

**CLIFTON TOWN COUNCIL SPECIAL MEETING
MONDAY, APRIL 6, 2020, 7:30 PM
COMMUNITY MEETING HALL PARKING LOT
12641 CHAPEL ROAD
CLIFTON, VA 20124**

Present: Mayor Bill Hollaway; Vice Mayor Steve Effros; Councilmember Chase Hinderstein; Councilmember Regan McDonald; Councilmember Melissa Milne; Councilmember Darrell Poe.
Staff: Amanda Christman, Town Clerk.
Absent: Marilyn Barton, Town Treasurer.

The Special Meeting was called to order by Mayor Hollaway at 7:32 PM.

Order of Business:

1. Mayoral Declaration of a State of Emergency in Town of Clifton Posed by COVID-19.
See attached Declaration.

2. Town Council Ratification of State of Emergency Posed by COVID-19.

- **Vice Mayor Effros moved to ratify the State of Emergency, seconded by Councilmember Poe. The motion was approved by poll, 6-0.**

3. Resolutions.

See attached Resolutions.

a. Adoption of Town of Clifton Town Council Members' Policy for Participation in Meetings by Electronic Communication under Virginia Code § 2.2-3708.2.

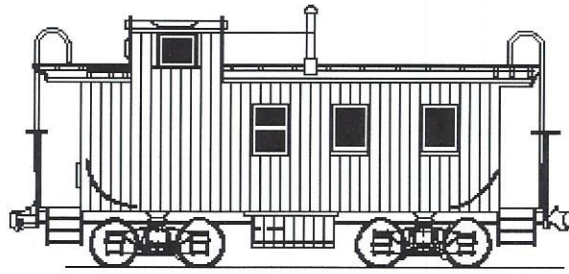
b. Adoption of an Emergency Uncodified Ordinance to Establish Methods to Assure Continuity in the Town of Clifton Government and Conduct of Town Council Members Meetings During the Novel Coronavirus Disease 2019 (COVID-19) Emergency under Virginia Code § 15.2-1413.

- **Vice Mayor Effros moved to approve the Resolutions as presented, seconded by Councilmember Hinderstein. The motion was approved by poll, 6-0.**

4. Adjournment.

- **Vice Mayor Effros moved to adjourn, seconded by Councilmember Poe. The motion was approved by poll, 6-0.**

The Special Meeting was adjourned at 7:45 PM.



TOWN OF CLIFTON, VIRGINIA
P.O. BOX 309, CLIFTON, VA 20124

DECLARATION OF A STATE OF EMERGENCY DUE TO NOVEL CORONAVIRUS (COVID-19)

Importance of the Issue

This Declaration is being issued in response to the Novel Coronavirus (COVID-19) outbreak. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020. On March 12, 2020, Virginia Governor Ralph Northam issued a Declaration of a State of Emergency due to COVID-19. The Governor declared the emergency "to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat" and he found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia." The Governor's Declaration of a State of Emergency remains in effect until June 10, 2020, unless sooner amended or rescinded. Effective March 16, 2020, Governor Northam and the State Health Commissioner jointly issued an Order declaring a state public health emergency.

Declaration

In order to marshal all public resources and appropriate preparedness, response, and recovery measures of the Town of Clifton, I hereby declare a State of Emergency in the Town of Clifton to help the Town of Clifton to better respond to the threat posed by the COVID-19 outbreak disaster.

Effective Date of this Declaration

This Declaration shall be effective April 2, 2020, and shall remain in effect until June 10, 2020 unless sooner amended or rescinded by further declaration.

Given under my hand as Mayor of the Town of Clifton, Virginia, this 2nd day of April, 2020.

A blue ink signature of William R. Hollaway, Ph.D., written in a cursive style. The signature is positioned above the printed name of the Mayor.

William R. Hollaway, Ph.D.
Mayor, Town of Clifton, Virginia

Attest:

A blue ink signature of Amanda Christman, written in a cursive style. The signature is positioned above the printed name of the Town Clerk.

Amanda Christman, Town Clerk

Resolution regarding Meetings to Address Emergencies under Virginia Code § 2.2-3708.2

Adoption of a Written Policy Governing Participation by Electronic Communication of Town Council Members in Public Meetings

ISSUE:

Virginia Code § 2.2-3708.2 authorizes the electronic participation of members of public bodies in public meetings under certain conditions. Prior to any member of the Town of Clifton Town Council attending a public meeting by electronic communication, however, the Council must adopt a written policy allowing for, and governing participation by electronic communication means.

RECOMMENDATION:

That the Council adopt a written policy (Attachment 1) allowing for and governing participation by electronic communication means.

TIMING:

Council action is requested on April 6, 2020 to promptly provide for remote participation of Town Council Members in public meetings.

BACKGROUND:

The Virginia Freedom of Information Act (FOIA) generally prohibits meetings of public bodies, including the Town Council Members, from being conducted through telephonic, video, electronic, or other electronic communication means where the members of the public body are not physically assembled to discuss or transact public business. Va. Code § 2.2-3707(B).

However, a 2018 amendment to FOIA authorized public bodies to adopt a written policy allowing for and governing participation by electronic communication in limited circumstances. Va. Code § 2.2-3708.2(C). The Council has not yet adopted a policy authorizing its members to participate in the Council's public meetings by electronic communication.

After the Council adopts a written policy, individual Town Council Members may remotely participate in meetings under limited circumstances. Those circumstances include:

- A quorum of the public body is physically assembled at a primary meeting location; Va. Code § 2.2-3708.2(C)(2);
- The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary location; Va. Code § 2.2-3708.2(C)(3); and the member of the public body requesting remote participation is unable to attend the meeting either due to (1) a temporary or permanent disability or other medical condition that prevents the member's physical attendance; or (2) a personal matter that is identified with specificity. Va. Code § 2.2-3708.2(A)(1). Remote

participation due to a personal matter is limited each calendar year to two meetings. *Id.* "Personal matter" is not defined in the statute.

Adopting a written policy is recommended at this time, due to the Governor, Fairfax County, and the Mayor's recent State of Emergency declarations regarding the spread of COVID-19. The Governor is encouraging Virginians who are over age 65 to self-quarantine. The Governor is also discouraging public gatherings of more than ten people. While under a State of Emergency, the Council may conduct a meeting *entirely* through electronic means only if it is impracticable or unsafe to assemble a quorum in a single location, and the meeting solely addresses the emergency. Va. Code § 2.2-3708.2(A)(3). This policy, however, will allow individual members to participate remotely if they meet the requirements of the policy and it will continue to be in effect once the State of Emergency concludes, unless it is later affirmatively rescinded by the Council.

FISCAL IMPACT:

There is no anticipated fiscal impact.

ENCLOSED DOCUMENTS:

Attachment 1 – The Town of Clifton Town Council Members' Policy for Participation in Meetings by Electronic Communication under Virginia Code § 2.2-3708.2

THE TOWN OF CLIFTON TOWN COUNCIL MEMBERS' POLICY FOR PARTICIPATION IN MEETINGS BY ELECTRONIC COMMUNICATION UNDER VIRGINIA CODE § 2.2-3708.2

1. AUTHORITY AND SCOPE.

a. This policy is adopted pursuant to the authorization of Va. Code § 2.2- 3708.2 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2(A)(3).

2. DEFINITIONS.

a. **"Council"** means the Town of Clifton Town Council Members.

b. **"Member"** means any member of the Town Council.

c. **"Remote participation"**, **"remotely participate"**, or **"participate remotely"** mean participation by a member of the Council via telephonic, video, or other audio or combined audio and video electronic communication.

d. **"Meeting"** means a meeting as defined by Va. Code § 2.2-3701.

e. **"Notify"** or **"notifies,"** for purposes of this policy, means actual notice, including, but not limited to, email, text, telephone, or in-person notice.

3. MANDATORY REQUIREMENTS

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

a. A quorum of the Council must be physically assembled at the primary or central meeting location; and

b. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

4. PROCESS TO REQUEST REMOTE PARTICIPATION

a. On or before the day of the meeting, and at any point before the meeting begins, the requesting member must notify the Mayor (or the Vice-Mayor if the requesting member is the Mayor) that they are unable to physically attend a meeting due to a personal matter or a temporary or permanent disability or other medical condition that prevents their physical attendance at the meeting.

b. The requesting member shall also notify the Town Clerk of their request, but their failure to do so shall not affect their ability to remotely participate.

c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited to two times per calendar year. There is no limit to the number of times that a member may

participate remotely due to a temporary or permanent disability or other medical condition.

d. The requesting member is not obligated to provide independent verification regarding the reason that they are not able to physically attend the meeting.

e. The Mayor (or the Vice-Mayor if the requesting member is the Mayor) shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

5. PROCESS TO CONFIRM APPROVAL OR DISAPPROVAL OF PARTICIPATION FROM A REMOTE LOCATION

When a quorum of the Council has assembled for the meeting, the Council shall vote to determine whether:

a. The Mayor's decision to approve or disapprove the requesting member's request to participate from a remote location was in conformance with this policy; and

b. The voice of the remotely participating member can be heard by all persons at the primary or central meeting location.

6. RECORDING IN MINUTES:

a. If the member is allowed to participate remotely due to a temporary or permanent disability or other medical condition, the Council shall record in its minutes (1) the Council's approval of the member's remote participation; and (2) the remote location from which the member participated.

b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as whether this is the first or second meeting of the calendar year in which the member has participated remotely due to a personal matter, and the remote location from which the member participated.

c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

7. CLOSED SESSION

If the Council goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

8. STRICT AND UNIFORM APPLICATION OF THIS POLICY

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

GIVEN under my hand this 6th day of April, 2020.



Amanda Christman
Town Clerk
Clifton, Virginia

Resolution regarding Adoption of an Emergency Uncodified Ordinance to Establish Methods to Assure Continuity in The Town of Clifton Government and Conduct of Town Council Meetings During the Novel Coronavirus 2019 (COVID-19) Emergency under Virginia Code § 15.2-1413

ISSUE:

Virginia Code § 15.2-1413 authorizes localities to adopt an ordinance that will “assure continuity in its government” in the event of a disaster. The COVID-19 emergency is a type of disaster contemplated by this statute, has been determined by the Governor to be a disaster, and this ordinance establishes additional methods for ensuring that public business related to continuity in government may continue.

RECOMMENDATION:

That the Council adopt the emergency ordinance for continuity of government provided as Attachment 1.

TIMING:

Council action is requested on April 15, 2020, to assure that adequate methods are available in a timely manner to assure continuity in the Town of Clifton government.

BACKGROUND:

The Virginia Freedom of Information Act (VFOIA), Virginia Code §§ 2.2-3700 to -3714, allows for fully electronic meetings to discuss the emergency itself. VFOIA makes no provision for addressing business related to the continuity of the Town government if a quorum cannot be physically assembled. Under the current circumstances, the Town Council Members should have all available tools at their disposal to best position them to address matters relating to the ongoing continuity of Town government during the COVID-19 pandemic. As the Virginia Attorney General has determined, Virginia Code Section 15.2-1413 expressly authorizes the adoption of the attached ordinance, which provide a method for the Town Council Members to be able to address such matters in the event it is unsafe to assemble a physical quorum.

The ordinance establishes that the Town Council Members will follow FOIA’s usual procedures (including the provisions of its electronic meeting policy) whenever possible. If, in the Mayor’s judgment, it is unsafe to assemble a physical quorum, a fully electronic meeting may be held in accordance with FOIA’s existing provisions to address the emergency itself. If the Mayor determines that any meeting is being conducted for the purpose of assuring continuity in the Town of Clifton government and the usual procedures cannot be implemented safely or practically, then the ordinance provides a method for conducting an electronic meeting to address matters related to the continuity of the Town Government. For any matter that requires a public hearing, the Council would allow the receipt of public comment by written or electronic communication rather than in-person testimony.

The proposed ordinance will become effective upon adoption, but it may only be enforced for 60 days from the date of adoption unless it is readopted by the Council before then. The ordinance contains an enactment clause directing the Town Clerk to advertise a public hearing within the 60-day period, at which time the Council will consider readopting the emergency ordinance or a similar ordinance that assures continuity in the Town of Clifton Government during the COVID-19 pandemic.

FISCAL IMPACT:

There is no anticipated fiscal impact.

ENCLOSED DOCUMENTS:

Attachment 1- Emergency Uncodified Ordinance to Establish Methods to Assure Continuity in the Town of Clifton Government and Conduct of Town Council Members Meetings During the COVID-2019 Emergency under Virginia Code § 15.2-1413

AN EMERGENCY UNCODIFIED ORDINANCE TO ESTABLISH METHODS TO ASSURE CONTINUITY IN THE TOWN OF CLIFTON GOVERNMENT AND CONDUCT OF TOWN COUNCIL MEMBERS MEETINGS DURING THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19) EMERGENCY UNDER VIRGINIA CODE § 15.2-1413

AN EMERGENCY UNCODIFIED ORDINANCE to establish methods to assure continuity in The Town of Clifton government and conduct of Town Council Members meetings during the COVID-19 Emergency, as authorized by Virginia Code §§ 15.2-1413 and -1427.

Be it ordained by the Town Council Members of The Town of Clifton:

1. That the following uncodified ordinance is hereby adopted:

A. Purpose of the Ordinance.

This ordinance establishes methods to assure continuity in The Town of Clifton government, including the Town Council Members' procedures for meetings, during the COVID-19 emergency. These provisions are intended to ensure the Council's ability to conduct necessary public business in a manner consistent with Virginia state law and federal, state, and local health directives and guidance, all while maintaining transparency and public participation to the greatest extent feasible.

This ordinance is being adopted in response to the COVID-19 outbreak. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of Emergency due to Novel Coronavirus (COVID-19). The Governor declared the emergency "to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat" and he found that "[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia." The Governor's Declaration of a State of Emergency remains in effect until June 10, 2020, unless sooner amended or rescinded. Effective March 16, 2020, Governor Northam and the State Health Commissioner jointly issued an Order declaring a state public health emergency.

The Public Health Emergency Order issued jointly by the Governor and the State Health Commissioner effective March 16, 2020, consistent with all other expert opinions, observes that COVID-19 spreads from person to person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person. No vaccine or known treatment options exist at this time.

B. Virginia Statutory Authority for the Ordinance.

Virginia Code § 15.2-1413 authorizes localities to adopt an ordinance to “provide a method to assure continuity in its government, in the event of an enemy attack or other disaster,” “[n]otwithstanding any contrary provision of law, general or special.” The Governor’s Declaration of a State of Emergency found that “[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia.”

Virginia Code § 15.2-1427 authorizes localities to adopt emergency ordinances without prior notice; however, no such ordinance may be enforced for more than 60 days unless readopted in conformity with the provisions of the Virginia Code.

Virginia Code § 2.2-3708.2(A)(3) allows the Town Council Members to meet via electronic communications without a quorum physically assembled together “when the Governor has declared a state of emergency,” “the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location,” and “the purpose of the meeting is to address the emergency.” Public notice must be given using the best available method, in light of the nature of the emergency, and it must be provided contemporaneously with the notice provided to the members of the public body. Finally, arrangements must be made for the public to access the meeting.

Virginia Code § 2.2-3708.2(A)(1) allows members of the Town Council to participate in a meeting via electronic communications if (1) it has a written policy allowing for such electronic participation; (2) a quorum of the Council is physically assembled at the primary meeting location; (3) the Town Council Members makes arrangements for the voice of the remote participant to be heard by all persons at the primary location; and (4) any member requesting remote participation is unable to attend the meeting due either to a temporary or permanent disability or other medical condition that prevents the member's physical attendance, or to a personal matter that is identified with specificity. The Council adopted an electronic communications policy on April 6, 2020.

C. Definitions.

“Continuity in The Town of Clifton government” includes, without limitation, those actions, and the coordination of actions, that are necessary to assure the continuation of the Town’s essential functions and services.

“Electronic communication” means the use of technology having electrical, telephonic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

“Emergency” means the outbreak of the respiratory illness referred to as the novel coronavirus or COVID-19, as described in the Governor’s Declaration of a

State of Emergency, and the spread and effects of COVID-19, which constitute a disaster as defined in Virginia Code § 44-146.16.

“Meeting” means a regular meeting of the Town Council Members, the meetings of any Town Council Members Committee, any public hearing scheduled and held by the Town Council, and any special or emergency meeting called as allowed by Virginia Code §§ 15.2-1417 and -1418.

“Usual procedures” means the requirements and procedures established by the Virginia Freedom of Information Act for public meetings, including remote participation by a Council member as long as a quorum of the Council is physically assembled at the meeting location, as allowed by Virginia Code § 2.2-3708.2(A)(1) and the policy adopted by the Council on April 15, 2020.

D. Town Council Members’ Meeting Procedures.

1. For any meeting at which the Town Council transacts public business with any purpose other than addressing the emergency or assuring continuity in the Town of Clifton government, the Council will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act.
2. If the purpose of a meeting of the Town Council is to address the emergency, the Town Council Members will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act unless, in the judgment of the Mayor, the catastrophic nature of the declared emergency makes it impracticable or unsafe to physically assemble a quorum at one location, in which case the Council will meet solely through electronic communication means to discuss the emergency in accordance with the emergency procedures established by FOIA and specifically Virginia Code § 2.2-3708.2(A)(3). In no event shall any action be taken by the Council in an electronic meeting unless a quorum is participating remotely. If the Council follows the procedures established by Virginia Code § 2.2-3708.2(A)(3), the Council will state on the record the nature of the emergency, the fact that the meeting is being held electronically, and the type of electronic communication means being used, and the Council will make arrangement for public access to the meeting.
3. (A) In addition, if any meeting or any part of a meeting of the Council is being conducted for the purpose of assuring continuity in the Town of Clifton government, the Town Council Members will meet in accordance with all usual procedures established by the Virginia Freedom of Information Act to the extent possible.

(B) If, in the judgment of the Mayor, items proposed to be considered are necessary to assure continuity in the Town of Clifton government and the usual procedures cannot be implemented safely or practically, then, under the authority granted to the Council by Virginia Code § 15.2-1413, the method by which the Council will conduct any meeting to consider the items will be as follows.

(1) The meeting may be held solely through electronic communication means without a quorum of members physically assembled at one location, but only after notice of the meeting is given in accordance with applicable laws. In no event shall any action be taken by the Council in an electronic meeting unless a quorum is participating remotely.

(2) The meeting may be held without permitting members of the public to be physically present in the same location as any of the Council members, but alternative arrangements for public access will be made. Such alternative public access may be through electronic communication, including but not limited to audio, telephonic, or video broadcast.

(3) Before action may be taken on any item, the Council must first approve that the item or items are necessary to assure continuity in the Town of Clifton government and that the usual procedures cannot be implemented safely or practically. A motion may be made and voted upon before each item or as to the entire agenda, as may be determined by the Mayor.

(4) For any such matter requiring a public hearing by law, public comment will be solicited and received via written or electronic communication prior to the vote on the matter. All such comments will be provided to the members of the Council and made a part of the record of the meeting.

E. Suspension of Certain Policies

Any policies or procedures previously adopted by the Council are suspended to the extent they are inconsistent with this Ordinance.

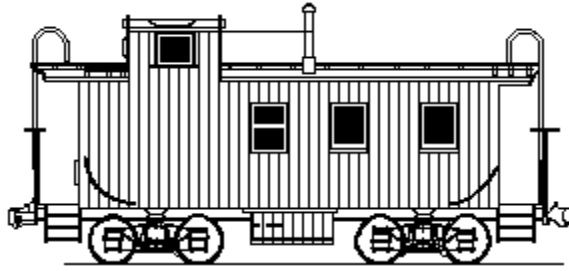
2. That this ordinance will become effective upon adoption.

3. That this ordinance is being adopted on an emergency basis as allowed by Virginia Code § 15.2-1427(F), and may be enforced for no more than 60 days from the date of adoption, unless the Council readopts this ordinance in conformity with all applicable provisions of state law and following the procedures established in this ordinance.

4. That the Clerk for the Town Council Members will schedule a public hearing on June 2, 2020, at which the Council will consider readopting this ordinance or a similar ordinance that assures continuity in the Town of Clifton Government during the COVID-19 pandemic. Such ordinance will be limited in its effect to a period not exceeding six months after the emergency and will provide for a method for the resumption of normal governmental authority by the end of the six-month period. The Clerk will publish descriptive notice of the Council's intention to propose the ordinance for passage once a week for two successive weeks as required by Virginia Code § 15.2-1427.

GIVEN under my hand this 6th day of April, 2020.


Amanda Christman
Town Clerk
Clifton, Virginia



**CLIFTON TOWN COUNCIL MEETING
MONDAY, APRIL 6, 2020, 7:30 PM
CLIFTON TOWN MEETING HALL
12641 CHAPEL ROAD
CLIFTON, VA 20124**

Order of Business:

1. Mayoral Declaration of a State of Emergency in Town of Clifton Posed by COVID-19.
2. Town Council Ratification of State of Emergency Posed by COVID-19.
3. Adoption of Town of Clifton Town Council Members' Policy for Participation in Meetings by Electronic Communication under Virginia Code § 2.2-3708.2.
4. Adoption of an Emergency Uncodified Ordinance to Establish Methods to Assure Continuity in the Town of Clifton Government and Conduct of Town Council Members Meetings During the Novel Coronavirus Disease 2019 (COVID-19) Emergency under Virginia Code § 15.2-1413.
5. Adjournment.