

AN ORDINANCE RE-ADOPTING AND MODIFYING ORDINANCE 2020-21 AND THE EMERGENCY PROCEDURES ESTABLISHED THEREUNDER TO ENSURE THE CONTINUITY OF LOCAL GOVERNMENT DURING THE COVID-19 PANDEMIC.

WHEREAS, on March 12, 2020 Governor Northam declared pursuant to Section 44-146.7 of the Virginia Code that a state of emergency existed in the Commonwealth of Virginia due to the necessity to respond to the potential spread of COVID-19 (the “State Declaration”); and

WHEREAS, on March 12, 2020 Dr. L. Pettis Patton, in her capacity as Director of Emergency Management for the City pursuant to Article XIII of Chapter 2 of the Code of the City of Portsmouth, Virginia, issued a “Declaration of Local Emergency Due to Novel Coronavirus (COVID-19) Impacting Portsmouth, Virginia” (as extended on March 23, 2020, the “Director Declaration”); and

WHEREAS, on April 14, 2020 City Council adopted Ordinance 2020-21, which affirmed and modified the Director Declaration and established certain requirements and conditions for the holding of public meetings during the emergency period (the “Emergency Ordinance”); and

WHEREAS, the Director Declaration as affirmed and modified by the Emergency Ordinance is referred to as the “Local Declaration”; and

WHEREAS, City Council reviewed the status of the Local Declaration on June 23, 2020 and by adoption of Ordinance 2020-59 determined to continue the Local Declaration without modification; and

WHEREAS, City Council reviewed the status of the Local Declaration on July 16, 2020 and by adoption of Ordinance 2020-71 determined to continue the Local Declaration without modification; and

WHEREAS, City Council provided in Ordinance 2020-71 that it would again review the status of the Local Declaration within 90 days; and

WHEREAS, the State Declaration has remained in effect and Governor Northam has continued to issue Executive Orders implementing the response to the pandemic; and

WHEREAS, the concerns underlying the Local Declaration, including maintaining social distancing and taking other measures to limit the spread of COVID-19, remain applicable; and

WHEREAS, based on the current status of the spread of COVID-19, the continued limitations on access to public buildings, and the inherent difficulties in practicing social distancing given the location and configuration of the City’s regular public meeting facilities, it is not advisable to cancel the Local Declaration at this time; and

WHEREAS, it is therefore necessary to continue the Local Declaration through the substantial re-adoption of the provisions of Ordinance 2020-21 by this Ordinance; and

WHEREAS, this Ordinance also makes minor modifications to the text of Ordinance 2020-21 to reflect current practices regarding public hearings that have been developed during the course of the emergency;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Portsmouth, Virginia:

1. That it finds that COVID-19 continues to constitute a real and substantial threat to public health and safety and continues to constitute a “disaster” as defined by Virginia Code Section 44-146.16, being a “communicable disease of public health threat”.

2. That it finds that the Governor has declared a state of emergency and that the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum of City Council in a single location.

3. That the term of the Local Declaration (as defined above), as modified by this Ordinance, shall extend indefinitely, until modified or cancelled by City Council or the Director of Emergency Management, either of whom may act.

4. That, notwithstanding Section 3 above, City Council shall review the status of the Local Declaration (if not sooner terminated) within 90 days of the date of adoption of this Ordinance (and every 90 days thereafter) and take formal action to modify, continue or cancel the Local Declaration.

5. That City Council hereby confirms to the general public that, when in the judgment of either City Council or the Director of Emergency Management all needed emergency actions have been taken, appropriate action to cancel the Local Declaration will be taken as soon as practicable.

6. That it finds that during the term of the Local Declaration the infectious nature of COVID-19 makes it unsafe to assemble a quorum of City Council or other public boards or commissions in a single location, or to assemble members of the public in a single location, making it difficult or impossible for this Council and the city’s boards and commissions to conduct meetings in accordance with normal practices and procedures.

7. That, in accordance with Section 15.2-1413 of the Code of Virginia, notwithstanding any contrary provision of law, general or special, the following emergency procedures are adopted to ensure continuity of government while the Local Declaration remains in effect:

a. The emergency procedures authorized by this Section 7 are made applicable to and may be utilized by City Council, the School Board for the City of Portsmouth, Virginia, the Portsmouth Community Services Board, the Board of Zoning

Appeals, and any Board or Commission all members of which are appointed by City Council, including without limitation the Boards of independent political subdivisions such as the Economic Development Authority, the Portsmouth Redevelopment and Housing Authority, and the Portsmouth Port and Industrial Commission (collectively, inclusive of City Council, the School Board, etc., the "Boards").

b. The Boards are hereby authorized to conduct public meetings by electronic means without a quorum of the Board physically assembled, subject to the procedures and limitations provided in this Section 7.

c. Prior to holding any such electronic meeting, the Board shall provide public notice in accordance with applicable laws, including identifying how the public may participate in said meeting or otherwise offer comment.

d. Any such electronic meeting of a Board shall state on its agenda and at the beginning of such meeting that it is being held pursuant to and in compliance with this Ordinance; identify Board members 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.

e. The minutes of all electronic meetings shall conform to the requirements of law, identify how the meeting was conducted and the members participating, and specify what actions were taken at the meeting. Specifically, the minutes shall state the nature of the emergency, the fact that the meeting was held by electronic means, and the type of electronic communication by which the meeting was held. The Boards 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.

f. That such public 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 members, so long as an alternative arrangement for public access to such meetings is made. Such alternative public access may be electronic, including but not limited to audio, telephonic, or video broadcast.

g. That the following shall apply to electronic meetings held by City Council: All proposed agenda items must be sent to the City Manager and City Attorney for a compliance review, which will take into consideration, among other things, the statutory limitations of Virginia Code Section 15.2-1413, and the potential harm of deferring the item until the threat of COVID-19 has passed.

h. That the following shall apply to electronic meetings held by all Boards other than City Council, the School Board, the Portsmouth Community Services Board, the Board of Zoning Appeals, and the Portsmouth Redevelopment and Housing Authority:

- i. Electronic meetings may only be held if there is a Necessary Item (defined below) added to that Board's agenda.
- ii. Proposed agenda items must be submitted to the City Manager for review. If the City Manager determines, in his sole discretion, that said agenda item is necessary to be heard before the threat of COVID-19 has passed, the item will be considered necessary ("Necessary Item") and will be added to that Board's agenda. If the City Manager determines that said agenda item is not necessary, the Board will be unable to hold an electronic meeting to discuss that item.

- i. For any matter considered during an electronic meeting requiring a public hearing by law: (1) public comment will be received via electronic, telephonic, and/or written means prior to the vote on such matter and all such comments will be provided to the members of the Board and made a part of the record of such meeting; and (2) members of the public who have signed up in advance shall be permitted to speak during the hearing via electronic or telephonic means.

8. Any documents or materials required by law to be made available for public inspection at specified physical locations that have been closed (or to which public access has been limited) due to the emergency addressed by the Local Declaration may instead be made available for public inspection on the Board's website or, if the Board does not have an operating website, on the City's website. Upon request, the City Manager will provide reasonable, alternative means of access to those members of the public who are unable to view these materials online.

9. That the provisions of Section 7 hereof shall remain in effect until cancellation of the Local Declaration, or until this Ordinance is repealed or modified by City Council, or, in accordance with Section 15.2-1413, six months after the disaster that warranted adoption of this Ordinance, whichever is earlier.

10. That all provisions of the Rules of Order and Procedure of the Portsmouth City Council that are inconsistent with this Ordinance are hereby suspended until termination or expiration of the Local Declaration.

11. If any provision of this Ordinance is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Ordinance shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Ordinance, and the remaining provisions of this Ordinance shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Ordinance.

12. This Ordinance shall take effect on the date of its adoption.

ADOPTED by the Council of the City of Portsmouth, Virginia at an electronic meeting held on October 13, 2020.

Teste:

City Clerk