1. Public Bodies Subject to FOIA Requirements
   a. All public bodies, which include municipal councils, public utility boards, municipal planning commissions, boards of zoning appeals, architectural review boards and all other boards, commissions or committees appointed by council, are subject to public meeting notice and agenda requirements contained in Section 30-4-80 of the South Carolina Code of Laws as amended (Freedom of Information Act).

2. Regular meetings
   a. All public bodies must give written public notice of their regular meetings at the beginning of each calendar year. The annual meeting notice must include the dates, times, and places of all regularly scheduled meetings.
   b. An agenda for regularly scheduled meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if the public body has one, at least 24 hours prior to such meetings.

3. Special, called or rescheduled meetings
   a. S11 contains conflicting language regarding the posting of public notice and agendas for special meetings and the terms special, called and rescheduled meetings are not defined. Out of an abundance of caution, the Association recommends that all public bodies post a public notice for any special, called or rescheduled meetings on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if the public body has one.
   b. A public meeting notice must include the agenda, date, time and place of the meeting, and must be posted as early as is practicable but not later than 24 hours before the meeting.

4. Restrictions on amending an agenda
   a. Once an agenda for a regular, special, called or rescheduled meeting is posted, no items may be added to the agenda without an additional 24-hour notice to the public, which must be made in the same manner as the original posting.
   b. After the meeting begins, an action item, which is not a final action and for which public comment has been or will be received at a publicly noticed meeting, may be added to the agenda by a two-thirds vote of the members present present and voting (see the flow chart produced by the Municipal Association and the SC Press Association on the back of this page for more information regarding the process for amending an agenda).
   c. After the meeting begins, an action item, which is a final action or for which there will be no opportunity for public comment, may be added to the agenda by a
      i. a two-thirds vote of the members present and voting and
      ii. a finding that an emergency or exigent circumstance exists (an exigent circumstance would be considered an urgent or time-sensitive issue).

5. The Association has also developed “best practices” language for councils to use when voting to add an agenda item based on the procedures in S11.

In accordance with SC Code of Laws Section 30-4-80 (A), the [NAME OF PUBLIC BODY] finds an emergency or exigent circumstance does or will exist if the [ACTION OR NAME OF ITEM] is not added to the current meeting agenda for the body’s consideration and desired action before the conclusion of this meeting.
6. **Other Provisions**
   a. Public meeting notice and agenda requirements do not apply to emergency meetings of public bodies.
   b. S11 makes it clear that the requirements of Section 30-4-80 of the South Carolina Code of Laws as amended does not relieve a public body of any notice requirement regarding any statutorily required public hearing. This means the above listed public notice and agenda requirements must be met in addition to any other public hearing requirement imposed by state law. For example Section 6-1-80 requires a public hearing prior to adoption of the annual budget and provides specific requirements in terms of the size, location and content of the public hearing notice. These requirements would need to be met in addition to posting the notice and agenda as described above.
Procedure to add item to a public meeting agenda within 24 hours of the meeting

Will the item require a vote of council to be taken at the meeting?

- No
  - Follow the public body’s adopted rules of procedure for adding an item to the agenda.
- Yes
  - Is this the final vote on the item?
    - No
      - Requires only 2/3 vote of members present.
    - Yes
      - Requires a 2/3 vote of members present and finding of emergency or exigent circumstances.

Has there been or will there be an opportunity for public comment on the item at a noticed public meeting?

- Yes
  - Requires only 2/3 vote of members present.
- No
The South Carolina Supreme Court held in the 2015 case of *Donohue v City of North Augusta* that a public body describing the purpose of an executive session as a "proposed contractual matter" is not specific enough to comply with the Freedom of Information Act when entering executive session pursuant to S.C. Code 30-4-70(a)(2). Public bodies include municipal councils, public utility boards, municipal planning commissions, boards of zoning appeals, architectural review boards and all other boards, commissions or committees appointed by council.

Prior to going into executive session, a council or other public body must make a motion and vote - in a properly noticed and convened, regular, called or special public meeting - to enter an executive session. *S.C. Code* 30-4-70(b). This motion to enter executive session should include three parts - (1) the specific purpose of executive session and (2) the code section and (3) language in this section supporting the use of executive session.

**Sample motions to enter executive session**

**Example of simple recommended motion:** I make a motion council go into executive session to consider discipline of an employee as allowed by Section 30-4-70(a)(1), which includes “discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, or a person regulated by a public body or the appointment of a person to a public body.”

**Example of more complicated recommended motion:** I make a motion council go into executive session to discuss contractual negotiations related to the provision of water and sewer service to a prospective industry and legal advice related to water and sewer line easements to serve the customer. These items are allowed by Sections 30-4-70(a)(2) and (5), which apply to receipt of legal advice covered by attorney client privilege and discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.
SC state code sections authorizing executive session (Freedom of Information Act (Section 30-4-70))

Section 30-4-70 (a) (1)
Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing. (The identity of the individual or entity being discussed is not required to be disclosed)

Section 30-4-70 (a) (2)
Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

Section 30-4-70 (a) (3)
Discussion regarding the development of security personnel or devices.

Section 30-4-70 (a) (4)
Investigative proceedings regarding allegations of criminal misconduct.

Section 30-4-70 (a) (5)
Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body. (The identity of the individual or entity being discussed is not required to be disclosed.)

Section 30-4-70 (b)
Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, “specific purpose” means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session.
FOIA Update: Executive Sessions (June 2016)

FOIA update: executive session action on agenda

The SC Supreme Court recently ruled in the case of Brock v Town of Mount Pleasant regarding executive sessions. Brock alleged the town violated the Freedom of Information Act by listing an executive session on its agenda but not indicating council would take action after the executive session.

This ruling indicates a public body, after exiting executive session, may only take action on a matter discussed during the closed session if the agenda acknowledges the possibility of that action.

The following statement should be included on the agenda after an executive session listed on the agenda: “Upon returning to open session, Council may take action on matters discussed in executive session.”

In light of the changes that were made to the FOIA law’s notice provisions in 2015 following the Lambries case, this rule also likely applies when a regular or special meeting agenda is amended to add an executive session regarding a topic that was not included on the agenda published prior to the meeting.