

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

**NO. 2020-30**

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, the City Council has enacted Ordinance 2271 authorizing the conduct of City Council meetings conducted by Electronic Means during certain declared emergencies or disasters, but a resolution is require to establish guidelines for public hearings on quasi-judicial matters and related votes to ensure conformance with the requirements of the Charter, the Commerce City Revised Municipal Code, and the requirements of due process;

WHEREAS, the City Council finds that this resolution establishes guidelines to ensure that public hearings may continue during prolonged emergencies 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;

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 Ordinance 2271, as it may be amended, and supplements Council Policies CP-20 and CP-22 and any other policy related to public hearings when a public hearing, as defined in CP-22, is conducted by Electronic Means as provided in Ordinance 2271. All other provisions of applicable Council Policies will apply to a public hearing held pursuant to this resolution to the extent not in conflict with this resolution and Ordinance 2271. References to the “body” means the City Council or applicable board or commission.

**2. Applicant Agreement.** Except for any public hearing held 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 by electronic means presents legal risks and involves an area of legal uncertainty and that the applicant has reviewed this resolution; b) agrees that the applicant assumes all risk of conducting the quasi-judicial hearing by electronic means; 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 the use of electronic means. If such a request and consent is not provide, no public hearing will be held until in-person meetings resume and the applicant will

be deemed to have consented a delay in the processing of related application and the timing of the public hearing.

**3. 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.

**4. Public Testimony – Advance Submission or Registration.** 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 previously-registered participant, as follows:

a. For **written testimony**, submit written testimony by mail or through a web-based portal established by the City and identified in the agenda. All written testimony must be received a 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.

b. For **oral testimony**, register to testify through means to be established by the City and identified in the agenda. All persons wishing to testify must register by a deadline to be 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. Persons who submit written testimony may also provide oral testimony. The clerk or secretary will provide a list of registered persons to the chair and will provide speakers with information on connecting to the hearing and providing testimony.

c. **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.

d. No presentations or exhibits other than rebuttal exhibits from the applicant or the City will be accepted during oral testimony by the applicant or any registered speaker.

**5. Oral Testimony by Applicant & 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. Speakers 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 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.

**6. 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. This resolution may not be relied upon during an emergency meeting, as permitted by Ordinance 2271, as it may be amended.

**7. 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.

RESOLVED AND PASSED THIS 20TH DAY OF APRIL 2020.

CITY OF COMMERCE CITY, COLORADO



*Benjamin A. Huseman*  
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Benjamin A. Huseman, Mayor

ATTEST

*Dylan A. Gibson*  
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Dylan A. Gibson, Deputy City Clerk