



CITY COUNCIL ACTION FORM

Department City Attorney	Presented by Geoff Wilson	Date April 6, 2021
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ITEM Resolution 2021-08: Approving and Adopting the Salida City Council Handbook, and Replacing the Salida City Council Rules of Procedure

BACKGROUND At your March 15, 2021 Work Session, City Council reviewed and discussed a draft Salida City Council Handbook. The City Attorney explained that many Councilors had recently asked for clarity on process, and to address certain legal and procedural items. City Council shared general thoughts and suggestions on the draft, and the proposed Resolution attaches an amended version of this Handbook. Exhibit A of Resolution 2021-08 incorporates most of those comments and suggested amendments. A “Council Handbook” was requested, as a more inclusive and comprehensive document than the previous “Meeting Rules of Procedure.”

FISCAL NOTE None.

STAFF RECOMMENDATION

Staff recommends approval of this Resolution, based upon City Council’s suggestions and preferences for updated procedures, guidelines and other helpful information.

SUGGESTED MOTION



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A City Councilmember should make a motion to approve Resolution 2021-08, Approving and Adopting the Salida City Council Handbook, and Replacing the Salida City Council Rules of Procedure, followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 08
(Series of 2021)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO
APPROVING AND ADOPTING THE SALIDA CITY COUNCIL HANDBOOK, AND
REPLACING THE SALIDA CITY COUNCIL MEETING RULES OF PROCEDURE**

WHEREAS, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, on February 7, 2000, the City Council passed Resolution 2000-07, adopting Salida City Council Meeting Rules of Procedure; and

WHEREAS, the City Council amended the Salida City Council Meeting Rules of Procedure at various times; most recently on May 16, 2017, via Resolution 2017-31; and

WHEREAS, the City Council desires to replace said meeting rules with a more comprehensive City Council Handbook addressing: meeting procedures, conflicts of interest, Council and staff interaction, Open Meetings Law, and legislative and quasi-judicial hearings; and

WHEREAS, the City Council finds it in the best interest of the City to adopt the Salida City Council Handbook, attached and incorporated herein, to guide the City through constructive, thoughtful and inclusive decision-making, and to focus on the most positive outcomes.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

Section 1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations and findings.

Section 2. The Salida City Council Handbook, attached and incorporated herein as Exhibit A, is hereby approved and adopted.

Section 3. Resolution 2017-31, and the most recent version of the Salida City Council Meeting Rules of Procedure is hereby replaced and superseded by this Resolution 2021-08 and by the attached and approved Salida City Council Handbook.

RESOLVED, APPROVED, AND ADOPTED this 6th day of April, 2021.

CITY OF SALIDA

By: _____
P.T. Wood, Mayor

[SEAL]

ATTEST: _____
City Clerk/Deputy City Clerk

Exhibit A
Salida City Council Handbook

Salida City Council Handbook
[ADOPTED April 6, 2021 via Resolution 2021-08]
(Replaces previous "Council Meeting Rules of Procedure")

I. Mission Statement.

To guide the City through constructive, thoughtful and inclusive decision-making, preserving what makes Salida unique and focusing on the most positive outcomes.

II. Meeting Procedures.

A. Regular Meetings of City Council: Regular meetings are typically conducted on the first and third Tuesday of the month, excluding holidays, and begin at 6:00 p.m., unless another day or time is set by prior approval of a majority of the City Council. Regular meetings shall adjourn no later than 9:00 p.m. unless a later time is agreed upon by a majority vote of the council members present at said meeting. In the event one or more agenda items have not been called prior to 9:00 p.m., and majority approval for extension of the meeting has not been obtained, such item or items shall be automatically continued to the next regular city council meeting.

B. Work Sessions of City Council: Work Sessions are typically held on the first and third Monday of the month, as needed, and usually begin at 6:00pm. The purpose of a Work Session is for general discussion, review and education of policy or operational issues. No formal action or decisions may be taken at a Work Session. However, the council may direct appointed officials to prepare information for a discussion and possible decision at a regular City Council meeting.

C. Public Hearings: Typical Order of a Public Hearing shall be as follows:

1. Mayor/presiding officer opens the public hearing.
2. City Staff summarizes their report; explains what is being requested; applies relevant Code provisions; makes recommendations; confirms proper notice of the public hearing.
3. Applicant/Appellant presents its request and basis for same; possibly brings forward persons speaking in support of the application.
4. Public Comment. Interested persons from the general public may speak, testify, address Council. (3 minute limit)
5. Applicant may offer rebuttal, closing statement and may cross-examine any person who presented or testified.
6. City Staff may offer rebuttal, closing statement and may cross-examine any person who presented or testified.
7. Council may ask questions of any party or any person who as offered comment at the hearing.
8. Mayor closes public hearing.
9. Preliminary Council Discussion. Council reviews all testimony and evidence presented, applies appropriate Code provisions, and then objectively discusses and deliberates the requested

application(s). The Council may ask additional questions of (or seek clarification or assistance from) the applicant, City Staff, Attorney, and anyone else present.

10. Call for Motion. A council member proposes a final decision on the application, in the form of a motion.

11. Deliberation. Council deliberates on the motion, and makes any applicable amendments to the motion.

12. Roll Call Vote. A roll call vote of all councilmembers occurs on the final version of the motion.

D. Quorum for City Council: Three (3) Council members and the Mayor, or four (4) Council members, shall constitute a quorum to do business at all meetings of the City Council.

E. Order of Business on City Council Meeting Agendas: All business of the council shall be considered in the order of the agenda unless otherwise directed by motion adopted by the majority of the members present. Agenda order is currently, and should normally be:

- Call to Order
- Pledge of Allegiance
- Roll Call
- Civility Invocation
- Consent Agenda
 - Approval of Agenda
 - Approval of the Minutes
- Citizen Comment - three (3) minute time limit. (for items not on the agenda and/or agenda items that are not scheduled for public hearings)
- Public Hearings
- Unfinished Business/Action Items
- New Business/Action Items
- Reports (from Council members, appointed officials, departments, boards or commissions)
- Executive session, if applicable
- Adjournment

F. Consent Agenda: The Consent Agenda allows the Council to approve several items of routine business with one vote. Items presented by Staff at a work session may include a recommendation, if appropriate, that the item be included on the Consent Agenda for approval at a Regular Meeting. The Council shall determine those items to be included as consent items on the Agenda for any regular session of a Regular Meeting. After the City Clerk reads the Consent Agenda, all of the consent items shall be voted on as a group. If a Council Member requests discussion or requests that any item(s) be removed from the consent items, such item(s) shall be acted upon after consideration of the remaining consent items by the Council. The individual items will then be considered for adoption.

Consent Agenda items may include, but are not limited to:

- Approval of the Meeting Agenda;
- Approval of the Minutes of prior meetings;

- Approval of contracts or awards of bids previously presented in a work session and/or approved by City Council in the annual budget;
- Approval of Memoranda of Understanding with various entities;
- Approval of administrative, organizational or employment policies;
- Appointment of members to a board or commission.

The consent items will be listed as separate items on the Agenda for the Regular Meeting and have the following explanation for the general public:

“All matters listed under Item X, Consent Agenda, are considered to be routine business matters by the Council and will be enacted with a single motion and a single vote by roll call. There will be no separate discussion of these items. If discussion is deemed necessary by any member of the Council, that item should be removed from the Consent Agenda and considered separately.”

- G. Reports:** City Council reports at the end of regular City Council meetings should aim to be approximately 3 to 5 minutes each.
- H. Civility:** It is the intention of the Salida City Council to promote civil communication by adopting guidelines for speaking to the public in the City Council Chambers, and by reading this Civility Invocation at the beginning of each regular City Council meeting.
- I. Robert's Rules of Order:** regular City Council Meetings are conducted by the Mayor, according to Robert's Rules of Order, Revised, or “Bob's Rules of Order,” the abbreviated Robert's Rules of Order (SMC 2-2-80).
- J. Placement of a Work Session or Regular Meeting agenda item:** The direction of either the Mayor or a minimum of two (2) City Councilmembers is required in order to place a topic or item on a work session or regular City Council meeting agenda. Such a request should be made publicly at regular meeting, if at all possible; however, that is not required if time or other circumstances do not allow.
- K. Executive Sessions:** The policy basis for executive sessions, which are not open to the public, is the recognition that the public interest can best be served if certain specified matters are discussed in private. The purpose of an executive session is to deliberate, not to make final decisions. No formal action shall be taken in an executive session to adopt a proposed policy, position, resolution, rule, regulation or ordinance.

The Colorado Revised Statutes permit Executive Sessions in the following limited situations:

1. *Real and Personal Property:* to discuss the purchase, acquisition, lease, transfer, or sale of property interests, so long as the executive session is not held to conceal an official's personal interest in the property. (CRS §24-6-402(4)(a))
2. *Attorney Conferences:* for the purpose of receiving legal advice on specific legal questions. (CRS §24-6-402(4)(b))
3. *Confidential Matters Under State or Federal Law:* for the purpose of discussing any topic required by state or federal law to be kept confidential. The governing body must announce the specific statutory citation or rule that requires the confidentiality of the matter to be discussed. (CRS §24-6-402(4)(c))

4. *Security Arrangements or Investigations*: for the purpose of discussing specialized details of security arrangements or investigations. (CRS §24-6-402(4)(d))
5. *Negotiations*: for the purpose of determining positions, strategy, or instructions to negotiators. (CRS §24-6-402(4)(e))
6. *Personnel Matters*: for the purpose of discussing general personnel matters. However, if the discussion involves a specific employee, that employee may request an open meeting. If the discussion involves more than one employee, the executive session may be held unless all of the employees request an open meeting. 'Personnel Matters' does not include discussions of any member of a local public body, any elected official, the appointment of any person to fill a vacancy in a local public body or elected office, or discussion of personnel policies that do not require discussion of particular employees. (CRS §24-6-402(4)(f))
7. *Documents Protected Under Open Records Act*: for discussions that involve consideration of documents protected by the mandatory non-disclosure provision of the Open Records Act. Discussion of documents protected under the 'work product' or 'deliberative process' privileges in the Open Records Act must occur in an open meeting unless an independent basis for an executive session concerning such documents exists. (CRS §24-6-402(4)(g))

Procedures:

1. Executive sessions may only be conducted during a regular or special meeting of the City Council.
2. The City must first announce the topic of discussion to the public, including the specific citation to the Open Meetings Law (CRS section) that authorizes consideration of the announced topic in executive session, as well as "identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized."
3. A City Councilmember must make an official motion to go into Executive Session (i.e. "I move to go into Executive Session for the purpose of a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b))."
4. Two-thirds of the quorum present must vote affirmatively on the motion before the governing body can close the meeting to the public.
5. Discussions that occur in Executive Session must be electronically recorded. The recordings must be retained for at least ninety (90) days after the date of the session. If, in the opinion of the City Attorney present, all or a portion of the discussion constitutes a privileged attorney-client communication, no record or electronic recording is required to be kept of that part of the discussion.

III. Conflicts of Interest

Members of the City Council shall work for the common good of the people of the City and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council.

A member of the Council who has a personal or private interest in any matter proposed or pending before the Council shall disclose the interest to the other members prior to action on the matter by the Council. The member shall be excused from voting on any matter on which he or she has a conflict of interest. The member who has the conflict of interest shall refrain from attempting to influence the other members of the Council who are or will be voting on the matter. The member excused from voting

because of a conflict of interest shall leave the meeting during the deliberations and the vote on the matter.

A member of the Council shall not use his or her official position to secure a special privilege, exemption or service for himself or herself or for others, nor shall any member of the Council seek or grant any special consideration, treatment or advantage to or for any citizen beyond that which is generally available to every other citizen. This provision shall not be interpreted to prohibit or hinder a member from presenting citizen concerns to the Council or to City Staff and requesting a response to the citizen concern.

A member of the Council who, in the course of his or her private business, desires to enter into a contract with the City, or who has such a contract at the time he or she takes office, shall disclose such contract to the other members of the Council. The member shall not vote on any contract in which he or she has a financial interest and shall not attempt to influence the other members of the Council or the City Staff in the process of awarding the contract.

A member of the Council shall not take any special advantage of services or opportunities for personal gain, by virtue of his or her public office, that are not available to the public in general. Members shall refrain from accepting any benefit or promises of future benefits which compromises their independence of judgment or action or gives the appearance of such compromise.

A member of the Council shall not use public resources not available to the public in general, such as City Staff time, equipment, supplies or facilities, for private gain or personal purposes, except for privileges generally available or granted to employees of the City.

Employment. It is in the interest of the City to hire the most qualified people to work at the City. Due to the potential conflict of interest that exists when a Council member applies for an open position with the City, any councilmember that intends to apply for an open position with the City must resign his/her council seat at the next regular meeting after an application is submitted. If an employee is elected to City Council, they must resign their position with the City at the first regular meeting after they take office.

IV. Council and Staff Interaction. Governance of a City relies on the clear, honest, cooperative efforts of elected officials, who set policy, and City staff, who implement and administer the Council's policies. Therefore, every effort should be made to be civil, professional, and show mutual respect for the contributions made by each individual for the good of the community.

A. Communications through appropriate senior City staff. Questions and requests for information should be directed to the City Administrator, City Attorney, City Clerk, Municipal Judge, or their designees, including relevant Department Heads. When in doubt about what staff contact is appropriate, Councilmembers can ask the City Administrator or the affected appointed official for direction.

B. Requests for routine research by staff. In order to assure proper coordination and an efficient allocation of City resources, routine requests for research by City staff should be made to the City Administrator, who will determine what follow-up to which staff member is appropriate.

- C. **Policy or program modifications.** Requests to research and analyze the viability of new or modified legislation, policy, or programming should be presented as a request at a Council meeting, where it shall be decided whether the request is something that merits an investment of staff time.
 - D. **Political support from staff.** Councilmembers must refrain from soliciting any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff at work. Staff certainly may, as any other citizen, support political candidates away from the workplace, and on their own personal time. The City as an employer requests that personal mail for employees, including campaign material, be sent to their home address.
 - E. **Administrative functions.** Councilmembers should avoid staff interactions that may be construed as trying to direct or shape staff operations.
 - F. **Same information to all Councilmembers.** Council should expect that staff will make every attempt to provide each individual member of Council with the same information for decision-making. (i.e., requests made of staff for research will be distributed to all; correspondence to one Councilmember on policy issues will be distributed to all).
 - G. **Whistleblowers.** In the event a Councilmember is approached by an employee with concerns that there is an illegal activity, including the alleged violation of City policy, the Councilmember shall direct that complaint to the Mayor. The Mayor will provide the information to the appropriate appointed official for investigation. If the complaint is made against an appointed official, then the Mayor shall determine what action should be taken. Where the Mayor desires legal advice he or she should use the City Attorney, or if the complaint is against the City Attorney, then he or she has the authority to obtain outside legal counsel to assist with investigation and advice.
 - H. **Personnel.** Members of the Council shall not attempt to individually direct the City Administrator, the City Clerk, the City Attorney, the Municipal Judge or any City Staff on employment or personnel matters or decisions, awarding of contracts, selection of consultants, processing of development applications, or the granting of City licenses or permits.
- V. **Open Meetings Law.** (Colorado Revised Statutes 24-6-401, et seq.)
- A. **Meeting** means: any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.
 - B. **Local public body** means: any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of the City and any public or private entity to which the City, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.
 - Note the exclusion in the foregoing definition for “administrative staff.”
 - C. **What meetings are required to be “open to the public” at all times?**
 - All meetings of a quorum or 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.
 - D. **Notice:** Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in

attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

- OML does not define "full and timely notice," but provides an example of notice by posting. The General Assembly recently authorized this posting to be on the public entity's website.

E. Chance meetings and social gatherings: The requirements of the OML do "not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose."

F. Open Meetings Law may apply to the following discussions:

- a. Emails
- b. GoToWebinar chat box
- c. Text messages
 - i. Messaging during a meeting: councilmember to councilmember could violation OML; or councilmember to an applicant or the public may violate other quasi-judicial provisions.

VI. Legislative v. Quasi-Judicial Proceedings.

Applying constitutional due process (fair hearing) requirements, state and federal courts have characterized certain governmental entity decisions as legislative, and others as quasi-judicial. It is important to understand the differences between the two because the courts require that special procedures be followed for quasi-judicial matters.

Legislative Matters

Legislative matters are matters of general concern or with applicability throughout a municipality. In the legislative role, the City Council reviews, recommends, creates and amends regulations on a citywide basis. Legislative matters are frequently referred to as "policy making."

Examples: Resolutions or Ordinances with broad application; amending Municipal Code.

The City Council may freely discuss legislative matters with the general public.

Quasi-Judicial Matters

Quasi-Judicial matters have a narrower application. Unlike legislative matters, the Council does not *set* new policy in a quasi-judicial proceeding, but rather *applies* policy established in existing law to specific facts gathered at the hearing to arrive at its decision on the case presented.

Examples: special use permits, zoning variances, subdivision plat approvals, liquor license issuance, nuisance abatement.

In quasi-judicial hearings, the City Council is acting in a manner similar to a judge, and must make an objective decision that is based upon the evidence presented at the hearing and the current law and applicable legal standard.

Because these proceedings impact the property rights of one individual, entity or small group of individuals, fairness and due process must be ensured. Everyone with an interest in the case, as well as all members of the decision-making body, must hear the same evidence, at the same time, from the same sources. The applicant, appellant or property owner deserves the opportunity for a fair, impartial hearing before unbiased decision makers, each of whom have had the benefit of the same input and testimony.

Council's Impartiality in a Quasi-Judicial Proceeding may be affected by:

- (1) **Pre-judgment or bias.** An individual Councilmember's desires, personal preferences or prejudices must not be a factor for consideration, or enter into their decision-making. A councilmember must not have their mind made up before the hearing, and must remove themselves from the process if they have advocated one way or the other on a quasi-judicial matter. Each member participating in the hearing must have the ability to decide the case fairly, impartially and based solely on the evidence and testimony presented at the hearing.
- (2) **Conflicts of Interest.** Described earlier in this Handbook.
- (3) **Ex-Parte Communications.** Ex-Parte communication refers to information received "outside of the record," whether verbal, written, electronic, or graphic. Ex-parte communications are also defined as communication between a councilmember and one party, outside of the other parties to the case, or other affected individuals.

Because of the legal constraints of this process, councilmembers may not discuss quasi-judicial issues outside of a hearing. Council must refrain from listening to opinions outside of the public hearing, and should not form opinions until the hearing. Council also should not research the issue outside of the hearing. Should a member of the public, or the applicant, attempt to share opinions or discuss the issue, Council must explain that because it is a quasi-judicial matter, they cannot not engage in ex-parte communication. Councilmembers may direct the individual to provide written comments to City Staff, which will be included in the public record, and considered by all Council at the proper time.

Courts generally hold that such communications are improper and may provide legal grounds for overturning a Council's decision. These rules promote impartial decisions by ensuring disclosure of all evidence and arguments presented to the Council in its deliberation and decision. These rules also gives everyone involved a fair chance to respond to all information that may affect the decision.