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Patrick Sullivan, Community Development
Shannon Bohince, Information Technology
Hooper McCann, Administration

TOWN OF PURCELLVILLE
IN
LOUDOUN COUNTY, VIRGINIA

ORDINANCE NO. 20-03-01

PRESENTED: MARCH 24, 2020
ADOPTED: _____

**AN ORDINANCE: ESTABLISHING LAWS GOVERNING OPERATION OF THE
TOWN FOR THE PURPOSE OF CONTINUING GOVERNMENT
FUNCTIONS DURING AND AFTER A DISASTER**

WHEREAS, the immediate need for this ordinance is the result of a declaration of emergency and disaster, as declared by the Governor of Virginia on March 12, 2020, and by the Town Manager on March 16, 2020. Those declarations were prompted by the public health threat caused by the spread of the coronavirus, which causes a disease known as COVID-19.

NOW THEREFORE, the Town Council of the Town of Purcellville, Virginia hereby ordains:

Section 1. That the Town Code of the Town of Purcellville, Virginia is hereby amended to add a Chapter entitled, "Powers During States of Emergency and Disasters," as follows:

POWERS DURING STATES OF EMERGENCY AND DISASTERS

Part A – Purpose; Time Limits; Authority

The purpose of this ordinance is to ensure the continuation of an effective and legally-constituted government for the duration of any emergency or disaster, as declared by either the Town of Purcellville or the Commonwealth of Virginia. In order for government to perform essential services while re-directing its limited resources toward resolution of an emergency or disaster, special powers are needed.

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The Town may operate under this Ordinance only while a state of emergency remains in effect, as declared by the Town Manager of the Town of Purcellville or the Governor of Virginia, as the result of a disaster, emergency, or major disaster, as those terms are used and defined in Va. Code § [44-146.16](#).

Va. Code § 15.2-1413 authorizes this ordinance, allowing for the continuity of government in the event of a disaster. Virginia Code provides that, notwithstanding any contrary provision of law, general or special, any locality may, by ordinance, 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 its effect to a period not exceeding six months after any such attack or disaster and shall provide for a method for the resumption of normal governmental authority by the end of the six-month period.

Part B – Emergency Interim Successors

The Town Manager is hereby authorized to designate emergency interim successors for the following positions, when the persons in those positions are unable to act:

- (a) The Town Manager and Director of Emergency Management
- (b) Town Clerk
- (c) Town Attorney
- (d) All Department Directors

State Code prohibitions on dual office holding shall continue to apply. At the time of their designation, an emergency interim successor shall do such things, if any, as are required to qualify them to exercise the powers and discharge the duties of the office as to which they have been assigned; provided, that the designation of an emergency interim successor for an office subject to confirmation by the Town Council shall not require the approval of the Town Council to be effective.

The Town Manager may at any time and without cause terminate the authority of any emergency interim successor so designated.

Part C – Employee Hiring, Functions, Compensation, and Leave

During the time the Town is under a state of emergency or disaster, the Town Manager or his successor shall have the authority to perform the following acts, which acts shall be reversed within a reasonable time upon conclusion of the emergency or disaster:

1. Hire, promote, transfer, and reinstate employees as needed, without delay, and without adherence to any process required under law or policy

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2. Set wages, award monetary bonuses, and convert non-exempt employees to exempt status when allowed under FLSA.
3. Create leave and work-from-home policies as needed to handle the emergency or disaster

Part D – Employee Grievances

The right of an employee to file a grievance against the Town shall be suspended during the time in which the Town is under a state of emergency or disaster, and all deadlines established for such grievances shall be tolled until the state of emergency or disaster has been declared by Town Council to have concluded.

Part E – Town Contracts & Procurement

The Town Manager or his successor shall have the authority during an emergency or disaster to amend the terms of existing contracts as needed to address the emergency, so long as such amendments are limited to the duration of the emergency. Further, the Town Manager shall have all authority to expedite the procurement of goods and services, as granted under Virginia Code, and to expend monies from Town reserves. Such amendments, procurements, and expenditures shall be valid only if also approved by a second officer of the Town, other than the Town Manager or his successor, which officer should, if possible, be the Town's director of Finance or her interim emergency successor. Such secondary approval may be given in writing, by email, or orally by phone or in person, so long as any oral approval is later reduced to writing.

Part F – Deferment of Payments Due to the Town

During the time the Town is under a state of emergency or disaster, the Town Manager or his successor shall have the authority to defer the due date for payments of local taxes, charges, and fees to the extent permitted by state law.

Part G – Public Property and Public Services

During the time the Town is under a state of emergency or disaster, the Town Manager or his successor shall have the authority to perform the following acts, which acts shall be reversed within a reasonable time upon conclusion of the emergency or disaster and, in any event, no later than 6 months after such conclusion:

1. Restrict or prohibit the public from entering or congregating around Town-owned buildings, facilities, and real property as he deems necessary to ensure the health, safety, and welfare of the public, Town staff, and Town officials. The Town Manager's discretion hereunder should be exercised so that it is consistent with advice from public health officials, public emergency officials, and other state or federal guidelines.

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2. Suspend the provision of non-essential government services.
3. Cancel or postpone Town Events, in spite of any penalties that may be incurred under contract for cancelling or postponing such events.

Part H – Public Meetings & Ordinance Adoption

1. Public Notice, Public Hearing & Ordinance Adoption. During periods of emergency or disaster, the Town Council may adopt ordinances without first advertising or conducting a public hearing when the Town Manager determines (1) that the matter to be decided is necessary to the reasonable continuation of government functions, and (2) that one or both of the following apply: (a) that the delay resulting from such advertising and public hearing would harm the public health, safety, or welfare, or (b) the physical assembly of the public would harm the public health, safety, or welfare.

If the Town Manager determines that only the delay resulting from advertising and public hearing will harm the public health, safety, or welfare, then the Town shall provide an alternate form of public notice, but shall maintain the traditional public hearing format at the public meeting. The Town shall provide public notice as early as possible, describing both the nature of the matter to be considered by Council and the date, time and location of the Council meeting, by: (i) issuing a press release, (ii) posting to the Town's Facebook page, and (iii) posting to the Town's website.

If the Town Manager determines that the delay of advertising will not harm the public health, safety, or welfare, but that the physical assembly of the public would, then the Town shall advertise the public hearing in the manner that meets or exceeds the minimum statutory requirements, but will allow public attendance only through electronic and telephonic means as provided under Section 3, below. The Town's public notice shall specify how the public may observe the meeting on-line, listen to the meeting over the phone, ask questions, and offer comments. Further, when public hearings are conducted by Town Council in this manner, the Town Council shall reserve time during the meeting to receive public input by email and telephone.

Ordinances adopted under a state of emergency with either advertising methods or public hearing methods that fail to meet the minimum requirements of State Code shall automatically terminate upon the Town Council's declaration that the emergency or disaster has concluded. The Town Clerk shall track all ordinances so adopted, and, to the extent such ordinances need to remain effective after the Town Council declares the emergency to have concluded, they must be re-adopted in accordance with standard, non-emergency procedures.

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2. Electronic & Telephonic Meetings. For any regular, special, or emergency meeting of the Town Council, or any subordinate board, committee, or commission, the Town Manager may direct that (i) such meeting be held by solely electronic or telephonic means without a quorum of members physically present, or (ii) if the meeting is to be physically assembled, that members of the public not be permitted to attend when necessary to protect the public health safety or welfare of the public or Town officials; provided, however, that either such directive may be given only so long as all of the following criteria are satisfied:

- (a) All meetings shall have a live audio and video broadcast accessible through the Town website.
- (b) All meetings shall have a dial-in phone number that will accommodate at least 100 persons participating by phone.
- (c) The public will be given time to participate in any such meeting by speaking over the phone, or by emailing the Town Clerk who will then present the comment or question to the public body.
- (d) The notice and agenda for any meeting held in wholly electronic or telephonic form under this section shall:
 - (1) affirmatively state that the meeting is being held during a state of emergency and that emergency rules under this Ordinance shall apply;
 - (2) provide the website address for viewing the meeting on-line and provide the dial-in phone number for participation by phone; and
 - (3) notify the public that they may provide comments and questions via email or telephone during the meeting.

If action is taken at a Town Council meeting under conditions that have caused the Town to prohibit the public from physically attending while the electronic and telephonic methods of public participation are non-functioning, such that no public observation or participation of the meeting is possible, then such Council action must be brought back before Council for ratification at the earliest possible opportunity under conditions when the public may either physically attend, or participate electronically or telephonically.

3. Lack of Quorum. If, during a state of emergency, a quorum of Council members cannot be assembled, either physically or electronically, then an affirmative vote by a majority of those Council Members who are present (physically or electronically) and voting will operate to make a decision of Town Council binding.

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4. Cancellation of Meetings. The Town Manager may order the cancelation of any meeting of a Town commission, committee, or board.

5. Emergency Meetings. The Town Council shall continue to have the power to call emergency meetings as allowed under statute. When these meetings are conducted:

- (a) Opportunities for public access and participation during any emergency meeting shall be given using the best available methods under the circumstances.
- (b) The nature of the emergency shall be reflected in the minutes of the meeting.
- (c) All actions taken at an emergency meeting that are unrelated to the emergency itself shall be ratified at a later regular or special meeting.

Section 2. That this ordinance shall be effective March 16, 2020, on the same date that the Town Manager declared a state of emergency due to the coronavirus.

Section 3. That if any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid by the courts, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid.

PASSED THIS ____ DAY OF _____, 2020.

Kwasi A. Fraser, Mayor
Town of Purcellville

ATTEST:

Diana Hays, Town Clerk