



DATE: April 7, 2020

MEMO TO: Honorable Board of Commissioners
Lake County Forest Preserve District

FROM: Alex Ty Kovach
Executive Director

RECOMMENDATION: Approve an Ordinance delegating to Designated Officers the joint authority to (i) take actions that are necessary or appropriate to conduct the District's day-to-day operations, including the expenditure of District funds that are budgeted in FY 2020 (except for construction and land acquisitions that have not yet been approved by the Board), (ii) take other actions that the Board and the Committees of the Board are authorized to take and that do not require or include the expenditure of District funds or the incurrence of debt by the District, and (ii) take other reasonable and necessary actions to mitigate the impact of the COVID-19 emergency to the District and the public, so long as the expenditure of District funds in furtherance thereof have been previously appropriated by the Board of Commissioners or are grant funds.

STRATEGIC DIRECTION SUPPORTED: Organizational Sustainability

FINANCIAL DATA: The adopted FY2020 Budget includes expenditures of \$62,449,370 and the adopted FY 2020 Appropriation Ordinance appropriates \$93,861,000. To date the District has spent or encumbered approximately \$10.9 million and received \$1.3 million in revenue for the 2020 Budget.

BACKGROUND: COVID-19 is a novel severe acute respiratory illness that can be spread among people through respiratory transmissions and has created a worldwide health crisis. On March 9, 2020, through his "Gubernatorial Disaster Proclamation," the Governor of the State of Illinois, pursuant to the Illinois Emergency Management Act, declared that, because of the COVID-19 crisis, a disaster exists within the State of Illinois and further declared all counties in the State as a disaster area. On April 1, 2020, the Governor issued a second Gubernatorial Disaster Proclamation, extending the proclamations through April 30, 2020. The Governor has also issued multiple executive orders imposing health and safety requirements to address the COVID-19 crisis.

This crisis presents a challenge to the District's ability to hold public meetings, conduct its day-to-day business, and take emergency measures, while still remaining compliant with the Governor's Executive Orders, other Federal and State health and safety recommendations, and the Illinois Open Meetings Act.

On March 20, 2020, the Governor issued his "Stay at Home" Executive Order (Executive Order No. 2020-10 (COVID-19 Executive Order No. 8)) which (in Section 1, Paragraph 3) prohibits:

- (i) all public and private gatherings of any number of people occurring outside a single household or living unit, unless exempted by that Executive Order and
- (ii) pursuant to current guidance from the Center for Disease Control, any gathering of more than ten people, unless exempted by the Executive Order.

However, the “Stay at Home” Executive Order allows units of local government to continue with (under Section 1, Paragraph 1) “Essential Governmental Functions,” which appears by its definition (in Section 1, Paragraph 10) to include public meetings: “all services provided by . . . any . . . agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public . . .”). Further, Executive Order No. 2020-10 allows each governmental body to determine its Essential Governmental Functions (§1, ¶10); However, the 10-person limit and social distancing must be practiced at any gathering (such as an in-person public meeting) that is exempt from the “Stay at Home” restrictions (Section 1, Paragraph 14). On April 1, 2020, the Governor of the State of Illinois issued Executive Order No. 2020-18 (COVID-19 Executive Order No. 16) (“Executive Order No. 2020-18”), extending Executive Order 2020-10 in its entirety through April 30, 2020.

Taking all these restrictions and exceptions together, the District may still hold meetings of its public bodies, which may be (i) at a physical location, attended by gatherings of people outside of different households, so long as attendance does not exceed ten people and social distancing is enforced at such meetings or (ii) remote meetings, via audio and/or video means, although it is not entirely clear whether, with a remote meeting, there must still be a physical location at which the public may attend the meeting (as opposed to allowing the public to attend remotely). A physical meeting presents a clear challenge to the District, because a quorum of its Board of Commissioners (11 Commissioners) exceeds the 10-person limit and because almost all of the District’s Committee meetings have at least 10 people in attendance (including Commissioners, staff, consultants, and the public).

The Governor provided some relief from this challenge in his earlier Executive Order No. 2020-7 (COVID-19 Executive Order No. 5, issued March 16, 2020) which provides (in Section 6): “During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended”. Executive Order No. 2020-7 was extended, by Executive Order No. 2020-18, through April 30, 2020. Pursuant to that authority, the District is holding its April 6 Committee meetings and April 7 Board meetings via audio and video conference.

Because physical meetings present health risks, and remote audio/video meetings (which must still be held with advance notice and a published agenda in accordance with the Open Meetings Act) may prove cumbersome to address immediate short-term needs, the District does not have a good “traditional” option to continue conducting its day-to-day business and to efficiently and nimbly address urgent matters that may arise out the crisis. Of course, if the District cannot safely and legally conduct public meetings of its Committees and Board, it will be unable to carry on critical business functions and will lack a mechanism for taking action to mitigate the impact of the current declared disaster.

To address this challenge, the attached ordinance (the “Delegation Ordinance”) would authorize the District’s President, the District’s Treasurer, an At-Large District Commissioner appointed by the President, and District Executive Director to jointly (i) expend any District funds that have been appropriated and included in the District’s fiscal year 2020 budget (except they could not expend funds for land acquisition or construction projects over \$25,000), (ii) take other actions (not involving the expenditure of funds or incurrence of debt) that are normally performed by the District’s Committees and Board, and (iii) take any other reasonable or necessary action to mitigate the impact of the COVID-19 disaster, so long as any District funds expended in furtherance thereof have been previously appropriated by the Board of Commissioners or are grant funds. For example, the Designated Officers could, without further Board approval (i) purchase and pay for supplies, equipment, maintenance and repair services, and restoration projects that have already been planned for and budgeted, (ii) enter into intergovernmental agreements that satisfy the expenditure and budgetary limits of the Ordinance, and (iii) take as yet unplanned actions to address the COVID-19 disaster,

which may include intergovernmental agreements and currently unforeseen and unbudgeted (but appropriated) expenses to abate the crisis. The Delegation Ordinance would be in effect until the next Board of Commissioners meeting, at which time it could be extended or rescinded.

Finally, events surrounding the COVID-19 crisis are developing and changing rapidly. To address any new issues that arise within the few days preceding the April 7 special meeting, the special meeting agenda includes a placeholder for other final action that may be necessary to mitigate or respond to the COVID-19 crisis. If staff will recommend any such final action, we will provide you, the media, and the public with greater detail as soon as is practical.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance and Corporate Counsel.

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**AN ORDINANCE DELEGATING AUTHORITY TO DESIGNATED OFFICERS TO
CONDUCT DAY-TO-DAY OPERATIONS WITHIN BUDGETARY AUTHORITY AND
TO TAKE ACTION TO ABATE THE DECLARED COVID-19 DISASTER WITH
APPROPRIATED FUNDS**

WHEREAS, on March 9, 2020, the Governor of the State of Illinois declared all counties in the State of Illinois as a disaster area (the “First Gubernatorial Disaster Proclamation”) in response to the outbreak of Coronavirus Disease 2019 (“COVID-19”); and

WHEREAS, on April 1, 2020, the Governor of the State of Illinois again declared all counties in the State of Illinois as a disaster area (the “Second Gubernatorial Disaster Proclamation” and, collectively with the First Gubernatorial Disaster Proclamation, the “Gubernatorial Disaster Proclamations”) in response to the outbreak of COVID-19, extending the duration of the Gubernatorial Disaster Proclamations through April 30, 2020; and

WHEREAS, on March 16, 2020, the Governor of the State of Illinois issued Executive Order No. 2020-7 (COVID-19 Executive Order No. 5) (“Executive Order No. 2020-7”), which provides: “During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended” (Executive Order No. 2020-7, §6); and

WHEREAS, on April 1, 2020, the Governor of the State of Illinois issued Executive Order No. 2020-18 (COVID-19 Executive Order No. 16) (“Executive Order No. 2020-18”), which continued and extended certain provisions of Executive Order No. 2020-7 through April 30, 2020, and specifically provides: “During the duration of the Gubernatorial Disaster Proclamations, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that ‘members of a public body must be physically present’ is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.” (Executive Order No. 2020-18, Part 1); and

WHEREAS, on March 20, 2020, the Governor of the State of Illinois issued a “Stay at Home” Executive Order (Executive Order No. 2020-10 (COVID-19 Executive Order No. 8)) (“Executive Order No. 2020-10”) which:

- (i) prohibits all public and private gatherings of any number of people occurring outside a single household or living unit, unless exempted by Executive Order No. 2020-10 (Executive Order No. 2020-10, §1, ¶3);
- (ii) prohibits, pursuant to current guidance from the Center for Disease Control, any gathering of more than ten people, unless exempted by the Executive Order (Executive Order No. 2020-10, §1, ¶3);

- (iii) allows units of local government to continue to provide “Essential Governmental Functions,” which includes “all services provided by . . . any . . . agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public . . .” (Executive Order No. 2020-10, §1, ¶10); and
- (iv) provides that each governmental body shall determine its Essential Governmental Functions (§1, ¶10); and

WHEREAS, Executive Order No. 2020-18, issued on April 1, 2020, also extended Executive Order 2020-10 in its entirety through April 30, 2020; and

WHEREAS, on October 8, 2019 the Lake County Forest Preserve District (the “District”) Board of Commissioners (the “Board”) approved (i) an Ordinance setting forth the District’s annual appropriations for Fiscal Year 2020 (“Appropriations Ordinance”) and (ii) an Ordinance approving the District’s Fiscal Year 2020 budget (“Budget”); and

WHEREAS, the Board hereby finds that the following District actions (without limitation to other Essential Governmental Functions) are Essential Governmental Functions of the District (collectively, the “Designated District Actions”):

- (i) the expenditure of District funds, that have already been appropriated in the Appropriations Ordinance and included in the Budget, for the purposes for which such funds have been appropriated and budgeted, except for
 - (a) the expenditure of any funds to acquire any fee simple interest in real estate, if such expenditure and acquisition was not approved by the Board prior to the effective date of this Ordinance (“Unapproved Land Acquisitions”) and
 - (b) the expenditure of any funds for the construction or renovation of any permanent improvement on District property, if such expenditure is greater than \$25,000.00 and was not approved by the Board prior to the effective date of this Ordinance (“Unapproved Construction Projects”),
- (ii) other actions that the Board and the Committees of the Board are authorized to take and that do not require or include the expenditure of District funds, the incurrence of debt by the District, Unapproved Land Acquisitions, or Unapproved Construction Projects,
- (iii) other reasonable or necessary actions to mitigate the impact of the COVID-19 disaster, but only if any funds expended in furtherance thereof are
 - (a) funds that have been appropriated in the Appropriations Ordinance or

- (b) grant funds received after the approval of the Appropriations Ordinance (“Grant Funds”);
- (iv) acceptance of Grant Funds to mitigate the impact of the COVID-19 disaster, including funds authorized pursuant to the federal Coronavirus Aid, Relief, and Economic Security Act or any other federal, state, or local law;

WHEREAS, the Board further finds that, in light of (i) the unacceptable COVID-19 health risks posed by in-person public meetings of the Board and the Board’s Committees and (ii) the potential impracticality of conducting District business at remote meetings of the Board and the Board’s Committees pursuant to Section 6 of Executive Order No. 2020-7 and Part 1 of Executive Order No. 2020-18, including urgent business that may be necessary to address matters arising from the quickly evolving COVID-19 disaster, there is a risk that the District will be unable to safely and legally conduct public meetings of the Board and the Board’s Committees, and thus be unable to perform the Designated District Actions; and

WHEREAS, the Board further finds that it is in the District’s best interests to delegate the authority to conduct the Designated District Actions to (i) the District President, (ii) the District Treasurer, (iii) a District Commissioner appointed by the President, with the advice and consent of the Board (the “At-Large Commissioner”), and (iv) the Executive Director (collectively, the “Designated Officers”), as provided in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as part of this Ordinance by this reference.

Section 2. Delegation of Authority to Designated Officers. The Board hereby delegates to the Designated Officers the authority to exercise the Designated District Actions. To exercise the authority granted to them under this Section 2 with respect to a particular Designated District Action, all four Designated Officers must consent in writing to the performance of such Designated District Action.

Section 3. Effective Date; Modification of Other Enactments. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law and shall remain in effect until the next regular or special meeting of the Board that occurs after such effective date. If any ordinance, resolution, motion, or other enactment of the District is inconsistent with any provision of this Ordinance, then the provision of this Ordinance shall control, and such other ordinance, resolution, motion, or other enactment is deemed to be repealed, amended, or otherwise modified to the extent necessary for this Ordinance to control. If any Grant Funds are expended, then this Ordinance shall be deemed to either amend the Appropriations Ordinance or to approve a separate emergency appropriation to appropriate such Grant Funds, as provided in Section 13.4 of the Downstate Forest Preserve Act, 70 ILCS 805/13.4, and the District Secretary and Corporate Counsel shall cause this Ordinance to be certified, filed, and published, in the manner required by law.

PASSED this _____ day of _____, 2020

AYES:

NAYS:

APPROVED this _____ day of _____, 2020

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____