

CITY OF LAFAYETTE

RESOLUTION NO. 2020-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING THE CITY OF LAFAYETTE'S CITY COUNCIL HANDBOOK TO ADDRESS QUASI-JUDICIAL MATTERS AND EXECUTIVE SESSION PROCEDURES DURING CITY COUNCIL MEETINGS CONDUCTED VIA ELECTRONIC PARTICIPATION DUE TO A DECLARED EMERGENCY

WHEREAS, the City Council of the City of Lafayette, Colorado, is authorized by Section 6.7 of the Charter of the City of Lafayette to determine its own organization, rules and order of business; and

WHEREAS, the City Council adopted the City Council Handbook by Resolution No. 2007-03; and

WHEREAS, the City Council Handbook sets forth a general guide to various legislative activities of City Council, and compiles policies relative to the actions of the City Council; and

WHEREAS, the City Council Handbook states it may be amended or new rules adopted by resolution, by a two-thirds majority vote of all members of the Council; and

WHEREAS, the City Council desires to amend the City Council Handbook to clarify that the Policy Regarding Electronic Participation for City Council Meetings applies during a declared emergency; and

WHEREAS, the City Council desires to amend the City Council Handbook to revise the Policy Regarding Electronic Participation for City Council Meetings to allow the consideration of quasi-judicial matters during a declared emergency and to provide certain rules and procedures therefor; and

WHEREAS, the City Council desires to amend the City Council Handbook to revise the Policy Regarding Electronic Participation for City Council Meetings to address procedures related to conducting an executive session via electronic participation during a declared emergency; and

WHEREAS, the City Council has determined that it is in the best interest of the public health, safety, and welfare of the residents, employees, and officials of the City of Lafayette to adopt these amendments to the City Council Handbook.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

Section 1. That the “Policy Regarding Electronic Participation for City Council Meetings” in Section 7 of the City of Lafayette City Council Handbook, “Council Meeting Protocol”, be amended to read as follows:

POLICY REGARDING ELECTRONIC PARTICIPATION FOR CITY COUNCIL MEETINGS

I. Purpose.

The purpose of this Policy Regarding Electronic Participation for City Council Meetings (“Policy”) is to specify the circumstances under which members of the City Council may conduct regular, special, emergency, or workshop meetings by telephone or other electronic means of participation, such as video-conferencing (“Electronic Participation”). Electronic Participation has inherent limitations because Electronic Participation effectively precludes a member of the City Council 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 (e.g., pointing at graphs and charts) during a speaker’s presentation or testimony. The City Council finds that these limitations in Electronic Participation may produce inefficiencies in meetings, increase the expense of meetings, and may undermine the decision-making process and thus desires to permit City Council meetings to be conducted via Electronic Participation only upon the declaration by the Mayor or City Administrator of a local disaster emergency pursuant to C.R.S. § 24-33.5-709, and for so long as such declaration is in effect.

II. Policy.

A. Emergency Situations.

In the event a quorum is unable to meet at the day, hour, and place fixed by the rules and procedures of the City Council because meeting in person is not feasible, practical, or prudent due to an emergency, including natural disaster, epidemic, or pandemic affecting the City, meetings necessary to conduct City business may be conducted by telephone, electronically, or by other means of communication only when all of the following conditions are met:

1. A local disaster emergency has been declared by the Mayor or City Administrator under C.R.S. § 24-33.5-709, and the declaration is in effect at the time of the meeting;
2. The City Administrator or the Mayor determines that meeting in person is not practical, prudent, or feasible because of an emergency affecting the City;
3. All members of the City Council and any members of City staff attending the meeting can hear one another or otherwise communicate with one

another and all members of the City Council can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation;

4. Members of the public present at the regular meeting location can hear or read all discussion, testimony and votes, unless public access to the regular meeting location is not feasible, practical, or prudent due to the emergency. In the event public access to the regular meeting location is not feasible, practical, or prudent due to the emergency, appropriate arrangements, if feasible, will be made to allow the public to observe, listen, or, if applicable, provide public input during the meeting while it is occurring from another location or remotely;

5. At least one member of the City Council is present at the regular meeting location, unless not feasible due to the emergency;

6. All votes are conducted by roll call;

7. Minutes of the regular, special, emergency, or workshop meeting are taken and promptly recorded, and such records are open to public inspection; and

8. To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, advising that some or all members of the City Council may attend the meeting via Electronic Participation, and, if feasible, the right of the public to monitor the meeting from the regular meeting location, or if public access to the regular meeting location is not feasible, practical, or prudent due to the emergency, from another location or remotely.

B. Arranging for Electronic Participation. To arrange to participate via Electronic Participation:

1. A Councilmember shall contact the Mayor, City Administrator, or City Clerk in advance of the meeting to determine if arrangement for Electronic Participation is possible. Councilmembers shall endeavor to advise the City of their intent to participate via Electronic Participation at the earliest possible time and not less than twenty-four (24) hours prior to the requested participation.

2. If the Mayor or City Administrator determines that the meeting shall be conducted entirely via Electronic Participation, the City Administrator or City Clerk shall contact the City Council members at least twenty-four (24) hours in advance of the meeting to provide notice of a meeting conducted under this Policy.

3. The City shall to the extent feasible initiate the Electronic Participation not more than ten (10) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the City Clerk or City staff shall attempt to re-initiate the connection.

C. Effect of Electronic Participation.

1. Quorum. Electronic Participation shall constitute actual attendance for purposes of establishing a quorum for meetings only when all of the conditions in part II.A. of this Policy are met.

2. Quasi-Judicial Matters.

a. In the event that an application is scheduled for a public hearing that is quasi-judicial in nature and due to applicable timelines must be held while this Policy is in effect, the City shall notify the applicant of such circumstances and present the applicant with options for proceeding with the application. Upon notice from the City, the applicant shall authorize the City, in writing, to proceed with one of the following options:

- i. Conduct the public hearing under this policy with accommodations made for Electronic Participation by the applicant and the public, subject to the applicant waiving in writing any legal challenge on the basis that the hearing will be conducted via Electronic Participation; or
- ii. Suspend any and all review and decision deadlines until such time that the local disaster emergency declaration is terminated and the City Council can schedule a meeting at which an in-person quorum will be present.

b. To the extent reasonably possible, the City Council shall provide adequate opportunity for the applicant and the public to participate in the quasi-judicial matter conducted under this Policy in a manner that approximates as closely as possible the opportunity that is routinely provided during in-person meetings—for example, an opportunity for members of the public to comment on the application during the public comment portion of the hearing. Such opportunity shall include, at a minimum, the ability for the public to listen or comment by telephone during the hearing. Nothing in this Policy shall prevent members of the public from submitting written comments in advance of the meeting at which the quasi-judicial matter will be considered. If written comments are received on a quasi-judicial matter being considered at a meeting conducted via Electronic Participation, such comments shall be read into the record by the City Clerk, the Mayor, or a member of City staff.

c. Any documents, exhibits, or other materials (collectively, “Materials”) to be presented by the applicant, City staff, other parties (if any), or members of the public during the public hearing must be clearly

marked for identification and must be submitted to the City Clerk at least five (5) business days prior to the hearing date, in addition to any obligation the applicant, City staff, or other parties, if any, may have by law to provide such Materials to other parties prior to the hearing. Notice of the public hearing issued by the City shall include notice of this requirement to submit Materials to the City Clerk, and shall state where, how, and by when such Materials must be submitted. The City Clerk will include the Materials in the City Council's packet with a cover sheet identifying the name of the party submitting the Materials, and will make such Materials available to the public on the City's website at least 24 hours before the hearing.

d. The participants in the public hearing, discussion, and decision should endeavor to identify themselves for the record upon speaking or asking questions. The Mayor or chair of the hearing will endeavor to ensure the participants in the public hearing clearly identify themselves and any Materials referenced during the hearing for purposes of creating an adequate record.

e. An adequate record of the public hearing, discussion, and decision shall be made and kept by the City, including a full audio recording or, if the meeting is conducted using video, a full audio and video recording.

2. Executive Sessions.

a. In the event the City Council conducts an executive session pursuant to C.R.S. § 24-6-402 while this Policy is in effect, Councilmembers and other persons authorized to attend the executive session are authorized to participate electronically.

b. Any executive session conducted under this Policy shall be recorded by the City as required by statute. Individual participants shall not record the executive session.

c. All Councilmembers, City staff, and other persons participating in the executive session shall take all steps necessary to initiate the connection at a secure location and to ensure that the confidentiality and privacy of the executive session is maintained at the highest level and not compromised. No individual participant in the executive session may permit any other person to hear, see, or otherwise have access to executive sessions or related materials.

D. Limited Applicability of Policy. This Policy shall only apply to regular, special, emergency, and workshop meetings of the City Council in the event a local disaster emergency affecting the City has been declared under C.R.S. § 24-33.5-709 and only while such declaration remains in effect.

E. Reasonable Accommodations. The City shall provide reasonable accommodation and may waive or modify provisions of this Policy to provide disabled members of the City Council or the public access to City Council meetings.

RESOLVED AND PASSED THIS 7TH DAY OF APRIL, 2020.

CITY OF LAFAYETTE, COLORADO

Jamie Harkins, Mayor

ATTEST:

Susan Koster, CMC
City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney