

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
APRIL 21, 2020
7:00 P.M.**

The meeting is being held electronically due to Order of the Governor EO-53 and pursuant to Ordinance 20-O-23, adopted March 24, 2020 by the Herndon Town Council, and Code of Virginia §2.2-3708.2 (A)(3). Public comments will be received through the town clerk at town.clerk@herndon-va.gov.

CALL TO ORDER

1. Roll Call & Determination of Quorum
2. Comments from the Town Manager

GENERAL

3. Ordinance, to amend Ordinance 20-O-23 adopted on March 24, 2020, to suspend certain deadlines and extend the validity of certain development approvals to assure Continuity of Governmental Operations during Pandemic Disaster (COVID-19).

ROUNDTABLE

CLOSED MEETING

A closed meeting pursuant to the Code of Virginia, under:

- Section 2.2-3711 (A)(3) to consider the disposition of publicly held real estate in the downtown where discussion in an open meeting would adversely affect the bargaining position or negotiation strategy of the public body



STAFF REPORT

Town Council
April 21, 2020

Title:

Ordinance - to amend Ordinance 20-O-23 adopted on March 24, 2020, to suspend certain deadlines and extend the validity of certain development approvals to assure Continuity of Governmental Operations during Pandemic Disaster (COVID-19)

Staff Contact:

Lesa J. Yeatts, Town Attorney
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Description:

Virginia Code §15.2-1413 authorizes the Town to adopt ordinances that “provide a method to assure continuity in its government” in the event of a disaster. The COVID-19 emergency is a type of disaster contemplated by this statute. On March 24, 2020 Town Council adopted Ordinance 20-O-23 “Continuity of Governmental Operations during Pandemic Disaster (COVID-19)”. This amendment to 20-O-23 suspends certain deadlines and extends the validity of certain approvals and thus enables the Departments of Public Works and Community Development to devote their limited resources to maintaining core government services.

Background:

In response to the various Federal, State and local declarations of emergency, the Town has taken a number of steps including reducing staff physically present in Town buildings and closing Town buildings to the general public. While applications and other filings continue to be received and processed by the interim methods provided by the Town, current limitations have presented challenges to the town departments involved. These amendments are necessary to help assure that the Town, its citizens and our development community continue to receive the services these Town departments provide as consistently as possible without penalty to any party during this disaster by suspending deadlines and automatically extending the validity of any expiring staff-approved plans, plats, permits, modifications, waivers or determinations.

This ordinance will help to assure continuity in government by enabling the affected departments to continue providing their essential services to homeowners and the development community.

The proposed ordinance will become effective upon adoption, but expires 60 days following the lifting of the state of emergency by the Town.

Fiscal Impact:

None.

Recommendation:

That the Town Council approve the Ordinance as proposed.

Attachments:

1. Proposed Ordinance
2. Exhibit – Ordinance 20-O-23

Prepared and Approved By:



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 28, 2020

ORDINANCE- to amend Ordinance 20-O-23 adopted on March 24, 2020, to suspend certain deadlines and extend the validity of certain development approvals to assure Continuity of Governmental Operations during Pandemic Disaster (COVID-19)

BE IT ORDAINED by the Town Council for the Town of Herndon, Virginia that:

WHEREAS, On March 24, 2020, Town Council adopted Ordinance 20-O-23 addressing Continuity of Governmental Operations during Pandemic Disaster (COVID-19); and

WHEREAS, It has become necessary to make amendments to this Ordinance in order to suspend certain deadlines and extend the validity of certain development approvals to further assure continuity of governmental operations during Pandemic Disaster (COVID-19); and

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that to the extent possible, town staff will endeavor to take action as is practical and appropriate to meet deadlines or time frames established under state law or town ordinances, however, notwithstanding any provision of law, regulation, or policy to the contrary, any deadlines requiring action by the town, any public body, or town employees are suspended. Time frames for review or expedited reviews are also suspended. Failure to meet any deadline or time frame will not constitute a default, violation, approval, ratification, or recommendation. Any policies or procedures inconsistent with this ordinance are hereby suspended; and

IT IS FURTHER ORDAINED that any staff approved plan, plat, permit, modification, waiver or determination that would have otherwise expired during the disaster and before the expiration or repeal of this ordinance, will remain valid until 60 days following the lifting of the state of emergency declared by the Town; and

IT IS FURTHER ORDAINED that this Ordinance to Amend Ordinance 20-O-23 shall be effective upon its adoption.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

MARCH 24, 2020

Ordinance- to Implement Emergency Procedures and Effectuate Temporary Changes to Address Continuity of Governmental Operations during Pandemic Disaster (COVID-19).

BE IT ORDAINED by the Town Council for the Town of Herndon, Virginia that:

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 disaster as defined by Virginia Code Section 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 24, 2020, the Town's Emergency Management Coordinator issued a Declaration of Emergency and Disaster, applicable throughout the entire Town of Herndon, Virginia pursuant to the Town's Emergency Management Plan and Virginia Code Sections 44-146.21; and

WHEREAS, also on March 24, 2020 the Town Council affirmed the existence of a disaster and declared a state of emergency and disaster throughout the entire Town that remains active; and

WHEREAS, Virginia Code Section 15.2-1413 provides that a locality may, by ordinance, provide a method at variance with general or special laws to assure continuity of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, Virginia Code Section 44-146.21(C) further provides that a local director of emergency management or any member of a governing body in his absence may upon the declaration of a local emergency "proceed without

regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to performance of public work;" and

WHEREAS, Virginia Code Section 2.2-3708.2(A)(3) allows, under certain procedural requirements including public notice and access, that members of Town Council may convene solely by electronic means "to address the emergency;" and

WHEREAS, the open public meeting requirements of the Virginia Freedom of Information Act are limited only by a properly claimed exemption provided under that Act or "any other statute;" and

WHEREAS, federal and state guidance from the executive branch has recommended suspension of public gatherings of more than ten attendees; and

WHEREAS, due to the Declaration of Emergency and Disaster and the limitations on interpersonal contacts and public gatherings it is necessary to delegate to the Town Manager certain responsibilities and powers in order to preserve the continuity of operations.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that the Town Manager or his designee shall, in addition to all powers otherwise granted by the federal, state and local law, for the duration of the local emergency declaration not to exceed six (6) months, be empowered with all responsibilities and powers, heretofore conferred upon the Town Council, by the Town's Internal Administrative Policies, Resolution 18-G-29, be enabled to approve any transaction pursuant to Chapter 30, Section 30-311 of the Town Code, be empowered to re-direct or suspend town services to preserve the public health and safety, be enabled to take actions to preserve the health and safety of employees including any action taken under Section 54-61 of the Town code relative to administrative leave, and be empowered to sign all negotiable instruments necessary for the function and continuity of Town operations

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that agenda items scheduled or proposed to be considered for the duration of the local emergency declaration not to exceed six (6) months by the Town Council, Planning Commission or any other Town board or commission shall be deemed continued for the duration of the local emergency declaration not to exceed six (6) months, if the Town Council, Planning Commission or other Town board or commission does not take action on the agenda item during the referenced timeframe, including those agenda items for which state

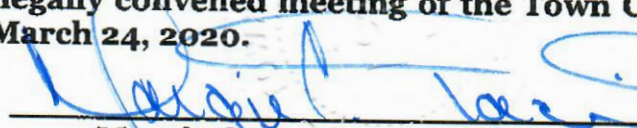
or local law requires an affirmative action to be taken within a statutorily-mandated time frame and the failure to act can be deemed an approval; and

IT IS FURTHER ORDAINED that notwithstanding the foregoing, Town Council, Planning Commission: and any other Town board or commission may, at their election, conduct previously scheduled meetings or special meetings and act upon scheduled or purposed agenda items before them for the duration of the emergency declaration thereafter, under normal procedures or by solely electronic means in compliance with public notice, access, and other requirements of Virginia Code Section 2.2-3708.2(A)(3) to the extent practicable; and

IT IS FURTHER ORDAINED that in the event that a public hearing matter is deemed by the applicable governing body to present a critical government function essential to continuity of government for the duration of the emergency declaration, the public hearing may be conducted by an open public comment period called for during an electronic meeting, in which case, action by the governing body shall be continued to a subsequent meeting pending receipt of such comments. Public comments shall be received by written submittal (including but not limited to email) delivered to the Town Clerk or designee during the period stated in the call for public comments which comment period shall be a minimum of six calendar days.

IT IS FURTHER ORDAINED that Town Council reserves the right by subsequently enacted ordinance to rescind or amend this ordinance. An emergency and disaster is deemed to exist and this ordinance shall be effective upon its adoption.

This is certified to be a true and accurate copy of Ordinance 20-O-23 adopted at a legally convened meeting of the Town Council of the Town of Herndon on March 24, 2020.


Margie C. Tacci, Deputy Town Clerk

Attached for reference is the Town's Internal Administrative Policies, Resolution 18-G-29, May 22, 2018.