

A RESOLUTION REINSTATING A PROGRAM FOR REMOTE PARTICIPATION BY MEMBERS OF TOWN ADVISORY BOARDS IN ADVISORY BOARD MEETINGS AND PROVIDING INTERIM CHANGES TO ADDRESS THE COVID-19 STATE OF EMERGENCY (2020-04-01/R-1)

WHEREAS, on March 6, 2017, the Town Council adopted a resolution establishing a pilot program for remote participation by members of Town advisory boards in advisory board meetings; and

WHEREAS, the program documented 19 uses in 2017-18, an additional five uses in the fall of 2018, and one use in 2019; and

WHEREAS, the program expired on June 30, 2018, because it didn't return to Council for expansion; and

WHEREAS, on March 13, 2020, the Town of Chapel Hill Proclaimed a State of Emergency in Response to COVID-19; and

WHEREAS, on March 26, 2020, the NC Department of Justice provided an advisory opinion stating that "electronic meetings are allowed under N.C.G.S. §143.318.13, and the requirements of notice, access and minutes can be met through electronic means. Due to the unprecedented circumstances we are all faced with, and the fact that local governing bodies conducting meetings remotely is not expressly prohibited by statute, I conclude that local governments can carry out necessary meetings electronically and remain in compliance with Open Meetings Laws."; and

WHEREAS, the School of Government transmitted the above advisory opinion and added that "the letter doesn't specifically address the impact of electronic participation on statutory quorum/voting requirements, public hearings, public comment periods, or quasi-judicial hearings." Some blog posts on those topics include the following:

- [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/)¹
- [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/)²
- [Failures to Vote by Board Members Participating Remotely](https://canons.sog.unc.edu/failures-to-vote-by-board-members-participating-remotely/)³
- [Remote Participation in Quasi-Judicial Evidentiary Hearings](https://canons.sog.unc.edu/author/lovelady/)⁴; and

WHEREAS, in an effort to significantly reduce the spread of the novel coronavirus, the Town of Chapel Hill, along with the Towns of Carrboro and Hillsborough, have joined Orange County's Stay at Home Declaration. The Declaration is in effect beginning at 6 p.m. Friday, March 27, until 5 p.m. Thursday, April 30.

¹ <https://canons.sog.unc.edu/meetings-and-public-hearings-under-the-coronavirus-state-of-emergency/>

² <https://canons.sog.unc.edu/can-we-really-ban-in-person-attendance-at-board-meetings-during-the-coronavirus-emergency/>

³ <https://canons.sog.unc.edu/failures-to-vote-by-board-members-participating-remotely/>

⁴ <https://canons.sog.unc.edu/author/lovelady/>

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council modifies and reinstates a policy to address the remote participation for the Town's advisory boards and commissions as described herein.

BE IT FURTHER RESOLVED that the parameters of the program shall be amended to include the following:

- Only Boards and Commissions shall be included, not the Council.
- Boards that are quasi-judicial in nature, specifically the Board of Adjustment and Historic District Commission, shall not be included, except where those Boards are engaging in making recommendations and not hearing quasi-judicial applications.
- Participation in voting on Boards and Commissions shall include those situations in which the Boards and Commissions are reviewing plans and making recommendations to the Town Council but not cases where the body has authority to approve or deny. Where the action being considered is approval or denial of, for example, a minor subdivision by the Planning Commission or a certificate of appropriateness by the Community Design Commission for Blue Hill district, a board member attending remotely could participate in the conversation but would not vote on any decision.
- Some or all of the Members of said Boards and Commissions may fully participate in and vote at meetings in which they participate remotely, and would be counted toward a quorum.

BE IT FURTHER RESOLVED that these policies shall, during the period of the COVID-19 State of Emergency, supersede any provisions of the Council Procedures Manual inconsistent herewith

BE IT FURTHER RESOLVED that upon the expiration of the State of Emergency the policy for remote participation by advisory board members as adopted by the Council in March 2017 shall be reinstated unless otherwise modified or rescinded.

This the 1st day of April, 2020.