

<b>ACTIONS</b> <b>Board of Supervisors Meeting of December 16, 2020</b>		
<b>December 17, 2020</b>		
<b>AGENDA ITEM/ACTION</b>	<b>ASSIGNMENT</b>	<b>VIDEO</b>
1. Call to Order. <ul style="list-style-type: none"> <li>Meeting was called to order at 1:01 p.m., by the Chair, Mr. Gallaway. All BOS members were present with the exception of Ms. Palmer. Also present were Jeff Richardson, Greg Kamptner, Claudette Borgersen and Travis Morris.</li> </ul>		
4. Adoption of Final Agenda. <ul style="list-style-type: none"> <li>By a vote of 5:0 (Palmer absent), <b>ADOPTED</b> the final agenda as amended.</li> </ul>		
5. Brief Announcements by Board Members. <u>Ann Mallek</u> : <ul style="list-style-type: none"> <li>Announced that PVCC has been awarded the best college in the nation for veterans for the third year in a row.</li> <li>Shared unemployment statistics from the Virginia Employment Commission and expressed concern over the potential consequences if the federal government does not act quickly.</li> </ul>		
7. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board. <ul style="list-style-type: none"> <li><u>Gary Grant</u>, Earlysville resident spoke on the Albemarle County seal.</li> </ul>		
8.1 FY 2021 Appropriations. <ul style="list-style-type: none"> <li><b>ADOPTED</b> Resolution to approve appropriation #2021045 for local government and school projects and programs.</li> </ul>	<u>Clerk</u> : Forward copy of signed resolution to OMB and County Attorney's office. (Attachment 1)	
8.2 Anti-displacement and Tenant Relocation Policy Implementation Guidelines. <ul style="list-style-type: none"> <li><b>ADOPTED</b> Resolution of Intent to approve an update to the County Code.</li> </ul>	<u>Clerk</u> : Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 2)	<a href="#">Link to Video</a>
8.3 County Support of Thomas Jefferson Foundation's Grant Proposal for Proposed Property Acquisition in Support of the Planned Rivanna River Greenway. <ul style="list-style-type: none"> <li><b>APPROVED</b> submission of the draft letter of support.</li> </ul>	<u>Clerk</u> : Forward signed copy of letter to Ms. Liz Russell, Thomas Jefferson Foundation.	
9. <b>Work Session</b> : Options to Address Blight and Building Maintenance. <ul style="list-style-type: none"> <li><b>HELD</b>.</li> </ul>		
10. <b>Work Session</b> : Rio29 Form Based Code. <ul style="list-style-type: none"> <li><b>HELD</b>.</li> </ul>	<u>Community Development</u> : Proceed as discussed.	
11. <b>Presentation</b> : Thomas Jefferson Health District COVID-19 Update. <ul style="list-style-type: none"> <li><b>RECEIVED</b>.</li> </ul>		
12. Emergency Ordinance to Amend Emergency Ordinance No. 20-E(7), An Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19. <ul style="list-style-type: none"> <li>By a vote of 5:0, <b>ADOPTED</b> ordinance.</li> </ul>	<u>Clerk</u> : Forward copy of signed ordinance to County Attorney's office. (Attachment 3)	

13.	Closed Meeting. <ul style="list-style-type: none"> <li>At 4:55 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:</li> <li>Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation involving a Virginia corporation and two zoning decisions where consultation or briefing in an open meeting would adversely affect the litigating posture of the County and the Board; and</li> <li>Under Subsection (8), to consult with and be briefed by legal counsel requiring the provision of legal advice by counsel regarding new enabling authority regarding firearms, volunteer emergency medical service providers in the County, a zoning decision, a zoning overlay district, and a mixed-use development.</li> </ul>		
14.	Certify Closed Meeting. <ul style="list-style-type: none"> <li>At 5:51 p.m., the Board reconvened into open meeting and certified the closed meeting.</li> </ul>		
15.	From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board. <ul style="list-style-type: none"> <li><b>NOT HELD.</b></li> </ul>		
16.	<b>Presentation:</b> 2020 Year in Review. <ul style="list-style-type: none"> <li>Continued to a later date due to inclement weather.</li> </ul>	<u>Clerk:</u> Schedule as directed.	
17.	<b>Pb. Hrg.: 20-03(1) – Agricultural and Forestal Districts.</b> <ul style="list-style-type: none"> <li><b>AFD 2020-01 Batesville AFD – District Review.</b></li> <li><b>AFD 2020-02 High Mowing AFD – District Review.</b></li> <li>Continued to January 6, 2020 due to inclement weather.</li> </ul>	<u>Clerk:</u> Schedule on the January 6 agenda.	
18.	<b>Pb. Hrg.: ZTA202000003 Outdoor Storage and Outdoor Activities at Recycling Uses in Industrial Zoning Districts.</b> <ul style="list-style-type: none"> <li>Continued to a future agenda due to inclement weather.</li> </ul>	<u>Clerk:</u> Schedule on future agenda.	
19.	From the Board: Committee Reports and Matters Not Listed on the Agenda. <ul style="list-style-type: none"> <li>Not held due to inclement weather.</li> </ul>		
20.	From the County Executive: Report on Matters Not Listed on the Agenda. <ul style="list-style-type: none"> <li>Not held due to inclement weather.</li> </ul>		
21.	Adjourn to January 6, 2021, 1:00 p.m., electronic meeting pursuant to Ordinance No. 20-A(16). <ul style="list-style-type: none"> <li>The meeting was adjourned at 5:52 p.m.</li> </ul>		

ckb/tom

Attachment 1 – Resolution to Approve Additional FY 2021 Appropriations

Attachment 2 – Resolution of Intent Anti-displacement and Tenant Relocation Policy Guidelines

Attachment 3 – Ordinance No. 20-E(8)

**RESOLUTION TO APPROVE  
ADDITIONAL FY 2021 APPROPRIATION**

**BE IT RESOLVED** by the Albemarle County Board of Supervisors:

- 1) That Appropriation #2021045 is approved;
- 2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2021; and
- 3) That the County Executive is hereby authorized to allocate funding to and from the Pandemic Response, Recovery, and Reconstitution and Contingency Reserve to appropriate budget line-items for expenditure.

**RESOLUTION OF INTENT**  
**Anti-displacement and Tenant Relocation Policy Guidelines**

**WHEREAS** the County of Albemarle is committed to (i) the promotion of housing opportunities for very low-, low-, and moderate-income households and (ii) the preservation of existing communities; and

**WHEREAS** the County of Albemarle is committed to limiting the negative impacts residential (re)development and rehabilitation projects may have on County residents; and

**WHEREAS**, on September 18, 2020, the Albemarle County Board of Supervisors adopted a resolution committing the County to making all reasonable efforts to ensure that residential redevelopment and rehabilitation activities that receive County funding support or that require Board approval will minimize resident displacement or relocation to cases where no other alternative is available; and

**WHEREAS**, the resolution further committed the County to work with developers and property owners to avoid resident displacement whenever possible and, when relocation is necessary, to enable displaced residents to move directly to safe, healthy, and affordable replacement housing convenient to their place of employment and/or school; and

**WHEREAS**, staff was instructed to draft a set of guidelines to implement the Anti-displacement and Tenant Relocation policy.

**NOW, THEREFORE, BE IT RESOLVED THAT** for the purposes of public necessity, convenience, general welfare, and good affordable housing practices, the Albemarle County Board of Supervisors hereby adopts a resolution to consider amending the Albemarle County Code of Ordinances to incorporate the Anti-displacement and Tenant Relocation Policy guidelines.

## ORDINANCE NO. 20-E(8)

AN EMERGENCY ORDINANCE TO AMEND SECTION 3, DEFINITIONS, SECTION 4, LIMITATION ON THE NUMBER OF PERSONS AT FOOD ESTABLISHMENTS, FARM WINERIES, LIMITED BREWERIES, AND LIMITED DISTILLERIES, SECTION 5, LIMITATION ON THE NUMBER OF ATTENDEES AT GATHERINGS, SECTION 6, FACE COVERINGS, AND SECTION 9, SUCCESSION TO ORDINANCE NO. 20-A(13) AND DURATION, OF ORDINANCE NO. 20-E(7), AN ORDINANCE TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY REFERRED TO AS COVID-19

**WHEREAS**, on March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19, a pandemic (for reference in this ordinance, this virus and the disease that it causes are referred to as "COVID-19"); and

**WHEREAS**, on March 12, 2020, the County Executive, acting as the Director of Emergency Management, declared a local emergency because of the COVID-19 pandemic pursuant to his authority under Virginia Code § 44-146.21, and this declaration was confirmed by the Board of Supervisors on March 17, 2020; and

**WHEREAS**, also on March 12, 2020, Governor Ralph S. Northam issued Executive Order Number Fifty-One ("EO 51") declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a "disaster" as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a national emergency in response to the spread of COVID-19; and

**WHEREAS**, COVID-19 spreads person to person and, at this time, it appears that COVID-19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet)<sup>i</sup>, and by airborne transmission, which may be able to infect people who are further than 6 feet away from the person who is infected or after that person has left the space<sup>ii</sup>; and

**WHEREAS**, COVID-19 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunity<sup>iii</sup>; and

**WHEREAS**, at this time, there is no known cure and no effective treatment of widespread application<sup>iv</sup> vaccine; however, the first vaccine was approved for emergency use by the United States Food and Drug Administration on December 11, 2020 and distribution of available quantities began on December 13, 2020<sup>v</sup>; nonetheless, at this time, people may be infected but asymptomatic and infect persons<sup>vi</sup>; and

**WHEREAS**, the World Health Organization, the United States Centers for Disease Control and Prevention ("Centers for Disease Control") and the Virginia Department of Health have identified several behaviors and practices that are fundamental in controlling the spread of COVID-19 in the community: frequently washing hands, sanitizing frequently touched surfaces, wearing a cloth face covering when in public, maintaining a separation of at least six feet between people ("social distancing" or "physical distancing"), limiting the size of gatherings in public places, and limiting the duration of gatherings<sup>vii</sup>; and

**WHEREAS**, with respect to people wearing face coverings when in public, current evidence suggests that transmission of COVID-19 occurs primarily between people through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions, or through their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings; and some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in food establishments, or in fitness classes<sup>viii</sup>; and

**WHEREAS**, according to the World Health Organization, fabric face coverings, “if made and worn properly, can serve as a barrier to droplets expelled from the wearer into the air and environment,” however, these face coverings “must be used as part of a comprehensive package of preventive measures, which includes frequent hand hygiene, physical distancing when possible, respiratory etiquette, environmental cleaning and disinfection,” and recommended precautions also include “avoiding indoor crowded gatherings as much as possible, in particular when physical distancing is not feasible, and ensuring good environmental ventilation in any closed setting”<sup>ix</sup>; and

**WHEREAS**, the World Health Organization advises that people take a number of precautions, including: (i) maintaining social distancing because when someone coughs, sneezes, or speaks they spray small liquid droplets from their nose or mouth which may contain virus, and if other persons are too close, they can breathe in the droplets, including the COVID-19 virus, if the person coughing, sneezing, or speaking has the disease; and (ii) avoiding crowded places because when people are in crowds, they are more likely to come into close contact with someone that has COVID-19 and it is more difficult to maintain social distancing<sup>x</sup>; and

**WHEREAS**, the Centers for Disease Control caution that: (i) the more people a person interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading; (ii) the higher level of community transmission in the area that a gathering is being held, the higher the risk of COVID-19 spreading during the gathering; and (iii) large in-person gatherings where it is difficult for persons to remain spaced at least six feet apart and attendees travel from outside the local area pose the highest risk of COVID-19 spreading<sup>xi</sup>; and

**WHEREAS**, the Centers for Disease Control state that cloth face coverings are strongly encouraged in settings where persons might raise their voice (e.g., shouting, chanting, singing)<sup>xii</sup>; and

**WHEREAS**, the Centers for Disease Control advise, in restaurants: (i) wearing cloth face coverings when less than six feet apart from other people or indoors; (ii) wearing face coverings as much as possible when not eating; (iii) maintaining a proper social distancing if persons are sitting with others who do not live with the person; and (iv) sitting outside when possible<sup>xiii</sup>; and

**WHEREAS**, for these and related reasons, the Virginia Department of Health has stated that those businesses that operate indoors and at higher capacity, where physical distancing “recommendations” are not observed, sharing objects is permitted, and persons are not wearing cloth face coverings, create higher risk for the transmission of COVID-19<sup>xiv</sup>; and

**WHEREAS**, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; and

**WHEREAS**, as of July 21, 2020, the spread of COVID-19 in the Commonwealth, in the Thomas Jefferson Health District of which the County is a member, and in the County itself, had been increasing since late June, shortly before Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19) (collectively referred to as “EO 67”) moved the Commonwealth into “Phase 3” of its reopening plan, the curve in the positivity rate of persons tested for COVID-19 was no longer flattened, and the community was currently experiencing more transmission of COVID-19; and

**WHEREAS**, on July 27, 2020, the Board of Supervisors adopted Ordinance No. 20-E(5), “An Emergency Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19 (the “Ordinance”), which became effective August 1, established regulations pertaining to: (1) the maximum indoor occupancy allowed at restaurants, farm wineries, limited breweries, and limited distilleries; (2) the maximum size of public and private gatherings; and (3) the requirement for persons to wear face coverings in public places; and

**WHEREAS**, as of September 7, Virginia’s 7.30 percent positivity rate in COVID-19 testing over a 14-day period exceeded the World Health Organization’s recommendation at that time that the positivity rate remain at 5 percent or lower for at least 14 days before governments lift public health and social measures (“re-open”)<sup>xv</sup>; the seven-day positivity rate in the Thomas Jefferson Health District was 6.4

percent<sup>xvi</sup>; the community had just entered an uncertain period with approximately 4,400 students having returned to the University of Virginia to live on grounds since September 3, and in-person instruction beginning at the University on September 8.<sup>xvii</sup>

**WHEREAS**, on September 16, 2020, following a duly noticed public hearing, the Board of Supervisors adopted Ordinance No. 20-A(13), “An Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19”; and

**WHEREAS**, as of November 9, 2020, the seven-day positivity rate in the Thomas Jefferson Health District was 1.7%; nationwide, as of November 9, 2020, new daily cases rose 29.1%, new daily reported deaths rose 20.9%, and hospitalizations rose 18.5%, all over the prior week, and the positivity rate among reported tests was 8%;<sup>xviii</sup> and all states and territories, with the exception of Puerto Rico, including Virginia (+10%, in addition to 21% the week before), reported increases in cases over the prior week<sup>xxix</sup>, and public health experts warn that, during the coming winter, with people spending much more time indoors and in drier air, will bring on a new surge in COVID-19 cases unless gatherings are limited, physical distancing is maintained, and face coverings are worn<sup>xx</sup>; and

**WHEREAS**, the Board of Supervisors had on its agenda for November 18, 2020 a public hearing on the question of extending Ordinance No. 20-A(13) from November 18, 2020 to January 20, 2021; and

**WHEREAS**, on November 13, 2020, Governor Northam issued amended Executive Order Number 63 (2020) and Order of Public Health Emergency Five, Requirement to Wear Face Covering While Inside Buildings (collectively referred to as “EO 63”) and EO 67, and the introduction to EO 67 states that the “statewide percent test positivity rate is at 6.5%, an increase from 4.3% approximately one month ago,” that all “five health regions report a positivity rate over five percent and hospitalizations have increased statewide by more than 35 percent in the last four weeks,” that “[c]ase investigation interviews show a pattern of increased socialization with extended (non-household) family members and friends,” that “[r]ecent scientific literature suggests indoor settings contribute to community transmission,” and that “[m]odeling data demonstrates that large gatherings substantially increase transmission of the virus”<sup>xxi</sup>; and

**WHEREAS**, because EO 67 reduced the State-allowed maximum gathering size from 250 to 25 persons, the Board of Supervisors on November 18, 2020 adopted an emergency ordinance, Ordinance 20-E(7), which reduced the County-allowed maximum gathering size from 50 to 25, among other changes; and

**WHEREAS**, on December 10, 2020, Governor Northam issued Executive Order Number Seventy-Two (2020) and Order of Public Health Emergency Nine, Common Sense Surge Restrictions, Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19) (collectively referred to as “EO 72”), which imposes further directions and restrictions, including a request for persons in Virginia to stay at home between the hours of 12:00 a.m. and 5:00 a.m. each day, and a reduction in the maximum size of gatherings, in response to increases in new COVID-19 cases, positive tests, and hospitalizations throughout Virginia.<sup>xxii</sup>

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of the County of Albemarle, Virginia, that:

### **Sec. 1. Purpose**

For the reasons stated in the recitals, the purpose of this ordinance is to prevent the spread of COVID-19.

### **Sec. 2. Authority**

This ordinance is authorized by Virginia Code § 15.2-1200, which enables the County, through its Board of Supervisors, to adopt “necessary regulations to prevent the spread of contagious diseases among persons . . .” that “are not inconsistent with the general laws of the Commonwealth.” This ordinance is adopted as an emergency ordinance pursuant to Virginia Code § 15.2-1427(F).

### **Sec. 3. Definitions**

The following definitions apply to this ordinance:

- A. "Entertainment and amusement businesses" includes performing arts venues, concert venues, sports venues, convention centers, expos, movie theaters, museums, aquariums, fairs, carnivals, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, amusement parks, and zoos, and other places of indoor public amusement.
- B. "Expressive activity" means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.
- C. "Face covering" means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (*i.e.*, the person's nose and mouth).
- D. "Farm winery" means an establishment that is required to be licensed as a farm winery under Virginia Code § 4.1-207.
- E. "Food establishment" means a food establishment as defined in 12VAC5-421-10 and the term includes, but is not limited, any place where food is prepared for service to the public on or off the premises, or any place where food is served, including restaurants, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs. For purposes of this ordinance, "food establishment" does not include kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under Virginia Code § 53.1-68.
- F. "Gathering" includes, but is not limited to, parties, celebrations, wedding receptions, or other social events, whether they occur indoors or outdoors. The following are not "gatherings": (i) the gathering of family members who live in the same residence; (ii) the presence of more than 10 persons performing functions of their employment or assembled in an educational instructional setting; (iii) the presence of more than 10 persons in a particular location, such as a park or retail business, provided that those persons do not congregate; and (iv) the presence of more than 10 persons in shared spaces not expressly addressed in Section 5 but which may be subject to restrictions on the maximum size of gatherings in EO 72 or any state or federal law or order that are unique to that institution, business sector, facility, activity, or event.
- G. "Limited brewery" means an establishment that is required to be licensed as a limited brewery under Virginia Code § 4.1-208.
- H. "Limited distillery" means an establishment for which a limited distiller's license is required under Virginia Code § 4.1-206.
- I. "Public place" means: (i) any indoor place shared by other persons, including, but not limited to, local government buildings, retail stores, food establishments, theaters, personal care and personal grooming services, and transportation other than a personal vehicle; or (ii) any outdoor place shared by other persons. "Public place" does not include a person's residence or personal vehicle. "Public place" also does not include institutions of higher education and other schools, fitness and other exercise facilities, religious institutions and places where religious rituals are conducted, areas under state or federal jurisdiction or control, indoor shooting ranges, and the County courthouse buildings, provided that they, and any other institutions, business sectors, and locations shared by other persons not expressly addressed in Section 6 but which may be subject to face covering requirements in EO 72 or any state or federal law or order that are unique to that institution, business sector, facility, activity, or event.

**Sec. 4. Limitation on the Number of Persons at Food Establishments, Farm Wineries, Limited Breweries, and Limited Distilleries**

- A. *Indoor occupancy.* Indoor occupancy at food establishments, farm wineries, limited breweries, and limited distilleries must not be more than 50 percent of the lowest occupancy load on the certificate of occupancy issued by the County of Albemarle. If the building or structure does not have an occupancy load established on a certificate of occupancy issued by the County of Albemarle, indoor occupancy must not be more than 50 persons.
- B. *Persons at gathering are counted.* Persons participating in or attending a gathering who are indoors count towards the occupancy limits established by this section.
- C. *Persons working not counted.* Persons working at food establishments, farm wineries, limited breweries, or limited distilleries, either as employees or independent contractors, do not count towards the occupancy limits established by this section.
- D. *State requirements, recommendations, and guidance.* Except as provided in Sections 4(A), (B), and (C), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing that apply to food establishments, farm wineries, limited breweries, and limited distilleries established in EO 72, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

#### **Sec. 5. Limitation of the Number of Attendees at Gatherings**

- A. *Generally.* All public and private in-person gatherings, as defined in Section 3(F), of more than 10 persons are prohibited, except as provided in Sections 5(B) and (C).
- B. *Entertainment and amusement businesses.* The total number of attendees (including both participants and spectators) at entertainment and amusement businesses cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons. Private bookings at entertainment and amusement businesses are subject to the 10-person limitation in Section 5(A).
- C. *Recreational sports.* The total number of spectators at indoor and outdoor recreational sports activities are limited as follows:
  - 1. *Indoor sports.* For sports played indoors, the number of spectators may not exceed 25 persons per field and the total number of spectators may not exceed 30 percent of the occupancy load of the certificate of occupancy for the venue.
  - 2. *Outdoor sports.* For sports played outdoors, the number of spectators may not exceed two spectators per player and the total number of spectators may not exceed 30 percent of the occupancy load of the certificate of occupancy for the venue. Races or marathons may have up to 250 participants, provided staggered starts separate runners into groups of 25 persons or less.
- D. *State requirements, recommendations, and guidance.* Sections 5(A), (B), and (C) incorporate the gathering size limitations of EO 72 for common businesses, events, and activities in the County, however this section does not affect any other applicable requirement, recommendation, or guidance in EO 72 including, but not limited to, those requiring or recommending physical distancing pertaining to entertainment and amusement businesses; and recreational sports nor does it affect the exceptions in section II(D)(3) of EO 72. This section also does not affect any requirement, recommendation, or guidance pertaining to business sectors and other events and activities subject to EO 72, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

#### **Sec. 6. Face Coverings**

- A. *Face coverings required.* Face coverings must be worn by all persons in public places, as defined in Section 3(I), except as provided in Sections 6(B) and (C).
- B. *Persons not required to wear face coverings.* Face coverings are not required to be worn by the following persons:

1. *Children.* Children four years of age or under.
2. *Wearing face covering poses certain risks.* Persons for whom wearing a face covering poses a bona fide and substantial mental or physical health risk, such as persons who have trouble breathing, a health condition, or a disability, or poses a safety or security risk to persons who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance. For this exception to apply to any person claiming that wearing a face covering poses a substantial mental or physical health risk: (i) the person must present a valid document from a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services, including mental health services, consistent with State law, specifying the medical necessity for not wearing a face covering and the date on which the person may begin wearing a face covering again; and (ii) the public place must be unable to provide goods, services, or activities outdoors to the person or to the adult accompanying a child four years of age or under.
3. *Certain employees.* On-duty employees exempt from wearing face coverings by workplace safety regulations promulgated by the State Safety and Health Codes Board, or exempt from face covering rules established by an applicable Executive Order of the Governor or an Order of Public Health Emergency by the State Health Commissioner.

C. *Circumstances when face coverings are not required to be worn by any persons.* Face coverings are not required to be worn by any persons in the following circumstances:

1. *Outdoor activities.* While persons are engaged in outdoor activities in public places such as parks and other open spaces, provided that at least six feet of physical distancing from any person not living in the same household is maintained.
2. *Eating or drinking.* While a person is eating food or drinking a beverage.
3. *Exercising.* While a person is exercising or using exercise equipment.
4. *Certain musical instruments.* While a person is playing a musical instrument, whether indoors or outdoors and in a rehearsal or during a performance, if wearing a face covering would inhibit playing the instruments, such as a wind instrument, if at least 10 feet of physical distancing can be maintained from other persons.
5. *Communicating with the hearing impaired.* While communicating with the hearing impaired and for which the mouth must be visible.
6. *Receiving services.* While receiving governmental or medical services if removing the face covering is necessary to receive the services.
7. *End of waiver of Virginia Code § 18.2-422.* When the waiver of Virginia Code § 18.2-422, currently established in section III(F) of EO 72, or as it may be further amended or superseded, ends.

D. *Responsibility of adults accompanying minors.* Adults accompanying minors should use their best judgment regarding placing face coverings on any minor between the ages of two through four in public places. Adults accompanying minors between the ages of five through 17 must use reasonable efforts to prompt the minor to wear face coverings while in public places.

#### **Sec. 7. Effect of More Restrictive Executive Order or Order of Public Health Emergency**

Section 4, 5, or 6 does not apply when a more restrictive requirement in an Executive Order or an Order of Public Health Emergency is in effect.

#### **Sec. 8. Penalties**

- A. *Penalty for violation of Section 4.* A violation of Section 4 by the owner of the food establishment, farm winery, limited brewery, or limited distillery, and any manager or assistant manager, however titled,

responsible for the operation and management of the food establishment, farm winery, limited brewery, or limited distillery on the date of the violation, is punishable as a Class 3 misdemeanor. Section 4(D) is not enforced pursuant to this ordinance.

- B. *Penalty for violation of Section 5.* A violation of Section 5 by the owner or tenant of the private property on which the gathering is located, is punishable as a Class 1 misdemeanor. A violation of Section 5 by any person attending the gathering, after first being warned by a law enforcement officer to disperse from the gathering because it exceeds the limitation for a gathering and having failed to disperse after a reasonable period of time not to exceed two minutes, is punishable as a Class 1 misdemeanor.
- C. *Penalty for violation of Section 6.* A violation of Section 6 by any person subject to its requirements is punishable as a Class 1 misdemeanor. No person under the age of 18 is subject to a criminal penalty for failing to wear a face covering.
- D. *Injunctive relief.* The County, the Board of Supervisors, and any County officer authorized by law, may seek to enjoin the continuing violation of any provision of this ordinance by bringing a proceeding for an injunction in any court of competent jurisdiction.

### **Sec 9. Succession to Ordinance No. 20-A(13) and Duration**

This ordinance amends Ordinance No. 20-E(7), which succeeded and superseded Ordinance No. 20-A(13) on and after November 18, 2020, and Ordinance No. 20-E(7), as hereby amended, continues in full force and effect for 60 days from November 18, 2020 until and including January 16, 2021 unless it is amended, superseded, or repealed on or before that date.

### **Sec. 10. Effect of this Ordinance on the Powers of the Director of Emergency Management**

This ordinance does not affect the powers of the County Executive, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster.

### **Sec. 11. Severability**

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

**State law reference –** Va. Code §§ 15.2-1200, 15.2-1427(F), 15.2-1429, 15.2-1432, 18.2-11.

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<sup>i</sup> *Xponential Fitness v. Arizona*, No. CV-20-01310-PHX-DJH, 2020 WL 3971908, at \*1 (D. Ariz. July 14, 2020) and cases and authorities cited therein; [How Coronavirus Spreads | CDC](https://www.cdc.gov/coronavirus/2019-novel-coronavirus/specifics/interactions-with-the-law.html).

<sup>ii</sup> [How Coronavirus Spreads | CDC](https://www.cdc.gov/coronavirus/2019-novel-coronavirus/specifics/interactions-with-the-law.html).

<sup>iii</sup> *Xponential Fitness v. Arizona*, No. CV-20-01310-PHX-DJH, 2020 WL 3971908, at \*1 (D. Ariz. July 14, 2020) and cases and authorities cited therein.

<sup>iv</sup> <https://www.covid19treatmentguidelines.nih.gov/whats-new/> (use of remdesivir approved for certain patients on October 22, 2020); <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-monoclonal-antibody-treatment-covid-19> (use of investigational monoclonal antibody therapy bamlanivimab approved for certain patients on November 9, 2020).

<sup>v</sup> [Hospitals await coronavirus vaccine shipments and wonder who gets the first shots - The Washington Post](https://www.washingtonpost.com/health/2020/11/09/hospitals-await-coronavirus-vaccine-shipments-and-wonder-who-gets-first-shots/)

<sup>vi</sup> *South Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (May 29, 2020) (Roberts concurring in denial of application for injunctive relief); on the fact that there is no effective treatment as of the date of this ordinance, see also [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EA1aIQobChMI9IvSvJPk6gIVGrbICh2TYw9QEAAVASAAEgKjDfD\\_BwE#medicines](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EA1aIQobChMI9IvSvJPk6gIVGrbICh2TYw9QEAAVASAAEgKjDfD_BwE#medicines); <https://www.health.harvard.edu/diseases-and-conditions/treatments-for-covid-19>; <https://www.mayoclinic.org/diseases-conditions/coronavirus/diagnosis-treatment/drc-20479976>.

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<sup>vii</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html> and links therein; <https://www.vdh.virginia.gov/coronavirus/#COVID-19-resources> and links therein.

<sup>viii</sup> World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>ix</sup> World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; see also Statement of Dr. Michael Ryan, World Health Organization COVID-19 Virtual Press Conference, transcript page 12, [https://www.who.int/docs/default-source/coronavirus/transcripts/covid-19-virtual-press-conference---17-july.pdf?sfvrsn=dd7f91a1\\_0](https://www.who.int/docs/default-source/coronavirus/transcripts/covid-19-virtual-press-conference---17-july.pdf?sfvrsn=dd7f91a1_0) (“So it’s all about the setting, it is about the duration you spend in that setting and it’s about the intensity of the activities that you participate in in that setting and when you get into a particular setting, a very overcrowded situation in an indoor environment then effectively all bets are off because so many of the modes of transmission come into play; the aerosol route, the airborne route, the fomite or contamination route. So the more close you are to other people, the more you are inside, the more the activity is intense or involves very close social contact the more that multiple modes of transmission come into play. So in that sense it is about you understanding your risk, it is about you managing that risk and being aware of the situation that you find yourself in personally and reducing that risk for you, for your family, for your children and for your community. It is important, as I’ve said previously, that governments communicate those risks very, very carefully and it is also important that providers, authorities and others ensure that those environments are as safe as possible and that the risks are also managed.”)

<sup>x</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>.

<sup>xi</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>; see also <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; [How Coronavirus Spreads | CDC](#).

<sup>xii</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>.

<sup>xiii</sup> <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>; [Deciding to Go Out | COVID-19 | CDC](#).

<sup>xiv</sup> <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>.

<sup>xv</sup> <https://coronavirus.jhu.edu/testing/testing-positivity>

<sup>xvi</sup> <https://www.vdh.virginia.gov/thomas-jefferson/tjhd-covid-19-data-portal/>

<sup>xvii</sup> <https://www.cavalierdaily.com/article/2020/08/there-are-no-risk-free-paths-u-va-announces-no-changes-to-fall-semester-plans-for-in-person-instruction>

<sup>xviii</sup> <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

<sup>xix</sup> <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

<sup>xx</sup> <https://www.scientificamerican.com/article/why-covid-outbreaks-could-worsen-this-winter/>; <https://www.forbes.com/sites/robertglatter/2020/10/25/dry-air-indoors-will-increase-transmission-of-covid-19-as-winter-approaches/?sh=1ce4e74720ee>; <https://blogs.webmd.com/public-health/20201019/will-covid19-get-worse-in-the-winter>

<sup>xxi</sup> <https://www.governor.virginia.gov/executive-actions/>

<sup>xxii</sup> <https://www.governor.virginia.gov/executive-actions/>