

# **FOIA and Virtual Meetings – Is It Live or Is It Memorex?**

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Virtual South Carolina  
Local Government Attorneys’ Institute



**SOUTH CAROLINA  
ASSOCIATION OF COUNTIES**

Friday, November 20, 2020

NR YES ☐ NO ☐  
NORMAL BIAS 120µs EQ

# FOIA and Virtual Meetings – Is It Live or Is It Memorex

November 20, 2020

Sandy Cruickshanks, Laurens County Attorney

Ginny Dupont, Spartanburg County Attorney

MEMOREX® DBS

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*Sorry* We're  
**CLOSED**



State of South Carolina  
Executive Department



FILED

MAR 17 2020

Mark Hammond  
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO.

2020-10

**Section 5.** I hereby prohibit and direct the postponement, rescheduling, or cancellation, as applicable, of any organized event or public gathering scheduled to be hosted or held at any location or facility owned or operated by the State of South Carolina, or any political subdivision thereof, beginning Wednesday, March 18, 2020, and through Tuesday, March 31, 2020, if any such event or gathering could or would involve or require simultaneously convening fifty (50) or more persons in a single room, area, or other confined indoor or outdoor space. This Section does not apply to essential or emergency meetings of state or local government bodies or gatherings of government officials or employees or other personnel that may be required in connection with the performance of emergency or essential government functions. However, to the extent possible, state or local government bodies should utilize any available technology or other reasonable procedures to conduct such meetings and accommodate public participation via virtual or other remote or alternate means.

This Order is effective immediately and, with the exception of Sections 4 and 5, shall remain in effect for a period of thirty (30) days unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.



GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 17th DAY OF  
MARCH, 2020.

  
HENRY MCMASTER  
Governor

ATTEST:

  
MARK HAMMOND  
Secretary of State



REFORMATTING  
RESCHEDULING  
CANCELING  
VIRTUAL MEETINGS



**South Carolina Code Annotated §30-4-60 (Freedom of Information Act) states:**

“Every meeting of all public bodies shall be open to the public unless closed pursuant to §30-4-70 . . .”

**South Carolina Code Annotated §30-4-20(d) defines a “Meeting” as:**

“the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.”

A “Quorum” is thereafter described as:

“a simple majority of the constituent membership of a public body (unless otherwise defined by applicable law).”





A close-up of Gene Wilder as Willy Wonka. He is wearing a brown top hat, a purple velvet jacket, a white shirt, and a patterned tie. He has a smug, slightly mischievous expression, resting his chin on his right hand. The background is slightly out of focus, showing a yellow wall and a dark doorway.

**Tell me again**

**Why this meeting  
couldn't have been just  
an email?**

## **THE ATTORNEY GENERAL HAS OPINED:**

Meetings of public bodies do not have to be held in a specific location and can be conducted via telephone as long as the other requirements of FOIA are met, unless the statutes that govern the public body require the meetings to be held at a specific location or in a particular manner. Section 7-17-220 calls for the SC Election Commission to meet at the office of the Commission, unless otherwise provided in §7-3-10(c). Section 7-3-10(c) requires the Commission to also meet at its offices or at a more convenient location. These provisions do not contemplate a meeting via conference call. Op. S.C. Att’y Gen., 2007 WL 1651329 (May 18, 2007).

Telephonic and electronic meetings must comply with all the provisions of FOIA. This includes the provision set forth in § 30-4-60 that all meetings of a “public body” shall be open to the public. This also includes the provisions set forth in § 30-4-80 and § 30-4-90 that require giving notice of the meetings and keeping minutes of the meetings. It is recommended that a speaker phone be placed in a conference room or other gathering place in the offices which would allow several persons to monitor what was taking place in the meeting and to communicate with members as needed. An ordinance outlining the procedures for telephonic meetings is not necessary since the requirements are outlined in the FOIA. An ordinance could not limit the FOIA. Op. S.C. Att’y Gen., 2005 WL 2250207 (Aug. 25, 2005).

Convening a meeting telephonically is permitted by the Act. Op. S.C. Att’y Gen., 2000 WL 1205954 (June 21, 2000).

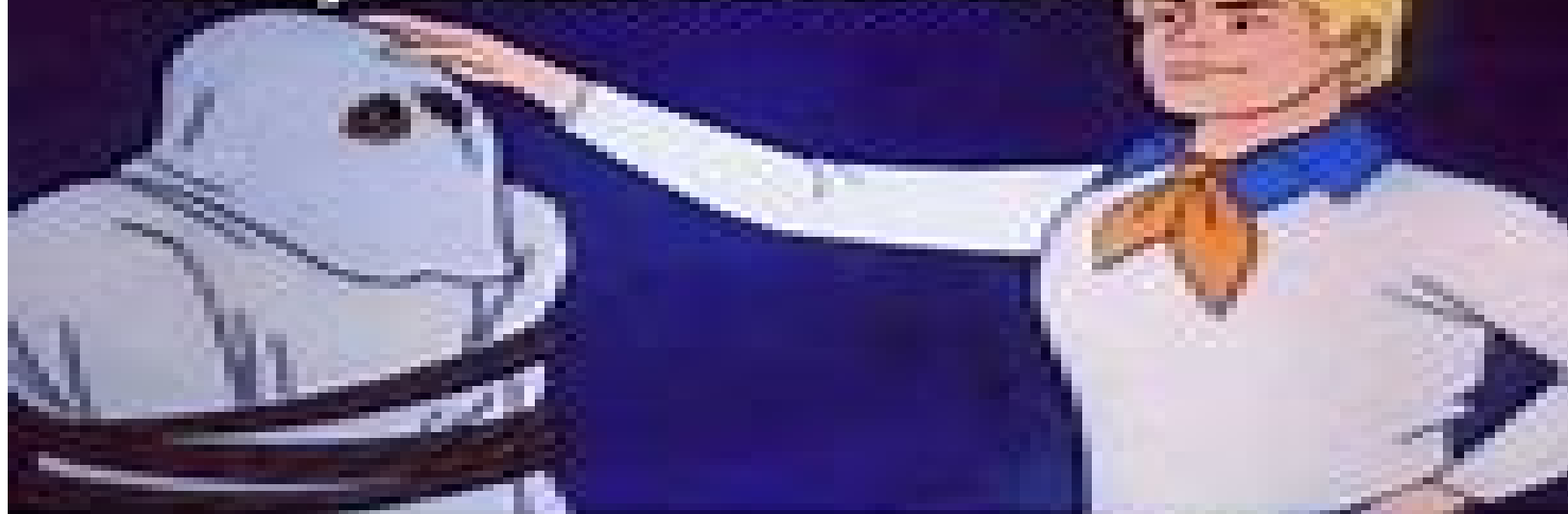
Using telephone poll to handle matters over which public body has authority would most probably not comply with Act. Rather, meeting of body either corporally or by means of electronic equipment such as telephone conference call would be preferable way to handle emergency situation so body may act collectively rather than its members acting individually and independently. Op. S.C. Att’y Gen., 1992 WL 575608 (Jan. 21, 1992).

Barring a requirement that the delegation meet in a particular location, we believe it would be able to use electronic means to conduct its meetings in compliance with FOIA. While our opinions namely address meetings over conference call, there have been advancements in technology that allow meeting to be conducted with video via the internet, which may satisfy the meeting requirement as well. Regardless of the means used to conduct the meeting, we again caution that other aspects of FOIA, including the notice requirements under [section 30-4-80 of the South Carolina Code](#) (Supp. 2019), must be met if a meeting is conducted by means of electronic equipment. Op. S.C. Att’y Gen., 2020 WL 2266981 (April 27, 2020).

The South Carolina Freedom of Information Act (“FOIA”) contemplates the conduct of meetings by public bodies via electronic means. [Section 30-4-20\(d\) of the South Carolina Code](#) (2007) defines “meeting” for purposes of FOIA as “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” (emphasis added). This Office has long advised such language authorizes meetings to be conducted via telephone conference call so long as the public body is not statutorily restricted to meeting in a physical location. See Ops. Att’y Gen., [1981 WL 96555 \(S.C.A.G. Mar. 25, 1981\)](#) and [1980 WL 121071 \(S.C.A.G. Nov. 17, 1980\)](#). More recently, we interpreted this language as also allowing meetings conducted with video via the internet. Op. S.C. Att’y Gen., [2020 WL 2266981](#) (April 27, 2020).



Lets see who's  
really behind COVID-19



**BUT BEFORE WE GO VIRTUAL, TELEPHONIC OR ELECTRONIC THE ATTORNEY GENERAL  
HAS WARNED:**

“Also of importance, we note that our state's FOIA cautions that “[n]o chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” [S.C. Code Ann. 30-4-70\(c\) \(2007 & Supp. 2014\)](#).” Op. S.C. Att’y Gen., 2015 WL 1093149 (February 25, 2015).

South Carolina Code Ann. §30-4-60 requires that every meeting of all public bodies be open to the public unless closed for Executive Session.



# SO WHAT ARE THE STEPS TO COMPLY WITH FOIA?

## 1. Public Notice and Agenda

§ 30-4-80. Notice of meetings of public bodies.

- (A) All public bodies, except as provided in subsections (B) and (C) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board or website, if any, public notice for any called, special, or rescheduled meetings. This requirement does not apply to emergency meetings of public bodies. Once an agenda for a regular, called, or special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours' notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any § 30-4-80 53 statutorily required public hearing.
- (B) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.
- (C) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (A), must make reasonable and timely efforts to give notice of their meetings.
- (D) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.
- (E) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

HISTORY: 1978 Act No. 593, § 9; 1987 Act No. 118, § 7; 2015 Act No. 70, § 1.

## EXAMPLE OF VIRTUAL MEETING AGENDA HEADING

An agenda should give the public notice as to how the meeting will be conducted along with necessary instructions.

Spartanburg County Council  
General Session  
Monday, April 20, 2020  
4:30 PM  
Virtual Meeting

The County Administration Building is currently closed for public meetings.  
Regular Meeting to be conducted with remote participation.

Links and instructions for how to access this meeting via computer or mobile device will be available on the County's webpage and provided to the local media.

Citizens may access the meeting at the following web address:

[https://www.youtube.com/channel/UC7gqyyNDZ0uoyo\\_g7qCsoCw?view\\_as=subscriber](https://www.youtube.com/channel/UC7gqyyNDZ0uoyo_g7qCsoCw?view_as=subscriber)



## EXAMPLE OF POSTED PUBLIC COMMENT INSTRUCTIONS

Please note that in response to the threat of COVID-19, the Laurens County Council Chambers or designated location will be restricted to access to council and required staff only. The general public and press/media access to the meeting will be provided by a live video stream from the County's website at [www.laurenscountysc](http://www.laurenscountysc). The video of the Council meeting will be also archived on the county's website at [www.laurenscountysc](http://www.laurenscountysc).

Citizen public comments and public hearing comments will be accepted in writing via email and directed to the Clerk to Council at [bwalsh@co.laurens.sc.us](mailto:bwalsh@co.laurens.sc.us) or mailed to the County Council's Office, PO Box 445, Laurens, SC 29360. If received prior to the distribution of the agenda packages, your comments will be forwarded to the full Council. **ALL written comments must be received by NOON on the date of the Council meeting. Others received after this designated day and hour will not be read until the next meeting of Council.**

## **EXAMPLE OF POSTED PUBLIC HEARING NOTICE/INSTRUCTIONS**

### **NOTICE OF PUBLIC HEARING ON THE PROPOSED ISSUE OF NOT EXCEEDING \$5,500,000 OF GENERAL OBLIGATION BONDS OF THE CHEROKEE SPRINGS FIRE DISTRICT, SOUTH CAROLINA**

The County Council of Spartanburg County (the "County Council"), the governing body of Spartanburg County, South Carolina (the "County"), is considering whether the Cherokee Springs Fire District, South Carolina (the "District") shall be authorized to issue not exceeding \$5,500,000 of general obligation bonds of the District (the "Bonds"). On March 16, 2020, the County Council adopted a resolution authorizing the holding of a public hearing on such matter. As required by Section 6-11-840 of the Code of Laws of South Carolina 1976, as amended, you are advised of the following:

1. A public hearing will be held via an electronic meeting on Monday, May 18, 2020 at 5:30 p.m. on the question of the issuance of the Bonds (the "Public Hearing"). The Public Hearing will be held in accordance with the County Council's procedures for conducting electronic meetings. Those wishing to provide written public comments for the public hearing should email comments to the Clerk of County Council (the "Clerk") at [dziegler@spartanburgcounty.org](mailto:dziegler@spartanburgcounty.org) by no later than 5:00 p.m. on May 18, 2020. Those wishing to make oral comments at the public hearing should email the Clerk at [dziegler@spartanburgcounty.org](mailto:dziegler@spartanburgcounty.org) by no later than 4:30 p.m. on May 18, 2020, and provide their name and a telephone number where they can be reached. The Clerk will contact those who have signed up to provide oral comments via telephone in the order the request was received. The Public Hearing will be livestreamed on the Spartanburg County Council Meeting Livestream, which may be accessed via the County's website at <https://www.spartanburgcounty.org/189/County-Council>.

## 2. Keeping of Minutes

§ 30-4-90. Minutes of meetings of public bodies.

- (a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to: (1) The date, time and place of the meeting. (2) The members of the public body recorded as either present or absent. (3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken. (4) Any other information that any member of the public body requests be included or reflected in the minutes.
- (b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter.
- (c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter, provided that in so recording there is no active interference with the § 30-4-90 57 conduct of the meeting. Provided, further, that the public body is not required to furnish recording facilities or equipment.

History: 1978 Act No. 593, § 10; 2001 Act. No. 13, § 1.

## **OTHER CONSIDERATIONS FOR A VIRTUAL OR TELEPHONIC OR ELECTRONIC MEETING:**

1. Public Hearings
2. Public Comment
3. Participation/Attendance of Public
4. Recording/Retention
5. Verification of Attendance and Votes of Members

## TEMPLATE NOTICE of ELECTRONIC PUBLIC HEARING

Courtesy of Pope Flynn, LLC

A public hearing will be held via an electronic meeting on [Date and Time] on the question of the approval of an annual budget of [Local Government] (the “Public Hearing”). The Public Hearing will be held in accordance with the [governing body’s] procedures for conducting electronic meetings. Those wishing to provide written public comments for the public hearing should email comments to [e-mail address] no later than one hour prior to the time set for the public hearing. Those wishing to make oral comments at the public hearing should e-mail [e-mail address], and provide their name and a telephone number where they can be reached during the Public Hearing. Those who have signed up to provide oral comments via telephone will be contacted during the Public Hearing in the order the request was received. The Public Hearing may be accessed by the public in the same manner as public meetings of the [governing body].



## **TEMPLATE ELECTRONIC PUBLIC COMMENT/PUBLIC HEARING POLICY**

Courtesy of Pope Flynn, LLC

With respect to any electronic meeting, any public comment periods provided for by local ordinance, resolution, policy, or bylaws are hereby suspended. Members of the public may submit written public comments to the [clerk/secretary/etc.] no later than one hour prior to any regular meeting, which shall be distributed to the members of the Governing Body at such meeting.

With respect to any public hearing that is required by law to be held in connection with any proposed action of the Governing Body, electronic public hearings shall be permitted. Individuals wishing to provide written comments for any such public hearing may e-mail comments to the [clerk/secretary/etc.] no later than one hour prior to the scheduled time for such public hearing, and the presiding officer shall read such comments aloud during the public hearing. Individuals wishing to speak at the public hearing shall sign up with the [clerk/secretary/etc.] no later than one hour prior to the scheduled time for the public hearing. The [clerk/secretary/etc.] shall contact those who wish to speak at the public hearing by phone, in the order the requests were received, to admit them to the public hearing. Public hearings shall otherwise be conducted in accordance with all other rules and procedures of the governing body. Notices of public hearings shall include detailed instructions regarding the manner in which the public hearing shall be held.

## **TIPS ON HOW TO CONDUCT A VIRTUAL MEETING WITH PARTICIPATION/ATTENDANCE OF THE PUBLIC**

Courtesy of the South Carolina Association of Counties  
And Pope Flynn, LLC

1. Conduct a Council Meeting by telephone conference with public access to the conference call.
2. Stream a meeting where only Council Members and necessary staff are physically present and the public can stream and e-mail questions or comments for public comment period, or where they can listen by dialing into a conference call and comment during the public comment period, or they can e-mail questions or comments to Council, if a period for public comment is provided for during the meeting. While the provisions of the law dealing with public hearings (§4-9-130 and §6-1-80) are silent as to whether or not a public hearing could be conducted by virtual means, the opinion is that they can as long as the meeting is properly noticed and the public has access to participate in the virtual meeting as outlined.
3. Provide for a speaker phone or some other electronic media to be placed in the normal meeting room of the governing body to allow the public to listen to any electronic meeting.

## RECORDING/RETENTION OF A VIRTUAL MEETING

South Carolina FOIA only requires that written minutes of the public meetings be kept.

Many Clerks to Council simultaneously record the proceedings – recordings can even be done virtually.

Recordings of the meetings on any medium would then become a “public record” subject to release under FOIA.

But what about livestreaming? Once the livestream is over, is there any duty to maintain a recording? And if a recording of the livestream is done, is it actually in the public body’s possession to become a “public record” if actually maintained by the virtual platform?





## **TIPS ON HOW TO CONDUCT A VIRTUAL MEETING WITH VERIFICATION OF ATTENDANCE/VOTING OF MEMBERS**

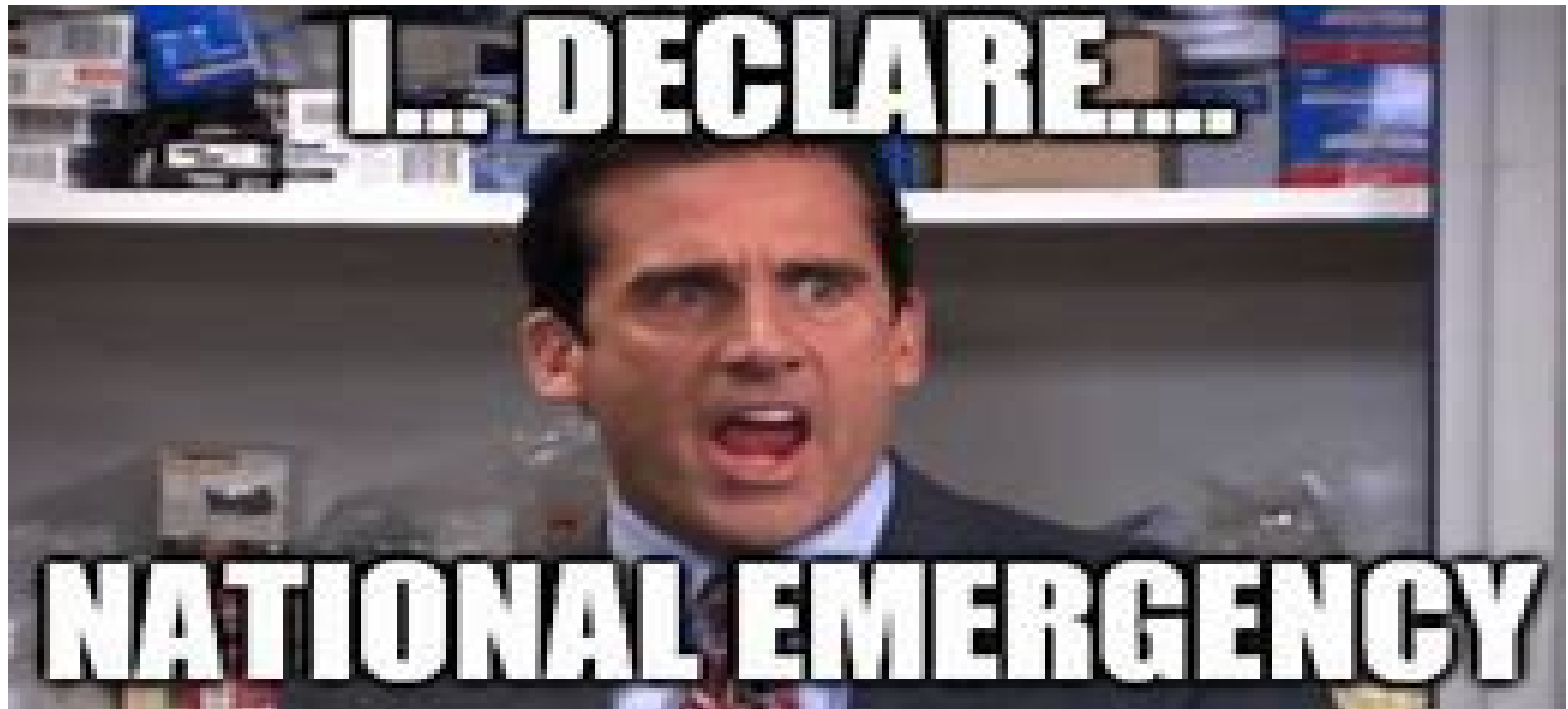
Courtesy of the South Carolina Association of Counties

1. Council Members should identify themselves each time they speak during the meeting.
2. All voting shall be done by roll call voting or in some manner that allows the votes of each Council Member to be recorded into the minutes.
3. If individual Council Members will be attending the meeting via telephone, the Chairman needs to identify those members at the beginning of the meeting.



## HOW DO WE OFFICIALLY GET TO UTILIZING THE ELECTRONIC MEETING?

1. Emergency Ordinance/Resolution Allowing for Electronic Meetings
2. Emergency Declaration



**TEMPLATE EMERGENCY ORDINANCE/RESOLUTION  
ALLOWING FOR ELECTRONIC MEETINGS  
Courtesy of Pope Flynn, LLC**

**Single Reading Required:** Under South Carolina law, cities and counties may enact an emergency ordinance of this type by a single reading and without providing twenty-four hours' notice of the meeting. Special purpose districts and other forms of local governments may also adopt this resolution by a single reading, as would typically be the case, and may also hold the meeting at which such an emergency resolution is adopted without giving twenty-four hours' notice. The expiration date of any emergency ordinance for any city or county is established by State law. It may be advisable for other types of local governments to include such an expiration date as well.



## EMERGENCY [ORDINANCE/RESOLUTION]

**WHEREAS**, on March 13, 2020, Governor Henry McMaster issued Executive Order No. 2020-08 related to 2019 Novel Coronavirus (“**COVID-19**”) and declared that a State of Emergency exists in South Carolina; and

**WHEREAS**, pursuant to Section 25-1-440(a)(1) of the Code of Laws of South Carolina 1976, as amended, when an emergency has been declared, proclamations and regulations issued by the Governor possess the force and effect of law as long as the emergency exists; and

**WHEREAS**, on March 17, 2020, Governor Henry McMaster issued Executive Order No. 2020-10 directing local governing bodies to “utilize any available technology or other reasonable procedures to conduct such meeting and accommodate public participation via virtual or other remote or alternate means”; and

**WHEREAS**, on March 23, 2020, Governor Henry McMaster issued Executive Order No. 2020-13 restricting gatherings of people in groups of three or more outside of private homes if, in the discretion of law enforcement, such gatherings pose, or could pose, a threat to public health; and

**WHEREAS**, while it is imperative for local government to continue to operate during States of Emergency, it is equally imperative for local governments to take steps to minimize the need for large gatherings in order to protect public health and safety and the health and safety of local government officials and staff; and

**WHEREAS**, the South Carolina Freedom of Information Act, , which is codified at Title 30, Chapter 4 of the Code of Laws of South Carolina 1976, as amended, (the “**Act**”) defines a “Meeting” as “the convening of a quorum of the constituent membership of a public body, whether corporal *or by means of electronic equipment*, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power” (emphasis added); and

**WHEREAS**, pursuant to the above-mentioned Executive Orders and the State of Emergency related to COVID-19, it is necessary to make provisions for the holding of electronic public meetings, while ensuring any electronic meeting fully complies with the open meeting requirements of the Act; and

**WHEREAS**, the Act further permits that emergency meetings of public bodies may be held without having provided twenty-four hours’ notice of such meeting; and

[**WHEREAS**, South Carolina law provides that cities and counties may enact emergency ordinances to meet public emergencies affecting life, health, safety or the property of the people upon a single reading, provided that such ordinance does not levy taxes, grant, renew or extend a franchise or impose or change a service rate, upon the affirmative vote of at least two-thirds of the city or county council present, and provided that such emergency ordinance shall expire automatically on the sixty-first day following its enactment; and]

**WHEREAS**, it is hereby determined that a public emergency affecting life, health, and safety does exist, and therefore, it is appropriate and necessary to conduct an emergency meeting in order to [enact/adopt] this Emergency [Ordinance/Resolution].

**NOW THEREFORE**, be it hereby [ordained/resolved] in this emergency meeting of the [City Council/County Council/Commission/Board] (the “**Governing Body**”), as follows:

**Section 1. Standards for Electronic Meetings.** The Governing Body is hereby authorized to conduct public meetings exclusively in electronic form, provided the medium for such meeting, whether telephonic, broadcast video, computer-based, or other electronic media, or any combination of these, and the conduct of the electronic meeting, allows for the following standards and practices to be met:

(a) At the beginning of any electronic meeting, the presiding officer shall poll the members of the Governing Body to confirm attendance, and any member of the Governing Body attending by way of electronic media shall be considered present for the purposes of constituting a quorum.

(b) Throughout the duration of the electronic meeting, all members of the Governing Body, as well as any officials or staff required to speak at such meeting, must have the capability to be heard at all times by any other member of the governing body and by the general public.

(c) Any vote of the Governing Body must be conducted by individual voice vote of the members of the Governing Body, who shall verbally indicate their vote on any matter by stating “yay” or “nay.” All individual votes shall be recorded by the clerk, secretary, or presiding officers, as appropriate.

(d) Meetings shall be recorded or minutes kept in the same manner as an in-person meeting as required by the Act.

(e) All members of the governing body, officials, staff, and presenters should identify themselves and be recognized prior to speaking. Members of the Governing Body shall strictly comply with the rules of the Governing Body as they relate to procedural matters in order to preserve order and allow for the effectiveness of electronic meetings.

(f) Electronic executive sessions shall be permitted in accordance with the provisions of the Act and the Governing Body shall properly announce its reason for going into any executive session in conformance with Section 30-4-70 of the Act. Upon the entry into any electronic executive session, meeting minutes need not be kept and the electronic meeting utilized for such executive session may be held by (i) a separate telephonic, broadcast video, computer-based, or other electronic media, or any combination of these wherein the public shall not be permitted to participate, or (ii) on the initial telephonic, broadcast video, computer-based, or other electronic media, or any combination of these, with the implementation of necessary participation or listening restrictions, provided that in either instance all members of the Governing Body must have the capability to be heard at all times.

(g) With respect to any electronic meeting, any public comment periods provided for by local resolution, policy, or bylaws are hereby suspended. However, members of the public may either (i) submit written public comments which shall be distributed to the members of the Governing Body, or (ii) make a written request to the moderator (as provided in the agenda materials) of the electronic meeting (at any time after the agenda for such meeting is posted until 15 minutes in advance of the start of such meeting) to make a presentation during a public comment period or public hearing.

**Section 2. Procedures for Boards, Commissions, and Committees.** The normal operating procedures all boards, commissions, and committees are temporarily suspended in order to allow the meetings thereof to be conducted using electronic means; provided that such electronic means conforms to the standards set forth in Section 1, as they may be amended by the Governing Body.

**Section 3. Conflicts in Procedures.** To the extent that any board, commission, or committee is authorized by South Carolina law to establish its own rules of procedure, the procedures set forth in Section 1 for electronic meetings shall apply by default, unless such board, commission, or committee takes action to the contrary. To the extent that any provision of South Carolina law permits the Governing Body to adopt rules of procedure for any board, commission, or committee by ordinance or otherwise, this Ordinance shall suffice to fulfill that purpose during its term of effectiveness.

**Section 4. Suspension of Local Provisions.** During the period of effectiveness of this [Ordinance/Resolution], any ordinance, resolution, policy, or bylaw of the Governing Body that conflicts with the provisions hereof is suspended and shall be superseded hereby.

**Section 5. Effective Date; Expiration.** The provisions hereof shall be effective upon a single hearing and two-thirds vote of the Governing Body, and shall expire on the sixty-first day following the effective date hereof.

**DONE AS AN EMERGENCY [ORDINANCE/RESOLUTION] AT AN EMERGENCY MEETING** and approved at a meeting duly assembled by no less than an affirmative vote of two-thirds of the members of the Governing Body present, this \_\_\_\_ day of \_\_\_\_, 2020.

[LOCAL GOVERNMENT]

(SEAL)

\_\_\_\_\_  
[Presiding Officer]

ATTEST:

\_\_\_\_\_  
[Clerk/Secretary]

**SPARTANBURG COUNTY, SOUTH CAROLINA  
EMERGENCY ORDINANCE 2020-01**

**AN ORDINANCE MAKING A SPARTANBURG COUNTY COUNCIL DECLARATION  
OF A STATE OF EMERGENCY IN SPARTANBURG COUNTY, SOUTH CAROLINA  
IN RESPONSE TO THE PUBLIC SAFETY AND HEALTH THREAT OF THE NOVEL  
CORONAVIRUS (“COVID-19”), EFFECTIVE APRIL 6, 2020; AND OTHER MATTERS  
RELATING THERETO INCLUDING IMPLEMENTATION OF MEASURES DEALING  
WITH THE STATE OF EMERGENCY**

**WHEREAS**, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020;

**WHEREAS**, also on March 13, 2020, the Governor of the State of South Carolina issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus (“COVID-19”) poses an actual or imminent public health emergency for the State of South Carolina;

**WHEREAS**, the President’s Coronavirus Guidelines for America recommend avoidance of social gatherings in groups of more than ten people;

**WHEREAS**, on March 23, 2020, the Governor issued Executive Order 2020-13, which authorizes law enforcement officers of the State, or any political subdivision thereof “to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health;”

**WHEREAS**, the President, the Governor, and public health authorities have all recommended observance of social distancing, including the maintenance of safe zones of at least six feet between individuals;

**WHEREAS**, the County of Spartanburg, South Carolina (the “County”) is required to meet in public in order to discharge its official duties;

**WHEREAS**, the County has determined that conducting meetings in the ordinary course and in the usual manner would create a public health hazard by involving a gathering of more than three people and in which minimum social distancing could not be reliably observed;

**WHEREAS**, the South Carolina Freedom of Information Act (“SC FOIA”) defines “meeting” as “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power,” S.C. Code § 30-4-20(d) (emphasis added);

**WHEREAS**, the South Carolina Attorney General has opined that “in the absence of a statute requiring it to meet physically in a certain place, [SC FOIA] authorizes a public body to meet by means of a telephone conference call so long as the public body complies with the other provisions of the South Carolina Freedom of Information Act,” *Op. S.C. Att’y Gen.*, 2007 WL 1651329, at 2 (May 18, 2007); *see also Op. S.C. Att’y Gen.*, 2012 WL 3875118 (August 28, 2012);

**WHEREAS**, the County Council of the County (the “County Council”) now desires to establish protocols for conducting meetings during the continuance of the COVID-19 crisis by telephone or other electronic means;

**WHEREAS**, the Council also needs and desires to address other emergent matters which have come to the Council’s attention during the state and national emergency which must be addressed in order to protect the life, safety, health, welfare, and property of its citizens and visitors;

**WHEREAS**, S.C. Code § 4-9-130 provides that “[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;” and

**WHEREAS**, this Ordinance has been approved by at least two-thirds of the Councilmembers present at the meeting in which it was considered and at which a quorum was present:

**NOW, THEREFORE, BE IT ORDAINED** as an Emergency Ordinance, in accordance with South Carolina Code of Laws Title 4, Article 9 Section 130 and the Spartanburg County Code of Ordinances, that Spartanburg County, South Carolina, acting by and through its governing body, the Spartanburg County Council declares that a state of emergency exists, in the County and State and Nation, and that the threat therefrom to life, health, safety and property is imminent, and extraordinary emergency measures are deemed necessary and appropriate to cope with the existing and anticipated situation. Spartanburg County hereby implements a COVID-19 Response operations plan and all necessary emergency procedures required thereby, immediately upon enactment of this Emergency Ordinance on April 6, 2020, and until further notice.

1. The County Administrator, in consultation with the Council Chairman, and all County staff, under their direction, are authorized to take any lawful necessary actions and use all available resources for protection of the health, safety and welfare of Spartanburg County citizens and visitors, including but not limited to the following, each of which is hereby authorized and directed and ordered:



a. Utilize all available resources of county government as reasonably necessary and as funds are available to cope with the COVID-19 emergency in Spartanburg County; and

b. Transfer the direction, personnel, or functions of county departments and agencies or units thereof for purposes of facilitating or performing emergency services, as necessary or desirable; and

c. Compel performance by government officials and employees of the duties and functions assigned in the county emergency plan or the Administrator's directives hereunder; and

d. Suspend the production of records portions of the South Carolina Freedom of Information Act and any other portion of that Act which interferes with the implementation of this Ordinance or the Administrator's actions hereunder due to lack of personnel; however, all parts and portions of the Freedom of Information Act which can be maintained under emergency conditions shall remain in force and effect, wherever possible; and

e. Suspend all other County government operations, and responses, which cannot reasonably be conducted under the existing circumstances, because of the lack of personnel in County offices, or otherwise; and

f. Take any and all other actions deemed necessary by the Administrator or his appointees, for the preservation of the health, safety and welfare of citizens, residents, and visitors of and to Spartanburg County, South Carolina, and their property.

2. All citizens and residents of, and visitors to Spartanburg County are requested, and directed to vigorously and zealously abide by and comply with the orders, directives, and information passed by the President of the United States and the Governor of South Carolina and their respective staffs, the Centers for Disease Control, the South Carolina Department of Health and Environmental Control, and all other lawfully created state and federal agencies, pertaining to Covid-19 and its causes, effects, precautions, treatments, and related matters.

3. All orders, ordinances, resolutions, and normal procedures and parts of the Spartanburg County Code of Ordinances in conflict herewith, or which would hinder the application and use of emergency procedures pursuant hereto or otherwise, are hereby suspended until the later of the dates in Paragraph 3, hereof. Specifically, but without limitation in any regard, all meetings of Spartanburg County and any of its boards, commissions, or other public and non-public bodies may be conducted electronically, using all available electronic means, while still being conducted and broadcast in such a manner as to honor the letter, spirit, and intent of the South Carolina Freedom of Information Act to the greatest degree possible, given the circumstances and the resources available, and specifically with heed to the limitations on meeting size provided herein and by other state and national directives. Specific guidelines for the conduct of public meetings by electronic means are provided in Attachment A, hereto, the terms of which are hereby incorporated by reference thereto as fully as if quoted herein verbatim. All other terms and provisions of the Spartanburg County Code of Ordinances not superseded or suspended hereby or by the emergency measures and actions authorized hereby, directly or indirectly, by necessity, shall remain in full force and effect.

4. This Ordinance and its declaration of emergency shall take effect immediately upon enactment and shall remain in force until, in the Administrator's determination, aided and assisted by all such assets and sources of information as he should deem necessary, emergency conditions associated with COVID-19 and its virus have subsided and the emergency procedures and limitations in Spartanburg County are no longer necessary to protect the life, safety, health, welfare, and property of our citizens, or upon the sixty-first (61st) day after the effective date of this emergency ordinance, whichever comes first.

5. Should any part or provision of this ordinance be declared unconstitutional or otherwise unenforceable by final order of any court of competent jurisdiction, such order will have no force or effect on any other part or provision, all of which are, and shall remain, separate and separable. All other terms and provisions of the Spartanburg County Code of Ordinances not amended or affected hereby shall remain in full force and effect.

**ENACTED AND EFFECTIVE** in meeting, duly assembled, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

\_\_\_\_\_  
B. Cole Alverson  
County Administrator  
Spartanburg County

\_\_\_\_\_  
A. Manning Lynch, Chairman  
Chairman, Spartanburg County Council

\_\_\_\_\_  
Debbie Ziegler  
Clerk to Council

## **ATTACHMENT A**

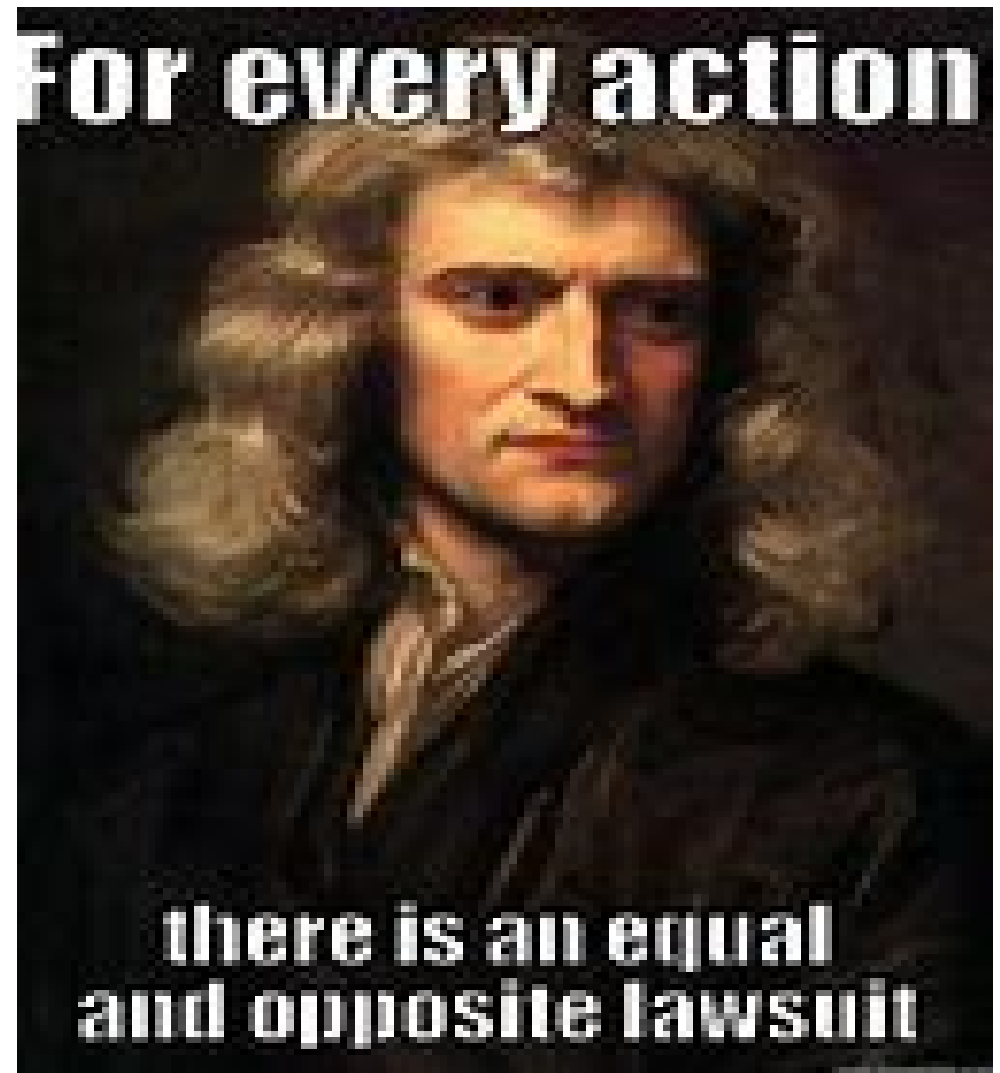
**Section 1. Remote Meetings During the COVID-19 Crisis.** The provisions of this Section shall apply to Council and to any and all boards, commissions, committees, or other subsidiary, related, or delegated bodies of the County (collectively, "Boards and Commissions"). For a period beginning on the date of enactment of this Ordinance and continuing until the sixty-first day following such enactment (the "Emergency Term"), the Council and all of its Boards and Commissions shall be entitled to conduct all regular and special meetings by telephone or other electronic means, provided that:

- a) Members attending by electronic means shall be able to hear any and all comments made by the public, staff, and other council members;
- b) All public participants and attendees, staff, and other members shall be able to hear the comments, motions, and votes of the members attending such meeting by electronic means;
- c) Other than establishing the electronic connections, there shall be no communications among the members attending electronically, unless such communication is part of the meeting and can be heard by all public participants or attendees; and
- d) The comments, motions, and votes of the members attending electronically shall be recorded in the minutes of the meeting.

Collectively, these conditions are referred to as the "Participation Requirements."

**Section 2. Physical Presence Not Required to be Counted as Part of a Quorum.** The provisions of this section shall apply to Council and to all of its Boards and Commissions. During the Emergency Term, and notwithstanding any other provision of applicable State or local law, a member attending a meeting of Council or any of its Boards and Commissions by telephone or electronic means in compliance with the Participation Requirements, whether physically present or not, shall be counted as present in determining the quorum for such meeting.

# We Can Follow All These Steps, But Still, We Get Sued



STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Faith Adedokun

Plaintiff,

vs.

Greenville County Council

Defendant

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No: 20-CP-

**SUMMONS  
(Non-jury)**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you (and which has been filed in the Office of the Clerk of Court) and to serve a copy of your Answer upon the subscribers, at their offices located at 906 N. Church St., Greenville, SC 29601, within thirty (30) days after the date of such service, exclusive of the day of service, and if you fail to answer the said Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

Attorney For Plaintiff:

/s/ Jake Erwin

Jake Erwin  
SC BAR #79941  
906 N. Church St.  
Greenville, SC 29601  
864.316.2857  
jake@jakeerwin.com

**QUESTIONS?**



**ANYONE? ANYONE?**



**SOUTH CAROLINA  
ASSOCIATION OF COUNTIES**

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PO Box 8207  
Columbia, SC 29202-8207  
Phone: (803) 252-7255  
In-state: (800) 922-6081  
Fax: (803) 252-0379  
[scac@scac.sc](mailto:scac@scac.sc)  
[www.SCCounties.org](http://www.SCCounties.org)