



Rules of Procedure for Remote Participation

Date: September 11, 2018
To: Davidson Board of Commissioners
From: Cindy Reid, Town Attorney

1. OVERVIEW

The Board has requested a brief analysis of whether it should allow commissioners to vote via phone. Currently, members are allowed to participate in board meetings by phoning in but are not permitted to vote. The Rules of Procedure adopted by the BOC state: "A member who attends a meeting electronically (via phone, skype, etc.) may take part in debate however may neither be counted toward a quorum nor vote on any matter before the board".

The UNC School of Government has advised there is some legal risk to allowing remote participation therefore the town's rules of procedure, Part III Rule 3, have taken this into account.

Attached are the rules of procedure and a blog post from the UNC School of Government.

2. RELATED TOWN GOALS

N/A

3. OPTIONS/PROS & CONS

Option 1: Leave rules of procedure as is and not allow voting by remote participation.

Pros: No deviation from adopted rules of procedure. Follows best practice guidelines. Least likely option to result in a legal challenge. Please see the NCSOG memo attached to this analysis.

Cons: Because Commissioners have a duty to vote, a Commissioner who can participate in the discussion but not vote may feel frustrated.

Option 2: Amend rules of procedure to allow voting by remote participation.

Pros: Allows all Commissioners to vote.

Cons: Most likely to result in a legal challenge particularly if the vote is the deciding vote or if the remote participant is needed for quorum. This has not been addressed by a NC court, but my opinion is that a court would not uphold a decision that rested on a vote via phone.

Option 3: Amend rules of procedure to only allow voting by remote participation under certain circumstances such as when the vote will not be the deciding vote and there is already a quorum.

Pros: Allows remote voting under limited circumstances. Severely limits possibility of legal challenge.

Cons: If a vote is only allowed where it will not be the deciding vote, advance knowledge of how each commissioner will vote might be necessary. If the remote participant is counted for quorum, all actions taken during this particular meeting can be challenged on the grounds that there was not quorum and

therefore not a legal meeting.

4. FYI or RECOMMENDED ACTION

The Town Attorney recommends Option 1.

5. NEXT STEPS

If Option 2 or 3- Amend Rules of Procedure to allow voting via phone.