AN EMERGENCY UNCODIFIED ORDINANCE TO ESTABLISH METHODS TO ASSURE CONTINUITY IN MADISON COUNTY GOVERNMENT AND CONDUCT OF BOARD OF SUPERVISORS MEETINGS DURING THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19) EMERGENCY #2020-10

AN EMERGENCY UNCODIFIED ORDINANCE to establish methods to assure continuity in Madison County government and conduct of Board of Supervisors meetings during the COVID-19 Emergency, as authorized by Virginia Code §§ 15.2-1413 and -1427.

Be it ordained by the Board of Supervisors of Madison County:

1. That the following uncodified ordinance is hereby adopted:

A. Purpose of the Ordinance.

This ordinance establishes methods to assure continuity in Madison County government, including the Board of Supervisors' procedures for meetings, during the COVID-19 emergency. These provisions are intended to ensure the Board of Supervisors' ability to conduct necessary public business in a manner consistent with Virginia state law and federal, state, and local health directives and guidance, all while maintaining transparency and public participation to the greatest extent feasible.

This ordinance is being adopted in response to the COVID-19 outbreak. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of Emergency due to Novel Coronavirus (COVID-19). The Governor declared the emergency "to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat" and he found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44 146.16 of the Code of Virginia." The Governor's Declaration of a State of Emergency remains in effect until June 10, 2020, unless sooner amended or rescinded. Effective March 16, 2020, Governor Northam and the State Health Commissioner jointly issued an Order declaring a state public health emergency. On March 13, 2020, the Madison County Director of Emergency Management, with the consent of the Board of Supervisors, declared a local state of emergency due to the potential spread of COVID-19. The local Declaration of Emergency remains in effect until the Board of Supervisors takes appropriate action to end the declared emergency.

The Public Health Emergency Order issued jointly by the Governor and the State Health Commissioner effective March 16, 2020, consistent with all other expert opinions, observes that COVID-19 spreads from person to person, transmitted via respiratory

droplets, and can be spread from an infected person who does not have symptoms to another person. No vaccine or known treatment options exist at this time.

This Ordinance extends the Emergency Ordinance adopted on March 24, 2020 and shall remain in full force and effect until the Governor declares that the State of Emergency has ended, or until six months from the date of adoption of the this ordinance, which ever occurs first.

B. Virginia Statutory Authority for the Ordinance.

Virginia Code § 15.2 1413 authorizes localities to adopt an ordinance to "provide a method to assure continuity in its government, in the event of an enemy attack or other disaster," "[n]otwithstanding any contrary provision of law, general or special." The Governor's Declaration of a State of Emergency found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44 146.16 of the Code of Virginia."

Virginia Code § 15.2 1427 authorizes counties to adopt emergency ordinances without prior notice; however, no such ordinance may be enforced for more than 60 days unless readopted in conformity with the provisions of the Virginia Code.

Virginia Code § 2.2 3708.2(A)(3) allows the Board of Supervisors to meet via electronic communications without a quorum physically assembled together "when the Governor has declared a state of emergency," "the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location," and "the purpose of the meeting is to address the emergency." Public notice must be given using the best available method, in light of the nature of the emergency, and it must be provided contemporaneously with the notice provided to the members of the public body. Finally, arrangements must be made for the public to access the meeting.

Virginia Code § 2.2 3708.2(A)(1) allows members of the Board of Supervisors to participate in a meeting via electronic communications if (1) it has a written policy allowing for such electronic participation; (2) a quorum of the Board of Supervisors is physically assembled at the primary meeting location; (3) the Board of Supervisors makes arrangements for the voice of the remote participant to be heard by all persons at the primary location; and (4) any member requesting remote participation is unable to attend the meeting due either to a temporary or permanent disability or other medical condition that prevents the member's physical attendance, or to a personal matter that is identified with specificity.

C. Definitions.

"Continuity in Madison County government" includes, without limitation, those actions, and the coordination of actions, that are necessary to assure the continuation of the County's essential functions and services.

"Electronic communication" means the use of technology having electrical, telephonic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means the outbreak of the respiratory illness referred to as the novel coronavirus or COVID-19, as described in the Governor's Declaration of a State of Emergency and the local Declaration of Emergency, and the spread and effects of COVID-19, which constitute a disaster as defined in Virginia Code § 44-146.16.

"Meeting" means a regular meeting of the Board of Supervisors as established on the schedule approved by the Board of Supervisors at its 2020 Annual Meeting on January 2, 2020, the meetings of any Board of Supervisors Committee, the Planning Commission, and any special or emergency meeting called as allowed by Virginia Code §§ 15.2 1417 and 1418.

"Usual procedures" means the requirements and procedures established by the Virginia Freedom of Information Act for public meetings, including remote participation by a Board member as long as a quorum of the Board is physically assembled at the meeting location, as allowed by Virginia Code § 2.2 3708.2(A)(1) and the policy adopted by the Board on March 26, 2020.

D. Board of Supervisors' Meeting Procedures.

1. For any meeting at which the Board of Supervisors transacts public business with any purpose other than addressing the emergency or assuring continuity in Madison County government, the Board of Supervisors will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act.

2. If the purpose of a meeting of the Board of Supervisors is to address the emergency, the Board of Supervisors will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act unless, in the judgment of the Chairman, the catastrophic nature of the declared emergency makes it impracticable or unsafe to physically assemble a quorum at one location, in which case the Board will meet solely through electronic communication means to discuss the emergency in accordance with the emergency procedures established by FOIA and specifically Virginia Code § 2.2 3708.2(A)(3). In no event shall any action be taken by the Board in an electronic meeting unless a quorum is participating remotely. If the Board follows the procedures established by Virginia Code § 2.2 3708.2(A)(3), the Board will state on the record the nature of the emergency, the fact that the meeting is being held electronically, and the type of electronic communication means being used, and the Board will make arrangement for public access to the meeting.

3. (A) In addition, if any meeting or any part of a meeting of the Board of Supervisors is being conducted for the purpose of assuring continuity in Madison County

government, the Board of Supervisors will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act to the extent possible.

(B) If, in the judgment of the Chairman, items proposed to be considered are necessary to assure continuity in Madison County government and the usual procedures cannot be implemented safely or practically, then, under the authority granted to the Board by Virginia Code § 15.2 1413, the method by which the Board will conduct any meeting to consider the items will be as follows.

(1) The meeting may be held solely through electronic communication means without a quorum of members physically assembled at one location, but only after notice of the meeting is given in accordance with applicable laws. In no event shall any action be taken by the Board in an electronic meeting unless a quorum is participating remotely.

(2) The meeting may be held without permitting members of the public to be physically present in the same location as any of the Board members, but alternative arrangements for public access will be made. Such alternative public access may be through electronic communication, including but not limited to audio, telephonic, or video broadcast.

(3) Before action may be taken on any item, the Board must first approve that the item or items are necessary to assure continuity in Madison County government and that the usual procedures cannot be implemented safely or practically. A motion may be made and voted upon before each item or as to the entire agenda, as may be determined by the Chairman.

(4) For any such matter requiring a public hearing by law, public comment will be solicited and received via written or electronic communication prior to the vote on the matter. All such comments will be provided to the members of the Board and made a part of the record of the meeting.

E. Suspension of Certain Policies.

Any policies or procedures previously adopted by the Board are suspended to the extent they are inconsistent with this Ordinance.

2. That this ordinance will become effective upon adoption.

3. That this ordinance is being re-adopted on an emergency basis as allowed by Virginia Code § 15.2 1413, and may be enforced for no more than six months from the date of adoption, unless the Board readopts this ordinance in conformity with all applicable provisions of state law and following the procedures established in this ordinance.

4. That the Clerk for the Board of Supervisors will schedule a public hearing on October 27, 2020, at which the Board will consider readopting this ordinance or a similar ordinance that assures continuity in Madison County Government during the COVID-19 pandemic. Such ordinance will be limited in its effect to a period not exceeding six months after the emergency and will provide for a method for the resumption of normal governmental authority by the end of the six-month period. The Clerk will publish descriptive notice of the Board's intention to propose the ordinance for passage once a week for two successive weeks as required by Virginia Code § 15.2 1427.

CERTIFICATION OF ADOPTION OF ORDINANCE

The undersigned Chairman of the Board of Supervisors of the County Madison, Virginia hereby certifies that the Ordinance set forth above was adopted during an open meeting on the 12th day of May, 2020, by the Board of Supervisors with the following votes:

	"Aye":	**"Nay":**	**"Abstain":**	**Absent:**
R. Clay Jackson				
Charlotte L. Hoffman				
Kevin K. McGhee				
Amber Foster				
Carty Yowell				

GIVEN under my hand this 12th day of May, 2020.

_____
R. Clay Jackson, Chairman
Board of Supervisors
Madison County, Virginia

Attest:

_____
Jack Hobbs, Clerk

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