

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES FOR THE CITY OF HENDERSONVILLE, ARTICLE V, BOARDS, COMMISSIONS AND COMMITTEES, TO PROVIDE FOR ELECTRONIC MEETINGS FOR SUBCOMMITTEES

WHEREAS, City Council has been asked to permit subcommittees of City boards, commissions and committees to meet electronically; and

WHEREAS, City Council finds that with the advent of streaming and video-conferencing technology, access to electronic meetings is more readily available to the general public than in times past; and

WHEREAS, permitting electronic meetings of subcommittees will foster participation by volunteers by making subcommittees more convenient; and

WHEREAS, permitting subcommittees to meet electronically is in the best interest of the City at this time.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Chapter 2, Administration, Article V, Boards, Commissions and Committees, of the Code of Ordinances for the City of Hendersonville shall be amended to add new Sections 2-226 through 2-230 follows:

CHAPTER 2 - ADMINISTRATION

ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES

Sec. 2-226 General Provisions

The provisions of this article shall apply to all boards, commission and committees created by City Council, provided, however, that where a board, commission or committee is created pursuant to specific enabling legislation of the North Carolina General Assembly, the specific enabling legislation shall preempt any provisions of this article, applicable to such board, commission or committee, where the terms of this article and such enabling legislation are in conflict. Where specific enabling legislation or other applicable law for a board, commission or committee grants discretion to the City Council to adopt different, additional, or more or less restrictive provisions to govern a board, committee or commission, the provisions adopted by City Council shall be deemed to control.

Sec. 2-227 Definitions.

(a) The following words shall have the meanings stated when used in this article.

- (1) Board, commission or committee shall mean any appointed group of people, consisting of 2 or more members, appointed by City Council for a local government purpose, including but not limited to advisory, quasi-judicial, or administrative.*
- (2) Enabling legislation shall mean general, local, or special legislation adopted by the North Carolina General Assembly granting specific authority to the City Council for creating a particular board, commission or committee. As an example, N.C.G.S. § 160D-302 grants authority to the City Council to create a zoning board of adjustment.*

- (3) Electronic meeting shall mean a meeting where a quorum of the board, commission, or committee, or a subcommittee, is participating in the meeting through electronic means of communication, and not in person. Electronic means include any means of communication through the use of technology which enables two or more persons to engage in simultaneous communicate without being in the physical presence of one another, and includes, but is not limited to telephone conferences and video conferencing (e.g. Zoom meetings, or Microsoft Teams meetings). Email exchanges among a quorum of the members shall not be considered a electronic meeting under this article. As used herein, "electronic meetings" shall not be considered a "remote meeting" for purposes of N.C.G.S. 166A-19.24.
- (4) Quasi-judicial board, commission or committee shall mean a board, commission or committee carrying out a quasi-judicial function. Notwithstanding anything stated in this article to the contrary, except where specifically authorized by the Code of Ordinances for the City of Hendersonville, or the North Carolina General Statutes, a quasi-judicial board, commission or committee may not form a subcommittee to conduct or assist with conducting a quasi-judicial proceeding, or to provide a recommendation or perform any investigation, with respect a matter that may be the subject of a quasi-judicial proceeding before the quasi-judicial board, commission or committee.
- (5) Remote meeting shall mean a remote meeting defined by and held pursuant to the authority of NCGS § 166A-19.24, as amended, during declarations of emergency made under NCGS 166A-19.20. Nothing herein shall be deemed to impose greater requirements for remote meetings than the requirements of the North Carolina General Statutes, or to prohibit remote meetings permitted by NCGS § 166A-19.24.
- (6) Subcommittee shall mean a group of people, consisting of 2 or more members, appointed by a board, commission or committee, or by the chairperson of a board, commission or committee, for the purpose of acting in an advisory capacity to assist the board, commission, or committee in carrying out its authorized function or authority (ref. Sec. 2-228). Unless otherwise specifically authorized by City Council or specific enabling legislation, a board, commission or committee may not delegate its function or authority to a subcommittee. As an example, the Planning Board may not delegate its authority to approve a development plan to a subcommittee of the Planning Board. As another example, an advisory board to the City Council could not create a subcommittee to also be advisory to City Council. In both examples, the subcommittee would be permitted to make a recommendation to the board, commission or committee to assist the board, commission or committee in carrying out their advisory or administrative function.

Sec. 2-228 Authority of Boards, Commissions and Committees

Boards, commissions and committees shall have the only such authority and exercise only those functions specifically granted to them by City Council or by the North Carolina General Assembly through specific enabling legislation.

Sec. 2-229 Charters and Rules of Procedure

Except where specifically provided otherwise in the Code of Ordinances for the City of Hendersonville, City Council approval shall be required for all charters creating or organizing a board, commission or committee, and their rules of procedure or bylaws.

Sec. 2-230 Meetings

(a) Electronic Meetings.

(1) Boards, Commissions and Committees - (Reserved).

a. (Reserved)

(2) Subcommittees

a. Electronic meetings are authorized for subcommittees. All electronic meetings held by a subcommittee must comply with the provisions of this article.

(b) Rules Governing Electronic Meetings.

- (1) All electronic meetings must be conducted in accordance with the North Carolina Open Meetings Law, NCGS Chapter 143, Article 33C, as amended. Where these rules and the Open Meetings Law conflict, the most restrictive shall be complied with. In construing which is the most restrictive requirement, the requirement providing the greatest notice to the public, or greatest opportunity for attendance by the public, shall be deemed to be the most restrictive.
- (2) All votes must occur by roll call of the members.
- (3) Any documents being considered must have been provided to each member participating in the electronic meeting.
- (4) All members must be able to hear what is said by the other members and by any member of the public permitted by the members to speak at the electronic meeting.
- (5) The minutes of the electronic meeting must reflect that it was an electronic meeting, and must reflect the technological method used to conduct the electronic meeting. As an example, the minutes would reflect that the meeting was an electronic meeting held on Zoom.
- (6) The electronic meeting must be simultaneously available to the general public for streaming.
- (7) A physical location must be provided to allow members of the public to attend and listen to the meeting. The physical location must be stated in the notice of the meeting, required by the Open Meetings Law.
- (8) Members participating by electronic means and in person shall both be counted as present, and can vote.
- (9) During the meeting, a quorum of the membership shall not deliberate or communicate by text, email, group chat or by any other means in which a participant or member of the general public could not hear or listen to what is being communicated.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Becker, City Attorney