

RESOLUTION 2019-105
OF THE COUNCIL OF THE CITY OF FORT COLLINS
EXPRESSING SUPPORT FOR LEGISLATION BY THE COLORADO GENERAL
ASSEMBLY REGARDING EXECUTIVE SESSIONS AND ELECTRONIC
COMMUNICATIONS UNDER THE COLORADO OPEN MEETINGS LAW

WHEREAS, the Colorado Open Meetings Law (Colorado Revised Statutes [“C.R.S.”] Sections 26-6-401 to 26-6-402) (“COML”), in particular C.R.S. Section 24-6-402(4) regarding executive sessions, lists the purposes for which a local public body can hold an executive session, none of which are directly applicable to issues of competition inherent in providing telecommunications facilities and services by a city, town or municipality in competition with private sector service providers; and

WHEREAS, in addition, the COML further provides in C.R.S. Section 26-6-402(2)(d)(III) that use of electronic mail by elected officials to discuss pending legislation or other public business among themselves is subject to the requirements of the COML; and

WHEREAS, as a home-rule municipality under Article XX of the Colorado Constitution, the City’s Charter, adopted by the people of the City of Fort Collins, is the organic law of the City, granting it authority over all local and municipal matters, and superseding within its territorial limits and other jurisdiction any Colorado statutes conflict therewith; and

WHEREAS, at a special election on November 3, 2015, City voters authorized the City to provide high-speed internet services, including, without limitation, high-bandwidth broadband services, telecommunications services, and/or cable television services (collectively, “Telecommunications Facilities and Services”) within the City’s growth management area; and

WHEREAS, at a special election on November 7, 2017, City voters approved an amendment to the City Charter adding a new Section 7 to Charter Article XII (“Section 7”) granting to the City Council certain powers related to the City providing Telecommunication Facilities and Services, including the power by ordinance and without a vote of the City’s electorate, to authorize the City’s Electric Utility to provide Telecommunications Facilities and Services; and

WHEREAS, on January 16, 2018, City Council adopted Ordinance No. 011, 2018 implementing the authority granted in Section 7 by authorizing the City’s Electric Utility to acquire, construct, provide, fund and contract for Telecommunication Facilities and Services; and

WHEREAS, paragraph (d) of Section 7 and City Code Section 2-13 both grant to the City Council and any board or commission established under subsection (e) of Section 7, the authority to go into executive session to consider matters pertaining to issues of competition in providing Telecommunications Facilities and Services, including, without limitation, matters subject to negotiation, strategic planning, pricing, sales and marketing, development phasing and any other matter allowed under Colorado law (the “Telecommunications Executive Session Authorization”); and

WHEREAS, none of the purposes for which a local public body can hold an executive session set forth in the COML are directly applicable to issues of competition inherent in providing Telecommunications Facilities and Services by a local government in competition with private sector service providers, which providers are not subject to the COML; and

WHEREAS, as a home-rule municipality under Article XX of the Colorado Constitution, the City's Charter, adopted by the people of the City of Fort Collins, is the organic law of the City, granting it authority over all local and municipal matters, and superseding within its territorial limits and other jurisdiction any Colorado statutes in conflict therewith; and

WHEREAS, as a home-rule municipality, the City of Fort Collins is specifically empowered by Section 6 of Article XX to legislate upon, provide for, regulate, conduct, and control local and municipal matters, including the powers set out in Sections 1, 4, and 5 of Article XX and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including a variety of matters set forth in Section 6; and

WHEREAS, Section 1 of Article XX specifically and expressly empowers the City, as a home-rule municipality, to "add to, maintain, conduct and operate water works, light plants, power plants, transportation systems, heating plants, *and any other public utilities or works ...local in use and extent, in whole or in part, and everything required therefore....*; and

WHEREAS, Ordinance No. 088, 2018 established the City's Telecommunications Facilities and Services as a unit of the City's Electric Utility and it constitutes a "public utility or work" that is "local in use and extent" and authorized under Section 1 of Article XX of the Colorado Constitution; and

WHEREAS, the Telecommunications Executive Session Authorization is a valid exercise of the City's home-rule authority under Article XX of the Colorado Constitution as set forth above; and

WHEREAS, although the City Council believes that its home rule authority authorizes the executive sessions as described herein, the City Council finds that it is in the best interest of the residents of the City and consistent with the City's Legislative Policy to support potential legislation by the General Assembly that confirms and expressly permits the Telecommunications Executive Session Authorizations and the corresponding ability of the City and other cities, town, or municipalities to effectively and competitively provide local telecommunications facilities and services such as high-speed internet and ancillary services to residents of their jurisdictions; and

WHEREAS, it would also be helpful if the Colorado General Assembly could consider and further clarify the extent to which use of electronic mail by elected officials to discuss pending legislation or other public business among themselves is considered a "meeting" under the COML so that elected officials can effectively use this now common-place communication technology within appropriate transparency requirements and other reasonable limitations.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the City Council finds that it is in the best interest of the residents of the City and consistent with the City's Legislative Policy to encourage and support potential legislation by the Colorado General Assembly to amend the COML to affirmatively authorize any local government body to go into executive session to consider matters pertaining to issues of competition in the provision of telecommunications facilities and services to their residents, including without limitation matters subject to negotiation, strategic planning, pricing, sales and marketing, and development phasing of such facilities and services, together with other statutory changes necessary to effectuate this authority, including but not limited to changes to the Colorado Open Records Act.

Section 3. That the City Council finds that it is in the best interest of the residents of the City and consistent with the City's Legislative Policy to encourage and support potential legislation by the Colorado General Assembly to clarify when an email exchange among elected officials constitutes a "meeting" subject to the requirements of the COML, including possible identification of a safe harbor within which elected officials can communicate by electronic mail without constituting a meeting in order to preserve and enable the use of this effective and now common-place technology within appropriate transparency requirements and other reasonable limitations.

Section 4. That City representatives, including the City Manager and City Attorney (and their respective staffs, as appropriate), are authorized to suggest or support legislation by the Colorado General Assembly consistent with the findings set forth in this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of November, A.D. 2019.


Mayor

ATTEST:


City Clerk

