

## **The Town of Upper Marlboro**

### **Declaration of Emergency Order 2022-01**

**AN EMERGENCY ORDER OF THE PRESIDENT OF THE TOWN OF UPPER MARLBORO POSTPONING THE SPECIAL ELECTION SET TO FILL A VACANCY IN OFFICE PREVIOUSLY SCHEDULED FOR JANUARY 25, 2022, UNTIL FEBRUARY 22, 2022; AND SUPPLEMENTING OR MODIFYING CERTAIN SAFEGUARDS, PRECAUTIONS AND REQUIREMENTS UNDER THE LOCAL STATE OF EMERGENCY ORDER INITIALLY ISSUED BY THE MAYOR ON MARCH 25, 2020, AS AMENDED OR EXTENDED.**

**WHEREAS**, in accordance with Emergency Ordinance 2020-04 (Emergency Operations), the President/Mayor may declare a Local State of Emergency for a 30-day period and the Board is authorized to ratify, extend, or modify said order; and

**WHEREAS**, Resolution 2021-27 ordered and ratified a declaration of emergency (DOE 2021-03) as the third extension of the initial proclamation issued on March 25, 2020, and extended the state of local emergency period until January 31, 2022; and

**WHEREAS**, according to Section 82-32 of the Charter, in case of a vacancy on the Board of Commissioners (the "Board") for any reason, the Board of Supervisors of Elections shall, pursuant to the provisions of Section 82-29, conduct a special election to elect some qualified person to fill such vacancy for the unexpired term, provided, however, any vacancy which occurs within 61 days of the next general election as provided for in Section 82-27 [held the first Tuesday in November in odd numbered years] shall remain vacant until said general election; and

**WHEREAS**, the Board approved Resolution 2021-28, jointly declaring along with the Mayor, a Board vacancy and selecting a special election date for January 25, 2022, subject to approval of the date by the Board of Supervisors of Elections, and modifying certain requirements and safeguards for the conduct of the election; and

**WHEREAS**, pursuant to Emergency Ordinance 2020-04 upon the issuance of an executive order of a civil municipal emergency by the President, and during the existence of such civil emergency, the President may, in a form that meets the requirements of Section 4 of said ordinance, make and proclaim the following orders: ... (22) An order to derogate express charter or ordinance provisions for conducting or postponing a municipal election or to prescribe the method of conducting a municipalelection; (23) An order abrogating or modifying any relevant and existing ordinance, resolution, rule, regulation, or charter provision to allow for extensions of permits, licenses, registrations, nomination certificates or other permissions, deadlines or mandated filings to extend or avoid lapsing of same fora period of time extending for up to 30 days after the emergency; and

**WHEREAS**, according to Section 82-29 of the Charter, all special Town elections shall be conducted by the Board of Supervisors of Elections in the same manner and with the same personnel, as far as practicable, as regular Town elections, and in the event a special election is required pursuant to Section 82-32, the said special election shall be held not less than thirty (30) days and not more than forty-five (45) days after the vacancy is created, and the newly elected Commissioner shall take

office on the second Monday of the month [Mar. 14, 2022] following the special election; and

**WHEREAS**, the President finds that, based on the legal opinion of the Town Attorney, that the Charter provision in Sec. 82-29 stating that "[i]n the event a special election is required pursuant to Section 82-32, the special election shall be held not less than thirty (30) days and not more than forty-five (45) days after the vacancy is created..." (emphasis added) would likely be deemed as directory and not mandatory by a Maryland Court and that unless there is further language to clarify the legislative intent, the word "shall" in referring to the government when used in statutes or charters, is to be construed as "may;" and

**WHEREAS**, Ordinance 2001-2 enacted on October 9, 2001, provides for the conduct of voter registration, maintenance of registration records, conduct of elections, certification of election results and absentee ballots, except that certain provisions governing absentee ballots pertaining to the reasons for the absence are now are superseded and nullified by State Law; and

**WHEREAS**, as required by Section 5 of Emergency Ordinance 2020-04 upon issuing any emergency proclamation, the President does hereby find the following:

- (i) That conditions of peril to the safety of persons and property continue to exist within said Town, caused by the COVID-19 epidemic; and
- (ii) That the President and the Board believe it is in the best interest of public safety and the protection of property that the exercise of certain rights be temporarily limited and that the conditions of this Order is designed to provide the least necessary restriction on those rights; and

**WHEREAS**, the President further finds that there are other compelling reasons to delay and hold the special election beyond 45 days from the time of the vacancy or otherwise postpone the election date during the current declared health emergency to change the special election date and impose further regulations and safeguards to govern the conduct of said election to include the following: (i) there have been no statements of candidacy filed to date and no names to place on the ballot, (ii) it would be impractical and a potential waste of tax dollars to have an election when there is no official or registered interest in being a candidate, (iii) the preparations for this special election have been delayed or hampered by the uptick in COVID, snowstorms and the recent holiday period, (iv) health and other issues regarding at least one key member of the Board of Election Supervisors and staff have contributed to delays in organizing the special election, and (v) a postponement of the special election will help mitigate or cure any lapses in judgment, irregularities or alleged improprieties or appearances of improprieties in attracting and recruiting candidates or in providing sufficient notice to attract a reasonable number of viable candidates (named on the ballot or write in) since the vacancy occurred; and

**WHEREAS**, according to Section 82-23 of the Charter, the Board of Supervisors of Elections shall give at least two weeks' notice of every registration day and every election by an advertisement published in a newspaper of general circulation in the Town.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro, this 14th day of January 2022, that the President

hereby orders a change to Special Election previously scheduled to be held on Tuesday, January 25<sup>th</sup>, 2022, shall be postponed until and instead held on Tuesday, February 22nd, 2022 with the below additional emergency measures, actions or precautions to be put in place to protect voters, poll workers and other Town personnel and their families from the novel Coronavirus (COVID-19):

1. A State of Local Emergency continues to exist within the boundaries of the Town of Upper Marlboro because of ongoing concerns about the possible spread of the Coronavirus (COVID-19).
2. That during the existence of said local and/or State emergency the Town shall observe the same rules and restrictions as Prince George's County, as adopted by reference herein, except for any modifications to same found in this Joint Order and Resolution.
3. That during the existence of said local and/or State emergency the Board of Election Supervisors or any member thereof is authorized to recommend additional rules and procedures or precautions for the conduct of elections to be further ordered by the President pursuant to an emergency proclamation.
4. Modified Election Procedures or Precautions in Response to COVID-19:
  - A. Limit of 10 persons in voting room/conference room at a time (including up to five election judges),
  - B. Voters will enter one door and exit a different door,
  - C. 6-foot social distancing and masks will be required within the polling place,
  - D. Voters will be screened via temperature checks prior to entering Town Hall or in a designated separate or partitioned room or foyer within Town Hall,
  - E. Any otherwise qualified voter whose screening at the polls exceeds acceptable guidelines, in order to protect the public and staff, will be offered or may be required by the Chairman of the Board of Election Supervisors or his or her designee to use a provisional or emergency absentee ballot for which to vote,
  - F. Hand sanitizer will be made available at every voting booth and station to include measures for sanitizing voting equipment and other surfaces, such as pens and tables, and, paper towels, hand sanitizer, tissue to be made available, and
  - G. Elections judges and voting booths will be protected by plexiglass shields as deemed by the Board of Election Supervisors to be practicable and effective.

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro that written statements of candidacy and nominating petitions shall be filed with one of the Supervisors of Elections or the Town Clerk on or before the first Monday in February of 2022 (February 7, 2022).

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro that this Order shall modify and extend, as applicable, any prior existing proclamation or order of the President until such time that the present health emergency is declared terminated.

**AND BE IT FURTHER RESOLVED AND ORDERED**, by the President of the Board of Commissioners for The Town of Upper Marlboro that this Resolution and Order and any other lawful

local orders may be enforcement by the Upper Marlboro Police Department within the corporate limits of the Town and any other law enforcement agency having jurisdiction within the Town.

ATTEST:

  
Clerk, John Hoatson

THE TOWN OF UPPER MARLBORO

  
Sarah Franklin, President

Date: 1-14-2022

