



**SOUTH CAROLINA
ASSOCIATION OF COUNTIES**

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TECHNICAL BULLETIN

To: SCAC Board County
Council Chairs
County Attorneys
CAOs
Clerks to Council

From: SCAC Staff

Re: Virtual Meetings

This Technical Bulletin outlines how to conduct a virtual meeting in light of the current health and safety threat posed by the Novel Coronavirus (COVID-19). This Technical Bulletin does not constitute legal advice. It is intended for general information on this topic. Please consult your county attorney for specific issues affecting your county.

Governor McMaster's Executive Order 2020-11 dated March 19, 2020, in conjunction with Executive Order 2020-10 dated March 17, 2020, prohibits and directs 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. Governor McMaster then issued Executive Order 2020-13 dated March 23, 2020, that among other things, incorporated the President of the United States' Coronavirus Guidelines for America to avoid

social gatherings in groups of more than 10 people, and encourages “social distance practices.” The Order also authorizes law enforcement to prohibit or disperse the congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if law enforcement, in their discretion, determines that such a gathering of people poses or could pose a threat to public health.

SCAC legal staff has previously opined that absent the declaration of a state of emergency by the Governor that specifically prohibits county council meetings, county council must continue to meet at least once in each and every calendar month. SCAC has also opined that Title 4 of the S.C. Code of Laws grants counties authority over their own property (See § 4-1-10(4)). This authority along with the broad police powers granted in § 4-9-25 related to health and safety allows counties to control access to their buildings as a matter of health and safety. With that in mind, the Freedom of Information Act (FOIA), which requires transparency in public body meetings, allows meetings to be conducted by virtual means.

Section 30-4-20(d) of 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.” A council meeting could be conducted via conference call as long the meeting is properly noticed with an agenda, and the public has the ability to dial in to the conference call, listen, and make comments if there is a designated time during the meeting for public comment. Minutes of the meeting must also be recorded. There are some Attorney General (AG) opinions that provide guidance on conducting meetings via telephone. In a 2005 opinion, a city council inquired as to whether or not their ordinance regarding meeting attendance via telephone complied with FOIA if their ordinance contained the following provisions:

- a. A quorum of the council members are physically present at the meeting place, and remain physically present throughout the meeting; and
- b. The member(s) attending by teleconference can hear any and all comments made by the public, staff, and other council members (whether attending in-person or telephonically), at such meeting.
- c. Each of the members of public, staff, and other council members (whether attending in-person or telephonically) can hear the comments, motions and vote(s) of the member(s) attending such meeting telephonically.
- d. The individual presiding over the meeting is physically present during the meeting.
- e. Other than establishing the telephone connections, there shall be no communications between the member(s) attending by telephone and other members of council, unless such communication is (part) of the meeting, and can be heard by members of the public in attendance.

- f. All of the comments, motions, and votes of the member(s) attending telephonically must be capable of being recorded in the minutes of the meeting.

The AG opined that “the procedure outlined above for telephonic meetings by the city council would comply with FOIA.” Op. S.C. Att’y Gen., 2005 WL 2250207 (August 25, 2005). (It should also be noted that the AG indicated that based on the provisions in FOIA, it was not necessary for the city to have an ordinance governing meeting attendance via telephone). In another AG opinion, the AG opines that pursuant to § 30-4-20(d), a board member of a public body may attend a meeting of that body via phone, and be counted as part of the quorum and vote on matters at the meeting. Op. S.C. Att’y Gen., 2012 WL 3875118 (Aug. 28, 2012).

Due to technological advancements, meetings cannot only be conducted via telephone, but by other virtual means. A meeting can be streamed live by video, or through the use of some of the other digital platforms such as Go to Meeting, Zoom, or Skype, to name a few. Based on all of the above, SCAC offers some suggestions on how to conduct virtual meetings:

1. Conduct a council meeting by telephone conference with public access to the conference call. Council members should identify themselves each time they speak during the meeting. 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. If individual council members will be attending the meeting via telephone, the chair needs to identify the members at the beginning of the meeting attending by telephone.
2. Stream a meeting where only council members and necessary staff are physically present and the public can stream and email questions or comments for the public comment period, or where they can listen by dialing into a conference call and comment during the public comment period, or they can email 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, SCAC is of the opinion that they can as long as the meeting is properly noticed and the public has access to participate in the virtual meeting as outlined above.

As stated earlier, a virtual meeting has to meet all of the other FOIA requirements, namely posting an agenda at least 24 hours before the meeting, and recording the minutes of the meeting. The agenda should also give the public notice as to how the meeting will be conducted along with any necessary instructions. While each county may have different electronic resources, SCAC is willing to work with each county and their attorney to develop a system that

allows them to conduct their normal business and comply with FOIA during these challenging times.

If you have any questions, please contact Kent Lesesne at (803) 252-7255.