



DATE: June 9, 2020

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

FROM: Alex Ty Kovach
Executive Director

RECOMMENDATION: Approve a Third 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, the incurrence of District debt, or the disposition of the District’s real property rights, 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 has been previously appropriated by the Board of Commissioners or is an expenditure of 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 \$18.7 million and received \$13.9 million in revenue for the 2020 Budget.

BACKGROUND: At its April 7 and May 12 meetings, the Board of Commissioners approved ordinances delegating certain authority to District officers, in light of the COVID-19 disaster. The authority granted under the most recent ordinance will expire upon commencement of the June 9 Regular Board of Commissioners Meeting. If approved, the attached ordinance will extend those powers through the next regularly scheduled meeting of the Board of Commissioners, on July 15, 2020.

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 four occasions (March 9, April 1, April 30, and May 29, 2020) the Governor has made “Gubernatorial Disaster Proclamations”, pursuant to the Illinois Emergency Management Act. The Proclamations, which extend through June 27, 2020, declare that, because of the COVID-19 crisis, a disaster exists within the State of Illinois and that all counties in the State are a disaster area. The Governor has also issued multiple other executive orders imposing health and safety requirements to address the COVID-19 crisis.

On March 20, 2020, the Governor issued his first “Stay at Home” Executive Order (Executive Order No. 2020-10 (COVID-19 Executive Order No. 8)). On April 1, 2020, the Governor issued Executive Order No. 2020-18 (Executive Order No. 2020-18 (COVID-19 Executive Order No. 16)), extending the first Stay at Home Order in its entirety through April 30, 2020. On April 30, 2020, the Governor issued a new

“Stay at Home” Executive Order (Executive Order No. 2020-32 (COVID-19 Executive Order No. 30) (“Executive Order No. 2020-32”), which provided that (i) all persons may leave their homes only for “Essential Activities,” “Essential Governmental Functions,” or to operate “Essential Businesses and Operations”, as those terms are defined in the Executive Order and (ii) any gathering of more than ten people is prohibited unless exempted by the Executive Order.

“Essential Governmental Functions,” by its definition, appears 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 . . .” (Executive Order No. 2020-32, §2, ¶10). Each governmental body may determine its own “Essential Governmental Functions”. (Id.)

On the same day he issued the new Stay at Home Order, the Governor also issued Executive Order No. 2020-33 (COVID-19 Executive Order No. 31), which re-issued Executive Order No. 2020-7 (issued March 16, 2020), and which suspends, through May 29, 2020, the Open Meetings Act requirement that at least a quorum of a public body be in physical attendance. Pursuant to that authority, the District is holding its May 4 and 7 Committee meetings and May 12 Board meetings via audio and video conference. Executive Order No. 33 also states: “Public bodies . . . are encouraged to postpone consideration of public business where possible.”

On May 29, 2020 the Governor issued (i) Executive Order No. 2020-38 (COVID-19 Executive Order No. 36) extending, until June 27, 2020, the social distancing requirements and limits on gathering size (not more than 10 people) of prior Executive Orders and (ii) Executive Order No. 2020-39 (COVID-19 Executive Order No.37), which re-issued and extended Section 6 of Executive Order 2020-07, suspending the Open Meetings Act’s physical quorum requirements.

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.

Taking all these considerations together, the District may still hold meetings of its public bodies, although Executive Order No. 38 restricts physical attendance to ten people and states that Illinoisans are “encouraged to continue limiting in-person contact with others”. If a meeting is held, it must be either (i) at a physical location, so long as attendance (in any one room) does not exceed ten people and social distancing is enforced at the meeting or (ii) a remote meeting, held via audio and/or video means. 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 ten people in attendance (including Commissioners, staff, consultants, and the public).

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 the District’s 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 new land acquisition or for new construction projects over \$25,000), (ii) take other actions (not involving the expenditure of funds, incurrence of debt, or disposition of real property rights) 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 a new ordinance could be adopted.

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 June 9 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**

**A THIRD 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 April 9, 2020, the Lake County Forest Preserve District (the “District”) Board of Commissioners (the “Board”) approved “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” (the “First Ordinance”); and

WHEREAS, the First Ordinance expired on May 12, 2020; and

WHEREAS, on May 12, 2020, the Board approved “A Second 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” (the “Second Ordinance”); and

WHEREAS, the Second Ordinance expires on June 9, 2020; and

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”) in response to the outbreak of COVID-19, and extended the duration of the First Gubernatorial Disaster Proclamation and Second Gubernatorial Disaster Proclamation through April 30, 2020; and

WHEREAS, on April 30, 2020, the Governor of the State of Illinois again declared all counties in the State of Illinois as a disaster area (the “Third Gubernatorial Disaster Proclamation”); and

WHEREAS, on May 29, 2020, the Governor of the State of Illinois again declared all counties in the State of Illinois as a disaster area (the “Fourth Gubernatorial Disaster Proclamation” and, collectively with the First Gubernatorial Disaster Proclamation, the Second Gubernatorial Disaster Proclamation, and the Third Gubernatorial Disaster Proclamation the “Gubernatorial Disaster Proclamations”) in response to the outbreak of COVID-19, and extended the duration of the Gubernatorial Disaster Proclamations through June 27, 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 April 30, 2020, the Governor of the State of Illinois issued Executive Order No. 2020-33 (COVID-19 Executive Order No. 31) (“Executive Order No. 2020-33”), which re-issued Executive Order No. 2020-7 through May 29, 2020, and specifically provides: “During the duration of the Gubernatorial Disaster Proclamation and through May 29, 2020, 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. . . . Public bodies . . . are encouraged to postpone consideration of public business where possible.” (Executive Order No. 2020-33, Part 1); and

WHEREAS, on May 23, 2020, the General Assembly passed Senate Bill 2135 (“Senate Bill 2135”), which would amend the Open Meetings Act by adding a new Section 7(e) to such Act, that would provide that “an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members,” subject to the conditions stated in Senate Bill 2135; and

WHEREAS, on May 29, 2020, the Governor of the State of Illinois issued Executive Order No. 2020-39 (COVID-19 Executive Order No. 37) (“Executive Order No. 2020-39”), which re-issued and extended Section 6 of Executive Order 2020-07 (relating to the Open Meetings Act’s physical quorum requirements), as amended by Executive Order 2020-33, through June 27, 2020 or until Senate Bill 2135 is enacted and takes effect, whichever occurs first; 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”); 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 April 30, 2020, the Governor of the State of Illinois issued a new “Stay at Home” Executive Order (Executive Order No. 2020-32 (COVID-19 Executive Order No. 30)) (“Executive Order No. 2020-32”); and

WHEREAS, on May 29, 2020, the Governor of the State of Illinois issued Executive Order No. 38 (Executive Order No. 2020-38 (COVID-19 Executive Order No. 36) (“Executive Order No. 2020-38”) which (i) requires that individuals using shared spaces outside their residence must at all times and as much as reasonably possible maintain social distancing of at least six feet from any other person who does not live with them, (ii) prohibits any gathering of more than ten people unless exempted by Executive Order No. 2020-38, and (iii) does not affect services provided by any subdivision 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 (“Essential Governmental Functions”) (Executive Order No. 2020-38, §§2(a), 2(d), and 3(j)(c)); and

WHEREAS, on October 8, 2019 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, Unapproved Construction Projects, or the conveyance of any interest in District real property,
- (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; and

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, (ii) the Board’s desire to continue performing Essential Governmental Functions, including urgent business that may be necessary to address matters arising from the quickly evolving COVID-19 disaster, and (iii) the provisions of Executive Order No. 2020-33 (extended and re-issued by Executive Order No. 2020-39) encouraging public bodies to postpone consideration of public business at public meetings where possible (Executive Order No. 2020-33, Part 1), there is a risk that, while it is authorized to hold audio or video meetings pursuant to either Executive Order No. 2020-39 or Senate Bill 2135 (if it is signed by the Governor), the District will be unable to safely and legally conduct public meetings of the Board and the Board’s Committees, and thus will be unable to perform the Designated District Actions, and will be unable to swiftly and efficiently take reasonable and necessary actions to mitigate emerging issues and impacts arising from the COVID-19 disaster; 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;

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. _____