



## Legislation Text

File #: [20-0341], Version: 1

### **Modify Advisory Board Remote Participation Policy to Allow the Board of Adjustment and Historic District Commission to Conduct Remote Quasi-Judicial Evidentiary Hearings and to Allow Boards to Act to Approve or Deny Matters Before Them During State-declared States of Emergency and in Accordance with the Provisions of G.S. 166A-19.24.**

**Staff:**

Ralph D. Karpinos

**Department:**

Town Attorney

**Overview:** On [April 1, 2020](https://chapelhill.legistar.com/LegislationDetail.aspx?ID=4409291&GUID=E54C09E4-27D1-437C-B13E-94A90A21C84A&Options=&Search=>) [<https://chapelhill.legistar.com/LegislationDetail.aspx?ID=4409291&GUID=E54C09E4-27D1-437C-B13E-94A90A21C84A&Options=&Search=>](https://chapelhill.legistar.com/LegislationDetail.aspx?ID=4409291&GUID=E54C09E4-27D1-437C-B13E-94A90A21C84A&Options=&Search=>), the Council adopted a Resolution (2020-04-01/R-1) to modify and reinstate a policy addressing remote participation in Advisory Board meetings by members of Town advisory boards. The resolution excluded boards that are quasi-judicial in nature, specifically the Board of Adjustment and Historic District Commission, except where those Boards are engaged in making recommendations and not hearing quasi-judicial applications. On May 4, 2020, the Governor signed General Assembly Session Law 2020-3 into law to enact G.S. 166A-19.24, which provides authority and procedures for remote meetings by simultaneous communication during declarations of emergency by the Governor or General Assembly, including authorization and procedures for holding quasi-judicial evidentiary hearings, subject to limitations ([Session Law 2020-3](https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2020-3.pdf) [<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2020-3.pdf>](https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2020-3.pdf), Section 4.31 (a)). The Town Attorney briefed the Council on the provisions of G.S. 166A-19.24 at the [May 8, 2020 meeting of the Council Committee on Economic Sustainability](https://www.townofchapelhill.org/government/departments-services/economic-development/council-economic-sustainability-committee) [<https://www.townofchapelhill.org/government/departments-services/economic-development/council-economic-sustainability-committee>](https://www.townofchapelhill.org/government/departments-services/economic-development/council-economic-sustainability-committee). Modifying Resolution (2020-04-01/R-1) would allow the Board of Adjustment and Historic District Commission to conduct remote quasi-judicial evidentiary hearings and other boards to act to approve or deny matters before them during a State-declared State of Emergency and in accordance with the provisions of this new law.



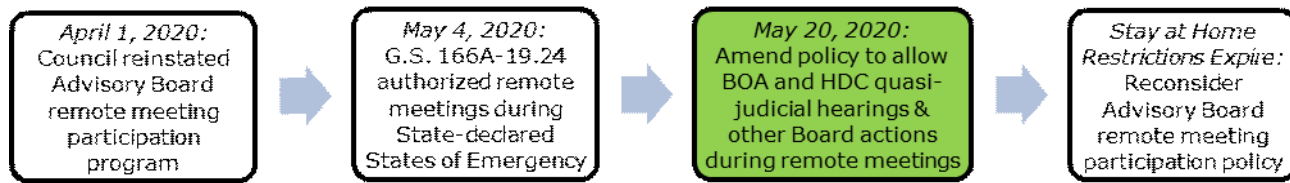
**Recommendation(s):**

That the Council adopt the attached resolution allowing the Board of Adjustment and Historic District Commission to conduct remote quasi-judicial evidentiary hearings and other boards to act to approve or deny matters before them during a State-declared State of Emergency and in accordance with the provisions of G.S. 166A-19.24.

**Key Issues:**

- The provisions of G.S. 166A-19.24 regarding remote meeting participation, including conducting remote quasi-judicial evidentiary hearings, are only in effect during states of emergency declared by the Governor or the General Assembly.
- G.S. 166A-19.24 and considerations for conducting remote hearings are discussed in the UNC School of Government blog post "[Remote Zoning Hearings During Declared Emergencies](https://canons.sog.unc.edu/remote-zoning-hearings-during-declared-emergencies/>) [<https://canons.sog.unc.edu/remote-zoning-hearings-during-declared-emergencies/>](https://canons.sog.unc.edu/remote-zoning-hearings-during-declared-emergencies/>)"
- Council agreed to reconsider the Advisory Board remote participation policy when stay at home restrictions contained in local and state Proclamations and State of Emergency Orders expire.

**Where is this item in its process?**



**Attachments:**

- Resolution

**A RESOLUTION MODIFYING THE ADVISORY BOARD REMOTE PARTICIPATION POLICY TO ALLOW THE BOARD OF ADJUSTMENT AND HISTORIC DISTRICT COMMISSION TO CONDUCT REMOTE QUASI-JUDICIAL EVIDENTIARY HEARINGS AND TO ALLOW BOARDS TO ACT TO APPROVE OR DENY MATTERS BEFORE THEM DURING STATE-DECLARED STATES OF EMERGENCY AND IN ACCORDANCE WITH THE PROVISIONS OF G.S. 166A-19.24 (2020-05-20/R-4)**

WHEREAS, on April 1, 2020, the Town Council adopted Resolution (2020-04-01/R-1) reinstating a program for remote participation by members of Town Advisory Boards in Advisory Board meetings; and

WHEREAS, the Resolution excluded authorization for the Board of Adjustment and Historic District Commission to conduct hearings on quasi-judicial matters due to the lack of statutory authority to hold quasi-judicial evidentiary hearings remotely; and

WHEREAS, on May 4, 2020, the Governor signed Session Law 2020-3 into law to enact G.S. 166A-19.24, which provides authority and procedures for remote meetings by simultaneous communication during declarations of emergency by the Governor or General Assembly, including authorization and procedures for holding quasi-judicial evidentiary hearings, subject to certain limitations; and

WHEREAS, on March 10, 2020 the Governor issued Executive Order No. 116 declaring a State of Emergency to coordinate the State's response and protective actions to address the COVID-19 public health emergency. The Governor has issued subsequent Executive Orders related to the COVID-19 public health emergency and the State-declared State of Emergency remains in effect; and

WHEREAS, on March 13, 2020, Orange County declared a State of Emergency in response to the COVID-19 public health emergency. Orange County has issued subsequent Declarations extending the local State of Emergency through June 30, 2020; and

WHEREAS, on March 13, 2020, the Town of Chapel Hill declared a State of Emergency in response to the COVID-19 public health emergency. The Mayor has issued subsequent Declarations extending the local State of Emergency through June 30, 2020; 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, joined Orange County's Stay at Home Declaration that first went into effect on March 27, 2020 and which remains in effect; and

WHEREAS, the Council desires to allow the Board of Adjustment and Historic District Commission to conduct quasi-judicial evidentiary hearings where required for matters before these boards and to allow other Boards to approve or deny matters before them during the State-declared State of Emergency and pursuant to G.S. 166A-19.24.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council modifies the parameters of the Town's advisory boards and commissions remote participation program defined in the April 1, 2020 Resolution (2020-04-01/R-1) as follows:

- "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.~~

- Remote participation in voting on non-quasi-judicial applications by Boards and Commissions shall include those situations in which the Boards and Commissions are reviewing plans and making recommendations to the Town Council and, during State-declared States of Emergency, 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 except during such a State of Emergency and pursuant to the provisions of G.S. 166A-19.24.
- The Board of Adjustment and Historic District Commission may not conduct hearings or make decisions on quasi-judicial applications except during a State-declared State of Emergency and pursuant to the provisions of G.S. 166A-19.24.
- 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 t~~These meetings shall provide an opportunity for the public to participate and comment during the meetings by remote methods, including email, telephone and other methods, to the extent practical."

BE IT FURTHER RESOLVED that the Council reaffirms 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 the Council reaffirms that, upon the expiration of the Stay at Home restrictions as contained in the local and state Proclamations and State of Emergency Orders, the policy for remote participation by advisory board members as adopted by the Council in March 2017 shall be reconsidered by the Council at that time.

This the 20<sup>th</sup> day of May, 2020.

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

By adopting the resolution, the Council will modify Resolution (2020-04-01/R-1) to allow the Board of Adjustment and Historic District Commission to conduct remote quasi-judicial evidentiary hearings and to allow boards to act to approve or deny matters before them during State-declared States of Emergency and in accordance with the provisions of G.S. 166A-19.24.