

**TEMPLATE EMERGENCY ORDINANCE/RESOLUTION
ALLOWING FOR ELECTRONIC MEETINGS**

(Updated as of April 24, 2020)

Disclaimer: *The template ordinance/resolution below is in draft form and is intended to allow local governments to permit electronic meetings in compliance with the South Carolina Freedom of Information Act where large public gatherings may be detrimental to public health. Pope Flynn, LLC is providing open access to this template, but makes no warranties or assurances that this template, as drafted, complies with any local ordinance, resolution, policy, or bylaws. While we have attempted to draft this broadly to supersede any existing ordinance, resolution, policy, or bylaws, it is advisable to consult with your legal counsel regarding any specific circumstances that may exist before taking action on or under this ordinance/resolution.*

Single Reading Required: *Under South Carolina law, cities and counties may enact an emergency ordinance of this type by a single reading. Special purpose districts and other forms of local governments may also adopt this resolution by a single reading, as would typically be the case. Local governments should consult with their legal counsel to determine whether it is appropriate under the South Carolina Freedom of Information Act to adopt this ordinance/resolution at an emergency meeting without having given 24-hours' notice of such meeting. 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. Provisions of this template that are in [brackets] may require revision based upon the type of local government or may not be applicable to all types of entities.*

Choice of Electronic Media: *Local governments have made use of a number of electronic means of conducting an electronic meeting; however, the critical feature of any media is that all members of the governing body attending by electronic means must be able to hear all comments made at the meeting and in turn all members, staff, and members of the public must be able to hear what is said at the meeting. See, Opinion of the Office of the Attorney General of South Carolina, March 14, 2017. It may be worthwhile to consider services such as GoToMeeting or Zoom that are specifically designed for conducting webinars or other electronic presentations where some presenters are able to speak while others may only listen. Many local governments have also chosen to broadcast electronic meetings using YouTube or similar services. The local government may 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, however, this may frustrate the intent of this template to eliminate the need for large public gatherings.*

EMERGENCY [ORDINANCE/RESOLUTION]

WHEREAS, on March 13, 2020, Governor Henry McMaster issued Executive Order No. 2020-08 related to the 2019 Novel Coronavirus (“**COVID-19**”) and declared that a State of Emergency exists in South Carolina; 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, on March 31, 2020, Governor Henry McMaster issued Executive Order No. 2020-17 directing that certain “non-essential” businesses, venues, facilities, services, and activities be closed to the public, including recreational and athletic facilities and activities; and

WHEREAS, on April 6, 2020, Governor Henry McMaster issued Executive Order No. 2020-21 directing citizens to not leave their residences unless they are engaging in essential activities or essential businesses; and

WHEREAS, on April 12, 2020, Governor Henry McMaster issued Executive Order No. 2020-23 declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 poses an actual, ongoing and evolving public health threat that requires additional proactive steps by the State and the continuation of measures to slow the spread of COVID-19 ; and

WHEREAS, on April 20, 2020 Governor Henry McMaster issued Executive Order No. 2020-28 modifying executive order 2020-18, as extended by Executive Order No. 2020-23, to authorize certain businesses, venues, facilities, services and activities to reopen in order to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, notwithstanding Executive Order No. 2020-28, individuals are still subject to the provisions of prior orders including Executive Order No. 2020-13, as extended by Executive Order No. 2020-23, prohibiting gatherings outside of homes of groups of three or more people; 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, 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**, 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 [enact/adopt] this Emergency [Ordinance/Resolution].

NOW THEREFORE, be it hereby [ordained/resolved] in this 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” or some similar verbal cue to indicate an affirmative or negative position on the

matter before the Governing Body. 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 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. However, any physical presence requirements or similar provisions in the procedural rules are hereby suspended.

(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.

(h) Additionally, the Governing Body, acting through staff, may establish separate rules and procedures for public hearings, if any, so long as the public is able to effectively participate in the public hearing with the Governing Body such that the spirit and purpose of the public hearing is fulfilled.

Section 2. Procedures for Boards, Commissions, and Committees. The normal operating procedures of 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.

[Remainder of Page Left Blank]

DONE AS AN EMERGENCY [ORDINANCE/RESOLUTION] 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]