

A special meeting of the Board of Supervisors of Albemarle County, Virginia, was held on Friday, July 27, 2020, at 3:06 p.m. and was held by electronic communication means using Zoom and a telephonic connection due to the COVID-19 state of emergency. The Chair, Mr. Gallaway, called the special meeting to allow a quorum of Board members to convene an open meeting to consider, discuss, and take action on the following: an emergency ordinance establishing regulations to prevent the spread of the novel coronavirus commonly known as COVID-19.

PRESENT: Mr. Ned Gallaway, Ms. Beatrice (Bea) J. S. LaPisto-Kirtley, Ms. Ann H. Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer, and Ms. Donna P. Price.

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeffrey B. Richardson, Assistant County Attorney, Andy Herrick, Clerk, and Claudette K. Borgersen.

Agenda Item No. 1. Call to Order. The meeting was called to order at 3:06 p.m., by the Chair, Mr. Gallaway.

Mr. Gallaway said the meeting was being held pursuant to and in compliance with Ordinance No. 20-A(8), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster."

Mr. Gallaway said the persons responsible for receiving public comment are the Board of Supervisors of Albemarle County.

Mr. Gallaway said the opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website, on the Board of Supervisors homepage and on the Albemarle County calendar.

---

**Introductions.** Mr. Gallaway introduced staff present and announced the Supervisors in attendance.

---

Agenda Item No. 2. Incident Management Team's (IMT) Recommendation to an Emergency Ordinance Establishing Regulations to Prevent the Spread of the Novel Coronavirus Commonly Known as COVID-19

Mr. Jeff Richardson, County Executive, said he would be presenting along with Mr. Andy Herrick, Assistant County Attorney. He recognized Mr. Jim Hingeley, Commonwealth's Attorney, who was attending that day, and thanked Mr. Hingeley and his staff who, last week on a moment's notice, made time to go through and review the draft ordinance with County staff, which was immensely helpful. He said he appreciated Mr. Hingeley being available that day as well.

Mr. Richardson reminded the Board that the recommendations that were developed and are being considered are driven off of trend data, compliance and enforceability, and responsiveness to contact tracing community spread data.

Mr. Richardson also reminded the Board that, back in mid-March when the County went into emergency operations and declared a local state of emergency, staff worked very closely from guidance from the CDC, OSHA, the Commonwealth of Virginia, and the Department of Health and Human Services to identify three goals, which still remain in place today. He said they are working to reduce the transmission among County staff and among the general public of the citizens of Albemarle County. He said they are also working to protect people who are at high risk for adverse health complications. He said the third goal is to maintain essential services to the public.

Mr. Richardson said Mr. Herrick would later go into the details on the recommended modifications to Phase 3. He pointed out that all other Phase 3 guidelines will continue to apply. He said the proposed revisions focus in the areas of occupancy at food establishments, wineries, breweries, and distilleries, per Section 4 of the draft ordinance; gatherings, per Section 5; and the face covering requirement, per Section 6.

Mr. Richardson said in terms of a compliance approach, there were two areas of focus. He said the first is the ambassador program, which staff is continuing to develop. He said it would be through a third-party vendor and would be supervised and managed by County staff administratively. He said they are looking at creating a program that will allow the County to do proactive visits to popular gathering areas in and across Albemarle County, which will include retail businesses, food establishments, and other areas that are identified through the Thomas Jefferson Health District and perhaps through the Albemarle County Police Department.

Mr. Richardson said the goals with ambassadors are to educate and inform. He said they will be seeking out onsite management and business owners to discuss any issues. He said they will hopefully be making these visits with signage to offer the businesses an opportunity to post signage that, if the Board passes the ordinance that day, would remind shoppers and visitors to the area that the County has a local ordinance that requires face coverings.

Mr. Richardson said the signage will also point out that they have a complaint program that is

coordinated through the Thomas Jefferson Health District. He said he envisions the signage including the location for the VDH online complaint form that can be submitted to the Health Department for any business or provider that a citizen sees problems with.

Mr. Richardson said he spoke with the Health District that morning, and that they would prefer to use the online complaint form. He said they will then ship the concern to the appropriate regulating agency or a state agency that oversees that particular business. He said this process has been in effect for a period of time with the Health District, and that he asked that day if the complaint system was in place.

Mr. Richardson said the Health District shared with him that Albemarle County has received a total of 322 complaints on this system, to date. He said he did not know when the system started and could get that information, but it is a complaint system that is monitored by the Health District, who looks for issues and patterns.

Mr. Richardson said he envisions the ambassador program connecting well with the Health District in order for the ambassadors to be able to visit, educate, inform, and help businesses and citizens understand the importance of these steps.

Mr. Richardson said Mr. Herrick would get into more details of the ordinance and answer any questions from the Board.

Mr. Andy Herrick, Deputy County Attorney, said he was filling in for Mr. Greg Kamptner, County Attorney, that week. He said he would spend the first part of his time walking the Board through the proposed ordinance, and that he would then go over some of the provisions that have changed since the last time the Board discussed this.

Mr. Herrick said the proposed ordinance before the Board that day has three main provisions. He said the first is a limit of indoor occupancy at food establishments, wineries, breweries, and distilleries. He said it would provide for a limit of 50% occupancy, that is, whatever the maximum occupancy is that is specified in the Certificate of Occupancy for the structure, or a 50-person maximum if it is considered a farm building and does not have a Certificate of Occupancy. He said this is included in Section 4 of the proposed ordinance, which was emailed to the Board and is available on the County's website.

Mr. Herrick said the second provision, in Section 5, is a limitation on gatherings. He said while Phase 3, statewide, limits gatherings to 250 people, the proposed ordinance would limit gatherings to 50 people, with certain listed exceptions. He said those exceptions include outdoor gatherings at food establishments, wineries, breweries, and distilleries; religious exercises; weddings; and expressive activities, such as demonstrations. He said in each of those cases, that would be a limitation that the County ordinance would be providing beyond what is required under the current State Executive Order.

Mr. Herrick said finally, Section 6 of the proposed ordinance would have a face covering requirement that will require face coverings at indoor public places and outdoor public places where a 6-foot physical distance is not possible. He said there are listed exclusions to the face covering requirement including personal residences, personal vehicles, institutions of higher education and other schools, fitness and other exercise facilities, religious institutions, indoor shooting ranges, and the County Courthouse Building.

Mr. Herrick noted that there are also exceptions in the definition of "gathering" and in the definition of "food establishments" that, in each case, exclude institutions of higher learning and schools. He said in each case, the ordinance has definitions, and those definitions play a part in where gatherings are allowed and in where face coverings are and are not allowed.

Mr. Herrick said going through some of the proposed changes to the ordinance since the last time the Board saw it, these were highlighted on the slide in yellow. He said they are primarily due to the valuable input staff received from Mr. Jim Hingeley, Albemarle County Commonwealth's Attorney, who was also available on the line and could speak to some of his recommendations.

Mr. Herrick said that per Section 5(B), exceptions to the gathering restrictions now include food establishments among the places that are excepted from having a limit on outdoor gatherings. He said the prior versions of this ordinance had an exception for outdoor gatherings at farm wineries, limited breweries, and limited distilleries, and that this exception would now apply to food establishments as well. He noted that "food establishments" is a term that is similar to restaurants but has a broader application. He said food establishments would include restaurants, lunch counters, and other similar establishments.

Mr. Herrick said with regard to the face covering restrictions in Section 6, most of these adjustments were made at the recommendation of Mr. Hingeley, and that his suggestions were very well-taken. He said Section 6(B)-2 has as an exception to the face covering requirement people for whom there is significant physical or mental risk in wearing a face mask.

Mr. Herrick said the language that was highlighted in yellow on the slide requires the person to produce documentation of mental or physical health risks, and also show that the public place at which they are seeking service is unable to provide those services outdoors. He said they would have to provide documentation and show that the establishment is not able to make alternate accommodations for them outdoors.

Mr. Herrick said the next significant revision since when the Board last saw the draft was in Section 6(B), which clarifies the face covering requirement for minors. He said currently, there is an exception for face coverings in Section 6(B)-1 that face coverings are not required for children 10 years of age or under. He said Section 6(B) clarifies that adults accompanying minors should use their best judgment for placing face coverings on any minor between the ages of 2-9 in public places, and adults accompanying minors between the ages of 10-17 must use reasonable efforts to prompt the minor to wear face coverings while in public places.

Mr. Herrick said this is the same language that currently exists in the state's Executive Order 67, which is where they derived the language from.

Mr. Herrick said further along in the ordinance, in Sections 8(A) and 8(B), it clarified that the County's ordinance does not purport to enforce what are state requirements. He said more significantly, Sections 8(B) and 8(C) increase the penalties for noncompliance with the gatherings and face coverings restrictions. He said Mr. Hingeley had recommended that those penalties be increased to be consistent with what the state's Executive Order currently calls for.

Mr. Herrick said this was an overview of not only the main provisions in the ordinance, but the changes and adjustments that have been made to the suggested ordinance since this was last before the Board. He offered to answer any questions.

Ms. Palmer asked Mr. Herrick when they were expecting to implement the ordinance.

Mr. Herrick replied that as worded, the ordinance would become effective at midnight on August 1 and would be in effect for 60 days. He said the Board has the ability to adopt an emergency ordinance for a period of 60 days, at which point they would need to readopt it through the public hearing process. He said Section 9 of the proposed ordinance clarifies that it has a delayed effective date of August 1 and lasts for 60 days thereafter.

Ms. Palmer asked if there was any information about the regulations that the Governor's Office put out that day for businesses.

Mr. Richardson replied no. He said he had not received any communication from the state. He said he would continue to seek what Ms. Palmer was speaking about.

Ms. Palmer said she was told earlier that day that some of the businesses received a lengthy document from the state on how to implement the regulations. She said she could not imagine why what the Board was doing that day would in any way confuse that situation but wanted to ask the question to cover all the bases she could.

Ms. McKeel asked if Mr. Herrick could address schools.

Mr. Herrick replied that in the definitions section, the definition of "food establishment" does not include the kitchen facilities or dining accommodations of public and private schools and institutions of higher education. He said the definition of "gathering" does not include events or activities on the grounds of an institution of higher education or school-owned property, or that are institution or school-related. He said "public place" does not include a personal residence, personal vehicle, institutions of higher learning, or other schools. He said in each of those cases, schools have been excluded from the definitions that the ordinance put forth.

Ms. McKeel said what she was getting at was that the Board was receiving emails about keeping schools open or closing schools. She said they are not making a decision over whether or not Albemarle County Public Schools are opening or closing.

Mr. Herrick said this was correct.

Ms. McKeel said she wanted people to understand that this is a School Board decision to be made at a later time and that the Supervisors are not making a decision on whether or not schools are open or closed.

Mr. Herrick said this was correct.

Ms. McKeel commented that the Board received a letter that day from President Ryan of UVA in support of the ordinance. She asked if this email could be made a part of the official record for this meeting, as it was very important for the community to be able to see this email to the Board of Supervisors and City Council.

Ms. Mallek said she was glad to see the addition of the food establishments and thanked everyone who were involved in that. She said many restaurants have worked hard to move their businesses outside, so she was glad that they were able to keep them going.

Ms. Mallek said she was confused about the situation where someone cannot get outdoor service and says they cannot wear a mask. She asked if the person still gets to go inside without a mask, or if they have to go elsewhere where they can get outside service. She asked if this was not addressed at all.

Mr. Herrick replied that there is a hard limit on the indoor occupancy of food establishments,

which is 50. He said there are other places in the ordinance that have various types of exceptions. He said there is the exception part to the gatherings to exclude certain types of gatherings. He said the limitation on indoor occupancy at food establishments is hard and fast at 50. He said he knew that earlier that day, staff were looking at ways of perhaps expediting approvals of temporary outdoor seating, and that this is still something they are working on and could be pursued. He said at this point, with the ordinance being considered, the limit on 50 is hard and fast when it comes to indoor occupancy at food establishments.

Ms. Mallek said she had connected this to something Mr. Herrick said about not wearing masks. She said what Mr. Herrick said made perfect sense and that she wanted to make sure it was not a matter of not wearing a mask and wanting to come in anyway.

Ms. Price asked what would happen if a food establishment has a load capacity of 180 people. She asked if it is 50%, 90 people, or if it was no more than 50 people.

Mr. Herrick replied that it would be 50% of the occupancy load. He thanked Ms. Price for asking and clarifying. He said the way the ordinance reads in Section 4(A), the load of 50 persons is only if the building or structure does not have an occupancy load established on the Certificate of Occupancy. He said otherwise, if it does have a Certificate of Occupancy, it would be 50%.

Ms. Price said she appreciated Mr. Herrick clarifying, as this was the way she had read it, but when he said the 50 persons was a hard limit, she wanted to make sure she didn't misunderstand. She said she thinks this is helpful and that the food establishment businesses will be very appreciative of knowing that they can go up to 50% of their occupancy limit based on their Certificate of Occupancy.

Ms. Price said she had a question about individuals who, for medical, physical, or emotional reasons, are unable to wear a mask. She said if the ordinance goes into effect on August 1, with it presently being July 27, this was not a lot of time for people to be able to get to a doctor. She said she has personally had some difficulty scheduling doctors' appointments because of the pandemic. She asked if the individual has to have this medical documentation with them or provide the proof at that time to then not be subject to prosecution for a misdemeanor offense.

Mr. Jim Hingeley, Albemarle County Commonwealth's Attorney, replied that the idea behind this language in the ordinance is to require the person seeking entry without a mask to have proof of the qualifying exception at the time of entry. He said this is not something that can be presented later or otherwise. He said if it were, there would be great difficulty in enforcing the ordinance. He said what is contemplated here is for the person who is claiming the exemption to have proof of that exemption in hand at the time they are seeking entry to the business or food establishment.

Ms. Price said this makes perfect sense from the practical standpoint of enforcement. She said her concern, however, is that she doesn't think it provides a reasonable window of opportunity between either last week or present time and August 1 for people to be able to get that proof.

Ms. Price noted that she thinks it is a relatively small number of individuals they will have to deal with for this particular type of issue. She said she does believe that the Albemarle County Police Department is very professional and can engage in compassionate enforcement and understanding. She said she does have a concern, however, with a 4-day notice on someone having to get medical proof before that would come into effect.

Mr. Hingeley said there was something that may somewhat mitigate the concern. He said there is a second provision under the face mask requirement that says if one has a medical exemption, they must also establish that the business establishment cannot provide the service outside. He said if, for example, one does not have medical exemption because they have not had time to get the documentation of the exemption, this does not mean that they are foreclosed from getting services because most business establishments provide for curbside pickup.

Mr. Hingeley said, for example, assume that someone needs to get a prescription filled, cannot wear a mask, and does not have the medical exemption certificate in hand yet because they have not had time. He said they can still get their prescription filled because most pharmacies will provide curbside pickup. He said not having proof of the documentation of the exemption will not necessarily foreclose people from getting services while they are waiting to get that exemption.

Ms. Price said this was an excellent explanation of the other circumstance that will help reduce this as being perceived as particularly onerous.

Ms. Price commented that back on April 1, the nationwide infection rate for this pandemic was right at 20,000 persons per day. She said from there until about the middle of June, they went up and then, the numbers were coming back down. She said by June 14, they were back down to about 30,000 per day. She said since then, the infection rate across the country has spiked and that the country is now averaging almost 75,000 infections per day.

Ms. Price said in many of the communications the Board has received from the public, because there has not been an extreme case locally, they are opposed to the Board taking action now. She said she believes that as Supervisors, they have a responsibility for health and welfare, as well as looking at the economic impact. She said they are walking a tightrope here in trying to ensure that they take enough action without taking too much action. She said if they do not take enough action, they run the risk of their

residents being infected and having the spikes here that the rest of the country is seeing. She said if they go too far, they have the potential of too much adverse economic impact.

Ms. Price said they are getting ready to have thousands of students come back into the community from all over the country and the world. She said she thinks this is a good ordinance. She said she appreciated the extra work that Mr. Hingeley and his staff provided. She said this was a better ordinance than they had last week and that she supported it.

Ms. LaPisto-Kirtley said she wanted to know if the County is providing the signs for all the businesses regarding the mandate of wearing masks to go inside.

Mr. Richardson replied that it is staff's intention to produce internal signage that is consistent and has the necessary information. He said they will be getting that once they get the plans developed and once they get the ambassador program off the ground and running. He said they will be working proactively to get into the community to get that done. He said it will take some time to get the contract signed and get the ambassadors on the ground, and that it would take more than just a couple of days to get going.

Ms. LaPisto-Kirtley said also regarding children playing soccer, she wanted to know if this would be limited to 50, or if they would not be able to have group sports.

Mr. Herrick replied that any given game would be a gathering, so any given game would be considered a gathering of 50 and would be limited to 50. He said if there are multiple gatherings taken place, those could be considered separate gatherings so that they would not together be considered 50.

Ms. LaPisto-Kirtley asked if this does not, then, eliminate children having a baseball or soccer game.

Mr. Herrick replied that this was true as long as the gathering was under 50.

Ms. LaPisto-Kirtley said, for those listening, this would also include adults.

Mr. Herrick said this was correct.

Ms. LaPisto-Kirtley said the restaurants she has spoken with have asked for the 50% occupancy, and that she was not getting pushback from a lot of them, which was very positive. She said she thinks the County has gone above and beyond to address the issues to keep the community safe, but also to support the businesses and make sure that they can continue thriving.

Ms. LaPisto-Kirtley said hopefully, if they can get the rates down further, they can open everything. She said one of her goals is to be able to get the schools open. She said they cannot completely reopen the schools and get back to normal, however, until they level this out. She said this was her primary purpose in supporting the ordinance.

Mr. Gallaway said the Board had received many emails from people, both for and against the possible actions of the ordinance. He said he would encourage people before August 1 to carefully read the ordinance. He said a lot of questions were around details that are laid out. He said the ideas in people's minds of just going to Phase 2 has created some confusion, and he didn't want people to either think that the Board was being overly restrictive or not restrictive. He said whether people were for or against this ordinance, he hoped that everyone would be mindful to read through to know exactly what it is and isn't doing.

Mr. Gallaway said the ordinance would go into effect on August 1 and encouraged people to carefully read it. He said if there are questions, people can send them to the Board, and the Board will be sure to get answers and clarification to them.

Mr. Gallaway said Ms. McKeel had mentioned President Ryan's email to the Board voicing his support for the action to the ordinance that day. He said UVA is also putting similar measures in place and expect to do that for grounds, which was welcome news.

Mr. Gallaway said he was pleased to read that President Ryan correctly and rightfully called out that there is a regional partnership between the County, City, and UVA, and that this regional partnership is critical for many reasons, especially during this time as they deal with the COVID-19 pandemic. He said as the students return, the coming months could be challenging, as President Ryan noted, so it is important that the partnership remains strong and that they work together to keep the community safe.

Mr. Hingeley noted that under the definition of "public places," the courthouses are excluded. He said he wanted the Board and the public to know that the courthouses have very strict requirements for wearing masks. He said the courthouses and judicial system are in line with what the Board is proposing to do.

Ms. Palmer asked Mr. Richardson if he could talk about what the County's communications person and Economic Development personnel would be doing while the ambassador program is under development to try to get the information out to businesses who may not be attuned to this currently.

Mr. Richardson said once they get a better timeline for the practicality of putting the ambassadors

in place, as there will be some necessary training time, staff will reach out to businesses in the community and take proactive steps, perhaps through Mr. Roger Johnson's office or through the Community and Public Engagement (CAPE) Office to make some contact. He said hopefully, they can get the signage done with some expediency and then begin formal outreach. He said they would do this that week, and that he was not prepared in that moment to tell the Board any specific steps other than the fact that they have a lot of talent in their CAPE Office and will do their best.

Mr. Richardson said there has been significant media attention given to this matter as well, and he knew there was a concerted effort to get information into the community accordingly.

Ms. Palmer thanked Mr. Richardson. She said she knew staff will do a good job trying to get the word out, and that all the Supervisors will also be communicating with people as much as they possibly can.

Ms. Palmer said she had a comment that had not yet been said. She said one of the objectives with the ordinance is to give the businesses tools to help them do what the Governor has put out as far as regulations so that their personnel have something to back them up. She said she knows that in many situations, it is difficult for employees to stop someone and say they must wear a mask to come in. She said with the sign, this is helping them out in telling patrons that this is a County ordinance, as well with the 50% occupancy on the restaurants, which was already discussed.

Ms. Palmer said given Ms. Price's comment about what is happening with infection rates and that they recognize the geometric progression of these infections, there is no reason to think that the County is immune to that given the number of infections they have now, and with the students coming back. She said they all appreciate UVA, and presumably the City, all working together.

Mr. Gallaway said if there were no further questions to understand the ordinance itself, it would be appropriate if they call the question, then make statements during the discussion period of the motion.

Ms. Price **moved** that the Board adopt the ordinance as amended and presented that day. Ms. Mallek **seconded** the motion.

In further discussion, Ms. Mallek said looking back there may be things that they did not get exactly right, and the assumptions may not be perfect. She said the Board, however, does have to take enough action so that they are not looking back and wishing they had. She said it is always easier to say they were a little too safe and now, they are safer. She said this ordinance limits its focus on areas that fall outside the boundaries of other state agencies, and that these are areas in which the Board can make a significant difference.

Ms. Mallek said one set of numbers has been consistent since the very beginning. She said the Board has been told since the very beginning of this virus that a falling number of cases over 14 days is needed before they know that they are starting to make progress. She said this has been their goal, and that it was not about the competing statistics.

Ms. Mallek said she has also heard from restaurants who say that with the short-term future at 50%, at least they have some flexibility because if some of their staff fall ill, they do not want to have to shut down everything because they went too big too fast.

Ms. Price said she believes that the ordinance before the Board strikes an adequate and appropriate balance between protecting the health and welfare of both constituents and businesses.

Ms. LaPisto-Kirtley said she supported the other Supervisors' comments and that she would hope the County's citizens would look at this as what she calls a "Phase 2.5." She said they have made a lot of adjustments that fit the community and will help businesses keep citizens safe.

Mr. Gallaway again encouraged citizens to scrutinize the ordinance. He said just as they have used information that has been public all along as to how they made this decision, he believes they will continue to get information, whether things are trending up and down, and make decisions as needed, moving forward.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price  
NAYS: None

---

Agenda Item No. 3. From the Board: Matters Not Listed on the Agenda.

Ms. Mallek said the Ruritans are organizing to make signs that encourage people to wear masks that can be put in people's yards. She said she thinks this is a great idea and that perhaps others will want to do that, too.

Ms. McKeel asked again to make President Ryan's email to the Board part of the meeting record.

---

Agenda Item No. 4. From the County Executive: Report on Matters Not Listed on the Agenda

There was none.

---

Agenda Item No. 5. Adjourn

At 3:47 p.m., Mr. Gallaway adjourned the meeting to August 5, 2020, 2:00 p.m., an electronic meeting pursuant to Ordinance No. 20-A(8), “An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.”

---

Chair

Approved by Board
Date 2/02/2022
Initials CKB