

## MEMORANDUM

**TO:** Dublin City Council

**FROM:** Jennifer D. Readler, Law Director

**DATE:** September 30, 2021

**RE:** Consideration of a Virtual Meetings Ordinance

---

### **BACKGROUND AND QUESTION PRESENTED**

Prior to the COVID-19 pandemic, Ohio Revised Code Section 121.22 regulated meetings of public bodies. Section 121.22 has several requirements for public body meetings including: that they be open to the public; that minutes of the meeting be prepared, filed and maintained; that notice of meetings be given, and; that certain requirements be met before an executive session is held. Specifically, R.C. Section 121.22(C) requires members of a public body to be present, in person, at meetings for their vote to be counted and to count toward a quorum.

As you are aware, the Ohio General Assembly passed House Bill 197 authorizing municipal bodies to conduct meetings virtually as a response to the COVID-19 pandemic. This original authorization would have expired in December of 2020, but a new bill, House Bill 404, was passed. House Bill 404 continued the authorization for municipal bodies to conduct meetings virtually. While creating a permanent or additional authorization for virtual meetings was considered by the Ohio General Assembly, legislation to that effect was never passed. The House Bill 404 authorization for virtual meetings expired on July 1, 2021.

Since the virtual meeting's authorization from the General Assembly was permitted to expire, the number of COVID-19 cases in Ohio has continued to fluctuate. At least one new variant of the virus, the Delta variant, is present in Ohio. Also, hospitalizations due to COVID-19 have been on the rise. Many local municipalities have re-initiated their mask mandates as a result of the growing numbers of COVID-19.

Multiple municipalities throughout Ohio have enacted virtual meetings ordinances, each with their own authorizations and limitations as to who may attend virtually. Cincinnati passed a virtual meetings ordinance on June 13, 2021. Cleveland passed a virtual meetings ordinance on July 14, 2021. Most recently, Worthington passed a virtual meetings ordinance on September 7, 2021.

This Memorandum addresses the applicable legal considerations for the City of Dublin as it considers whether to enact a virtual meetings ordinance. It also addresses the changes to the

definitions under Chapter 34 that would be required as part of this ordinance as well as its authorizations and requirements for virtual meetings.

## **SUMMARY CONCLUSION**

The City has home-rule authority to adopt a local virtual meetings ordinance. The City also has authority to designate consequences for a public body member who violates the ordinance. Many options must be considered including who can attend meetings virtually and under what circumstances.

## **LAW AND ANALYSIS**

The Home Rule Amendment (Section 3, Article XVIII) of the Ohio Constitution grants Ohio municipalities the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws. The Ohio Supreme Court has defined matters of local self-government as those actions in which “the results affect only the municipality itself, with no external effects.”

All municipalities have inherent Home Rule authority under Ohio law. However, under Section 7, Article XVIII, municipalities that adopt a charter are permitted to further establish the rights and powers of local self-government. Typically, Charter municipalities are afforded greater deference in their decision making than non-charter municipalities.

The Dublin City Charter does not prohibit public meetings from being held virtually. Therefore, enacting an ordinance authorizing virtual meetings would arguably take precedence over the Open Meetings Act if the two were in conflict. Consequently, the City of Dublin, as a charter municipality, could enact legislation permitting public body members to attend public meetings virtually.

Notably, municipalities have suffered Home Rule setbacks at the Ohio Supreme Court in recent years, so there is always the possibility that a challenge to permitting virtual attendance of public body members could be successful. If this challenge was brought after a significant period of time, and if the ruling was unfavorable, it could call into question the legislation that was passed while the body was not in compliance with R.C. 121.22. Ultimately, so long as the City is aware of the potential for a legal challenge, it has the authority under its Charter and the Ohio Constitution to dictate the manner of its meetings.

## **DRAFT LEGISLATION FOR COUNCIL REVIEW**

### **A. Changes to Section 34.02 Definitions**

To permit virtual meetings, a few changes to the definitions under Chapter 34 of the Dublin Codified Ordinances are necessary. First, a definition of the word “Hearing” must be included so that its inclusion as a possible instance when public body members can attend virtually is clear. Second, the definition of “Municipal Body” must be expanded so that it is clear that all City of Dublin bodies can attend meetings virtually. Lastly, a definition for “Virtual” must be created so that the type of attendance permitted, other than in-person, is clear.

A few minor, and unrelated, additional changes to the definitions section are outlined in the drafted ordinance. These proposed changes seem to be typical for this type of ordinance, although the specific changes differ based on how broad the virtual meetings ordinance is.

B. Creation of a Virtual Meetings Ordinance

The proposed virtual meetings ordinance would allow any public body member of the City to attend public meetings virtually. The ordinance would essentially give the member all of the same rights as if they were present in-person. Members of the public would also be permitted to participate virtually if so authorized by the public body.

This proposed ordinance also has all the same notice requirements that were in place during the Ohio General Assembly's authorization of virtual meetings. The proposed virtual meetings ordinance also has the same requirements as to access for the public to the meeting.

**RECOMMENDATION**

We would recommend that Council adopt revisions to its Rules of Order to implement these new Code sections. We would also recommend that no City board or commission conduct a virtual meeting unless and until Council authorizes revisions to the board or commission's rules and regulations in order to implement the virtual meeting Code sections.

**AN ORDINANCE AMENDING SECTION 34.02 "DEFINITIONS" AND ENACTING NEW SECTION 34.08 "VIRTUAL MEETINGS" OF THE CODIFIED ORDINANCES OF THE CITY OF DUBLIN, OHIO TO PERMIT MUNICIPAL BODY MEMBERS TO HOLD, ATTEND AND CONDUCT PUBLIC MEETINGS VIRTUALLY.**

**WHEREAS**, at the onset of the COVID-19 pandemic the General Assembly passed legislation that permitted public bodies to hold meetings virtually; and

**WHEREAS**, the General Assembly legislation has since expired, but the number of COVID-19 cases in Ohio continues to fluctuate; and

**WHEREAS**, City Council feels that it is in the City of Dublin and the citizens' best interests to have the flexibility to hold public meetings virtually;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, Delaware, Franklin, and Union Counties, State of Ohio, \_\_\_\_\_ of the elected members concurring that:

**Section 1.** That Section 34.02 of Chapter 34 be amended to read as follows:

**§ 34.02. DEFINITIONS**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CLERK.** The Clerk of Council.

**DAY.** Calendar day.

**HEARING.** Any administrative hearing or other hearing at which persons present oral or written testimony for consideration and determination of a matter before the Municipal Body.

**MANAGER.** The Manager of Dublin, Ohio.

**MEETING.** Any prearranged discussion of the public business of a Municipal Body by a majority of the members of the Municipal Body.

**MUNICIPAL BODY.** Each of the following:

- (1) Council;
- (2) Board of Control;
- (3) Planning and Zoning Commission;
- (4) Board of Zoning Appeals;
- (5) Architectural Review Board;
- (6) Parks and Recreation Committee;
- (7) Any other Board, Commission, or Committee created subsequent to the enactment of these rules by the City Charter, the Mayor, or Council and;
- (8) Committees or subcommittees of the above Municipal Bodies comprised of members of such Bodies.

**ORAL NOTIFICATION.** Notification given orally either in person or by telephone, directly to the person for whom such notification is intended, or by leaving an oral message for such

person at the address, or if by telephone at the telephone number, of such person as shown on the records kept by the Clerk and/or Manager pursuant to this chapter.

**POST.** To post at three public places as designated by Council pursuant to Section 4.12 of the Revised Charter.

**PUBLISHED.** Published once in a newspaper having a general circulation in the Municipality, as defined in R.C. § 7.12, except that no portion of such newspaper need be printed in the municipality. If at the time of any such publication there is no such newspaper of general circulation, then such publication shall be in a newspaper then determined by the Clerk to have the largest circulation in the municipality.

**SPECIAL MEETING.** A meeting which is neither a regular meeting nor an adjournment of a regular, or special, meeting to another time or day to consider items specifically stated on the original agenda of such regular, or special, meeting.

**VIRTUAL.** Teleconference, video conference or other similar electronic means.

**WRITTEN NOTIFICATION.** Notification in writing mailed, electronically mailed or delivered to the address of the person for whom such notification is intended as shown on the records kept by the Clerk and/or Manager under this chapter, or in any way delivered to such person. If mailed, such notification shall be mailed by first-class mail, deposited in a U.S. Postal Service mailbox no later than the second day preceding the day of the meeting to which such notification refers, provided that at least one regular mail delivery day falls between the day of mailing and the day of such meeting.

**Section 2.** That Chapter 34 "Open Meetings" of the Codified Ordinances of the City of Dublin, Ohio, be hereby amended to add Section 34.08 "Virtual Meetings" to read as follow:

### **§ 34.08 VIRTUAL MEETINGS.**

- (A) Members of municipal public bodies may hold, attend, permit public participation and conduct meetings and hearings virtually, in-person or a combination of the two and all of the following apply:
- (1) Any ordinance, resolution, motion, rule, decision, or other formal action passed or taken while Members attend virtually shall have the same effect as if it had occurred during an open meeting or hearing in which all members of the Municipal Body attended in person.
  - (2) Municipal Body members who attend a meeting or hearing by virtual means shall be considered present, as if the member attended the meeting or hearing in person, shall be permitted to vote, and shall be counted for determining whether a quorum is present at the meeting or hearing.
  - (3) Municipal bodies shall provide notification of meetings and hearings held under this section to the public, to the media that have requested notification of a meeting, and to the parties required to be notified of a hearing, at least twenty-four hours in advance of the meeting or hearing by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted, except in the event of an emergency hearing requiring immediate official action. In the event of an emergency, the Municipal Body shall immediately notify the news media that have requested notification, or the parties required to be notified of a hearing of the time, place, and purpose of the meeting or hearing.
  - (4) The Municipal Body shall provide the public access to a public meeting under this section, and to any hearing held under this section that the public would otherwise be

entitled to attend, commensurate with the method in which the meeting or hearing is being conducted, including, but not limited to, examples such as live-streaming by means of the internet, local radio, television, cable, or public access channels, call in information for a teleconference, or by means of any other similar electronic technology. The Municipal Body shall ensure that the public can observe and hear the discussions and deliberations of all the members of the Municipal Body, whether the member is participating by virtual means or in person.

- (5) When members of a Municipal Body decide to conduct a hearing by virtual means the Municipal Body must establish a means, using electronic equipment that is widely available to the general public, to converse with witnesses and to receive documentary testimony and physical evidence.

**Section 3.** The authority granted in this Ordinance applies notwithstanding any conflicting provision of the Revised Code. Nothing in this Ordinance shall be construed to negate any section of 121.22 of the Revised Code or other section of the Revised Code that is not in conflict with this section.

**Section 4.** This Ordinance shall take effect on the earliest date provided by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

### 34.02. DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CLERK.** The Clerk of Council.

**DAY.** Calendar day.

**HEARING.** Any administrative hearing or other hearing at which persons present oral or written testimony for consideration and determination of a matter before the Municipal Body.

**MANAGER.** The Manager of Dublin, Ohio.

**MEETING.** Any prearranged discussion of the public business of a Municipal Body by a majority of the members of the Municipal Body.

**MUNICIPAL BODY.** Each of the following:

- (1) Council;
- (2) Board of Control;
- (3) Planning and Zoning Commission;
- (4) Board of Zoning Appeals;
- (5) Architectural Review Board;
- (6) Parks and Recreation Committee;
- (7) Any other Board, or Commission, or Committee created subsequent to the enactment of these rules by the City Charter, the Mayor, or Council or both and;
- (8) Committees or subcommittees of the above Municipal Bodies comprised of members of such Bodies if such committees are comprised of a majority of the members of the main Municipal Body, or are decision-making committees.

**ORAL NOTIFICATION.** Notification given orally either in person or by telephone, directly to the person for whom such notification is intended, or by leaving an oral message for such person at the address, or if by telephone at the telephone number, of such person as shown on the records kept by the Clerk and/or Manager pursuant to this chapter.

**POST.** To post in ~~at three public places as designated by Council pursuant to Section 4.12 of the Revised Charter, an area accessible to the public during the usual business hours at the office of the Clerk and at the following locations:~~

~~—(1) The Dublin Branch~~

~~—Columbus Public Library~~

~~—75 North High Street~~

~~—Dublin, Ohio 43017~~

~~—(2) The Dublin Barbershop~~

~~—24 South High Street~~

~~—Dublin, Ohio 43017~~

~~—(3) Dublin T.V. Incorporated~~

~~—36 North High Street~~

~~—Dublin, Ohio 43017~~

~~—A notice identifying the locations at which notifications will be posted pursuant to this chapter shall be published by the Clerk within ten calendar days after the adoption of this chapter.~~

**PUBLISHED.** Published once in a newspaper having a general circulation in the Municipality, as defined in R.C. § 7.12, except that no portion of such newspaper need be printed in the municipality. If at the time of any such publication there is no such newspaper of general circulation, then such publication shall be in a newspaper then determined by the Clerk to have the largest circulation in the municipality.

***SPECIAL MEETING.*** A meeting which is neither a regular meeting nor an adjournment of a regular, or special, meeting to another time or day to consider items specifically stated on the original agenda of such regular, or special, meeting.

***VIRTUAL.*** Teleconference, video conference or other similar electronic means.

***WRITTEN NOTIFICATION.*** Notification in writing mailed, ~~telegraphed~~ electronically mailed or delivered to the address of the person for whom such notification is intended as shown on the records kept by the Clerk and/or Manager under this chapter, or in any way delivered to such person. If mailed, such notification shall be mailed by first-class mail, deposited in a U.S. Postal Service mailbox no later than the second day preceding the day of the meeting to which such notification refers, provided that at least one regular mail delivery day falls between the day of mailing and the day of such meeting.

**§ 34.08 VIRTUAL MEETINGS.**

- (A) Members of municipal public bodies may hold, attend, permit public participation and conduct meetings and hearings virtually, in-person or a combination of the two and all of the following apply:
- (1) Any ordinance, resolution, motion, rule, decision, or other formal action passed or taken while Members attend virtually shall have the same effect as if it had occurred during an open meeting or hearing in which all members of the Municipal Body attended in person.
  - (2) Municipal Body members who attend a meeting or hearing by virtual means shall be considered present, as if the member attended the meeting or hearing in person, shall be permitted to vote, and shall be counted for determining whether a quorum is present at the meeting or hearing.
  - (3) Municipal bodies shall provide notification of meetings and hearings held under this section to the public, to the media that have requested notification of a meeting, and to the parties required to be notified of a hearing, at least twenty-four hours in advance of the meeting or hearing by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted, except in the event of an emergency hearing requiring immediate official action. In the event of an emergency, the Municipal Body shall immediately notify the news media that have requested notification, or the parties required to be notified of a hearing of the time, place, and purpose of the meeting or hearing.
  - (4) The Municipal Body shall provide the public access to a public meeting under this section, and to any hearing held under this section that the public would otherwise be entitled to attend, commensurate with the method in which the meeting or hearing is being conducted, including, but not limited to, examples such as live-streaming by means of the internet, local radio, television, cable, or public access channels, call in information for a teleconference, or by means of any other similar electronic technology. The Municipal Body shall ensure that the public can observe and hear the discussions and deliberations of all the members of the Municipal Body, whether the member is participating by virtual means or in person.
  - (5) When members of a Municipal Body decide to conduct a hearing by virtual means the Municipal Body must establish a means, using electronic equipment that is widely available to the general public, to converse with witnesses and to receive documentary testimony and physical evidence.