



TOWN COUNCIL
Special Meeting
March 30, 2020
Cape Charles Civic Center
6:30 PM

1. Introduction by Mayor Dize
2. Call to Order
 - A. Roll Call
 - B. Establish quorum
3. Public Comments re: Agenda Item Only (accepted via email to clerk@capecharles.org and Facebook Live during the meeting)
4. Special Meeting Order of Business:
 - *A. Ordinance 20200330 – An Emergency Ordinance of the Town Council of the Town of Cape Charles, Virginia, Declaring a Local Emergency and Disaster Created by the COVID-19 Pandemic; Appointing the Town Manager as the Town's Director of Emergency Management; and Adopting Temporary Changes in Practices and Procedures, Public Meetings and Deadlines as Necessary to Address Continuity of Government Associated with the Pandemic Disaster
5. Adjournment

March 30, 2020 Town Council Special Meeting

Item 1 – Introduction to Meeting by Mayor Dize

- This special meeting of the Town Council is being held electronically as provided under Code of Virginia Section 2.2-3708.2 Subsection A.3 which permits public bodies to meet by electronic communications without a quorum physically assembled at one location since, on March 12, 2020, Governor Northam declared a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic.
- The purpose of this meeting is to address the emergency and adopt Ordinance 20200330 declaring a local emergency and disaster created by the COVID-19 pandemic.
- An audio recording is being made of this meeting. This meeting is also being live-streamed on Facebook, as well as being video-taped for viewing from the Town's website after processing.
- Public comments will be accepted this evening via Facebook Live and emails to clerk@capecharles.org. Comments were also solicited to be emailed to the Clerk prior to the meeting.
- All votes taken this evening will be by roll call vote and recorded in the minutes.
- Any Council members who leave the meeting or arrive after start of the meeting must verbally note their attendance.
- Only essential business of the Town of Cape Charles can be done in this manner.
- These procedures will remain in effect until the COVID-19 crisis has been alleviated.
- Do any of the Council members have any questions about this process?

ORDINANCE 20200330

AN EMERGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CAPE CHARLES, VIRGINIA, DECLARING A LOCAL EMERGENCY AND DISASTER CREATED BY THE COVID-19 PANDEMIC; APPOINTING THE TOWN MANAGER AS THE TOWN'S DIRECTOR OF EMERGENCY MANAGEMENT; AND ADOPTING TEMPORARY CHANGES IN PRACTICES AND PROCEDURES, PUBLIC MEETINGS AND DEADLINES AS NECESSARY TO ADDRESS CONTINUITY OF GOVERNMENT ASSOCIATED WITH THE PANDEMIC DISASTER.

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic; and

WHEREAS, Executive Order Fifty-One acknowledged the existence of a public health emergency which constitutes a disaster, as defined by Virginia Code § 44-146.16, arising from 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 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency, beginning March 1, 2020, in response to the spread of COVID-19; and

WHEREAS, on March 17, 2020, Governor Northam and the Virginia Health Commissioner issued a public health emergency order advising against non-essential gatherings of more than 10 people; and

WHEREAS, on March 23, 2020, Governor Northam issued Executive Order Fifty-Three closing certain non-essential business and banning most gatherings of more than 10 people, excluding, among other things, operations of government; and

WHEREAS, on March 24, 2020, pursuant to Virginia Code § 44-146.21, the Board of Supervisors of Northampton County ("Board") confirmed and ratified the declaration of local emergency and disaster by the Northampton County Director of Emergency Management and affirmed the emergency powers vested in said Director; and

WHEREAS, on March 24, 2020, pursuant to Virginia Code § 15.2-1413, the Board adopted an emergency ordinance to authorize emergency procedures to ensure the continuity of government during the COVID-19 pandemic disaster ("Emergency Ordinance"); and

WHEREAS, Virginia Code § 2.2-3708.2(A)(3) permits public bodies to meet by electronic communication means without a quorum physically in assembled at one location when the Governor has

declared a state of emergency in accordance with Virginia Code § 44-146.17 provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location, (ii) the purpose of the meeting is to address the emergency, (iii) public notice is given contemporaneously with notice provided to the members of the public body, (iv) arrangements are made for public access to the meeting, and (v) minutes are kept indicating the nature of the emergency, the fact that the meeting was held by electronic communication and the type of electronic communication means used to conduct the public meeting; and

WHEREAS, Virginia Code § 15.2-1102 authorizes municipalities to take all action necessary and desirable to promote and protect the public health, safety and welfare; 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 of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, the Council of the Town of Cape Charles (“Council”) hereby finds that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code § 44-146.16, being a “communicable disease of public health threat;” and

WHEREAS, the Council further finds that the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies or members of the public, rendering it difficult or impossible for the Council and its boards, commissions, committees and authorities, to conduct meetings in accordance with normal practices and procedures; and

WHEREAS, for the reasons stated herein, the Council desires to adopt certain emergency procedures to ensure the continuity of government during the COVID-19 pandemic disaster, including, but not limited to, the suspension of rules of procedures and the conduct of electronic meetings without a quorum of members physically assembled in one in a single location; and

WHEREAS, this Declaration of Emergency and Emergency Ordinance is adopted in accordance with Virginia Code §§ 2.2-3708.2(A)(3), 15.2-1102, 15.2-1413 and 44-146.16 – 21.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Cape Charles, Virginia:

1. That the COVID-19 pandemic is hereby declared a local emergency and disaster as those terms are defined in Virginia Code § 44-146.16. This declaration supersedes any previous declaration of emergency that may have been made by the Town’s officers and employees with respect to the COVID-19 pandemic.
2. That the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum of the Council, and its boards, commissions, committees and authorities, in a single location.
3. That the Town Manager is hereby designated the Town’s Director of Emergency Management and is hereby given the emergency powers and duties described in Virginia Code § 44-146.21, and is further authorized to take such lawful action as he deems necessary or desirable to address the COVID-19 pandemic. The Council hereby confirms and ratifies any and all lawful actions made by the Town Manager taken in relation to the COVID-19 pandemic to date.

4. That the Town Manager is directed to assist and fully cooperate with the County of Northampton in the implementation of its Plan of Emergency Operations and is further directed to develop and implement (i) a supplemental Plan of Emergency Operation for the Town of Cape Charles to the extent he deems necessary, (ii) a plan for the continuity of essential government functions during the COVID-19 pandemic, and (iii) a plan for the resumption of normal government operations at the termination of the emergency and disaster created by the COVID-19 pandemic.
5. That the Town Manager shall ensure that the adoption and implementation of all plans, procedures, and policies are consistent with state and federal law and with the terms and conditions of this Emergency Ordinance.
6. That in accordance with Virginia Code § 15.2-1413, and notwithstanding any contrary provision of law, general or specific, the following emergency procedures are adopted to ensure the continuity of government during the COVID-19 pandemic emergency and disaster:
 - a. Any meeting or activities that require the physical presence of member of the Council, or its boards, commissions, committees and authorities (collectively, the “governing body”), may be held through real time electronic means (including audio, telephonic, video or other practical electronic medium) without a quorum physical present in one location; and
 - b. Prior to holding any such electronic meeting, the governing body shall provide public notice of at least three days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment; and
 - c. Any such electronic meeting shall state on its agenda and at the beginning of such meeting that it is being held pursuant to and in compliance with this Emergency Ordinance; identify those members of the governing body physically and/or electronically present; identify the persons responsible for receiving public comment; and identify notice of the opportunities for the public to access and participate in such electronic meeting; and
 - d. Any such electronic meeting of the governing body shall be open to electronic participation by the public and closed to in-person participation by the public; and
 - e. For any matters requiring a public hearing, public comment may be solicited by electronic means in advance and shall also be solicited through telephonic or other electronic means during the course of the electronic meeting. All such public comments will be provided to members of the governing body at or before the electronic meeting and made part of the record for such meeting; and
 - f. The minutes of all electronic meeting shall conform to the requirements of law, identify how the meeting was conducted, members participating, and specify what actions were taken at the meeting. The governing body may approve minutes of an electronic meeting at a subsequent electronic meeting and shall later approve all such minutes at a regular or special meeting after the emergency and disaster has ended.

IT IS FURTHER ORDAINED that notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by a governing body, including its officers and employees, shall be suspended during this emergency and disaster, however, the governing body, and the officers and

employees thereof, are encouraged to take such action as is practical and appropriate to meet those deadlines. Failure to meet any such deadlines shall not constitute a default, violation, approval, recommendation or otherwise.

IT IS FURTHER ORDAINED, that non-emergency public hearings and action items of the governing body may be postponed to a date certain provided that public notice is given so that the public are aware of how and when to present their views.

IT IS FURTHER ORDAINED, that the provisions of this Emergency Ordinance shall remain in full force and effect until amended or rescinded by the Council in conformity with the notice provisions set forth in Virginia Code § 15.2-1427, but in no event shall such ordinance be effective for more than six months. This powers, duties and obligations conferred by and under this Emergency Ordinance shall incorporate any future executive orders of the President of the United States, the Governor of the Commonwealth of Virginia or the State Health Commissioner, as well as any and all changes in state or federal law. Upon rescission by the Council, this Emergency Ordinance shall terminate, and normal practices and procedures of government shall resume.

Nothing in this Emergency Ordinance shall prohibit the Council or its boards, commissions, committees, and authorities, from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration.

An emergency is deemed to exist, and this ordinance shall be effective upon its adoption.

ADOPTED by the Town Council of Cape Charles, Virginia on March 30, 2020.

By: _____
Mayor

ATTEST:

Town Clerk

TO: Michael Sterling, Managing Partner
FROM: Jan L. Proctor, Esq.
RE: Allocation of Powers under Emergency Ordinance
DATE: March 26, 2020

The Town of Cape Charles ("Town") is considering the adoption of an emergency ordinance to declare the COVID-19 pandemic a local emergency and disaster; to designate the Town Manager as the Director of Emergency Management during the local emergency; and to permit the suspension of rules of procedures, extension of deadlines, remote participation in Council meetings, and such other action as may be necessary to ensure the continuity of government during the COVID-19 pandemic. The Town Manager has asked what powers he may exercise upon adoption of the ordinance without Town Council approval.

GENERAL CHARTER AND STATUTORY POWERS

The Town Charter is paramount in determining the powers of the Town Council and the Town Manager. Section 3.10 of the Charter provides that the Town Council shall have all powers and authority that are now or may be granted by the Charter and the general laws of the Commonwealth. More specifically, but not exclusively, Section 2.2 of the Charter adopts all powers set forth in Sections 15.2-1100 through 15.2-1126 of the Code of Virginia. Of significance, Virginia Code 15.2-1100 provides that all statutory powers vested in a municipal corporation under Chapter 11 of Title 15.2 shall be exercised by its governing body.¹ Section 15.2-1102 provides that a municipal corporation shall have all powers "which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience morals, trade, commerce and industry of the municipality and the inhabitants thereof."

Section 4.5 of the Charter designates the Town Manager as the executive officer of the Town.² Among other duties, he is to prepare and submit the annual budget to the Town Council and assume responsibility for its administration after adoption; appoint and remove employees other than those appointed by the Town Council,³ and perform such other duties as may be required by the Town Council or the Chief Executive of the Town (Mayor), or as required under the general laws of Virginia.

In addition, Section 15.2-1541 of the Code of Virginia provides that every "chief" administrative officer⁴ shall be the administrative head of the local government and shall be responsible for the proper management of all affairs of the locality. His duties include:

¹ See also Section 15.2-1401 of the Code of Virginia, 1950, as amended.

² Section 3.5 of the Town Charter designates the Mayor is the "chief executive officer" of the Town.

³ Section 3.5 of the Town Charter provides that the Mayor is to "see that the duties of the various town officers are faithfully performed."

⁴ Although the Mayor is designated the chief executive officer of the Town (see note 2 above), it may be assumed for purposes of this analysis that the duties and powers given to the chief administrative officer in Section 15.2-1541 are applicable to the Town Manager. See Section 4.5 of the Charter of the Town of Cape Charles.

- Enforcement of all ordinances, resolutions, directives and orders of the governing body and all laws of the Commonwealth.
- Making reports to the governing body as required or deemed advisable concerning the affairs of the locality under his control and supervision.
- Receiving reports, from and giving direction to, the heads of offices, departments and boards under his control and authority.
- Submit to the governing body a proposed annual budget and recommendations.
- Implement the adopted budget.
- Keep the governing body fully advised on the locality's financial condition.
- Appoint all officers and employees of the locality, except as may be appointed by the governing body or by department heads.
- Perform such other duties as may be prescribed by the governing body.

EMERGENCY POWERS

Section 15.2-1413 provides that notwithstanding any contrary provision of law, any locality may adopt an ordinance to provide a method to assure continuity in its government in the event of an enemy attack or other disaster. Such ordinance shall be limited in effect to a period not exceeding six months after such attack or disaster. This authority is cited in the emergency ordinance under consideration by the Town Council to allow for the continuity of government during the COVID-19 pandemic.

Section 44-146.21 authorizes the governing body of a political subdivision to confirm any declaration of local emergency made by the local director of emergency management. Upon such declaration and affirmation, the local director of emergency management may exercise the following powers, if so authorized by the local governing body:

- Control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems within the jurisdiction.
- Enter into contracts and incur obligations necessary to combat the disaster.
- Provide assistance to victims of the disaster.
- Proceed without regard to time-consuming procedures and formalities prescribed by law, other than constitutional requirements, pertaining to the performance of public works, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds,

The emergency ordinance under consideration by the Town Council grants the foregoing powers to the Town Manager as the Town's Director of Emergency Management. It further authorizes the Town Manager to "take such lawful action as he deems necessary or desirable to address the COVID-19 pandemic."

LIMITATION OF TOWN MANAGER'S POWERS

Although the emergency ordinance grants the Town Manager broad authority to address the COVID-19 disaster, all policy decisions and matters that by law require the adoption of an ordinance must be presented to the Town Council approval. A complete enumeration of such matters is not possible; however, the following categories of actions will require Town Council approval:

- Adoption or amendment of annual budget, including new or modified appropriations (see below for appropriations specific to the COVID-19 emergency).
- Approval of the issuance of bonds.
- Adoption, amendment, rescission, or suspension of any ordinance.
- Amendment, rescission, or suspension of any program or policy adopted by an approved resolution or motion of the Town Council.
- Approval of the plan of emergency operation and plan of continuity of government.
- Approval of the plan for resuming normal government operations and the termination of the declaration of local emergency and disaster.
- Extension of deadlines where necessary to the continuity of government.
- Adoption of a curfew or any ban on assemblies.⁵
- Approval of closures of private businesses or events or any restrictions on the use of private property.
- Approval of any deferment of tax payments or waiver of penalty and interest.
- Approval of any appropriation to the regional industrial development authority for business incentives.
- Approval of any appropriation to assist, through non-profit associations or authorized human resource entities, inhabitants in need of housing, food, and other essentials.

Thus, in general terms, all policy decisions remain with the Town Council, and the Town Manager continues in his role of implementing such policies, whether approved by ordinance, resolution or motion. Additionally, pursuant to Section 15.2-1541, the Town Manager is responsible for the enforcement of state and local laws, and in the case of federal law pertaining to the COVID-19, such as the emergency amendments to the Family Medical Leave Act (FMLA), the Town Manager may play a direct role in ensuring the emergency provisions are properly applied in the Town. The Town Manager is also directed in the emergency ordinance to cooperate with Northampton County in the implementation of its Plan of Emergency Operations, and to the extent deemed necessary, to develop such a plan for the Town, along with a plan of continuity of essential government services, a plan to resume normal government operations once the Town Council terminates the declaration of emergency and disaster.

As a best practice, the Town Council should consult with the Town Attorney whenever there is doubt as to the extent of his authority or the lawfulness of any action proposed in response to the COVID-19 epidemic.

Please advise if I may be of further assistance.

⁵ Section 15.2-952 of the Code of Virginia authorizes the local law-enforcement officer to prohibit assemblies; however, it is recommended that any such ban be affirmed by the Town Council.

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NORTHAMPTON, VIRGINIA, CONFIRMING AND RATIFYING THE DECLARATION OF A LOCAL EMERGENCY ISSUED BY THE NORTHAMPTON COUNTY DIRECTOR OF EMERGENCY MANAGEMENT ON MARCH 20, 2020, MADE NECESSARY BY COVID-19 AND IMPLEMENTING EMERGENCY PROCEDURES TO ENSURE CONTINUITY OF COUNTY GOVERNMENT.

WHEREAS, Section 44-146.21 of the Code of Virginia, 1950, as amended, prescribes necessary actions precedent to a declaration of a local emergency; and

WHEREAS, Section 44-146.21 prescribes two methods for declaring an emergency: the first is accomplished by the local Director of Emergency Management with the consent of the governing body; the second is accomplished by the Director of Emergency Management without the initial consent of the governing body, but such declaration must be confirmed by the governing body at its next regularly scheduled meeting or at a special meeting within 45 days of the declaration, whichever occurs first; and

WHEREAS, it was necessary and proper for the Northampton County Director of Emergency Management, to, on March 19, 2020, declare a local emergency and disaster in Northampton County, Virginia, arising from the Coronavirus Disease 2019 (COVID-19), without first obtaining the consent of the Board of Supervisors of the County of Northampton, Virginia (the "County"), and confirmation by the Board of Supervisors is now required by law; and

WHEREAS, on January 31, 2020, the United States Health and Human Services Secretary declared a public health emergency for the entire United States to aid the healthcare community in responding to COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 12, 2020, Governor Ralph Northam declared a state of emergency in the Commonwealth of Virginia in response to the continued spread of COVID-19, and declared the anticipated effects of COVID-19 to be a disaster as described in Section 44-146.16 of the Code of Virginia, 1950, as amended; and

WHEREAS, on March 15, 2020, Governor Northam announced a ban on all gatherings of one hundred or more people statewide; and

WHEREAS, on March 16, 2020, President Donald Trump urged people to avoid gathering in groups of more than ten people; and

WHEREAS, on March 17, 2020, Governor Northam and the Virginia health commissioner issued a public health emergency order that barred restaurants, fitness centers and theaters from having more than 10 patrons at a time; and

WHEREAS, on March 17, 2020, Governor Northam advised Virginians to avoid non-essential gatherings of more than 10 people, per federal guidelines; and

WHEREAS, there has been a confirmed case of COVID-19 in the Eastern Shore region; and

WHEREAS, the Board of Supervisors is satisfied that public health threat posed by COVID-19 constitutes a real and substantial threat to health and safety of persons and property in the Northampton County, Virginia, and that it necessitated a declaration of local emergency; and

WHEREAS, Section 15.2-1413 of the Code of Virginia authorizes any locality to, by ordinance, provide a method to assure continuity in its government in the event of a disaster.

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

1. That it hereby confirms and ratifies the Declaration of Local Emergency made on March 19, 2020, by the Director of Emergency Management.
2. That it understands and confirms that the Declaration of Local Emergency empowers the Director of Emergency Management with special authority and duties, said authority and duties being defined by the laws, rules, regulations and plans of the United States of America, the Commonwealth of Virginia and the County of Northampton.
3. That it understands and confirms that when, in judgment of this Board of Supervisors, all needed emergency actions have been taken, appropriate action to end the declared local emergency will be taken.
4. That the infectious nature of COVID-19 makes it unsafe to assemble a quorum of this Board in a single location, or to assemble members of the public in a single location, making it difficult or impossible for this Board and the County's boards and commissions to conduct meetings in accordance with normal practices and procedures. In accordance with Section 15.2 1413 of the Code of Virginia, 1950, as amended, notwithstanding any contrary provision of law, general or special, the following emergency procedures are adopted to ensure continuity of government during the pendency of the emergency and disaster created by COVID-19:
 - a. That any process, procedure, or matter which requires the physical presence of the public in a county building that the County Administrator has declared or in the future declares to be closed to the public is hereby suspended.

b. Meetings of the Board of Supervisors and other County boards or commissions may be held through electronic communication means without a quorum of members physically present in a single location, provided that notice of such meetings is still given in accordance with applicable laws.

c. All Rules of Procedure adopted by the Board of Supervisors are hereby suspended.

d. All such county meetings may be held without permitting members of the public to be physically present in a central location or in the same physical location as any of the board or commission members, so long as alternative arrangements for public access to such meetings are made. Such alternative public access may be electronic, including but not limited to audio, telephonic, or video broadcast.

e. For any matter requiring a public hearing by law, public comment will be solicited and received via written means prior to the vote on such matter. Public comments may also be solicited and, if so solicited, received, via electronic and/or telephonic means if possible and practical. All such comments will be provided to the members of the body and made a part of the record of such meeting.

5. That the provisions in the aforesaid Section 4 shall be in effect until repealed by this Board, for a period not exceeding six months from the declaration of a local emergency. Upon repeal or expiration of the aforesaid Section 4, the matters referenced therein shall resume operation in accordance with normal practices and procedures.

6. That this ordinance shall be in effect on and after the date of its adoption, March 24, 2020.

The undersigned clerk of the Board of Supervisors of the County of Northampton hereby certifies that the resolution set forth above was adopted during a meeting on March 24, 2020, by the Board of Supervisors with the following votes:

Oliver Bennett, Chair Yes

L. Dixon Leatherbury, Vice- Chair Yes

David Farber Absent

John Coker Yes

Betsy Mapp Yes

Abstentions:

Absent: Mr. Fauber

A COPY TESTE 

Clerk to the Board of Supervisors