

RESOLUTION NO. 30
SERIES 2020

**A RESOLUTION REGARDING QUASI-JUDICIAL HEARINGS AT MEETINGS
CONDUCTED BY ELECTRONIC PARTICIPATION**

WHEREAS, on March 15, 2020, the Mayor of the City of Louisville, pursuant to Chapter 2.32 of the Louisville Municipal Code and C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Louisville (the “Mayor’s Declaration”) in response to the widespread pandemic Novel Coronavirus (COVID-19); and

WHEREAS, by Resolution No. 27, Series 2020, adopted on March 16, 2020, the City Council continued in effect the Mayor’s Declaration until terminated by resolution of the City Council; and

WHEREAS, by Resolution No. 26, Series 2020, also adopted on March 16, 2020, the City Council amended its Rules of Procedure to provide for electronic meeting participation in certain situations, including when meeting in person is not practical or prudent due to a health epidemic or pandemic; and

WHEREAS, on March 25, 2020, the Governor of the State of Colorado issued Executive Order 2020-17, ordering the Colorado Department of Health and Environment (“CDPHE”) to issue a state-wide “Stay at Home” public health order; and

WHEREAS, also on March 25, 2020, the CDPHE issued an Amended Public Health Order 20-24 Implementing Stay at Home Requirements, which Order has since been updated twice, and which Order requires all individuals currently living within the State of Colorado to stay at home whenever possible, and only to leave to perform or utilize “Necessary Activities,” as defined in the Order; and

WHEREAS, by Resolution No. 29, series 2020, adopted on March 31, 2020, the City Council authorized boards, commissions, and committees established by the City Council (“Appointed Bodies”) to also hold meetings by electronic participation when meeting in person is not practical or prudent due to a health epidemic or pandemic; and

WHEREAS, the City Council Rules of Procedure, as amended by Resolution No. 26 do not permit quasi-judicial hearings be held at electronic meetings; and

WHEREAS, Appointed Bodies also may not hold quasi-judicial hearings at electronic meetings unless and until the City Council adopts a resolution establishing guidelines for such

matters that confirm with the requirements of the City's Home Rule Charter, the Louisville Municipal Code, and constitutional due process requirements; and

WHEREAS, current available information indicates the City Council and Appointed Bodies may not be able to meet in person for an extended period of time and thus the nature and extent of the COVID-19 Pandemic is extraordinary; and

WHEREAS, the City Council finds that holding quasi-judicial hearings constitutes an important function of City government; that not holding such hearings for an extended period of time may present a burden to City residents, property owners, and businesses; and that the public health, safety, and welfare of the City will best be secured and protected during this COVID-19 Pandemic by permitting quasi-judicial hearings to proceed at electronic meetings in accordance with the procedures set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The amended City Council Rules of Procedure are hereby approved in the form accompanying this Resolution.

Section 2. The City Council and Appointed Bodies are hereby authorized to hold quasi-judicial hearings at a meeting by Electronic Participation, subject to the procedures set forth in this Section 2; provided, however, no quasi-judicial hearing shall be held for any matter the decision of which is subject to referendum.

A. **Applicant's Written Request.** In the event a pending quasi-judicial matter is scheduled for a public meeting to be conducted by Electronic Participation, or an applicant wishes to request an as-yet unscheduled hearing be conducted by Electronic Participation, a written request shall be made on a form provided by the City. The applicant shall acknowledge that holding a quasi-judicial hearing by Electronic Participation presents certain legal risks and involves an area of legal uncertainty, and the applicant shall agree that moving forward with a quasi-judicial hearing by Electronic Participation shall be at their own risk. Land use applicants shall additionally agree to defend and indemnify the City in any action that may arise out of, or in connection with, conducting the hearing by Electronic Participation.

B. **City Manager to Determine Suitability of Conducting Quasi-Judicial Hearing by Electronic Participation.** The procedures adopted by this Resolution create no right in any party to a quasi-judicial matter to have a hearing conducted by Electronic Participation. Upon receipt of a written request, the City Manager or their designee shall

determine whether the City has the capability to hold the particular type of hearing by Electronic Participation, what available form of Electronic Participation is most appropriate for the type of hearing, and set date(s) for the hearing(s). Such hearings shall be open to the public and provide the ability for interested members of the public to join the hearing electronically. The method chosen by the City Manager or their designee shall ensure the public has the ability to view or listen to the hearing in real time and interested parties may speak. If at any point the City Manager or their designee determines it not possible or prudent to hold the hearing by Electronic Participation, whether due to technical issues or an inability to do so while meeting constitutional due process requirements, the hearing shall be vacated and the matter will be held in abeyance until in-person meetings have resumed.

C. Notice Requirements.

1. The required notice for the hearing and the agenda for the meeting at which the hearing will be held shall each include information about how the hearing will be conducted and how the public can access, observe, and participate in the hearing. If such notice as required by the Louisville Municipal Code or otherwise by law has already been provided for a hearing to be held in person, such additional notice shall be given as to reasonably inform interested persons that such hearing will instead be held by Electronic Participation; provided, however, this additional notice shall not be deemed jurisdictional.

2. The notice shall advise that relevant documents will be made available online, that any interested party may contact the City Clerk to receive a paper copy if unable to access the online documents, and that the City will reasonably accommodate interested parties who lack necessary equipment or the ability to access equipment. Interested parties will be encouraged to submit written comments in advance of the hearing, which comments will be made a part of the record of the hearing.

D. Documents. The City Clerk or Secretary of the applicable board or commission shall set deadlines for submission of documents depending on the nature of the hearing. Materials relevant to the hearing, including but not limited to materials related to specific applications and other documents to be shown electronically during the hearing, will be made available online at least 72 hours in advance for public inspection prior to, during, and after the hearing.

E. Hearing Procedures. At the outset of the hearing, the presiding officer of the Public Body shall describe the hearing procedure, including how testimony and

public comment will be received. The applicant shall be given an opportunity to object to the hearing procedure. The presiding officer shall rule on any such objection, and the decision of the presiding officer shall be final.

F. Record. The City Clerk or Secretary of the applicable board or commission shall ensure that all equipment used for the hearing is adequate and functional for allowing clear communication among the participants and for creating a record of the hearing as required by law. Provided, however, the City Clerk or Secretary shall not be responsible for resolving any technical difficulties incurred by any person participating in the hearing.

PASSED AND ADOPTED this 7th day of April, 2020.

Ashley Stolzmann, Mayor

ATTEST:

Meredyth Muth, City Clerk

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