remembrance Project, have committed to sharing an inclusive history of our County—including the stories that have been traditionally left out of the dominant narrative; and

WHEREAS, we want to commemorate Thomas Jefferson's birthday as the third president of the United States, the author of the Declaration of Independence and the Virginia Statue of Religious Freedom, and the father of the University of Virginia; and

WHEREAS, we want to express gratitude for the immense contributions Thomas Jefferson made to our community and to our country while also holding space for the harm he caused the Black community in Albemarle County, including the people enslaved at Monticello and elsewhere and their descendants; and

NOW, THEREFORE, BE IT RESOLVED, that we, the Albemarle County Board of Supervisors, do hereby recognize the vast and complex legacy of Thomas Jefferson and affirm our commitment to celebrating an inclusive history of our community.

Signed this 7th day of April 2021.

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SE2021-00006 GEORGETOWN WAY HOMESTAY**

BE IT RESOLVED that, upon consideration of the Memorandum prepared in conjunction with the application and the attachments thereto, including staff's supporting analysis, any comments received, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-5.1.48 and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to modify the minimum 125 foot front, southeastern, and northwestern yards required for a homestay in the Rural Areas zoning district, subject to the conditions attached hereto.

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SE 2021-00006 Georgetown Way Homestay Special Exception Conditions

1. Parking for homestay guests is limited to the existing parking areas as depicted on the Parking and House Location Exhibit dated March 15, 2021.
2. Homestay rental is limited to two guest rooms located within the existing house, as depicted on the Parking and House Location Exhibit dated March 15, 2021.
3. The existing screening, as depicted on the Parking and House Location Exhibit dated March 15, 2021, must be maintained, or equivalent screening that meets the minimum requirements of County Code § 18-32.7.9.7(b)-(e) must be established and maintained.

ORDINANCE NO. 21-A(4)

**AN ORDINANCE TO AUTHORIZE THE ONE-TIME PAYMENT OF A MONETARY BONUS
TO EMPLOYEES OF THE COUNTY OF ALBEMARLE, VIRGINIA**

WHEREAS, in recognition of the hard work and dedication of County employees to maintain the continuity of operations and services for the citizens of Albemarle County during the unprecedented conditions resulting from the COVID-19 pandemic, and given the lack of a salary increase in the FY 2021 budget, the Albemarle County Board of Supervisors has determined that a one-time monetary bonus shall be granted to County employees who report up to the Board of Supervisors ("County employees"); and

WHEREAS, the Board is authorized by Virginia Code § 15.2-1508 to provide for payment of monetary bonuses; and

WHEREAS, an appropriation to fund the one-time monetary bonus, which is contingent upon the adoption of this ordinance, is included as part of an appropriation going to the Board of Supervisors for consideration on April 7, 2021.

NOW, THEREFORE, BE IT ORDAINED that, pursuant to the authority in Virginia Code § 15.2-1508, the Albemarle County Board of Supervisors hereby authorizes the one-time payment of a monetary bonus as follows:

1. A one-time payment of \$1,000 shall be paid to all full-time and part-time regular County employees who:
 - A. have a start date before January 1, 2021;
 - B. are an active employee as of April 1, 2021; and
 - C. fill a total full time equivalent of 0.7 and above.

2. A one-time payment of \$750 shall be paid to all part-time regular County employees who:
 - A. have a start date before January 1, 2021;
 - B. are an active employee as of April 1, 2021; and
 - C. fill a total full time equivalent of less than 0.7.

**RESOLUTION TO APPROVE
ADDITIONAL FY 2021 APPROPRIATIONS**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That the FY 21 Budget is amended to increase it by \$7,548,165.41;
- 2) That Appropriations #2021055; #2021056; #2021057, #2021058 and #2021059 are approved;
- 3) That the appropriations referenced in Paragraph #2, above, are subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2021.

ORDINANCE NO. 21-8(1)

AN ORDINANCE TO AMEND CHAPTER 8, LICENSES, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 8, Licenses, is hereby amended and reordained as follows:

By Amending:

Sec. 8-800 Alcoholic beverages.

Chapter 8. Licenses

Article 1. Business Licenses

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Division 2. License Requirement, Situs of Gross Receipts, Appeals, and Recordkeeping

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Sec. 8-201 - When license application and license tax are due; penalties.

Each person subject to a license tax shall apply for a license and pay the license tax as follows:

- A. *When license application is due.* Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensure in the County on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. The application shall be on forms prescribed by the Director of Finance.
- B. *When license tax is due.* The tax shall be paid with the license application in the case of any license tax not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before June 15 of the license year; provided that each motor vehicle dealer who separately states the amount of the license tax applicable to each sale of a motor vehicle and adds the tax to the sales price of the motor vehicle shall pay the tax on or before the twentieth day of the month following the close of each calendar quarter.
- C. *Extensions.* The Director of Finance may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of ten percent of the portion paid after the due date.
- D. *Penalty for failure to timely file an application or pay the license tax.* The Director of Finance will impose a penalty for failure to timely file an application or pay the license tax as follows:
 - 1. *When late penalty imposed.* A penalty of ten percent of the tax may be imposed by the Director of Finance upon the failure of any person to file an application or the failure to pay the tax by the appropriate due date. The Director of Finance shall impose only the late filing penalty if both the application and license tax payment are late; provided that the Director may impose both penalties if the Director determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Director of Finance, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless, or intentional disregard of the law by the taxpayer, the Director shall not impose a late payment penalty with the additional tax. If any assessment of tax by the Director of Finance is not paid within 30 days, the Director may impose a ten percent late payment penalty.

2. *When late penalty not imposed.* If the failure to file or pay was not the fault of the taxpayer, the Director of Finance shall not impose a late penalty, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.
 - a. *Acted responsibly defined.* "Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.
 - b. *Events beyond the taxpayer's control defined.* "Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Director who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

E. *Interest on late payments.* The Director of Finance shall charge interest on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Director is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax collected pursuant to this article from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under Virginia Code § [58.1-3916](#).

1. *When interest does not accrue.* No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year.
2. *When interest not refunded or charged.* No interest shall be refunded or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.

(§ 8-201; [Ord. 19-8\(1\)](#), 4-17-19)

State Law reference— Va. Code § [58.1-3703.1](#).

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Article 2. Other Licenses

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Sec. 8-800 - Alcoholic beverages.

Pursuant to and subject to Virginia Code § [4.1-205](#), a County license tax is hereby imposed on persons licensed by the Virginia Alcoholic Beverage Control Board to manufacture, bottle, or sell alcoholic beverages in the County, except for temporary licenses authorized by Virginia Code § [4.1-211](#).

- A. *Tax rates.* The following annual tax rates shall apply:
1. *Distiller's license.* For each distiller's license, if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, \$750.00; if more than 36,000 gallons manufactured during such year, \$1,000.00; and no license shall be required for any person who manufactures not more than 5,000 gallons of alcohol or spirits or both during the license year.
 2. *Winery license.* For each winery license, \$50.00.

3. *Brewery license.* For each brewery license, if not more than 500 barrels of beer manufactured during the year in which the license is granted, \$250.00, and if more than 500 barrels of beer manufactured during the year in which the license is granted, \$1,000.00.
 4. *Beer bottler's license.* For each beer bottler's license, \$500.00.
 5. *Wholesale beer license.* For each wholesale beer license, \$75.00.
 6. *Wholesale wine license.* For each wholesale wine license, \$50.00.
 7. *Retail wine and beer license.* For each retail on-premises wine and beer license for a hotel, restaurant, or club, and for each retail off-premises wine and beer license, \$37.50.
 8. *Retail beer license.* For each retail on-premises beer license for a hotel, restaurant or club, and for each retail off-premises beer license, \$25.00.
 9. *Fruit distiller's license.* For each fruit distiller's license, \$500.00.
 10. *Mixed beverage restaurant license.* For each mixed beverage restaurant license, including restaurants located on the premises of and operated by hotels or motels, or other persons, the tax is:
 - a. \$200.00 for areas seating 50 to 100.
 - b. \$350.00 for areas seating 100 to 150 persons.
 - c. \$500.00 for areas seating more than 150 persons.
 - d. \$350.00 for private, nonprofit clubs operating a restaurant located on the premises of those clubs.
- B. *When license application and license tax are due; penalties.* Alcoholic beverage license taxes are subject to section 8-201.
- C. *State license required for County license to issue.* No County license shall be issued pursuant to this chapter to any person who does not hold or secure simultaneously the proper State license.
- D. *Beer defined.* For purposes of this section, the term "beer" is defined as it is in Virginia Code § [4.1-100](#).
- (3-15-73, § 25; 4-21-76; Ord. 96-11(1), 11-13-96, § 11-27; Code 1988, § 11-27; § 8-600, Ord. 98-A(1), 8-5-98; [Ord. 14-8\(1\)](#), 9-3-14; [Ord. 15-8\(1\)](#), 7-1-15; [Ord. 16-8\(1\)](#), 7-13-16; § 8-800, [Ord. 19-8\(1\)](#), 4-17-19; Ord. 21-8(1), 4-8-21)

State Law reference— Va. Code §§ [4.1-205](#), [4.1-233](#).

EMERGENCY ORDINANCE NO. 21-E(1)

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

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 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunityⁱ, and in recent months several variants of COVID-19 now exist both globally, in the United States, and the Commonwealth of Virginia, including the variant identified as B.1.1.7, and which appear to be more contagious, resistant to certain medications, moderately reduce the effectiveness of antibodies generated by a previous COVID-19 infection or COVID-19 vaccine, or some combination thereofⁱⁱ; and

WHEREAS, these person-to-person, close contact, transmissions occur primarily 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 classesⁱⁱⁱ; and

WHEREAS, COVID-19 spread is more likely when people are in close contact with one another (within about six feet), and by airborne transmission, which may be able to infect people who are further than six feet away from the person who is infected or after that person has left the space^{iv}; and

WHEREAS, the United States Centers for Disease Control and Prevention (“Centers for Disease Control”) caution that: (1) 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; (2) 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 (3) 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^v; and

WHEREAS, the World Health Organization, the 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: (1) wearing a cloth face covering when in public; (2) maintaining a separation of at least six feet between people (“social distancing” or “physical distancing”); (3) limiting the size of gatherings in public places; (4) limiting the duration of gatherings; (5) frequently washing hands; and (6) sanitizing frequently touched surfaces^{vi}; 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)^{vii}; and

WHEREAS, the Centers for Disease Control advise, in restaurants: (1) wearing cloth face coverings when less than six feet apart from other people or indoors; (2) wearing face coverings as much as possible

when not eating; (3) maintaining a proper social distancing if persons are sitting with others who do not live with the person; and (4) sitting outside when possible^{viii}; 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^{ix}; and

WHEREAS, since Governor Northam issued EO 51 on March 12, 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; and

WHEREAS, on December 10, 2020, Governor Northam issued Executive Order Number Seventy-Two (2020) and Order of Public Health Emergency Nine, Common Sense Surge Restrictions, Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19) (collectively referred to as “EO 72”) which imposes further directions and restrictions, and it has since been amended, most recently on March 23, 2021; 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,” which became effective August 1, 2020, 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, the ordinance first adopted as Ordinance No. 20-E(5) has been amended as necessary as both emergency and non-emergency ordinances since its original adoption, most recently on January 6, 2021 (Ordinance No. 21-A(1)), and Ordinance No. 21-A(1) expires on April 7, 2021; and

WHEREAS, as of April 5, 2021, three COVID-19 vaccines have received emergency use authorization by the United States Food and Drug Administration^x, and there are treatments available for persons with COVID-19 in certain circumstances^{xi}; and

WHEREAS, as of April 5, 2021, the total number of persons in the United States fully vaccinated against COVID-19 is approximately 57.4 million, or approximately 17.5% of the population^{xii}; the total number of persons in Virginia fully vaccinated against COVID-19 is 1,520,918 or 17.86% of the population^{xiii}; and

WHEREAS, as of April 5, 2021, the COVID-19 case, hospitalization, and death rates are as follows: (1) in the United States, the seven-day average number of new daily cases is 136 per 100,000 persons^{xiv}; (2) in the Commonwealth of Virginia, the seven-day average number of daily cases is 16.2 per 100,000 persons, the seven-day average of new daily hospitalizations reported is 0.7 per 100,000 persons, and the seven-day average number of new daily deaths reported is 0.2 per 100,000 persons^{xv}; and (3) in Albemarle County, the seven-day average number of daily cases is 9.9 per 100,000 persons, the seven-day average of new daily hospitalizations reported is 0.7 per 100,000 persons, and the seven-day average number of new daily deaths reported is 0.1 per 100,000 persons^{xvi}; and

WHEREAS, in the past week in the Commonwealth of Virginia, new daily reported COVID-19 cases fell 8.4%, new daily reported COVID-19 hospitalizations rose 0.9%, and new daily reported COVID-19 deaths rose 53.8%^{xvii}; and

WHEREAS, despite national caseloads and warnings of a surge in COVID-19 cases resulting from the relaxation or complete lifting of COVID-19-related public health protocols^{xviii}, EO 72 describes itself as a slight easing of certain restrictions and cautions that “every Virginian must continue to practice measures that are proven to keep people safe: avoid gatherings with anyone outside your household, practice hand sanitation, maintain proper physical distance from others, stay home when possible, and wear masks while indoors and in public^{xix}; and

WHEREAS, the Blue Ridge Health District states that “current public health conditions are favorable for loosening the current mitigation strategies [in the County’s current ordinance, Ordinance No. 21-A(1)], and aligning with the changes in Executive Order 72”.

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, convention centers, expos, 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, zoos, and other places of indoor public amusement.
- B. “Face covering” means an item normally made of multiple layers of cloth or various other breathable materials that complies with the Centers for Disease Control’s recommendations for face coverings, 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).
- C. “Family members” are all individuals residing in the same household or visiting such household pursuant to a child custody arrangement or order.
- 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 to, 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, and 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, wedding receptions, or other social events, whether they occur indoors or outdoors. The following are not “gatherings”: (1) the gathering of family members who live in the same residence; (2) the presence of persons performing functions of their employment or assembled in an educational instructional setting; (3) the presence of persons in a particular location, such as a park or retail business, provided that those persons do not congregate; and (4) the presence of persons in shared spaces not expressly addressed in Section 5 but which may be subject to restrictions on the maximum size of gatherings in EO 72 or any state or federal law or order that are unique to that institution, business sector, facility, activity, or event.
- 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. “Parties” means an individual patron consuming food and/or beverages alone, or a group of patrons consuming food and/or beverages together.
- J. “Public place” means: (1) any indoor place shared by other persons, including, but not limited to, local government buildings, retail stores, food establishments, theaters, personal care and personal grooming

services, and transportation facilities and vehicles other than a personal vehicle as well as waiting and congregating areas associated with boarding public transportation; or (2) any outdoor place shared by other persons who are not family members. "Public place" does not include a person's residence or personal vehicle. "Public place" also does not include institutions of higher education and other schools, fitness and other exercise facilities, religious institutions and places where religious rituals are conducted, areas under state or federal jurisdiction or control, indoor shooting ranges, and the County courthouse buildings, provided that they, and any other institutions, business sectors, and locations shared by other persons not expressly addressed in Section 6 may be subject to face covering requirements in EO 72 or any state or federal law or order that are unique to that institution, business sector, facility, activity, or event.

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

- A. *Indoor occupancy.* All parties at food establishments, farm wineries, limited breweries, and limited distilleries must be separated by at least six feet, including in the bar area. Tables at which dining parties are seated must be positioned six feet apart from other tables. If tables are not movable, parties must be seated at least six feet apart, including in the bar area. All private bookings are limited to 50 people indoors and 100 people outdoors.
- B. *State requirements, recommendations, and guidance.* This section does not affect any requirement, recommendation, or guidance in EO 72 including, but not limited to, those requiring or recommending physical distancing and wearing face coverings, which are referred to in EO 72 as "masks," that apply to food establishments, farm wineries, limited breweries, and limited distilleries. This section also does not affect any Order of Public Health Emergency of the State Health Commissioner, 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 and Certain Events and Activities

- A. *Generally.* All public and private in-person gatherings, as defined in Section 3(F), of more than 50 persons if they are indoors, or 100 persons if they are outdoors, are prohibited, except as provided in Sections 5(B) and (C).
- B. *Entertainment and amusement businesses.* At entertainment and amusement businesses, the total number of spectators indoors cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 500 persons. The total number of spectators for outdoor venues cannot exceed 30 percent of the lowest occupancy load on the certificate of occupancy. If no occupancy load has been determined, the total number of spectators may not exceed 30 percent of the resulting number when the square footage of the venue likely to be accessed by spectators is divided by 40 square feet per person. Private bookings at entertainment and amusement businesses may not exceed 50 persons if they are indoors, or 100 persons if they are outdoors.
- C. *Recreational sports.* The total number of attendees (either spectators, or spectators and participants, as stated below) at indoor and outdoor recreational sports activities are limited as follows:
 - 1. *Indoor sports.* For sports played indoors, the total number of spectators may not exceed the lesser of 30 percent of the occupancy load stated on the certificate of occupancy for the venue or 100 persons per field.
 - 2. *Outdoor sports.* For sports played outdoors, the total number of spectators may not exceed the lesser of 30 percent of the occupancy load stated on the certificate of occupancy for the venue or 500 persons per field.
 - 3. *Races or marathons.* For races or marathons, the total number of attendees (including participants and spectators) may not exceed 30 percent of the resulting number when the square footage of the venue likely to be accessed by persons is divided by 40 square feet per person, and with staggered starts separating runners into groups of 50 persons or less.
- D. *State requirements, recommendations, and guidance.* Sections 5(A), (B), and (C) incorporate the corresponding limitations in EO 72 on gathering sizes and persons attending certain events and activities in the County. However, this section does not affect any other applicable requirement, recommendation, or guidance in EO 72 including, but not limited to, those requiring or recommending physical distancing

pertaining to entertainment and amusement businesses and recreational sports and wearing face coverings, which are referred to in EO 72 as “masks.” This section also does not affect any requirement, recommendation, or guidance pertaining to business sectors and other events and activities subject to EO 72, or as it may be further amended or superseded, any Order of Public Health Emergency of the State Health Commissioner, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic. This section also does not affect the exceptions in section I(D)(3) of EO 72.

Sec. 6. Face Coverings

- A. *Face coverings required.* Face coverings must be worn by all persons aged five years and older in public places, as defined in Section 3(J), 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, a health condition, or a disability. For this exception to apply: (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, stating that wearing a face covering would be contrary to the person’s health or safety, and the date on which the person may begin wearing a face covering again; and (ii) the public place must be unable to provide goods, services, or activities outdoors to the person or to the adult accompanying a child four years of age or under. This section does not require either the person or the physician or other health care practitioner to disclose the underlying health risk, health condition, or disability
 - 3. *Certain employees.* On-duty employees exempt from wearing face coverings by workplace safety regulations promulgated by the State Safety and Health Codes Board or exempt from face covering rules established by an applicable Executive Order of the Governor or an Order of Public Health Emergency of the State Health Commissioner.
- C. *Circumstances when face coverings are not required to be worn by persons.* Face coverings are not required to be worn by persons in the following circumstances:
 - 1. *Outdoor activities.* While a person is outdoors in a public place such as a parks and other open space, provided that at least six feet of physical distancing from any person who is not a family member defined in Section 3(C) is maintained.
 - 2. *Eating or drinking.* While a person is eating food or drinking a beverage.
 - 3. *Exercising.* While a person is exercising or using exercise equipment.
 - 4. *Certain musical instruments.* While a person is playing a musical instrument, whether indoors or outdoors and in a rehearsal or during a performance, when wearing a face covering would inhibit playing the instrument, such as a wind instrument, if at least 10 feet of physical distancing can be maintained from other persons.
 - 5. *Incapacity.* Any person who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.
 - 6. *Communicating with the hearing impaired.* While a person is communicating with the hearing impaired and for which the mouth must be visible.
 - 7. *Receiving services.* While a person is receiving governmental or medical services if removing the face covering is necessary to receive the services.
 - 8. *End of the waiver of Virginia Code § 18.2-422.* When the waiver of Virginia Code § 18.2-422, currently established in section II(F) of EO 72, 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 of the Governor or an Order of Public Health Emergency of the State Health Commissioner 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. Violations of the requirements of EO 72 referenced in Section 4(B) are enforced pursuant to EO 72 rather than 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. Violations of the requirements of EO 72 referenced in Section 5(D) are enforced pursuant to EO 72 rather than this Ordinance.
- 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. 21-A(1) and Duration

This Ordinance succeeds Ordinance No. 21-A(1) and is in effect on April 7, 2021 and continues in full force and effect for 60 days unless it is re-adopted following a noticed public hearing on or before the 60-day period expires.

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 of the Ordinance 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.

ⁱ *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.

ⁱⁱ <https://www.mayoclinic.org/diseases-conditions/coronavirus/expert-answers/covid-variant/faq-20505779> (March 23, 2021); <https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics> (updated March 9, 2021); <https://www.nbc12.com/2021/03/25/first-cases-californian-covid-variants-found-virginia/>.

ⁱⁱⁱ 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>.

^{iv} [How Coronavirus Spreads | CDC](https://www.cdc.gov/media/releases/2020/s110320-covid-19-spreading.html); <https://www.vdh.virginia.gov/coronavirus/local-exposure/>

<https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics> (updated March 9, 2021).

v <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>; [How Coronavirus Spreads | CDC](#).

vi See <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html> and links therein; <https://www.vdh.virginia.gov/coronavirus/prevention-tips/> and links therein.

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

viii <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>; [Deciding to Go Out | COVID-19 | CDC](#).

ix <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>; <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/social-gatherings/>

x <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines.html>.

xi <https://www.health.harvard.edu/diseases-and-conditions/treatments-for-covid-19>.

xii https://www.washingtonpost.com/graphics/2020/health/covid-vaccine-states-distribution-doses/?itid=sf_coronavirus_sn_covid-vaccine-states-distribution-doses_3;
<https://coronavirus.jhu.edu/region/united-states>.

xiii <https://coronavirus.jhu.edu/vaccines/international>.

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

xv [Locality – Coronavirus \(virginia.gov\)](#)

xvi [Locality – Coronavirus \(virginia.gov\)](#)

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

xviii <https://www.washingtonpost.com/nation/2021/03/22/coronavirus-covid-live-updates-us/>;
<https://www.cnn.com/2021/03/30/health/us-coronavirus-tuesday/index.html> (March 30, 2021).

<https://www.washingtonpost.com/nation/2021/03/30/coronavirus-covid-live-updates-us/> (March 30, 2021).

xix [EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf \(virginia.gov\)](#)