

# White Paper for North Carolina Planning Boards and Boards of Adjustment:

Holding Virtual Public Meetings

UPDATED VERSION



Centralina Council of Governments

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## **Disclaimer**

**This white paper is for information purposes only and not for the purpose of providing legal advice or recommendations.**

## Introduction and Purpose

In response to the COVID-19 crisis, local governments in North Carolina are canceling, postponing, modifying, and avoiding gatherings of people. This creates issues for local governments that are required by North Carolina statute to conduct public hearings and meetings to remain in compliance with state law and local ordinances. Many local government employees are working remotely, creating the need to connect with co-workers and the public using online technology.

The purpose of this paper is to provide information to local governments in North Carolina for how they might continue to conduct business when face-to-face meetings are not possible. This paper also includes guidance on technology resources, practical tips, and lessons learned through experience by using these technology resources. The information in this document is not meant to be a comprehensive accounting of all possible technologies but to provide a few options for communities to consider and weigh against their own needs.

The document is organized into the following sections:

1. Tools and Resources for Holding Virtual Public Meetings
2. Best Practices and Lessons Learned
3. Board of Adjustment Specific Information

Updated: [Session Law 2020-3 enacts G.S. 166A-19.24, which provides authority and procedures for remote meetings by simultaneous communications during declarations of emergency by the Governor or General Assembly. This authority is limited to only the area of the declared emergency and only for the duration of the declared emergency.](#)

## Tools and Resources for Holding Virtual Public Meetings

### Understanding the Context:

The first order of business is to understand the laws that govern in-person public meetings in North Carolina and how they translate to virtual meetings. The best resource for this analysis is the UNC School of Government (SOG). In a March 13, 2020 blog post, “Meetings and Public Hearings Under the Coronavirus State of Emergency,”<sup>i</sup> Frayda Bluestein, David M. Lawrence Distinguished Professor of Public Law and Government, provides an interpretation of the North Carolina General Statutes (NCGS) Open Meeting requirements and offers guidance for holding electronic meetings. Review this post to understand the context for conducting virtual public meetings.

Updated: [The new rules and procedures of G.S. 166A-19.24 apply to remote meetings which is defined as an official meeting “with between one and all of the members of the public body participating by simultaneous communications.”](#)

The SOG is posting on the Coates' Canon: NC Local Government Law website at: <https://canons.sog.unc.edu/> with updated information and interpretation of COVID-19 issues. This link also provides access to joining the RSS feed and email subscription.

### Tools to Hold Virtual Public Meetings:

*Please note that this is not meant to be an exhaustive list, but rather a resource providing several options that should be further vetted based on an individual community's needs.*

**Centralina Council of Governments does not endorse private sector companies, therefore, absence from this list is not a reflection on the quality of a product.**

In a blog post on the Coates' Cannon, "Can We Really Ban In-Person Attendance at Board Meetings During the Coronavirus Emergency,"<sup>ii</sup> Trey Allen, Associate Professor of Public Law and Government at the UNC School of Government, identifies the relevant North Carolina statutes that relate to open meetings and access by the public to meetings of a public body. Review Mr. Allen's post if you are interested in the background and legal issues.

Updated: In a blog post addressing the new G.S. 166A-19.24, "New Rules for Meetings of Public Bodies During State-Level Declared Emergencies,"<sup>iii</sup> Frayda Bluestein, David M. Lawrence Distinguished Professor of Public Law and Government, provides an interpretation of the new policy and how it impacts public notice, quorums, requirements for conducting remote meetings, voting, public hearings, and quasi-judicial evidentiary hearings. Please review this blog post for detailed information.

The following list of technology tools is provided to help your jurisdiction understand what technology is available to conduct meetings of a public body by electronic means. There are several variables that can determine how your jurisdiction chooses to implement virtual communication—ranging from equipment availability to local know-how. To add additional complexity, access, quality, and strength of internet connection varies across geography and residents may be limited by access, quality, and cost. Considerations should be made to make public body meetings as accessible for all as possible.

Depending on the specific technology, attendees could log-in via a computer, tablet, or smartphone at a location that is convenient for them. Then they can see and hear presenters and participate during public comment and public hearings.

### Audio and Visual Compatible Options:

Facebook Live <https://www.facebook.com/facebookmedia/solutions/facebook-live>

Google Hangouts <https://gsuite.google.com/products/meet/>

GoToWebinar <https://www.gotomeeting.com/webinar>

GoToMeeting <https://www.gotomeeting.com/>

Microsoft Teams <https://teams.microsoft.com/start>

Mural <https://mural.co/>

Skype for Business <https://www.skype.com/en/>

WebEx <https://www.webex.com/>

Zoom <https://zoom.us/join?zcid=3172>

Please note that there are call length and number of participant limitations for some of the software options depending on plans and pricing. Some of the above are free or have free options, while others require a subscription. Audio only software will limit access for the hearing impaired.

## Best Practices and Lessons Learned

Some readers of this paper may be veterans of virtual meetings while for other readers this might be the first time using this type of meeting format. Here are a few helpful tips that we would like to offer for your consideration.

The most helpful advice we can provide is to practice! Practice with whichever online meeting / conference call platform your jurisdiction has settled on using. Become familiar with the features and settings so that when issues arise during a meeting they can be quickly addressed.

### Publication & Notice of Meetings:

In order to ensure fair and equitable access to virtual public meetings, each jurisdiction must take the necessary actions to facilitate two-way communication. Actions include, but are not limited to:

- providing adequate notice to the public of the meeting including posting the information on the jurisdiction's website
- permitting participants to record or broadcast the public meeting
- allowing participants to address the public body during a public comment period

Updated: Under the new law, an electronic meeting notice issued during a state of emergency declared by the Governor or General Assembly must specify the means by which the public can access the remote "as that meeting occurs."

Regarding publication and access to a public meeting, access to many virtual meeting software tools requires a link or login information. A link or login information should be readily available to the public prior to the meeting, either through individual emails, posted on a community's website, and included in the public meeting notice. North Carolina's Open Meetings law states that if a public body changes its schedule of regular meetings then the public should be made aware at least seven (7) calendar days before the day of the first meeting. Every public body should keep full and accurate minutes of all official meetings, which can be in the written form or as an audio and video recording.

## Entry into a Virtual Meeting:

Instruct participants to login with their first and last names and that anyone using inappropriate/slang usernames will not be allowed to join. Some software (e.g., Zoom) allows the meeting host to put participants into a “Waiting Room” prior to the meeting so that the host can finish preparations. It is best practice to automatically mute participants and turn off video for participants upon joining the meeting to limit noise and disruptions. It is at the discretion of the board whether board members will remain muted during proceedings, which should be stated ahead of time. Participants that call in rather than video chat should have their phone numbers masked so they are not seen by anyone else.

Some online meeting software comes with the ability to track the attendance of those who logged in during the session and will provide a report after the meeting is complete. This report should be saved for possible future reference and meeting records.

There are some things to be aware of when hosting a public meeting on virtual software. For example, some software (e.g., Zoom) has experienced unwanted “gate-crashing” when entrance links are made public. “Gate-crashing” is where guests share their screen to display inappropriate or disturbing images. Ways to limit the probability of this happening include using host controls to limit screen sharing, using a waiting room to put guests in until the host is ready, disabling the private chat function, locking the meeting after it has started, and familiarizing oneself with other settings and features offered.

Updated: If live audio and/or video is made accessible to the public during a virtual meeting, the meeting must simultaneously be streamed online.

The minutes of remote meetings must reflect the use of simultaneous communication and which members were participating by simultaneous communications and when those members joined or left the remote meeting.

## Public Comments:

Comments from the public are an integral part of any public meeting and should be included during virtual meetings. Establishing a designated Question and Answer time will reduce confusion and interruptions. Those members from the public who would like to speak should use the “Raise Hand” function to be recognized. Alternatively, the “Chat” function can be utilized so that a queue can form. The meeting host or moderator will unmute participants individually during the public comment portion of the meeting. Most online meeting software has features such as a Chat Box, Raise Hand, or Question options for participants to engage with the meeting. We recommend practicing with the platform prior to a “real” meeting to become familiar with the features and tools.

Updated: Written comments for a public hearing may be submitted any time between the notice of the hearing until 24 hours after the hearing has taken place. This means that a public body will have to wait 24 hours after the hearing to take action on the matter in order to comply.

## Agenda Items:

When presenting agenda items, presenters have the option of sending out the presentation material ahead of time for the public and board members to view on their own screens. They can also utilize the “Share My Screen” function to present the material in real time. If they are sharing their screen, material should be readily available and web browsers/tabs should be kept to a minimum to avoid confusion and limit distraction.

As board members discuss agenda items, it would be beneficial if board members start each statement by saying their name, and then follow with their discussion item or statement. Any document that is used during the meeting must be made available to all board members and the public body.

## Motions & Voting:

New NC legislature recognizes virtual meetings as official meetings. For recording motions it is best practice for board members to state their name for the record, and for the Chair to verbally state the names of the board member who made the motion and the board member who seconded the motion.

UPDATED: If a board member is participating in a virtual meeting without the use of video it is required by law for that board person to introduce themselves verbally during roll call, when the meeting commences, before to deliberations, and before voting.

During remote meetings, all votes must be conducted by roll call. For recording votes of board members, an appointed individual should call on individual board members by name and ask them to state their vote. UPDATED: If a member of a public body participates in a meeting virtually they should be counted as present, and their vote is valid as long as they maintain communication for the meeting. If their connection is severed for whatever reason they should no longer be counted as present. The absence of a vote from a board member should not be assumed as an affirmative. No vote that is performed in secret or written ballots on paper or electronic will be counted.

If there is voting among the public, software with online voting and polling options should be chosen.

## Board of Adjustment Specific Information

For background, Adam Lovelady, Associate Professor of Public Law and Government at the SOG, wrote a recent blog post “*Remote Participation in Quasi-Judicial Evidentiary Hearings*,”<sup>iv</sup> which is a great resource. In a blog post addressing the new law “*Remote Zoning Hearings During Declared Emergencies*,”<sup>v</sup> Adam Lovelady provides additional interpretation for Zoning and QJ hearings.

With quasi-judicial cases, members of the public do not have the right to comment or actively participate in a Board of Adjustment hearing. If remote participation is necessary, all persons who have standing to participate have been given notice of the quasi-judicial hearing and consent to the meeting taking place virtually. For a definition of who may or may not have “standing”, refer to GS 160A-393(d) found here:

[https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-393.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-393.html)

Software that is equipped with both audio and visual access is preferred since it is closer to live engagement. At the discretion of the board, the general public may be called to provide factual testimony. All witnesses must be sworn in or affirmed, which can be done outside the jurisdiction’s front door before the virtual hearing, and then allow time for those participants to travel to where they are participating virtually to resume the hearing. Those who wish to provide a testimony must notify the local government’s Clerk prior to the hearing in order to arrange to have them sworn in. It is important to have a detailed agenda for the order of testimony prepared ahead of time, and that no public business be conducted other than what was approved.

Any party with legal standing has due process rights in a Board of Adjustment case, which includes the right to cross examine a witness. It is important to have procedures outlined for addressing cross-examination and evidence ahead of time. North Carolina gives some flexibility for the submission of evidence in quasi-judicial hearings.

## Closing

We are in a new state of practice and as additional lessons are learned we will do our best to update this document so that it remains useful. If you’d like to speak with a staff person from Centralina for help or guidance please contact us at [planning@centralina.org](mailto:planning@centralina.org).

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<sup>i</sup> Bluestien, Fradya. *Meetings and Public Hearings Under the Coronavirus State of Emergency*. <https://canons.sog.unc.edu/meetings-and-public-hearings-under-the-coronavirus-state-of-emergency/>. March 13, 2020.

<sup>ii</sup> Allen, Trey. *Can We Really Ban In-Person Attendance at Board Meetings During the Coronavirus Emergency*. <https://canons.sog.unc.edu/can-we-really-ban-in-person-attendance-at-board-meetings-during-the-coronavirus-emergency/> March 25, 2020

<sup>iii</sup> Bluestein, Frayda. *New Rules for Meetings of Public Bodies During State-Level Declared Emergencies*. May 5, 2020. <https://canons.sog.unc.edu/new-rules-for-meetings-of-public-bodies-during-state-level-declared-emergencies/>

<sup>iv</sup> Lovelady, Adam. *Participation in Quasi-Judicial Evidentiary Hearings*. <https://canons.sog.unc.edu/remote-participation-in-quasi-judicial-evidentiary-hearings/>. March 24, 2020.

<sup>v</sup> Lovelady, Adam. *Remote Zoning Hearings During Declared Emergencies*. May 6, 2020. <https://canons.sog.unc.edu/remote-zoning-hearings-during-declared-emergencies/>