



## AGENDA ITEM SUMMARY

City Council

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### STAFF

Paul Sizemore, Director of Community Development and Neighborhood Services  
Noah Beals, Development Review Manager  
Anissa Hollingshead, City Clerk  
Brad Yatabe, Legal

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### SUBJECT

**Second Reading of Ordinance No. 143, 2022, Amending Section 2-73 of the Code of the City of Fort Collins to Allow City Commissions to Conduct Quasi-Judicial Hearings Using Remote Technology.**

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### EXECUTIVE SUMMARY

This Ordinance, unanimously adopted as amended on First Reading on December 6, 2022, amends provisions of Article III of Chapter 2 of the City Code to permit boards and commissions considering quasi-judicial matters to incorporate participation by remote technology into proceedings.

The proposed amendment would enable the presiding officer of the board or commission, upon consultation with the staff liaison, to allow remote participation by members of the public and parties-in-interest. As it was presented at First Reading, the Ordinance would have also allowed remote participation and voting by commission members. Council removed the provision allowing participation and voting by commission members at First Reading, and this change is reflected in the revised ordinance.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

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### BACKGROUND / DISCUSSION

During the declared COVID-19 local emergency the City made use of remote technology to allow participation in public meetings by members of the public, parties-in-interest, board and commission members, and staff. Typically, this occurred in the form of hybrid meetings where some parties were present in-person and others participated remotely.

When the emergency declaration was lifted in October of 2022, boards and commissions were required to align their operations with the provisions in Article III of Chapter 2 of the City Code. Currently, Chapter 2 permits boards and commissions that are not considering quasi-judicial items to use remote technology for participation. However, quasi-judicial proceedings require in-person attendance by all commission members, all members of the public, and all parties-in-interest.

The City has six commissions that consider quasi-judicial items. These are: the Building Review Commission, Historic Preservation Commission, Human Relations Commission, Land Use Review

Commission, Planning and Zoning Commission, and Water Commission. Some of these bodies consider quasi-judicial items at every meeting, while others only hear them occasionally.

Beginning in October 2022, commissions ended remote participation for quasi-judicial items. Since this time, staff has heard from members of the public, applicants, and commission members that there were many positive aspects of remote participation that should be preserved.

This proposed ordinance addresses remote participation by two types of participants in quasi-judicial proceedings. Staff has noted positive outcomes from remote participation by each participant type:

1. **Members of the public.** Staff observes that remote participation has opened opportunities for members of the public to provide comment who otherwise would not or could not participate due to other obligations, lack of convenience, or simply the time required to participate in an in-person proceeding.
2. **Parties-in-interest (applicant teams).** Staff observes that it is more likely that specialist professionals who worked on the project will be available for commission questions if they can participate remotely. For some commissions, this has also made it easier to get projects scheduled for hearings because coordinating attendance by applicant teams is less complicated.

The proposed ordinance modifies the Code to allow remote participation by the public and parties-in-interest in a manner similar to the COVID-19 emergency declaration. The presiding officer of the commission, upon consultation with the staff liaison, may determine that the meeting will be conducted in whole or in part with the use of remote technology. When remote participation is authorized by a commission, an applicant will be informed about the intention to hold the proceeding using remote technology. If this is not acceptable to the applicant, they may elect to delay the meeting until the applicant and staff can be present in-person. If, during the conduct of a hearing using remote technology, the presiding officer determines that the technology is not functioning adequately to meet all conditions outlined in the code, the commission must continue the hearing to make other arrangements.

At First Reading the Ordinance also included provisions that would have allowed remote participation and voting by commission members. Council decided to advance the Ordinance allowing participation by the public and parties-in-interest, but removed provisions allowing participation and voting by commission members. The Ordinance has been revised to reflect this change, and to clarify that while commission members are not permitted to participate or vote on quasi-judicial items remotely, commission members are permitted to review recorded materials and subsequently participate in a vote.

## **CITY FINANCIAL IMPACTS**

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Staff does not anticipate a financial impact to the City because the technology and staff expertise to implement these measures already exist.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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The following Commissions made recommendations regarding the proposed ordinance to allow remote participation by commissions considering quasi-judicial matters:

- The Building Review Commission recommended approval at their November 17, 2022, meeting.
- The Historic Preservation Commission recommended approval, with encouragement that commission members attend in-person whenever possible, at their November 16, 2022, meeting.
- The Planning and Zoning Commission recommended approval of remote participation for the public and parties-in-interest and took no position on remote participation by commission members, at their November 17, 2022, meeting.

Staff liaisons for the Land Use Review Commission, Water Commission, and Human Relations Commission have been consulted regarding the proposal; however, these commissions have not made formal recommendations on this topic.

## **PUBLIC OUTREACH**

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Since the switch to all in-person participation in October, members of the public who have contacted staff seeking the ability to participate in hearings remotely have been informed about this proposal. No proactive public outreach was conducted.

## **ATTACHMENTS**

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1. Ordinance for Consideration