

# AGENDA ITEM SUMMARY

April 21, 2020

City Council

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## STAFF

Rebecca Everette, Development Review Manager  
Tom Leeson, Director, Comm Dev & Neighborhood Svcs  
Carrie Daggett, City Attorney

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## SUBJECT

Second Reading of Ordinance No. 061, 2020, Amending and Superseding Emergency Ordinance No. 054, 2020, Enacting Temporary Procedures for Remote Participation in Certain Meetings.

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## EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on April 14, 2020, by a vote of 6-1 (nays: Pignataro) authorizes certain types of remote meetings in light of the declared local emergency. The Ordinance will allow remotely conducted City Council meetings and certain quasi-judicial hearings by Council, City boards and commissions and administrative hearing officers. The types of quasi-judicial items that can be considered remotely under the Ordinance without further Council action are limited and exclude zoning decisions, appeals and additions of permitted use. The Ordinance also authorizes remote neighborhood meetings in the Development Review Process. Finally, the Ordinance also permits remote participation by boards and commissions in order to complete City business that is pressing and requires prompt action.

For second reading, the following changes have been made and are shown in the Ordinance, based on the Council's discussion of the Ordinance on First Reading:

1. Changed language to clarify that all matters being heard remotely must be determined to be "pressing and require prompt action" and to require that agenda items explain the determination.
2. Added language to clarify that if Remote Technology is found to be not sufficiently working the Hearing/Meeting must be continued.

Added a provision allowing the Council to (by majority vote) authorize additional types of meetings or proceedings, or specific items if Council determines the authorized action is pressing and requires prompt action and that the Remote Technology available for the proceeding will provide sufficient public participation and input called for by the type of meeting, hearing or proceeding or the individual matter, as applicable, in light of the specific circumstances

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## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

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## ATTACHMENTS

1. First Reading Agenda Item Summary, april 14, 2020 (w/o attachments) (PDF)

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City Council

April 14, 2020

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## SUBJECT

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Items Relating to Remote Participation in Certain Meetings.

## EXECUTIVE SUMMARY

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A. Emergency Ordinance No. 060, 2020, Amending and Superseding Emergency Ordinance No. 054, 2020, Enacting Temporary Procedures for Remote Participation in Certain Meetings.

Or

B. First Reading of Ordinance No. 061, 2020, Amending and Superseding Emergency Ordinance No. 054, 2020, Enacting Temporary Procedures for Remote Participation in Certain Meetings.

The purpose of either the Emergency Ordinance or Ordinance No. 061, is to authorize certain types of remote meetings in light of the declared local emergency. As published, both Ordinances allow remotely conducted City Council meetings and certain quasi-judicial hearings by Council, City boards and commissions and administrative hearing officers. The types of quasi-judicial items that can be considered remotely are limited and exclude zoning decisions, appeals and additions of permitted use. The Ordinances also authorize remote neighborhood meetings in the Development Review Process. Finally, the Ordinance also permits remote participation by boards and commissions in order to complete essential City business.

To authorize these remote meetings and hearings, Council may choose to adopt the Emergency Ordinance, which goes into effect upon adoption, or alternatively may choose to adopt Ordinance No. 061 on First Reading, which would then be presented for consideration on Second Reading at the next Council meeting and if adopted, would be effective in May.

Attachments to the Agenda Item Summary show the revisions needed to: (1) eliminate the authority for any quasi-judicial proceedings or (2) eliminate the authority for any quasi-judicial proceedings or any neighborhood meetings.

## STAFF RECOMMENDATION

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Staff recommends adoption of the Ordinance.

## BACKGROUND / DISCUSSION

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A. Emergency Ordinance No. 060, 2020, Amending and Superseding Emergency Ordinance No. 054, 2020, Enacting Temporary Procedures for Remote Participation in Certain Meetings.

B. Ordinance No. 061, 2020, Amending and Superseding Emergency Ordinance No. 054, 2020, Enacting Temporary Procedures for Remote Participation in Certain Meetings.

Council adopted Emergency Ordinance 054, 2020 on March 20, 2020, permitting Council to conduct business remotely. However, Ordinance No. 054, 2020 did not authorize remote quasi-judicial hearings or neighborhood meetings required under the Land Use Code. This Ordinance is meant to authorize certain remote quasi-judicial hearings and neighborhood meetings, in addition to other City Council meetings, and therefore amends and supersedes Ordinance No. 54, 2020. This authority is conditioned upon stated criteria to protect due process and other legal rights.

In addition, this Ordinance modifies the originally adopted language about remote Council meetings. Instead of saying the Clerk must only open up the electronic participation no more than fifteen minutes before the meeting, it now says (for Council and Board meetings) that the electronic means of participation must be opened up no more than forty-five minutes and no less than fifteen minutes before the start of the meeting.

Finally, the Ordinance also provides for the use of remote participation by boards and commissions in order to complete essential City business, using a procedure similar to that laid out for City Council meetings. This is intended to allow boards with time-sensitive and critical work, such as the CDBG Commission or other board involved in the process of funding community programs and services, to complete that work.

### **BASIS FOR EMERGENCY ORDINANCE**

This matter is being brought forward for consideration in a remote City Council meeting because it is critical to address how the many pending and anticipated quasi-judicial decisions or other decisions will be managed during the current local emergency.

Questions have been raised about whether an emergency ordinance is the appropriate mechanism for enacting this change. Article XIII of the Charter defines "Emergency ordinance" as an ordinance "immediately necessary, on account of an emergency, to preserve the public property, health, peace, or safety" and an "emergency" is defined as "an existing condition actually arising from unforeseen contingencies which immediately endangers public property, health, peace, or safety". In case Councilmembers do not agree this standard is met, a standard ordinance, Ordinance No. 061, is also provided for Council consideration on First Reading. Ordinance No. 061 would require adoption on Second Reading and would not go into effect until 10 days after adoption (May 1 if adopted on Second Reading on April 21).

### **QUASI-JUDICIAL PROCEEDINGS AND NEIGHBORHOOD MEETINGS AS ESSENTIAL CITY BUSINESS**

City Council and various appointed boards and commissions conduct essential government functions on a weekly and monthly basis. For several boards and commissions, their primary responsibility is to make decisions or recommendations on quasi-judicial items that support health, safety and welfare, including the economic wellbeing of the Fort Collins community. This work directly supports Council-adopted priorities and strategic outcomes related to Neighborhood Livability and Social Health, Economic Health, and other outcome areas.

The Planning and Zoning Board, Landmark Preservation Commission, Zoning Board of Appeals, and Building Review Board meet monthly to approve, deny and make recommendations on land use and development projects, historic landmark designation and design review, variances, contractor licensing, and other topics of critical importance to the community. In addition, Administrative Hearings are required for many development projects; the decision maker for these hearings is a third-party land use attorney serving as a hearing officer. The Land Use Code also requires neighborhood meetings as an initial step before a development application can be filed for many projects.

Construction activity has been deemed an essential service under the current State of Colorado and Larimer County stay-at-home orders. Allowing certain quasi-judicial hearings and neighborhood meetings to continue remotely during the current state of emergency will mitigate long-term economic impacts to the community, maintain predictability for development projects, and ensure that funding and construction timelines can be met for critical land uses, including the development of affordable housing, child care, and small business projects.

As proposed with this ordinance, remote quasi-judicial hearings would be limited to projects that comply with the list of permitted uses under the existing zoning designation for a property. Items that propose a new zoning designation (initial zoning or rezoning) or items that seek to amend the list of permitted uses for a property (additions of permitted use) would require an in-person hearing and could not be heard remotely.

**PROPOSED EMERGENCY ORDINANCE: ALLOW CERTAIN REMOTE QUASI-JUDICIAL PROCEEDINGS, NEIGHBORHOOD MEETINGS, AND ESSENTIAL BOARD AND COMMISSION MEETINGS**

The Ordinance prepared for Council consideration would allow only certain quasi-judicial hearings, neighborhood meetings, and essential board and commission activities to proceed remotely.

**Quasi-Judicial Hearings**

The quasi-judicial proceedings that could occur remotely include land use and development decisions, consideration of variance requests, and landmark designations - excluding specific proceedings described below.

Quasi-judicial decisions that have broader or more significant implications for neighborhoods and/or individual property owners would be excluded. This limitation would maintain predictability for community members with regard to the type and intensity of development that might occur on a property. The following proceedings could not be conducted remotely:

- Appeals of decisions of all types (includes appeals to both the City Council and Planning and Zoning Board)
- Initial zoning and rezoning decisions
- Additions of Permitted Use (APUs)

Quasi-judicial decisions for development projects that generally conform to existing zoning could be considered remotely. This includes projects that comply with the permitted use list within the existing zone district for a subject property. This would maintain a predictable process and schedule for projects that generally match the community expectations set by City Plan and the Land Use Code.

This emergency ordinance would allow for consideration of both modifications of standards (LUC Division 2.8) and variances (LUC Division 2.10) at remote hearings. Modifications of standards and variances are often critical to the feasibility of infill and redevelopment projects, which have been prioritized in both City Plan and the Strategic Plan. Because the Land Use Code requires specific criteria to be met and findings to be made for both modification of standards and variance requests, staff finds that there is sufficient predictability in the process to allow for remote hearings of these items. The request must be found to not be detrimental to the public good and meet specific review criteria that justify the granting of the modification or variance.

Staff would ensure that all standard procedures could be replicated within a remote platform. Staff would:

1. Ensure the meetings can be tightly moderated to ensure all rules and procedures are followed, and to ensure due process for all parties involved
2. Provide multiple options for public participation, including both phone and web participation, to ensure full and equal access to the hearings
3. Provide all materials online in advance of the hearing, including all staff and applicant presentation materials
4. Ensure adequate technical assistance is available to all participants, and that there are backup plans in place in case of technological failure
5. Ensure fair notice and adequate training is provided to all board members, staff, applicants, and interested members of the public

A test hearing would be required for any boards that intend to conduct quasi-judicial hearings remotely, to ensure that all board members can effectively participate in the meetings. A public training and test session would also be required to allow interested members of the public to test the technology and ask questions of staff in advance of any quasi-judicial hearings.

## **Neighborhood Meetings**

Neighborhood meetings are required for various development project types, and particularly for any project that will be presented to the Planning and Zoning Board for consideration. Neighborhood meetings are required during the conceptual planning stage for development projects so that neighborhoods may give input on the proposal before the applicant expends time and effort to submit a formal development application to the City.

The purpose of these neighborhood meetings, as described in the Land Use Code, is to:

- Facilitate active community participation and dialogue early in the development review process
- Present development applications to residents of area neighborhoods and for the residents to identify, list and discuss issues related to the development proposal
- Encourage residents to work jointly with staff and the applicant to seek solutions to issues that have been identified

Given the breadth of technology available to encourage virtual public engagement, neighborhood meetings can be effective using remote techniques. The existing tools available to City staff, including the OurCity platform, WebEx, Microsoft Teams, and town hall technology, which can be used in concert to provide a fully accessible meeting experience for residents. A neighborhood meeting is intended to be the starting point in a longer conversation, and staff continues to engage with community members via phone, email, small group meetings, and OurCity pages long after the initial neighborhood meeting has occurred. OurCity pages long after the initial neighborhood meeting has occurred.

Utilizing remote tools and technology for neighborhood meetings presents an additional opportunity for the City to reimagine how we engage with community members around development projects, potentially resulting in better access to and representation in the process over the long term. Prior to the current state of emergency, staff had already been exploring opportunities to increase participation in the development review process using online tools, so there is the potential for long-term implementation of any changes that are well-received by the community.

## **Board and Commission Meetings**

In addition to quasi-judicial hearings and neighborhood meetings, there are boards and commissions with other essential functions that may need to continue during the current state of emergency.

For legislative items and other urgent board and commission items, a determination that the item is considered essential business, as well as the basis of such determination, should be included in the materials for each item to be considered.

## **ORDINANCE VERSIONS**

Two Ordinances are presented Council's consideration; Council should adopt only one of these two:

**Item A, Emergency Ordinance No. 060, 2020, is an emergency ordinance that authorizes:**

- City Council meetings using remote technologies for pressing matters requiring prompt action;
- City Council, City boards and commissions, and administrative hearing officers to hold quasi-judicial hearings using remote technology, excluding the following types of quasi-judicial matters:
  - appeals of decisions of all types (includes appeals to both the City Council and Planning and Zoning Board),
  - initial zoning and rezoning, and
  - additions of permitted use applications (APUs) as described above.
- Remote neighborhood meetings
- Essential meetings of City boards and commissions.

**Item B, Ordinance No. 061, 2020**, is substantively the same as the Emergency Ordinance, but is First Reading of a non-emergency ordinance. If adopted, this Ordinance would be considered on Second Reading on April 21 and if adopted on Second Reading, would go into effect on May 1.

Council may wish to modify the Ordinance through a motion that would revise either Ordinance No. 060 or Ordinance No. 061, and two alternate versions Councilmembers have expressed some interest in are attached to this Agenda Item Summary:

Alternate 1 – Allow Only Essential Board and Commission Meetings and Neighborhood Meetings to Occur Remotely (Attachment 2)

An ordinance version showing the changes required to remove the ability to conduct quasi-judicial hearings remotely, while allowing essential board and commission meetings and neighborhood meetings to occur remotely, is provided as Attachment 2 to this Agenda Item Summary.

Alternate 2 – Allow Only Essential Board and Commission Meetings to Occur Remotely (Attachment 3)

An ordinance version showing the changes required to remove the ability to conduct quasi-judicial hearings and also removing the ability to conduct neighborhood meetings remotely while still allowing essential board and commission meetings to occur remotely, is provided as Attachment 3 to this Agenda Item Summary.

The chart below demonstrates the types of remote meetings covered by the versions presented:

Type of Ordinance	Quasi-Judicial <i>with exclusions</i>	Non Quasi-Judicial	Essential Boards/ Comm Bus Meetings <i>iness</i>	Neighborhood Meetings	Emergency: <i>effective immediately</i>	Non-Emergency: <i>Effective May 1 or after</i>
A. Emergency Ordinance No. 060	x	x	x	x	x	
B. Ordinance No. 060	x	x	x	x		x
C. Remote Meeting Minus Quasi-Judicial		x	x	x	If revisions applied to Emergency No. 060	If revisions applied to No. 061
D. Remote Meeting Minus Quasi-Judicial & Neighborhood		x	x		If revisions applied to Emergency No. 060	If revisions applied to No. 061

**UPCOMING HEARINGS AND NEIGHBORHOOD MEETINGS**

Pending quasi-judicial hearings that have been scheduled for March, April, May or June and currently at risk of delay include:

Meeting Type	Pending Projects/Decisions
<b>City Council Hearings</b>	<ul style="list-style-type: none"> <li>• 3 rezoning decisions related to properties within City limits</li> <li>• 2 initial zoning decisions related to recent annexations (second reading)</li> <li>• 5 landmark designation decisions (voluntary)</li> </ul>
<b>Planning and Zoning Board Hearings</b>	<ul style="list-style-type: none"> <li>• 1 City of Fort Collins neighborhood park</li> <li>• 1 child care center</li> <li>• 162 multi-family dwelling units (2 projects)</li> </ul>

	<ul style="list-style-type: none"> <li>• 2 duplexes (4 dwelling units)</li> <li>• 2 industrial buildings</li> <li>• 1 enclosed mini-storage building</li> <li>• 1 new parking lot with drive-thru ATM for a bank (Addition of Permitted Use)</li> <li>• 1 convenience store with fuel sales</li> <li>• 1 community solar project</li> <li>• 2 appeals of Minor Amendment decisions</li> <li>• 2 recommendations to City Council related to rezoning decisions</li> </ul>
<b>Development Review Administrative Hearings</b> (Hearing Officer)	<ul style="list-style-type: none"> <li>• 1 hotel (150 rooms)</li> <li>• 1 wireless telecommunication facility (cell tower)</li> <li>• 1 accessory dwelling unit (carriage house)</li> </ul>
<b>Zoning Board of Appeals</b>	<ul style="list-style-type: none"> <li>• 2 sign variances</li> <li>• 1 setback encroachment variance</li> </ul>
<b>Landmark Preservation Commission</b>	<ul style="list-style-type: none"> <li>• 1 design review/recommendation for a development project</li> <li>• 5 recommendations to City Council on landmark designations (voluntary)</li> </ul>
<b>Building Review Board</b>	<ul style="list-style-type: none"> <li>• 1 decision related to a suspended contractor license</li> </ul>

In addition to public hearings, neighborhood meetings are required prior to the formal submittal of an application for many development projects. Pending neighborhood meetings that are currently at risk of delay include:

Meeting Type	Pending Projects/Decisions
<b>Neighborhood Meetings (Development Review)</b>	<ul style="list-style-type: none"> <li>• 2 affordable housing projects</li> <li>• Senior housing facility (36 memory care units, 63 assisted/independent living units)</li> <li>• New restaurant</li> <li>• New manufactured housing community</li> <li>• Conversion of existing industrial building to a place of worship</li> <li>• New mixed residential community</li> </ul>

**CITY FINANCIAL IMPACTS**

Allowing certain meetings to be conducted remotely would ensure predictability for development projects and other essential City business. This would reduce the potential for adverse financial impacts to the City in the form of lost revenue, delayed or lost economic activity in the community, and lost community funding in the form of Community Development Block Grant (CDBG) funding.

Holding meetings remotely would have a negligible impact to City finances, as some costs (e.g., meals) would be replaced by others (e.g., subscriptions to remote meeting platforms).

**ATTACHMENTS**

1. Comparision of April 14 version of Emergency Ordinance No. 60, 2020 to April 7 version (PDF)
2. Revisions to show removal of all remote quasi-judicial hearings (PDF)
3. Revisions to remove all remote quasi-judicial hearings and remote neighborhood meetings (PDF)

ORDINANCE NO. 061, 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



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 by this Ordinance to occur remotely are: (1) Appeals; (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; 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 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 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.

D. If during any meeting the Council, by majority vote, determines that the Remote Technology in use is not functioning sufficiently to meet the conditions above during any particular item or meeting, the Council must continue such item or meeting to allow for improved technologies or other arrangements.

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. Unless further action is taken by the Council, the following Quasi-Judicial Hearings are not allowed to be heard remotely due to their complexity, difficulties in making an adequate record, and fundamental nature of the action:

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 1.3.4.44.

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, and an explanation of such determination provided in the agenda materials for the related items:

- 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 and is pressing and requires prompt action.
- 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 and is pressing and requires prompt action.
- 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 and is pressing and requires prompt action.
- 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 and is pressing and requires prompt action.

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.

F. In connection with any Quasi-Judicial Hearing conducted pursuant to this Section, if the decisionmaker, whether an individual or a body by majority vote, determines that the Remote Technology in use is not functioning sufficiently to meet the conditions above during any particular item or meeting, said decisionmaker must continue such item or meeting to allow for improved technologies or other arrangements.

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).

If the Director of Community Development and Neighborhood Services or their designee determines that the Remote Technology in use is not functioning sufficiently to meet the conditions set forth in this Section during any Neighborhood Meeting, the Director must either continue such Neighborhood Meeting or schedule an additional Neighborhood Meeting to allow for improved technologies or other arrangements.

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 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~~; is pressing and requires prompt action. An explanation for the basis of such determination shall be included in the materials for each item to be considered;

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; **and**
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.

**D. If during any meeting a Board or Commission, by majority vote, determines that the Remote Technology in use is not functioning sufficiently to meet the conditions above during any particular item or meeting, the Board or Commission must continue such item or meeting to allow for improved technologies or other arrangements.**

**Section 8. The Council may, by majority vote on a motion, authorize additional types of meetings, hearings or proceedings, or individual matters otherwise not allowed hereunder, to**



proceed using Remote Technology, provided the Council determines that the authorized action is pressing and requires prompt action and that the Remote Technology available for the proceeding will provide sufficient public participation and input called for by the type of meeting, hearing or proceeding or the individual matter, as applicable, in light of the specific circumstances.

Section 98. This Ordinance shall supersede and replace in all respects Emergency Ordinance No. 054, 2020.

Introduced, considered favorably on first reading, and ordered published this 14th day of April, A.D. 2020, and to be presented for final passage on the 21st day of April, A.D. 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 21st day of April, A.D. 2020.

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Mayor

ATTEST:

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City Clerk