

# **City Council Legal Review Committee**

## **Meeting Agenda**

**July 7, 2020  
Electronic Meeting  
6:00 PM**

***This meeting will be held electronically. Residents interested in listening to the meeting or making public comments can join in one of two ways:***

- 1) You can call in to +1 312 626 6799 or 877 853 5247 (Toll Free) Webinar ID # 811 9438 6813.***
- 2) You can log in via your computer. Please visit the City's website here to link to the meeting: [louisvilleco.gov/government/city-council](http://louisvilleco.gov/government/city-council)***

***The Council will accommodate public comments 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: June 10, 2020
- V. Public Comments on Items Not on the Agenda
- VI. Discussion/Direction – Options for Meetings for Quasi-Judicial Hearings Subject to Referendum
- VII. Discussion/Direction –Electronic Signature Gathering for Referenda Petitions
- VIII. Discussion Items for Next Meeting
  - Annual Evaluation of Judge, Prosecutor, and City Attorney
  - Marijuana FAQs
  - Back Up Prosecutor
- IX. Adjourn

# ***City Council Legal Review Committee***

## ***Meeting Minutes***

**June 10, 2020  
Electronic Meeting  
6:00 PM**

**Call to Order** – Councilmember Leh called the meeting to order at 6:00 pm. **Roll Call:** The following members were present:

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

***Other City Councilmembers Present:  
Mayor Ashley Stolzmann  
Councilmember Caleb Dickinson***

***Staff Present: Meredyth Muth, City Clerk  
Heather Balsler, City Manager  
Kathleen Kelly, City Attorney  
Rob Zuccaro, Planning & Building Safety Director***

### **APPROVAL OF AGENDA**

The agenda was approved by all members as presented.

### **APPROVAL OF MINUTES**

The minutes were approved by all members as presented.

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

John Leary, 1116 La Farge Avenue, read an email he had written to the Committee noting his concerns that even if in-person meetings can be safely held there are still health concerns around the safety of signature gathering for the referendum process.

### **DISCUSSION/DIRECTION – MEETING OPTIONS/ISSUES DURING COVID 19 RESTRICTIONS**

Councilmember Leh stated the Committee needs to recommend to Council options for proceeding with in-person meetings and when and how that could happen. The fundamental values we need to maintain are transparency and accessibility but added to that now is safety.

Councilmember Fahey stated she believes in-person meetings should not be happening yet. The public health risk is too high. She noted she is not comfortable with having an in-person meeting. She also doesn't feel a hybrid meeting with some board members at home and some in-person is equitable.

### *Public Hearings and Quasi-Judicial Hearings*

City Attorney Kelly stated the Council asked her to determine what is a public hearing and if there is a legal requirement to hold public hearings in-person. She clarified that not all hearings are quasi-judicial so that should be kept in mind. The only definition in the Code for public hearings is specifically for those hearings in the zoning code. That definition is "Public hearing means a meeting called by a public body for which public notice has been given and which is held in a place at which the general public may attend to hear issues and to express their opinions."

The definition appears to have been originally added to the Code in 1962, a time when use of the phrase "held in a place" would likely have been commonly understood to mean a physical location. However, given the current public health pandemic a physical place may no longer be necessary as long as the "place" where the public hearing is held allows the general public to attend to hear issues and express their opinions. The electronic platform currently used by the City Council for its meeting allows the general public to attend, hear issues, and express their opinions.

She stated it is important all due process rules are met, but as a practical matter there is no reason Council could not hold public hearings, including quasi-judicial hearings, electronically.

### *Possible Options for In-Person Meetings*

Muth reviewed how the City is currently handling public meetings noting the current electronic meeting process allows people to watch the meeting multiple ways including on Comcast Channel 8, via Zoom, and streaming through the City's website on YouTube. The last two can be done from a computer, tablet, smartphone or other smart device. Zoom also allows people to call in from any phone to listen to the meeting and comment.

She reviewed other options being considered including broadcast meetings with all members of the Council in-person and a hybrid in-person/electronic meeting. There are technology issues to be worked out for all of these options.

Members discussed how such meetings might work and what the positives could be as well as what the drawbacks might be.

Councilmember Fahey again noted her concern that those in-person would have a different experience than those at home participating electronically.

Mayor Stolzmann stated she feels the electronic meetings don't allow for good interpersonal communication and pleasantries which also changes the tone of the meetings.

Councilmember Leh stated the recommendation to Council is be tempered by the fact that a larger outbreak may happen again. Things are changing rapidly and we may have to make changes again with new information. He suggested staying with electronic meetings for 30 days unless or until the Council as a whole decides to meet in-person.

Councilmember Brown stated if the City has allowed restaurants to open and to have protests, why we wouldn't allow in-person meetings from a public health risk perspective. He added that electronic meetings are not necessarily equal for all members either as each member of Council has a different situation at home to access meetings.

Councilmember Fahey stated that opening the restaurants allowed people the choice to eat there however Council meeting attendance is a requirement for her if she wants to keep her seat.

#### Public Comments

Sherry Sommer, 910 South Palisade Court, stated she supports in-person meetings and wondered if they could be held outside for greater safety.

John Leary, 1116 La Farge Avenue, stated he would like a toll free option for electronic meeting participation. He feels the telephone option is not good for meetings with a lot of visuals.

Councilmember Dickinson stated he is concerned about in-person meetings because it requires people to come who may not feel safe doing so. He would prefer to have an electronic option for anyone if they want one.

Councilmember Brown stated he would like to look for an in-person option for those people who want to attend in-person.

Councilmember Fahey stated that if at all possible she would like meetings online. She would like the City to adopt criteria for when in-person meetings can take place.

Councilmember Brown stated there are objective measures that can be used to establish those criteria. He noted items such as testing infrastructure, case rates, and local out breaks. He agreed many issues can be handled electronically but for some others we need an in-person option.

Councilmember Leh moved to recommend the Council continue to meet electronically through and including July 14<sup>th</sup> and discuss options at that meeting. Seconded by Councilmember Brown. All in favor.

Legal Committee will meet before that meeting to discuss additional details and make a recommendation.

#### *How Other Cities are Handling Quasi-Judicial Hearings*

Councilmember Leh asked if the City needs to put in place specific procedures for quasi-judicial hearings. City Attorney Kelly stated those can be put in place but we should be careful not to make participation too difficult. She noted other cities have been having quasi-judicial hearings electronically and it is going fairly well.

Members agreed new procedures are not needed at this moment and the City Attorney will work on some for future quasi-judicial hearings.

#### **DISCUSSION ITEMS FOR NEXT MEETING**

Councilmember Brown asked that the Legal Committee discuss what options there are for electronic signature gathering for referenda petitions. Councilmember Fahey agreed.

#### **ADJOURN**

The meeting was adjourned at 8:46 pm.

**SUBJECT: DISCUSSION/DIRECTION – OPTIONS FOR MEETINGS FOR  
QUASI-JUDICIAL HEARINGS SUBJECT TO REFERENDUM**

**DATE: JULY 7, 2020**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK  
KATHLEEN KELLY, CITY ATTORNEY**

**SUMMARY:**

Staff continues to look into options for holding in-person meetings during the COVID-19 outbreak while there are strict limitations on in-person gatherings. While there is no requirement quasi-judicial hearings be held in-person, under the current City Council Rules of Procedure the City Council may not hold electronic meetings for those land use applications the final decision regarding which is subject to referendum. The City Council has asked the Legal Review Committee to review options for how to hold public hearings in-person to address such items.

As of July 1, the COVID 19 pandemic and its increasing infection rates mean it is very unlikely the Council will be able to hold an in-person meeting for all participants in the near future, even with safety protocols and social distancing. Under the current rules indoor gatherings are allowed but must meet strict social distancing regulations for the room size. Given that, staff recommends Council consider changing its Rules of Procedure to either allow for quasi-judicial hearings items to be heard at a hybrid electronic/in-person meeting or to allow for those items to be heard at an all electronic meeting.

*Electronic Participation at In-Person Meetings*

Staff is working on the process to allow for a hybrid electronic/in-person meeting that would meet current social distancing rules. This would involve continuing to have every Councilmember and staff on zoom but those who chose to could attend in-person while those not comfortable with that may join from home.

The social distancing rules would not allow for many members of the public to attend a meeting in Council Chambers as the room is relatively small. Using the current State social distancing calendar, staff has determined a meeting could be held at the Brooks/Crown Room and it would allow for at least 19 members of the public to attend with Council and two members of staff in the room; everyone else would join electronically. (See the attached room layout.) Staff continues to look at that room and layout to see if there are other options that would allow additional people to attend safely.

This option would allow people to attend in-person to give comments. However, if there were more than 19 people in attendance it would not allow for people to attend the entire meeting in-person. People would have to be staged in a separate room and brought in for public comments.

This option does allow for people at home to watch the meeting multiple ways including on Comcast Channel 8, via Zoom, and streaming through the City's website on YouTube. The last two can be done from a computer, tablet, smartphone or other smart device. Zoom also allows people to call in from any phone to listen to the meeting and comment. Anyone on Zoom either on a computer or the phone could also make public comments.

As a legislative body Council is allowed to have in-person meetings under current State rules. However, the Council could establish some data-driven criteria under which they feel such a meeting could be held.

Besides social distancing, any in-person meeting will also include safety protocols including mask wearing, limited access to touching surfaces, sanitation stations, and extra cleaning.

One item of note is that the Brooks/Crown Room will not be available for City Council meetings October 13 – November 5 as Boulder County is using the space as a Voter Service and Polling Center.

Alternatively, Council could consider allowing electronic meetings for all public hearings including land use applications the final decision of which is subject to referendum. For electronic meetings staff is continuing to make the meetings more accessible. Towards that end, staff is now providing a toll free option for people to use to phone into the meeting, closed captioning is being worked out, and the call in number is being run on Channel 8 during the live meetings so people may call in at the appropriate public comment period.

With any of these options all of the standard Council processes will still apply. Proper notice is required, public comments are limited to specific times on the agenda, and everyone who is interested may have a chance to speak (either in-person or on the phone/computer) for three minutes.

#### *Changes to Rules of Procedure*

Should Council want to allow for quasi-judicial hearings for items subject to referenda to be heard at an electronic or hybrid meeting, Council would have to specifically allow that with a new Resolution that would supersede Resolution No. 38 passed in June. Council would also have to amend its Rules of Procedure to allow for a hybrid electronic/in-

person meeting. The attached redline of the Rules of Procedure shows one option for allowing hybrid meetings.

**PROGRAM/SUB-PROGRAM IMPACT:**

Determining a process for the resumption of in-person meetings will help the City meet its goals of inclusive, transparent, and efficient governance during the COVID-19 pandemic.

**RECOMMENDATION:**

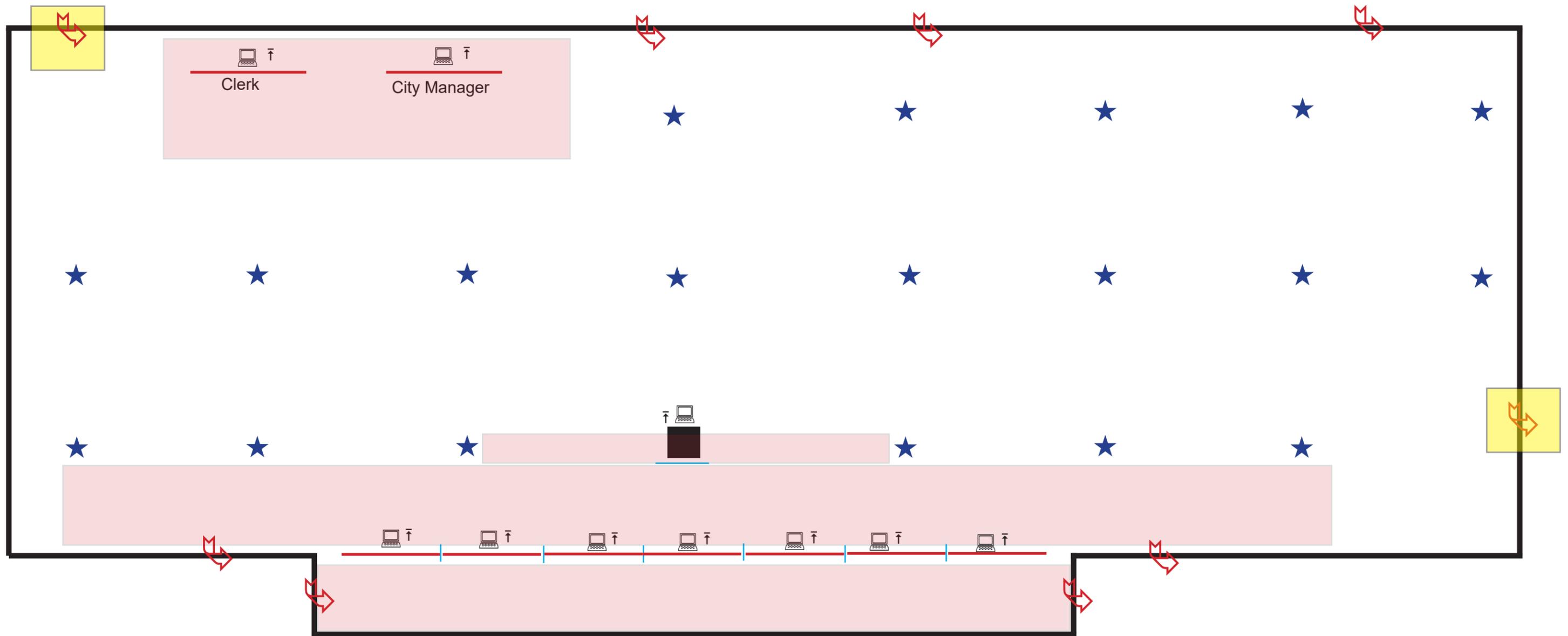
Discussion/Direction.

**ATTACHMENT(S):**

1. Brooks/Crown Room Layout
2. Resolution No. 38, Series 2020
3. Possible Rules of Procedure Changes

**STRATEGIC PLAN IMPACT:**

<input type="checkbox"/>	 <b>Financial Stewardship &amp; Asset Management</b>	<input checked="" type="checkbox"/>	 <b>Reliable Core Services</b>
<input type="checkbox"/>	 <b>Vibrant Economic Climate</b>	<input type="checkbox"/>	 <b>Quality Programs &amp; Amenities</b>
<input checked="" type="checkbox"/>	 <b>Engaged Community</b>	<input checked="" type="checkbox"/>	 <b>Healthy Workforce</b>
<input type="checkbox"/>	 <b>Supportive Technology</b>	<input type="checkbox"/>	 <b>Collaborative Regional Partner</b>



- Tables
- Plexiglass
- Microphone
- Chairs
- Door

Room is approximately 92x32 feet (3,000 sf).

The social distancing calculator for the State tell us we can have 19 people in the room not including staff (I am including Council in the staff number).

This assumes the red areas are no walking areas as they are not 12 feet away from people. Enter through the senior center door (highlighted yellow) and exit through rear east door (highlighted yellow).

**RESOLUTION NO. 38**  
**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 and that any interested party may contact the City Clerk to receive a paper copy if unable to access the online documents. 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.

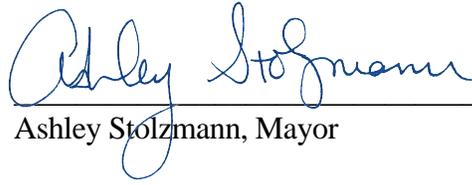
G. Accessibility. All hearings conducted pursuant to this Resolution shall be held on an electronic platform generally meeting Web Content Accessibility Guidelines (“WCAG”) 2.1 and the agenda for such meeting shall contain the following notice:

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 Office at (303) 335-4533. A forty-eight hour notice is requested.

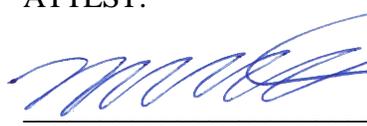
H. Hearing May be Vacated or Continued. The procedures adopted by this Resolution create no right in any party to a quasi-judicial matter to have a hearing conducted by Electronic Participation. If at any point the City Manager, the Mayor, or the Chair of the Appointed Body, as the case may be under 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 2<sup>nd</sup> day of June, 2020.

  
Ashley Stolzmann, Mayor

ATTEST:

  
Meredyth Muth, City Clerk





## **CITY COUNCIL**

# **RULES OF PROCEDURE**

*Originally adopted February 6, 2018*

*Amended:*

*January 10, 2020 – by Resolution No. 10, Series 2020*

*March 17, 2020 – by Resolution No. 26, Series 2020*

*April 7, 2020 – by Resolution No. 30, 2020*

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# **RULES OF PROCEDURE FOR THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO**

## **I. DEFINITIONS**

“Charter” means the [Home Rule Charter of the City of Louisville, Colorado](#).

“Chair” means the Mayor or member of the Council who presides over a meeting, special meeting, executive session, or study session of the City Council, subject to Rule III I below.

“City” means the City of Louisville, Colorado.

“Code” means the Louisville Municipal Code.

“Council” or “City Council” means the body constituting the City Council of the City, consisting of six (6) Councilmembers and the Mayor.

“Councilmember” means each member of the City Council except the Mayor.

“Electronic Participation” means attendance at a meeting by telephone or other electronic means.

“Emergency” means a matter which could not have been reasonably anticipated or foreseen and on which immediate action is genuinely and urgently necessary for the preservation of the public health, safety, or welfare.

“Entire Council” means all of the seven (7) members of the City Council.

“Member of the Council” means the Mayor and each Councilmember.

“Rules” means the City Council Rules of Procedure.

## **II. AUTHORITY**

The [Home Rule Charter of the City of Louisville](#) provides that the Council may determine its own rules of procedure for meetings. The following Rules shall be in effect upon their adoption by the Council until such time as they are amended or new Rules adopted.

In order to efficiently and effectively complete City business facing the Council, all meetings must be conducted in an orderly and respectful manner. These Rules are intended to provide guidelines for the procedures to be followed for the conduct of Council meetings and study sessions.

If any Rule, on its face or as applied, conflicts with applicable provisions of the Charter or ordinances, those provisions shall apply and that Rule shall not.

### **III. GENERAL RULES**

- A. **LOCATION:** All in-person Council meetings shall take place in a public building that is accessible to members of the public, with or without reasonable accommodation in accordance with applicable law.
- B. **OPEN TO THE PUBLIC:** All meetings and study sessions, including those conducted by Electronic Participation pursuant to Section IV.H, shall be open to the public. The Council may conduct executive sessions in compliance with the Charter, Code, and applicable provisions of the Colorado Open Meetings Law.
- C. **MEETING NOTICE:** Notice for all meetings and study sessions shall be given as required by the Charter. At the first regular meeting of every year, the City Council shall designate the locations for posting of notices of its meetings.
- D. **MINUTES:** Minutes of each regular and special meeting shall be taken and retained permanently in the records of the City. A summary shall be prepared for each study session.
- E. **QUORUM:** A quorum is needed for the transaction of business at each regular and special meeting of the Council. A quorum shall be defined as a majority of the members of the Council holding office at the time of the meeting.
- F. **ABSENCES:** No member of the Council shall have more than six (6) absences from regular Council meetings during any period of twelve (12) consecutive calendar months. The date of the seventh (7<sup>th</sup>) absence shall be deemed to be the date on which the office was vacated.
- G. **APPLICABILITY OF THE CODE OF ETHICS:** Each member of the Council shall adhere to the Code of Ethics (Charter Section 5-6).
- H. **DISCLOSURE OF INTEREST AND RECUSAL:** Any member of the Council who has an interest in, or whose interest would be affected by, any proposed official action before the Council shall immediately and publicly disclose the nature and extent of the interest; shall not participate in any discussion or decision concerning the proposed action; shall not attempt to publicly or privately influence the City Council, any public body, or any employee in connection with the action; and shall leave the room

where the discussion or decision is taking place during the time the proposed action is being discussed and the decision is being made.

- I. CHAIR: The Chair is the member of Council who presides over a Council meeting and shall do so according to these Rules and applicable law. The Mayor serves as Chair of all Council meetings at which the Mayor is present. In the Mayor's absence, the Councilmember appointed as Mayor Pro Tem will serve as Chair. In the absence of both the Mayor and the Councilmember appointed as Mayor Pro Tem, then the Councilmember with the greatest seniority on Council, followed by alphabetical order, will serve as Chair.

#### **IV. MEETINGS**

- A. REGULAR MEETINGS: Council shall hold regular meetings twice each month. Regular meetings shall be conducted on the first and third Tuesday of the month, excluding holidays, and shall convene at 7:00 p.m. unless another day or time is set by prior approval of a majority of the Council. A regular meeting may be held on at least seventy-two (72) hours written notice.
- B. SPECIAL MEETINGS: A special meeting shall be called by the City Clerk on the request of any four (4) members of the Council, and shall be held on at least forty-eight (48) hours written notice. In addition to other means, a request for a special meeting may be effected by e-mailing such request to the City Clerk or by a motion approved a majority of the entire Council.
- C. EMERGENCY SPECIAL MEETINGS: An emergency special meeting shall be called by the City Clerk on the request of the City Manager or any four (4) members of the Council and shall be held on at least twenty-four (24) hours written notice to each member of the Council. In addition to other means, a request for an emergency special meeting may be effected by e-mailing or telephoning such request to the City Clerk. Each person requesting the meeting must have determined that the meeting is urgently necessary to take action on an unforeseen matter requiring immediate action; and the basis for the determination shall be stated in the notice of the meeting.

The Council shall not take action on any item of business at any special meeting unless the item to be acted on has been stated in the notice of the meeting; or the item to be acted on is reasonably related to the item which was stated in the notice of the meeting.

- D. STUDY SESSIONS: The purpose of study session meetings is to enable the Council to obtain information about and discuss matters of public

business in a less formal atmosphere. No preliminary or final policy decision, fiscal decision, rule, regulation, resolution, ordinance, action approving a contract, action calling for the payment of money, or other formal action shall be made or taken at any study session.

At any study session, any member of the public who in good faith believes that a study session is proceeding in violation of this section IV.D shall be entitled to submit a brief written objection to the Chair of the study session; the written objection shall specify the grounds for the objection. The Chair shall exercise discretion in determining whether the study session complies with this section, and shall conduct the study session in accordance with that determination.

Study sessions are generally held on the 2<sup>nd</sup> and 4<sup>th</sup> Tuesday of each month.

- E. EXECUTIVE SESSIONS: It is the policy of the City that the activities of City government should be conducted in public to the greatest extent feasible in order to assure public participation and enhance public accountability. The Council may hold an executive session only at a regular or special meeting and for the sole purpose of discussing topics approved by the Charter.

Adoption of any proposed policy, position, resolution, rule, regulation, or formal action, or informal or "straw" vote, shall not occur at any executive session.

Executive Session Procedure:

1. A request for an executive session may be made only by a member of the Council, the City Attorney or other attorney representing the City, the Municipal Judge, or the City Manager.
2. The request to go into an executive session shall be made in an open session at a regular or special meeting of the Council. The requesting party shall give as detailed and specific a statement as possible avoiding disclosure of any confidential matters, as to the topic or topics to be discussed and the reasons for requesting an executive session.
3. Immediately after a request to go into an executive session, and prior to any motion to go into executive session, the City Clerk shall read the statement concerning executive sessions required by the Code.

4. The executive session shall only be held upon an affirmative vote of two-thirds (2/3) of the entire Council. A separate vote shall be held on each topic requested to be considered in the executive session. Following the vote and immediately prior to retiring into the executive session, the Mayor (or the Councilmember appointed as Mayor Pro Tem, as the case may be) shall announce the topic or topics of the executive session.
  5. Immediately upon retiring into the executive session, the requesting party shall explain in detail the nature of the topic and the reasons for requesting the executive session. Those in attendance may then discuss the propriety of the executive session.
  6. Before any discussion on the merits of any topic in the executive session, the City Attorney or other attorney representing the City shall give an opinion as to the propriety of the executive session and shall provide guidelines as to the limitations that apply to the discussion.
  7. At any time, any participant may object to the continuation of the executive session. Upon the making of such objection, all discussion shall cease, and the Council shall reconvene in an open session for the purpose of determining the propriety of continuing the executive session. An affirmative vote of two-thirds (2/3) of the entire Council shall be required to continue the executive session.
  8. Upon completion of the executive session, the Council shall reconvene in an open session. The person who requested the executive session shall provide as detailed an explanation as allowed by law without disclosing any confidential matter or any matter which would adversely affect the City's interests, and shall announce what procedure, if any, will follow from the executive session.
  9. Discussions that occur in executive session shall be recorded, and access to the record shall be provided, in the manner and to the extent provided in the State statutes concerning open meetings and the State statutes concerning open records.
- F. RESCHEDULING: The Council may reschedule meetings for dates and times outside its regular meeting schedule to avoid holidays, elections, and other matters, to achieve a quorum, or to allow for additional time for a meeting. To reschedule such meetings, the Council first must provide notice and approve of the proposal to reschedule. Notice to reschedule a meeting may be given on any regular or special meeting agenda.

G. CANCELLATION: Any scheduled meeting may be cancelled by the Mayor with the consent of three (3) Councilmembers in the event unforeseen emergent conditions exist which make conduct of the meeting impractical (for example, in the case of power outage) or travel to the meeting unduly hazardous (for example, in the case of blizzard conditions). In the event of such cancellation, all agenda items for such meeting shall not abate but shall be deemed continued to next regular meeting of the Council.

H. MEETINGS HELD BY ELECTRONIC PARTICIPATION: In the event meeting in person is not practical or prudent due to a health epidemic or pandemic or other state of emergency affecting the City, the City Manager or any four (4) members of the Council may determine a regular or special meeting shall be held by Electronic Participation.

1. At least twenty-four (24) hours written notice shall be provided to each Councilmember that the meeting will be held by Electronic Participation and the agenda for such meeting shall be revised to reflect it will be held by Electronic Participation.

2. The City Manager shall take reasonable and practical measures to ensure that:

a. Each such meeting is open to the public at all times, and information is provided to enable the public to Electronically Participate;

b. All Councilmembers can hear one another or otherwise communicate with one another and can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation;

c. All votes are conducted by roll call; and

d. Each such meeting provides City staff and the public a reasonable opportunity to be heard.

3. No public hearings on quasi-judicial matters and no votes on quasi-judicial actions shall be taken during a meeting held by Electronic Participation except (1) upon a finding by the City Council that the nature and expected duration of a health epidemic or pandemic or other state of emergency affecting the City is or will be extraordinary; and (2) in accordance with procedures to be adopted by Resolution of the City Council that provide such hearings will be conducted in a manner that reflects, to the greatest extent practicable, hearings conducted in person. Otherwise, any quasi-judicial matter scheduled

for a meeting of the Council held by Electronic Participation shall be continued by motion of the City Council to the date and time of the next regular or special meeting to be held in person. If the Council is unable to determine when the next in-person meeting will be held, such quasi-judicial matters shall be vacated and new public notice provide when such quasi-judicial matters are rescheduled.

- I. ELECTRONIC PARTICIPATION AT IN-PERSON MEETINGS: A member of the City Council may participate in a regular or special meeting or work session of the City Council by Electronic Participation for good cause upon prior notification to the Mayor or City Clerk. For purposes of this Section, "good cause" shall include, but not be limited to, circumstances that either prevent the physical attendance at the meeting by the Councilmember or for reasons that physical attendance by the Councilmember may compromise such person's health or the health of others. A Councilmember joining a meeting by Electronic Participation may participate in and vote on any item before the City Council at such meeting, including executive sessions and quasi-judicial matters, provided the Councilmember is able to view, hear, and consider all testimony and other evidence presented at the public hearing in a manner similar to those Councilmembers attending the meeting in person.

## V. MAYOR AND MAYOR PRO TEM

- A. The Mayor shall preside over meetings of the Council when present and able to perform mayoral responsibilities. The Mayor shall have the same voting powers as any Councilmember.
- B. By the affirmative vote of a majority of the entire Council, a Councilmember shall be appointed as Mayor Pro Tem, for a two-year term, to perform the responsibilities of the Mayor when the Mayor is absent or is otherwise unable to perform the responsibilities of the Mayor.

## VI. MEETING PROCEDURE

### A. PREAMBLE

1. A bedrock principle of a representative democracy is notice of impending governmental action and an opportunity for members of the public and their representatives to be heard. Principles of good government include deep respect for citizens; prudent stewardship of public resources, including the time of its citizens, staff members and elected officials; direction that is clear and decisive; and decision making that is reasonably consistent, equitable, flexible, and transparent.

2. Through the application of these Rules, Council intends to ensure that it balances the principles described in the previous section in a way that ensures robust debate and accountability of City government to its residents. To that end, these procedures are not meant to be employed for the purpose of unreasonable rigidity, surprise, suppression of competing views, or needless prolonging of action.
- B. CHAIR'S DISCRETION & RIGHT OF APPEAL Council intends that the Chair shall have reasonable discretion in the application of these procedures subject to section VII.A.
- C. ORDER OF BUSINESS AT REGULAR MEETINGS: The order of business at regular Council meetings shall be as follows; however, Council in its sole discretion may adjust such order to accommodate schedules or when otherwise deemed appropriate.
1. CALL TO ORDER
  2. PLEDGE OF ALLEGIANCE
  3. APPROVAL OF AGENDA
  4. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA, OR ON THE CONSENT AGENDA
  5. CONSENT AGENDA
  6. COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA
  7. CITY MANAGER'S REPORT
  8. REGULAR BUSINESS
  9. CITY ATTORNEY'S REPORT
  10. COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF FUTURE AGENDA ITEMS
  11. ADJOURNMENT
- D. CONSENT AGENDA: The Consent Agenda contains items considered routine and shall be approved, adopted, accepted, or otherwise acted upon, by motion of the Council and voice vote for approval of the Consent Agenda, unless the Mayor or a Councilmember specifically requests an item be considered under Regular Business. Items removed from the Consent Agenda and considered under Regular Business will be placed in the agenda order as determined by the Chair.

If the City Council fails to adopt a motion to approve the Consent Agenda, then each item will be added to the Regular Business agenda and considered individually.

- E. PUBLIC COMMENTS: The following provisions apply to any section of the agenda where public comments are allowed.
1. All regular and special meetings of the Council shall be open to the public. Members of the public shall have a reasonable opportunity to be heard at each meeting. The Chair may permit public comment on any item at the time such item is being considered by the Council.
  2. Regular meetings include specifically designated times for citizens to make public comment. Each speaker shall be limited to three (3) minutes.
  3. The Chair may exercise discretion and permit multiple citizens to designate someone to speak for them and aggregate their three-minute limit time up to a maximum of six (6) minutes of speaking time for their designated spokesperson. Those pooling their time must be physically present, identify themselves, and designate their spokesperson. A designated spokesperson may not speak for more than one group.
  4. On any item with a second round of public comments, such as a second round of public comment on an ordinance, during such second round each speaker shall be limited to three (3) minutes and time may not be pooled.
  5. The Chair shall enforce compliance with the time limits, and time shall be kept on a public comment clock. The public comment clock shall be controlled by the City Clerk.
- F. WRITTEN COMMUNICATIONS: Interested parties, or their authorized representatives, may address the Council by submitting written communication concerning any matter on the Council agenda. Such a written communication may be submitted by electronic mail or by addressing the communication to the City Clerk who will distribute copies to the Council. The communication will be entered into the record without the necessity of reading. A copy of the communication shall be posted at the meeting for the public to review. Anonymous written communications will not be accepted into the record.

G. ACTION: The Council shall act only by ordinance, resolution, or motion. Each action shall be recorded in the minutes of the meeting. The Council may select the appropriate form for its action, except where a specific form is required by the Charter or the Code. The Council may take any of the following actions on an agenda item: approve, approve subject to conditions, disapprove or deny, continue to a date certain, adopt a motion to take no further action, remand a matter to a board or commission having jurisdiction, or such other action as is permitted by law.

H. VOTING:

1. Except where a greater number is required by the Charter (as summarized below), resolutions and motions require the affirmative vote of a majority of the members of the Council present.
2. Except where a greater number is required by the Charter (as summarized below), the final adoption of any ordinance shall require the affirmative vote of a majority of the entire Council.
3. The following items require the affirmative vote of a majority of the entire Council for approval: The appointment of a Councilmember as Mayor pro tem; the appointment or removal of the City Manager, City Attorney or City Prosecutor; the appointment or removal of a board, commission, task force or committee member; and the adoption of a resolution to revise the boundaries of any City ward.
4. The following items require the affirmative vote of two-thirds (2/3) of the entire Council: The appointment or removal of the Presiding Municipal Judge or any deputy municipal judge; the adoption of an emergency ordinance; the holding of an executive session; the adoption of an ordinance submitting a proposed amendment to the City Charter to a vote of the registered electors of the City; and an ordinance placing open space into a less protected classification under the Charter.
5. No member of the Council shall vote on any matter concerning the member's own conduct.
6. Each member of the Council's vote on an ordinance or resolution shall be recorded in the minutes.
7. Any member of the Council absent from a session of a quasi-judicial hearing of the Council shall not vote on the matter(s) that was the

subject of such hearing, unless the member of the Council has first listened to or viewed the recording of the earlier session of the hearing from which the member of Council was absent.

8. A member of the Council shall not attend or watch any quasi-judicial hearing of any lower tribunal of the City in which the lower tribunal considers any matter which may be submitted to Council through the hearing process or an appeal. If a member of the Council does attend or watch such a hearing, he or she shall recuse himself or herself from consideration of the matter if it comes before the Council.

I. ORDINANCE REQUIRED: The following acts of the Council shall be by ordinance:

1. Authorizing the borrowing of money, imposing a new tax, increasing a tax rate, or approving a lease-purchase agreement;
2. Approving any transfer of fee ownership in real property owned by the City;
3. Approving any transfer of water rights owned by the City; or
4. Establishing any regulation for violation of which a fine, imprisonment, or both may be imposed.

J. ORDINANCES PROCEDURE:

1. Adoption Procedure – Non-Emergency Ordinances

a) First Reading: The ordinance shall be introduced by title at a regular or special meeting of the Council. The Council shall vote to amend, adopt, or reject the ordinance, or take such other action as it deems appropriate. If the ordinance is adopted on first reading, it shall be published in full as required by the Charter.

b) Second Reading: The ordinance shall be introduced by title at a second regular or special meeting of the Council, which shall be held not earlier than four (4) days after the first publication. The Council shall vote to amend, finally adopt, or reject the ordinance, or take such other action as it deems appropriate. Upon final adoption, the ordinance shall be published by title; however, if the ordinance is amended prior to final adoption, the amendment shall be published in full. If published by title, the ordinance shall contain a notice that copies of the full ordinance are available at City offices

and on the City's website.

## 2. Adoption Procedure – Emergency Ordinances

- a) The Council may finally adopt an ordinance on an emergency basis without necessity of two readings and prior publication under circumstances constituting an emergency when expedited Council action is required.
- b) An emergency ordinance may be introduced and finally adopted at any regular or special meeting after only one (1) reading and need not be published before final adoption. An emergency ordinance shall take effect upon final adoption or on such later date as specified in the ordinance. Following final adoption, an emergency ordinance shall be published in full.
- c) An emergency ordinance shall require the affirmative vote of two-thirds (2/3) of the entire Council. The facts showing the emergency shall be specifically stated in the ordinance.

## 3. Public Hearing

- a) No ordinance shall be adopted without first holding at least one (1) public hearing on the ordinance.
- b) Except for an emergency ordinance, the public hearing shall be held at the meeting at which the ordinance is to be considered on second reading, and prior to Council action on second reading. The public hearing on an emergency ordinance shall be held at the meeting at which the emergency ordinance is to be considered.
- c) The Chair shall provide at least one (1) opportunity for public comments on the ordinance prior to the initial Council discussion of the ordinance. Therefore, if any member of the Council desires Council discussion of the ordinance at the time of first reading, the Chair shall afford an opportunity for public comments prior to Council discussion and action on first reading.
- d) The Chair shall provide at least one (1) additional opportunity for public comments on the ordinance following the initial Council discussion but before Council action on the ordinance.

## **VII. PARLIAMENTARY PROCEDURE**

- A. POINTS OF ORDER: The Chair shall determine all points of order, subject to the rights of any member of the Council to appeal to the Council, in which case the point of order shall be resolved by vote of a majority of the members of Council present.
- B. RIGHT OF THE FLOOR: Any member of the Council desiring to speak shall be recognized by the Chair.
- C. CLOSE OF PUBLIC COMMENT PERIOD: The Chair shall close the public comment period of a public hearing. The public comment period shall stay closed during Council discussion unless the Chair determines the public comment period shall be reopened for the receipt of new information.
- D. MOTIONS: Motions may be made by any member of the Council, including the Chair, provided that before the Chair offers a motion, the opportunity for making a motion should be offered to other members of the Council. Any member of the Council, other than the person offering the motion, may second a motion.
- E. PROCEDURES FOR MOTIONS: The following is the general procedure for making motions:
  - 1. Before a motion can be considered or debated it must be seconded; however, no action taken shall be invalidated simply because a motion was not properly made, seconded or recorded.
  - 2. A member of the Council who wishes to make a motion should do so through a verbal request to the Chair.
  - 3. Once the motion has been made and seconded, the Chair shall open the matter for discussion offering the first opportunity to the moving party and thereafter to any member of the Council recognized by the Chair.
  - 4. Once the matter has been discussed and the Chair calls for a vote, no further discussion will be allowed; provided, however, that members of the Council may be allowed to explain their votes.
- F. AMENDMENTS TO MOTIONS: Once a motion has been made and seconded, any member of the Council who did not make or second the motion may offer an amendment to the motion. If the members of the Council who made and seconded the motion accept the offered amendment, then the motion shall be considered amended without necessity of a separate motion on the “friendly amendment” and the Council

may then vote on the motion, as amended. If such an offered “friendly amendment” is rejected by either of the members who made or seconded the motion, then a Council vote shall be taken on the proposed amendment. For sake of clarity, Council shall strive to ensure that no main motion shall be amended more than two (2) times, either by a friendly amendment or amendments adopted by Council vote.

- G. **SUBSTITUTE MOTIONS:** Any member of the Council shall have the right to make a substitute motion. Such a motion shall be offered only to substitute a new motion for the entirety of a pending motion. A substitute motion requires a second, may be amended in accordance with previous section, and shall take precedence over the pending motion. If the substitute motion is not seconded or is not adopted, then the Council shall proceed with consideration of the pending motion as if the substitute motion were never made.
- H. **DISCUSSION:** Speakers shall confine themselves to the question under discussion. All discussion must be germane to the agenda item.
- I. **MOTION TO END DEBATE:** Any member of the Council may make a motion to end debate (also known as “calling the question”). If such a motion is made and seconded, the Chair shall immediately call for a vote on the motion. If the motion is not approved by 2/3 of the members of the Council present and voting, the Chair shall allow for debate to continue. If the motion is approved, the Chair shall call for a motion on the matter under consideration.
- J. **ALL MEMBERS MAY SPEAK:** Each member of the Council shall have the right to speak and ask questions prior to a vote.
- K. **AFTER VOTING:** Once a vote has been taken on a motion, there shall be no further discussion on that motion unless a motion to reconsider is properly made, seconded, and adopted.
- L. **MOTION TO RECONSIDER:** A motion to reconsider may only be made at the same meeting at which the motion to be reconsidered was made or at the next regular meeting of the Council. The motion must be made by a member of the Council on the prevailing side of the motion to be reconsidered. The required second on the motion need not be a member of Council from prevailing side. The motion is debatable but only for the reasons to explain or justify reconsideration and not for the purpose of debating the merits of the motion. An affirmative vote of 2/3 of the members of the Council present and voting is required for approval of the motion for reconsideration.

- M. TABLE: The Table of Common Motions set forth in Section XI of the Rules is adopted for Council's reference.

**VIII. MEETING CIVILITY**

- A. CIVILITY AMONG MEMBERS OF THE COUNCIL: The Chair shall preserve reasonable order and decorum and confine Council and members of the public to discussion of the questions under consideration.

The Chair shall preserve reasonable decorum and decide all questions of order, subject to appeal to the entire Council, in which case the point of order shall be resolved by a vote of the majority of the members of the Council present.

During Council meetings, members of the Council shall preserve reasonable order and decorum and shall not delay or interrupt the proceedings or refuse to obey the order of the Chair or the Rules. Every member of the Council desiring to speak shall address the Chair, and upon recognition by the Chair, shall confine himself or herself to the questions under debate. Once recognized, no member of the Council shall be interrupted while speaking unless called to order by the Chair or unless a point of order is raised by another member of the Council.

Members of the public desiring to address the Council on any item on the agenda shall be recognized by the Chair, state their names, and are requested to state their place of residence (by address or by city, town, or county of residence). Each member of the public shall speak in an audible tone for the record, and shall limit their remarks to the questions under discussion.

**IX. TABLE OF COMMON MOTIONS**

Type of Motion	Second needed?	Debatable?	Vote	Effect
Main	Yes	Yes	Dependent upon subject matter of motion (see "Voting" requirements, page 9)	Proposes a new idea or action
Amend	Yes	Yes	Majority of the members of the Council present and voting	Amends the language of pending main motion
Substitute	Yes	Yes	Majority of the members of the Council present and voting	Replaces pending main motion in its entirety
End Debate (call the question)	Yes	No	2/3 of the members of the Council present and voting	Ends debate on a matter
Continue matter to date certain	Yes	Yes	Majority of the members of the Council present and voting	Suspends consideration of matter until a later meeting date
Recess	Yes	No	Majority of the members of the Council present and voting	Postpones meeting for a period of time
Adjourn	Yes	Yes	Majority of the members of the Council present and voting	Ends meeting
Reconsider; motion must be made by member on prevailing side	Yes; by any member	Yes; but only as to reasons for reconsideration.	2/3 of the members of the Council present and voting	Reconsideration of previously-adopted motion; must be at same meeting or next regular meeting
Table	Yes	No	Majority of the members of the Council present and voting	Places main motion and all pending amendments aside temporarily with the intention of bringing them back at a later time for action
Postpone indefinitely	Yes	Yes	Majority of the members of the Council present and voting	Kills main motion being discussed

**SUBJECT: DISCUSSION/DIRECTION – SIGNATURE GATHERING FOR REFERENDA PETITIONS**

**DATE: JULY 7, 2020**

**PRESENTED BY: MEREDYTH MUTH, CITY CLERK  
KATHLEEN KELLY, CITY ATTORNEY**

**SUMMARY:**

At the June 16 City Council meeting the Council asked the Legal Review Committee to begin looking at options for a possible ballot initiative in 2021 that would amend the Charter to allow for electronic signature gathering for referenda petitions.

The Charter states signatures for either an initiative or a referendum are to be collected in compliance with the State statutes for such procedures. State statute requires a petition circulator affirm by affidavit that “each signature thereon was affixed in the affiant’s presence.” This rule therefore precludes the collection of signatures electronically for these petitions.

If Council wants to consider a Charter amendment to change this in 2021 here are some of the issues that will need to be addressed:

- Under what circumstances would electronic signature gathering be allowed
- What type of “electronic signature” is required (a wet signature that is scanned, a electronic signature, etc.)
- What type of signature verification will be used if any
- What security measures would be needed to prevent abuse

It should be noted that earlier this year Governor Polis issued an executive order creating an exception to the in-person rule for signature collecting during this pandemic. This order only affected statewide elections, not municipal elections. This was followed by the Secretary of State (SOS) issuing rules on how electronic signature gathering could happen. Following a legal challenge, the Colorado Supreme Court ruled the Governor did not have the authority to create such an exception. However, the rules from the SOS (attached) do give some ideas on how such a process could work.

Boulder looked into allowing electronic signature gathering a few years ago but decided not to pursue it. They did not get far enough into the process to have determined any actual procedures.

This discussion is an initial conversation with the Committee to see how it wants to proceed and what information it would like to continue to work on this.

**PROGRAM/SUB-PROGRAM IMPACT:**

Changes to this process may allow for further participation in government and help the City meet its goals of inclusive, transparent, and efficient governance during the COVID-19 pandemic.

**RECOMMENDATION:**

Discussion/Direction.

**ATTACHMENT(S):**

1. Secretary of State Rulemaking for Electronic Signature Gathering

**STRATEGIC PLAN IMPACT:**

<input type="checkbox"/>	 <b>Financial Stewardship &amp; Asset Management</b>	<input checked="" type="checkbox"/>	 <b>Reliable Core Services</b>
<input type="checkbox"/>	 <b>Vibrant Economic Climate</b>	<input type="checkbox"/>	 <b>Quality Programs &amp; Amenities</b>
<input checked="" type="checkbox"/>	 <b>Engaged Community</b>	<input checked="" type="checkbox"/>	 <b>Healthy Workforce</b>
<input type="checkbox"/>	 <b>Supportive Technology</b>	<input type="checkbox"/>	 <b>Collaborative Regional Partner</b>

# COLORADO SECRETARY OF STATE

## 8 CCR 1505-6 Election Rules

### Rules as Adopted – Clean May 30, 2020

*(Italic blue font text indicate publication notes)*

*New Rule 15.9 concerning circulation of petitions via mail or email:*

#### 15.9 Circulation of petitions via mail or email

15.9.1 For the purposes of this Rule 15.9, the following definitions apply:

- (a) “Audio visual communication” means communication by which an individual is able to see, hear, and communicate with a remotely located individual in real time using electronic means.
- (b) “Collector” means an individual designated by a proponent to collect signer forms returned by eligible electors. Each collector must be:
  - (1) At least 18 years old; and
  - (2) A citizen of the United States.
- (c) “Proponent” means the designated representatives of a ballot issue or the unaffiliated or independent candidate circulating petitions in accordance with this rule.
- (d) “Real time” or “in real time” means, with respect to an interaction between individuals by means of audio-video communication, that the individuals can see and hear each other substantially simultaneously and without interruption or disconnection. Delays of a few seconds that are inherent in the method of communication do not prevent the interaction from being considered to have occurred in real time.
- (e) “Signer form” means the form that will be sent by a proponent to an eligible elector via mail or email which may be signed by an elector and returned to the proponent.
- (f) “Transcriber” means an individual designated by a proponent to transcribe the information found on a signer form onto a petition section. Each transcriber must be:
  - (1) At least 18 years old; and

(2) A citizen of the United States.

15.9.2 Rule 15.9 applies only to unaffiliated or independent candidates or ballot initiatives whose initial period of circulation has not expired.

15.9.3 In the event that this Rule 15.9 conflicts with any other rule, the provisions of this rule apply.

15.9.4 Proponents may continue to circulate petitions in-person following the procedures otherwise outlined in Rule 15.

15.9.5 Proponents who wish to circulate petitions following the procedures set in this Rule 15.9 may do so while also circulating petitions in person.

15.9.6 Application to circulate by email or mail

(a) Proponents who wish to circulate via mail or email must notify the Secretary of State by sending an email to [ballot.access@sos.state.co.us](mailto:ballot.access@sos.state.co.us) that they intend to do so.

(b) Petition template for state petitions circulated via mail or email

(1) Upon receipt of a request to circulate via mail or email the Secretary of State will create a separate fillable .pdf petition template for use when circulating under this rule.

(2) Petition proponents must use the Secretary of State's fillable .pdf petition template to create their petition format.

(3) After approval of the petition format as to form, proponents must print all petition sections in accordance with the Secretary of State's petition-printing guidelines.

(4) Any information appearing on a petition section that does not conform to the requirements of this Rule 15.9.6 is not valid.

(c) Signer form template for state petitions circulated via mail or email

(1) Proponents who intend to circulate via mail or email must submit their proposed signer form to the Secretary of State for review. The signer form must include space for:

(A) The signer's name;

(B) The signer's residence address;

(C) The signer's signature;

(D) The date of signature; and

- (E) For signer forms for candidates:
- (i) The name of the candidate;
  - (ii) The office the candidate seeks;
  - (iii) The candidate's affiliation or party name, if applicable; and
  - (iv) A statement that the signer acknowledges, under penalty of perjury, that by signing this form they:
    - (I) Will be 18 years of age by the date of the next general election;
    - (II) Are registered or preregistered to vote in the State of Colorado;
    - (III) Want the candidate to appear on the 2020 general election ballot; and
    - (IV) Have not signed any other petition for any other candidate for the same office.
- (F) For signer forms for ballot initiatives:
- (i) The ballot title;
  - (ii) Directions for how the signer may view the full text of the measure and the fiscal impact statement. This may include:
    - (I) For proponents circulating by email, by including a direct link to both the initiative and fiscal impact statement found on the Colorado Secretary of State's website;
    - (II) For proponents circulating by mail, by including a direct link to both the initiative and fiscal impact statement found on the Colorado Secretary of State's website. Proponents including a direct link in a mailing must also provide a signer with the option to request a printed copy of the full text of the measure and fiscal and instructions about how to do so;

- (III) By including both as an attachment to an email; or
- (IV) By including both as a physical copy in a mailing.
- (iii) A witness name and signature; and
- (iv) A statement that the signer acknowledges, under penalty of perjury, that by signing this form they:
  - (I) Are at least 18 years of age;
  - (II) Are registered to vote in the State of Colorado; and
  - (III) They want the measure to appear on the 2020 general election ballot.
- (2) Upon receipt of the signer form, the Secretary of State will review to determine if the requirements of this rule have been met. Proponents may not begin circulation by email or mail until both the petition format and signer form have been approved by the Secretary of State.
- (3) Any information appearing on a signer form that does not conform to the requirements of this Rule 15.9.6 is not valid.

#### 15.9.7 Circulation by mail or email

- (a) In addition to circulating a petition format by hand, proponents who have had their petition format and signer form approved by the Secretary of State may send the signer form by mail or email to registered electors. Notwithstanding the prohibition of providing a thing of value to someone who signs a petition found in sections 1-13-401, and 1-40-111, C.R.S., a proponent may include a pre-paid return envelope in any mailing.
- (b) Registered electors must complete all required fields in the form and include a wet signature. Forms returned lacking any required field or wet signature are not valid. Images of a form that include all required fields and a wet signature may be accepted by proponents.
- (c) Any person, except a collector, may assist an elector in filling out a signer form by following the procedures set forth in section 1-4-904(4), C.R.S. for candidate petitions or section 1-40-111(1), C.R.S. for ballot initiatives. A person who assists an elector under this rule may not also witness a signer form for a ballot initiative.

- (d) For ballot initiatives, a signer form must be witnessed by any registered elector in the State of Colorado either in person or remotely following the requirements of this rule.
  - (1) A signer form may be witnessed by a registered elector who is not physically present with the signer if the witness uses a form of audio visual communication that allows the witness to view, in real time, the registered elector completing and signing the signer form.
  - (2) If a signer form is being witnessed remotely, then the signer, upon completing the form and applying a wet signature, must transmit a legible copy of the form by fax, email, or other electronic means directly to the witness on the same date the signer signed the form. The witness must print the form, apply a wet signature to the witness attestation, indicate on the form that the form was witnessed remotely, and transmit a legible copy of the form by fax, email, or other electronic means directly back to the signer. For collectors acting as witnesses, the collector must send a copy of the final signed form back to the signer, and may keep a signed copy for transcribing by the proponents.
- (e) For ballot initiatives, a witness must attest that, under the penalty of perjury, to the best of the witness' knowledge and belief:
  - (1) The signature on the form is the signature of the person whose name it purports to be;
  - (2) The person signing the form was, at the time of signing, a registered elector; and
  - (3) If the witness viewed the signer completing the form using audio visual communication, the witness was able to view, in real time, the eligible elector completing and signing the signer form.
- (f) Once a signer form has been completely filled out, the registered elector must return the form to the proponent by mail or electronic delivery.

#### 15.9.8 Collection of signer forms

- (a) Each proponent must designate at least one person to act as a collector for petitions circulated by mail or email.
- (b) Upon receipt of a signer form, a collector must compile signer forms to be transcribed onto a single petition section.
- (c) Before the signer forms are given to a transcriber to be transcribed onto a petition section, a collector must sign and notarize the collector affidavit for that section.

- (d) The collector affidavit may be notarized in the physical presence of a notary public or remotely from a notary public.
  - (1) Notwithstanding Rule 5.2.2(a) of the remote notary rule found at 8 CCR 1505-11, temporarily adopted on March 30, 2020, A collector affidavit notarized remotely must follow the procedures outlined in those rules except:
    - (i) The original affidavit must be physically sent to the remote notary for notarization and the original returned to the collector following notarization; and
    - (ii) Upon receipt, the notary must affix the date on which the notary witnessed the collector signing the affidavit.
  - (2) In the event that remote notarization is no longer allowed either through executive order or under the law, a collector affidavit may only be notarized in the physical presence of a notary public.

#### 15.9.9 Transcribing signer forms onto petition sections

- (a) Each proponent must designate at least one person to act as a transcriber for petitions circulated by mail or email. A person may be designated to serve as both a transcriber and a collector.
- (b) Once a collector affidavit that is attached to a petition section has been signed and notarized by a collector, a transcriber may begin transcribing the information found on a signer form onto the petition section assigned by the collector.
  - (1) A transcriber must not change, correct, or add information when copying the signer information onto the petition section.
  - (2) A transcriber must write down all legible characters from the signer card into the appropriate fields on the petition. If an entire field on the signer card is illegible, the transcriber should write "ILLEGIBLE" in the corresponding petition field.
  - (3) If, upon review of the signer form, the transcriber finds that the voter or witness failed to sign the signer form, the transcriber must not transcribe the signer's information onto the petition.
  - (4) If, while transcribing, a transcriber makes an error, the transcriber must make a line through the signature line and record the information on the next blank signer line.
  - (5) A transcriber must not fill in the signature on the petition section.

- (6) A transcriber must transcribe onto a petition section any written information included on a signer form indicating that an elector has been given assistance when filling out the signer form.
  - (7) A transcriber must write on the signer form the petition section number and line that the signer form information has been transcribed onto.
- (c) Once all the signer forms have been transcribed on a petition section, the transcriber must bundle the signer forms and label the bundle with the corresponding section number. Transcribers must set aside for later submission to the Secretary of State any signer forms that were not transcribed because they were not signed by the elector or witness.
  - (d) Once a transcriber has completed transcription of any section, the transcriber must sign the transcriber affidavit for that petition section. Any section submitted without a signed transcriber affidavit will not be accepted by the Secretary of State.

#### 15.9.10 Submission to the Secretary of State

- (a) Unless otherwise specified in this rule, the Secretary of State will receive petitions submitted in accordance with Election Rule 15.
- (b) Upon submission, proponent must indicate and separate those sections that were circulated in person and those sections that were circulated by mail or email.
- (c) At the time of submission, proponents must also submit to the Secretary of State each signer form received from a voter. The signer forms must be bundled and labeled with the corresponding section number on which they were transcribed. Signer forms that were received by the proponents but not transcribed should be separately bundled and labeled "NOT TRANSCRIBED".
- (d) When submitting information required under section 1-4-905(5), C.R.S. for candidates and sections 1-40-111(4) and 1-40-121(2), C.R.S. for ballot initiatives, proponents must include the names and address of any collectors and transcribers and the sections they collected or transcribed.
- (e) Proponents of a ballot initiative circulating under this rule must submit their original petitions and any cure under Section 1-40-117(3)(b), C.R.S. no later than August 3, 2020.
- (f) Proponents of an unaffiliated or independent candidate circulating under this rule must submit their petitions no later than July 27, 2020.

- (g) Proponents of a ballot initiative who enter a cure period as defined by section 1-40-117 (3)(b), C.R.S. must submit their cure no later than 15 days after the statement of insufficiency has been issued.

#### 15.9.11 Processing of petitions by the Secretary of State

- (a) Unless otherwise specified in this rule, the Secretary of State will process petitions submitted in accordance with Election Rule 15.
- (b) Circulator and transcriber affidavit
  - (1) If a petition section circulated by mail or email does not have a completed collector affidavit and transcriber affidavit, the Secretary of State will reject the entire section.
  - (2) If a petition section circulated by mail or email does not have a completed notary clause accompanying the collector affidavit, or if the date of the notary clause differs from the date the collector signed the affidavit, the Secretary of State will reject the entire section.
  - (3) A collector or transcriber affidavit for a candidate petition that is deficient under this rule may be cured in accordance with section 1-4-912(2), C.R.S.
- (c) No line on a petition section that is circulated by mail or email will be rejected because a signature is not present on the petition. Signer forms that do not contain an elector signature or witness signature are invalid, should not be transcribed, and may not be counted.
- (d) The Secretary of State will compare signatures found on an unaffiliated or independent candidate signer form or petition section to signatures found in the statewide voter registration database following the procedures listed in section 1-4-908(1.5), C.R.S.
- (e) The Secretary of State will provide notification of sufficiency or insufficiency to an unaffiliated or independent candidate no later than the deadline to certify ballot content for the 2020 general election.