



TOWN OF CHAPEL HILL

Town Council Meeting Agenda

Town Hall
405 Martin Luther King Jr.
Boulevard
Chapel Hill, NC 27514

Mayor Pam Hemminger
Mayor pro tem Michael Parker
Council Member Jessica Anderson
Council Member Allen Buansi

Council Member Hongbin Gu
Council Member Tai Huynh
Council Member Amy Ryan
Council Member Karen Stegman

Wednesday, April 1, 2020 7:00 PM

RM 110 | Council Chamber

Virtual Meeting Notification

Town Council members will attend and participate in this meeting remotely, through internet access, and will not physically attend. Members of the public may live stream the meeting and view it over the Town's cable television channel access and are encouraged to do so. View Council meetings live at <https://chapelhill.legistar.com/Calendar.aspx> – and on Chapel Hill Gov-TV (townofchapelhill.org/GovTV).

In addition, there is an opportunity for the public to view the meeting by coming to the Council Chambers in Town Hall. However, because of the stay at home directives issued regarding crowds and social distancing, there will be limited seating available at Town Hall and it may be necessary to turn people away. The Public is urged to find other locations and ways to observe this meeting.

OPENING

DISCUSSION

1. Reconsider a Proposal for an Advisory Board Membership Policy Amendment.

[20-0228]

PRESENTER: Maurice Jones, Town Manager

RECOMMENDATION: That the Council amend the Advisory Board Membership Policy to continue a pilot program for remote participation by members of Town Advisory Boards.



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Item Overview

Item #: 1., **File #:** [20-0228], **Version:** 1

Meeting Date: 4/1/2020

Reconsider a Proposal for an Advisory Board Membership Policy Amendment.

See Staff Report on next page.

The Agenda will reflect the text below and/or the motion text will be used during the meeting.

PRESENTER: Maurice Jones, Town Manager

RECOMMENDATION: That the Council amend the Advisory Board Membership Policy to continue a pilot program for remote participation by members of Town Advisory Boards.



RECONSIDER A PROPOSAL FOR AN ADVISORY BOARD MEMBERSHIP POLICY AMENDMENT

STAFF REPORT

TOWN OF CHAPEL HILL MANAGER'S DEPARTMENT
Maurice Jones, Town Manager

AMENDMENT REQUEST Amend the Advisory Board Policy regarding board members participating remotely.	MEETING DATE April 1, 2020
STAFF'S RECOMMENDATION That the Council amend the Advisory Board membership policy to continue a pilot program for remote participation by members of Town Advisory Boards.	
BACKGROUND The on-going COVID-19 pandemic has restricted meetings for Town advisory boards. The Council created standards regarding remote participation in the Advisory Board Membership Policy (which has expired). Staff believes reinstating this policy is necessary to allow the advisory boards to continue to operate. The proposed changes to the Advisory Board Membership Policy would continue the remote participation standards with some modifications to adjust to the current COVID-19 restrictions in place. On March 6, 2017, the Council adopted a resolution for a pilot program for remote participation ¹ by members of Town Advisory Boards in advisory board meetings. This pilot program expired on June 30, 2018. Staff recommends temporary changes to the Advisory Board Membership policy with the proposed amendments effective immediately. These proposed amendments would be active for the duration of Orange County's Stay at Home declaration, at which point the remote participation policy would revert to the original language, unless otherwise modified or rescinded.	DECISION POINTS The proposed changes do not apply to boards that are quasi-judicial in nature, specifically the Board of Adjustment and the Historic District Commission, except if engaged in making recommendations and not hearing quasi-judicial applications. Members attending remotely would fully participate in and vote at meetings and would be counted toward a quorum (Board members would not be present at the meeting site as meetings would be held virtually). Advisory Board meetings, as possible, would be scheduled and advertised as virtual meetings with opportunities for the public to participate. 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. During this COVID-19 State of Emergency period, Board and Commission members can participate remotely in all meetings with no requirement to attend in person.
ATTACHMENTS	<ol style="list-style-type: none"> 1. Resolution 2. March 6, 2017 Council Minutes² 3. NC Department of Justice advisory opinion

¹ https://chapelhill.granicus.com/MetaViewer.php?view_id=&clip_id=3044&meta_id=154166

² https://chapelhill.granicus.com/MinutesViewer.php?view_id=21&clip_id=3044&doc_id=b3cb3c2d-034b-11e7-ad57-f04da2064c47

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.

JOSH STEIN
ATTORNEY GENERAL



SHANNON CASSELL
SPECIAL COUNSEL
(919) 716-6425

March 26, 2020

Greg McLeod
 Deputy General Counsel, Office of the Governor
 20301 Mail Service Center
 Raleigh, NC 27699-0301

RE: Advisory Letter Regarding the Ability for Local Public Bodies to Conduct Open Meetings Electronically

Dear Greg,

I write with regards to the request from your office for us to weigh in on the issue of whether local governing boards can carry out their meetings electronically and remain in compliance with Open Meeting Laws. This question comes on the heels of federal and state executive orders directed at preventing the spread of COVID-19 by significantly limiting – if not prohibiting – the ability to gather in person, yet governing must continue at all levels of state and local government.

QUESTION PRESENTED:

Can local governments carry out their necessary meetings via electronic means during these exigent circumstances?

BRIEF ANSWER:

Yes, because 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.

DISCUSSION:

At the outset, it is significant to note that the Public Policy behind the Open Meetings Laws is to ensure the hearing, deliberations, and actions of the public bodies “conduct[ing] the people’s business” be conducted openly. N.C.G.S. §143.318-9.

Generally speaking, a public body may hold an official meeting (defined in N.C.G.S. § 143-318.10(d)) by use of electronic means. N.C.G.S. §143-318.13. In that case, it shall provide a location and means whereby members of the public may listen to the meeting, the location of which should be specified in

the notice. *Id.* A fee of up to \$25 may be charged to each listener to defray the cost of providing the necessary cost and equipment. *Id.*

As with all meetings being made available to the public, public bodies should still comply with statutory requirements of notice, access and minutes.

1. Notice – The public body must provide notice of an official meeting. N.C.G.S. §143-318.12. Most meetings require 48-hours' notice and that should be met if at all possible. N.C.G.S. §143-318.12(b)(2). Emergency meetings may be called on short notice, but notice should still be provided. N.C.G.S. §143-318.12(b)(3).
2. Access – With few exceptions, an official meeting of a public body shall be open to the public. N.C.G.S. §143-318.10. Access should be reasonable. The Governor can, and has, limited the number of people that can physically attend a gathering. That limitation must be respected. This means the public must be given reasonable means of listening/participating in the meeting.
3. Minutes – Minutes are required and should be respected even when conducting the meeting electronically. N.C.G.S. §143-318.10(e). These may be in the form of sound or video and sound recordings. *Id.*

When public bodies are attempting to comply with statutes requiring a physical quorum, it is best that the physical quorum be met if at all possible. As of today, that would need to be no more than ten people in the meeting. Minutes should specifically record the person(s) that is not able to be physically present as not recusing himself or herself, but rather choosing to participate electronically. As discussed herein, if it is not possible for a quorum to be physically present, I believe it is reasonable for the governing body to meet electronically.

When meetings of public bodies are not necessary for immediate ongoing governance, I would encourage postponing that meeting until a future time when the meeting can occur in-person.

I realize this does not address all of the various statutory provisions that could be implicated, and that is not the intent of this letter. I have provided citations when available, but have also canvassed available information. All weighing in on this topic are in agreement: whatever is not explicitly addressed in the statutes should be met with reasonableness to allow transparency into the local governing process. That is to say that local governments must continue to run, people have been ordered to not convene in groups larger than ten, and reasonableness must prevail in a time like this. Again, these are unprecedented times and I feel confident a court will view efforts to remain transparent through a lens of reasonableness, which can be met through electronic meetings.

This is an advisory letter and has not been reviewed and approved in accordance with the procedures for issuing an Advisory Opinion of the Attorney General. Please let me know if I can be of further assistance.

Sincerely,

s// Shannon Cassell
Special Counsel

cc: Alec Peters, Chief Deputy Attorney General
Blake Thomas, Deputy General Counsel