

QUASI -JUDICIAL PROCEEDINGS

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~~STUDY SESSION DRAFT~~
~~CITY OF LITTLETON, CITY COUNCIL~~
~~APRIL 10, 2018~~

~~Note: All these rules are new, they are not a statute or code~~

~~POLICY FOR QUASI-JUDICIAL PROCEEDINGS BEFORE THE CITY OF LITTLETON, COLORADO CITY COUNCIL ("COUNCIL")~~

1. Application

- A. This policy shall apply to the ~~City~~ ~~Council~~ and all ~~B~~boards and ~~C~~ommissions of the City of Littleton in exercising their responsibilities in quasi-judicial matters. For purpose of this policy, "~~City Clerk~~" shall mean the ~~City Clerk~~ and the ~~Clerk/Recording Secretary~~ of any quasi-judicial ~~B~~board or ~~C~~ommission of the ~~City~~. "~~Council~~" shall mean the ~~City Council~~ and any ~~B~~board or ~~C~~ommission of the ~~City~~ when acting in a quasi-judicial capacity. Mayor shall mean the ~~M~~ayor (or any ~~C~~council member chairing a ~~City Council~~ meeting in the ~~M~~ayor's absence) or any ~~C~~hairperson of any ~~B~~board or ~~C~~ommission of the ~~City~~ when acting in a quasi-judicial capacity.
- B. These guidelines are for information purposes only, and shall not impose upon the ~~C~~council and any ~~B~~board or ~~C~~ommission having responsibility in a matter any legal requirements greater than those imposed by applicable law. The ~~C~~council is authorized to deviate from these guidelines, provided the resulting procedure complies with applicable law. No deviation from these guidelines shall be considered a failure of the ~~C~~council to follow its own rules, policies or procedures. These guidelines are intended for contested quasi-judicial proceedings. City staff with the consent of the ~~M~~ayor are specifically authorized to place uncontested quasi-judicial matters on the consent agenda, in which case the agenda package shall be deemed to be admitted into evidence in support of the ~~C~~council's decision.

2. Parties

The parties to a quasi-judicial proceeding shall be the ~~C~~city, the applicant or person whose property or interests are directly involved in the matter ("~~applicant~~"), and, only if permitted by applicable law, any person or entity which has formally intervened in the proceeding ("~~intervener~~")who is a person that meets a statutory, charter or code requirement that grants them intervener status.

3. Pre-Hearing Matters

- A. As soon as staff becomes aware of a quasi-judicial matter which will probably come before the Council for decision, staff shall notify the Council of this fact, by email or other acceptable means. The notice shall set forth the matter and the nature of the issues involved, and shall generally remind council members of the requirements of these guidelines.
- B. Ex Parte Communications. Once Council members ~~once they~~ have received notice ~~they~~ shall not engage in in ex parte communications with city staff, parties or other interested persons or ~~conduct~~ investigations, or seek ~~Expert~~ opinions, except through Council action taken at a properly noticed public meeting. Investigations and expert opinions shall be arranged through the Community Development Department. ~~Individual~~ Council members shall disclose any site visits in the official record of the proceedings.

4. Hearing Matters

- A. Fair and Impartial Decision-Makers. Each Council member shall keep an open mind and shall base his or her decision on the evidence presented at the hearing, in the public record, and in accordance with the applicable law. Accordingly, council members shall refrain from making any public statements prior to the hearing, for or against the application. If, because of conflict of interest, bias or other factors, a council member does not have an open mind and cannot base his or her decision on the evidence and applicable law, the council member should advise the Council of this fact, and withdraw from any further participation in the proceedings. A Council member that has been excused from participation for this reason shall not participate in any way in subsequent proceedings, and shall not be present in any public hearings related to the application.
- B. Council Member Disclosures. If a Council member has engaged in ex parte communications (written or verbal), made any site visits, conducted any investigations, or consulted with any experts prior to the hearing except as provided under this policy, the council member shall disclose such ex parte communications, site visits, investigations or consultations at the start of the hearing. Specifically, ~~(i)~~ with respect to ex parte communications (including consultations with experts), the council member shall disclose the subject of the communication and the identity of the person or group with whom the communication took place. If the communication was in writing and was actually read by the council member, a copy of the written communication shall be given to city staff and included in staff's file on the matter. The written communication shall be available for public inspection prior to the hearing, shall be given by city staff to the clerk at the start of the hearing, and shall be made a part of the record, ~~and (ii).~~
~~With respect to site visits and other investigations, the council member shall disclose the fact of such visits and investigations, and any findings made or information obtained. Any council member disclosing such matters shall confirm at the start of the hearing whether he or she has an open mind and is able to base his or her decision on the evidence presented at the hearing and the applicable law.~~
- C. Rules of Evidence. The formal rules of evidence shall not apply. Generally, any evidence which is relevant to the issues will be admissible, and concerns relating to the reliability or trustworthiness of the evidence (e.g., hearsay) will ~~be considered by the body in their evaluation. go to the weight to be given the evidence.~~ Objections to evidence shall be resolved as a procedural decision by the Mayor.

- D. Role of the City Attorney. The City Attorney's Office shall be responsible for conformance to the Colorado Rules of Professional Conduct for lawyers as promulgated by the Colorado Supreme Court. In a contested quasi-judicial hearing where the City Attorney has been involved in the representation of the City department enforcing a matter, the City Attorney may retain special legal counsel to represent the Council.
- E. Decorum of Proceedings. Quasi-judicial proceedings are ~~serious,~~ formal business meetings of the Council, and all parties and other participants are expected to act in a courteous and respectful manner. Loud, rude or disruptive behavior, or outbursts in support of or opposition to statements made by others, will not be tolerated. The Mayor shall maintain the decorum of the proceedings.
- F. Order of Proceedings. After Council member disclosures, the order of proceedings shall be as follows:
1. Record. The Mayor shall ask the City Clerk if the record has been filed. The record shall consist of all documents, including but not limited to electronic communications filed and received by the City Clerk prior to 5:00 p.m. of the date of the hearing. The Council shall not review or consider any written document received after 5:00 p.m. of the date of the hearing, unless the document is introduced and accepted into evidence at the hearing. Should a Council member receive an e-mail from a citizen in a matter prior to 5:00 p.m. on the date of the hearing, the Council member shall immediately forward the e-mail to the City Clerk and the staff department for inclusion in the record. All council members shall have access to the filed official record.
 2. Staffs Presentation. Staff makes its presentation. Unless there is an objection and the objection is sustained, the agenda package and any power point presentation made by staff shall be deemed to be admitted into evidence. ~~Questions from Council Members.~~ Council members are encouraged to ask questions or raise issues at the conclusion of the staff's presentation.
 3. The Applicant's Presentation. The applicant makes his or her presentation. If the Applicant has attachments, power points or materials, they should be provided to the Clerk for inclusion into the record, unless there is an objection to their inclusion in the record. The Presiding Officer shall rule on all objections and if the objection is sustained, the materials shall not be included in the record and shall not be used at the hearing. ~~Questions from Council members.~~ Council members are encouraged to ask questions or raise issues at the conclusion of the Applicant's presentation.
 4. Each Intervener's (if any) Presentation. Each intervener (if any) makes his or her presentation. If the intervener has attachments, power points or materials, they should be provided to the Clerk for inclusion into the record, unless there is an objection from another party to their inclusion in the record. The Presiding Officer shall rule on all objections and if the objection is sustained, the materials shall not be included in the record and shall not be used at the hearing.
 5. Questions from Council Members. Council members are encouraged to ask questions or raise issues at the conclusion of the intervener's presentation.

6. Presiding Office shall open the Public Hearing.
 - a. Witnesses Called. The City Clerk shall collect a public comment form identifying the witnesses by name and address. However, addresses, phone numbers and e-mail addresses are deemed personal identifying information and not subject to public disclosure. Attorneys appearing for a party shall not be required to complete a public comment form, but shall identify themselves, their firm and the party that they represent.
 - b. Input from Members of the Public. Members of the public may address the Council. The Council has adopted Rules of Procedure providing for each member to have three minutes to address the council. If a member of the public is presenting written information, it should be provided to the City Clerk for inclusion into the official record. Members of the public are encouraged to bring sufficient copies for all members of the Council and the applicant. Members of the public are not parties to the proceeding.
7. Final Presentations by the Parties. Each party has a final opportunity to present rebuttal evidence, in the following order:
 - a. Staff;
 - b. Each intervenor (if any);
 - c. The applicant, who shall have the right to make the final presentation;

~~d.~~

Parties may waive their final presentations.
8. Record. The Mayor orders the admission of all exhibits and testimony and confirms that all records and other tangible evidence are in the possession of the City Clerk;
9. Close the public comment portion of the Public Hearing. The Mayor orders the public comment portion of the Public Hearing closed

5. Decision by the City Council

- A. Decision. The City Council deliberates and makes its decision based on substantial, competent evidence presented at the hearing and the applicable law.
- B. Substantial, Competent Evidence. "Substantial" evidence is evidence which provides a factual basis from which a fact in issue may reasonably be inferred. "Competent" evidence is evidence which is sufficiently relevant and material to the ultimate question that a reasonable person would accept it as adequate to support the conclusion reached. Relevant, fact-based statements, whether from experts or not, generally constitute competent evidence. General statements of support or opposition to a project, standing alone, do not constitute competent evidence.
- C. Essential Requirements of Applicable Law. The City Council decision shall also be consistent with the essential requirements of applicable law. The City Attorney will advise

the Council with respect to the essential requirements of applicable law.

- D. Written Order. If the decision of the Council is required by law to be set forth in a written order, the order shall promptly be prepared by the City Attorney, signed by the Mayor and filed with the City Clerk.

NOTICE OF UPCOMING QUASI-JUDICIAL MATTER

To: City Council members

This is to advise of a quasi-judicial matter which may/will come before the Council. The applicant is [insert legal name of applicant] and the matter is [insert type of matter]. Please remember that

- If you engage in any ex parte communications, you must be prepared to disclose at the hearing the subject of the communications and the identity of the person or group with whom the communications took place;
- If you engage in any individual site visits or other individual investigations, you must be prepared to disclose at the hearing the ~~fact of such visits or~~ investigations and **you must be prepared to disclose the fact of such visits or investigations, and** any findings made and information obtained; and
- If you receive and actually read any written communications, you must promptly give a copy of the written communications to the planning department staff.

Also, please remember that you must keep an open mind on the matter and base your decision on substantial, competent evidence presented at the hearing, and applicable law. Accordingly, you should refrain from making public statements prior to the hearing, for or against the application.