

ORDINANCE NO. 2291

INTRODUCED BY: ALLEN-THOMAS, FRANK, GRIMES, GUARDIOLA, HURST,
HUSEMAN, MADERA, NOBLE, SMITH

AN ORDINANCE OF THE CITY OF COMMERCE CITY, COLORADO ESTABLISHING ELECTRONIC AND EMERGENCY MEETING PROCEDURES AND AUTHORIZING THE REMOTE CONDUCT OF MEETINGS FOR THE CITY OF COMMERCE CITY DURING CERTAIN DECLARED DISASTERS AND EMERGENCIES AND REPEALING ORDINANCE 2271

WHEREAS, the Governor of the State of Colorado has issued and amended Executive Order D 2020 003, declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado and the City has declared a local disaster emergency due to the presence of COVID-19;

WHEREAS, the presence of COVID-19, and manner in which it is communicated, and in light of the incubation period during which symptoms may not be apparent, continues to pose a threat to the public health and welfare and numerous governmental entities across the state of Colorado have cancelled or restricted public gatherings to reduce the spread of COVID-19;

WHEREAS, pursuant to the Charter of the City of Commerce City ("Charter"), the City Council of the City of Commerce City ("City") has all legislative powers and functions of municipal government as reserved to it by the Colorado Constitution and the laws of the state of Colorado;

WHEREAS, Section 4.24 of the Charter provides that "[a]ll regular and special meetings of the council shall be open to the public and citizens shall have a reasonable opportunity to be heard under such rules and regulations as the council may prescribe," but does not mandate that the physical presence of the public in all circumstances and specifically allows the City Council to determine rules and regulations for citizens to be heard (*see also* Section 4.27 ("The council shall determine its own organization, rules and order of business"));

WHEREAS, C.R.S. 24-6-402(2)(b) requires that "[a]ll meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times," but does not define the phrase "open to the public" or mandate the physical presence of the public or members of the local public body;

WHEREAS, the existence of a disaster or emergency – including an epidemic - as defined by the Charter, Chapter 23 of the Commerce City Revised Municipal Code ("CCRMC"), and or the Colorado Disaster Emergency Act, C.R.S. §§ 24-33.5-701 et seq., as amended ("Disaster" or "Emergency"), presents a situation in which public notice, and likewise, a public forum, would be either impractical or impossible and may present a danger to public health;

WHEREAS, the City Council desires to establish guidelines to ensure that City business can be conducted and all residents can be represented by their elected officials during a declared emergency or disaster without endangering public health, including the health of the public, the City Council, and City staff and the community at large, while retaining a maximum of transparency, openness, and public participation consistent with the City Charter and the Colorado Open Meetings Law;

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

SECTION 1 - FINDINGS. The City Council finds and determines that during that:

- a. During a declared Emergency or Disaster in the City relating to an epidemic or other incident where the nature of the physical environment presents a risk to public health, as a result of the Emergency or Disaster, conducting public meetings in the physical presence of the public is dangerous and requiring the physical attendance of City Council and City staff is impractical, imprudent, and dangerous to the public health;
- b. Conducting meetings in a manner that provides either telephonic or video access to the discussion of public business and formal actions and the ability to comment in writing or by other means and, in emergency situations, allows for emergency meetings with more limited public access to take action that may be ratified at a future public meeting, provides for meetings that are open to the public and a reasonable opportunity to be heard, consistent with the Charter and the Colorado Open Meetings Law; and
- c. The passage of this ordinance is necessary for the preservation of the public health, safety, and welfare for the reasons set forth in this ordinance.

SECTION 2 – ELECTRONIC MEETINGS. During a declared Emergency or Disaster in the City relating to an epidemic or other incident where the nature of the physical environment presents a risk to public health, as a result of the Emergency or Disaster, the chief executive (as defined in CCRMC Chapter 23) is authorized to schedule City Council meetings as electronic meetings if the capacity for such meetings is available, subject to the provisions of this section, including any meeting held at the Civic Center or other location where any or all of the members of the City Council are present.

- a. All City Council members shall be allowed to attend and participate in City Council meetings by such telephonic, video conferencing, or other electronic means as are made available by the City Manager that allow for real-time participation and visibility (audio or video) by the public (“Electronic Means”), as provided herein. Councilmembers may, if permitted by the chief executive based on the availability of resources and if in compliance with applicable public health orders, participate in such meetings from the regular meeting location. The number of Councilmembers present may be limited.
- b. Electronic Means, except where not consistent with the Colorado Open Meetings Law, shall include telephone, video, or web-based conferencing means made available by the City Manager that:

- (1) Allows all councilmembers and City staff to see (to the extent possible), hear and communicate with each other, the City Manager, the City Clerk, and the City Attorney;

- (2) Allows the public to hear and view, if the meeting is visible and the person has adequate technological connection, the meeting, public statements by councilmembers and staff, voting, and materials presented to councilmembers; and
 - (3) Allows for oral public comment, to the extent possible, and written public comment (including before a meeting) that can be visible to the public and City Council as would be allowed by applicable council policies, subject to the limitations of this ordinance and as determined by the mayor to preserve the orderly conduct of the meeting – provided written public comment shall be entered into the record but may be relied upon by any councilmember.
- c. During a meeting held pursuant to this ordinance, members of the public shall not be entitled or permitted to be present in any physical location where the meeting occurs unless some members of the City Council are present and to the extent the chief executive determines that the public's presence can be accommodated in compliance with applicable public health orders, within available resources.
- d. During a meeting held pursuant to this ordinance, Councilmembers shall not engage in any discussions of the business unless such discussions are visible to the public through Electronic Means, except for executive sessions.
- e. All votes shall be conducted in a manner consistent with the City Charter and the Colorado Open Meetings Law. Any votes not conducted as roll call votes must not conceal the identity of the person voting and that person's vote except where permitted by law.
- f. All electronic regular meetings, special meetings, and study sessions of the City Council conducted pursuant to this ordinance shall be recorded.
- g. Minutes of the meeting, where required, shall be taken and promptly prepared for review and approval by the City Council at the next regular or special meeting.
- h. A quorum may be established by the attendance of councilmembers through Electronic Means.
- i. Executive sessions and study sessions may be conducted by Electronic Means if held in accordance with the Colorado Open Meetings Law and City policies applicable to such meetings. Public comment shall not be required during such meetings and confidentiality of executive sessions shall be maintained.
- j. Limitations:
 - (1) If any councilmember's ability to participate by Electronic Means is disconnected or delayed, the City Council may elect to proceed with the meeting provided a quorum remains present.
 - (2) Public hearings on quasi-judicial matters and votes taking quasi-judicial actions during an emergency meeting, as defined below, or electronic meeting shall comply with Resolution 2020-30, as it may be amended or replaced consistent with this ordinance and in conformance with the requirements of the Charter, CCRMC, and the requirements of due process.
- k. In the discretion of the chief executive and subject to the availability of resources, boards and commissions, the boards of any general improvement districts, and the Commerce City Urban Renewal Authority may conduct meetings through electronic

meetings pursuant to this ordinance. Any meeting of a board or commission exercising quasi-judicial authority must be recorded.

SECTION 3 – EMERGENCY MEETINGS. In case of an emergency requiring immediate action of the City Council to protect public health, safety or welfare, the City Council may convene an emergency meeting without any advance public notice or with such limited advance public notice as the mayor finds feasible in the circumstances. Such meetings may be held pursuant to this ordinance. At such emergency meeting, the City Council may take any action within its authority that is necessary for the immediate protection of public health, safety or welfare; provided however, that any action taken at the emergency meeting shall be effective only until the next meeting that complies with the advance notice requirements of the Colorado Open Meetings Law. At that next meeting, the City Council may ratify any action taken at the emergency meeting. The agenda and posted public notice for that next meeting shall include the question of ratifying such emergency action. If the City Council fails to ratify any such emergency action taken, that action shall be deemed rescinded but shall remain effective for the period of time from its approval until its rescission.

SECTION 4 – EFFECT ON EXISTING LAWS; REPEAL. All ordinances, resolutions, and policies of the City that are inconsistent with this ordinance are superseded by this ordinance to the extent of such inconsistency. Ordinance 2271 is hereby repealed.

INTRODUCED, PASSED ON FIRST READING, AND PUBLIC NOTICE ORDERED
THIS 5TH DAY OF OCTOBER 2020.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 2ND DAY OF NOVEMBER 2020.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk