

City Council Legal Review Committee

Meeting Agenda

**June 10, 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

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.

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Approval of Minutes: May 20, 2020
- V. Public Comments on Items Not on the Agenda
- VI. Discussion/Direction – Meeting Options/Issues During COVID 19 Restrictions
 - Public Hearings and Quasi-Judicial Hearings
 - Possible Options for In-Person Meetings
 - How Other Cities are Handling Quasi-Judicial Hearings
- VII. Discussion Items for Next Meeting
 - Annual Evaluation of Judge, Prosecutor, and City Attorney
 - Marijuana FAQs
 - Back Up Prosecutor
- VIII. Adjourn

City Council Legal Review Committee

Meeting Minutes

May 20, 2020

6:00 PM

Electronic Meeting

Call to Order – Councilmember Leh called the meeting to order at 6:00 pm and the following members were present:

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

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

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

None.

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

City Manager Balsler stated this draft resolution amends procedures for quasi-judicial hearings. Previously, the Council approved Resolution 30 allowing for quasi-judicial hearings to be held electronically for all boards with the exception that City Council could not hold quasi-judicial hearings on those items subject to referendum. That resolution gave the City Manager discretion to decide if other hearings could be handled electronically or should be held for an in-person meeting. This new resolution attempts to clarify some of those details. Staff is looking for the committee to make a recommendation to Council.

Councilmember Leh noted the goal is to make sure that whatever process is used we need to adhere to all of the provisions of the charter and show true transparency.

Councilmember Brown noted this version changes the language about indemnifying the City. He asked why staff is recommending those changes. City Attorney Kelly stated substantively it doesn't change much. It does break down the categories and uses the land use code to identify the precise types of applications that would be allowed to be heard by Planning Commission and City Council and those not allowed.

Councilmember Leh asked if any more applicants have decided to not proceed to hearing because of the indemnification requirement. Director Zuccaro stated since the last meeting there was one other applicant who declined to go ahead with an electronic hearing, but he does not know if that was due to the indemnification requirement.

Councilmember Brown asked why the section giving the City Manager discretion to decide what could be held electronically was struck. City Attorney Kelly stated this resolution is intended to allow the Council to expressly decide what kinds of hearings should be held by electronic hearing and which shouldn't be while understanding that if there are technical issues a hearing may need to be continued.

Councilmember Brown was concerned this gives applicants the right to an electronic hearing. City Attorney Kelly stated it doesn't give the right but does give the applicant a more clear process of what to expect moving forward this way unless there is a technological reason it can't be heard electronically. The goal is to create a more predictable process both for applicants and staff as to which hearings can move forward.

Councilmember Leh stated he does like making this more predictable with less discretion in the process.

Councilmember Leh stated he doesn't like section A2. He is concerned about having these public hearings at Planning Commission by electronic means. He will not support that provision. He would like to provide an alternative for that.

Councilmember Fahey stated she feels this resolution is a good representation of what the Council decided they would like to see done when passing the earlier resolution. As whole this document represents what the Council agreed to.

Members discussed accessibility for meetings and how the City can help accommodate people and make sure anyone can participate if interested.

Public Comments

John Leary, 1116 LaFarge Avenue, asked how information presented at an electronic quasi-judicial hearing will be made available to the public. He also asked how gaps are handled when a person's feed drops during an electronic meeting.

Councilmember Leh suggested adding specific procedures on how materials for the meeting could be handled and made available to the public prior to and during the meeting.

Members discussed if there are other options for the meeting platform and what ADA requirements we may need to address if meeting electronically.

Councilmember Brown noted his concerns that electronic meetings are not as accessible as they should be.

Councilmember Fahey noted the electronic meetings are actually more accessible for some people who can't come to meetings in person.

Councilmember Leh moved to send to Council the draft resolution with the changes suggested tonight but noting that the Committee is not necessarily endorsing the provisions, but simply recognizing this is consonant with the Council majority from the last discussion. Councilmember Fahey seconded.

Passed 2-1

Brown voting no stating he doesn't feel this resolution has addressed enough of his concerns.

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

Muth stated after reviewing options, staff recommends that when in-person meetings begin the best option will be to broadcast meetings with a call in option for any resident that doesn't want to attend in-person.

Councilmember Brown stated he likes the option of having in-person meetings with the ability to bring people into speak while keeping the room attendance low and having a call in option.

Public Comments

John Leary stated he is concerned that even with in-person meetings that does not solve the concern that people can't collect signatures for a referendum due to

social distancing at this time. He feels that needs to be figured out before having in-person meetings.

Councilmember Leh agreed this is of great concern. Even if we could go back to normal meetings this issue will still need to be addressed.

City Attorney Kelly stated this area is changing rapidly and much will be dependent on what happens at the legislature and what the Governor does.

Councilmember Leh moved the Committee recommend to Council the recommendation from staff for public meetings except for quasi-judicial hearings where the final decision is subject to referendum. Councilmember Fahey seconded. All in favor.

DISCUSSION ITEMS FOR NEXT MEETING

None.

ADJOURN

The meeting adjourned at 8:10 PM.

SUBJECT: PUBLIC HEARINGS AND QUASI-JUDICIAL HEARINGS

DATE: JUNE 10, 2020

PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY

SUMMARY:

At its May 26, 2020 meeting, the City Council requested the Legal Review Committee review (1) what is a “public hearing”; and (2) whether the City Council is required by Charter or ordinance to hold public hearings in person, or whether there is any legal duty to hold public hearings in person.

A public hearing in the most general sense is a hearing held to receive public comment on a matter before the City Council after providing public notice. A quasi-judicial hearing is a type of public hearing held when the law requires that due process be afforded parties in interest; a quasi-judicial hearing requires notice and an opportunity to be heard before an impartial decision-maker, the decision must be based on the evidence presented at the hearing, and the decision is subject to judicial review for abuse of discretion.

The City’s Home Rule Charter requires public hearings on ordinances (Charter § 4-10), prior to setting the ballot title for an initiated or referred measure (Charter § 7-4), and in connection with adoption of the budget (Charter § 11-4). None of these sections in the Charter provide any specific procedure for the required public hearings, and none of these hearings are quasi-judicial hearings.

The City’s municipal code contains more than sixty references to public hearings required in connection with various actions by the City, including in Title 3 (Business Assistance Agreements), Title 4 (City Open Space), Title 5 (Business Licenses and Regulations), Title 15 (Historic Preservation), Title 16 (Subdivisions), and Title 17 (Zoning). Some of these are quasi-judicial hearings and some are not.

As Mayor *pro tem* Maloney noted at the May 26 City Council meeting, the zoning code provides the following definition of “public hearing” for the purposes of the zoning code:

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.

LMC § 17.08.400. This appears to be the only definition provided in connection with the many public hearings required in various Titles of the Code (there is no definition of “public hearing” in LMC § 1.04.010, which defines words and phrases applicable whenever used in the Code) and is consistent with the general view of what constitutes a public hearing.

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 (ie, an in-person meeting). However, given the current public health pandemic, the Denver District Court in the attached opinion has acknowledged the prevalence – in fact, the need – for virtual communication platforms. *Ritchie v. Polis*, Denver District Court Case No. 2020CV31708 (May 27, 2020) (stating in footnote 3 on page 14, “I note specifically that the Hearing in this matter conducted on May 22, 2020 was done remotely via Webex. Indeed, even the United States Supreme Court heard oral arguments remotely” and in footnote 6 on page 15 “It is worth noting that my signature at the bottom of this Order is an electronic signature.”)

Therefore, as long as the “place” (ie, the medium) where the public hearing is held allows the general public to attend to hear issues and express their opinions, this definition of public hearing for matters arising under the zoning code would be met. The electronic platform currently used by the City Council for its meeting allows the general public to attend, hear issues, and express their opinions.

Finally, quasi-judicial hearings are subject to more relaxed requirements than judicial proceedings. So when the legitimacy of electronic hearings for judicial matters is acknowledged by the court, it would appear there likewise is no general legal impediment to electronic hearings in quasi-judicial matters and, similarly, no legal duty to hold public hearings in person.

ATTACHMENT(S):

- 1. Denver District Court decision in *Ritchie v. Polis*.

STRATEGIC PLAN IMPACT:

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

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: May 27, 2020 4:32 PM CASE NUMBER: 2020CV31708
Plaintiffs: DANIEL RITCHIE, an individual, COLORADO CONCERN, a Colorado non-profit corporation, v. Defendants: JARED POLIS, in his capacity as Governor of Colorado, and JENA GRISWOLD, in her capacity as Colorado Secretary of State; and Plaintiff-Intervenor: PROTECTING COLORADO'S ENVIRONMENT, ECONOMY, AND ENERGY INDEPENDENCE.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 2020CV31708 Courtroom: 414
ORDER RE: PLAINTIFFS' FORTHWITH MOTION FOR TEMPORARY RESTRAINING ORDER and VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF	

THIS MATTER comes before me on Plaintiffs' Forthwith Motion for Temporary Restraining Order and a Verified Complaint for Expedited Declaratory Relief, filed on May 18, 2020. On May 18, 2020, I held a scheduling hearing with Plaintiffs' counsel and the Attorney General's Office, setting this matter for a public hearing on preliminary injunction and/or declaratory relief on May 22, 2020, via Webex.

On May 21, 2020, several briefs were filed:

1. Plaintiffs filed a "Brief for May 22 Hearing;"
2. Amici Curiae "Cross-Ideological Nonpartisan Group Committed to the Rule of Law in Colorado" filed a Brief in Support of Plaintiffs;

3. Governor Polis filed a "Response to Forthwith Motion for Temporary Restraining Order;"
4. Plaintiff-Intervenor Protecting Colorado's Environment, Economy, and Energy Independence filed a Brief; and
5. Secretary of State Griswold filed a "Hearing Brief of the Secretary of State."
6. During the Webex hearing held on May 22, 2020, I granted Cross-Ideological Nonpartisan Group Committed to the Rule of Law in Colorado's Motion for Leave to File an Amicus Brief. I also granted Protecting Colorado's Environment, Economy, and Energy Independence Unopposed Motion to Intervene.
7. No Parties presented, and I did not hear any additional evidence or testimony during the May 22, 2020 hearing.
8. On May 26, 2020, Plaintiff-Intervenor Protecting Colorado's Environment, Economy, and Energy Independence filed an Unopposed Motion to Supplement the Record.
9. Having reviewed the record, briefings, and applicable law, I hereby make the following findings of fact, conclusions of law and enter the following **ORDERS**:

I. PARTIES

10. Plaintiff Daniel L. Ritchie is an individual and a registered elector residing in Denver County. Mr. Ritchie serves on the board of Colorado Concern.
11. Plaintiff Colorado Concern, Inc. ("Colorado Concern") is a statewide CEO-based organization devoted to investing in and promoting a pro-business environment through the political process.
12. Defendant Jared Polis is the Governor of Colorado ("Governor Polis") and is sued here in his official capacity as the Governor of Colorado.
13. Defendant Jena Griswold ("Secretary of State Griswold") is the Colorado Secretary of State and is sued here in her official capacity as Secretary of State.
14. Amici Curiae are a group of thirty-nine organizations referring to themselves as the "Cross-Ideological Nonpartisan Group Committed to the Rule of Law in Colorado." A full list of the amici parties can be found in their Motion for Leave to file Brief as Amici Curiae in Support of Plaintiffs, filed on May 21, 2020.
15. Plaintiff-Intervenor Protecting Colorado's Environment, Economy, and Energy Independence ("PCEEEI") is a non-profit organization with a mission to support state and local ballot initiatives that promote a vibrant Colorado economy and oppose those measures that seek to harm Colorado's economy and way of life.

II. BACKGROUND

16. The Colorado Constitution was drafted on March 14, 1876, was adopted by Colorado's electorate on July 1, 1876, and into effect upon Colorado's admission to the Union on August 1, 1876.
17. Article V, Section 1 of the Colorado Constitution vests the legislative power in the General Assembly apart from the powers of initiative and referendum, which are expressly reserved for direct exercise by the people of Colorado. Colo. Const. art. V, § 1.
18. Article V, Section 1, subsection 2 establishes requirements for the exercise of the power of initiative. Colo. Const. art. V, § 1, (2).
19. Article V, Section 1, subsection 6:
 - a. The petition shall consist of ***sheets having such general form printed or written*** at the top thereof as shall be designated or prescribed by the secretary of state; ***such petition shall be signed by registered electors*** in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors. Colo. Const. art. V, § 1, (6) (emphasis added).
20. Article V, Section 1, subsection 2 of the Colorado Constitution states that the petition must "include the full text of the measure" and be addressed to and filed with the Secretary [of State] within three months of the related election. Colo. Const. Art. V, § 1(2).
21. These are the only two provisions found in the Colorado Constitution that govern the signature gathering process. All other requirements about the signature gathering process are contained in statutes and regulations.

22. Article V, Section 1, subsection 10 of the Colorado Constitution provides that: “[t]his section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.” Colo. Const. art. V, § 1(10).
23. Title 1, Article 40 of the Colorado Revised Statutes (“Article 40”), provides the statutory framework for the exercise of the initiative and referendum power of the people of Colorado. See C.R.S. § 1-40-103(1).
24. The legislative declaration at the front of Article 40 states that: “[t]he general assembly declares that it is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to **properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.**” C.R.S. § 1-40-101(1) (emphasis added).
25. Article 40 includes provisions that prescribe the form of initiative petitions and implements the safeguards for the petitioning process set out in Article V, Section 1 of the Colorado Constitution. See e.g., C.R.S. §§ 1-40-105 (setting out the procedure for filing); 1-40-107 (setting out the procedure for a rehearing), 1-40-111 (setting out the procedures for affidavits and notarization), 1-40-119 (setting out the procedure of hearings).
26. Under the Colorado Disaster Emergency Act (“CDEA”), the governor is responsible for “meeting the dangers to the state and people presented by disasters.” C.R.S. § 24-33.5-704(1); see also Polis Ex. A, at 001.
27. The CDEA was updated most recently in 2018. C.R.S. § 24-33.5-704.
28. On March 10, 2020, Governor Polis declared a disaster emergency under the CDEA because of the community spread of a novel coronavirus causing COVID-19. *Id.*, at 008.

29. Governor Polis has issued numerous executive orders¹ designed to mitigate the effects of the COVID-19 pandemic, prevent further spread of COVID-19, protect against overwhelming Colorado's healthcare resources, while also ensuring as much as is feasible that critical activities in the state may continue.
30. On May 15, 2020, Governor Polis issued the Executive Order at issue in this case, "Executive Order D 2020 065," ("Executive Order 65").
31. The stated purpose of Executive Order 65 is to address the "significant and determinative barriers due to state and local public health orders that prevent [petition circulators] from the normal statutory conduct of in-person signature gathering. Executive Order 65, 1, § I.
32. Two components of Executive Order 65 are at issue in this case:
- b. The first component challenged is that Executive Order 65 suspends those provisions in Article 40 which have the effect of requiring petition circulators be physically present when a registered elector signs an initiative position. Executive Order 65, at 2, §§ II.A-D;
 - c. The second component challenged is that Executive Order 65 authorizes the Secretary of State Griswold to promulgate emergency rules in the wake of these statutory suspension to ensure both the protection of public health and the reliability of the petition signatures that are gathered. *Id.* at § II.G.
33. The specified statutory requirements of Article 40 which are suspended by Executive Order 65 are:
- d. C.R.S. §§ 1-40-102(6), -110, -105.5(4), and -113;
 - e. C.R.S. § 1-40-111;
 - f. C.R.S. § 1-40-116;

¹ <https://www.colorado.gov/governor/2020-executive-orders>.

g. C.R.S. §§ 1-40-130(l)(k), -130(l)(e), -130(l)(l);

34. None of the provisions of Executive Order 65 “relieves circulators... of the burden to ensure that the signature on the petitions are valid to the best of their knowledge,” nor does Executive Order 65 suspend “the other provisions of C.R.S. § 1-40-130, which define the unlawful signature gathering actions and their penalties. Executive Order 65, §§ II.H-J.
35. The process of placing a citizen initiative on the November ballot of an even year election in the State of Colorado contains four major steps that occur in the following order: (A) setting a title; (B) obtaining a petition form from the Secretary of State; (C) circulating and obtaining signatures; and (D) review of the petition signatures by the Secretary of State. Hr’g Br. of the Secretary of State, 6.
36. Executive Order 65 primarily affects three provisions of this process: (1) the timing of submitting petitions; (2) the contents of petition sections; and (3) the process of circulating and signing petitions. *Id.*, at 11.
37. Executive Order 65 applies to several currently pending ballot measures. Of the sixty-six initiatives with a title currently set, fourteen initiatives have been approved for circulation with the remaining fifty-two needing to submit petitions for review and approval of their format by the Secretary of State. See Pl.’s Forthwith Mot. for Temp. Restraining Order, ¶ 7; Pl.’s Verified Compl. For Expedited Decl. Relief, ¶ 23.).

III. STANDARD OF REVIEW

38. A hearing on the motion for preliminary injunction and/or expedited declaratory relief pursuant to Colo. R. Civ. P. 57(m) has been completed and the case has been submitted for judicial review.

A. Preliminary Injunction Standard under *Rathke*.

39. To obtain a preliminary injunction, the moving party must establish all six of the factors outline in *Rathke v. MacFarlane*. 648 P.2d 648 (Colo. 1982). Here,

Plaintiffs must demonstrate the following six factors: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury that may be prevented by injunctive relief; (3) no plain, speedy, and adequate remedy at law; (4) granting of an injunction will not disserve the public interest; (5) balance of equities favors the injunction; and (6) injunction will preserve the status quo pending a trial on the merits. *Id.* at 653-54. A preliminary injunction is not warranted, unless the trial court finds that the moving party has demonstrated each of the *Rathke* factors. *Phoenix Capital, Inc. v. Dowell*, 176 P.3d 835, 839 (Colo. App. 2007); *see also Wakabayashi v. Tooley*, 648 P.2d 655, 657 (Colo. 1982); *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008). I will address all six factors.

40. Granting injunctive relief lies within the sound discretion of the district court and will be reversed only upon a showing of an abuse of that discretion. *Scott v. City of Greeley*, 931 P.2d 525, 530 (Colo. App. 1996). If only legal, rather than factual questions are at issue, the trial court's preliminary injunction ruling is reviewed *de novo*. *Giltitz v. Bellock*, 171 P.3d 1274, 1278 (Colo. App. 2007).

B. Declaratory Judgment Standard under C.R.C.P. 57 and C.R.S. § 13-51-106.

41. Under C.R.S. § 13-51-106; "Any person...whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."
42. "District and superior courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations." C.R.C.P. 57(a). The granting of declaratory relief is a matter resting in the sound discretion of the trial court. *Troelstrup v. Dist. Court In & For City & Cty. of Denver*, 712 P.2d 1010, 1012 (Colo. 1986); *see also* C.R.C.P 57(a). A declaratory judgment "calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present rights upon established facts." *Bd. of Dir., Metro Wastewater Reclamation Dist. v.*

Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 105 P.3d 653, 656 (Colo. 2005) (quoting *Cacioppo v. Eagle Cty. Sch. Dist. Re-50J*, 92 P.3d 453, 467 (Colo. 2004)).

IV. ANALYSIS

43. As our Colorado Supreme Court recently noted in its *per curiam* opinion in *Griswold v. Warren*, “the COVID-19 pandemic has radically altered nearly every aspect of life in Colorado and around the world.” *Griswold v. Warren*, -- P.3d --, 2020 CO 34 at ¶ 1, 2020 WL 2553063, *1 (Colo. May 4, 2020)².

44. I wish to reiterate the narrow nature of the case before me. This case is a focused consideration of actions that Governor Polis has taken, in his official capacity, to temporarily suspend the operation of certain provisions of state statutes governing the petitioning process, and authorizes Secretary of State Griswold to issue emergency rules to implement both its express provisions and the remaining unsuspended statutory provisions, pursuant to the CDEA, C.R.S. § 24-33.5-701, *et seq.* The State of Colorado has a very robust culture and history of initiative and referendum, and “the right of initiative and referendum...is a fundamental right under the Colorado Constitution.” *Loonan v. Woodley*, 882 P.2d 1380, 1383 (Colo. 1994) (citing *Clark v. City of Aurora*, 782 P.2d 771, 777 (Colo. 1989)). That culture and history provides the backdrop for this case.

A. **PLAINTIFFS’ CLAIMS AGAINST GOVERNOR POLIS.**

i. **Plaintiffs Have Not Established All of the *Rathke* Factors.**

a. PLAINTIFFS HAVE NOT ILLUSTRATED A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS.

45. Under the CDEA, the governor is responsible for “meeting the dangers to the state and people presented by disasters.” C.R.S. § 24-33.5-704(1). The general assembly delegated to the Governor broad emergency powers and discretion,

² As I said during the hearing on this matter: “Strange days indeed.” Lennon, J., 1984. *Nobody Told Me*. Milk and Honey: Geffen label.

including the authority to “[s]uspend the provisions of **any regulatory statute** prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency, **if strict compliance** with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.” *Id.* § 24-33.5-704 (7)(a) (emphasis added). To date, there is no case law in Colorado defining what a “regulatory statute” is, in the context of the CDEA.

46. Plaintiffs argued that Executive Order 65 exceeds Governor Polis’ authority under the CDEA. Plaintiffs assert that there must be a “nexus” between the laws suspended under subsection 24-33.5-704 (7)(a) and the declared disaster emergency. For example, according to Plaintiffs, Governor Polis may suspend a “regulatory statute” only when strict compliance with that statute would otherwise impede necessary state action in coping with the emergency. Plaintiffs further argue that Governor Polis has failed to establish the allegedly required “nexus” between strict compliance with the signature gathering requirements for citizen-initiated ballot measures and necessary state action to cope with the COVID-19 pandemic. Plaintiffs’ argument is premised on their claim that state action, as defined in the statute, does not implicate private action. According to the Plaintiffs, “the targeted [statutory] requirements [suspended by Executive Order 65] govern only citizen-initiated ballot measures...[and] the constitutional and statutory scheme for signature gathering is not an obstacle to necessary actions by the state in response to the [COVID-19] pandemic.” Pl.s’ Forthwith Mot. for Temp. Restraining Order, ¶¶ 20; see also Pl.’s Verified Compl. For Expedited Decl. Relief, ¶¶ 46.

47. Governor Polis has responded by citing to how courts in several other jurisdictions have interpreted the meaning of a “regulatory statute.” Def. Governor Polis’ Resp. to Forthwith Mot. for Temp. Restraining Order, 6. Governor Polis also asserts that Governor Polis must have authority to issue orders affecting private action subject to state regulation in order to protect public health and

safety, asserting that regulatory statutes are ones that regulate private conduct even without state action. *Id.*, at 6-7. I agree. See *infra* ¶¶ 51-61.

48. Plaintiffs also claim, that even if a “nexus” exists with the declared emergency, Governor Polis still lacks the power to relax strict compliance with signature gathering requirements which would generally be required by the suspended statutory provisions. Plaintiffs claim that the signature gathering requirement is “non-technical.” Pl.s’ Forthwith Mot. for Temp. Restraining Order, ¶ 23. Plaintiffs’ cite the recent Colorado Supreme Court case, which found that there are some aspects of the Election Code that simply cannot be subject to only substantial compliance. *Griswold v. Warren*, 2020 CO 34 at ¶ 18, 2020 WL 2553063, *4 (Colo. May 4, 2020) (quoting *Kuhn v. Williams*, 418 P.3d 478, 488, *reh’g denied* (Colo. 2018)).
49. Governor Polis argues that Executive Order 65, suspends only “the technical requirements” relating to the ballot initiative process. Def. Governor Polis’ Resp. to Forthwith Mot. for Temp. Restraining Order, 9, 11. I agree. See *infra* ¶¶ 62-69.
50. Additionally, Executive Order 65 authorizes Secretary of State Griswold promulgate temporary emergency rules to allow campaigns which have titles set or pending in the Supreme Court “to continue collecting signatures in a way that protects public health consistent with the constitutional requirement that some registered elector must attest to the validity of signatures on the petition.” Def. Governor Polis’ Resp. to Forthwith Mot. for Temp. Restraining Order at 11, *citing* Executive Order 65, § II.G.
51. Article 40 proscribes how the initiative and referendum process will be conducted and regulated. While there are provisions in Article 40 dealing with substantive procedures for the initiative and referendum process, taken as a whole the statute, is a comprehensive regulatory scheme designed to “properly safeguard, protect, and preserve inviolate for [the citizens of Colorado] these modern instrumentalities of democratic government.” C.R.S. § 1-40-101(1).

52. I find that Article 40 overall is a “regulatory statute” because it defines how the popular initiative and referendum right – as provided by the Colorado Constitution – is to be effectuated. Indeed, without the regulatory scheme contained in Article 40 it would be impossible to effectuate the initiative and referendum process contained in the Colorado Constitution. *See supra* ¶ 22.
53. In Colorado, when a statute is part of a “comprehensive regulatory scheme, the scheme should be construed to give consistent, harmonious, and sensible effect to all its parts.” *Martinez v. People*, 69 P.3d 1029, 1031 (Colo. 2003) (*citing* *Martin v. People*, 27 P.3d 846, 851 (Colo. 2001); *N.A.H. v. S.L.S.*, 9 P.3d 354, 367 (Colo. 2000); *Left Hand Ditch Co. v. Hill*, 933 P.2d 1, 3 (Colo.1997)).
54. The CDEA allows the Governor to “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency.” C.R.S. § 24-33.5-704 (7)(a).
55. Colorado Courts have consistently upheld the principle that “statutes should not be interpreted to reach an absurd result.” *Bodelson v. City of Littleton*, 36 P.3d 214, 217 (Colo. App. 2001) (*quoting Denver Post Corp. v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo.App. 2000)).
56. Courts must consider “whether the resulting interpretation is inconsistent with the purposes of the legislation.” *Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001) (*citing* *AviComm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023, 1031 (Colo.1998) (“[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result”).
57. To take the position advanced by the Plaintiffs that Governor Polis is only authorized under the CDEA to suspend regulatory statutes relating to state action would be contrary to the purpose of the CDEA itself. The intent of the CDEA is to delegate to the Governor the authority to act to meet “the dangers to the state and people presented by disasters.” C.R.S. § 24-33.5-704(1). Allowing the Governor to suspend statutes that solely implicate state action, as argued by the

Plaintiffs, would hamstring the Governors authority to respond to disasters and would create an absurd result.

58. Even if Plaintiffs' "state action" argument is correct, Article 40 is a statute that regulates "state action."
59. The language in the CDEA states that the Governor has authority to suspend statutes that "prescribe[] the procedure for the conduct of state business or the orders, rules, or regulations of any state agency," thus Article 40 clearly "regulatory statute." C.R.S. § 24-33.5-704 (7)(a).
60. Article 40 regulates not only private citizen action with regard to the initiative and referendum process but also regulates the Secretary of State's actions with regard to the initiative and referendum process. See e.g., C.R.S. §§ 1-40-105, 1-40-106. The best demonstration of this? The manner of collecting signatures is inherently a part of the Secretary of State's obligation to verify signatures. See e.g., C.R.S. § 1-40-116.
61. The CDEA states that the Governor has the authority to "[s]uspend the provisions...if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency." C.R.S. § 24-33.5-704 (7)(a).
62. The CDEA applies to all statutes, not just the Election Code – of which Article 40 is part. Here, Plaintiffs seem to unintentionally misconstrue the idea of strict compliance as applied to Article 40.
63. As explicitly expressed by the Colorado Supreme Court in *Griswold v. Warren*, the Election Code is generally subject only to the substantial compliance standard, even without the threat of a pandemic or other disaster emergency. 2020 CO 34 at ¶ 22, 2020 WL 2553063, at *6.
64. As further explained below, see *infra* ¶ 65, even though the Colorado Supreme Court has found that some portions of the Election Code require strict compliance, generally only the substantial compliance standard applies. Whether

or not strict compliance is required can be determined on a case-by-case basis applying the *Loonan* standard. 882 P.2d 1380, 1384.

65. The present case is distinguishable from *Griswold*. In *Griswold, supra*, the Plaintiff filed a petition seeking to have her name placed on the primary ballot, even though she failed to obtain the required number of signature on her nomination petition, alleging the COVID-19 pandemic and resulting state of emergency prevented her from collecting the required signatures. The Colorado Supreme Court held that the Election Code's minimum signature requirement in order to petition onto the ballot was a substantive requirement that required strict compliance. *Griswold*, 2020 CO 34, at ¶¶ 18, 2020 WL 2553063, at *4. The *Griswold* decision is instructive in explaining the differences between substantive and technical provisions in Colorado's election law: "the clear and unambiguous standard adopted by the General Assembly requires compliance with a specific numerical threshold determined according to a specific mathematical formula. A candidate either meets that minimum threshold or does not. There is no close enough." *Griswold*, 2020 CO 34 at ¶¶ 22, 2020 WL 2553063, at *6 (*quoting Jackson-Hicks v. E. St. Louis Bd. of Election Comm'rs*, 28 N.E.3d 170, 178 (Ill. 2015)). Comparing that language to the facts in the present case, I find there is nothing to suggest that any of pending ballot initiatives with a title set will stop attempting to obtain the required number of signatures for those petitions, when – or if – any new rules are promulgated by Secretary of State Griswold on how to obtain them. *See e.g., supra* ¶¶ 20-22.

66. Here, compliance with the non-suspended portions of Article 40 is achievable, albeit through other means. Nothing in Executive Order 65 changes the minimum signature requirements or changes any of the substantive provisions of Article 40's requirements. Given the prevalence of video conferencing³ and other forms

³ I note specifically that the Hearing in this matter conducted on May 22, 2020 was done remotely via Webex. Indeed, even the United States Supreme Court heard oral arguments remotely: https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-13-20

of virtual communication, there is nothing in the facts before me to suggest that the equivalent of “in-person” signatures is impossible.

67. The methods by which technical requirements of regulatory statutes are accomplished is likely to be shaped by the COVID-19 pandemic for years to come. And it should not be forgotten that Article 40 specifically refers to “modern instrumentalities of democratic government.” C.R.S. § 1-40-101(1).
68. There are ways other than physical presence to ensure that a circulator can attest to the identity of signatures consistent with the purpose of the signature verification procedure to “maintain integrity in the initiative process and to comply with the constitutional requirements.” *Buckley v. Chilcutt*, 968 P.2d 112, 116 (Colo. 1998) (internal citations omitted). In fact, the Colorado Supreme Court has rejected the argument that an affiant must be in the physical presence of the signer. In 1938, the Colorado Supreme Court considered the constitutionally required affidavit and concluded, “the circulator can make a positive affidavit that the signature was the genuine signature affixed by the signer” in one of two ways: 1) “by reason of its having been written in his presence,” or 2) “through his familiarity with the signer’s handwriting.” *Brownlow v. Wunsch*, 83 P.2d 775, 781 (Colo. 1938). The manner in which signatures are collected for the ballot initiatives that have a title, but still need to complete the signature gathering process, are technical. An example of how an in-person technical requirement has been suspended in light of the COVID-19 pandemic is in person notarization⁴ -- which includes but is not limited to suspending the notarization requirement for new bar applicants;⁵ default judgments; service of process, etc.⁶
69. Because of the foregoing, Plaintiffs have not shown a reasonable likelihood of success on the merits.

⁴ <https://www.nationalnotary.org/knowledge-center/news/law-updates/co-governor-executive-order-d-2020-019>

⁵ <https://www.coloradosupremecourt.com/AboutUs/Notices.asp>

⁶ It is worth noting that my signature at the bottom of this Order is an electronic signature.

b. PLAINTIFFS HAVE NOT SUFFERED ACTUAL INJURY.

70. Plaintiffs define their injury as such:

- 1) "Plaintiff Ritchie **will be** adversely impacted by several of these initiatives if they become law." Pl.'s Verified Compl. For Expedited Decl. Relief, ¶ 23; and
- 2) "With the substantive requirements of both the Colorado Constitution and Article 40 suspended, Plaintiffs are **more likely** to be adversely impacted by the unconstitutional qualification of ballot measures, which will adversely impact them if adopted." Pl.s' Forthwith Mot. for Temp. Restraining Order, ¶ 34; and
- 3) "Plaintiffs **will** suffer an injury to their right under the Colorado Constitution against having ballot measures, **which may adversely affect them**, qualify for the ballot without passing appropriate muster. *Id.*, at ¶ 35. (emphasis added).

71. It is inappropriate for a preliminary injunction to be based on this kind of hypothetical harm that is not ripe for judicial review. Plaintiffs have not established "irreparable injury" because they have not demonstrated that any of their alleged injuries are ripe for judicial review, only that "uncertain or contingent future matters" may occur. *See Stell v. Boulder Cty. Dep't of Soc. Servs.*, 92 P.3d 910, 914-15 (Colo. 2004), *as modified on denial of reh'g* (July 12, 2004) (internal citations omitted). In the present case, even if the Secretary of State Griswold promulgates temporary rules to effectuate Executive Order 65, there is no guarantee that any of the initiatives with title currently set will be able to fully comply with any of the new rules and/or the non-suspended provisions of Article 40. Simply put, none of the initiatives that Plaintiffs are hypothetically complaining about may ever appear on the November ballot.

72. Therefore, based on the preceding, Plaintiffs have not shown that they have suffered actual injury.

c. ENJOINING EXECUTIVE ORDER 65 WOULD BE CONTRARY TO THE PUBLIC INTEREST AND THE BALANCE OF EQUITIES FAVORS ENSURING ACCESS TO THE INITIATIVE AND REFERENDUM PROCESS.

73. Executive Order 65 retains all requirements for ballot qualification found in the Colorado Constitution and strikes a careful balance that facilitates petition circulation while protecting public health, especially for “Vulnerable Individuals.” See Executive Order D 2020 044, § II.C (recognizing the continuing threat of the COVID-19 pandemic on this population even in the move to “Safer at Home” in Colorado). Given the strong culture and history of the initiative and referendum process in Colorado, the injunction sought by the Plaintiffs would harm the public interest by negatively impacting citizens’ fundamental right to initiative and referendum as provided by the Colorado Constitution. Because that right is fundamental in character and self-executing, see Colo. Const. art. V, § 1(10), “the initiative provisions of the [Colorado] Constitution must not be narrowly construed, but rather that they must be liberally construed to effectuate their purpose and to facilitate the exercise by electors of this most important right reserved to them by the [Colorado] Constitution.” *Colorado Project-Common Cause v. Anderson*, 495 P.2d 220, 221 (Colo. 1972).
74. While Governor Polis has issued additional orders “re-opening” certain activities and areas in the state over the Memorial Day weekend, everything has not reopened and what is being reopened is subject to conditions in many cases. The fact that some activities have reopened does not change my analysis. For example, the number of people allowed to gather is still limited and schools have not reopened.
75. Granting the preliminary injunction requested by the Plaintiffs would be against the public interest because it would create confusion and delay with the signature gathering processes for initiatives and referendum.
76. This same analysis would apply to the *Rathke* balance of equities factor.

d. ENJOINING EXECUTIVE ORDER 65 WOULD NOT PRESERVE THE STATUS QUO.

77. Not entering a preliminary injunction allows initiatives with title set to continue to collect signatures, this is the current status quo. Entering a preliminary injunction in this matter would change the status quo, therefore the Plaintiffs have not shown enjoining Executive Order would preserve it.

e. PLAIN, SPEEDY, AND ADEQUATE REMEDY

78. I have fully considered this final *Rathke* factor. I have found that whether or not there is another plain, speedy, or adequate remedy available to Plaintiffs in this matter is irrelevant to the final determination in this matter, as Plaintiffs have failed to establish at least five of the six *Rathke* factors. *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008).

ii. **The Forgoing Analysis Applies to C.R.C.P. 57 as well.**

79. Declaratory judgment proceedings are designed to resolve a dispute between parties as to their respective rights, status, or obligations under a law, controlling instrument, or relationship. *Bd. of Dirs. of Alpaca Owners & Breeders Ass'n, Inc. v. Clang*, 80 P.3d 945, 948 (Colo. App. 2003). As shown above, I have reviewed this case thoroughly under the *Rathke* standards for preliminary injunctions. This same analysis would apply to relief requested pursuant to C.R.C.P. 57, such relief is **denied**.

iii. **Plaintiff-Intervenor's Claims**

80. Plaintiff-Intervenor PCEEEI has advanced arguments about Equal Protection and election fraud. My review of those arguments show that those arguments are premised on speculative concerns. Plaintiff-Intervenor has not articulated any non-speculative harm in any of their briefs. *Developmental Pathways v. Ritter*, 178 P.3d 524, 534 (Colo. 2008). I do not find those arguments persuasive.

B. PLAINTIFFS' CLAIMS AGAINST SECRETARY OF STATE GRISWOLD.

i. Plaintiffs' Alleged Claims Against Secretary of State Griswold Are Not Ripe.

81. Secretary of State Griswold currently does not seek dismissal from this lawsuit on ripeness grounds. However, Secretary of State Griswold does state that Plaintiffs' request for a preliminary injunction or expedited declaratory relief as to her is not ripe for review because it depends on uncertain, contingent future events. I agree.

82. If Executive Order 65 stands, Secretary of State Griswold will be able to promulgate emergency rules to effectuate that Order. As of the date of the entry of this Order, Secretary of State has not promulgated or issued any rules to effectuate Executive Order 65. "Under the doctrine of ripeness, a claim must be real and immediate." *Developmental Pathways v. Ritter*, 178 P.3d 524, 534 (Colo. 2008). *Villa Sierra Condo. Ass'n v. Field Corp.*, 878 P.2d 161, 165 (Colo. App. 1994) ("if the parties' legal rights are dependent upon the happening of a contingency that may never occur, the issuance of a declaratory judgment would be premature"). Plaintiffs' request for an injunction as to Secretary of State Griswold is based on speculative and contingent matters that may never occur, namely, the Secretary promulgating rules implementing Executive Order 65. The matter is thus not ripe for me to enter any Order enjoining Secretary of State Griswold or entering any form of expedited declaratory relief against her. I will, however, retain jurisdiction to review any and all rules actually promulgated by Secretary of State Griswold, if such rules are objected to.

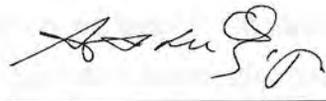
V. ORDER

For the reasons set forth above, Plaintiffs' Forthwith Motion for a Temporary Restraining Order is **DENIED**. Further, the portion of Plaintiffs' Complaint requesting relief under C.R.C.P. 57 is also **DENIED**.

The time for filing a Notice of Appeal and/or Request for Post-Judgment Relief shall begin to run upon the entry of this Order.

IT IS SO ORDERED this Wednesday, May 27, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert L. McGahey, Jr.", written over a horizontal line.

Judge Robert L. McGahey, Jr.
Denver District Judge

SUBJECT: POSSIBLE OPTIONS FOR IN-PERSON MEETINGS

DATE: JUNE 10, 2020

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

SUMMARY:

Staff continues to look into what options there are for holding in-person meetings during the COVID-19 outbreak while there are strict limitations on in-person gatherings.

At this time, staff plans to hold meetings electronically for the foreseeable future as the 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. These rules may be loosened soon; however, even then both board members and the public may not be comfortable meeting in-person or coming into a City facility for a meeting even with proper social distancing.

The Third Amended Public Health Order, issued by the CDPHE on May 14, 2020, revised the list of Critical Government Functions that are authorized to continue, notwithstanding the 10-person limit on gatherings, to include “legislative bodies of municipal governments.” So City Council meetings are not subject to the 10-person limit, but boards and commissions of the City are not “legislative bodies” and therefore it appears are still subject to the 10-person limit. The language of the 10-person limit on gatherings in the current order, the Fifth Amended Public Health Order 202-28 Safer at Home and in the Vast, Great Outdoors issued June 2, 2020, has changed slightly with regard to private gatherings (now “private gatherings in commercial spaces”) but the 10-person limit remains on public gatherings not otherwise authorized in the order.

Assuming public participation, transparency, and personal safety are the guiding principles, staff continues to review a variety of options for how to handle hearings. Staff has also reviewed the options taking into consideration public participation and due process (for both the applicant and the public).

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.

The following options are being considered and tested, each has different pros and cons and logistical challenges:

- Broadcast meetings (Channel 8 and web stream) with a phone-in option for public comments. Staff has ordered the equipment necessary to broadcast from the Recreation Center should Council Chambers be too small a room to use.
 - This would assume all members of the board would want to attend in person.
 - A phone queuing system would need to be purchased.
- Hybrid In-Person/Zoom Meetings would allow people to participate from home or at an in-person meeting.
 - Technologically more difficult but staff is working on these details.
 - Some may feel the people in the room have more influence over a decision than those participating remotely,
- Continued electronic meetings may be required due to health concerns or if larger meetings cannot be facilitated under public health rules. Meetings would continue with the current Zoom webinar platform. Staff is looking for additional ways for people to participate remotely including investigating the following possibilities:
 - Lending Chromebooks from the Library to anyone who may not have computer access but would like to join a meeting remotely. If they do not have broadband a person could use the Steinbaugh Pavilion for wifi.
 - Close captioning Zoom meetings.
 - Listing the Zoom phone in information on the broadcast screen for people at home to call in.
 - Creating a help sheet for people who may not have a computer but have a smart phone and need help joining electronically.

It should be noted that many logistical details still need to be worked out for all of these options.

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. Staff could also add a component to allow people to register to speak if needed.

For any in-person component, the following would be necessary:

- 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 large gatherings and social distancing guidelines may dictate how many people can attend in-person.

As a reminder, the City always accepts public comments by email for any meeting item and those comments are included in the meeting packet or given to Councilmembers prior to the meeting. Comments are also made a part of the public record of the proceedings. If someone does not want to or cannot participate in the meeting this is always an option.

It should be noted that having City Council meetings in-person does not resolve concerns raised regarding those items that are subject to referendum. The current Safer at Home public health order does not prohibit circulation of referendum petitions, but recommended social distancing practices may present practical difficulties. Council should take this into consideration when the City is ready to proceed with in-person meetings.

As a point of reference this is how some of our neighbors are currently meeting:

- Lafayette – electronically
- Erie – electronically
- Boulder – electronically
- Superior – electronically
- Broomfield – electronically
- Longmont – electronically
- Golden – electronically
- Denver – in-person
- Arvada – In-person/Zoom hybrid
- Lakewood – electronically
- Littleton – electronically
- Fort Collins - In-person/Zoom hybrid

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):

None.

STRATEGIC PLAN IMPACT:

SUBJECT: IN-PERSON MEETING OPTIONS

DATE: JUNE 10, 2020

PAGE 4 OF 4

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

SUBJECT: HOW OTHER CITIES ARE HANDLING QUASI-JUDICIAL HEARINGS

DATE: JUNE 10, 2020

PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY

SUMMARY:

Committee members asked how other cities are handing quasi-judicial hearings. Attached are some examples.

ATTACHMENT(S):

1. Commerce City Resolution
2. Westminster Procedures
3. Town of Mead Resolution
4. Colorado Springs Resolution

STRATEGIC PLAN IMPACT:

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

**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

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

- 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 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.

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 44-R-2020**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO
ADOPTING A POLICY CONCERNING PROCEDURES FOR REMOTE
PARTICIPATION IN REGULAR AND SPECIAL MEETINGS IN EMERGENCY
SITUATIONS**

WHEREAS, the Town of Mead is a statutory town in the State of Colorado (“Town”);
and

WHEREAS, pursuant to § 24-33.5-709 of the Colorado Revised Statutes (C.R.S.), the
Town Manager and Mayor have authority to declare a local disaster or emergency; and

WHEREAS, the Town government must continue to operate during a local disaster or
emergency, while taking measures to protect the health, safety, and welfare of its employees,
officials, and the public; and

WHEREAS, on March 21, 2020 the Town adopted a disaster declaration declaring a
public health emergency related to COVID-19 (the “Disaster Declaration”); and

WHEREAS, pursuant to Section 3 of the Disaster Declaration, the Disaster Declaration
“. . . shall remain in effect until the Mayor issues a written declaration terminating the local
disaster emergency”; and

WHEREAS, the Town has also adopted Resolution No. 38-R-2020, a Resolution
Adopting Supplementary Rules and Procedures for Emergency Meetings (“Emergency Meeting
Procedures”), which provides procedures for remote participation in emergency meetings; and

WHEREAS, the Town Board of Trustees (“Town Board”) desires to adopt procedures
for remote participation in all regular and special meetings held in emergency situations or
during the pendency of a local disaster declaration, in which the Emergency Meeting Procedures
would not apply; and

WHEREAS, the Town Board has determined that it is in the best interest of the public
health, safety, and welfare of the residents, employees, and officials of the Town of Mead to
adopt an Emergency Electronic Participation Policy for Regular and Special Meetings, as set
forth in this Resolution.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of
Mead, Weld County, Colorado, that:

Section 1. Adoption of Policy. The Emergency Electronic Participation Policy for
Regular and Special Meetings, attached hereto and incorporated herein as **Exhibit 1**, is hereby
adopted.

Section 2. Effective Date. This resolution shall be effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 30th DAY OF MARCH, 2020.

ATTEST:

By: 
Mary E. Strutt, MMC, Town Clerk



TOWN OF MEAD

By: 
Colleen G. Whitlow, Mayor

EXHIBIT 1

Emergency Electronic Participation Policy for Regular and Special Meetings

I. Applicability and Purpose.

The purpose of this Emergency Electronic Participation Policy for Regular and Special Meetings (“Policy”) is to specify the circumstances and means under which the Town Board of Trustees (“Town Board”) and all advisory boards, commissions, and committees of the Town as set forth in Chapter 3 of the Mead Municipal Code (“Committees”) shall be authorized to conduct regular and special meetings by telephone or other electronic means of participation, such as video-conferencing, that is clear, uninterrupted and allows two-way communication for the participating members (“Electronic Participation”). Electronic Participation has inherent limitations because Electronic Participation may preclude a member of the Town Board or members of one of the Committees from contemporaneously observing documentary information presented during meetings; from fully evaluating a speaker’s non-verbal language in assessing veracity or credibility; and from observing non-verbal explanations during a speaker’s presentation or testimony. The Town Board finds that these limitations, inherent in Electronic Participation, may produce inefficiencies in meetings, increase the expense of meetings, and alter the decision-making process. As such, the Town Board and Committees shall only utilize this Policy upon the adoption by the Town Board of a resolution declaring, or the Mayor and/or Town Manager declaring, a local disaster emergency pursuant to C.R.S. § 24-33.5-709.

This Policy does not apply to emergency meetings, which shall be conducted in accordance with the Supplementary Rules and Procedures for Emergency Meetings (“Emergency Meeting Procedures”), adopted by the Town Board by Resolution No. 38-R-2020.

II. Statement of General Policy.

The Town Board and Committees may conduct a regular or special meeting by Electronic Participation only in accordance with this Policy.

A. Emergency Situations. In the event an in-person quorum is unable to meet at the day, time, and place fixed by the rules and procedures of the Town Board or applicable Committee because an in-person meeting is not practical or prudent due to an emergency or local disaster affecting the Town, meetings may be conducted via Electronic Participation. Meetings may be held by Electronic Participation if all of the following conditions are met:

1. A local emergency or disaster has been declared under C.R.S. § 24-33.5-709; and
2. The Town Manager or the Town Board determines that an in-person meeting is not practical or prudent, due to circumstances related to the local emergency or disaster affecting the Town; and

3. All participating members of the Town Board or Committee, and at least one Town staff member, 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 participation; and
4. Members of the public can hear the Town Board or Committee proceedings and are afforded a reasonable opportunity to participate in public comment; and
5. All votes are conducted by roll call; and
6. Minutes of the meeting are taken and promptly recorded, and such records are open to public inspection; and
7. To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, that some members of the Town Board or Committee may participate electronically, and the right of the public to monitor the meeting from another location or through Electronic Participation.

III. Arranging for Electronic Participation.

- A. The Town Manager or a member of Town staff shall contact the Town Board or Committee members at least twenty-four (24) hours in advance of a regular or special meeting to provide notice of a meeting conducted under this Policy.
- B. The Town shall initiate the Electronic Participation not more than ten (10) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the Town Clerk or his or her designee shall make at least three attempts to re-initiate the connection.

IV. Effect of Electronic Participation.

- A. **Quasi-Judicial Matters.** In the event that a pending application is scheduled for a public hearing that is quasi-judicial in nature and conducted under this Policy, the Town shall advise the applicant of such circumstances and present the applicant with options for proceeding with the application. Upon notice from the Town, the applicant shall authorize the Town, in writing, to proceed with one of the following options.
 1. Conduct the public hearing under this Policy with accommodations made for Electronic Participation by the public; or
 2. Suspend any and all review and decisions deadlines until such time that the local emergency or disaster declaration is lifted or rescinded

and the Town Board or Committee may schedule a meeting at which an in-person quorum will be present.

To the extent reasonably possible, the Town Board or Committee (as applicable) shall provide adequate opportunity for the public to participate in the meeting conducted via Electronic Participation that is commensurate with a similar opportunity that is routinely provided during in-person meetings – e.g., an opportunity to comment on the application during the public comment portion of the hearing. Nothing in this Policy shall prevent members of the public from submitting written comments in advance of the meeting. If written comments are received on an item being considered at a meeting conducted via Electronic Participation, said written comments shall be read into the record by the Mayor, the Committee chair, or his or her designee.

- B. Continuation of Meetings Including Quasi-Judicial Matters.** In the absence of a quorum, a lesser number of the Town Board or Committee or one (1) member of the Town Board or Committee, as applicable, may adjourn a meeting or continue a meeting or public hearing to a later date and time. Any decision to continue a public hearing will be specified in the minutes of the meeting and shall specify the date and time to which the public hearing will be continued.

- C. Executive Sessions.** In the event that the Town Board or a Committee holds an executive session pursuant to C.R.S §24-6-402(4) and conducted under this Policy, members shall be authorized to participate electronically. Any executive session conducted under this Policy shall be recorded electronically as required by statute. All members of the Town Board or Committee participating in an executive session taking place via Electronic Participation, as applicable, shall take all steps necessary to ensure that the privacy and confidentiality of the executive session are maintained at the highest level. No individual member of the Town Board or Committee may permit any other person to hear, see, or otherwise have access to executive sessions or related materials.

RESOLUTION NO. 23-20

A RESOLUTION SUSPENDING THE RULES OF THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS AND AUTHORIZING THE CONDUCT OF ELECTRONIC OR TELEPHONIC QUASI-JUDICIAL HEARINGS AND EXECUTIVE SESSIONS DURING THE PERIOD OF THE STATE OF EMERGENCY DECLARED FOR THE CITY OF COLORADO SPRINGS AND RESULTING FROM A PUBLIC HEALTH EMERGENCY CAUSED BY THE 2019 NOVEL CORONAVIRUS

WHEREAS, the Governor of the State of Colorado issued a declaration of emergency effective as of March 10, 2020, as the result of the public health emergency caused by confirmed cases in the State of Colorado of the contagious 2019 Novel Coronavirus ("COVID-19"); and

WHEREAS, pursuant to City Code § 8.7.103(A), the Mayor of the City of Colorado Springs issued a Proclamation and Declaration of Emergency within the City of Colorado Springs, effective as of March 10, 2020, as the result of COVID-19; and

WHEREAS, the City Council of the City of Colorado Springs has determined that as a result of the public health emergency caused by COVID-19 it is necessary to suspend certain Rules and Procedures of City Council (the "City Council Rules") requiring City Councilmembers to be physically present at meetings of the City Council; and

WHEREAS, Rule 10-3 of the City Council Rules permits City Council to suspend its rules by a majority vote of all members of City Council; and

WHEREAS, on March 18, 2020, the City Council passed Resolution No. 19-20 authorizing electronic or telephonic participation for Councilmembers and the public until May 1, 2020, and postponing all pending quasi-judicial matters to a date after April 20, 2020; and

WHEREAS, City Council finds that it is necessary and appropriate as a result of the continuing declaration of emergency related to COVID-19 to continue to suspend provisions of Part 2 of its City Council Rules in order to permit electronic or telephonic meetings, including, but not limited to providing for electronic or telephonic attendance and participation by the public for meetings of City Council beyond May 1, 2020; and

WHEREAS, City Council further finds that during the period of the continuing declared emergency, a City Councilmember's presence may be achieved through that City Councilmember's electronic or telephonic participation in a meeting such that the Councilmember's physical presence at the meeting is not required; and

WHEREAS, the City Council wishes to extend the authorization for electronic or telephonic participation for Councilmembers and the public at its meetings for an additional period of time, continuing until June 20, 2020; and

WHEREAS, the City Council hereby authorizes the use of electronic or telephonic quasi-judicial hearings, which are to be conducted pursuant to the standards set forth in this Resolution; and

WHEREAS, the City Council hereby authorizes the use of electronic or telephonic Executive Sessions, which are to be conducted pursuant to the standards set forth in this Resolution.

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

Section 1. In accordance with Rule 10-3 of the City Council Rules, City Council hereby suspends those sections of City Council Rules 2-1, 2-2, 2-3, 3-2, and 3-7 which require City Councilmembers to attend Work Session, Regular Session, and Special Session City Council meetings in person, and hereby authorizes electronic or telephonic meetings and electronic or telephonic attendance, including, but not limited to providing for electronic or telephonic attendance and participation by the public. The City Council President shall determine whether a meeting will be held electronically or telephonically or whether it should be held in person, and will provide notice of the President's decision in the notice of the meeting posted pursuant to City Charter § 3-60(d), and its incorporated Open Meetings Law, C.R.S. § 24-6-402.

Section 2. City Council hereby authorizes all of its advisory boards and commissions established pursuant to City Code §§ 1.2.901 *et seq.*, and appointed officers, licensing officials and hearing officers of the City, to conduct meetings electronically or telephonically, to permit board or commission member, appointed officer, licensing official, and hearing officer attendance by electronic and telephonic means, and to provide for electronic or telephonic attendance and participation by the public.

Section 3. City Council finds and declares that a City Councilmember's presence at a City Council meeting may be achieved by participation in the meeting electronically or telephonically such that physical presence is not required. For the duration of this Resolution, City Council further finds and declares that electronic or telephonic participation by a City Councilmember shall satisfy the requirements of City Council Rules 3-2 and 3-7.

Section 4. City Council authorizes City staff to take all actions and provide all public notices needed to effectuate electronic or telephonic City Council, advisory board or commission, appointed officer, licensing official, or hearing officer meetings, hearings and participation.

Section 5. Pursuant to City Council Rules 7-2, 10-2 and 10-4, City Code § 7.5.105, and any other applicable provision of the City Charter or City Code, City Council hereby authorizes public hearings regarding quasi-judicial matters be conducted electronically or telephonically by the City Council, any advisory board or commission, appointed officer, licensing official, or hearing officer of the City having jurisdiction, subject to the following requirements:

a. In the event that a quasi-judicial matter is scheduled for a public hearing at a meeting during the duration of this Resolution, the applicable City department shall advise the applicant of such circumstances and present the applicant with the two (2) options listed below for proceeding with the application. When the quasi-judicial matter is an appeal to the City Council, an advisory board or commission, appointed officer, licensing official, or hearing officer, and the appellant is a party other than the applicant, the applicant shall have the option to select one (1) of the following options without consulting with the appellant. The applicant shall authorize the City, in writing, to proceed with one (1) of the following options:

- 1) Conduct the quasi-judicial hearing pursuant to this Resolution with accommodations made for electronic or telephonic public participation and waive any legal challenge to the hearing being conducted electronically or telephonically; or

2) Suspend scheduling of the quasi-judicial hearing until such time as the local or state-wide emergency is lifted and the City Council, any advisory board or commission, appointed officer, licensing official or hearing officer having jurisdiction over the application schedules a regular meeting at which a quorum will be physically present.

b. All required public notices of quasi-judicial hearings shall comply with the requirements contained in City Code § 7.5.902, or the applicable notice requirements contained within the City Charter or City Code. The required public notice shall set forth the method and time for the conduct of the hearing, provide the applicant and the public with instructions regarding how to participate and present written and verbal testimony pursuant to City Code § 7.5.903, or any other applicable requirement contained within the City Charter or City Code.

c. If during the course of an electronic or telephonic quasi-judicial hearing the City's means of conducting the hearing fails and results in the loss of either a quorum of the City Council, the advisory board or commission, or presence of the appointed officer, licensing official, or hearing officer, or of the ability of the applicant or the general public to participate, the hearing shall immediately be postponed until such time as the resumption of the electronic or telephonic means for conducting the hearing. Failure of electronic or telephonic capabilities of an applicant or member of the public shall not require the immediate postponement of the quasi-judicial hearing.

d. All other applicable requirements of the City Charter, City Code and the City Council Rules shall apply to the conduct of quasi-judicial hearings conducted pursuant to this Resolution.

Section 6. Pursuant to City Charter § 3-60(d) and City Council Rule 2-5, the City Council hereby authorizes electronic or telephonic open and closed Executive Sessions of the City Council and its advisory boards and commissions ("Executive Sessions"). All requirements set forth in City Charter § 3-60(d) and its incorporated Colorado Open Meetings Law, C.R.S. § 24-6-402, and City Council Rule 2-5 shall apply to the conduct of any electronic or telephonic Executive Session of the City Council and its advisory boards and commissions conducted pursuant to this Resolution. Prior to entering into any electronic or telephonic Executive Session pursuant to this Resolution, each member of the City Council or the advisory board or commission shall ensure that no other member

of the public not authorized to participate in the Executive Session is present or able to hear the matters discussed as part of the Executive Session. As a part of the authorization to enter into the Executive Session, each City Councilmember or member of the advisory board or commission shall affirmatively state for the record that the Councilmember or the member of the advisory board or commission is present, consents to entering into the Executive Session, and that no other member of the public not authorized to participate in the Executive Session is present or able to hear the matters discussed as part of the Executive Session. Councilmembers and members of advisory boards and commissions shall ensure that no unauthorized member of the public is permitted to observe, hear, or participate in any electronic or telephonic Executive Session of the City Council or its advisory boards or commissions, subject to City Council Rule 2-5(C) and City Code § 1.3.113.

Section 7. Upon its passage and effectiveness, this Resolution shall supersede and replace the requirements contained in Resolution No. 19-20.

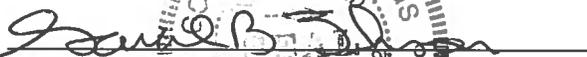
Section 8. This Resolution shall take effect as of the date and time of its approval and shall be effective until June 20, 2020.

DATED at Colorado Springs, Colorado, this 28th day of April, 2020.



Council President

ATTEST:



Sarah B. Johnson, City Clerk

