

**A RESOLUTION ESTABLISHING POLICIES FOR CONDUCTING PUBLIC  
HEARINGS DURING ELECTRONIC MEETINGS**

**NO. 2023-045**

WHEREAS, the City Council has enacted ordinances authorizing all City Council meetings to be conducted by “electronic means” as defined in Commerce City Revised Municipal Code (“CCRMC”) Section 2-2001; and

WHEREAS, the City Council of the City of Commerce City enacted certain policies pursuant to Section 4.27 of the City Charter, including Council Policies 20 and 22 regarding the conduct and order of public hearings;

WHEREAS, City Council previously established guidelines for public hearings on quasi-judicial matters and related votes through electronic means which were limited only to occasions during public health emergencies;

WHEREAS, City Council recently passed Council Policy #CP-26 in anticipation of and effective upon changes to the CCRMC to allow for electronic meetings to continue on a permanent basis, unless otherwise amended;

WHEREAS, City Council desires to establish permanent guidelines to ensure that public hearings on quasi-judicial matters, when participants, including the applicant, or members of City Council or board or commission is attending the meeting by electronic means to ensure conformance with the requirements of the Charter, the CCRMC, and the requirements of due process;

WHEREAS, the City Council finds that this resolution establishes guidelines to ensure that public hearings occur in an open and impartial manner, that the public has the ability to hear or view the proceedings in real time, that allows interested parties to provide testimony, and allows an opportunity for the City Council to give fair consideration to all issues presented at the public hearing; and

WHEREAS, the City Council finds that the guidelines established by this resolution are necessary and appropriate to promote the efficient and orderly conduct of municipal business, to ensure the validity of municipal proceedings, and to protect the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

**1. Application.** This resolution is adopted pursuant to Section 2-2001 of the CCRMC, as it may be amended, and applies to any public hearing, as defined in Council Policy CP-22, that includes participation by the applicant, City Council members, board of commission members, or the public through electronic means. This resolution supplements Council Policies CP-20, CP-22, and CCP-26 and any other policy related to public hearings. All other provisions of applicable

Council Policies will apply to any meeting including public hearings held pursuant to this resolution to the extent they do not in conflict with these provisions.

**2. Definitions.** The following definitions apply to the terms used in this resolution:

“Board member” shall mean all members of a board or commission of the City or City related entity (e.g., general improvement districts).

“Body” means the City Council or applicable board or commission.

“Councilmember” shall mean the Mayor or a member of the City Council.

“Electronic means” shall have the meaning ascribed in Section 2-2001 of the CCRMC, as amended.

“Electronic participation” or “electronically participate” shall mean participating in a meeting through electronic means.

“In-person” shall mean being physically present at the designated meeting location.

“Meeting” shall mean a regular or special meeting of a body or emergency meeting of City Council that is required to be an “open meeting” under the Colorado Open Meetings Law, §§ 24-4-401 *et seq.*

**3. Applicant Agreement.** Except for any public hearing initiated by the City or based on an appeal of an action initiated by the City, each applicant must request and consent, on a form provided by the City, that a public hearing be conducted pursuant to this resolution. The request form shall provide that, without condition, the applicant: a) acknowledges that holding a quasi-judicial hearing involving electronic participation presents legal risks and involves an area of legal uncertainty and that the applicant has reviewed this resolution; b) agrees to assume all risk of conducting the quasi-judicial hearing with electronic participation; and c) agrees to defend and indemnify the City in any action arising from or in connection with any alleged deficiency in the conduct of the hearing as a result of electronic participation. If such a request and consent is not provided by the applicant, the public hearing may not be held until an in-person public hearing may be held. In such circumstances, the applicant will be deemed to have consented to a delay in the processing of the related application and the timing of the public hearing.

**4. City Council, Board Member, City Staff and Public Remote Participation.** If an applicant does not agree to electronic participation in a public hearing using electronic means, any City Councilmember, Board member, City staff member, or member of the public electronically participating in a meeting will not be permitted to participate in a public hearing. If the special notice identified in paragraph 5 provided the public with opportunity to attend the meeting remotely, the public hearing must be continued with sufficient notice to allow the public to attend the hearing in-person.

**5. Special Notice Required.** In addition to any notice required by law, the following notice requirements apply:

a. Any agenda including a public hearing that will be conducted remotely must be published at least 3 business days before the hearing (e.g., for a hearing on Monday, the agenda must be posted by Wednesday) and shall include:

i. Materials to be presented by the City and the applicant during the hearing (except for rebuttal materials);

ii. Information about how the hearing will be conducted and how the public can access, observe, and provide testimony for the hearing (including registration requirements); and

iii. Information about how to request paper copies of materials from the City.

The agenda notice will be part of the record. Agendas may be amended. This does not modify the notice requirements of the Land Development Code and will not be deemed jurisdictional.

b. Mailed, published and placard notices (as required by the Land Development Code) for the public hearing shall include a notification that the public hearing may be conducted electronically, that advance registration for testifying will be required, and that information for participation will be provided in the published agenda. Any previously issued notice shall be supplemented to comply with this resolution, but such supplement will not affect the validity of the previously issued ordinance.

## **6. Materials and Testimony – Advance Submission or Registration.**

a. Applicant Materials. An applicant's written presentation materials and exhibits must be submitted at least 5 business days before the meeting to be included in the record. Except for rebuttal materials addressing issues raised by the City or the public, no new presentation materials or exhibits will be allowed.

b. Testimony by the Public. Testimony other than by the applicant, its consultants, and city staff during the public hearing will be limited to written testimony submitted in advance and oral testimony from a registered participant, as follows:

i. Written Testimony. Written testimony must be submitted by mail or through a web-based portal established by the City and identified in the agenda. All written testimony must be received by the deadline established by the clerk or secretary that is published in the agenda. Written testimony received or submitted late will not be entered into the record. The clerk or secretary of the body will amend the published materials specific to the matter to include all timely-received written testimony.

ii. Oral Testimony. Any member of the public desiring to provide oral testimony must register to testify through means established by the City and identified in the agenda. All persons wishing to testify must register by the deadline established by the clerk or secretary that is published in the agenda. Persons who do not register

on time will not be permitted to testify. Speakers must have a reliable phone or internet connection and respond when called upon to testify. The clerk or secretary will provide a list of registered persons to the mayor or chair and will provide speakers with information on connecting to the hearing and providing testimony. Persons who submit written testimony may also provide oral testimony. However, no presentations or exhibits from the public will be accepted during oral testimony by any registered speaker.

**7. Oral Testimony by Applicant and Public.** This section's use of technological terms shall be interpreted according to the capabilities and features of the platform used to conduct the public hearing.

a. The applicant shall appear by video with audio unless only an audio connection is viable and the body consents to an audio-only appearance. The public hearing should be continued in the absence of such consent or if the applicant's connection does not allow the applicant to hear or respond to questions or if the body cannot hear the applicant's presentation.

b. Registered speakers may be limited to audio presentations unless a video connection is technologically feasible and secure. If disconnected or if the connection limits the speaker from being heard, the speaker will forfeit their opportunity to speak unless the body votes to allow the speaker to attempt to re-connect or to continue the public hearing.

c. All presented exhibits and all testimony and questions must be clearly audible and visible (for those using video connections) to the body, City staff, the applicant, and to the public.

d. The applicant and registered speakers must remain muted, with any video disabled, until recognized to speak. Any person who fails to remain muted or uses video, without being recognized, and as a result, disrupts or interferes with the meeting, will forfeit the opportunity to speak and will be disconnected.

e. Once recognized to speak, a registered speaker must promptly state their name and provide their testimony. If the speaker does not promptly begin, the chair may direct the clerk or secretary to mute and disable the video of the speaker and the speaker will forfeit their opportunity to speak. Once a speaker's testimony is concluded or time is expired, the clerk or secretary will mute the speaker and disable the speaker's video.

f. Members of the public providing oral testimony are asked to disconnect from the meeting platform once they have concluded their testimony and should watch the remainder of the hearing and meeting online or on television. The applicant and its witnesses should remain connected until the conclusion of the hearing.

g. The chair may direct the clerk or secretary to mute, disable, or disconnect any speaker whose time has expired or who violates applicable rules.

h. A member of the public may only speak once during the public hearing.

**8. Voting.** All votes by members of a body electronically participating shall be by roll call vote.

**9. Recording.** All public hearings held pursuant to this resolution shall be recorded.

**10. Technical problems.** If the applicant, Board member, or Councilmember informs the relevant body during the hearing of technical issues precluding participation as otherwise available under this resolution, such information will be forthwith transmitted to the Mayor or chair who shall determine whether to continue the hearing to a future date certain. The Mayor or chair has discretion to determine whether to continue the hearing to a future date certain if the electronic participation results in interference in the meeting process; e.g., where the telephone or electronic connection is repeatedly lost, the quality of the connection is unduly noisy, or a participant is unable to hear other speakers using a normal speaking voice amplified to a level suitable for the meeting audience electronically participating.

**11. Limitation.** The City Manager may choose to vacate any public hearing to be conducted by this resolution if and hold the matter in abeyance if the City Manager determines it is not possible or prudent to hold the public hearing by electronic means. City Council may continue a public hearing to a date certain should a public hearing be vacated and held in abeyance. This resolution may not be relied upon during an emergency meeting.

**12. Severability.** If any provision of this resolution or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the resolution that can be given effect without the invalid portion or applications, provided such remaining portions or applications are not determined by the court to be inoperable.

**13. Effective Date.** This resolution shall be effective immediately upon, and only upon, passage of Ordinance 2504.

RESOLVED AND PASSED THIS 3RD DAY OF APRIL 2023.

CITY OF COMMERCE CITY, COLORADO

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Benjamin A. Huseman, Mayor

ATTEST

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Dylan A. Gibson, City Clerk