

## **SPECIAL MEETING OF THE TOWN COUNCIL OF STEPHENS CITY**

**Saturday March 14, 2020**

**1:38 pm**

At 1:38 pm, Mayor Diaz called the Special Meeting of the Town Council, to address the coronavirus emergency, to order.

The following members were present:

Mayor Diaz, Vice Mayor Nauman, Councilman Bowers, Councilman Fravel, Councilwoman Swygert-Smith, Councilwoman Stevens participated remotely

Absent: Councilman Hollis

Staff Present: Mike Majher, Town Manager; Kelly Thatcher, Deputy Town Clerk, Dave Griffin, Town Attorney participated remotely.

Public Safety Members Present: Steve Ritter, Fire Marshal; Fire Chief Timothy Vaught participated remotely

Public Safety Chair Jason Nauman read the minutes of the Public Safety Committee.

Councilor Nauman made a Motion to make a Resolution that the Town of Stephens City declare a State of Emergency. The Motion carried with the following recorded Vote:

Aye- Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made a Motion that the Town would procure assistance to the Town, the Police and the Fire Department as needed. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion to Close the Town office to the Public. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion to have the Town's office staff work remotely and to implement ways to accomplish this and to procure help if needed. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion to have the Town manager to limit his hours in the office to four hours daily. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion to hire a contractor as needed to help with the sidewalk project. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion to suspend the use of the Town Commons and to suspend yard sale permits. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion to have all Council, Committee and Commission meetings to be held remotely. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Councilor Nauman made the Motion that all town playgrounds would be closed to the public. The Motion carried with the following recorded Vote:

Aye-Councilor Bowers, Councilor Fravel, Councilor Nauman, Councilor Stevens, Councilor Swygert-Smith

Nay-None

Abstain-None

Absent-Councilor Hollis

Mayor Diaz asked if there were any other matters that needed to be discussed. Town Manager Mike Majher stated that he would inform the newspapers of the Town's decision and that the Town would inform the citizens.

There being no more business, Councilman Fravel made a Motion to adjourn at 1:57 pm and the Motion carried unanimously.

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Michael Diaz, Mayor

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Kelly Thatcher, Deputy Town Clerk

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Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager based on guidance from health advisory bodies and local, state, and federal governments.

2. Payments for water and sewer bills, taxes, town decals, and other fees may be submitted online, mail, telephone, or through the night dropbox at the Town Hall at 1033 Locust Street, Stephens City.
3. The Public Safety Committee further unanimously recommends that Town Council authorize the Town Manager to direct the Town Clerk and Town Treasurer to work remotely for a period of no less than two (2) weeks and until a date and time so determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager based on guidance from health advisory bodies and local, state, and federal governments. Further, the Committee unanimously recommends Town Council authorize the Town Manager to procure, secure, and implement any necessary resources required to enable remote work for staff.
4. The Public Safety Committee unanimously recommends that Town Council direct the Town Manager to reduce his work day in the office to no more than four (4) hours per day. The balance of his work day to be conducted remotely. During his time in the office, he is able to take/return telephone calls/messages, manage daily operations, assist citizens as needed through conducting transactions through the night dropbox, and any other necessary tasks. The Town Manager shall exercise universal precautions if interacting with others and ensure the decontamination of all spaces and surfaces at the end of each day in the office.

C. Staff Interactions with the Public

1. The Public Safety Committee directed the Town Manager to prepare a list of best practices and recommendations for interactions by staff with the public. e.g., Public Works, Police Department, etc. based on guidance from health advisory bodies and local, state, and federal governments.
2. Out of an abundance of caution, the Committee directs all staff to practice good personal hygiene, maintain safe (two to three feet) social distances, practice universal precautions at all times and to assume every "touch" or interaction has the potential to be an exposure.
3. The Public Safety Committee directs the Town Manager to discontinue the use of inmates as part of the Town's Public Works workforce until a date and time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager. The Committee unanimously recommends Town Council to authorize the Town Manager to hire part-time contractors to assist the Public Works Department with fulfilling any needed tasks, actions, responsibilities, etc.
4. The Public Safety Committee unanimously recommends Town Council suspend all public events and use of common spaces for at least four (4) weeks and until a date and time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager.
5. The Public Safety Committee unanimously recommends Town Council suspend the issuance of Yard Sale Permits for at least four (4) weeks and until a date and time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager.

D. Meetings

1. It is safe to assume the Freedom of Information Act (FOIA) never contemplated a scenario wherein governing bodies were *not* encouraged to meet.
2. The Virginia Municipal League (VML) received this guidance opinion (attached) from the FOIA Advisory Council regarding how to use subdivision A3 of the *Code of Virginia* §2.2-3708.2
3. Based on the opinion, the Public Safety Committee unanimously recommends Town Council, in accordance with §2.2-3708.2 of the *Code of Virginia*, 1950, as amended, conduct all meetings of Council and its committees remotely during the pendency of the State of Emergency.

Statutory Reference:

**§2.2-3708.2. Meetings held through electronic communication means.**

A. The following provisions apply to all public bodies:

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3. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with §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 and

(ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subdivision shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting; and

c. Otherwise comply with the provisions of this section.


The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

4. On Friday, March 13, 2020, Senator McPike and Delegate Sullivan sent a letter to the Office of the Attorney General asking the following question: "Does Virginia Code §44-146.21 allow local governing bodies, upon declaration of a state of emergency, to hold their meetings solely by electronic communication during the pendency of the emergency?" While we await an advisory opinion from the Attorney General concerning §44-146.21, the Public Safety Committee recommends Town Council follow the advice and counsel of the Town Attorney.

**IV. Matters Not Listed on the Agenda**  
None

**V. Adjournment**  
Mr. Nauman adjourned the meeting at 1:30 pm.

Respectfully submitted:

  
Jason C. Nauman  
Chairman

ACTION LETTER next page.

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**ACTION LETTER**

- **Town Council:** Declare a State of Emergency pursuant to §44-146.21.A of the *Code of Virginia*, 1950, as amended.
- **Town Staff and Appointed Officers:** Document all encumbrances, expenditures, salaries including overtime, resources usage, etc. in compliance with FEMA requirements and guidelines.
- **Town Manager:** Arrange for the provision of assistance to the Fire & Rescue Department and Police Department to assist in the required documentation.
- **Town Council:** Authorize the Town Manager to procure assistance as needed and required to achieve documentation requirements.
- **Town Council:** Authorize the emergency closure of all Town administrative offices to the public effective Monday, March 16, 2020 at 12:00 pm for a period of no less than two (2) weeks with said offices to remain closed to the public until further notice at a date and time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager.
- **Town Council:** Authorize the Town Manager to direct the Town Clerk and Town Treasurer to work remotely for a period of no less than two (2) weeks and until a date and time so determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager based on guidance from health advisory bodies and local, state, and federal governments.
- **Town Council:** Authorize the Town Manager to procure, secure, and implement any necessary resources required to enable remote work for staff.
- **Town Council:** Direct the Town Manager to reduce his daily work day in the office to no more than four (4) hours per day. The balance of his work day is to be conducted remotely. The Town Manager shall exercise universal precautions if interacting with others and ensure the contamination of all spaces and surfaces at the end of each day in the office.
- **Town Manager:** Prepare a list of best practices and recommendations for interactions by staff with the public. e.g., Public Works, Police Department, etc. based on guidance from health advisory bodies and local, state, and federal governments.
- **All Staff/Employees:** Practice good personal hygiene, maintain safe (two to three feet) social distances, practice universal precautions at all times and to assume every "touch" or interaction has the potential to be an exposure.
- **Town Manager:** Cease use of inmate workforce until a date and time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager.
- **Town Council:** Authorize the Town Manager to procure any necessary part-time contractual assistance to the Public Works Department with fulfilling any needed tasks, actions, responsibilities, etc.
- **Town Council:** Direct the Town Manager to discontinue and suspend all public events and use of common spaces for a period of not less than four (4) weeks until a date a time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager.
- **Town Council:** Direct the Town Manager to suspend the issuance of Yard Sale Permits for a period of not less than four (4) weeks until a date a time determined by the Chairman of the Public Safety Committee, Mayor, Vice Mayor, and Town Manager.
- **Town Council:** Conduct all meetings of Council and its committees remotely during the pendency of the State of Emergency, pursuant to §2.2-3708.2 of the *Code of Virginia*, 1950, as amended.
- **Town Attorney:** Provide advice and counsel to Council and its committees concerning §44-146.21 of the *Code of Virginia*, 1950, as amended, pending an advisory opinion from the Attorney General of the Commonwealth.



## VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

### COMMONWEALTH OF VIRGINIA

Senator Richard H. Stuart, Chair  
Delegate Luke E. Torian, Vice-Chair

Alan Gernhardt, Esq., Executive Director  
Ashley Binns, Esq., Attorney

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March 13, 2020

#### Electronic Meetings under the Virginia Freedom of Information Act and Coronavirus State of Emergency

The FOIA Council has received numerous inquiries regarding whether public bodies may hold meetings by electronic means without a quorum present due to concerns over spread of the coronavirus. Currently, the Virginia Freedom of Information Act (FOIA) only has one provision that allows for such electronic means without assembling a quorum of the members in a single location, subdivision A 3 of § 2.2-3708.2. That provision allows such meetings in response to a state of emergency declared by the Governor with certain limitations, including that "(i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency." We have been asked what topics may be discussed in such a situation, particularly as there may be a need to conduct regular business if the state of emergency lasts for any significant period of time. Our advice is that due to the statutory limitation that "the purpose of the meeting is to address the emergency," the topics that may be discussed will depend on the language of the emergency declaration, and will likely vary depending on the nature of the emergency.

In this instance, Governor Ralph S. Northam declared a state of emergency in Virginia in regard to the coronavirus on March 12, 2020, by Executive Order 51 (2020), available online at [https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-(COVID-19).pdf). In this order the Governor directs "state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible," in addition to directing certain other emergency actions. Please see the full text of the emergency order.

Finally, while the other provisions for electronic meetings do require that a quorum be physically assembled, please keep in mind that they are also available to use and are not limited based on the purpose of the meeting. For general guidance on electronic meetings procedures and requirements, please see our Electronic Meetings Guide, available at <http://foiacouncil.dls.virginia.gov/ref/EMeetGuide2019.pdf>.



Statutory Reference:

**§ 2.2-3708.2. Meetings held through electronic communication means.**

A. The following provisions apply to all public bodies:

3. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 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 and (ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subdivision shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting; and

c. Otherwise comply with the provisions of this section.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.