

EMERGENCY ORDINANCE NO. 060, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING AND SUPERSEDING EMERGENCY ORDINANCE NO. 054, 2020
ENACTING TEMPORARY PROCEDURES
FOR REMOTE PARTICIPATION IN CERTAIN MEETINGS

WHEREAS, the City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, the City and the Larimer County Department of Public Health and Environment, state officials, Colorado State University and the Poudre School District are cooperatively working to limit community spread and slow the transmission of COVID-19; and

WHEREAS, due to the increasing incidence of COVID-19 in the general population, the World Health Organization designated the spread of COVID-19 as a worldwide pandemic; and

WHEREAS, on March 10, 2020, Governor Polis issued a Declaration of a Disaster Emergency for the State of Colorado and on March 13, 2020, the President of the United States declared a National Emergency; and

WHEREAS, on March 13, 2020, in order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and in order to attempt to minimize the loss of human life and the preservation of property, the City Manager, as the Director of the City's Office of Emergency Management, proclaimed a "local emergency" in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code; and

WHEREAS, the City Council has, with its adoption of Resolution 2020-030, extended the City Manager's proclamation of local emergency; and

WHEREAS, in light of the potential for Councilmembers to be isolated and unable to physically meet together for a Council meeting in order to conduct Council business, Council adopted Emergency Ordinance No. 054, 2020 (Emergency Ordinance 054), on March 20, 2020, permitting Council to conduct business remotely; and

WHEREAS, Emergency Ordinance No. 054 did not authorize any remote quasi-judicial hearings or neighborhood meetings required under the City's Land Use Code, and this Ordinance is meant to authorize certain remote quasi-judicial hearings and neighborhood meetings and essential board meetings, in addition to other City Council meetings, and therefore supersedes and replaces in all respects Emergency Ordinance No. 54; and

WHEREAS, on March 25, 2020, the Governor of the State of Colorado issued Executive Order D 2020 017 (Governor's Stay-at-Home Order) and the Colorado Department of Public Health & Environment (CDPHE) issued Amended Public Health Order 20-24 (CDPHE Public

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Health Order), both of which ordered citizens of the State to stay at home, leave home only for identified necessary activities, and comply with physical distancing requirements, sometimes referred to as “social distancing”; and

WHEREAS, the prevention and management of exposure to COVID-19 and mitigation of related impacts of all kinds continue to require emergency action by the City and continued physical distancing in order to reduce its transmission, based on the scientific evidence described in the Governor’s Stay-at-Home Order and the CDPHE Public Health Order; and

WHEREAS, due to the continued critical need to limit interaction by staying at home, maintain physical distance from others, slow the transmission of COVID-19 and protect the health, safety and welfare of the people of Fort Collins, the City is currently unable to hold traditional meetings or quasi-judicial hearings in accordance with the provisions of its City Code and Land Use Code; and

WHEREAS, in order to continue essential government activity that will protect the health, safety and welfare of the people of Fort Collins, including but not limited to economic health, the City Council wishes to also make available certain remote quasi-judicial hearings by the City Council, City Boards and Commissions and administrative hearing officers charged with the exercise of quasi-judicial functions under the Fort Collins Municipal Code (“City Code”) and Land Use Code (collectively “Quasi-Judicial Hearings”), and certain remote neighborhood meetings required by the Land Use Code (“Neighborhood Meetings”), and essential Board Meetings, provided that criteria set forth below can be met; and

WHEREAS, utilizing technology, whether telephonic, on-line platforms, other technological methods or a combination thereof (“Remote Technology”) to conduct certain City Council Meetings, Quasi-Judicial Hearings, Neighborhood Meetings, and essential Board Meetings is authorized by City Council in recognition that the use of such technology is consistent with the Colorado Open Meetings Laws, Colorado Revised Statutes Sections 24-6-401 *et seq.* (2019) and Article II of the Charter of the City of Fort Collins (“City Charter”); and

WHEREAS, in accordance with the guidance of the Larimer County Sixth Public Health Order Re: Stay-At-Home dated March 25, 2020, regulating essential/critical businesses (which may be extended or replaced with a subsequent similar Order), and the Colorado Department of Public Health and Environment Third Updated Public health Order 20-24 Implementing Stay At Home Requirements dated April 1, 2020, regarding essential/critical businesses (which may be extended or replaced with a subsequent similar Order), City Council recognizes that certain essential business and infrastructure must continue to occur during this time to protect the physical and economic health of the City of Fort Collins and its citizens; and

WHEREAS, City Council will permit certain remote Quasi-Judicial Hearings to occur as defined in Section 4 because they are found to be essential/critical to maintaining the citizens’ physical and economic health; and

WHEREAS, the types of Quasi-Judicial Hearings that are not authorized to occur remotely are: (1) Appeals; (2) Zoning and Rezoning matters pursuant to Fort Collins Land Use Code

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Division 2.9; (3) Addition of Permitted Use matters pursuant to the Land Use Code Division 1.3 section 1.3.4; and

WHEREAS, certain Quasi-Judicial Hearings are authorized to be conducted using Remote Technology if the technology used ensures that the hearings meet the procedural safeguards required to provide due process of law under the United States and Colorado constitutions, the requirements of which include, but are not limited to: (1) notice; (2) an adequate right to be heard, present evidence, rebut evidence and to see or hear all of the public proceedings; (3) Hearings are fair and impartial with public roll call of votes; (4) the decision is supported by adequate findings; and (5) a sufficient record of the proceedings can be made (collectively, “Due Process Requirements”); and

WHEREAS, in addition, certain City Boards and Commissions are responsible for functions that, while not quasi-judicial in nature, are time-sensitive and important to the City Council’s ability to complete action on critical programs such as the federally funded Community Development Block Grant and HOME programs or other programs for funding or supporting community services or programs, and in order to carry out those functions during the local emergency and maintain required physical distancing and other measures to prevent the spread of COVID-19, Boards and Commissions may also need to meet and carry out essential City business using Remote Technology; and

WHEREAS, Article II, Section 6 of the City Charter authorizes the Council to adopt emergency ordinances, which shall be finally passed on first reading by the affirmative vote of at least five members of the Council and which shall contain a specific statement of the nature of the emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that:

Section 1. The City Council hereby finds that an emergency exists requiring the immediate adoption of this Ordinance under Article II, Section 6 of the City Charter to enable the City to use Remote Technology to conduct certain City Council Meetings, Quasi-Judicial Hearings and Neighborhood Meetings, as well as for Board and Commission meetings needed to carry out essential City business, during the pendency of a public health or other local emergency affecting the city declared in accordance with Section 2-671(a)(1) of the City Code (“Declared Local Emergency”), in order to protect the physical and economic health, safety and welfare of the people of Fort Collins that would result from the inability to conduct such meetings and essential City business.

Section 2. The City Council finds that allowing certain City Council Meetings, Quasi-Judicial Hearings, Neighborhood Meetings, and Board and Commission meetings needed to carry out essential City business, to be held using Remote Technology is consistent with the Colorado Open Meetings Laws of Colorado Revised Statute Sections 24-6-401 *et. seq.* (2019) and Article II of the City Charter.

Section 3. The Council hereby adopts the following special provisions for City Council meetings using Remote Technology during a Declared Local Emergency, to supplement the provisions of Division 2, Article II of Chapter 2 of the City Code, as follows:

A. In the event the City Council is unable during the course of a Declared Local Emergency to conduct its regular meeting at the day, hour, and place fixed by City Code § 2-28 or at a special meeting pursuant to City Code § 2-29 because meeting in person would not be prudent due to a public health emergency or other unforeseen circumstances affecting the city, meetings may be conducted by telephone, electronically or by other means of communication so as to provide reasonably available participation by the public, consistent with the requirements of this Emergency Ordinance.

B. Meetings of the City Council or Council committees may be conducted by telephone, electronically or by other means, and remote participation shall constitute presence and actual attendance for purposes of establishing a quorum, subject to the following conditions:

1. The City Manager or the Mayor determines that meeting in person would not be prudent because of a public health emergency or other unforeseen circumstances affecting the city;
2. All members of the Council participating in the meeting can see and hear one another, or, if circumstances preclude an arrangement that would allow visual communication, hear one another;
3. All members of the Council participating in the meeting can see, hear or read all discussion, comment, and testimony in a manner designed to provide maximum information sharing and participation;
4. Members of the public have equivalent access to all discussion, comment and testimony, and all Council votes and other dialogue, in a manner designed to provide maximum information sharing and participation;
5. At least one member of the Council must be present at the physical meeting location, unless not feasible due to the public health emergency or other unforeseen circumstances;
6. All votes must be conducted by roll call;
7. All other meeting-related requirements must be met, including advance notice with an explanation of how Councilmembers and the public may participate and stating the right of the public to monitor the meeting, as well as the recording and preparation of meeting minutes; and
8. Only matters that have been determined by the City Manager and Mayor to be pressing and to require prompt action by the Council may be considered

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when a meeting is conducted pursuant to these procedures. An explanation for the basis of such determination shall be included in the materials for each item to be considered.

C. The City Clerk or their designee shall initiate the meeting by telephone, electronically or through other means not more than forty-five (45) minutes and not less than fifteen (15) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the City Clerk or their designee shall make at least one attempt to re-initiate the connection.

Section 4. The Council hereby adopts the following special provisions permitting Quasi-Judicial Hearings, excluding those listed in Subsection 4.B. below, during a Declared Local Emergency using Remote Technology, to supplement the provisions of Division 2, Article II and Article III of Chapter 2 of the City Code, other applicable provisions of the City Code, applicable provisions adopted by Council (such as the Boards and Commissions Manual) and the City's Land Use Code, as follows:

A. In the event a scheduled in-person Quasi-Judicial Hearing not excluded under Subsection 4.B cannot be conducted at the day, hour and place fixed by City Code § 2-28, § 2-29 and § 2-72 or pursuant to other City Code or Council-adopted provisions applicable to City Board or Commission or the City's Land Use Code, because meeting in person would not be prudent or permitted due to a Declared Local Emergency, the Quasi-Judicial Hearing may be conducted by the use of Remote Technology so long as the requirements of Subsection 4.C below are met. Remote participation in any Quasi-Judicial Hearing by any member of the City Council or of any Board or Commission shall constitute presence and actual attendance for purposes of establishing a quorum.

B. The following Quasi-Judicial Hearings are not allowed to be heard remotely:

1. Appeals of any decision as such appeals may be authorized under the City of Fort Collins Municipal Code and Land Use Code. Variances considered by the Zoning Board of Appeals are not "appeals" under this provision.

2. Zoning and Rezoning matters pursuant to Fort Collins Land Use Code Division 2.9.

3. Addition of Permitted Use matters pursuant to the Land Use Code Division 1.3 section 1.3.4.

C. Quasi-Judicial Hearings not excluded under Subsection 4.B. may be conducted using Remote Technology if the following criteria are met:

1. A determination of necessity is made as follows:

i. For a City Council proceeding, the City Manager, after consultation with the Mayor and the City Attorney, determines that holding an in-person Quasi-Judicial Hearing by City Council would not be

- prudent because of conditions related to a Declared Local Emergency.
- ii. For a proceeding of any other decision-making body, the City Manager or their designee, after consultation with the chairperson of such body and the City Attorney, determines that holding an in-person Quasi-Judicial Hearing would not be prudent because of conditions related to a Declared Local Emergency.
 - iii. For a Type I hearing or other quasi-judicial proceeding before an individual decisionmaker under the City's Land Use Code, the Director of Community Development and Neighborhood Services, in consultation with the City Attorney, determines that holding an in-person Quasi-Judicial Hearing would not be prudent because of conditions related to a Declared Local Emergency.
 - iv. For a quasi-judicial proceeding before an individual decisionmaker under any provision of the City Code, the City Manager or their designee, in consultation with the City Attorney, determines that holding an in-person Quasi-Judicial Hearing would not be prudent because of conditions related to a Declared Local Emergency.
2. Legally sufficient notice of the Quasi-Judicial Hearing has been given.
 3. The Remote Technology used for the Quasi-Judicial Hearing is sufficient to satisfy the requirements of Due Process as described above and as follows:
 - i. All members of the decision-making body can see and hear one another or, if circumstances preclude an arrangement that would allow visual communication, hear one another;
 - ii. All members of the decision-making body or the individual decisionmaker, as applicable, can see, hear or read all discussion, comment and testimony in a manner designed to provide the body or decisionmaker with reasonably complete and accurate perception of such evidentiary material;
 - iii. Parties-in-interest in the Quasi-Judicial Hearing have fair and reasonable access to all discussion, comment and testimony, evidentiary material and dialogue;
 - iv. Parties-in-interest in the Quasi-Judicial Hearing have a fair and reasonable opportunity to present information to the decision-making body or individual decisionmaker, as applicable; and
 - v. All votes of the decision-making body must be conducted by a roll call of the members.
 4. The Remote Technology used to hold the Quasi-Judicial Hearing is reasonably be expected to record and maintain the decision made at the Hearing and the evidence and findings supporting that decision; and

5. The Remote Technology used to hold the Quasi-Judicial Hearing is reasonably be expected to make or support the making of a complete record of the proceedings, including all evidence presented and considered, all testimony and all discussion by the decisionmakers for purposes of any right of appeal available under the City Code, the City's Land Use Code or federal or state law.

D. Any person or applicant seeking a quasi-judicial decision from City Council, a City Board or Commission or an administrative hearing officer under the City Code or the City's Land Use Code, shall be notified in writing or by email of the intention to conduct a Quasi-Judicial hearing using Remote Technology. Such person or applicant shall be entitled to request that the Quasi-Judicial Hearing be delayed until such time as the Hearing can be conducted in person. Any person or applicant proceeding with and participating in a Quasi-Judicial Hearing using Remote Technology shall be deemed to have consented to such method of providing the Quasi-Judicial Hearing.

E. The Director of Community Development and Neighborhood Services, in consultation with the City Attorney, may promulgate reasonable policies and procedures to implement these requirements during a Declared Local Emergency for Quasi-Judicial Hearings conducted under the authority of the City's Land Use Code by Boards or Commissions or administrative hearing officers.

Section 5. The City Council hereby authorizes Neighborhood Meetings required under the City's Land Use Code to be conducted using Remote Technology during a Declared Local Emergency, so long as any such remote Neighborhood Meeting satisfies all of the following requirements of Section 2.2.2 of the City's Land Use Code:

1. Provides a forum for citizens of area neighborhoods, applicants and the Director to identify, review, discuss, and work through any solutions to identified concerns for development applications during the conceptual planning stage.
2. Complies with requirements of Notice articulated in Land Use Code Section 2.2.2(C).
3. Provides a forum for attendance by citizens of the affected area neighborhoods, the applicant/applicant representative and the Director/Director's representative.
4. Complies with the Summary of the meeting directives in Land Use Code Section 2.2.2(E).

Section 6. The Council hereby adopts the following special provisions for City Board and Commission meetings during a Declared Local Emergency that are not Quasi-Judicial Hearings, to supplement the provisions of Division 2, Article II and Article III of Chapter 2 of the City Code and other provisions adopted by the Council to govern City Boards and Commissions

(including the Boards and Commissions Manual), and to supersede any applicable provisions to the contrary, as follows:

A. In the event a City Board or Commission is unable during the course of a Declared Local Emergency to conduct its essential regular (non-quasi-judicial) business with members physically present at a meeting because meeting in-person would not be prudent due to a public health emergency or other unforeseen circumstances affecting the city, such meeting may be conducted by telephone, electronically or by other means of communication so as to provide reasonably available participation by the public, consistent with the requirements of this Emergency Ordinance.

B. Essential meetings of a City Board or Commission, other than Quasi-Judicial Hearings, may be conducted by telephone, electronically or by other means, and remote participation shall constitute presence and actual attendance for purposes of establishing a quorum, subject to the following conditions:

1. The City Manager or their designee, in consultation with the chairperson of the Board or Commission and Council Liaison to the Board or Commission, determines that meeting in person would not be prudent because of a Declared Local Emergency and that the business to be conducted by the Board or Commission is essential;
2. All members of the Board or Commission participating in the meeting can see and hear one another or, if circumstances preclude an arrangement that would allow visual communication, hear one another;
3. All members of the Board or Commission participating in the meeting can see, hear or read all discussion, comment and testimony in a manner designed to provide maximum information sharing and participation;
4. Members of the public have equivalent access to all discussion, comment and testimony, and all votes and other dialogue, in a manner designed to provide maximum information sharing and participation;
5. At least one member of the Board or Commission must be present at the physical meeting location, unless not feasible due to the Declared Local Emergency or other unforeseen circumstances;
6. All votes must be conducted by roll call;
7. All other meeting-related requirements must be met, including advance notice with an explanation of how members of the Board or Commission and the public may participate and stating the right of the public to monitor the meeting, as well as the recording and preparation of meeting minutes; and

8. Only matters that are the subject of the determination described in Subsection 1. above may be considered when a meeting is conducted pursuant to these procedures.

C. The staff liaison for the Board or Commission or their designee shall initiate the meeting by telephone, electronically, or through other means not more than forty-five (45) minutes and not less than fifteen (15) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the staff liaison or their designee shall make at least one attempt to re-initiate the connection.

Section 7. This Emergency Ordinance shall supersede and replace in all respects Emergency Ordinance No. 054, 2020.

Section 8. That the City Clerk is hereby directed to cause the publication of this Emergency Ordinance within 7 days after adoption in accordance with the Fort Collins City Charter.

Introduced, considered favorably by at least five (5) members of the Council of the City of Fort Collins and finally passed as an emergency ordinance and ordered published this 14th day of April, 2020.

Mayor

ATTEST:

City Clerk

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