

AGENDA ITEM SUMMARY

June 16, 2020

City Council

STAFF

Delynn Coldiron, City Clerk
Rebecca Everette, Development Review Manager
Carrie Daggett, City Attorney

SUBJECT

Second Reading of Ordinance No. 079, 2020, Amending and Superseding Ordinance No. 061, 2020 Enacting Temporary Procedures for Remote Participation in Certain Meetings.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on June 2, 2020, updates and replaces Ordinance No. 061, 2020, to allow Council to conduct business that has been postponed due to the local emergency set forth in the Ordinance. This Ordinance will also allow boards and commissions to conduct business remotely using technology set in place for Council meetings.

This Ordinance has been amended on Second Reading to change the time required to notify City Clerk of remote participation from thirty-six (36) hours to three (3) hours.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, June 2, 2020 (w/o attachments) (PDF)

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STAFF

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Rebecca Everette, Development Review Manager
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SUBJECT

First Reading of Ordinance No. 079, 2020, Amending and Superseding Ordinance No. 061, 2020 Enacting Temporary Procedures for Remote Participation in Certain Meetings.

EXECUTIVE SUMMARY

The purpose of this item is to update and replace Ordinance No. 061, 2020, in order to allow Council to conduct business that has been postponed due to the local emergency set forth in the Ordinance. This Ordinance will also allow boards and commissions to conduct business remotely using technology set in place for Council meetings.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

On March 13, 2020, the City Manager proclaimed a local emergency due to the worldwide pandemic in accordance with City Code and activated the Emergency Operations Plan. Resolution 2020-030 extended the proclamation, Emergency Ordinance No. 54, 2020 was adopted on Second Reading on March 20, 2020, permitting Council to conduct business remotely. Subsequently, Ordinance No. 061, 2020, authorized remote quasi-judicial hearings and neighborhood meetings required under the City's Land Use Code, and essential board meetings, in addition to other Council meetings, superseding Emergency Ordinance No. 54.

As permitted by the Colorado Open Meetings Laws and City Charter, Council has determined the use of remote technology, i.e., telephone and online platforms, to be effective and necessary during this unprecedented time in order to limit community spread and slow the transmission of COVID-19. Due to the extended time period requiring physical distancing, Council will consider allowing regular and non-emergent business to resume using remote technology. This ordinance will relax the remote technology requirements for Council and board and commission meetings while retaining the stricter safeguards for conducting quasi-judicial hearings.

ATTACHMENTS

1. Ordinance No. 079, 2020, (highlighted to show changes) (PDF)

ORDINANCE NO. 079, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING AND SUPERSEDING ORDINANCE NO. 061, 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, utilizing technology, whether telephonic, on-line platforms, other technological methods or a combination thereof ("Remote Technology") to conduct meetings 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 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 No. 054), on March 20, 2020, permitting Council to conduct business using Remote Technology; and

WHEREAS, on April 21, 2020, the City Council adopted on second reading Ordinance No. 061, 2020 (Ordinance No. 061), to supersede and replace in all respects Emergency Ordinance No. 054; and

WHEREAS, Ordinance No. 061 was intended to continue essential government activity and protect the health, safety and welfare of the people of Fort Collins, including but not limited to economic health, by authorizing certain Quasi-Judicial Hearings by the City Council, City boards and commissions and administrative hearing officers (including City officers and employees) 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 neighborhood meetings required by the Land Use Code (“Neighborhood Meetings”), and essential board meetings, using Remote Technology, provided that criteria set forth in Ordinance No. 061 could be met; and

WHEREAS, Ordinance No. 061 authorizes certain Quasi-Judicial Hearings 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, the Council has determined that in addition to allowing consideration or pressing matters requiring prompt action, allowing for the conduct of regular and routine City business by the City Council, Council Committees, and by City boards and commissions, and their committees, using Remote Technology is appropriate in light of the extended time period during which requirements for physical distancing and other measures to suppress the spread of COVID-19 are likely to be continued; and

WHEREAS, this Ordinance amends and restates Ordinance No. 061 in order to relax the requirements for use of Remote Technology for Council and board and commission meetings, and their committees, while retaining safeguards to assure effective observation and participation by the public and stringent requirements for the conduct of Quasi-Judicial Hearings in accordance with Due Process Requirements.

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

Section 1. The City Council hereby finds that it is necessary and appropriate to enable the City to use Remote Technology to conduct meetings during the pendency of the current public health and 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 carry out City business.

Section 2. The City Council finds that public meetings conducted 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, so long as proper notice of

the meeting is given and the public is reasonably able to observe and, as applicable, participate in such meetings.

Section 3. The Council hereby adopts the following special provisions for City Council and Council Committee meetings during the course of a Declared Local Emergency to supplement and, as applicable, supersede the provisions of Division 2, Article II of Chapter 2 of the City Code and any other applicable provisions adopted by Council:

A. The Mayor, after consultation with the Mayor Pro Tem, City Manager and City Attorney, may determine that the Council will conduct any regular meeting or special meeting in whole or in part by Remote Technology so as to provide reasonably available participation by Councilmembers and by the public, consistent with the requirements of this Ordinance, because meeting in person would not be prudent for some or all persons due to a public health emergency or other unforeseen circumstance affecting the city.

B. The chairperson of any Council Committee, after consultation with the City Manager and City Attorney, may determine that the Committee will conduct any Committee meeting in whole or in part by Remote Technology so as to provide reasonably available participation by members of the Committee and observation by the public, consistent with the requirements of this Ordinance, because meeting in person would not be prudent for some or all persons due to a public health emergency or other unforeseen circumstance affecting the city.

C. Regardless of the determination made under Subsection 3.A or 3.B, as applicable, any Councilmember concerned about their own or others' health or safety is entitled to participate by Remote Technology in any regular meeting or special meeting of the Council, or any meeting of a Council Committee of which they are a member, in a manner consistent with the requirements of this Ordinance, if such Councilmember requests to do so by notifying the City Clerk no less than ~~thirty six (36)~~ **three (3)** hours in advance of the meeting.

D. Participation by a Councilmember in a meeting conducted by Remote Technology shall constitute presence and actual attendance for purpose of establishing a quorum, provided the following conditions are met:

1. All members of the Council or Committee, as applicable, participating in the meeting can see and hear one another or, if circumstances preclude an arrangement that would allow visual communication, hear one another;
2. All members of the Council or Committee, as applicable, 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;
3. Members of the public have equivalent access to all discussion, comment and testimony, and to all Council votes and other dialogue, in a manner

designed to provide maximum information sharing and, to the extent applicable, participation;

4. All votes must be conducted by roll call; and
5. 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.

E. The City Clerk or their designee, or staff person managing arrangements for a Committee, shall initiate the meeting by Remote Technology not more than forty-five (45) minutes and not less than fifteen (15) minutes prior to the scheduled time of the meeting.

F. In addition to the requirements set forth in this Section, the requirements of Section 4 shall apply to any Quasi-Judicial Hearing by the City Council or a Council Committee using Remote Technology.

G. If during any meeting of the Council or a Council Committee, the presiding officer determines that the Remote Technology in use is not functioning sufficiently to meet the conditions above during any particular item or meeting, the Council or Committee 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 using Remote Technology, excluding those listed in Subsection 4.B. below, during a Declared Local Emergency, 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. The following requirements apply to the use of Remote Technologies for Quasi-Judicial Hearings:

1. A Council or Council Committee may conduct a Quasi-Judicial Hearing provided a determination or request has been made pursuant to the requirements of Section 3.A, 3.B or 3.C of this Ordinance and subject to compliance with all other requirements in this Section 4.
2. A board or commission or committee thereof may conduct a Quasi-Judicial Hearing provided a determination or request has been made pursuant to the requirements of Section 6.A, 6.B or 6.C of this Ordinance and subject to compliance with all other requirements in this Section 4.

3. Any individual decisionmaker under the City’s Land Use Code or City Code may conduct a Quasi-Judicial Hearing provided said decisionmaker, in consultation with appropriate City staff, has determined that it is desirable to conduct the Hearing by Remote Technology so as to provide reasonably available participation by parties-in-interest and by the public, consistent with the requirements of this Ordinance, because meeting in person would not be prudent for some or all persons due to a public health emergency or other unforeseen circumstance affecting the city and subject to compliance with all other requirements in this Section 4.

B. Unless further action is taken by the Council under Section 8, below, the following Quasi-Judicial Hearings are not allowed to be heard when one or more members of the decisionmaking body or an individual decisionmaker, as applicable, is participating by use of Remote Technology due to the complexity, difficulties in making an adequate record, and fundamental nature of these types of actions:

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 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. Legally sufficient notice of the Quasi-Judicial Hearing has been given.
2. 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.
3. The Remote Technology used to hold the Quasi-Judicial Hearing can reasonably be expected to record and maintain the decision made at the Hearing and the evidence and findings supporting that decision; and
 4. The Remote Technology used to hold the Quasi-Judicial Hearing can 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 individual decisionmaker or the presiding officer of a decisionmaking body, as applicable, determines that the Remote Technology in use is not functioning sufficiently to meet the conditions above during any particular item or meeting, said individual decisionmaker or the decisionmaking body, as applicable, 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 to supplement and, as applicable, supersede 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), as follows:

A. The chairperson of any City board or commission, after consultation with the staff liaison for such board or commission, may determine that such board or commission will conduct any regular meeting or special meeting in whole or in part by Remote Technology so as to provide reasonably available participation by members of the board or commission and by the public, consistent with the requirements of this Ordinance, because meeting in person would not be prudent for some or all persons due to a public health emergency or other unforeseen circumstance affecting the city.

B. The chairperson of any committee of any City board or commission, after consultation with the chairperson and staff liaison of such board or commission, may determine that such committee will conduct any committee meeting in whole or in part by Remote Technology so as to provide reasonably available participation by members of the committee and observation by the public, consistent with the requirements of this Ordinance, because meeting in person would not be prudent for some or all persons due to a public health emergency or other unforeseen circumstance affecting the city.

C. Regardless of the determination made under Subsection 6.A or 6.B, as applicable, any member of any board or commission concerned about their own or others' health or safety is entitled to participate by Remote Technology is entitled to participate by Remote Technology in any regular meeting or special meeting of such board or commission, or any meeting of any related committee of which they are a member, in a manner consistent with the requirements of this Ordinance, if such member requests to do so by notifying the staff liaison for their board or commission no less than ~~thirty-six (36)~~ **three (3)** hours in advance of the meeting.

D. Participation by a City board or commission member, or a member of a committee thereof, in a meeting conducted by Remote Technology shall constitute presence and actual attendance for purpose of establishing a quorum, provided the following conditions are met:

1. 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;
2. 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, to the extent applicable, participation;
3. Members of the public have equivalent access to all discussion, comment and testimony, and to all votes and other dialogue, in a manner designed to provide maximum information sharing and participation;
4. All votes must be conducted by roll call; and
5. 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.

E. The staff liaison for the board or commission, or a committee thereof, or their designee shall initiate the meeting by Remote Technology not more than forty-five (45) minutes and not less than fifteen (15) minutes prior to the scheduled time of the meeting.

F. In addition to the requirements set forth in this Section, the requirements of Section 4 of ~~Ordinance No. 061, as amended by~~ this Ordinance, shall apply to any Quasi-Judicial Hearing conducted by a City board or commission or a committee thereof using Remote Technology.

G. If during any meeting of a board or commission or a committee thereof the presiding officer 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 7. City Council may, by the adoption by Resolution of an updated Boards and Commissions Manual, update and supersede the provisions of this Ordinance, provided Council expressly states its intent to do so.

Section 8. The Council may, by the affirmative vote of five members 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 9. This Ordinance shall supersede and replace in all respects Ordinance No. 061, 2020.

Introduced, considered favorably on first reading, and ordered published this 2nd day of June, A.D. 2020, and to be presented for final passage on the 16th day of June, A.D. 2020.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of June, A.D. 2020.

Mayor

ATTEST:

City Clerk