

EMERGENCY ORDINANCE NO. 20-E(2)

AN EMERGENCY ORDINANCE TO ENSURE THE CONTINUITY OF GOVERNMENT DURING THE COVID-19 DISASTER

WHEREAS, on March 11, 2020, the World Health Organization declared the novel coronavirus (“COVID-19”) outbreak a pandemic; 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 Fifty-One declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; and

WHEREAS, Executive Order Fifty-One 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, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive “any state requirement or regulation” as appropriate; 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, on March 17, 2020, Governor Ralph S. Northam and the Virginia State Health Commissioner issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (amended on March 20, 2020) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment; and

WHEREAS, on March 18, 2020, the Board of Supervisors consented to the County Executive, acting as the Director of Emergency Management, issuing an amended declaration of local emergency to refer to the COVID-19 pandemic as not only an emergency, but also as a “disaster,” as the Governor had included in Executive Order Fifty-One, and the County Executive issued the amended declaration on March 20, 2020; and

WHEREAS, on March 20, 2020, the Attorney General for the Commonwealth of Virginia issued an opinion in which he concluded that the COVID-19 pandemic, which the Governor declared is a “disaster” as defined in Virginia Code § 44-146.16, is also a “disaster” as that term is used in Virginia Code § 15.2-1413; and

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to “assure continuity in its government” in the event of a disaster for a period not to exceed six months; and

WHEREAS, on March 23, 2020, Governor Ralph S. Northam issued Executive Order Fifty-Three, which closed all public and private K-12 schools throughout the Commonwealth of Virginia for the remainder of the 2019-2020 school year, imposed further restrictions on public and private gatherings on

several classes of dining establishments, closed many classes of “recreational and entertainment businesses” in their entirety, imposed limitations on the number of patrons allowed in other businesses, and encouraged businesses to use teleworking when feasible and, if not feasible, to adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance to the extent possible; and

WHEREAS, Executive Order Fifty-Three states that, despite the measure taken to date, “COVID-19 presents an ongoing threat to our communities,” that there are occurrences of the virus in every region of the Commonwealth, and that the data suggests that in several regions there may be community spread of the virus; and

WHEREAS, Executive Order Fifty-Three states that further measures are needed because “[u]nnecessary person-to-person contact increases the risk of transmission and community spread” and that “we must limit such interactions to those necessary to access food and essential materials”; and

WHEREAS, the Board of Supervisors finds that the COVID-19 pandemic constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code § 44-146.16 and within the meaning of Virginia Code § 15.2-1413; and

WHEREAS, the General Assembly recognizes the extreme public danger created by contagious diseases such as the COVID-19 virus by enabling counties, through the exercise of their police powers expressly granted in Virginia Code § 15.2-1200, to “adopt necessary regulations to prevent the spread of contagious diseases among persons” and to adopt “quarantine regulations” affecting persons; and

WHEREAS, this emergency ordinance is in response to the disaster caused by the COVID-19 pandemic, promotes and protects the public health, safety, and welfare of the residents of the County, the City of Charlottesville, and the Commonwealth of Virginia, and is consistent with the laws of the Commonwealth of Virginia, the Constitution of Virginia, and the Constitution of the United States of America.

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

Sec. 1. Purpose.

The purpose of this ordinance is to ensure the continuity of the government of the County of Albemarle, Virginia, during the novel coronavirus (“COVID-19”) disaster, which is currently a pandemic, by identifying the many essential governmental functions that must continue and establishing regulations to ensure these functions continue by providing for: (1) the succession of elected officials and appointed officers; (2) meeting procedures that allow the County’s public bodies, whose members are elected or appointed, to meet and conduct business in a manner that is safe for the members of the public bodies, staff, and the public, and allow the public to participate in these meetings to the fullest extent practicable given the current circumstances; (3) provide alternative deadlines for certain matters that are different than those provided by State law or the County Code; (4) establish the method for resuming normal governmental operations; and (5) other matters related to the foregoing.

The requirements, procedures, deadlines, and other provisions of this ordinance vary from those that apply to County government under normal governmental operations. However, for the reasons explained in the recitals, these alternative regulations are deemed to be essential in order to ensure the continuity of government during the COVID-19 disaster without further risking the health and lives of the public and County officers, appointees, and employees resulting from exposure to the COVID-19 virus and its further spread. The regulations that apply during normal governmental operations will

be followed to the extent they can be in a manner that is consistent with State and Federal orders and declarations and without risking the health and lives of the public and County officers and employees.

Sec. 2. Authority

This ordinance ensures the continuity of government during the COVID-19 disaster and is authorized by Virginia Code § 15.2-1413, which enables the Board of Supervisors to provide by ordinance “a method to assure continuity in its government.” This ordinance is adopted as an emergency ordinance pursuant to Virginia Code § 15.2-1427(F).

Sec. 3. Scope

This ordinance applies to not only to the government of the County of Albemarle, Virginia, but also to the Albemarle County Public Schools, the County’s authorities identified in this ordinance, public bodies established pursuant to a joint exercise of powers agreement or other agreements, and other public bodies and offices described in Section 4.

Sec. 4. Essential governmental functions

Under the county executive form of government, the “powers of the county as a body politic and corporate” are vested in the Board of Supervisors. *Virginia Code § 15.2-502*. Any actions of the Board in which it exercises its powers are essential governmental functions. By providing vital support for the Board, the activities of the Clerk of the Board and her office are also essential governmental functions.

The Board of Supervisors also finds that the essential governmental functions that must be performed in order to ensure the continuity of government during the COVID-19 disaster are those activities or functions of the County established by Virginia Code § 15.2-518 (departments of finance, social services, law enforcement, education, records, and health), those that the Board has previously deemed to be “necessary to the proper conduct of the business” of the County pursuant to Virginia Code § 15.2-518, the authorities that provide essential public services, the County public bodies that oversee the proper administration and enforcement of State laws and the County Code, and the other public bodies and offices that facilitate the proper administration and implementation of State laws and the County Code to the extent necessary and practicable during the COVID-19 disaster.

A. Essential governmental functions provided by County offices and departments. The following offices and departments provide essential governmental functions as described below:

1. County Executive’s Office. The County Executive is the administrative head of the County, whose duties include executing and enforcing all Board resolutions and orders, that all laws of the Commonwealth required to be enforced through the Board, or some other County officer subject to the control of the Board, are faithfully executed, and performing other duties as may be required by the Board and as may be otherwise required by law. *Virginia Code § 15.2-516*. The functions of the Office of Equity and Inclusion and the Communications and Public Engagement Office, which exist within the County Executive’s Office, are included in this designation. The Office of Management and Budget and the Project Management Office are also within the County Executive’s Office, but their functions are identified separately below.
2. County Attorney’s Office. The County Attorney is the legal advisor to County government whose duties are to advise the Board and “all boards, departments, agencies, officials and employees” of the County on civil matters, draft or prepare ordinances, and defend or bring actions in which the County or any of its boards, departments, agencies, officials, or

- employees are a party; and in any other manner advising or representing the County, its boards, departments, agencies, officials and employees. *Virginia Code § 15.2-1542(A)*.
3. Department of Finance. The Finance Director's duties include administering the financial affairs of the County, including the budget; assessing property for taxation; collecting taxes, license fees, and other revenues; being the custodian of all public funds belonging to or handled by the County; supervising the expenditures of the County and its subdivisions; disbursing County funds; keeping and supervising all accounts; and performing other duties as the Board of Supervisors requires. *Virginia Code § 15.2-519*.
 4. Economic Development Office. Under normal governmental operations, this office is responsible for promoting the economic development of the County and the region, consistent with the County's Economic Development Strategic Plan, and providing staffing assistance to the Economic Development Authority. During the COVID-19 disaster, providing economic assistance to County businesses is an essential function of this office, and its services will also include any additional State or Federal assistance or services programs, either on its own or in its work with the Economic Development Authority.
 5. Department of Community Development. Under normal governmental operations, this office oversees a wide range of functions related to the physical development of the County. During the COVID-19 disaster, administering and enforcing the Albemarle County Zoning, Subdivision, and Water Protection Ordinances, and administering and enforcing the Virginia Uniform Statewide Building Code and other related codes are essential functions.
 6. Department of Facilities and Environmental Services. This department maintains and operates the County's buildings, manages the lands owned by the County, manages County capital projects and administers related construction contracts, and oversees environmental-related County responsibilities including, but not limited to, ensuring the County's compliance with the County's Clean Water Act permit, and its obligations as a municipal separate storm sewer system (MS4) program.
 7. Department of Fire Rescue. This department provides fire protection and emergency medical services and, through the Fire Marshal, administers and enforces the Virginia Fire Prevention Code.
 8. Department of Human Resources. This department provides human resources support for the County and Albemarle County Public Schools. The department provides services in seven key human resources functional areas: (1) recruitment/staffing support; (2) classification and compensation; (3) benefits and leave administration; (4) training and development; (5) employee relations; (6) workplace safety; and (7) teacher licensure and certification.
 9. Department of Parks and Recreation. This department maintains and operates the County's parks and provides numerous recreational programs, which during normal governmental operations, are essential to the public health and welfare. During the COVID-19 disaster, ensuring that the County's parks are protected and maintained are essential functions.
 10. Department of Social Services. This department provides a range of: (1) child welfare services including child protective services, family support, family preservation services, a foster care program, and adoption services; (2) economic assistance for those in need, including administering the supplemental nutritional assistance program (SNAP), the temporary assistance to needy families (TANF) program, energy assistance, and auxiliary grants; (3) self-sufficiency services, including services related to employment training, career services, and child care services; (4) health care services, including administering the

- Medicaid program; (5) adult and elder care services, including adult protective services; (6) housing assistance; and (7) language assistance. During the COVID-19 disaster, these services will also include any additional State or Federal assistance or services program.
11. Office of Management and Budget. This office, which is part of the County Executive’s Office, has the following responsibilities: (1) developing and implementing the County’s operating and capital budgets; establishing budget policies, and monitoring departmental and agency budgetary and program performance; (2) preparing the five-year Financial Plan, five-year Capital Improvement Plan, and the long range Capital Needs Assessment; (3) developing and managing the performance management system; and (4) managing the local government grants application and awards process.
 12. Police Department. This department provides law enforcement and community safety services.
 13. Project Management Office. This office, which is part of the County Executive’s Office, provides planning, organizational, and management responsibilities for the County’s project portfolio, including organizational projects, strategic plan objectives, and technology solutions. During the COVID-19 disaster, one of this office’s essential functions is having a critical role in planning, organizing, and managing a range of projects related to the County’s response to the COVID-19 disaster.
 14. Department of Information Technology. This department provides, manages, and supports the use of critical technology that allows the County to operate and communicate internally and with the public.
- B. Albemarle County Public Schools. Under the County Executive form of government, the County is required to have a “department of education.” *Virginia Code § 15.2-518*. The “department of education” is composed of the Albemarle County School Board, the Superintendent of the “school division,” and the “officers and employees thereof.” *Virginia Code § 15.2-531*. Article VIII, Section 1 of the Constitution of Virginia states: “The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.”
- C. Authorities. The following authorities and their boards provide essential governmental functions:
1. Albemarle Conservation Easement Authority. The Albemarle Conservation Easement Authority (“ACEA”) was created as a parks and recreational facilities authority by resolution adopted by the Board of Supervisors on November 20, 1989 pursuant to the Public Recreational Facilities Authority Act (Virginia Code § 15.2-5600 *et seq.*). The ACEA was called the Public Recreational Facilities Authority until its name was changed by resolution adopted by the Board of Supervisors on July 11, 2018. The ACEA’s articles of incorporation state that its purpose is to accept, hold, and administer open-space land and interests therein under the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*). *Amended Articles of Incorporation adopted July 11, 2018*. The types of interests held include open-space easements that are donated by landowners, easements acquired by the County under its Acquisition of Conservation Easements (“ACE”) program, and easements created pursuant to Rural Preservation Developments allowed under the County’s zoning regulations. Monitoring and enforcing these easements are essential functions.
 2. Albemarle County Broadband Authority. The Albemarle Broadband Authority (“ABBA”) was created as a wireless service authority “to provide qualifying communications services as

- authorized by Article 5.1 (Virginia Code § 56-484.7:1 et seq.) of Chapter 15 of Title 56 of the Virginia Code.” Facilitating the ongoing deployment of broadband infrastructure and services in the underserved areas of the County is an essential function.
3. Albemarle-Charlottesville Regional Jail Authority. The Albemarle-Charlottesville Regional Jail Authority (“Jail Authority”) was created as an authority under the Jail Authorities Law (Virginia Code § 53.1-95.2 et seq.) by agreement among the County, the County of Nelson, and the City of Charlottesville on November 15, 1995. The Jail Authority replaced the Regional Jail Board as the operator of the Albemarle-Charlottesville Joint Security Complex.
 4. Albemarle County Service Authority. The Albemarle County Service Authority (“ACSA”) was created as an authority under the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 et seq.). The ACSA’s articles of incorporation state that its purpose is to undertake projects for distributing and selling potable water to retail customers, collecting wastewater from retail customers, and delivering the wastewater to the Rivanna Water and Sewer Authority. *Amendment to the ACSA Articles of Incorporation, dated December 16, 1985; County Code § 2-701.*
 5. Economic Development Authority of Albemarle County, Virginia. The Economic Development Authority (“EDA”), officially identified as the “Economic Development Authority of Albemarle County, Virginia,” was created as an industrial development authority (now, an economic development authority) by ordinance adopted by the Board of Supervisors on May 12, 1976 pursuant to the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900 et seq.). *County Code § 2-600.* The EDA has all of the powers of such an authority under the Act. The EDA operates in cooperation with the County pursuant to a Memorandum of Understanding and the Albemarle County Economic Development Strategic Plan, also known as Project ENABLE (Enabling a Better Life Economically). During the COVID-19 disaster, providing economic assistance to County businesses within the scope of its enabling authority is an essential function of the EDA, and its services will also include any additional State or Federal assistance or services program either on its own or in its work with the Economic Development Office.
 6. Rivanna Solid Waste Authority. The Rivanna Solid Waste Authority (“RSWA”) was created on November 5, 1990 by the Solid Waste Organizational Agreement entered into between the County and the City of Charlottesville, together with a concurrent resolution of the Charlottesville City Council and the Albemarle County Board of Supervisors and the RSWA’s articles of incorporation, all pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 et seq.). The RSWA’s articles of incorporation state that its purposes are to “develop a regional refuse collection and disposal system, as such terms are defined in Virginia Code Section 15.2-5101 of the Virginia Water and Waste Authorities Act, including development of systems and facilities for recycling, waste reduction and disposal alternatives with the ultimate goal of acquiring, financing, constructing, and/or operating and maintaining regional solid waste disposal areas, systems and facilities, all pursuant to the Virginia Water and Waste Authorities Act.” *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated November 6, 2009 (“Concurrent Resolution”).*
 7. Rivanna Water and Sewer Authority. The Rivanna Water and Sewer Authority (“RWSA”) was created on June 7, 1972 by the City of Charlottesville and the County pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 et seq.). The RWSA currently describes its purpose as providing “clean, safe, high-

quality drinking water to the City of Charlottesville and Albemarle County Service Authority's over 100,000 customers. [The RWSA] then treat[s] the wastewater so that it can be safely returned back to the aquatic environment." *RWSA website*. The RWSA operates five reservoirs at Ragged Mountain, Sugar Hollow, South Fork Rivanna, Totier Creek, Beaver Creek, along with five water treatment plants, and wastewater treatment plants. *RWSA website*.

- D. Public bodies existing under joint exercise of powers agreements. The following public bodies exist under joint exercise of powers agreements, and they and their boards exercise essential governmental functions:
1. Charlottesville-Albemarle Convention and Visitors' Bureau. The Charlottesville-Albemarle Convention and Visitors' Bureau ("CACVB") has existed in various forms for more than 20 years. Its current iteration was established by the County and the City on June 28, 2018, and it became effective July 1, 2018. Individually, both the County and the City are enabled by Virginia Code § 15.2-940 to "expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality." The purpose of the CACVB is to jointly promote the resources and advantages of the County and the City, including marketing of tourism and initiatives that attract travelers to the City and County, increase lodging at properties located within the City and County, and generate tourism revenues within the City and County. *Second Amended Agreement to Operate a Joint Convention and Visitors' Bureau, dated October 2, 2019*. The County and the City contribute funds to support the CACVB's facilities and operations from their respective transient occupancy tax revenues. During the COVID-19 disaster, the CACVB provides an essential function to support the County's hospitality business sector.
 2. Emergency Communications Center. The Emergency Communications Center ("ECC") was established by the County, the City of Charlottesville, and the University of Virginia on January 20, 1984. The ECC was established to provide a centralized dispatching facility for the respective parties' law enforcement and emergency service providers operating in the County and the City, and to provide a 911 emergency system. *Agreement By and Among the County of Albemarle, Virginia, the City of Charlottesville, Virginia, and the Rector and Visitors of the University of Virginia, dated January 20, 1984*. The ECC also provides coordination and assistance in emergency management for the Emergency Operations Plan adopted by its participating agencies.
- E. Other public bodies and offices. Other public bodies and offices of the County also exercise essential functions. They include, but are not limited to, the the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, any advisory bodies established by the Board of Supervisors, and the office of the General Registrar.

Sec. 5. Succession

This section establishes the procedures to fill vacancies in elected and appointed offices arising during the COVID-19 disaster in order to ensure the continuity of County government. This section also applies to Albemarle County Public Schools and may be applied by the authorities and the other public bodies identified in Section 4 to the extent practicable. The Albemarle County School Board, in its discretion, may establish by resolution its own procedures to fill vacancies in elected offices arising during the COVID-19 disaster.

- A. Elected officials. When a vacancy occurs either on the Board of Supervisors or the Albemarle County School Board, the vacancy shall be filled according to the procedure generally established by Virginia Code § 24.2-228, as modified below:
1. Appointment by remaining members. When a vacancy occurs, the remaining members of the Board, within 45 days of the office becoming vacant, may appoint a qualified voter of the magisterial district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the Board cannot agree, or do not act, the judges of the Albemarle County Circuit Court may make the appointment.
 2. If a qualified voter from the magisterial district cannot be found. If the Board is unable to find and appoint a qualified voter from the magisterial district in which the vacancy exists after a reasonable effort, it may appoint a qualified voter from any other magisterial district.
 3. Duration of appointment. The person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to Virginia Code § 24.2-682 and the person so elected has qualified.
 4. Effect of being appointed. Any person appointed to fill a vacancy holds office the same way as an elected person, is authorized to exercise all powers of the elected office, and this includes having that person's vote be considered the vote of an elected member.
 5. Majority of seats are vacant. If four or more seats on the Board are vacant, the vacancies must be filled by judicial appointments as provided in Virginia Code § 24.2-227.
 6. Holding over. If, during the COVID-19 disaster, a general election cannot be held, any member whose term expires may continue to hold over in office until a successor is appointed.
 7. Temporary vacancies. If a member is unable to participate in any meeting of the Board for more than 30 days and the number of members available to meet and act falls below that required for a quorum as provided in Section 6, and action by the Board is determined to be essential to continue the functions of the County or the Albemarle County Public Schools, as applicable, the remaining members may, in their discretion, appoint a qualified voter to temporarily fill the office as provided in this subsection until the permanent member is able to participate.
- B. Appointed officers. This subsection applies to the County government and not to Albemarle County Public Schools, which is recommended to establish its own succession plan for appointed officers.
1. If the County Executive and the Deputy County Executive are incapacitated. If the County Executive and the Deputy County Executive are both incapacitated such that they cannot perform the duties of the County Executive, the Board of Supervisors may appoint any person it deems qualified to act as Acting County Executive.
 2. If the County Attorney and the Deputy County Attorney are incapacitated. If the County Attorney and the Deputy County Attorney are incapacitated such that they cannot perform the duties of the County Attorney, the Board of Supervisors may appoint any person it deems qualified to act as Acting County Attorney.
 3. If the Clerk and the Senior Deputy Clerk are incapacitated. If the County Clerk and the Senior Deputy County Clerk are incapacitated such that they cannot perform the duties of the

County Clerk, the Board of Supervisors may appoint any person it deems qualified to act as Acting County Clerk of the Board of Supervisors.

4. If any department head and deputy department head or equivalent position are incapacitated. If any department head and any deputy department head, or any equivalent position are incapacitated, the County Executive may appoint any person he deems qualified to act as the acting department head.

Sec. 6. Public Meetings

This section establishes the procedures for public meetings of the Board of Supervisors, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, and any advisory bodies established by the Board of Supervisors during the COVID-19 disaster in order to ensure the continuity of government. This section may also be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4 to the extent practicable for their public bodies. References to the “Board” and the “Supervisors” in this section should be modified when applied by public bodies other than the Board of Supervisors.

- A. The need to change how meetings are conducted during COVID-19. The Board fully endorses the statements in Virginia Code 2.2-3700, which is the introductory section of the Virginia Freedom of Information Act, that the “affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government,” and that unless an exception to open meetings is invoked “every meeting shall be open to the public.” The regulations in this section for conducting public meetings are necessary because the COVID-19 disaster makes it unsafe for public bodies, as well as their staff and the public, to physically assemble in one location or to conduct meetings in accordance with normal practices and procedures. Although the regulations in this section establish rules for conducting public meetings that are different from normal practices and procedures, the regulations are intended and designed to continue the policies expressed in Virginia Code § 2.2-3700.
- B. Meeting format. Any meeting or activity that requires the Board to physically assemble may be held through real time electronic means (including audio, telephonic, video, or any other practical electronic medium) without a quorum physically assembled in one location. Nonetheless, this ordinance does not prohibit the Board from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration, and that doing so does not violate any order or declaration from Governor Ralph S. Northam or the State Health Commissioner.
- C. Agenda. The agenda for an electronic meeting should state the following: (1) the meeting is being held pursuant to this ordinance; (2) identify the persons responsible for receiving public comment; and (3) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items on the agenda does not invalidate or make illegal the electronic meeting.
- D. Notice. Before holding a regular electronic meeting, the Board of Supervisors must provide public notice at least three days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment. The notice must state the following: (1) the meeting is being held pursuant to this ordinance; (2) identify the persons responsible for receiving public comment; (3) identify the opportunities for the public to access and participate in the electronic meeting. Any notice provided before the effective date of this ordinance, for a public meeting or public hearing after its effective date, that complied with the law when it was given but which is

inconsistent with this ordinance, including with respect to the location of the meeting or public hearing, is deemed to satisfy any notice requirements and no action taken at that meeting or regarding any public hearing is invalid for that reason.

- E. Statement by the Chair. At the beginning of the meeting, the Chair must state: (1) the meeting is being held pursuant to and in compliance with this ordinance; (2) identify the Supervisors physically and electronically present; (2) identify the persons responsible for receiving public comment; and (3) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items does not invalidate or make illegal the electronic meeting.
- F. Public participation. Any electronic meeting must be open to electronic participation by the public and closed to in-person participation by the public. In addition, for any matters requiring a public hearing, public comment may be solicited by electronic means in advance and must also be solicited through telephonic or other electronic means during the electronic meeting. The public comments received before the electronic meeting will be provided to the Supervisors at or before the electronic meeting and made part of the record for the meeting.
- G. Postponing certain matters. Any non-emergency public hearing and action item on the Board's agenda may be postponed to a later date provided that public notice is given so that members of the public are aware of how and when to present their views.
- H. Quorum. If three Supervisors are unable to participate in a public meeting because each of those three Supervisors is sick from the COVID-19 virus, and at least one temporary vacancy has not been filled pursuant to Section 5, a quorum of the Board of Supervisors to conduct business is reduced from four to three. If four or more Supervisors are unable to participate in a public meeting for the reasons stated above, the only action that the participating Supervisors may take is to adjourn the meeting until the temporary vacancies can be filled.
- I. Voting. State laws, as may be implemented in the County Code, may impose different voting requirements. Although most actions require the majority vote of those Supervisors present and voting, there are some actions that require a supermajority vote, the majority vote of the elected members, or impose some other requirement. These different voting requirements continue to apply unless: (1) one or more Supervisors is sick from the COVID-19 virus; (2) the sick Supervisors are unable to participate in the public meeting; (3) the temporary vacancy has not been filled pursuant to Section 5 and the voting requirement imposed by State law or the County Code cannot be complied with; and (4) a vote is required by the Board at that meeting in order to ensure the continuity of government. If all four of those prerequisites are satisfied, the Board may approve the matter on the affirmative vote of those Supervisors present and voting. Following are examples of different voting requirements for certain matters, and how they are addressed if the four prerequisites are satisfied:
 - 1. When the affirmative vote of the elected members is required. Article VII, Section 7 of the Constitution of Virginia and its statutory companion in Virginia Code § 15.2-1428 require, among other things, the affirmative vote of a majority of all members elected to the governing body on certain matters. As provided in Section 5(A)(4), and based on language in Virginia Code § 24.2-228, any appointed Supervisor's vote is considered to be the vote of an elected Supervisor.
 - 2. When a supermajority vote is required. Virginia Code § 15.2-2405 requires a two-thirds vote of the elected Supervisors to impose taxes in a service district. The Board is unique because it is a six-member Board and, for it, a majority vote is also a supermajority when a two-thirds vote is required. There are no service districts in the County. If another matter requires a

supermajority under Virginia law, the Board may approve a matter by a majority of the Supervisors participating and voting.

3. When the vote by those present and voting is required. The requirement that a matter be approved by a majority vote of those present and voting is common, one example being found in Virginia Code § 15.2-1427(A). For the purposes of this voting requirement, any Supervisor who is participating in the matter is “present.”
- J. Closed meetings. In addition to the purposes for the Board to have a closed meeting in Virginia Code § 2.2-3711(A), the Board may have a closed meeting to discuss plans to protect the public health and safety as it relates to the COVID-19 disaster and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters, to the extent that this purpose is not otherwise covered by Virginia Code § 2.2-3711(A)(19) or any other purpose for a closed meeting in Virginia Code § 2.2-3711(A).
- K. Minutes. The minutes of all electronic meetings must comply with the requirements of Virginia Code § 2.2-3707(H), identify how the meeting was conducted, the Supervisors participating, and specify what actions were taken at the meeting.
- L. Recordings. An audio recording of any electronic meeting must be made and retained as provided by law. This requirement does not apply to any public body, such as an advisory committee, that is not required to have minutes of its public meetings.
- M. Other requirements not modified. Any requirements for conducting a public meeting in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.* that are not modified by this section apply to conducting a public meeting.

Sec. 7. Deadlines

This section applies to the County government. State law and the County Code impose many deadlines by which the County, Board of Supervisors, and other public bodies must act. The following deadlines are extended, with the proviso that the Board of Supervisors and the County will endeavor to extent practicable to meet the deadlines established by State law and the County Code. This section may be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4 to the extent practicable.

- A. The tax rates. It is the intention of the Board to meet all of the deadlines established by State law to fix the tax rates. However, the May 15 deadline established by Virginia Code § 58.1-3321(E) for fixing the real estate tax rate, and the June 30 deadline to fix other tax rates established by Virginia Code § 58.1-3001, are extended indefinitely as may be necessary.
- B. The budget. It is the intention of the Board to meet all of the deadlines established by State law to approve the annual budget. However, the May 15 deadline established by Virginia Code § 22.1-93 requiring the Board to “prepare and approve an annual budget for educational purposes by May 15 or within 30 days of the receipt by the county . . . of the estimates of state funds, whichever shall later occur,” and the July 1 deadline to approve the budget established by Virginia Code § 15.2-2503 (“the date on which the fiscal year begins”), are extended indefinitely as may be necessary.
- C. Finance. The May 1 deadline for filing a tax return on certain tangible personal property employed in a trade or business imposed pursuant to County Code § 15-804 is extended to June 1 and the June 5 deadline for paying those taxes is extended to June 30.

- D. Land use applications. Any deadline established by State law or the County Code for action by the County, the Board of Supervisors, or any County public body within the scope of Chapter 14, Subdivision of Land, Chapter 17, Water Protection, or Chapter 18, Zoning, is extended indefinitely as may be necessary. Any provision in State law or the County Code to deem the failure of any action to be timely taken to be deemed approval is of no force or effect.
- E. Requests for records under the Virginia Freedom of Information Act. Any deadline by which a response to a request for records under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) is due, and the time for which any such records may be inspected or produced, are extended indefinitely as may be necessary.
- F. Hold harmless. The failure to meet any deadline imposed by State law, including the Prompt Payment Act, or the County Code does not constitute a default, violation, approval, recommendation or otherwise.
- G. Other deadlines may be extended. Any other deadlines not extended by this section may be extended by a separate ordinance.

Sec 8. Duration

This emergency ordinance is effective immediately and expires at 11:59 p.m. on May 26, 2020, or upon the adoption of a continuity of government ordinance for which notice is provided as required by Virginia Code § 15.2-1427(F), paragraph 1, whichever occurs first.

Sec. 9. Method for Resuming Normal Governmental Operations

Normal governmental operations will be resumed after the County Executive, acting as the Director of Emergency Management, reports to the Board of Supervisors that all emergency actions that can be taken by the County have been taken, the Governor ends the state of emergency, and the State Health Commissioner advises that it is safe for people to once again gather in public so that normal governmental operations, including normal public meetings (or words to that effect), may be re-established.

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, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster. The intention of the Board of Supervisors is that this ordinance and any powers exercised by the Director complement one another.

Sec. 11. Superseding Prior Continuity of Government Ordinances

This ordinance supersedes any previous continuity of government ordinance adopted by the Board of Supervisors.

Sec. 12. 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.

Sec. 13. Liberal Construction

Because its purpose is to ensure the continuity of government, this ordinance should be liberally construed to accomplish this purpose and to facilitate the performance of essential governmental functions, which include providing essential governmental services.

State law reference – Va. Code §§ 15.2-1413, 15.2-1427(F).

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Gallaway	_____	_____
Ms. LaPisto-Kirtley	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Ms. Price	_____	_____