

TOWN OF GYPSUM, STATE OF COLORADO

**RESOLUTION NO. 12
SERIES 2020**

**A RESOLUTION OF THE TOWN OF GYPSUM, COLORADO
ADOPTING PROCEDURES FOR CONDUCTING MEETINGS AND
QUASI-JUDICIAL HEARINGS BY ELECTRONIC PARTICIPATION**

WHEREAS, the Town of Gypsum, Colorado (“Town”), is a home rule municipality of the State of Colorado, duly organized and existing under Article XX of the Colorado Constitution and the Gypsum Home Rule Charter effective October 21, 1982; and

WHEREAS, on March 10, 2020, the Governor of the State of Colorado declared a state-wide emergency in response to the spread of the novel coronavirus (COVID-19) within the State of Colorado; and

WHEREAS, on March 18, 2020 the Mayor of Gypsum made a Declaration of Local Disaster Emergency (the “Mayor’s Declaration”) pursuant to §24-33.5-709., C.R.S and the Town’s Home Rule Charter, Section 4.8.2.,f.; and

WHEREAS, the Mayor’s Declaration suspends and postpones all scheduled public hearings and meetings of the Town Council and Planning and Zoning Commission unless approved by the Mayor; directs the Town Manager, Town Clerk and Town Attorney to arrange for meetings of the Town Council to be conducted via electronic meetings in a manner which as fully as possible given the emergency situation complies with the Colorado Open Meetings Law and the Charter; and suspends the use of all Town facilities inconsistent with any order and declaration of the Governor of the State of Colorado, the Colorado Department of Public Health and Environment (“CDPHE”) and the Colorado Department of Public Health and Environment or the Eagle County Health Department; and

WHEREAS, on March 25, 2020, the CDPHE, at the direction of the Governor of Colorado pursuant to Executive Order 2020-17, issued an Amended Public Health Order 20-24 Implementing Stay at Home Requirements (the “Stay at Home Order”), which requires all individuals in Colorado to only leave their homes to perform or utilize “Necessary Activities” as defined in the Stay at Home Order; and

WHEREAS, due to the Stay at Home Order, Mayor’s Declaration, state of emergency and the COVID-19 pandemic, the Town Council and Planning and Zoning Commission and the Planning and Zoning Commission and other Boards, commissions and committees of the Town (“Committees”) 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 Town Council and Committees conduct public meetings and public hearings in order to adopt ordinances, consider land use applications, and conduct other Town business; and

WHEREAS, discontinuing public hearings for an unknown extended period of time may present a burden to Town residents, property owners and businesses; and

WHEREAS, the Town Council finds that conducting public hearings constitutes an important function of Town government and that it is in the best interest of the Town, its residents, property owners and businesses to find a way for quasi-judicial hearings to proceed with the procedures set forth herein, which are designed to allow public meetings and hearings to occur while implementing measures intended to protect the health, safety and welfare of the Town employees, Town Council members, and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, as follows:

1. **Adoption of Procedures.** The Emergency Electronic Participation Policy and Procedures, attached hereto and incorporated herein as Exhibit A, is hereby adopted.
2. **Severability.** If any portion of this Resolution or the Policy is found to be void or ineffective, it shall be deemed severed from this Resolution and the remaining provisions shall remain valid and in full force and effect.
3. **Effective date.** This Resolution shall become effective and be in force immediately upon approval.

INTRODUCED, READ, PASSED AND ADOPTED this _____ day of April, 2020, by the Town Council of the Town of Gypsum, Colorado by a vote of _____ in favor and _____ against.

EXHIBIT A

EMERGENCY ELECTRONIC PARTICIPATION POLICY AND PROCEDURES FOR MEETINGS OF THE TOWN COUNCIL, PLANNING AND ZONING COMMISSION AND OTHER BOARDS, COMMISSIONS AND COMMITTEES OF THE TOWN

1. **Applicability and Purpose.** The purpose of the Emergency Electronic Participation Policy and Procedures (“Policy”) is to specify the circumstances under which the Town Council, and the Planning and Zoning Commission and other Boards, commissions and committees of the Town (“Committees”) shall be authorized to conduct regular and special meetings and quasi-judicial hearings by telephone or other electronic means of participation, such as video-conference; and to develop procedures to ensure such participation by the Town Council and Committees, Town staff, any applicant, and the public during appropriate public comment and public hearing periods, is clear, uninterrupted and allows two-way communication for the participating individuals (“Electronic Participation”).

2. **Electronic Participation.**

(a) If a member of the Town Council or applicable Committee reasonably determines that his or her personal attendance at a meeting would not be prudent or safe due to an existing local disaster or emergency affecting the Town, such Town Council or Committee member may participate by any available means of Electronic Participation, and may participate and vote on any matter on the agenda, including quasi-judicial matters.

(b) In the event an in-person quorum of the Town Council or applicable Committee is unable to meet to conduct a regular or special meeting, because an in-person meeting is not practical or prudent due to an emergency or local disaster affecting the Town, the Town Council or applicable Committee may conduct regular and special meetings and quasi-judicial hearings by Electronic Participation in accordance with this Policy when all of the following conditions are met:

(i) The Town has declared a local emergency or disaster pursuant to C.R.S. §24-33.5-709 and the Town’s Home Rule Charter, Section 4.8.2.,f.; and

(ii) The Town Manager, Town Council, or applicable Committee determines that an in-person meeting is not practical or prudent due to circumstances related to the local emergency or disaster affecting the Town; and

(iii) All participating members of the Town Council or applicable Committee and at least one Town 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 participation subject to reasonable limitations of meetings conducted with Electronic Participation; and

(iv) Members of the public can hear the Town Council or applicable Committee proceedings and are afforded a reasonable opportunity to participate in public comment where appropriate, subject to the need to discontinue Electronic Participation due to the considerations in paragraph 2(c), below; and

(v) Minutes of the meeting are taken and recorded, and such records are open to public inspection once approved by the Town Council or applicable Committee; and

(vi) To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, that some members of the Town Council or applicable Committee may participate electronically, and the right of the public to monitor the meeting through Electronic Participation.

(c) The Town Council or applicable Committee may discontinue the use of Electronic Participation by one or more participants during a meeting where the participation results in delays or interference in the meeting process; e.g., where the telephone or internet connection is repeatedly lost, the quality of the connection is unduly noisy or otherwise problematic to the conduct of the meeting, or the listening member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance; or by a member of the public who is disruptive.

(d) Any official act or meeting required to be performed at any regular location of the Town Council or applicable Committee is valid when performed via Electronic Participation pursuant to this Policy.

(e) To the extent reasonably possible, the Town Council or applicable Committee shall provide adequate opportunity for the public to participate in the meeting via Electronic Participation in a manner that is as similar as possible to the opportunity that is typically provided during communication at in-person meetings (e.g. an opportunity to comment during public comment portion of a meeting or hearing).

(f) Members of the public should be encouraged to submit written comments in advance of the meeting. If written comments are received on an item being considered at a meeting conducted via Electronic Participation, the written comments shall be read into the record by the Mayor, applicable Committee chairperson, or his or her designee.

3. **Quasi-Judicial Matters.**

(a) In the event that a quasi-judicial matter is scheduled for a public hearing at a meeting conducted via Electronic Participation, the Town shall advise the applicant of such circumstances and present the applicant with two options for proceeding with the application. The applicant shall authorize the Town, in writing, to proceed with one of the following options:

(i) Conduct the public hearing under this Policy with accommodations made for Electronic Participation by the public, acknowledging that holding a quasi-judicial hearing by Electronic Participation presents certain legal risks and involves an area of legal uncertainty, agreeing that moving forward with a quasi-judicial hearing by Electronic Participation shall be at the applicant's own risk, waiving any legal challenges to the hearing conducted electronically, and agreeing to defend and indemnify the Town in any action that may arise out of, or in connection with, conducting the hearing by Electronic Participation.

(ii) Suspend the application, all review and decision deadlines, and the scheduling of the public hearing on the application until such time as all applicable local and state-wide emergencies are lifted and the Town Council or applicable Committee may schedule a meeting where an in-person quorum will be present and the applicant and public will be able to be physically present.

(b) **Records.** The Town Clerk, or secretary of the applicable Committee, 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, that the Town Clerk and Town Council (or Secretary and applicable Committee) shall not be responsible for resolving any technical difficulties incurred by any person participating in the hearing, or any failure to record the meeting due to issues with the software or application or website used to host the electronic meeting.

(c) **Documents.** The Town Clerk or Secretary of the applicable Committee shall set deadlines for submission of documents depending on the nature of the hearing. Materials intended to be presented electronically at the hearing will be made available online at least 72 hours in advance for public inspection prior to, during, and after the hearing.

(d) **Hearing Procedures.** At the outset of the hearing, the Mayor, Chairperson of the applicable Committee, or their designee shall describe the hearing procedure, indicating how testimony and public comment will be received. The applicant shall be given an opportunity to object to the hearing procedure. The Mayor or Chairperson shall rule on any such objection, and the decision shall be final, except that


the applicant shall have the opportunity to request to suspend the application until such time as an in-person hearing can be conducted.

(e) **Town Determination.** This Policy creates no right in any applicant to have a hearing conducted by Electronic Participation. The Town Manager or his designee shall determine whether the Town has the capability to hold a 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). If at any point the Town Manager or his designee determines it is not possible or prudent to hold a 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.** The required notice for the agenda for the meeting shall include information about how public comment and any hearing will be conducted and how the public can access, observe, make public comment and participate in any hearing. If such notice as required by the Gypsum 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. The notice shall advise that the relevant documents will be made available online, that any interested party may contact the Town at least forty-eight (48) hours in advance of the meeting to receive a paper copy if unable to access the online documents, and that the Town will reasonably accommodate interested parties who lack necessary equipment or the ability to access equipment. Interested parties will be encouraged to submit written comments up to two (2) hours in advance of the meeting, which comments will be made a part of the recording of the hearing.

5. **Executive Sessions.** Electronic Participation is available to Town Council or applicable Committee members during an executive session held pursuant to C.R.S. §24-6-204(4) and conducted under this Policy. The executive session shall be recorded electronically as required by statute; other than the official recording, no participant may record the executive session. The Town Council or applicable Committee members and all persons invited to participate in the executive session by the Town Council or applicable Committee shall take all steps necessary to ensure that the privacy and confidentiality of the executive session are maintained at the highest level. No participant may permit any other person to hear, see, or otherwise have access to executive session or related materials.

TOWN OF GYPSUM

By: 
Steve Carver, Mayor

ATTEST:

By: 
Danette Schlagel, Town Clerk

