



CLERK'S BOARD SUMMARY

REPORT OF ACTIONS OF THE FAIRFAX COUNTY BOARD OF SUPERVISORS

**THURSDAY
May 28, 2020**

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A special meeting of the Board of Supervisors was called to order at 3:00 p.m., and was conducted wholly electronically using Fairfax County's videoconferencing system because the COVID-19 pandemic made it unsafe to physically assemble a quorum in one location or to have the public present. The meeting was accessible to the public through live broadcast on Channel 16, live video stream, and live audio. Chairman McKay presided over the meeting and participated from the Government Center, and the following Supervisors participated remotely from their respective District Offices:

- Supervisor Walter L. Alcorn, Hunter Mill District
- Supervisor John W. Foust, Dranesville District
- Supervisor Penelope A. Gross, Mason District
- Supervisor Patrick S. Herrity, Springfield District
- Supervisor Rodney L. Lusk, Lee District
- Supervisor Dalia A. Palchik, Providence District
- Supervisor Kathy L. Smith, Sully District
- Supervisor Daniel G. Storck, Mount Vernon District
- Supervisor James R. Walkinshaw, Braddock District

Others present during the meeting were Bryan J. Hill, County Executive; Elizabeth Teare, County Attorney; Jill G. Cooper, Clerk for the Board of Supervisors; Dottie Steele, Chief Deputy Clerk to the Board of Supervisors;

Emily Armstrong, Ekua Brew-Ewool and Kecia Kendall, Deputy Clerks,
Department of Clerk Services.

BOARD ANNOUNCEMENT

1. **ORDERS OF THE DAY** (3:01 p.m.)

Chairman McKay stated that since the meetings continue to be electronic during the COVID-19 pandemic and because this is a special meeting, there are preliminary motions that require Board approval. He stated that because each member of the Board is participating in the meeting from his or her respective Board office, it must be verified that a quorum of Members is participating and that each Member's voice is clear, audible, and at an appropriate volume for all of the other Members. Therefore, Chairman McKay conducted a roll call and asked each Member to confirm that they could hear each other's voices.

Therefore, Chairman McKay relinquished the Chair to Vice-Chairman Gross and moved that the Board certify for the record that each Member's voice may be adequately heard by each other member of this Board. Supervisor Foust seconded the motion and it carried by unanimous vote.

Chairman McKay moved that the Board certify that the State of Emergency caused by the COVID-19 outbreak makes it unsafe for staff, and the public to attend this meeting in person, and that as such, an in-person meeting cannot be implemented safely or practically. As a result, Chairman McKay further moved that the Board conduct this meeting electronically through a dedicated video conference line, and that the public may access this meeting via simultaneous telecast on Channel 16, or video streaming, or hear a live audio feed of the meeting by dialing 703-324-5300, and the public may participate in public hearings by established phone lines, YouTube submissions, or through written testimony. Supervisor Foust seconded the motion and it carried by unanimous vote.

Chairman McKay further moved that the Board certify that all matters on the agenda today concern the emergency, and/or are necessary for continuity in Fairfax County government under the Ordinance adopted by the Board on April 14, 2020, and/or are statutorily required or necessary to continue operations and the discharge of this Board's lawful purposes, duties, and responsibilities. Supervisor Foust seconded the motion and it carried by unanimous vote.

Vice Chairman Gross returned the gavel to Chairman McKay.

Supervisor Gross stated that Board members were notified of this emergency special meeting by an email communication sent by the Clerk, and the meeting was immediately posted on the public meetings calendar and publicized by the County. It is obvious that all Board members received that notice as evidenced by our attendance here today. Therefore, Supervisor Gross moved that the Board exercise its authority to suspend its Rules of Procedure and dispense with any requirement for the Clerk to notify Board members of this meeting five days in

advance by registered mail or service by the Sheriff. Chairman McKay seconded the motion and it carried by unanimous vote.

2. **MOMENT OF SILENCE** (3:07 p.m.)

Chairman McKay stated that:

- COVID-19 is affecting the whole community, from children to small businesses to those who are ill with the virus. He asked to keep everyone in Fairfax, and around the world, in thoughts and prayers during this difficult time
- The Fairfax County flag continues to fly at half-staff at County facilities in honor of the residents who have died of COVID-19 and in recognition of the many essential workers who are responding to the pandemic

The Board asked everyone to keep in thoughts the family and friends of:

- Mr. Marvin Wagner, who died recently
- Dr. Alan Merten, who died recently
- Mr. Larry Leonard, who died recently

AGENDA ITEM

3. **3 P.M. – BOARD CONSIDERATION OF THE ADOPTION ON AN EMERGENCY ORDINANCE THAT WOULD TEMPORARILY PERMIT THE EXPANDED USE OF OUTDOOR SPACE FOR OUTDOOR DINING AND FOR OUTDOOR FITNESS AND EXERCISE ACTIVITIES, ALL UNDER SPECIFIED CONDITIONS AND WITHOUT THE NEED FOR INDIVIDUALIZED DETERMINATIONS, WHEN THE COUNTY MOVES INTO PHASE ONE OF THE GOVERNOR’S REOPENING PLAN**
(3:11 p.m.)

(O) Barbara Byron, Director, Department of Planning and Development, gave a PowerPoint presentation.

Discussion ensued concerning:

- Cooking
- Handicapped parking
- Communication to the business community
- Catering establishments

- Complaints

Supervisor Gross questioned whether cooking would be allowed outdoors. Ms. Byron stated that all cooking would need to take place in the kitchens and served to the patrons outdoors.

The question was also raised about the number and location of handicapped parking spaces and whether there would be any flexibility in relocating some spaces to accommodate outdoor dining.

David Stoner, Deputy County Attorney, stated that the intent of the ordinance was not to prohibit the relocation of handicapped parking spaces if the number of spaces is not reduced, and they remain clearly delineated and properly accessible.

Supervisor Herrity inquired about a plan to communicate the information to restaurants, gyms, wineries, and breweries. Ms. Byron stated that a press release would be issued after the Board meeting and would include the adopted ordinance.

Supervisor Palchik asked about multilingual outreach and working with applicants on the RISE and microloan programs. Ms. Byron noted that the press release will contain guidelines and will include a phone number to contact with questions. Staff has been briefed so they are prepared to respond to inquiries and will continue to share the information regarding the grant programs.

Supervisor Foust noted that the explanation provided regarding disabled parking locations is not reflected in the draft ordinance. Supervisor Foust asked that the language in the ordinance be amended to say, “does not permit any reduction in number or convenience of parking spaces designated for individuals with disabilities.”

Supervisor Storck asked if food warming would be allowed outside. John Walser, Battalion Chief, Fire and Rescue Department, stated that open flames would not be permitted due to the concern of them tipping over, however, heating trays using water would be acceptable.

Supervisor Storck asked if businesses would be limited to no more than fifty percent of outside seating and if the same number of handicapped spaces need to be maintained. Bill Hicks, Director, Land Development Services, stated that since this is a blanket approval, it is difficult to quantify the need and staff would examine on an individual basis.

Supervisor Storck asked if there would be a way to enable or permit catering businesses some flexibility in providing food service outside of their establishments. Mr. Stoner noted that the Governor’s Executive Order 61 does not specifically address catering businesses.

Supervisor Storck asked if there would be any restrictions or limitations on moving exercise equipment outdoors and returning it to the building at the end of the day. Ms. Byron stated that there is no restriction prohibiting that action.

Supervisor Walkinshaw stated that the ordinance requires property owners maintaining adequate parking and he asked if the definition of adequate would be left up to the businesses. Ms. Byron stated that was correct. Supervisor Walkinshaw also noted his concern about giving property owners the blanket authority under this ordinance to reduce or move handicapped parking spaces and trust that they would relocate them to a location that was equally accessible.

Chairman McKay relinquished the Chair to Vice-Chairman Gross and moved that the Board adopt an emergency ordinance that would temporarily permit the expanded use of outdoor space for outdoor dining and for outdoor fitness and exercise activities all under specified conditions and without the need for individualized determinations when the County moves into Phase One of the Governor's reopening plan, with one amendment. Chairman McKay further moved to amend Paragraph "L" in the draft ordinance to read as follows, "Adequate onsite parking must be maintained for onsite users. This emergency ordinance does not permit any reduction in the number or convenience of parking spaces designated for individuals with disabilities so long as accessibility is not compromised." Supervisor Herrity seconded the motion.

Further discussion ensued with Supervisor Palchik asking about enforcement and communication regarding the relocation of handicapped spaces and how the Board and businesses will know if the relocated spaces are still adequate. Ms. Byron stated that because no permits are being issued, there would be nothing to inspect it against and would be examined if staff receives complaints. Ms. Byron stated that Dave Rohrer, Deputy County Executive, volunteered the non-emergency police number to be the recipient of complaints in reference to this ordinance.

Supervisor Alcorn added that the Board is approving this ordinance on an emergency basis and asked if it could be amended if need be. Supervisor Gross stated that the Board has the ability to amend the ordinance, as long as appropriate procedures are followed.

Supervisor Walkinshaw noted concern about property owners moving the location of handicapped parking spaces without any approval from the County. Mr. Hicks stated that the property owners would have to provide staff with a parking tabulation, which includes addressing parking aspects and accessibility.

Supervisor Herrity asked unanimous consent that the Board direct staff to consider what will be done in Phase Two so the County can stay ahead of the game for businesses. Without objection, it was so ordered.

The question was called on the motion as amended, and it carried by unanimous vote, Supervisor Alcorn, Supervisor Foust, Supervisor Gross, Supervisor Herrity,

Supervisor Lusk, Supervisor Palchik, Supervisor Smith, Supervisor Storck, Supervisor Walkinshaw, and Chairman McKay voting “AYE.”

Vice Chairman Gross returned the gavel to Chairman McKay.

Chairman McKay clarified that this is a temporary 60-day ordinance and that the Board reserves the right at any point to rescind or change the ordinance. He stated that a public hearing is being set for July on this ordinance at which point either the hearing will be cancelled because the County moved into another phase or the Board will need to extend this emergency ordinance or readopt it for a new period of time.

BOARD ANNOUNCEMENT

4. **REDUCTION IN PENALTY AMOUNTS FOR REAL ESTATE AND PERSONAL PROPERTY TAXES** (3:58 p.m.)

Chairman McKay stated that he has been working with staff on a proposal to adjust the real estate and personal property tax penalties. This item will be discussed at the Budget Committee meeting on June 2, 2020 and he hopes that the Board will adopt a reduction in the percentage of the penalty amount for people who are late in paying their real estate or personal property taxes. This item is scheduled for Board consideration at its meeting on June 9, 2020.

5. **BOARD ADJOURNMENT** (3:59 p.m.)

The Board adjourned.