

CHECKLIST FOR HOLDING COMPLETELY ELECTRONIC PUBLIC MEETINGS AND ENSURING PUBLIC ACCESS

AUTHORITY AND RESOURCE DOCUMENTS

Recent Emergency Declarations and Orders:

- [Presidential Declaration of National Emergency, 3/13/2020](#)
- [Governor's Declaration of State of Emergency, 3/12/2020](#)
- [Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, 3/17/2020](#)
- [Virginia Supreme Court Declaration of Judicial Emergency, 3/16/2020](#)
- [Local Declaration of State of Emergency and Related Resolutions](#)
- [Governing Body suspends Bylaws (Optional)]
- [Attorney General's Opinion - OAG Opinion, 3/20/2020](#)
- [Governor's Executive Order Closing Schools and Non-Essential Businesses, 3/23/2020](#)

Considerations Before You Proceed:

- Has your director of emergency management declared a local emergency pursuant to [Va. Code § 44-146.21\(A\)](#), (that was consented to by your local governing body before, or confirmed after, it was made) and does it identify the current situation as a “disaster”? If not, consider having an amended declaration issued. [see attached Albemarle County examples]
- Before proceeding with an ordinance to proceed with meetings held through electronic means, does your locality have other ordinances already in place that cover matters such as: (1) the succession of the members of your local governing body or other if they are dead or temporarily incapacitated (if not, consider [Va. Code § 24.2-228](#) as a starting point); and (2) amending the quorum requirements when there are temporary unfilled vacancies or, because of the disaster, some members are unable to participate (if not, consider [Va. Code § 2.2-3112\(D\)](#) as a starting point).
- Confirm that you have the technical capability to enable your governing body to conduct a meeting through electronic communication (phone or other).
- Must the governing body have to meet through electronic communication means or could it, if existing safe practices are maintained, physically assemble? Considerations include:
 - Whether there are members of the governing body and critical staff who are in vulnerable population groups.
 - Whether there is an available meeting location that would allow the applicable social distancing practices to be maintained.
 - Whether holding a meeting where the governing body is physically assembled sends a conflicting message to the public regarding social distancing and stay-at-home practices

- Are there matters on upcoming agendas that will generate high public interest? Are there matters that need action?
- Do you need to act immediately? (Counties may adopt emergency ordinances without prior notice pursuant to [Va. Code § 15.2-1427\(F\)](#); an emergency ordinance is valid for up to 60 days.)

Statutory and Other Authority - to be summarized at the meeting and in the meeting notice:

- **During a disaster, the Code of Virginia requires and allows governing bodies of localities and other public entities to conduct their meetings in manners which are consistent with providing continuity of government and in a safe and healthy manner and for the public safety, health and welfare for the governing body and all attendees/interested parties consistent with open government.**
- **The virus makes it impractical and unsafe, even life-threatening, for a quorum of the governing body to physically assemble in one location. [Va. Code § 2.2-3708.2\(A\)\(3\)](#).**

“Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with [Va. Code § 44-146.17](#) provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency...”¹

See *also* Gov. Direction to State entities attached to 3/13/20 Order.

- **The virus also makes it impractical and unsafe, as well as life-threatening, for the public, and the locality’s staff, to gather in the same location to participate in this meeting.**
- **A “disaster” exists which requires the locality to assure continuity in its government for a period not exceeding 6 months after the disaster. [Va. Code § 15.2-1413](#).**
- **Declarations of Emergency have been made at all levels of government, including this locality. [Va. Code § 44-146.21\(C\)](#);**

“the director of emergency management of each political subdivision or any member of the governing body in the absence of the director, if so authorized by the governing body, may. . .[among other powers] proceed without regard to time-consuming procedures and

¹ FYI: [Va. Code §15.2-925](#);

"Any locality may empower the chief law-enforcement officer to regulate, restrict or prohibit any assembly of persons or the movement of persons or vehicles if there exists an imminent threat of any civil commotion or disturbance in the nature of a riot which constitutes a clear and present danger. In such circumstances the governing body may convene immediately in a special meeting and enact an emergency ordinance or ordinances for such purposes, notwithstanding any contrary provisions in any charter or under the general law."

formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work. . .”

- **Cite Local Charter, Code, Rules of Procedure/Bylaws or Other Local Law or Regulations.**

Additional Reasons:

- Executive, Legislative and Judicial bodies at all levels have declared states of emergency based on the advice of Health Directors and taken unprecedentedly restrictive actions to limit physical contact.
- For counties, [Va. Code § 15.2-1200](#), the General Assembly recognizes the express and specific need for local governing bodies to be able to contain contagious diseases under their police powers. That section enables local governing bodies to adopt “necessary regulations to prevent the spread of contagious diseases among persons or animals.”
- For cities and towns, in addition to any authority provided in your charters, [Va. Code § 15.2-1102](#), the General Assembly provides “powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof,”
- We are community leaders and must lead by example.
- Matters on the agenda address important/essential matters of continuing the work of government.

HOLDING THE MEETING

Notice as set forth in [Va. Code § 2.2 – 3708.2](#)²

² The statute contains requirements for partially electronic meetings consistent with and to ensure the transparency of government intent of FOIA – follow these for completely electronic meetings:

“The public body convening a meeting in accordance with this subsection shall:

- a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting;
- b. Make arrangements for public access to such meeting; and
- c. Otherwise comply with the provisions of this section [e.g. notice, distribution of agenda, taking of minutes, recordation of votes, report to the FOIA Council, etc.]. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.”

Include in written notice (newspaper, website, etc.) key aspects of how the meeting will be conducted including:

- Provision for public access.
- Public participation –
 - Public comment is not required generally, consider whether to allow – if so, allow people to appear by video, phone, or submit in writing to be read by staff under the usual time limitations.
 - Public hearings – consider whether to allow by video, phone or at a location with a video and control access to the location.
- Provide agenda electronically when provide to governing body.
- Give public notice of any changes or cancellation of the meeting. [Va. Code § 2.2-3707](#).

The Meeting

Introduction to Meeting by Chair/Mayor (cover at least the following):

- Note the emergency and reference to the authority to proceed and where the public can review the ordinance and other documents.
- Indicate how long these procedures will be in effect, if known.
- Announce that an audio recording is being made of the meeting (if that is the case).
- Summarize the notice that was given, the access provided to the public, and how the meeting will proceed.
- State whether public comments will be taken and how, including time limits on each speaker and, for public hearings, the limit on the time of the public hearing portion of the item.
- Ask speakers to identify themselves when speaking.
- Explain that all votes will be by roll call and recorded in the minutes.
- Explain that elected officials who leave meeting or arrive must verbally note attendance.
- Ask other governing body members “Any questions about the process?”
- Point out that essential business of the entity is being done.

Have the clerk take attendance, announce that a quorum exists and proceed. (If videoconferencing is not used, consider having the Clerk hold additional quorum checks every hour of the meeting.)

Closed Meeting

- Motions for closed meeting and certifications as required by [Va. Code § 2.2-3711](#).
- Consider including in your ordinance adopted pursuant to [Va. Code § 15.2-1413](#) additional grounds to go into closed meeting. For example, [Va. Code 2.2-3711\(A\)\(19\)](#) authorizes your governing body to discuss:

“plans to protect public safety as it relates to *terrorist activity or specific cybersecurity threats or vulnerabilities* and briefings by staff members, legal

counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety.”

- Consider adding plans to “continue governmental operations or to protect public health and safety during the disaster.”

MEETING MINUTES REQUIREMENTS

- Memorialize all electronic meetings.
- Recommend making an audio recording of the meetings (not mandatory).
- Minutes must record the nature of the emergency, fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held. Va. Code §§ [2.2-3707](#) & [2.2-3708.2](#)
- State in the minutes why it was impractical or unsafe to assemble physically.

See *also* Gov. Direction to State entities in March 13, 2020.

RECORDKEEPING IN ACCORDANCE WITH FOIA

If a state public body, submit written report of all electronic meetings to FOIA Council on or before December 15, 2020, pursuant to [Va. Code § 2.2-3708.2\(D\)\(8\)](#).

OTHER RESOURCES

VML: <https://www.vml.org/coronavirus-resources/>

VACO: <https://www.virginia.gov/coronavirus-updates/>

Notice: This summary is provided by the Local Government Attorneys of Virginia, Inc. as general guidance. It is not to be considered legal advice. Officials should seek advice and direction from their county, city or town attorney on any specific questions. Issued 3/24/2020.