



Legislation Text

File #: Ordinance 25-2018, **Version:** 2

Agenda Date: 08/07/2018

Subject:

An ordinance on second reading amending city charter section 27 regarding council meetings

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| Presented By: Steve Kemp, City Attorney |
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REQUESTED COUNCIL ACTION:

Does city council support amending city charter section 27 regarding council meetings?

BACKGROUND:

The Littleton City Charter was adopted in 1959. Amendments were made in 1969, 1975, 1987, 1991, 1997, 2004, 2013 and 2015. The Charter Review Committee of 2015 recommended ten amendments be placed on the ballot, seven of which were approved by the voters. There were an additional 20 amendments recommended to city council that were not placed on the ballot.

PRIOR ACTIONS OR DISCUSSIONS:

Study session was held on May 22, 2018. The ordinance passed on first reading at the July 17, 2018 regular meeting of the city council.

STAFF ANALYSIS:

The proposed amendments pertain to the permitted reasons for executive sessions. As a result of voter approval of a 2013 ballot initiative, the council may only have an executive session for information that is confidential under federal or state statute or to discuss actual litigation filed in a court. These limitations create a number of significant problems, for example:

1. The council may not have an executive session to discuss protocols for dealing with an active shooter in the council chamber or Littleton Center. This type of education would occur in an executive session. The lack of education can result in a lack of knowledge and panic should such an event happen. Education and training in such areas is one of the best ways to prevent panic and save lives.
2. The lack of ability to discuss the purchase and sale of real and personal property and obtain instructions for negotiations from the council as a body. The council does not act as individuals, but as a body. The current practice of holding individual meetings with council members deprives the body as a whole of the discussion and thought processes of each member. Engaging in discussions in open session raises the problem of negotiating with a seller to buy property and telling the seller at the start of negotiations how much the city is prepared to pay. However, formal action regarding such matters should occur in open session.

3. The council may not discuss personnel matters pertaining to the appointment, evaluation and termination of a council appointed officer (city manager, city attorney, presiding municipal judge). The current provision forces the city to delegate extensive responsibility to outside consultants in order to maintain confidentiality of the interview process or risk qualified candidates deciding not to participate. The process actually operates to diminish transparency and openness since the public is not aware of the delegation and discussion. An extensive discussion with individual council members denies the council as a whole the input of each other and increases the likelihood of serial meetings outside of public view. The ability to hold executive sessions does not foreclose public input as many cities provide for public meet and greet of the candidates and the actual appointment must be approved in an open council meeting.
4. The council may not seek and receive legal advice from its attorney in executive session. This raises a number of issues. First, the attorney has an ethical duty in every state, including Colorado, to maintain the confidentiality of their advice. However, there is no way for the attorney to provide advice to the body and maintain its confidentiality.

Second, the assertion that the attorney may talk to individual council members about the advice is a fallacy as the attorney represents the body, not individual council members. Third, on decisions that belong to the client, an attorney may only act based on the instructions of their client, which in the case of the city is the council as a body. Under the current charter provision there is no means for the attorney to obtain instruction from the client except in an open public session. This charter provision conflicts with the attorney's duty to protect client confidences. One-on-one discussions with council members do not resolve this issue, as the attorney is deprived of the client's instruction, which is the council as a body. More importantly, it is at odds with openness and transparency, since the public is unaware that the members of the public body are consulting with their attorney. The fact that a client is consulting with their attorney is not privileged.

The proposed language is more restrictive than Colorado law; it limits executive sessions under this provision to discussions with the attorney to formulate legal questions and advice and contains protections against attempts to use this to defeat the public's right to know of the outcome of such discussions.

OPTIONS/ALTERNATIVES:

- A. Approve the proposed ordinance on second reading amending section 27 of the city charter and referring the matter to the voters of the city for approval.
 - B. Don't approve the proposed ordinance on second reading amending section 27 of the city charter.
- Draft Amendment** - Council member Elrod has expressed interest in council considering an amendment to this proposed ballot measure. The amendment would be as follows:
- C. I move that ordinance No. 25-2018 be amended by adding the following language to proposed subsection 4 of Section 27: an executive session under this subsection may only be held by a majority vote of a quorum present plus one vote.

FISCAL IMPACTS:

N/A

STAFF RECOMMENDATION:

While the merits of a charter change are a council policy decision, staff does note that the current provisions have negative impacts on discussion pertaining to security, purchase and sale of real property, evaluation of

council appointees and the provision of legal advice to the council.

PROPOSED MOTION:

I move to approve the ordinance on second reading amending city charter section 27 regarding council meetings.