



# CITY COUNCIL ORIENTATION

Reid B. Betzing  
City Attorney  
November 14, 2023

# Legal Considerations

- a. Council Actions (Proclamations, Recognitions, Motions, Resolutions, and Ordinances)
- b. Quasi-Judicial vs Legislative Proceedings
- c. Open Meetings Law
- d. Colorado Open Records Act
- e. Protocols and Standards of Conduct
- f. Legislative Rules
- g. Ethics

# City Charter and City Code

- Littleton Is A Home Rule Municipality
  - Colorado cities are either statutory cities or home-rule. The City of Littleton is a home-rule municipality. Article XX of the Colorado Constitution allows for certain cities to reserve for themselves the full right of self government in local and municipal matters when not in conflict with state laws. To this end the citizens have adopted a Charter which essentially acts as the City's constitution.
  - Can be only be changed by a vote of our citizens.
- Littleton's City Code serves as the local laws, or statutes
  - Establishes the law and policy for Littleton
  - As a "home-rule" city, Littleton may enact local laws that differ from State statutes (meaning we can be more restrictive, but not less restrictive that what the state allows).

# Legislative vs Quasi-judicial

- LEGISLATIVE:

City Council acts in both a “legislative” and “quasi-judicial” capacity depending on the subject matter. Lately in terms of code revisions we are acting in a legislative capacity. Since legislative action involves the political process and matters of policy, Commissioners often speak *ex parte*, essentially meaning “outside of party” with interested parties or citizens concerning the merits of a particular legislative proposal. *Ex parte* communications related to proposed legislation, and not involving quasi-judicial hearings, are not only appropriate and welcome, but can even be considered necessary and a vital part of the democratic process in which laws are conceived, formulated, and adopted or rejected.

## QUASI JUDICIAL:

In contrast to the Council’s exercising of “legislative” authority, the Council may deal with site-specific land use applications. when dealing with site specific land-use matters exercising “quasi-judicial” authority which typically affects a specific applicant’s property interests.

# Quasi-Judicial Requirements

Quasi-judicial actions act upon specific individual interests or rights (in contrast to the broad application of a new law that affects the population in general) and, as such, due process requires certain safeguards.

Those safeguards include:

- (1) notice;
- (2) a public hearing;
- (3) an opportunity to be heard by decision-makers who are unbiased and haven't prejudged the issues; and
- (4) a decision based only upon the record of the evidence (the application, staff report, testimony, exhibits, etc.) in reaching their decisions.

## Quasi-Judicial Role



- Think "Judge – Courtroom"
- Would you want your judge to be talking to other people outside of your trial?

# Quasi-Judicial Guidelines

After notice of the hearing by staff, Council members shall not:

- Engage in any *ex-parte* communications with City Staff, applicants, interested parties, or other interested citizens.
- Make your own independent investigations or obtain expert opinions.
- If you undertake a site visit or communicate with others, you must inform staff and disclose this during a public meeting.

# Quasi-Judicial

- Ex Parte Communications
- *Ex parte*: from the Latin language, “on one side only...” means off the record comments between a member of a quasi-judicial decision-making entity and representatives of the applicant, members of the public, or other members of the Council.
- Deprives the applicant of due process.



## Responding to Constituents

- “Dear \_\_\_\_\_, As this is a quasi-judicial matter I am prohibited by law from discussing this matter with you outside of the actual public hearing. I will forward your email to the City Clerk so it can become part of the record for the public hearing for our consideration. You are welcome to attend and provide comments at the hearing.”

# Quasi-Judicial Order of Proceedings

1. Staff Presentation
2. Applicant Presentation
3. Public Comment
4. Motion and Discussion
5. Decision by public vote

## Quasi-Judicial Hints

- Ask Questions. No stupid questions.
- Think about if your question is relevant to the criteria.
- Base your vote on the criteria.
- It's fine to say in your summation that you agree with the staff report. These are your experts.
- If you don't, then say you don't feel it meets X b/c of Y.
- Run amendments through legal if possible.

# Council Rules of Procedure

- Authority, Board, and Commission Handbook
- Council's Legislative Rules
- Robert's Rules of Order
- Council Standards of Conduct and Protocol

# Colorado Sunshine Law and Open Meetings

- C.R.S. § 24-6-402 - All meetings of a quorum of three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

# Open Meeting Requirements

- Full and timely notice to the public
  - At least 24 hours prior to the meeting
  - Include specific agenda information as best as possible.
  - Caution: Discussion of topics not listed on the Agenda

# What is a “Meeting?”

A “Meeting” means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

- This includes email!

- Does not include: scheduling/availability discussions, social gatherings and events (where discussion of public business is not the central purpose).
- Caution: "Reply all emails" and social media

# Open Meeting Violations - Ramifications

- Court can and may void any action taken during improper "meeting."
- Court may award complaining party costs and attorney fees if they prevail.
- Loss of public trust and undermining transparency.



# Executive Sessions

- In 2013 – citizen initiative charter amendment limited executive sessions to only those items required to be confidential under federal or state law and discuss actual litigation.
- In 2018 – most reasons for having executive sessions were given back.
- 1. To discuss matters required to be kept confidential by Federal and State laws or rules or regulations, including but not limited to specialized details of security arrangements or investigations, including defenses against terrorism or criminal acts, both foreign or domestic; and
- 2. To confer with an attorney regarding a legal action already filed in a court of law. The case name and number shall be cited for the public record. Any final settlement or final agreement shall be decided by a majority vote in a regular meeting of the Council.

## Executive Session Cont...

- 3. The purchase, acquisition, lease, transfer or sale of any real or personal property. No executive session may be held for the purpose of concealing the fact that a member of the Council has a personal interest in such purchase, acquisition, lease, transfer or sale. All formal action on the agreements for such purchase, acquisition, lease, transfer or sale of any real or personal property must occur in an open session of the City Council.
- 4. Conference with the attorney(s) for the Council for the purpose of receiving legal advice on specific legal questions. The general substance of the legal question shall be part of the agenda for executive session. Mere presence or participation of the attorney(s) for the Council is not sufficient for an executive session under this subsection. No persons, other than members of the Council, the attorneys for the City, the City Manager and only any other person required in the judgment of the attorneys for the Council to provide factual information necessary for the formulation of the legal question may be present in the executive session. No formal action of the Council may be taken during an executive session held under this subsection. All formal action arising out of or resulting from an executive session held under this subsection must occur in an open session of the City Council.

## Exec Session Cont

- 5. Personnel matters are defined as the recruitment, evaluation, discipline, termination and employment of an employee that is appointed by the Council. The employee who is the subject of the executive session shall be given, in writing, no less than forty-eight hours' notice of the executive session. The employee may request, upon no less than twenty-four hours' notice, that the matter be held in an opening meeting session. All formal action arising out of or resulting from an executive session held under this subsection must occur in an open session of the City Council.

# Colorado Open Records Act (CORA)

C.R.S. § 24-72-201 *et seq.* provides that "all public records shall be open for inspection by any person" subject to certain exceptions.

- This includes your city emails!!!
- Be mindful of content and who you are sending it to.
  - Example, If you are sending it to the City Attorney it is privileged.

# Conflicts of Interest

- Generally, when a Council Member has a personal or private interest in a pending matter, or if they have a particular relationship with an applicant, they should disclose this on the record to avoid an appearance of impropriety. If this relationship will influence your decision, you should step down.
- In addition, so as not to be seen as influencing or trying to influence other members, they should not participate in or be present in the room during any discussions including, of course, the actual, more formal discussion and vote.
- If you don't know, please contact the City Attorney.

**QUESTIONS/COMMENTS?**