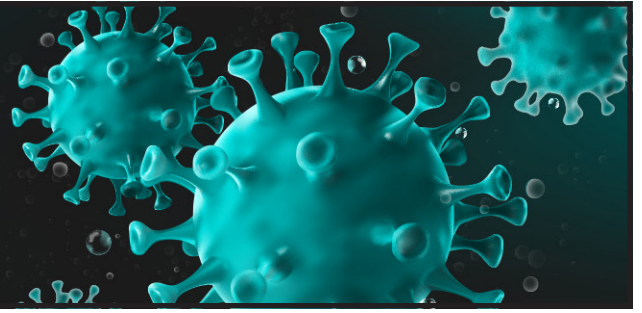


# FAQs:

## Conducting Public Meetings Under the Current “Stay at Home” Public Health Order and Proclamations of the Governor



*(The term “governmental entity” in these FAQs includes all governmental entities and quasi-governmental entities created pursuant to state statute or municipal ordinance as described in the April 2, 2020, Supplemental Proclamation of the Governor)*

### When may a governmental entity hold meetings via electronic means?

The Governor’s March 18 and April 2, 2020, Proclamations provide the option for governmental entities to hold a meeting by telephone or video conference, have members be counted for a quorum, and vote on matters coming before the body, so long as the meeting is limited to either: (a) matters that are necessary to respond to COVID-19; or (b) matters that are “necessary to perform essential minimum functions of the governmental body”. The communications equipment used must allow members to hear one another at the same time and, no less than 12 hours after the meeting, a summary of the meeting must be posted on the entity’s website or in another prominent location. (Note that governmental bodies “comprised of members from two or more counties” may already conduct meetings via electronic communications pursuant to Ala. Code § 36-25A-5.1.)

### What constitutes “essential minimum functions”?

The meaning will likely differ for each type of governmental entity, depending on the statutory purpose and authority of the entity. In cases where the entity is charged with specific and narrow duties, it may be easier to conclude that those functions are the “essential minimum functions” of the entity because they are its only functions. For example, a zoning board of adjustment (ZBA) is charged with the limited statutory powers set forth in Ala. Code § 11-52-80(d), which includes hearing and deciding variance requests and appeals from zoning administrative officials. Any of these actions are likely “essential minimum functions” of the ZBA. Where the entity’s powers are broader, or legislative in nature, like a city council, the determination is more difficult. Questions to ask include “Is this action needed to keep the entity’s services or operations ongoing?” and “If this action is not taken, is there a reasonable likelihood that the entity or those it serves suffer prejudice, harm, or failure to meet an existing obligation?”. If the answers to these questions are yes, then it is reasonable that the action constitutes an “essential minimum function”. It is advisable that the entity reflect those findings in its minutes. Because the phrase “essential minimum functions” is not defined, the entity should exercise caution and seek legal counsel where it is not clear.

### May a governmental entity hold “in-person” meetings?

Some entities may not have the capability of providing for electronic meetings as authorized by the Governor’s proclamation and others may determine that an in-person meeting is necessary for full transparency under the Open Meetings Act (OMA). Governmental operations are considered an “essential business and operation” under the public health order and meetings of governmental entities are fundamental to those government operations.

### If a governmental entity holds an “in person” meeting or public hearing, may the public attend?

While there is no express exception for a member of the public to attend a public meeting of a governmental entity under the current public health order, a citizen can leave their residence to seek/obtain government funded services or benefits. Seeking a government “service” under the order might reasonably be attending a meeting to monitor the governmental entity’s actions as they perform the public’s work and exercising their rights as a citizen under the OMA. Moreover, a citizen who works for an essential business as listed in the order could attend the meeting for a work-related purpose. Entities should provide for and enforce social distancing and proper sanitation.

### If a governmental entity holds an “in person” meeting or public hearing, are those meetings/hearings limited to 10 people?

While arguably not limited to 10 people, governmental entities are required to take “all reasonable steps” to avoid a gathering of 10 persons or more and to ensure that the persons in attendance maintain six feet social distancing. Those steps could include discouraging in-person attendance and providing livestreaming where possible and, in the case of public hearings, providing for alternative means of public comment such as a call-in option or written comments.

### May governmental entities cancel statutorily mandated meetings and thereby postpone business that was to be conducted at the meeting?

The Governor’s April 2, 2020, Proclamation allows for the postponement of meetings at the call of the chair or other person responsible for setting the meeting.

*This information is provided as a service of the Alabama League of Municipalities*

