

# CITY OF WINCHESTER, VIRGINIA

## PROPOSED CITY COUNCIL AGENDA ITEM

**CITY COUNCIL/COMMITTEE MEETING OF: 09/23/2014 CUT OFF DATE: 09/17/2014**

**RESOLUTION   x      ORDINANCE        PUBLIC HEARING**

**ITEM TITLE: RESOLUTION ADOPTING CITY COUNCIL POLICY FOR REMOTE PARTICIPATION BY MEMBERS IN CASE OF EMERGENCY AND PERSONAL MATTERS.**

**STAFF RECOMMENDATION: N/A**

**PUBLIC NOTICE AND HEARING: N/A**

**ADVISORY BOARD RECOMMENDATION: N/A**

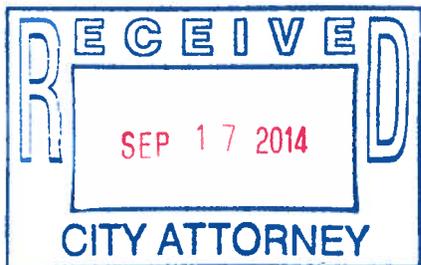
**FUNDING DATA: N/A**

**INSURANCE: N/A**

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	<i>9/17/2014</i>
6. City Manager	<i>[Signature]</i>	_____	<i>18 Sept 2014</i>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: \_\_\_\_\_ [COUNCIL REQUEST] \_\_\_\_\_ *9/17/2014*  
Date



**APPROVED AS TO FORM:**

*[Signature]* *9/17/2014*  
**CITY ATTORNEY**

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Anthony C. Williams, City Attorney  
**Date:** September 17, 2014  
**Re:** City Council Remote Participation Policy

---

**THE ISSUE:**

§2.2-3708.1 of the Code of Virginia requires a public body to adopt a Policy in order to permit remote participation by members under the provisions of the act. Council has requested that the City Attorney prepare such a Policy for their consideration.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal 2 – Develop a High Performing Organization

**BACKGROUND:**

§2.2-3708.1 of the Code of Virginia authorizes remote participation in meetings of a public body by members who have an emergency or personal matter which precludes their ability to participate in the meeting. Such participation is limited to two meetings or 25 percent of the meetings of the public body, whichever is fewer, and a member's remote participation cannot be used to create a quorum (a quorum must already exist to allow for remote participation).

**BUDGET IMPACT:**

None

**OPTIONS:**

Approve or modify, or reject Resolution.

**RECOMMENDATIONS:**

N/A

## **RESOLUTION**

WHEREAS §2.2-37081 of the Code of Virginia authorizes members of a public body to participate in a meeting of the public body from a remote location that is not open to the public under limited and defined circumstances; and

WHEREAS, this provision of the state code limits remote participation to emergency or personal matters, subject to approval, limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer; and

WHEREAS, this provision of the state code requires as a condition precedent to allowing such remote participation that the public body adopt a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation; and

WHEREAS, it is the belief of Common Council that the adoption of such a policy authorizing remote participation of members would be in the best interests of Common Council and the citizens of the City of Winchester.

NOW therefore be it RESOLVED that Common Council hereby adopts the following policy to govern remote participation by members in meetings of Common Council (to include all meetings of Council including but not limited to Regular Meetings of Council, Council Work Sessions, Retreats; and Joint Meetings):

### **CITY COUNCIL** **REMOTE PARTICIPATION POLICY**

1. The provisions of §2.2-3708.1 of the Code of Virginia and all subsequent revisions thereto are hereby adopted and incorporated into this policy *mutatis mutandis* as if set forth fully herein.
  
2. In the event of the President's absence, incapacity, or inability to perform the duties required under this Policy, the Vice-President shall fulfill the duties prescribed by this Policy upon the President. In the event of the President and Vice-President's absence, incapacity, or inability to perform the duties required under this Policy the Mayor shall fulfill the duties followed in succession by the Vice Mayor, then by members or Council in rank of seniority. In the event of members having equal seniority being called upon to fulfill the duties of the President under this Policy, Council shall designate by majority vote, the member authorized to fulfill the duties of the President pursuant to this Policy.

3. Upon receiving timely request by a member of Council that they wish to participate remotely in a meeting of Council due to an emergency or personal matter, the President shall make a determination (1) if the member has already reached the limitations for remote participation prescribed under §2.2-3708.1 of the Code of Virginia and (2) if the situation presented qualifies as an “emergency” or “personal” matter within the common meaning of said phrases and shall immediately advise the requesting Member of his decision.
4. The President shall then make reasonable efforts to notify all other members of Council, the City Manager, and the City Attorney regarding the nature of the emergency or personal matter, and of his decision regarding whether or not the member may participate remotely.
5. At the beginning of the meeting for which remote participation has been requested, the President shall announce (1) the request, (2) the nature of the emergency or personal matter, (3) the remote location from which the member wishes to participate, (4) whether the member has reached the allowable limitations for remote participation prescribed under §2.2-3708.1 of the Code of Virginia, and (5) his decision regarding whether or not the member may participate remotely.
6. All of the provisions of paragraph (5) shall be recorded in the minutes of Council at the meeting for which remote participation has been requested.
7. Upon making the announcement, the President may call for any motions by other Members who may object to the President’s decision concerning remote participation.
8. Upon motion that the decision of the President is inconsistent with the provisions of §2.2-3708.1 or this Policy and by subsequent majority vote, Council may override the President’s decision to allow or not allow remote participation by a member. Absent such a motion and subsequent action by Council upon the motion, the member shall be allowed to participate or shall be prohibited from participation remotely based upon the decision of the President.
9. Notwithstanding the foregoing provisions, no member shall be permitted to participate remotely if such participation causes the member to exceed the limitations on remote participation prescribed under §2.2-3708.1 of the Code of Virginia.
10. Members participating remotely in Closed Meetings shall be responsible for maintaining the confidentiality of Closed Meeting discussions and materials, and

for ensuring that no persons that are not authorized to participate in the Closed Meeting have access to deliberations conducted therein.

11. The President shall be responsible for validating the identity of the member participating remotely.
12. The City Manager or her designee shall be responsible for making arrangements to receive the remote transmission of the member and ensuring that the member's audio (and video if applicable) is publicly transmitted (for open meetings) and cognizable to all members participating in open and closed meetings. At minimum, the Manager or her designee must ensure that the voice of the remote participant may be heard by all persons at the meeting location.
13. Remote participation shall be via means deemed acceptable to the governing body including but not limited to telephonic and or live video transmissions. Remote means of transmission must include audible voice of sufficient quality to transmit so that it may be heard by the public (for open meetings) and by all participating members (for closed meetings).
14. Remote participation by a member inconsistent with the provisions of this Policy shall invalidate action taken by Common Council in which the member improperly participated in remotely.
15. This Policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting
16. In order to allow for remote participation of a member a quorum of the Council must be physically assembled at the primary or central meeting location (a Member's remote participation cannot be counted to create a quorum where one does not otherwise exist).
17. If any provision of this Policy is deemed inconsistent with the provisions of §2.2-3708.1 of the Code of Virginia or other applicable law, that provision shall be deemed stricken and the provisions of §2.2-3708.1 of the Code of Virginia or other applicable law shall apply.

**Va. Code Ann. § 2.2-3708.1**

Current through the 2014 Regular Session and Acts 2014, Sp. Sess. I, c. 2, of the General Assembly. Annotations current through June 20, 2014.

**Code of Virginia > TITLE 2.2. ADMINISTRATION OF GOVERNMENT > SUBTITLE II. ADMINISTRATION OF STATE GOVERNMENT > PART B. TRANSACTION OF PUBLIC BUSINESS > CHAPTER 37. VIRGINIA FREEDOM OF INFORMATION ACT**

**§ 2.2-3708.1.** Participation in meetings in event of emergency or personal matter; certain disabilities; distance from meeting location for certain public bodies

**A.** A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency or personal matter and identifies with specificity the nature of the emergency or personal matter, and the public body holding the meeting records in its minutes the specific nature of the emergency or personal matter and the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or
  3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting records in its minutes the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.
- B.** Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:
1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;
  2. A quorum of the public body is physically assembled at the primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

<b>History</b>
----------------

2007, c. 945; 2013, cc. 119, 694; 2014, cc. 492, 524.

**Annotations**

<b>Notes</b>
--------------

**THE 2013 AMENDMENTS. --**

The 2013 amendment by cc. 119 and 694, in the first paragraph of subdivision A 1, inserted "or before" near the beginning, inserted "or personal matter" three times, and inserted "at a meeting" near the end of clause (a).

**THE 2014 AMENDMENTS. --**

The 2014 amendments by cc. 492 and 524 are identical, and in subdivision A 1, deleted "(a) approves such member's participation by a majority vote of the members present at a meeting and (b)" preceding "records in its minutes" in the first sentence and added the second sentence; in subdivision A 3, deleted "(a) approves such member's participation by a majority vote of the members present and (b)" preceding "records in its minutes" in the first sentence and added the second sentence; and added B 1 and redesignated the remaining subdivisions accordingly.

CODE OF VIRGINIA

Copyright © 2014 by Matthew Bender & Company, Inc. a member of the LexisNexis Group. All rights reserved