

Subject: Consent Agenda Item

Staff Member: Kathleen Kelly, City Attorney

g. Resolution 20-34, approving a Policy regarding Electronic Participation for Public Meetings and Quasi-Judicial Hearings during Emergency Situations

At the special City Council meeting held on March 18, 2020, the City Council adopted Resolution No. 20-25, which adopted a policy regarding Electronic Participation in Public Meetings during Emergency Situations (the “Electronic Meeting Policy”) so that City Council and other boards and commissions could continue to meet during the City’s facility closure as a result of the COVID-19 Pandemic. At this time, the Electronic Meeting Policy does not permit the City Council or other boards and commissions to conduct quasi-judicial hearings at meetings conducted by Electronic Participation.

Adoption of Resolution 20-34 will expand the Electronic Meeting Policy to allow applicants with pending quasi-judicial applications to request the City schedule their application for a hearing at a meeting held by Electronic Participation. As with the original policy, meetings and quasi-judicial hearings will only be held by Electronic Participation when there is an Emergency Situation, defined in the Policy as when “meeting in person is not practical or prudent due to a health epidemic or pandemic or other emergency affecting the City.”

The expanded Policy contains several procedures intended to satisfy constitutional due process requirements of notice and a fair hearing before an impartial decision-making body. The procedures have also been drafted so as to provide some administrative flexibility moving forward. Holding quasi-judicial hearings electronically is a new and untested procedure that may require some refinement and City staff may face unexpected challenges when preparing for electronic hearings.

Electronic quasi-judicial hearings will be optional at the request of the applicant and applicants will be required to acknowledge the legal risk involved and agree to proceed electronically at their own risk. Because of the heightened risk involved with land use applications, those applicants must

also agree to defend and indemnify the City in case of any legal challenge arising from holding the hearing electronically. If an applicant does not want to take the risk, or will not agree to the conditions in the Policy, the matter will not be scheduled until an in-person hearing can be provided. Also, if at any point there are technical or other challenges that make it no longer feasible or prudent to hold the hearing electronically, the City Manager or their designee can vacate the electronic hearing.

RESOLUTION NO. 20-34

A RESOLUTION ADOPTING A POLICY REGARDING ELECTRONIC PARTICIPATION FOR PUBLIC MEETINGS AND QUASI-JUDICIAL HEARINGS DURING EMERGENCY SITUATIONS

WHEREAS, the Novel Coronavirus 2019 (COVID-19) Pandemic is causing widespread human and economic impacts to the City of Dacono; and

WHEREAS, on March 10, 2020, the Governor of the State of Colorado issued a Declaration of Statewide Emergency in response to COVID-19; and

WHEREAS, on March 17, 2020, the Mayor of the City of Dacono, pursuant to C.R.S. § 24-33.5-709, executed an Order Declaring a Local Disaster Emergency in and for the City of Dacono (the “Mayor’s Declaration”); and

WHEREAS, on March 18, 2020, the City Council adopted Resolution 20-25, which continued in effect the Mayor’s Declaration, adopted a policy regarding Electronic Participation in Public Meetings during Emergency Situations, and approved a continuity of operations plan; and

WHEREAS, current available information suggests the City Council, Planning Commission, and other boards and commissions established by the City Council 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 applicants who wish to proceed with quasi-judicial hearings at electronic meetings to do so in accordance with the policy regarding Electronic Participation for Public Meetings and Quasi-Judicial Hearings during Emergency Situation, a copy of which accompanies this resolution..

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

Section 1. The policy entitled “Electronic Participation for Public Meetings and Quasi-Judicial Hearings during Emergency Situations,” a copy of which is attached hereto and incorporated herein by this reference, is hereby adopted.

Section 2. All other resolutions or portions thereof inconsistent or conflicting with this resolution, or the policy adopted hereby, are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, and ADOPTED this 13th day of April, 2020.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

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**ELECTRONIC PARTICIPATION
FOR PUBLIC MEETINGS AND QUASI-JUDICIAL HEARINGS
DURING EMERGENCY SITUATIONS**

I. Purpose.

The purpose of this Policy is to specify the circumstances and means by which the City Council, Planning Commission, and other boards and commissions appointed by the City Council (each a “Public Body”) may conduct regular and special meetings and quasi-judicial hearings by telephone or other electronic means of participation, such as video-conferencing, that is clear, uninterrupted, and allows two-way communication for the participating members (“Electronic Participation”).

Electronic Participation has inherent limitations because Electronic Participation can limit or preclude contemporaneous observation of documentary information presented during meetings; full evaluation of a speaker’s non-verbal language in assessing veracity or credibility; and observation of non-verbal explanations during a speaker's presentation or testimony. The City Council finds that these limitations, inherent in electronic participation, may produce inefficiencies in meetings, increase the expense of meetings, and encumber the decision-making process. As such, the policies contained herein shall only be used in Emergency Situations (defined below).

II. Statement of General Policy.

A Public Body shall not conduct a regular or special meeting or quasi-judicial hearing by Electronic Participation except when authorized by, and when held in accordance with, this Policy. All such meetings and hearings shall be open to the public by providing the ability for interested members of the public to join the meeting and/or hearing by electronic means.

III. Use of Electronic Participation; Limitations.

A. Limited to Emergency Situations.

In the event meeting in person is not practical or prudent due to a health epidemic or pandemic or other emergency affecting the City (“Emergency Situation”), regular or special meetings and quasi-judicial hearings may be conducted by telephone, electronically, or by other means of communication so as to provide maximum practical notice and participation.

B. Meetings.

Meetings may be held by Electronic Participation if all of the following conditions are met:

1. The City Manager or the Mayor determines that meeting in person is not practical or prudent because of the Emergency Situation affecting the City;

2. All members of the applicable Public Body, and at least one City staff member can hear one another or otherwise communicate with one another and can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation;

3. Members of the public can hear the Public Body's proceedings and are afforded opportunities to participate in public comment;

4. All votes are conducted by roll call;

5. Minutes of the meeting are taken and promptly recorded, and such records are open to public inspection;

6. To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, the fact that some or all members of the applicable Public Body may participate by Electronic Participation, and the right of the public to monitor the meeting from another location. When an Emergency Situation exists, as determined by the City Manager or Mayor, public notice may be given only on the City's official website, and need not be posted at established physical posting locations; the fact that such notice was not physically posted shall not invalidate any action taken at the subject meeting.

C. Quasi-Judicial Hearings.

1. Intent. It is the intent of this Policy that, to the extent reasonably possible, Public Bodies conduct quasi-judicial hearings by Electronic Participation in a manner that reflects, to the greatest extent practicable, hearings conducted in person.

2. Applicant's Written Request. In the event a pending quasi-judicial matter is scheduled for a public meeting to be conducted by Electronic Participation and the applicant wishes to proceed with the hearing at such meeting, 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 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.

3. City Manager to Determine Suitability of Conducting Quasi-Judicial Hearing by Electronic Participation. This policy creates no right in any party to a quasi-judicial hearing to have such 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 is 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.

4. Notice Requirements.

a. 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 Dacono 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.

b. 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.

5. 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.

6. 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 and any other party with a legally protected interest 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.

7. 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.

D. Executive Sessions.

In the event that a Public Body holds an executive session pursuant to C.R.S. § 24-6-402, participants shall be authorized to attend by Electronic Participation. Any executive session conducted under this Policy shall be recorded electronically as required by statute.

IV. Arranging for Electronic Participation.

A. The City Manager shall contact Public Body members at least twenty-four hours in advance of a regular or schedule meeting to provide notice that a meeting will be conducted by Electronic Participation pursuant to this Policy. Public notice of such meeting may be provided by posting the meeting notice physically, or electronically as described in Section III.B.6.

B. The City shall initiate the Electronic Participation not more than fifteen (15) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the City Clerk or Secretary of the applicable board or commission shall make at least three attempts to re-initiate the connection. If the connection cannot be re-established, all matters scheduled for such meeting, including any quasi-judicial hearings, shall be deemed continued to the next regular meeting of the Public Body.

V. Limited Applicability of Policy.

This Policy shall only apply to regular and special meetings (including work sessions) of the Public Bodies listed in Paragraph I, unless otherwise provided by the City Council.

VI. Reasonable Accommodations.

Provisions of this Policy may be waived or modified to provide reasonable accommodations to persons with disabilities.