

# **City Council Legal Review Committee**

## **Meeting Agenda**

**May 20, 2020  
Electronic Meeting  
6:00 PM**

***This meeting will be held electronically. Residents interested in listening to the meeting should visit the City's website here to link to the meeting:***  
[louisvilleco.gov/government/city-council/city-council-meeting-agendas-packets-minutes#Other](http://louisvilleco.gov/government/city-council/city-council-meeting-agendas-packets-minutes#Other)

***The Council will accommodate public comments as much as possible during the meeting. Anyone may also email comments to the Council prior to the meeting at [Council@LouisvilleCO.gov](mailto:Council@LouisvilleCO.gov).***

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Approval of Minutes: May 6, 2020
- V. Public Comments on Items Not on the Agenda
- VI. Discussion/Direction – Resolution Amending Procedures to be Utilized for Quasi-Judicial Hearings at Meetings Conducted by Electronic Participation
- VII. Discussion/Direction – Possible Options for In-Person Quasi-Judicial Hearings During COVID-19 Restrictions
- VIII. Discussion Items for Next Meeting
- IX. Adjourn

# ***City Council Legal Review Committee Meeting Minutes***

**May 6, 2020  
Electronic Meeting  
5:00 PM**

**Call to Order** – Councilmember Leh called the meeting to order at 5:03 pm.

**Roll Call:** The following members were present:

**Committee Members:** *Chris Leh, City Council  
Deborah Fahey, City Council  
Kyle Brown, City Council*

**Staff Present:** *Meredyth Muth, City Clerk  
Heather Balsler, City Manager  
Kathleen Kelly, City Attorney*

## **APPROVAL OF AGENDA**

The agenda was approved as presented.

## **APPROVAL OF MINUTES**

The minutes were approved as presented.

## **PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA**

Sam Baily, Vice President Metro Denver Economic Development Corp, stated their organization is very interested in seeing the area retain those companies interested in moving here with new jobs and projects. Specifically, they support the Medtronic application and the City finding a way for the project to move forward in the City's processes virtually or in-person.

## **DISCUSSION/DIRECTION – POSSIBLE QUASI-JUDICIAL HEARING OPTIONS DURING COVID-19 RESTRICTIONS**

Muth stated staff has put together some ideas for how in-person meetings for quasi-judicial matters may be able to be handled once larger gatherings are allowed again. These are somewhat speculative at this time and include ideas for combined in-person/virtual meetings, options for other locations for more social

distancing, and alternative ways to take public input. Staff is looking for feedback from the Committee and recommendations for City Council.

City Attorney Kelly stated the City needs to be mindful that any action the City takes that could be perceived as restricting people from speaking at a public hearing could be problematic.

Councilmember Leh noted Council adopted a rule on this in April and we are currently following that. These are unprecedented times and certain things need to proceed, we are trying to figure out a way to do it.

Councilmember Leh stated he can't foresee an easy set of recommendations to give back to Council on this item given the lack of information from the State at this time.

Councilmember Brown stated he prefers some kind of hybrid meeting with both in-person and electronic participation, but we can't even do that right now with the 10-person limit.

City Attorney Kelly stated currently even the limitation of 10 people at gatherings is not clear and there are varying interpretations of this. It is also not clear if this applies to governing bodies. We will need more information before moving forward with anything.

City Manager Balser stated she has heard there may be an exemption for public hearings; but it is hard to know if people will feel comfortable attending a meeting. She also noted the City is setting a public example and should be cautious in this approach. She stated other cities are planning to go back to in-person when the allowed group size goes up to 50 people.

Councilmember Fahey stated there are possibilities of in-person meetings in a large room with social distancing.

Councilmember Brown stated scheduling people for public comment is an option.

Councilmember Leh asked what the impacts are if we postpone this discussion until June. City Manager Balser stated that at this time do have some land use issues subject to referendum that are cannot move through the Planning Commission and City Council processes.

Councilmember Leh stated he doesn't think Council is interested in changing the regulation about not holding public hearings on items subject to referendum at an electronic meeting. Councilmember Brown and Councilmember Fahey agreed.

Public Comments

Sherry Sommer, 910 South Palisade Court, noted there are problems with sound tonight. She asked Council to respect the referendum process. She noted Medtronic could move forward under the existing GDP if they wanted to.

Cyndi Bedell, 662 West Willow Street, stated she liked the idea of combination in-person/ electronic meetings. She noted tonight's meeting is hard to hear and she would like the electronic meetings to have closed captioning. She also would like to see Medtronic move forward without a GDP amendment.

Councilmember Fahey and Councilmember Brown would like to find ways to do limited in-person attendance combined with electronic meetings.

Members decided to continue this item to a May 20 meeting before taking recommendations to Council on May 26.

**DISCUSSION/DIRECTION – REVIEW OF BACK UP PROSECUTING ATTORNEY APPLICATIONS**

Councilmember Leh proposed postponing this to a later discussion when some of these other more pertinent items are handled.

**DISCUSSION/DIRECTION – RETAIL MARIJUANA FAQs**

Councilmember Leh proposed postponing this to a later discussion when some of these other more pertinent items are handled.

**DISCUSSION ITEMS FOR NEXT MEETING**

Continuation of this topic.

**ADJOURN**

The meeting was adjourned at 6:33 pm.

**SUBJECT: DISCUSSION/DIRECTION – RESOLUTION AMENDING PROCEDURES TO BE UTILIZED FOR QUASI-JUDICIAL HEARINGS AT MEETINGS CONDUCTED BY ELECTRONIC PARTICIPATION**

**DATE: MAY 20, 2020**

**PRESENTED BY: HEATHER BALSER, CITY MAANGER  
KATHLEEN KELLY, CITY ATTORNEY**

**SUMMARY:** Attached is a draft of a resolution amending procedures to be utilized for quasi-judicial hearings at meetings conducted by electronic participation. The draft amends the previously approved Resolution No. 30, Series 2020 regarding electronic quasi-judicial hearings adopted by City Council on April 7, 2020. Also attached is a blackline showing changes. The revisions to the previous resolution seek to clarify City Council’s policy regarding quasi-judicial hearings, particularly as it relates to matters that may be heard by electronic participation.

Highlights of the changes include the following:

*Matters for which Electronic Quasi-Judicial Hearings may be Held. Only the following types of quasi-judicial hearings may be held at a meeting by Electronic Participation:*

1. *Land use applications the final decision regarding which is not subject to referendum: Public hearings before City Council and all Appointed Bodies may be held by Electronic Participation. These types of applications include, but are not limited to, Planned Unit Development, subdivision plats, and special review uses.*

2. *Land use applications the final decision regarding which is subject to referendum: Public hearings before all Appointed Bodies may be held by Electronic Participation, but City Council hearings must be held at an in-person meeting. These types of applications include, but are not limited to, zoning and rezoning applications, including applications for General Development Plans and amendments thereto.*

3. *Historic Preservation applications. These types of applications include, but are not limited to, landmark designations, landmark alteration certificates, and demolition reviews.*

4. *New license applications and applications for renewals of existing licenses where a public hearing is required or ordered by the applicable licensing*

**SUBJECT: RESOLUTION NO. SERIES 2020**

**DATE: MAY 20, 2020**

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*authority. These types of applications include, but are not limited to, liquor license applications, medical marijuana license applications, and retail marijuana license applications.*

More detail on changes are provided in the attached blackline copy of the amended resolution. Additionally, there are changes in the amended resolution to address accessibility. Some information from the Rocky Mountain ADA Center regarding Virtual Meetings for People with Disabilities, can be found here:

<https://www.rockymountainada.org/news/blog/virtual-meetings-people-disabilities>.

**RECOMMENDATION:**

Discussion/Direction for recommendation to City Council at the May 26, 2020 City Council meeting.

**ATTACHMENT(S):**

1. Resolution No. Series, 2020 Clean Copy
2. Resolution No. Series 2020 Blackline Copy

**RESOLUTION NO. \_\_\_\_**  
**SERIES 2020**

**A RESOLUTION AMENDING PROCEDURES TO BE UTILIZED FOR QUASI-JUDICIAL HEARINGS AT MEETINGS CONDUCTED BY ELECTRONIC PARTICIPATION**

**WHEREAS**, on March 15, 2020, the Mayor of the City of Louisville, pursuant to Chapter 2.32 of the Louisville Municipal Code and C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Louisville (the “Mayor’s Declaration”) in response to the widespread pandemic Novel Coronavirus (COVID-19); and

**WHEREAS**, by Resolution No. 27, Series 2020, adopted on March 16, 2020, the City Council continued in effect the Mayor’s Declaration until terminated by resolution of the City Council; and

**WHEREAS**, by Resolution No. 26, Series 2020, also adopted on March 16, 2020, the City Council amended its Rules of Procedure to provide for electronic meeting participation in certain situations, including when meeting in person is not practical or prudent due to a health epidemic or pandemic; and

**WHEREAS**, on March 25, 2020, the Governor of the State of Colorado issued Executive Order D2020-17, ordering the Colorado Department of Health and Environment (“CDPHE”) to issue a state-wide “Stay at Home” public health order; and

**WHEREAS**, also on March 25, 2020, the CDPHE issued an Amended Public Health Order 20-24 Implementing Stay at Home Requirements, which Order has since been updated twice, and which Order requires all individuals currently living within the State of Colorado to stay at home whenever possible, and only to leave to perform or utilize “Necessary Activities,” as defined in the Order; and

**WHEREAS**, by Resolution No. 29, series 2020, adopted on March 31, 2020, the City Council authorized boards, commissions, and committees established by the City Council (“Appointed Bodies”) to also hold meetings by electronic participation when meeting in person is not practical or prudent due to a health epidemic or pandemic; and

**WHEREAS**, by Resolution No. 30, Series 2020, adopted on April 7, 2020, the City Council amended its Rules of Procedure to allow quasi-judicial hearings to be conducted during a health epidemic or pandemic or other state of emergency affecting the City that is or will be extraordinary, according to procedures set forth in Resolution No. 30; and

**WHEREAS**, Resolution No. 30 likewise authorized Appointed Bodies of the City to hold quasi-judicial hearings in accordance with the procedures set forth therein; and

**WHEREAS**, on April 26, 2020, Colorado Governor Polis issued Executive Order D2020-44, adopting a “Safer at Home” approach to the COVID-19 Pandemic, which loosened

certain restrictions that were in effect under the Stay at Home order, in order to allow many people within Colorado to return to work while maintaining sustainable levels of social distancing, while still recommending most people residing in the state to remain in their residences except when engaging in Necessary Activities; and

**WHEREAS**, also on April 26, 2020, the CDPHE issued Public Health Order 20-28 to implement the Governor’s Safer at Home order, which will be in effect until May 26, 2020 unless extended, rescinded, superseded, or amended in writing by the CDPHE; and

**WHEREAS**, the City Council and Appointed Bodies have not been able to meet in person for an extended period of time and it is unclear when in-person meetings may safely be resumed, thus the nature and extent of the COVID-19 Pandemic is extraordinary; and

**WHEREAS**, the City Council finds that holding quasi-judicial hearings constitutes an important function of City government; that not holding such hearings for an extended period of time may present a burden to City residents, property owners, and businesses; and that the public health, safety, and welfare of the City will best be secured and protected during this COVID-19 Pandemic by permitting quasi-judicial hearings to proceed at electronic meetings in accordance with the procedures set forth herein; and

**WHEREAS**, the City Council desires by this Resolution to clarify its policy regarding quasi-judicial hearings, particularly as it relates to the matters that may be heard by Electronic Participation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:**

**Section 1.** The City Council and Appointed Bodies are hereby authorized to hold quasi-judicial hearings at a meeting by Electronic Participation, subject to the procedures set forth in this Resolution.

A. Matters for which Electronic Quasi-Judicial Hearings may be Held. Only the following types quasi-judicial hearings may be held at a meeting by Electronic Participation:

1. Land use applications the final decision regarding which is not subject to referendum: Public hearings before City Council and all Appointed Bodies may be held by Electronic Participation. These types of applications include, but are not limited to, Planned Unit Development, subdivision plats, and special review uses.

2. Land use applications the final decision regarding which is subject to referendum: Public hearings before all Appointed Bodies may be held by Electronic Participation, but City Council hearings must be held at an in-person meeting. These

types of applications include, but are not limited to, zoning and rezoning applications, including applications for General Development Plans and amendments thereto.

3. Historic Preservation applications. These types of applications include, but are not limited to, landmark designations, landmark alteration certificates, and demolition reviews.

4. New license applications and applications for renewals of existing licenses where a public hearing is required or ordered by the applicable licensing authority. These types of applications include, but are not limited to, liquor license applications, medical marijuana license applications, and retail marijuana license applications.

B. Applicant's Written Request. For any application set forth in Section A, above, a written request for a hearing by Electronic Participation shall be made by the applicant on a form provided by the City. The applicant shall acknowledge that holding a quasi-judicial hearing by Electronic Participation presents certain legal risks and involves an area of legal uncertainty, and the applicant shall agree that moving forward with a quasi-judicial hearing by Electronic Participation shall be at their own risk. Applicants requesting a hearing by Electronic Participation pursuant to Section A.1 or A.2 above shall additionally agree to defend and indemnify the City in any action that may arise out of, or in connection with, conducting the hearing by Electronic Participation; if such is not provided, no public hearing will be held until in-person meetings have resumed and the applicant will be deemed to have consented to a delay in the holding of a public hearing.

C. Notice Requirements.

1. The required notice for the hearing and the agenda for the meeting at which the hearing will be held shall each include information about how the hearing will be conducted and how the public can access, observe, and participate in the hearing. If such notice as required by the Louisville Municipal Code or otherwise by law has already been provided for a hearing to be held in person, such additional notice shall be given as to reasonably inform interested persons that such hearing will instead be held by Electronic Participation; provided, however, this additional notice shall not be deemed jurisdictional.

2. The notice shall advise that relevant documents will be made available online, that any interested party may contact the City Clerk to receive a paper copy if unable to access the online documents, and that the City will reasonably accommodate interested parties who lack necessary equipment or the ability to access equipment. Interested parties will be encouraged to submit written comments in advance of the hearing, which comments will be made a part of the record of the hearing.

D. Documents. The City Clerk or Secretary of the applicable board or commission shall set deadlines for submission of documents depending on the nature of the hearing. Materials relevant to the hearing, including but not limited to materials related to specific applications and other documents to be shown electronically during the hearing, will be made available online at least 72 hours in advance for public inspection prior to, during, and after the hearing.

E. Hearing Procedures. At the outset of the hearing, the presiding officer of the Public Body shall describe the hearing procedure, including how testimony and public comment will be received. The applicant shall be given an opportunity to object to the hearing procedure. The presiding officer shall rule on any such objection, and the decision of the presiding officer shall be final.

F. Record. The City Clerk or Secretary of the applicable board or commission shall ensure that all equipment used for the hearing is adequate and functional for allowing clear communication among the participants and for creating a record of the hearing as required by law. Provided, however, the City Clerk or Secretary shall not be responsible for resolving any technical difficulties incurred by any person participating in the hearing.

G. Accessibility. All hearings conducted pursuant to this Resolution shall be held on an electronic platform generally meeting Web Content Accessibility Guidelines (“WCAG”) 2.1 and the agenda for such meeting shall contain the following notice:

Persons with disabilities planning to participate in the meeting who need sign language interpretation, assisted listening systems, Braille, taped material, or closed captioning should contact the City Manager’s Officer at (303) 335-4533. A forty-eight hour notice is requested.

H. Hearing May be Vacated or Continued. The procedures adopted by this Resolution create no right in any party to a quasi-judicial matter to have a hearing conducted by Electronic Participation. If at any point the City Manager, the Mayor, or the Chair of the Appointed Body, as the case may be under the particular circumstances, determines that technological, accessibility, or other issues prevent a hearing from being held by Electronic Participation while meeting due process requirements, the hearing may be vacated or continued until such time as it may be held at an in-person meeting.

**Section 2.** Resolution No. 30 is hereby repealed to the extent of any inconsistency with this Resolution.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Ashley Stolzmann, Mayor

ATTEST:

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Meredyth Muth, City Clerk

5/7/2020 3:08 PM [kmk] R:\Louisville\Resolution\Electronic Q-J Hearings Revised and Restated.doc

**RESOLUTION NO. ~~30~~ \_\_\_\_\_**  
**SERIES 2020**

**A RESOLUTION ~~REGARDING~~ AMENDING PROCEDURES TO BE UTILIZED FOR QUASI-JUDICIAL HEARINGS AT MEETINGS CONDUCTED BY ELECTRONIC PARTICIPATION**

**WHEREAS**, on March 15, 2020, the Mayor of the City of Louisville, pursuant to Chapter 2.32 of the Louisville Municipal Code and C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Louisville (the “Mayor’s Declaration”) in response to the widespread pandemic Novel Coronavirus (COVID-19); and

**WHEREAS**, by Resolution No. 27, Series 2020, adopted on March 16, 2020, the City Council continued in effect the Mayor’s Declaration until terminated by resolution of the City Council; and

**WHEREAS**, by Resolution No. 26, Series 2020, also adopted on March 16, 2020, the City Council amended its Rules of Procedure to provide for electronic meeting participation in certain situations, including when meeting in person is not practical or prudent due to a health epidemic or pandemic; and

**WHEREAS**, on March 25, 2020, the Governor of the State of Colorado issued Executive Order ~~2020D2020~~-17, ordering the Colorado Department of Health and Environment (“CDPHE”) to issue a state-wide “Stay at Home” public health order; and

**WHEREAS**, also on March 25, 2020, the CDPHE issued an Amended Public Health Order 20-24 Implementing Stay at Home Requirements, which Order has since been updated twice, and which Order requires all individuals currently living within the State of Colorado to stay at home whenever possible, and only to leave to perform or utilize “Necessary Activities,” as defined in the Order; and

**WHEREAS**, by Resolution No. 29, series 2020, adopted on March 31, 2020, the City Council authorized boards, commissions, and committees established by the City Council (“Appointed Bodies”) to also hold meetings by electronic participation when meeting in person is not practical or prudent due to a health epidemic or pandemic; and

**WHEREAS**, by Resolution No. 30, Series 2020, adopted on April 7, 2020, the City Council amended its Rules of Procedure, as amended by Resolution No. 26 do not permit to allow quasi-judicial hearings to be held at electronic meetings conducted during a health epidemic or pandemic or other state of emergency affecting the City that is or will be extraordinary, according to procedures set forth in Resolution No. 30; and

**WHEREAS**, Resolution No. 30 likewise authorized Appointed Bodies also may not of the City to hold quasi-judicial hearings at electronic meetings in accordance with the procedures set forth therein; and

WHEREAS, on April 26, 2020, Colorado Governor Polis issued Executive Order D2020-44, adopting a “Safer at Home” approach to the COVID-19 Pandemic, which loosened certain restrictions that were in effect under the Stay at Home order, in order to allow many people within Colorado to return to work while maintaining sustainable levels of social distancing, while still recommending most people residing in the state to remain in their residences except when engaging in Necessary Activities; and

WHEREAS, also on April 26, 2020, the CDPHE issued Public Health Order 20-28 to implement the Governor’s Safer at Home order, which will be in effect until May 26, 2020 unless and until the City Council adopts a resolution establishing guidelines for such matters that confirm with the requirements of the City’s Home Rule Charter, the Louisville Municipal Code, and constitutional due process requirements; extended, rescinded, superseded, or amended in writing by the CDPHE; and

WHEREAS, ~~current available information indicates~~ the City Council and Appointed Bodies ~~may have~~ not ~~been~~ able to meet in person for an extended period of time and ~~it is unclear when in-person meetings may safely be resumed,~~ thus the nature and extent of the COVID-19 Pandemic is extraordinary; and

WHEREAS, the City Council finds that holding quasi-judicial hearings constitutes an important function of City government; that not holding such hearings for an extended period of time may present a burden to City residents, property owners, and businesses; and that the public health, safety, and welfare of the City will best be secured and protected during this COVID-19 Pandemic by permitting quasi-judicial hearings to proceed at electronic meetings in accordance with the procedures set forth herein; and

WHEREAS, the City Council desires by this Resolution to clarify its policy regarding quasi-judicial hearings, particularly as it relates to the matters that may be heard by Electronic Participation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:**

~~Section 1.~~—The amended City Council Rules of Procedure are hereby approved in the form accompanying this Resolution.

~~Section 2~~**Section 1.** The City Council and Appointed Bodies are hereby authorized to hold quasi-judicial hearings at a meeting by Electronic Participation, subject to the procedures set forth in this ~~Section 2; provided, however, no quasi-judicial hearing shall be held for any matter the decision of which is subject to referendum~~**Resolution.**

A. ~~Applicant’s Written Request. In the event a pending~~Matters for which Electronic Quasi-Judicial Hearings may be Held. Only the following types quasi-judicial ~~matter is scheduled~~

~~for a public hearing may be held at a meeting to be conducted by Electronic Participation, or an applicant wishes to request an as yet unscheduled hearing be conducted;~~

~~1. Land use applications the final decision regarding which is not subject to referendum: Public hearings before City Council and all Appointed Bodies may be held by Electronic Participation. These types of applications include, but are not limited to, Planned Unit Development, subdivision plats, and special review uses.~~

~~2. Land use applications the final decision regarding which is subject to referendum: Public hearings before all Appointed Bodies may be held by Electronic Participation, but City Council hearings must be held at an in-person meeting. These types of applications include, but are not limited to, zoning and rezoning applications, including applications for General Development Plans and amendments thereto.~~

~~3. Historic Preservation applications. These types of applications include, but are not limited to, landmark designations, landmark alteration certificates, and demolition reviews.~~

~~4. New license applications and applications for renewals of existing licenses where a public hearing is required or ordered by the applicable licensing authority. These types of applications include, but are not limited to, liquor license applications, medical marijuana license applications, and retail marijuana license applications.~~

~~B. Applicant's Written Request. For any application set forth in Section A, above, a written request for a hearing by Electronic Participation shall be made by the applicant on a form provided by the City. The applicant shall acknowledge that holding a quasi-judicial hearing by Electronic Participation presents certain legal risks and involves an area of legal uncertainty, and the applicant shall agree that moving forward with a quasi-judicial hearing by Electronic Participation shall be at their own risk. Land use applicants Applicants requesting a hearing by Electronic Participation pursuant to Section A.1 or A.2 above shall additionally agree to defend and indemnify the City in any action that may arise out of, or in connection with, conducting the hearing by Electronic Participation; if such is not provided, no public hearing will be held until in-person meetings have resumed and the applicant will be deemed to have consented to a delay in the holding of a public hearing.~~

~~B. City Manager to Determine Suitability of Conducting Quasi-Judicial Hearing by Electronic Participation. The procedures adopted by this Resolution create no right in any party to a quasi-judicial matter to have a hearing conducted by Electronic Participation. Upon receipt of a written request, the City Manager or their designee shall determine whether the City has the capability to hold the particular type of hearing by Electronic Participation, what available form of Electronic Participation is most appropriate for the type of hearing, and set date(s) for the hearing(s). Such hearings shall be open to the public and provide the ability for interested members of the public to join~~

~~the hearing electronically. The method chosen by the City Manager or their designee shall ensure the public has the ability to view or listen to the hearing in real time and interested parties may speak. If at any point the City Manager or their designee determines it not possible or prudent to hold the hearing by Electronic Participation, whether due to technical issues or an inability to do so while meeting constitutional due process requirements, the hearing shall be vacated and the matter will be held in abeyance until in-person meetings have resumed.~~

C. Notice Requirements.

1. The required notice for the hearing and the agenda for the meeting at which the hearing will be held shall each include information about how the hearing will be conducted and how the public can access, observe, and participate in the hearing. If such notice as required by the Louisville Municipal Code or otherwise by law has already been provided for a hearing to be held in person, such additional notice shall be given as to reasonably inform interested persons that such hearing will instead be held by Electronic Participation; provided, however, this additional notice shall not be deemed jurisdictional.

2. The notice shall advise that relevant documents will be made available online, that any interested party may contact the City Clerk to receive a paper copy if unable to access the online documents, and that the City will reasonably accommodate interested parties who lack necessary equipment or the ability to access equipment. Interested parties will be encouraged to submit written comments in advance of the hearing, which comments will be made a part of the record of the hearing.

D. Documents. The City Clerk or Secretary of the applicable board or commission shall set deadlines for submission of documents depending on the nature of the hearing. Materials relevant to the hearing, including but not limited to materials related to specific applications and other documents to be shown electronically during the hearing, will be made available online at least 72 hours in advance for public inspection prior to, during, and after the hearing.

E. Hearing Procedures. At the outset of the hearing, the presiding officer of the Public Body shall describe the hearing procedure, including how testimony and public comment will be received. The applicant shall be given an opportunity to object to the hearing procedure. The presiding officer shall rule on any such objection, and the decision of the presiding officer shall be final.

F. Record. The City Clerk or Secretary of the applicable board or commission shall ensure that all equipment used for the hearing is adequate and functional for allowing clear communication among the participants and for creating a record of the hearing as required by law. Provided, however, the City Clerk or Secretary shall not be responsible for resolving any technical difficulties incurred by any person participating in the hearing.

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Section 2. Resolution No. 30 is hereby repealed to the extent of any inconsistency with this Resolution.

**PASSED AND ADOPTED** this 7<sup>th</sup> \_\_\_\_ day of ~~April~~, \_\_\_\_\_, 2020.

\_\_\_\_\_  
Ashley Stolzmann, Mayor

ATTEST:

\_\_\_\_\_  
Meredyth Muth, City Clerk

4/8/2020 11:11 AM 3:08 PM [kmk] R:\Louisville\Resolution\Electronic Q-J Hearings (as approved)\Revised and Restated.doc

**SUBJECT: DISCUSSION/DIRECTION – POSSIBLE OPTIONS FOR IN-PERSON QUASI-JUDICIAL HEARINGS DURING COVID-19 RESTRICTIONS**

**DATE: MAY 20, 2020**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK**

**SUMMARY:**

The City Council has asked the Committee to look into what possible options there are for holding public hearings for quasi-judicial items during the COVID-19 outbreak and while there are strict limitations on in-person gatherings.

At this time, staff plans to hold meetings electronically for all of May as the current Safer at Home regulations ask people to minimize the number of in-person meetings, maintain the 6-foot distancing, and avoid gatherings of more than 10 people. At this time, we do not yet know if the 10-person limit will be changed in June and if so how large of a gathering may be allowed.

For any hearing there are competing needs of transparency, public participation, due process (for both the applicant and the public), and the economic and personal property implications of holding up an application indefinitely.

Staff is looking into how to make the electronic meetings as accessible as possible including closed captioning. We are looking into using the same close captioning encoder we use for Channel 8 for Zoom meetings. There will be an additional cost for this.

Assuming public participation, transparency, and personal safety are the guiding principles, staff has reviewed a variety of options for how to handle hearings. There are pros and cons to all of the options and without exact guidance these are speculative at this point.

Some of the options being considered once larger in-person meetings are allowed include:

- Holding Council/Planning Commission meetings in the Gym or the Brooks/Crown Room at the Rec Center to allow for more social distancing.
  - We can broadcast directly to Channel 8 and the web stream from that location and have ordered the equipment necessary to do so.
  - That location would likely be a large enough room to spread out up to 50 people safely.

- Have speakers sign up for speaking appointments for the in-person meeting.
  - For example we could have one-hour slots in which 15 people at a time could come in to speak and we could rotate people through.
  - We would require people to sign up to speak in a specific time slot.
  - Members of the public not in the room would have to watch the rest of the Council discussion, staff presentation, etc. on Channel 8 or web stream.
  - This is problematic in that people cannot sit through the entire hearing in person and may feel that is limiting their participation.
  
- Hold a meeting both in-person and electronically and take comments both in-person and electronically.
  - We could continue to use Zoom with each Councilmember and staff on a laptop (even though we are in the same room) and feed that to Channel 8 and the web stream as we do now.
  - We could offer a limited number of in-person slots and have everyone else join the meeting electronically.
  - We would provide a laptop on the podium for in-person attendees to give public comments within the Zoom feed.
  - Perhaps save the in-person slots for those who cannot join electronically for lack of technology.
  - The number of in-person slots could be VERY limited. For example, seven Councilmembers and even a limited staff (City Manager, City Attorney, City Clerk, two Planners, the applicant, and the camera operator) is already 14+ people in attendance. If we are limited to say 25 that leaves very few in-person slots.
  - It may be perceived that those attending in person have more influence over the application than those watching electronically.
  
- For any of the above options:
  - All meetings attendees would be required to undergo the same screenings as required to enter other public buildings; masks and appropriate social distancing would be required.
  
  - Rules related to building capacity may also dictate how large a gathering can take place.
  
  - The Council would still want to consider if they want to require indemnification from the applicant and if it wants to use a process like this for an item subject to referendum

**SUBJECT: IN-PERSON OPTIONS FOR QUASI-JUDICIAL HEARINGS**

**DATE: MAY 20, 2020**

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- It should also be noted that the City always accepts public comments by email for any meeting item and those comments are given to Councilmembers/ Planning Commissioners and made a part of the public record of the proceedings.

**RECOMMENDATION:**

Discussion/Direction.

**ATTACHMENT(S):**

1. Commerce City Policy for Public Hearing at Electronic Meetings
2. City of Westminster Guidelines for Public Participation at Virtual Public Meetings

**RESOLUTION ESTABLISHING POLICIES FOR CONDUCTING PUBLIC HEARINGS  
DURING ELECTRONIC MEETINGS**

**NO. 2020-30**

WHEREAS, the City Council of the City of Commerce City enacted certain policies pursuant to Section 4.27 of the City Charter, including Council Policies 20 and 22 regarding the conduct and order of public hearings;

WHEREAS, the City Council has enacted Ordinance 2271 authorizing the conduct of City Council meetings conducted by Electronic Means during certain declared emergencies or disasters, but a resolution is require to establish guidelines for public hearings on quasi-judicial matters and related votes to ensure conformance with the requirements of the Charter, the Commerce City Revised Municipal Code, and the requirements of due process;

WHEREAS, the City Council finds that this resolution establishes guidelines to ensure that public hearings may continue during prolonged emergencies in an open and impartial manner, that the public has the ability to hear or view the proceedings in real time, that allows interested parties to provide testimony, and allows an opportunity for the City Council to give fair consideration to all issues presented at the public hearing;

WHEREAS, the City Council finds that the guidelines established by this resolution are necessary and appropriate to promote the efficient and orderly conduct of municipal business, to ensure the validity of municipal proceedings, and to protect the health, safety, and welfare of the public;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

**1. Application.** This resolution is adopted pursuant to Ordinance 2271, as it may be amended, and supplements Council Policies CP-20 and CP-22 and any other policy related to public hearings when a public hearing, as defined in CP-22, is conducted by Electronic Means as provided in Ordinance 2271. All other provisions of applicable Council Policies will apply to a public hearing held pursuant to this resolution to the extent not in conflict with this resolution and Ordinance 2271. References to the “body” means the City Council or applicable board or commission.

**2. Applicant Agreement.** Except for any public hearing held initiated by the City or based on an appeal of an action initiated by the City, each applicant must request and consent, on a form provided by the City, that a public hearing be conducted pursuant to this resolution. The request form shall provide that, without condition, the applicant: a) acknowledges that holding a quasi-judicial hearing by electronic means presents legal risks and involves an area of legal uncertainty and that the applicant has reviewed this resolution; b) agrees that the applicant assumes all risk of conducting the quasi-judicial hearing by electronic means; and c) agrees to defend and indemnify the City in any action arising from or in connection with any alleged deficiency in the conduct of the hearing as a result of the use of electronic means. If such a request and consent is not provide, no public hearing will be held until in-person meetings resume and the applicant will

be deemed to have consented a delay in the processing of related application and the timing of the public hearing.

**3. Special Notice Required.** In addition to any notice required by law, the following notice requirements apply:

a. Any agenda including a public hearing that will be conducted remotely must be published at least 3 business days before the hearing (e.g., for a hearing on Monday, the agenda must be posted by Wednesday) and shall include:

i. Materials to be presented by the City and the applicant during the hearing (except for rebuttal materials);

ii. Information about how the hearing will be conducted and how the public can access, observe, and provide testimony for the hearing (including registration requirements); and

iii. Information about how to request paper copies of materials from the City.

The agenda notice will be part of the record. Agendas may be amended. This does not modify the notice requirements of the Land Development Code and will not be deemed jurisdictional.

b. Mailed, published and placard notices (as required by the Land Development Code) for the public hearing shall include a notification that the public hearing may be conducted electronically, that advance registration for testifying will be required, and that information for participation will be provided in the published agenda. Any previously issued notice shall be supplemented to comply with this resolution, but such supplement will not affect the validity of the previously issued ordinance.

**4. Public Testimony – Advance Submission or Registration.** Testimony other than by the applicant, its consultants, and city staff during the public hearing will be limited to written testimony submitted in advance and oral testimony from previously-registered participant, as follows:

a. For **written testimony**, submit written testimony by mail or through a web-based portal established by the City and identified in the agenda. All written testimony must be received a deadline established by the clerk or secretary that is published in the agenda. Written testimony received or submitted late will not be entered into the record. The clerk or secretary of the body will amend the published materials specific to the matter to include all timely-received written testimony.

b. For **oral testimony**, register to testify through means to be established by the City and identified in the agenda. All persons wishing to testify must register by a deadline to be established by the clerk or secretary that is published in the agenda. Persons who do not register on time will not be permitted to testify. Speakers must have a reliable phone or internet connection and respond when called upon to testify. Persons who submit written testimony may also provide oral testimony. The clerk or secretary will provide a list of registered persons to the chair and will provide speakers with information on connecting to the hearing and providing testimony.

c. **An applicant's written presentation materials and exhibits** must be submitted at least 5 business days before the meeting to be included in the record.

d. No presentations or exhibits other than rebuttal exhibits from the applicant or the City will be accepted during oral testimony by the applicant or any registered speaker.

**5. Oral Testimony by Applicant & Public.** This section's use of technological terms shall be interpreted according to the capabilities and features of the platform used to conduct the public hearing.

a. The applicant shall appear by video with audio unless only an audio connection is viable and the body consents to an audio-only appearance. The public hearing should be continued in the absence of such consent or if the applicant's connection does not allow the applicant to hear or respond to questions or if the body cannot hear the applicant's presentation.

b. Registered speakers may be limited to audio presentations unless a video connection is technologically feasible and secure. If disconnected or if the connection limits the speaker from being heard, the speaker will forfeit their opportunity to speak unless the body votes to allow the speaker to attempt to re-connect or to continue the public hearing.

c. All presented exhibits and all testimony and questions must be clearly audible and visible (for those using video connections) to the body, City staff, the applicant, and to the public.

d. The applicant and registered speakers must remain muted, with any video disabled, until recognized to speak. Any person who fails to remain muted or uses video, without being recognized, and as a result, disrupts or interferes with the meeting, will forfeit the opportunity to speak and will be disconnected.

e. Once recognized to speak, a registered speaker must promptly state their name and provide their testimony. If the speaker does not promptly begin, the chair may direct the clerk or secretary to mute and disable the video of the speaker and the speaker will forfeit their opportunity to speak. Once a speaker's testimony is concluded or time is expired, the clerk or secretary will mute the speaker and disable the speaker's video.

f. Speakers are asked to disconnect from the meeting platform once they have concluded their testimony and should watch the remainder of the hearing and meeting online or on television. The applicant should remain connected until the conclusion of the hearing.

g. The chair may direct the clerk or secretary to mute, disable, or disconnect any speaker whose time has expired or who violates applicable rules.

h. A member of the public may only speak once during the public hearing.

**6. Limitation.** The City Manager may choose to vacate any public hearing to be conducted by this resolution if and hold the matter in abeyance if the City Manager determines it is not possible or prudent to hold the public hearing by electronic means. This resolution may not be relied upon during an emergency meeting, as permitted by Ordinance 2271, as it may be amended.

**7. Severability.** If any provision of this resolution or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the resolution that can be given effect without the invalid portion or applications, provided such remaining portions or applications are not determined by the court to be inoperable.

RESOLVED AND PASSED THIS 20TH DAY OF APRIL 2020.

CITY OF COMMERCE CITY, COLORADO



*Benjamin A. Huseman*  
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Benjamin A. Huseman, Mayor

ATTEST

*Dylan A. Gibson*  
\_\_\_\_\_

Dylan A. Gibson, Deputy City Clerk

## CITY OF WESTMINSTER GUIDELINES FOR PUBLIC PARTICIPATION IN VIRTUAL PUBLIC HEARINGS

### TO SUBMIT YOUR TESTIMONY IN ADVANCE:

#### Email testimony to [PublicHearing\\_ItemXX@cityofwestminster.us](mailto:PublicHearing_ItemXX@cityofwestminster.us)

- Send your written testimony no later than 12:00 p.m. (noon) the day of the public hearing.
- Please include your full name and address for the record.
- Your email testimony will be distributed to the City Council for their review and consideration by 1:00 p.m., and added to the official record.

#### Leave a recorded message to be played during the live the Public Hearing.

- Call (303) 658-XXXX by no later than 12:00 p.m. (noon) on the day of the public hearing.
- After the tone, state your full name and address for the record.
- Your recorded message is limited to 5 minutes, so please be aware of the time as you give your comments.
- There will be no time warnings, and the call will end after the 5 minute limit has expired.

### TO GIVE YOUR TESTIMONY DURING THE LIVE VIRTUAL MEETING:

#### Sign up to speak through the City Clerk's Office.

- Add your name to the list of speakers by emailing the City Clerk's Office at [cityclerk@cityofwestminster.us](mailto:cityclerk@cityofwestminster.us) by no later than 12:00 (noon) on the day of the public hearing.
- Provide your full name and address.
- Speakers will be called in the order that they sign up to speak.
- A web link to the live meeting will be sent in response to your email.
- You must have the ability to log in to the virtual meeting using your own computer equipment. In order to speak, you must use your computer's microphone, a headset, or call in on your phone for sound.
- Once you join the meeting, you will be automatically muted.
- During the Public Hearing, the Mayor will call on each person who signed up in order.
- When your name is called, you will be unmuted and may proceed to give your testimony.
  - If you experience technical difficulties when you are called to speak, and are unable to give live testimony:
    - i. To have your comments included as part of the official record, immediately call (303)658-XXXX to leave a recorded message of your testimony.
    - ii. After the tone, state your full name and address for the record.
    - iii. Your recorded message is limited to 5 minutes, so please be aware of the time as you give your comments.
    - iv. There will be no time warnings, and the call will end after the 5 minute limit has expired.
    - v. Your testimony will be played back before the close of the Public Hearing.