



COLORADO • SINCE 1878

City Council Legal Review Committee

Meeting Agenda

September 2, 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 # 886 7665 4969.***
- 2) You can log in via your computer. Please visit the City's website here to link to the meeting: www.louisvilleco.gov/local-government/government/city-council/city-council-meeting-agendas-packets-minutes***

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.

- I. Call to Order & Roll Call
- II. Approval of Agenda
- III. Approval of Minutes: July 7, 2020
- IV. Public Comments on Items Not on the Agenda
- V. Discussion/Direction – Annual Reviews of City Attorney, Water Attorney, Prosecuting Attorney, and Municipal Judge
- VI. Discussion/Direction – 2021 City Attorney Legal Fee Increase
- VII. Discussion/Direction – Electronic Signature Gathering for Referenda Petitions
- VIII. Discussion Items for Next Meeting
 - Marijuana FAQs
 - Back Up Prosecutor
- IX. Adjourn

City Council Legal Review Committee

Meeting Minutes

**July 7, 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 Councilmembers: ***Jeff Lipton, City Council***

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

APPROVAL OF AGENDA

The agenda was approved as presented.

APPROVAL OF MINUTES

The minutes were approved with a minor typo fix from Councilmember Leh.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

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

Clerk Muth stated 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.

Staff is working on a process to allow for a hybrid electronic/in-person meeting that would meet current social distancing rules. This would allow those feeling

comfortable to attend in-person while those not comfortable doing so may join electronically from home.

This option would allow people to attend in-person however the number of attendees would be very limited due to social distancing requirements. This allows 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.

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.

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.

Councilmember Brown noted the science is changing rapidly around how best to avoid contagions of COVID. At this time, masks and social distancing are very important. He stated there doesn't seem to be one specific metric to look at to decide when to meet in-person again. There are many factors we will have to take into consideration. We will have to make a decision based on what information is available and how comfortable people feel.

Councilmember Leh asked if Councilmember Brown thought in 30 days we will be better or worse off than we are now. Councilmember Brown stated Louisville is responding well and adhering to the public health guidance. He said as a State we will probably be worse off but perhaps we would be ok as a town.

Councilmember Fahey moved for quasi-judicial hearings subject to referendum be held in an all-electronic meetings and to allow Council to determine when meeting in person would be safe. Councilmember Leh seconded the motion for purposes of discussion.

Brown stated he is comfortable with the hybrid meeting option and supports giving people the option to come in-person or attend electronically.

Councilmember Leh stated there are pros and cons to each option. In-person meetings are very different from electronic ones and you can't recreate the in-person feeling on line.

Public Comments

Stephanie Rowe, 631 West Street, stated she feels the referendum portion is very important and what is decided for meetings should also apply to signature gathering.

Councilmember Brown stated that for meetings with important items subject to referenda there should be an in-person option.

Councilmember Fahey stated she supports having an option for using an all-electronic meeting for items subject to referenda.

City Attorney Kelly clarified that the only type of meetings that require an in-person option under current rules are the quasi-judicial items subject to referendum. The hybrid option under discussion tonight would allow councilmembers to appear electronically in a hybrid meeting.

After further discussion Councilmember Fahey withdrew her motion and moved to adopt the option to allow hybrid meetings for items subject to referendum.

Councilmember Leh offered substitute motion to change the rules of procedure to add a new section as proposed by the City Attorney which would allow a councilmember to attend a hybrid meeting by electronic means. Councilmember Fahey second. All in favor.

DISCUSSION/DIRECTION – ELECTRONIC SIGNATURE GATHERING FOR REFERENDA PETITIONS

City Attorney Kelly noted 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. To change this the Council could put a ballot question forward for residents to vote on a charter amendment.

Councilmember Leh asked how many municipalities in the County have done this. City Attorney Kelly stated we don't know if any that allow this option.

Councilmember Brown stated this is an interesting idea and we should continue to look into it to see if this is a possibility.

City Manager Balsler noted this conversation is for a 2021 ballot question, it is too late to add a question for 2020.

John Leary, 1116 LaFarge Avenue, stated this does not address the current issue of quasi-judicial hearings subject to referendum that are in the immediate future. Council should consider if it is reasonable and safe to collect signatures during a pandemic.

Councilmember Leh asked if there are any legal requirements barring signature gathering. City Attorney Kelly stated at this time there are no rules barring this activity but that could change. She noted at this point the Colorado Supreme Court has upheld the in-person requirement in the pandemic.

Councilmember Brown stated some guidance from public health officials could be very useful.

The Committee will continue this conversation to the next meeting.

DISCUSSION ITEMS FOR NEXT MEETING

- Annual Evaluation of Judge, Prosecutor, and City Attorney
- Marijuana FAQs
- Back Up Prosecutor

ADJOURN

The meeting was adjourned at 8:15 pm.

SUBJECT: ANNUAL EVALUATION OF APPOINTED OFFICIALS

DATE: SEPTEMBER 2, 2020

PRESENTED BY: MEREDYTH MUTH, CITY CLERK

SUMMARY:

In 2019, the City Council approved an evaluation process for the City Attorney, Water Attorney, Municipal Judge, and Prosecuting Attorney (the City Manager goes through a separate annual review process). It falls to the Legal Review Committee members to review all of the evaluation materials and take that information to the Council for discussion in an executive session.

The Prosecutor, Water Attorney, and City Attorney were all appointed to two-year terms in January 2020. The Municipal Judge was appointed in April to fulfill the remainder of a two-year term that also began in January 2020. As this is not the ending year of their contracts, this process will not involve making a recommendation to reappoint or not reappoint these contractors; rather the chair of the Committee will need to meet with the appointed officials to review the results of the evaluations following the City Council executive session.

The forms and process for the reviews are attached. The timeline for the reviews will need to be relatively quick as the evaluations will ideally need to be completed in September with meetings of the Committee and Council to review the results in October. This would allow the chair time to meet with each of the officials before the end of the year. That timeline can be pushed back a bit if needed.

For members who would like to watch court proceedings as a part of this process, the following is the Court schedule for the next two months.

September 8th	9:30 AM Traffic/Parking Arraignments	1:00 PM Pre-trials/trials, reviews	
September 22nd	9:30 AM Ordinance violations	1:00 PM Pre-trials/trials, reviews	3:00 PM Juveniles
October 6th	9:30 AM Traffic/Parking Arraignments	1:00 PM Pre-trials/trials, reviews	
October 20th	9:30 AM Ordinance violations	1:00 PM Pre-trials/trials, reviews	3:00 PM Juveniles

RECOMMENDATION:

Staff asks the Committee to review the process and forms and ask any questions they have about the process at this meeting so staff can send out review forms to everyone shortly after the meeting.

ATTACHMENT(S):

1. City Attorney Evaluation Process
2. Water Attorney Evaluation Process
3. Prosecuting Attorney Evaluation Process
4. Municipal Judge Evaluation Process

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



City Attorney Annual Evaluation

- **City Council Evaluation**
- **Staff Evaluation**
- **Self-Evaluation**
- **Legal Review Committee Recommendation**
- **Rating Scale**

2020 City Attorney Annual Evaluation

Part 1 – City Council Evaluation

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Questions relate to all staff of Kelly, PC, including Kathleen Kelly, Melinda Culley, and Nick Cotton-Baez.

Please answer all questions.

	Outstanding	Exceeds Expectations	Meeting Expectations	Below Expectations	Fails to Meet Expectations	No Opinion or No Observation	Do Not Know
Do you feel the City Council is getting value for its legal fees?	5	4	3	2	1	N/O	DNK
Does the City Attorney provide honest recommendations given all legal issues and ramifications?	5	4	3	2	1	N/O	DNK
Does the City Attorney possess an efficient and effective knowledge of the Municipal Code and City Charter?	5	4	3	2	1	N/O	DNK
Does the City Attorney possess an efficient and effective knowledge of government regulations and case law regarding issues facing the City?	5	4	3	2	1	N/O	DNK
Does the City Attorney proactively identify potential issues to avoid future problems?	5	4	3	2	1	N/O	DNK
Is the City Attorney's approach effective in achieving the best possible legal outcomes for the City?	5	4	3	2	1	N/O	DNK
Does the City Attorney represent the City in a professional and ethical manner?	5	4	3	2	1	N/O	DNK

Is the City Attorney impartial and objective in her duties and responsibilities?	5	4	3	2	1	N/O	DNK
Does the City Attorney communicate effectively with the City Council and staff?	5	4	3	2	1	N/O	DNK
Are the City Attorney's communications complete and understandable, and do they answer Council's questions?	5	4	3	2	1	N/O	DNK
Does the City Attorney maintain effective and open communications with the City Council?	5	4	3	2	1	N/O	DNK
Comments: Is there anything else you would like to share?							

Name of Reviewer: _____

Signature

Date

2020 City Attorney Annual Evaluation

Part 2 – City Staff Evaluation

City Manager, Department Directors, and a sampling of others who work closely with the City Attorney’s Office will complete the form.

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Questions relate to all staff of Kelly, PC, including Kathleen Kelly, Melinda Culley, and Nick Cotton-Baez.

Please answer all questions.

	Outstanding	Exceeds Expectations	Meeting Expectations	Below Expectations	Fails to Meet Expectations	No Opinion or No Observation	Do Not Know
Does the City Attorney prepare ordinances, resolutions, and contracts accurately and consistent with the direction from City Council, City Manager, directors?	5	4	3	2	1	N/O	DNK
Does the City Attorney maintain good working relationships with staff?	5	4	3	2	1	N/O	DNK
Are regular legal activities achieved within a sufficient timeframe?	5	4	3	2	1	N/O	DNK
Are standard forms developed and used where possible to minimize the preparation of legal documentation?	5	4	3	2	1	N/O	DNK
Do invoices accurately identify tasks and expenses in sufficient detail to provide accountability and cost control?	5	4	3	2	1	N/O	DNK
Is requested legal work completed in a timely manner within established time frames?	5	4	3	2	1	N/O	DNK
Is the City Attorney accessible when needed?	5	4	3	2	1	N/O	DNK

Does the City Attorney follow-up effectively to requests?	5	4	3	2	1	N/O	DNK
Are the City Attorney's communications complete and understandable, and do they answers staff's questions?	5	4	3	2	1	N/O	DNK
Does the City Attorney maintain effective and open communications with the City Manager and staff?	5	4	3	2	1	N/O	DNK

Please indicate what you believe the City Attorney's weaknesses are.	
Please indicate what you believe the City Attorney's strengths are.	
Comments: Is there anything else you would like to share? (attach another page if needed)	

Name of Reviewer: _____

Signature

Date

2020 City Attorney Annual Evaluation

Part 3 – Self-Evaluation

1. What do you see as the most important role of the City Attorney?
2. What goals have you set for yourself? Detail progress in accomplishing these goals.
3. What are your most significant accomplishments this year?
4. What obstacles or setbacks did you encounter during the year and how did you handle them?
5. What suggestions do you have for improving the communication and relationship generally between you and the Council?
6. What suggestions do you have for improving the effectiveness between you and the Council?
7. What do you see as your major goals for this next evaluation period?
8. What can the City Council do to help you accomplish these goals?

9. Are there any other issues or comments you wish to share?

City Attorney Signature

Date

City Attorney Annual Evaluation

Part 4 – Recommendation from Legal Review Committee

Committee members will review all survey forms, KPIs, and budget information.

If it is a reappointment year for the City Attorney the Committee will make a recommendation to City Council (to reappoint the City Attorney, to go out to bid for attorney services, or another option).

If it is the first year of two-year appointment, the chair of the Committee will meet with the City Attorney to review the results of the evaluation.

Evaluation Rating Scale For City Attorney and Water Attorney

1. Fails to Meet Expectations

Consistently fails to meet expectations in the significant/essential requirements and improvement is needed

2. Below Expectations

Periodically fails to meet expectations in the significant/essential requirements and improvement is needed.

3. Meeting expectations

Consistently fulfills performance expectations and periodically may exceed them.

4. Exceeding expectations

Always achieves performance expectations and frequently exceeds them.

5. Outstanding

Far exceeds performance expectations on a consistent and uniform basis.

N/O represents “no opinion” or “no observation” of performance.

DNK represents “do not know.”



Water Attorney Annual Evaluation

- **Staff Evaluation**
- **Utility Committee Evaluation**
- **Self-Evaluation**
- **Legal Review Committee Recommendation**
- **Rating Scale**

2020 Water Attorney Annual Evaluation

Part 1 – City Staff Evaluation

Public Works Director and Water Resources Engineer will complete the form.

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Outstanding	Distinctive Performance	Fully Satisfactory	Marginal	Unsatisfactory	No Opinion or No Observation	Do Not Know
Does the Water Attorney maintain good working relationships with staff?	5	4	3	2	1	N/O	DNK
Are standard forms developed and used where possible to minimize the preparation of legal documentation?	5	4	3	2	1	N/O	DNK
Do invoices accurately identify tasks and expenses in sufficient detail to provide accountability and cost control?	5	4	3	2	1	N/O	DNK
Is requested legal work completed in a timely manner within established time frames?	5	4	3	2	1	N/O	DNK
Is the Water Attorney accessible when needed to respond to requests?	5	4	3	2	1	N/O	DNK
Does the Water Attorney follow-up effectively to requests?	5	4	3	2	1	N/O	DNK
Does the Water Attorney accurately interpret and clarify City Council and City Manager direction?	5	4	3	2	1	N/O	DNK
Are the Water Attorney's communications complete and understandable, and do they answers staff's questions?	5	4	3	2	1	N/O	DNK

Does the Water Attorney maintain effective and open communications with staff?	5	4	3	2	1	N/O	DNK
Please indicate what you believe the Water Attorney's weaknesses are.							
Please indicate what you believe the Water Attorney's strengths are.							
Comments: Is there anything else you would like to share?							

Name of Reviewer: _____

Signature

Date

2020 Water Attorney Annual Evaluation

Part 2 – Utility Committee Evaluation

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Outstanding	Exceeds Expectations	Meeting Expectations	Below Expectations	Fails to Meet Expectations	No Opinion or No Observation	Do Not Know
Do you feel the Utility Committee is getting value for its legal fees?	5	4	3	2	1	N/O	DNK
Does the Water Attorney provide honest recommendations given all legal issues and ramifications?	5	4	3	2	1	N/O	DNK
Does the Water Attorney possess an efficient and effective knowledge of water law?	5	4	3	2	1	N/O	DNK
Does the Water Attorney possess an efficient and effective knowledge of government regulations and case law regarding issues facing the City?	5	4	3	2	1	N/O	DNK
Does the Water Attorney proactively identify potential issues to avoid future problems?	5	4	3	2	1	N/O	DNK
Is the Water Attorney's approach effective in achieving the best possible legal outcomes for the City?	5	4	3	2	1	N/O	DNK
Does the Water Attorney represent the City in a professional and ethical manner?	5	4	3	2	1	N/O	DNK
Is the Water Attorney impartial and objective in his duties and responsibilities?	5	4	3	2	1	N/O	DNK

Does the Water Attorney communicate effectively with the City Council and staff?	5	4	3	2	1	N/O	DNK
Are the Water Attorney's communications complete and understandable, and do they answer Council's questions?	5	4	3	2	1	N/O	DNK
Does the Water Attorney maintain effective and open communications with the Utility Committee?	5	4	3	2	1	N/O	DNK
Comments: Is there anything else you would like to share?							

Name of Reviewer: _____

Signature

Date

2020 Water Attorney Annual Evaluation

Part 3 – Self-Evaluation

1. What do you see as the most important role of the Water Attorney?
2. What goals have you set for yourself? Detail progress in accomplishing these goals.
3. What are your most significant accomplishments this year?
4. What obstacles or setbacks did you encounter during the year and how did you handle them?
5. What suggestions do you have for improving the communication and relationship generally between you and the Council?
6. What suggestions do you have for improving the effectiveness between you and the Council?
7. What do you see as your major goals for this next evaluation period?
8. What can the City Council do to help you accomplish these goals?

9. Are there any other issues or comments you wish to share?

Water Attorney Signature

Date

2020 Water Attorney Annual Evaluation

Part 4 – Recommendation from Legal Review Committee

Legal Review Committee members will review all survey forms, KPIs, and budget information and make a recommendation regarding reappointment to City Council.

If it is a reappointment year for the City Attorney the Committee will make a recommendation to City Council (to reappoint the Water Attorney, to go out to bid for attorney services, or another option).

If it is the first year of two-year appointment, the chair of the Committee will meet with the Water Attorney to review the results of the evaluation.

Evaluation Rating Scale For City Attorney and Water Attorney

1. **Fails to Meet Expectations**
Consistently fails to meet expectations in the significant/essential requirements and improvement is needed
2. **Below Expectations**
Periodically fails to meet expectations in the significant/essential requirements and improvement is needed.
3. **Meeting expectations**
Consistently fulfills performance expectations and periodically may exceed them.
4. **Exceeding expectations**
Always achieves performance expectations and frequently exceeds them.
5. **Outstanding**
Far exceeds performance expectations on a consistent and uniform basis.

N/O represents “no opinion” or “no observation” of performance.

DNK represents “do not know.”



Prosecuting Attorney Annual Evaluation

- **Legal Review Committee Evaluation**
- **Court Staff Evaluation**
- **City Staff Evaluation**
- **Self-Evaluation**
- **Court Customer Surveys**
- **Legal Review Committee Recommendation**

2020 Prosecuting Attorney Annual Evaluation

Part 1 – Legal Review Committee Evaluation

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
The Prosecutor treats all people with dignity and respect.	<input type="checkbox"/>				
The Prosecutor makes sure participants understand what is going on in the courtroom.	<input type="checkbox"/>				
The Prosecutor bases prosecutorial decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="checkbox"/>				
The Prosecutor gives all people individual consideration.	<input type="checkbox"/>				
The Prosecutor treats parties with counsel the same as those without counsel.	<input type="checkbox"/>				
The Prosecutor is courteous to all people.	<input type="checkbox"/>				
The Prosecutor is attentive during proceedings.	<input type="checkbox"/>				
The Prosecutor has an appropriate level of empathy with the parties involved in proceedings.	<input type="checkbox"/>				
The Prosecutor is punctual and prepared for court.	<input type="checkbox"/>				
The Prosecutor makes offers in a prompt and timely.	<input type="checkbox"/>				
The Prosecutor acts to ensure disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="checkbox"/>				
Cases are processed in an efficient manner and the Prosecutor was prepared.	<input type="checkbox"/>				
The Prosecutor treats all parties equally regardless of race, sex, age, ethnicity, social status, or economic status, and all other categories protected by law.	<input type="checkbox"/>				
Comments:					

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Name of Reviewer: _____

Signature

Date

2020 Prosecuting Attorney Annual Evaluation

Part 2 – Court Staff Evaluation

Court staff and Municipal Judge complete evaluation forms.

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
The Prosecutor takes time to consider relevant facts and based decisions on those facts and statements presented.	<input type="checkbox"/>				
The Prosecutor makes sure participants understand what is going on in the courtroom.	<input type="checkbox"/>				
The Prosecutor treats all parties with dignity and respect.	<input type="checkbox"/>				
Parties are made to feel they have been heard in the process.	<input type="checkbox"/>				
The Prosecutor treats all parties equally regardless of race, sex, age, ethnicity, social status, or economic status.	<input type="checkbox"/>				
The Prosecutor makes offers in a prompt and timely manner.	<input type="checkbox"/>				
The Prosecutor is prepared for each case on the docket.	<input type="checkbox"/>				
The Prosecutor communicates well with the judge and court staff.	<input type="checkbox"/>				
The Prosecutor's communications are clear, concise, and accurate.	<input type="checkbox"/>				
The Prosecutor has good working relationships with staff.	<input type="checkbox"/>				
The Prosecutor acts to ensure disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="checkbox"/>				
Please indicate what you believe the Prosecutor's weaknesses are.					

Please indicate what you believe the Prosecutor's strengths are.	
Comments, is there anything else you would like to share.	

Name of Reviewer: _____

Signature

Date

2020 Prosecuting Attorney Annual Evaluation

Part 3 – City Staff Evaluation

Department Directors who work with the Prosecuting Attorney to complete an evaluation form

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
The Prosecutor fully reviews and understands all citations before deciding to proceed or dismiss.	<input type="checkbox"/>				
The Prosecutor treats all types of infractions equally (code enforcement, traffic, sales tax) and gives them proper review	<input type="checkbox"/>				
The Prosecutor gives clear feedback to police officers or staff if she dismisses a citation.	<input type="checkbox"/>				
The Prosecutor gives feedback on enforceability on new ordinances.	<input type="checkbox"/>				
The Prosecutor works well with police officers and staff members to advance tickets through the court process.	<input type="checkbox"/>				
The Prosecutor treats staff and police officers with respect.	<input type="checkbox"/>				
Comments, is there anything else you would like to share.					

Name of Reviewer: _____

Signature

Date

2020 Prosecuting Attorney Annual Evaluation

Part 4 – Self-Evaluation

Please complete the following questionnaire based on your perception about your job performance during the past year. Please answer Does Not Apply (“DNA”) for any items which do not pertain to your court assignment or activities during the past year.

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
Section 1 Integrity and Impartiality					
a. I treat all people with dignity and respect.	<input type="checkbox"/>				
b. I am willing to make and have made difficult or unpopular decisions.	<input type="checkbox"/>				
c. I act fairly by giving people individual consideration.	<input type="checkbox"/>				
d. I base prosecutorial decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="checkbox"/>				
e. Please provide examples.					
Section 2 Professionalism & Temperament					
a. I act in a dignified manner in performing my duties, both in and out of court.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
b. I am courteous with all people.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
c. I am attentive to proceedings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
d. I act with patience and self-control throughout the day.					
e. I have appropriate levels of empathy with the parties involved in proceeding.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK

f. Please provide examples.					
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Section 3 Administrative Capacity

a. I am punctual and prepared for court.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
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b. I make offers in a prompt and timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
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c. I act to ensure disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
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d. Please provide examples.					
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What have you done to improve the administrative functioning of the court system?					
---	--	--	--	--	--

Is there anything you need from the City Council to help you be successful?					
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<p>Please provide any additional comments, clarifications, or details of your performance or the court generally that you would like us to know.</p>	
<p>What do you see as the most important role of the Prosecuting Attorney?</p>	
<p>What goals have you set for yourself? Detail progress in accomplishing these goals.</p>	
<p>What are your most significant accomplishments this year?</p>	

<p>What obstacles or setbacks did you encounter during the year and how did you handle them?</p>	
<p>Are there any other issues or comments you wish to share?</p>	

Signature

Date

Prosecuting Attorney Annual Evaluation

Part 5 – Customer Surveys

Customer surveys are given to all customers at Court. Those surveys that are turned in are recorded and copies will be given to the Committee members.

Prosecuting Attorney Annual Evaluation

Part 6 – Recommendation from Legal Review Committee

Committee members will review all survey forms and the surveys from Court customers.

If it is a reappointment year for the Prosecuting Attorney the Committee will make a recommendation to City Council (to reappoint the Prosecuting Attorney, to go out to bid for attorney services, or another option).

If it is the first year of two-year appointment, the chair of the Committee will meet with the Prosecuting Attorney to review the results of the evaluation.



Municipal Judge Annual Evaluation

- **Legal Review Committee Evaluation**
- **Court Staff Evaluation**
- **Self-Evaluation**
- **Court Customer Surveys**
- **Legal Review Committee Recommendation**

2020 Municipal Judge Annual Evaluation

Part 1 – Legal Review Committee Evaluation

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
The Judge treats all people with dignity and respect.	<input type="checkbox"/>				
The Judge is willing to make difficult or unpopular decisions.	<input type="checkbox"/>				
The Judge gives all people individual consideration.	<input type="checkbox"/>				
The Judge appears and acts neutrally on the bench.	<input type="checkbox"/>				
The Judge takes time to consider relevant facts and based decisions on those facts and statements presented	<input type="checkbox"/>				
The Judge treats parties with counsel the same as those without counsel.	<input type="checkbox"/>				
The Judge bases decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="checkbox"/>				
The Judge keeps an open mind and considers all relevant evidence in making rulings, reserving a final decision until the parties have made final arguments.	<input type="checkbox"/>				
The Judge is courteous to all people.	<input type="checkbox"/>				
The Judge is attentive during proceedings.	<input type="checkbox"/>				
The Judge has an appropriate level of empathy with the parties involved in proceedings.	<input type="checkbox"/>				
The Judge is punctual and prepared for court.	<input type="checkbox"/>				
The Judge maintains control over the courtroom.	<input type="checkbox"/>				
The Judge acts to ensure disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="checkbox"/>				
Cases are processed in an efficient manner and the Judge was prepared for each case on the docket.	<input type="checkbox"/>				
The Judge treats all parties equally regardless of race, sex, age, ethnicity, social status, or	<input type="checkbox"/>				

economic status, and all other categories protected by law.					
Comments:					

Name of Reviewer: _____

Signature

Date

2020 Municipal Judge Annual Evaluation

Part 2 – Court Staff Evaluation

Court staff and Prosecuting Attorney to complete evaluation forms.

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
The Judge takes time to consider relevant facts and based decisions on those facts and statements presented.	<input type="checkbox"/>				
The Judge makes sure participants understand what is going on in the courtroom.	<input type="checkbox"/>				
The Judge treats all parties with dignity and respect.	<input type="checkbox"/>				
Parties are given the opportunity to speak and are made to feel they have been heard in the process.	<input type="checkbox"/>				
The Judge maintains appropriate courtroom control.	<input type="checkbox"/>				
The Judge treats all parties equally regardless of race, sex, age, ethnicity, social status, or economic status.	<input type="checkbox"/>				
The Judge acts neutrally on the bench.	<input type="checkbox"/>				
The Judge processes cases in an efficient manner and is prepared for each case on the docket.	<input type="checkbox"/>				
The Judge shows consistency in court proceedings.	<input type="checkbox"/>				
The Judge bases decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="checkbox"/>				
The Judge communicates well with the Prosecuting Attorney and court staff.	<input type="checkbox"/>				
The Judge is prompt in making and rendering decisions.	<input type="checkbox"/>				
The Judge keeps current on local, state, and federal laws affecting the court.	<input type="checkbox"/>				
The Judge's communications are clear, concise, and accurate.	<input type="checkbox"/>				

The Judge has good working relationships with staff.	<input type="checkbox"/>				
The Judge acts to ensure disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="checkbox"/>				

Please indicate what you believe the Judge's weaknesses are.	
--	--

Please indicate what you believe the Judge's strengths are.	
---	--

Comments, is there anything else you would like to share.	
---	--

Name of Reviewer: _____

Signature

Date

2020 Municipal Judge Annual Evaluation

Part 3 – Self-Evaluation

Please complete the following questionnaire based on your perception about your job performance during the past year. Please answer Does Not Apply (“DNA”) for any items which do not pertain to your court assignment or activities during the past year.

Evaluation forms will be anonymous and kept confidential through the process, however the final assessment is public record.

Please answer all questions.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
Section 1 Integrity and Impartiality					
a. I treat all people with dignity and respect.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
b. I am willing to make and have made difficult or unpopular decisions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
c. I act fairly by giving people individual consideration.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
d. I appear and act neutrally on the bench.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
e. I treat parties with counsel the same as those without counsel.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
f. I base decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
g. I keep an open mind and consider all relevant evidence in making rulings, reserving a final decision until the parties have made final arguments.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
h. Please provide examples.					
Section 2 Professionalism & Temperament					
a. I act in a dignified manner in performing my duties, both on and off the bench.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK

b. I am courteous with all people.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
c. I am attentive to proceedings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
d. I act with patience and self-control throughout the day.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
e. I have appropriate levels of empathy with the parties involved in proceedings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
f. Please provide examples.					
Section 3 Administrative Capacity					
a. I am punctual and prepared for court.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
b. I maintain control over the courtroom.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
c. I appropriately enforce court rules, orders, and deadlines.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
d. I make decisions and rulings in a prompt and timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
e. I act to ensure disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	DNK
f. Please provide examples.					

<p>What have you done to improve the administrative functioning of the court system?</p>	
<p>Is there anything you need from the City Council to help you be successful?</p>	
<p>Please provide any additional comments, clarifications, or details of your performance or the court generally that you would like us to know.</p>	
<p>What do you see as the most important role of the Municipal Judge?</p>	
<p>What goals have you set for yourself? Detail progress in accomplishing these goals.</p>	

What are your most significant accomplishments this year?	
What obstacles or setbacks did you encounter during the year and how did you handle them?	
Are there any other issues or comments you wish to share?	

Signature

Date

2020 Municipal Judge Annual Evaluation

Part 4 – Customer Surveys

Customer surveys are given to all customers at Court. Those surveys that are turned in are recorded and copies will be given to the Committee members.

2020 Municipal Judge Annual Evaluation

Part 5 – Recommendation from Legal Review Committee

Committee members will review all survey forms and the surveys from Court customers.

If it is a reappointment year for the Municipal Judge the Committee will make a recommendation to City Council (to reappoint the Judge, ask for a new appointment process for a judge, or another option).

If it is the first year of two-year appointment, the chair of the Committee will meet with the Judge to review the results of the evaluation.

SUBJECT: DISCUSSION/DIRECTION – 2021 CITY ATTORNEY LEGAL FEE INCREASE

DATE: SEPTEMBER 2, 2020

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

SUMMARY:

The City Attorney has proposed an increase in partner and associates rates effective January 1, 2021. The firm’s memo is attached. The last increase in fees for services for the firm was on January 1, 2019.

RECOMMENDATION:

Discussion of the fee increase and make a recommendation for City Council to have when this comes to them for consideration on September 15.

ATTACHMENT(S):

1. Memo from City Attorney

STRATEGIC PLAN IMPACT:

<input checked="" 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



Kathleen M. Kelly
(303) 298-1601 tel
(303) 298-1627 fax
kathleen@kellypc.com

MEMORANDUM

TO: Mayor and Councilmembers
Legal Review Committee
Heather Balsler, City Manager
City of Louisville

FROM: Kathleen M. Kelly 

DATE: August 16, 2020

RE: Fees for Legal Services

Based upon the firm's general review of its fees, services, and costs, we find it necessary to increase our rates for legal services to the City effective January 1, 2021. We last increased our fees on January 1, 2019. While cost-effective service to the City is a primary goal of our firm, we must also consider the ongoing increases in our own costs of doing business. In consideration of the ongoing COVID-19 pandemic, and the impact it has had on the City's budget, we are limiting our hourly fee increase to only reflect inflation (see attached CPI-U for 2019 and estimated 2020) since the time of our last fee increase, and we will re-evaluate our fee schedule at this time next year.

Attached is a copy of our fee schedule, which reflects rate increases of \$5/hour and an increase in the monthly retainer for attendance at regular City Council meetings of \$100 effective January 1, 2021. If acceptable to the City, the revised Exhibit A to our contract should be approved by the City Council. We have also included a revised Exhibit A for the Louisville Revitalization Commission (the only difference being omission of the flat retainer).

We have appreciated the opportunity to serve the City of Louisville, and look forward to continuing our services in 2021. We will, of course, continue to work with the City to identify and implement methods for managing legal work and fees.

Thank you for your consideration of this proposal, and if you have any questions or concerns, or care to discuss this matter, please contact me.

APPENDIX A – FEE SCHEDULE – LOUISVILLE REVITALIZATION COMMISSION

General Legal Services:

- (1) Attorney time
 - Principals \$210.00 per hour
 - Senior Associates \$200.00 per hour
 - Associates \$185.00 per hour
- (2) Paralegals/Law Clerks \$ 95.00 per hour

Expenses:

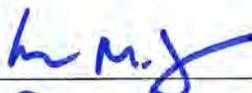
- (1) Copying: \$.15 per page
- (2) Travel: No mileage or attorney time charge for travel to and from Louisville

For other travel, travel time will be billed one-way and current IRS per mile
- (3) Long distance telephone calls: at cost
- (4) Delivery: at cost

AGREED AND ACCEPTED:

KELLY PC

LOUISVILLE REVITALIZATION
COMMISSION

By: 
Title: President
Date: 8/16/2020

By: _____
Title: _____
Date: _____

Consumer Price Index, All Items (CPI-U)

Index 100 = 1982-84

Year	All U.S. Urban Areas		Denver-Aurora-Lakewood*		
	Index	Inflation Rate	Index	Inflation Rate	
1981	90.9	10.3%	87.2	11.2%	
1982	96.5	6.2%	95.1	9.1%	
1983	99.6	3.2%	100.5	5.7%	
1984	103.9	4.3%	104.3	3.8%	
1985	107.6	3.6%	107.1	2.7%	
1986	109.6	1.9%	107.9	0.7%	
1987	113.6	3.6%	110.8	2.7%	
1988	118.3	4.1%	113.7	2.6%	
1989	124.0	4.8%	115.8	1.8%	
1990	130.7	5.4%	120.9	4.4%	
1991	136.2	4.2%	125.6	3.9%	
1992	140.3	3.0%	130.3	3.7%	
1993	144.5	3.0%	135.8	4.2%	
1994	148.2	2.6%	141.8	4.4%	
1995	152.4	2.8%	147.9	4.3%	
1996	156.9	3.0%	153.1	3.5%	
1997	160.5	2.3%	158.1	3.3%	
1998	163.0	1.6%	161.9	2.4%	
1999	166.6	2.2%	166.6	2.9%	
2000	172.2	3.4%	173.2	4.0%	
2001	177.1	2.8%	181.3	4.7%	
2002	179.9	1.6%	184.8	1.9%	
2003	184.0	2.3%	186.8	1.1%	
2004	188.9	2.7%	187.0	0.1%	
2005	195.3	3.4%	190.9	2.1%	
2006	201.6	3.2%	197.7	3.6%	
2007	207.3	2.9%	202.0	2.2%	
2008	215.3	3.8%	209.9	3.9%	
2009	214.6	-0.3%	208.5	-0.6%	
2010	218.1	1.6%	212.4	1.9%	
2011	224.9	3.1%	220.3	3.7%	
2012	229.6	2.1%	224.6	1.9%	
2013	233.0	1.5%	230.8	2.8%	
2014	236.7	1.6%	237.2	2.8%	
2015	237.0	0.1%	240.0	1.2%	
2016	240.0	1.3%	246.6	2.8%	
2017	245.1	2.1%	255.0	3.4%	
2018	251.1	2.4%	262.0	2.7%	
2019	255.7	1.8%	267.0	1.9%	
June 2020	2020	257.4	0.7%	269.7	1.0%
Forecast	2021	262.3	1.9%	275.1	2.0%
	2022	268.1	2.2%	281.1	2.2%

Source: U.S. Bureau of Labor Statistics and Legislative Council Staff.

*A consumer price index (CPI-U) is not calculated for the state of Colorado. The CPI-U for the Denver-Aurora-Lakewood core based statistical area is often used as a proxy for the inflation rate of Colorado. Beginning in February 2018, a bi-monthly index is published for the Denver-Aurora-Lakewood core based statistical area, instead of a semi-annual index for the Denver-Boulder-Greeley combined metropolitan statistical area.

Prepared by Legislative Council Staff.

SUBJECT: DISCUSSION/DIRECTION – SIGNATURE GATHERING FOR REFERENDA PETITIONS

DATE: SEPTEMBER 2, 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.

Staff has only limited information to add to this discussion since the July meeting. Attached for you is a presentation from the recent Colorado Municipal League (CML) conference with some general information about national legal decisions regarding petitioning and how much was done during the pandemic.

Staff asks the Committee to have a brief discussion of the timeline for this item moving forward and how the Committee sees it fitting in the 2021 Work Plan.

Information from July 7 Legal Committee Packet

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 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 determine any actual procedures.

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. CML Presentation

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 checked="" type="checkbox"/>	 Engaged Community	<input checked="" type="checkbox"/>	 Healthy Workforce
<input type="checkbox"/>	 Supportive Technology	<input type="checkbox"/>	 Collaborative Regional Partner



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Preview of 2020 State Ballot Questions and Reflections on Petitioning in a Pandemic

DAVID W. BROADWELL

CML GENERAL COUNSEL

Eleven questions will appear on the November 3 state ballot

Deciphering what succeeded and what failed to make the ballot in the strangest of all election years

This session will cover

- National legal trends upholding state petitioning laws during the pandemic
- Key Colorado Supreme Court rulings doing the same
- How state public health orders did or did not affect petitioning at the state level in Colorado
- Key municipal-impact measures that fell by the wayside
- Six 2020 ballot questions of greatest potential interest to municipalities



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National View: Pandemic doesn't justify suspension of petitioning laws

- On July 30, SCOTUS stayed a ruling in Idaho that would have forced that state to suspend signature requirements or allow virtual signature gathering in contravention of state law. *Little v. Reclaim Idaho*, 591 U.S. ___, 2020 WL 4360897 (2020)
- On August 11 SOTUS likewise granted a stay on a district court decision in Oregon that would have forced the state to accept an initiative petition with half the required signatures. *Clarno v. People Not Politicians*
- Three federal circuits uphold petitioning laws in OH, AR, IL; *Thompson v. DeWine*, 959 F.3d 804 (CA6 2020); *Miller v. Thurston*, 2020 WL 4218245(CA8, July 23, 2020); *Morgan v. White*, 2020 WL 3818059 (CA7 2020)
- Other federal district courts likewise uphold state laws in AZ, CT, ND and TX.
- But compare one circuit ruling extending the petition filing deadline in MI: *SawariMedia LLC v. Whitmer*, 963 F.3d 595 (CA6 2020).



Colorado Supreme Court requires adherence to state petitioning laws

- *Ritchie v. Polis* 2020 WL 3969873 (Colo. July 1, 2020)
 - The Governor does not have the authority to allow remote signature gathering on state initiative petitions due to the pandemic
 - The Governor's emergency powers do not include the ability to ignore or suspend any provision of the Colorado Constitution
 - The Colorado Constitution requires in-person signing and witnessing of signatures on state initiative and referendum petitions
- *Griswold v. Ferrigno Warren*, 462 P.3d 1081 (Colo. 2020)
 - Strict compliance, not mere "substantial compliance," is required for any state law specifying a certain number of signatures on a petition
 - Neither a court nor the SOS herself can waive or alter the signature requirement due to the pandemic



Municipalities enjoy greater authority to alter petitioning laws than does the state

- The constitutional language requiring in-person signatures cited in *Ritchie v. Polis* does not necessarily apply to municipalities
- "(C)ities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation." Art. V, Sec. 1(9), Colo. Const.
- "This article shall apply to municipal initiatives, referenda, and referred measures unless alternative procedures are provided by charter, ordinance, or resolution." C.R.S. 31-11-102
- Example: the City of Boulder charter was amended in 2018 to allow the council to authorize remote signature gathering on petitions (though the City Council chose not to do so). Boulder Home Rule Charter, Sec. 38(b), 45.
- Query: Does the same flexibility exist for initiated charter amendments?



The pandemic did not prevent Coloradan's from exercising their right to petition in 2020

The Safer at Home order "*imposes a significant hurdle for ballot petition circulators, who play an essential role in our democratic republic and have significant and determinative barriers due to state and local public health orders that prevent them from the normal statutory conduct of in-person signature gathering.*" Gov. Jared Polis, May 15, 2020.

Nevertheless seven initiative petitions successfully garnered in-person signatures during the pandemic:

- Late term abortion ban (48,000 cure signatures in May)
- Paid family and medical leave
- Voter-approval requirement for new state enterprises
- Reduction in state income tax rate
- Local option gaming expansion
- Two oil and gas industry measures* (*withdrawn after deal cut with the Governor in July)



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Key state petition efforts that fell by the wayside during the pandemic

- The proponents of several notable petitioning efforts cited the pandemic (along with their inability to utilize remote signature gathering after the supreme court ruling in *Ritchie v. Polis*) as their reason for suspending their efforts. Of greatest interest to municipalities:
 - Initiated statute to impose a 1% residential growth cap on all front range counties
 - Initiated constitutional amendment to dramatically change state and local petitioning laws
 - Reprise of initiated statute to impose 2500-foot setback on oil and gas wells
 - Initiated constitutional amendment to adopt graduated state income tax and authorize a \$2.5 billion state income tax increase



Key measures to watch on the November 2020 state ballot

Of the eleven statewide ballot questions appearing on the November 3 ballot, the following are probably of greatest interest to municipalities:

- Repeal of the Gallagher Amendment (Amendment 76)
- Tobacco, nicotine and vaping products tax increases
- Minimum qualifications for voting
- Local option for gaming expansion
- Paid family and medical leave
- Voter approval requirement for new state fee-based "enterprises"



Repeal of the Gallagher Amendment (Amendment 76)

- The 1982 Gallagher Amendment requires that residential property owners throughout Colorado bear the burden of paying no more than 45% of the total property taxes collected statewide. Art. X, Sec. 3(2), Colo. Const.
- Due to the massive run-up in residential property value since 1982, mill levies are now applied to only 7.15% of the actual value of a residential property statewide in order to stay under the 45% Gallagher cap. The residential assessment ratio is projected to decline to 5.88% next year.
- Adoption of Amendment 76 will stabilize the property tax base for local governments by preventing further automatic reductions in the residential assessment rate, will prevent growing disparities in the tax burden on commercial properties as compared to residential properties, but will also cause residential owners to bear a larger share of property taxes in the future.
- Some municipalities are also referring their own "de-Gallagher" questions to the November 2020 ballot.



Tobacco, nicotine and vaping products tax increase

- A referred \$294 million state tax increase, and the first state tax ever specifically aimed at vaping products
- While most of the revenue will be devoted to education and health programs, a small percentage in the first three years of implementation will be earmarked for housing programs and tenant assistance
- The measure will basically triple the amount of state tax on a pack of cigarettes and impose for the first time a minimum sales price of \$7.00 on a pack of cigarettes.
- The measure preserves the 27% local share of cigarette taxes, C.R.S. 39-22-623
- The measure preserves local authority to tax and regulate nicotine products, as confirmed last year in HB 19-1033



Minimum qualifications for voting

- This initiated measure would amend Art. VII, Sec. 1, Colo. Const., to absolutely require U.S. citizenship as a qualification for voting in Colorado. Proponents stated that one objective of the measure was to prevent "liberal cities" from extending voting rights to non-citizens.
- The measure does not, however, amend Art. XX, Sec. 6 which empowers home rule municipalities to control their own elections. Traditionally, when a constitutional amendment intends to override home rule authority, it must expressly say so.
- The measure incidentally requires a minimum age of 18 to vote.
- Telluride allows "persons holding a permanent alien registration card" to vote in town elections
- In 2018, Golden referred a charter amendment that would have allowed 16-year olds to vote in town elections, but the measure failed.



Local option for gaming expansion

- This measure will allow voters in Black Hawk, Central City and Cripple Creek to expand both the types of games and the betting limits in the casinos in each of their communities
- Most of the new tax revenue derived from expanded gambling will go to community colleges, as was true in a previous 2008 measure that raised the ceiling on "limited stakes" gambling
- But the three gambling towns along with the counties in which they are located (Teller and Gilpin) will receive 22% of the new tax revenue



Paid family and medical leave insurance program

- This referred statute will establish a statewide program providing for 12 weeks of paid family and medical leave, with premiums paid 50/50 by employers and employees
- Municipal employers will be included, but with the ability to opt out
- Even in municipalities that opt out, individual employees may choose to participate in the program by authorizing payroll deductions that will enable the employee to take paid leave in accordance with program requirements
- If this measure passes, it may render the recent paid sick leave mandates adopted by the General Assembly (SB 20-205) redundant. Municipalities are fully bound by the new sick leave statute adopted by the General Assembly



Voter approval requirement for new state enterprises

- This initiated statute will prevent the state, absent voter approval, from creating any new fee-based "enterprises" that are anticipated to garner at least \$100 million in revenue in the first five years.
- Although applying only to the state, this measure will be of interest to municipalities that sometimes directly or indirectly benefit from state enterprises, for example the transportation enterprises created in 2009 and funded with motor vehicle registration fee increases to finance road and bridge improvements throughout Colorado. *TABOR Foundation v. Colorado Colorado Bridge Enterprise*, 353 P.3d 896 (Colo. App. 2014)
- The state has used "enterprises" in the past to shelter revenue and thereby avert TABOR refunds. But due to the steep economic recession, current revenue estimates show the state \$2.7 billion below their TABOR cap in FY 20-21, thus reducing any immediate motivation to create new enterprises.





Questions?



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THANK YOU



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