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Bob's Rules of Order

SIMPLIFIED PARLIAMENTARY RULES OF ORDER FOR COLORADO LOCAL GOVERNMENTS

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Introduction

Efficient and well-run public meetings are a necessity for local government. An efficient and well-run meeting allows all scheduled business to be accomplished, voices to be equally heard, and differences of opinion to be aired amicably. Whether the meeting issues are deeply challenging and emotional or simply ministerial and non-confrontational, a well-run meeting leaves all participants feeling that the decisions made during the meeting are the product of fairness, equality, and respect. Poorly run meetings can undermine confidence in local government by allowing a perceived inequality among participants when engaged in debate and discussion, injecting conflict and argument between the participants, and adding confusion to the decision-making process and uncertainty in the eventual decision. A set of standardized rules of order or procedure which are both fully understood and routinely employed by meeting participants are a critical component to efficiency in meetings.

*Robert's Rules of Order*¹ is perhaps the most widely known set of rules offered to facilitate and manage meetings. Beginning with the pocket handbook first published in 1878, and with significant rewriting and amendment since that time, *Robert's Rules of Order* has evolved into a complex tool for meeting management. *Robert's Rules* totals an astounding 716 pages.² No fewer than two dozen independent publications are available to help meeting participants better understand, decipher, and interpret *Robert's Rules* including a *Robert's Rules for Dummies* publication³ and a *Complete Idiot's Guide to Robert's Rules*.⁴ Because an effective meeting necessarily requires meeting participants to equally understand the procedural rules governing the meeting, *Robert's Rules of Order* can prove to be an ineffective tool in conducting the meetings of local government.

Notwithstanding the unsuitability of *Robert's Rules of Order* to manage local government meetings, many communities incorporate *Robert's Rules* into their local meeting procedures by reference in local codes and policies. The incorporation of *Robert's Rules* into local government meeting procedures almost always results, not from an express acknowledgment that *Robert's Rules* will be suitable for use in the local government setting, but perhaps from a blind assumption that *Robert's Rules* will best guide meeting procedure because is the most recognized set of procedural rules. Few people have fully read *Robert's Rules* and fewer understand that *Robert's Rules* contain processes and procedures that Colorado local government might deem unacceptable.⁵

"*Bob's Rules of Order*" is intended as a simplified set of rules better suited to manage Colorado local government meetings. Although *Bob's Rules of Order* calls upon some of the basic concepts offered by *Robert's Rules*, *Bob's Rules of Order* pares down the available motions to those essential to advance the goal of running an efficient public meeting for Colorado local government.

¹ Henry M. Robert III and others, *Robert's Rules of Order Newly Revised*, 11th ed. (Da Capo Press, 2011).

² Id. The total pages are inclusive of 92 pages of summary charts and indexes.

³ C. Allen Jennings, *Robert's Rules for Dummies*, (New Jersey, John Wiley & Sons Inc., 2016).

⁴ Nancy Sylvester, *The Complete Idiot's Guide to Robert's Rules*, (New York, Penguin, 2010)

⁵ For example, *Robert's Rules of Order* includes provisions for the summary imposition of penalties against members who breach *Robert's Rules*, up to and including expulsion from the meeting and removal from membership on the body. See Chapter XX, *Robert's Rules of Order*.

Robert's Rules authorize a process and imposition of penalties for undefined conduct and actions taken by members outside of meetings which is deemed unacceptable by the body. Id.

Legal Advice and Disclaimers

Bob's Rules of Order does not offer legal advice. The *Rules* are offered to assist local government when considering the creation or implementation of local rules of order that will become a helpful tool in conducting more efficient public meetings.

When deciding practice and procedures for meetings, local governments should always inquire first to their local attorney. The local attorney is best suited to both understand the application of the laws affecting the local government and how to integrate the applicable law into the common or historic practice, procedures, and needs of the community. All legal advice involves an assessment of risk based on full knowledge of the law, the client, and the client's circumstances. Only the local attorney has the knowledge to best advise the local government in deciding the proper rules of order and procedure to govern meetings. In short, it is not a best practice to blindly apply the recommendations of *Bob's Rules* without consulting local legal counsel.

Terminology

Certain words and phrases are used throughout *Bob's Rules of Order* refer to actions or persons involved in a meeting. Some of these words and phrases are capitalized to remind the reader that the word or phrase has a specifically defined meaning.

Amendment (or to Amend) - An amendment is a motion to change, to add words to, or to omit words from a pending main motion. The amendment is usually intended to clarify or improve the wording of the original motion and must, of course, be germane to that motion.

Body – The formally constituted organization commissioned with the obligation and duty to act on behalf of the local government.

Chairperson – The person appointed or elected to preside over the meeting.

Floor – The privilege or right to speak to the body.

Member – A person appointed or elected to hold office as a recognized participant of the body.

Motion – A formal proposal seeking specific action by the body typically preceded by the words "I move that ..." or "I make a motion that" Motions are generally introduced by voice but may be presented to the body in writing.

Moving Party – The Member presenting a motion or point for action by the body.

Out of Order – An action that fails to comport with these *Rules of Order*.

Point – A declaration of a member addressed to the chairperson requesting to bring before the body a matter for immediate decision or resolution. There are three recognized points: (1) Point or Order; (2) Point of Information; and (3) Point of Appeal.

Second – An oral declaration by a Member to express that a motion offered to the body should receive debate or discussion.

Key Assumptions

Certain assumptions are incorporated into *Bob's Rules of Order*. Each of these assumptions are subject to rejection or modification by the Body in the development of the local rules of order to render *Bob's Rules* consistent with the local practices and procedures of the local government.

- ***The Chairperson Serves as the Parliamentarian:***
- ***Abstaining from Voting is not Permitted.***
- ***A Conflict-of-Interest Mandates Recusal from Voting:***
- ***A Motion is Not a Prerequisite to Discussion or Debate on a Matter.***

These assumptions are each clarified below:

- ***The Chairperson Serves as the Parliamentarian:***

During a meeting, decisions regarding the proper application of the *Rules* will be required. For example, a determination will need to be made during a meeting that a particular motion is, or is not, Out of Order (*i.e.*, appropriate for presentation under the *Rules*). “Parliamentarian” is the customary term used to identify the person with a solid understanding of the meeting rules and who is commissioned to render decisions on the applicable and proper procedure.

The practice in most government meetings is to assign the role of parliamentarian to the person in charge of the procedure and flow of the meeting – that is, the chairperson.

In some local governments, the role of parliamentarian is assigned to the clerk, attorney, or other administrative support or staff person. This assignment of the role to a person other than the chairperson can prove challenging; the parliamentarian will often be seen as “taking sides” on a ruling of procedure. Asking an administrative support or staff person to render a ruling between potentially conflicting positions held by body members who may control or supervise the administrative person is often seen as ill-advised and places the administrative person in an awkward position.

- ***Abstaining from Voting is not Permitted.***

Whether a member is elected, appointed, or volunteered to serve the body, an underlying assumption is that the member agreed to perform the duties of the position unless prevented by law.⁶ A member may wish to “abstain” (*i.e.*, not declare a formal vote or position) due to a myriad of reasons which may include a simple desire to avoid being placed on the record in support or opposition of a proposition. Such an abstention for personal reason or convenience constitutes a neglect of the duty freely accepted by the elected or appointed member to represent the body and the public and, therefore, is not permitted by these *Rules of Order*.

Abstentions can undermine the required vote of the body. Taken as an expression that the member is not declaring a vote and therefore no vote by the member will be recorded, an abstention or possible multiple abstentions can reduce the body's vote total below the

⁶ See *A Conflict-of-Interest Mandates Recusal from Voting*, below.

number necessary to enact a proposition or motion. For example, for a vote requiring a majority of a 5-member body, an abstention of two members will allow the vote to be approved by only 2 of the voting members or less than the quorum of the body.

The potential for abstention places the body at risk that the body will not have a sufficiently representative number of voting members after devoting considerable time and effort in reaching the point of rendering a decision. Combined with the abstaining member's active participation in the debate and deliberation before declaring an abstention, the member can effectively influence the body's decision yet evade taking a public position on the motion or proposition. Such practice should be viewed as incompatible or inconsistent with the concept of open, transparent, and representative government.

When a member expresses an otherwise unpermitted abstention on a vote, the *Rules of Order* deem the abstention as an affirmative vote or declaration in favor of the proposition which is pending before the body. For example, if a body member votes to "abstain," the clerk will record the vote as a "yes" vote or as an affirmative expression of support for the pending proposition. If the abstaining member objects to the recording of her abstention as an affirmative vote because then member does not affirmatively support the motion, the member is afforded an easy solution, which is to vote "no" on the motion.

The alternative to the recording of the abstention as an affirmative or "yes" vote and, instead, to record the abstention as a "no" vote, will allow members to defeat a motion without taking a specific position on the motion. In other words, the recorded vote on a motion by seven voting members could be 3 votes in favor by declaration of a "yes" vote, 2 votes in opposition by declaration of a "no" vote, and 2 votes to "abstain" which are then recorded as "no" votes. As a result, the motion is defeated upon a 3-4 vote without a majority of members publicly committing to a "no" or negative position on the vote. Such a scenario should be considered as antithetical to open, transparent, and representative government.

- ***A Conflict-of-Interest Mandates Recusal from Voting:***

When a member faces a lawfully recognized conflict of interest, the member shall recuse⁷ themselves from all participation in the matter and shall not vote. Moreover, the conflicted member shall not be permitted to influence the body by participation in the consideration, deliberation, or debate on the matter and may not seek to influence individual members outside of the public meeting or the hearing. Mandating that a member recuse themselves from advocating and voting on a matter due to a conflict of interest is lawfully permitted and a member has no personal constitutional right to participate or vote where a conflict exists.⁸ Colorado provides a limited single exception to this rule where (i) the conflict

⁷ Recusal is not the equivalent to abstention. Abstention is "the withholding of a vote;" whereas recusal is "the [removal] of oneself as judge or policy maker in a particular matter, especially because of a conflict of interest." Black's Law Dictionary (8th Ed. 2004). Abstention, if allowed, permits the member to participate in the proceeding and, prior to the vote, to make a declaration that the member will not vote for reasons often unstated, and which can include personal preference, indifference, lack of information, or possibly a perceived conflict of interest. In contrast, recusal precludes the member from participation in any aspect of the matter because to participate or to vote would subject the member or the member's organization to liability.

⁸ *Nevada Commission on Ethics v. Carrigan*, 564 U.S. 117 (2011)

arises from a personal or private interest; (ii) a quorum cannot be maintained if the member is excluded; and (iii) the member makes a required disclosure to the secretary of state.⁹

What constitutes a conflict of interest is difficult to summarize. State law recognizes a number of conflicts of interests in statute which are unfortunately not well defined. In addition, many local rules of procedure recognize other circumstances in which a member is not lawfully permitted to participate due to a conflict of interest. As a result, the body's attorney should always be consulted in advance of the meeting regarding a potential conflict of interest. In nearly all situations, the determination of a legally recognized conflict of interest will involve an evaluation of the particular facts surrounding the conflict, the form of decision pending before the body, and the potential for a vote to be entered notwithstanding a conflict of interest.

A declaration that a member has a conflict of interest is not addressed by a declaration to "abstain." Abstention is a declaration of a desire not to vote on a matter for which the member may otherwise lawfully participate and vote. The existence of a conflict of interest creates a legal impediment to participation and voting which can subject the member and the body to potential legal liability.

Recusal from participation due to a conflict of interest should be offered before the body *prior to* at the *initial opening* of the matter on the agenda. For example, the conflicted member should seek the floor at the initial opening of the matter and proclaim that, "Madam Chairperson, following consultation with our attorney and due to a conflict of interest, I must respectfully recuse myself from all participation in this matter." It is customary for the conflicted member, following declaration of recusal, to leave the dais of the body and take a seat either in the audience or outside the meeting room for the entire consideration of the matter.

- **A Motion is Not a Prerequisite to Discussion or Debate on a Matter.**

In some meeting rules of order, a motion is a necessary prerequisite to discussion or debate. However, such a practice is generally inconsistent with the common practice of local government meetings. Oftentimes, discussion on a problem or proposition sets the basis or background that will lead to an appropriately stated motion. The basis or background more often enables the motion to be tailored to the viewpoints and comments offered during discussion offered prior to any motion. It is not infrequent that a hastily stated motion is later withdrawn or modified following discussion. As a result, efficiency is achieved by permitting motions to be made at an appropriate time which may be before, during, or following robust discussion or deliberation on a matter.

General Rules Governing the Meeting

- Quorum Required. A majority of the members of the Body in office shall constitute a quorum for the transaction of business at all meetings where a quorum is required. In the absence of a quorum, the Body's chairperson, vice chairperson, other officer, or the administrative staff person serving the Body may announce that the meeting is continued due to lack of a quorum and such announcement

⁹ See C.R.S. § 24-18-110.

may include the date, time, and place at which the meeting will be re-convened. By way of example, such announcement may state: "Due to lack of quorum, this meeting is continued to the [state date, time, and place]." In the event any meeting is adjourned to a later date, the Chairperson or the administrative staff person serving the Body shall prepare and cause to be delivered to each member of Body timely notice setting forth the date and hour to which such meeting has been continued. Any announcement of a continuation without a public announcement of the date, time, and place of the continued meeting shall require the issuance of new notice for any public hearings or other matters that require notice.

- Floor Required to Address Body. Except when raising a Point (Point of Order, Point of Information, or Point of Appeal), a Member must first be recognized by the Chairperson and be given the floor in order to address the Body. Speaking without first obtaining the floor is out of order.
- Time Limit for Floor. A Member's right to the floor is limited to five (5) minutes. A Member may request that the Chairperson grant additional time. Such request should customarily be granted by the Chairperson unless the Chairperson determines that other Members are waiting to be recognized to obtain the floor or that meeting efficiency necessitates that the requested extension be denied. When one Member is denied a request for an extension of time to speak, no other Member shall be granted an extension of time for the same agenda item. Speaking in excess of the allocated time is out of order.
- Limitation on Obtaining Floor. A Member should only speak once to any motion or matter under debate until such time that all others seeking the floor have been provided an opportunity to speak to the motion. Obtaining the floor after previously speaking when other members are waiting an opportunity to speak is out of order.
- No Interruptions or Side Discussions. To maintain a clear recorded meeting record, only one person shall speak at any one time. Interrupting a person who has the floor or engaging in side discussions while another person has the floor is out of order.
- Second Required for Debate. All motions must receive a second before debate or discussion may begin. A second does not connote approval of the motion but only that the Member offering the second supports fuller discussion of the motion.
- Chairperson Discretion. The Chairperson may independently decide to deviate from the Rules of Order in order to increase meeting efficiency and to best enable full and informed discussion of a matter before the Body. However, such independent action by the Chairperson remains subject to a Point of Order and Point of Appeal through which a Member can bring the meeting into full compliance with the Rules of Order.
- Voting:
Vote Requirement. A majority vote of the quorum present is required for any motion unless a different requirement is set by these Rules of Order or by applicable law. For example, a supermajority (2/3rds of quorum present) is required for a Motion to Call the Question pursuant to these Rules of Order and a

supermajority (2/3rds of a quorum present) is required for a motion for executive session pursuant to the Colorado Open Meetings Law (C.R.S. § 24-6-402(4)).

Aye or Nay Vote Required. A vote of aye or nay (or another form of affirmative or negative declaration such as “yes” or “no”) shall be taken upon motions. Every Member, when present, must vote aye or nay unless:

- (1) The Member is excused by the Chairperson due to the Member’s declaration of a conflict of interest at the introduction of the agenda item or immediately upon discovery of a legally recognized conflict of interest; or
- (2) The Member is excused by the Chairperson because the member is without sufficient information upon which to enable an informed vote due to an absence at a prior meeting, e.g., the member did not attend the meeting for which meeting minutes are moved for approval.

No Abstention. An unexcused member’s vote to “abstain” or other similar declaration other than “aye” or “nay” shall be recorded as a “nay” vote on the pending motion or matter.

No Explanation of Vote. Members shall not explain their vote except during discussion and deliberation prior to the calling of the vote on the question. Any attempt to explain a vote or to condition the vote immediately prior to casting the vote is out of order.

Chairperson’s Privileges & Duties

- Chairperson to Direct Meeting. The Chairperson is privileged to act as the director of the meeting. The Chairperson shall seek to clarify the actions pending before the Body during the meeting and prior to a vote. For example, the Chairperson is encouraged to restate motions, announce expectations for the meeting agenda, and recommend to the Body the proper procedure or rules for a particular course of action. The Chairperson has a continuing right to the floor although, like any other member, shall be held to compliance with the Rules of Order.
- Chairperson as Parliamentarian. The Chairperson is the meeting parliamentarian and shall decide all questions of process and procedure. Such decisions are subject to appeal by a Point of Appeal. The Chairperson may consult with the Body’s legal counsel or administrative staff to assist in rendering decisions regarding the application of the Rules of Order.
- Chairperson as Facilitator of Discussion. As the meeting director, the Chairperson should generally encourage and enlist other Members to propose or to second motions and to lead initial debate. Nevertheless, the Chairperson is entitled to the same rights as Members regarding the presentation of motions, seconding motions, and debate and may exercise such privilege as deemed appropriate by the Chairperson.

- Temporary Informal Recesses. The Chairperson may declare a temporary recess without motion or consent of the Body. However, no recess shall be declared which would interrupt a member who has properly secured the floor to speak.

Moving Party's Privileges

- At any time *prior to* receiving a second on a motion, the Moving Party may unilaterally withdraw or unilaterally amend a motion provided that the Moving Party has the floor. A motion, *once seconded*, belongs to the decision-making Body and the Moving Party's privileges are limited.
- The Moving Party retains the following limited privileges after the motion receives a second if the Moving Party has properly secured the floor to speak:
 - A. The Moving Party may speak to the rationale, purpose, meaning, or need of the motion prior to the opening of full debate to other members of the Body.
 - B. The Moving Party may withdraw his/her seconded motion unless an objection is raised by Point of Order. An objection to the Moving Party's withdraw of the seconded motion will summarily defeat the Moving Party's request to withdraw.
 - C. The Moving Party may accept a proposed amendment (a "Friendly Amendment") unless an objection is raised by Point of Order. An objection to a Friendly Amendment will summarily defeat the Moving Party's privilege to accept a Friendly Amendment and, in such case, a formal Motion to Amend would be in order.
 - D. During debate, to further explain or clarify the meaning, intent, or purpose of the motion or to otherwise respond to a Point of Information.

Classes & Priority for Points and Motions

There are three classes for motions and points: (1) Privileged; (2) Main; and (3) Subordinate. The class determines the priority or importance of the motion or point and, therefore, determines whether the motion or point is "in order" when made, i.e., if the motion or point proposed is appropriate for the Body to consider at the time it is presented.

- **PRIVILEGED** motions, which include all three Points, do not require a pending main motion on the floor and do not relate directly to a pending question. Privileged motions or points may be raised at any time. Privileged *points* do not require the floor; privileged *motions* require the floor. Privileged motions oftentimes involve an administrative or ministerial aspect of the meeting that needs to be resolved independently of the business then-pending before the Body. There following motions or points are recognized as privileged and are listed *in order of precedence*:
 - Point of Order
 - Point of Information

- Point of Appeal
 - Motion to Recess
 - Motion for Executive Session
- A **MAIN** motion formally presents to the Body an item for action. A Main motion can be made only when no other motion is pending. If a Main motion is presented when another pending motion or point is before the Body, it is out of order.

Although there are as many Main motions as there are subject matters that a Body may consider, there are four (4) commonly recognized *specific* Main motions used in local government decision-making:

- Motion to Adjourn
 - Motion to Reconsider
 - Motion to Postpone an Agenda Item to a Date Certain
 - Motion to Postpone Indefinitely
- A **SUBORDINATE** motion is related to and supplements or builds upon the Main motion. A Subordinate motion must be dealt with before the Main motion can be voted on. A Subordinate motion is in order only when there is a pending main motion on the floor. Once a seconded Subordinate motion is pending on the floor, neither a MAIN motion nor another Subordinate motion is in order.

There are three (3) recognized Subordinate motions:

- Motion to Amend (a Main Motion)
- Motion to Continue Matter Before the Body to Date Certain
- Motion to Call the Question (Close Debate)

Points and Motions in Detail

A. Points

There are three "Points:" (1) Point of Order; (2) Point of Information; and (3) Point of Appeal. Points do not require a second. They are each "privileged" and may be raised at any time.

- **Point of Order** (or to "raise a question of order" as it is sometimes expressed), is an opportunity for a Member to express an opinion that the rules or procedures of the Body are being violated. The appropriate means of asserting such opportunity is for the member to wait for a break in the discussion and state "Point of Order" and wait to be recognized by the Chairperson. Any existing debate or discussion should cease. Upon the Chairperson's recognition, the member must succinctly state the general rule or procedure believed to be in violation. A point of order should not interrupt another speaker, does not require a second, is not debatable, is not amendable, and cannot be reconsidered. For example:

Member Jones was granted the floor and proposed a motion to approve a site plan. Member Jones then proceeded to discuss the rationale for his motion.

Member Jones: [has the floor and is engaged in debate on a motion, he pauses in his debate]

Member Smith: "Point of Order."

Chairperson: "Excuse me a moment, Mr. Jones. The Chairperson recognizes Ms. Smith."

Member Smith: "I believe we are debating a motion that did not receive a second. I believe that this is out of order because a motion requires a second before debate."

Chairperson: "You are correct Ms. Smith, I do not recall a second was offered. Therefore, let us cease debate. Do I have a second on the motion? [A second is offered]. Thank you for your Point of Order, Ms. Smith. Mr. Jones, you have the floor and may commence debate."

- **Point of Information** is a *request to receive information* on a specific question, either about process, meeting conduct, clarification of a motion, or about a fact at any time during a meeting. A Point of Information is not an opportunity for a member to *provide* information to the Body and should never be used as a means of continuously interrupting the flow of debate. Using a Point of Information to provide information or to interrupt debate would be out of order.

As an example of the proper use of a Point of Information while the Body is engaged in debate on a seconded motion:

Member Quinn: [Has the floor and is offering her thoughts on a pending matter.]

Member Frank: "Madam Chairperson, Point of Information"

Chairperson: "Excuse me a moment, Ms. Quinn. The Chairperson recognizes Member Frank."

Member Frank: "Ms. Quinn said there are more than 5,000 vehicles passing through the Main Street intersection during the peak evening hours. But I recall that our Traffic Engineer stated earlier that the traffic count at the intersection during evening peak hours was only 1,500 vehicles. What is the correct number?"

Chairperson: "Let's have the Traffic Engineer provide us the accurate figure for traffic count."

Following the Traffic Engineer's advisement, Ms. Quinn again has the floor.

- **Point of Appeal** is a request of a member to challenge a decision of the Chairperson concerning the application of the Rules of Order. A Point of Appeal shall customarily be in order immediately following the Chairperson's decision and

may be declared out of order and unavailable where the Body has relied upon the Chairperson's decision and continued the proceeding in reliance upon, or in accordance with, the Chairperson's decision. The member making the Point of Appeal may briefly state his or her reason for the Point, and the Chairperson may briefly explain his or her ruling, but there shall be no further debate on the appeal.

As an example of the use of a Point of Appeal when a motion is pending discussion:

Chairperson: "We have on the floor a Motion to Call the Question that was seconded." The vote on a Motion to Call the Question is not debatable and will require a majority vote of the quorum present."

Member Thomas: "Point of Appeal"

Chairperson: Mr. Thomas has raised a Point of Appeal. Mr. Thomas, you have the floor. What is your appeal?"

Member Thomas: I appeal the Chairperson's decision regarding the required vote on a Motion to Call the Question. A Motion to Call the Question requires a 2/3rds vote pursuant to our Rules of Order.

Chairperson: "My decision regarding the required vote is being appealed. I believe that closing debate is a rather simple matter only requiring a majority vote like a majority of all of our motions."

"We shall now vote on the appeal. Mr. Thomas appeals my decision regarding a vote on a Motion to Call the Question requires a simple majority of this quorum. Mr. Thomas asserts it should be a 2/3rds vote. The question we are now voting on is 'Shall the decision of the Chairperson be sustained?'"

[The Members vote to not sustain (they overturn) the Chairperson's decision.]

Chairperson: "My decision is overturned on appeal. I stand corrected and will now declare that the Motion to Call the Question requires a vote of 2/3rds of the members of the Body. Let us proceed to the consideration of the Motion to Call the Question."

B. Motions

- **Motion to Recess** **(Privileged)**

A Motion to Recess is intended to provide a temporary cessation in the meeting to accommodate matters such as restroom breaks or to consult with legal counsel or administrative staff. The motion should state approximate amount of time for the requested recess as a convenience to other members and the public in attendance. A second is required and the

motion is not debatable and requires an immediate vote. A majority vote of quorum present required for approval.

As an example of a Motion to Recess, such motion might be stated as:

Member Thomas: "I move to recess our meeting for 15 minutes until 7:30."

Member Jones: "Second."

Chairperson: "We have a Motion to Recess on the floor to recess until 7:30. Because this motion is not debatable, would the clerk please call for the vote."

- **Motion to Adjourn (Main)**

Motion to Adjourn is available to cease further action of the Body and immediately terminate the meeting. A Motion to Adjourn is debatable and requires a majority vote of quorum present required. Caution should be exercised when presenting a Motion to Adjourn when items are pending on the agenda that required prior notice (such as public hearing publication or posting of property) because these matters must be properly continued to a future date or new notice published and/or posted.

As an example of a Motion to Adjourn, such motion might be stated as:

Member Thomas: "I move to adjourn this meeting."

Member Jones: "Second."

Chairperson: "We have a Motion to Adjourn on the floor. Member Thomas, did you want to speak to your motion or open any debate?"

Member Thomas: "Thank you. I believe the remaining items on our agenda are not important and it is already 11:00 p.m. I believe we are all tired and can no longer concentrate."

Chairperson: Any other debate? Seeing none, would the clerk please call for the vote. Please note that only a simple majority of our quorum present tonight is needed to adjourn."

- **Motion to Reconsider (Main)**

A Motion to Reconsider is an extraordinary motion that requires a degree of care in presenting and, if approved, care in processing the matter to be reconsidered. A successful Motion to Reconsider will effectively void the prior vote taken on the previously decided motion and cause the matter to be reopened for another motion and a new consideration.

A Motion to Reconsider is only in order at the same meeting at which the decision to be reconsidered was made or at the *next* regular meeting of the

Body. The motion must be made by a member on the prevailing side of the original motion to be reconsidered. The required second on the motion need not be a member from prevailing side. The motion is debatable but only for the reasons to explain or justify reconsideration and not for the purpose of debating the merits of the original motion.

A supermajority vote of 2/3rds of the quorum present is required for approval. All proceedings, testimony, evidence, and debate on the matter presented during the initial consideration of the original matter will remain part of the official record; only the decision or vote taken is voided.

In the event of a successful Motion for Reconsideration, it is recommended that the reconsideration of the original matter be continued to a future date as opposed to being heard at the same meeting in which the Motion for Reconsideration was approved. This recommendation stems from the fact that the matter under reconsideration will likely require new public notice so that interested parties (and possibly an applicant whose rights are being decided) are apprised of the new consideration and can attend and participate in the new consideration. Even when a successful Motion for Reconsideration was presented in the same night as the matter subject to reconsideration, the parties present for the original matter may have departed the meeting after what appeared to those attending to be a final decision on the original motion. Fairness will often dictate that the reconsideration be scheduled for a future date.

As an example of the typical process surrounding a Motion to Reconsider, such motion might be stated as:

Member Thomas: "I move to reconsider our decision to approve Ordinance 14 which required all owners to keep their dogs on leashes at all times. I believe I can make this motion because I voted "yes" on the ordinance and it was approved at our last meeting."

Member Jones: "Second."

Chairperson: "We have on the floor a Motion to Reconsider Ordinance 14 concerning our new dog leash law. Please note that a Motion to Reconsider, if we approve it tonight, will reopen the consideration of Ordinance 14 and require new debate, a new motion, and a new vote. Member Thomas, did you want to speak to your Motion to Reconsider? Please note that you are free to discuss the reason why you wish to seek reconsideration but this is not intended to be a debate of the merits of Ordinance 14 at this time."

Member Thomas: "Thank you. I would like us to reconsider Ordinance 14 because upon reflection over the last week I believe the Ordinance may be too restrictive and we might want to consider allowing an exemption to the

leash requirement for owners that can maintain control over their dogs by using voice command.”

Chairperson: “Any other debate concerning whether we should reconsider Ordinance 14? Seeing none, would the clerk please call for the vote. Please note that this Motion to Reconsider requires a supermajority of 2/3rds of the quorum present tonight to be approved. If approved, our administrative staff will need to schedule Ordinance 14 for discussion at a future date and provide or publish any required notices to the public concerning our reconsideration of Ordinance 14.”

- **Motion to Postpone an Agenda Item to Date Certain (Main)**

A Motion to Postpone an Agenda Item to a Date Certain pertains to a matter that is not presently on the floor but is scheduled for later consideration on the Body’s agenda. The motion must identify a date and time certain for the agenda item to be reset for Body consideration. If the Moving Party desires to *indefinitely* postpone an item, a Motion to Postpone indefinitely is the appropriate motion (see below). The Motion to Postpone an Agenda Item to a Date Certain is debatable. A majority vote of quorum present required for approval.

As an example of a Motion to Postpone an Agenda Item to Date Certain, such motion might be stated as:

Member Smith: “I move to Postpone Agenda Item 8 which pertains to funding of the repainting of the offices in City Hall to our meeting on August 15 at 7:00 p.m. here in our Council Chambers.”

Member Edwards: “Second.”

Chairperson: “We have a Motion to Postpone Agenda Item 8 which pertains to the funding of the repainting of the offices. This motion is debatable, so I would offer Mr. Smith and other Members an opportunity to comment on the motion”.

Member Smith: “I believe that this is not an urgent matter and, quite frankly, there are more pressing matters to fully consider tonight. The August 15 agenda looks like a light meeting.”

Chairperson: “Any other discussion? Seeing none, would the clerk please call for the vote.”

- **Motion to Postpone Indefinitely (Main)**

A Motion to Postpone Indefinitely will effectively kill a matter that is subject to the Body’s consideration (and is usually on the meeting agenda or

scheduled on a future agenda). This motion will remove the matter from the Body's consideration without full debate of the matter and without directly voting the matter down on the matter's merits. It is most commonly used to eliminate a matter from the current and/or future agendas because there is insufficient interest on the Body to hear the matter. As a caution, a Motion to Postpone Indefinitely would not be appropriate where the item involves a quasi-judicial matter for which an applicant has a right to a hearing and opportunity to be heard; legal counsel should be consulted regarding the use of this Motion for any quasi-judicial matter. The motion is debatable. A majority vote of quorum present required for approval. If approved, the matter will not be brought back to the Body unless the Body instructs that the item return for a future agenda.

As an example of a Motion to Postpone Indefinitely, such motion might be stated as:

Member Johnson: "I move to Postpone Indefinitely Agenda Item 2 which pertains to enacting a leash law for all cats in the town."

Member Samuels: "Second."

Chairperson: "We have a Motion to Postpone Agenda Item 2 indefinitely which pertains to our imposing a leash law on cats. This motion is debatable and requires a majority vote of the quorum present tonight. I would offer Ms. Johnson and other Members an opportunity to comment on the motion."

Member Johnson: "I have talked with many citizens about this proposal and believe that we are likely to be harshly criticized should be enact such an ordinance. So I think it is a waste of our time to continue to entertain this idea and I prefer just to eliminate the matter from tonight's agenda and our future consideration."

Chairperson: "Any other discussion? [Member Thomas requests floor]. The floor recognizes, Mr. Thomas. Mr. Thomas you have the floor."

Mr. Thomas: "Thank you. Although I agree with Ms. Johnson about the public sentiment we are likely to hear about leashing cats, I think we should at least open the public debate and have the citizens comment to us directly. So, I oppose the motion to postpone indefinitely."

Chairperson: "Seeing no other discussion, would the clerk please call for the vote."

[Vote fails to gain the required simple majority vote needed for a Motion to Postpone Indefinitely.]

Chairperson: "We do not have the required majority of the quorum so the offered motion is rejected or fails. We will consider the matter of leashing cats as our scheduled Agenda Item 2 tonight."

• **Motion to Amend (a Main Motion) (Subordinate)**

A Motion to Amend (a Main Motion) is applicable only to a Main motion on the floor. The motion must provide specificity as to the intended amendment. The motion is debatable. A majority vote of a quorum present required for approval. A motion to amend is not in order when another motion to amend is already pending (made and seconded) before the Body; e.g., the Body will deal with only one Motion to Amend at a time to avoid confusion.

As an example of a Motion to Amend a Main Motion, such motion might be stated as:

Member Smith: I move to Approve Ordinance No. 6 as presented to us tonight."

Member Jackson: "Second."

Chairperson: "We have a proper Motion on the floor that has received a second to approve Ordinance No. 6. Any discussion?"

Chairperson: "Yes, the Chair recognizes Mr. James. Mr. James, you have the floor."

Member James: "Thank you. I move to amend the motion offered by Ms. Smith to change the amount of the penalty for the first violation stated in Section 1-1-3 on page 3 of Ordinance No. 6 from the stated \$100 for the first offense to \$200 for the first offense."

Member Samuel: "Second."

Chairperson: "We have a Motion to Amend before us to change the penalty in Section 1-1-3 of Ordinance No. 6 from \$100 to \$200 for the first offense. We will take up the Motion to Amend first and decide that Motion before we consider the Main Motion. It is debatable and requires a simple majority vote. I see no one wishing to comment or debate the offered amendment to Ordinance No. 6. Would the clerk call for the vote on the Motion to Amend only."

[Motion receives majority vote of approval.]

Chairperson: "The Motion to Amend is approved so Ordinance No. 6 is now amended to change the penalty for a first offense to \$200. We next turn to the Main Motion to

approve Ordinance 6, now as amended. Any debate on Ordinance No. 6 as amended? Seeing none, would the clerk please call for the vote of Ordinance No. 6 as it was amended.”

- **Motion to Continue Matter to Date Certain (Subordinate)**

A Motion to Continue a Matter (that is before the Body) to a Date Certain postpones to holdover the current motion to a specific date, time, and place stated in the motion. Note that a motion to continue a matter without stating a date certain would operate more like a Motion to Postpone Indefinitely (see above) and would require the matter to be affirmative requested by the Body for future consideration and reintroduced and, when required, new publication of notice of the hearing or discussion. The motion is debatable. A majority vote of a quorum present required for approval.

As an example of a Motion to Continue a Matter to a Date Certain, such motion might be stated as:

Member Smith: “I move to continue this matter under consideration to our meeting on February 23 at 7:00 p.m. here in our Council Chambers.”

Member Edwards: “Second.”

Chairperson: “We have a Motion to Continue this matter we are considering to a date and time certain, that being our meeting of February 23, at 7:00 p.m. here in our Council Chambers. This motion is debatable and only requires a majority of the quorum here this evening. I would offer Mr. Smith and other Members an opportunity to comment on the motion.”

Member Smith: “I believe we need a continuation so that we can have a full opportunity to review the traffic study we received tonight. Without my detailed review of that study, I do not believe I am able to make an informed decision on the matter pending before us.”

Chairperson: “Any other discussion? The Chair recognizes Ms. Hampton.”

Member Hampton: “We have all had the traffic study for more than a month and we received a presentation on the study contents last week. With all respect to Mr. Smith, I believe a majority of us are fully informed and we can decide the issue tonight.”

Chairperson: “Seeing none other request to debate, would the clerk please call for the vote.”

- **Motion to Call the Question** **(Subordinate)**

A Motion to Call the Question (also more correctly phrased as to “Close Debate”) will close further debate and require vote on the motion pending before the Body. The motion applies only to the motion on the floor. The motion is not debatable. Due to the fact that such a motion will forestall the Body’s ability to discuss the merits of the pending matter, a supermajority vote of 2/3rds of the quorum present is required for approval in order that the Body evidences a strong intent that continuing debate is not necessary to decide the matter.

As an example of a Motion to Call the Question (or Close Debate), such motion might be stated as:

[A debatable motion is pending before the Body and the Body is engaged in debate.]

Member Bernie: “I move to Call the Question.”

Member Jones: “Second.”

Chairperson: “We have Motion to call the Question which will, if approved, close all debate on the matter presently before us and require a vote. This motion is not debatable. This motion will require a supermajority of our quorum by 2/3rds. Would the clerk please call for the vote.”

Chairperson: “The Motion to Call the Question is approved by a 2/3rds vote. Would the Clerk please call for the vote on the main motion.”

- **Motion for Executive Session** **(Privileged)**

Executive sessions are expressly permitted by state law to allow the Body to discuss certain topics in a closed non-public setting. The most common authorized executive session topics for local government include:

- A. Purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale.¹⁰
- B. Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to qualify the executive session as a session involving legal advice.¹¹

¹⁰ C.R.S. § 24-6-402(4)(a).

¹¹ C.R.S. § 24-6-402(4)(b).

- C. Matters required to be kept confidential by federal or state law or rules and regulations. The Body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.¹²
- D. Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.¹³
- E. Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.¹⁴
- F. Personnel matters *except if* the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting.¹⁵ However, you cannot hold an executive session for “personal matters” to discuss:
 - (i) an elected official or an appointed member of the Body;¹⁶ or
 - (ii) the appointment of a person to fill an appointed¹⁷ or elective office; or
 - (iii) personnel policies that do not require the discussion of matters personal to particular employees.¹⁸
- G. Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act",¹⁹ except that all consideration of documents or records that are work product as defined in C.R.S. § 24-72-202 or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to state law.

Because the authorized purposes for executive session are limited and because errors in calling for an executive session *may* result in the session discussion becoming subject to public disclosure or actions, if any,

¹² C.R.S. § 24-6-402(4)(c).

¹³ C.R.S. § 24-6-402(4)(d).

¹⁴ C.R.S. § 24-6-402(4)(e).

¹⁵ C.R.S. § 24-6-402(4)(f)(I).

¹⁶ C.R.S. § 24-6-402(4)(f)(II).

¹⁷ *Id.* A special statutory provision of the Colorado Open Meetings Law (C.R.S. § 24-6-402(3.5)) may authorize non-public executive sessions to conduct some of the business associated with selecting the chief executive officer (commonly considered as the “city manager” or “town administrator.”) Consult your local counsel to understand the steps necessary to hold these special forms of non-public public meetings.

¹⁸ C.R.S. § 24-6-402(4)(II).

¹⁹ *Id.*

invalidated, it is always advised to obtain legal advice regarding each motion.

Unlike other matters that will be open for public discussion, debated, and possibly decided by the Body, it is not necessary that the Executive Session be listed on the meeting agenda in advance. Oftentimes, the Body has no need for an executive session and the need arises during the meeting. For example, the need for legal advice may not be known until evidence or information is presented that give rise to a question requiring consultation with the Body's counsel.

The Motion for Executive Session must include the citation to Colorado Revised Statute subsection authorizing session and a brief description of subject matter.

The motion is debatable. However, care should be taken during debate to not disclose any confidential or sensitive information that might undermine the purpose of the executive session. For example, a town board member may state in debate during the public meeting that an executive session should be held to allow the council to decide "whether to spend up to \$2,000,000 on the acquisition of the vacant Thompson Property for a public park." Such public disclosure would essentially undermine the purpose of the executive session, that is, to give the town board the opportunity to determine negotiation strategy and the total amount willing to be paid to the seller for the Thompson Property. More appropriate would be to declare in debate that the executive session is needed to "allow the town board to decide the maximum amount the negotiation team can offer in negotiation."

Very importantly, a supermajority of 2/3rds of quorum present required for approval pursuant to the Colorado Open Meetings Law.

As an example of a Motion for Executive Session to obtain legal advice, such motion might be stated as follows:

Member Thomas: "I move to hold an executive session pursuant to C.R.S. § 24-6-402(4)(b) to receive legal advice on the right to impose a condition on the proposed rezoning application under discussion."

Member Jones: "Second."

Chairperson: "Is there any debate on this motion? Seeing none, would the clerk please call for the vote." Please note that the vote required for executive session is a 2/3rds of the quorum present tonight."

[Vote by the Body is taken and the vote is unanimous.]

Chairperson: "We are now authorized to enter into executive session."

Suspension of Rules

A. Chairperson May Suspend

Subject to challenge by Point of Appeal, the Chairperson may unilaterally elect to suspend operation of any rule provided by these Rules of Order; provided, however, that the Chairperson shall not be authorized to suspend or alter the vote required on any motion or matter.

B. Suspension of Rules

Any member may move to suspend the applicability of a rule of order by proposing a main motion; provided, however, that no motion may suspend or alter the vote required on any motion or matter. Such motion shall be presented only as a main motion which motion shall require a second, be subject to debate, and shall require a majority vote of the quorum present for adoption.

Matrix of Points and Motions

Type	MOTION	Floor Required?	When in Order?	Second Required?	Debatable ?	Vote Required
Point	Point of Order	No	Any time	No	No	-
Point	Point of Information	No	Any time	No	No	-
Point	Point of Appeal	No	Immediately following decision	No	Yes	Majority of quorum
Main	Main Motion	Yes	When no other motion is pending	Yes	Yes	Usually majority. Depends on law or regulation Section 3.9
Main	Adjourn	Yes	When no motion pending	Yes	Yes	Majority of quorum
Main	Postpone (an item on the agenda)	Yes	When no motion pending	Yes	Yes	Majority of quorum
Subsidiary	Continue (a pending matter or pending motion)	Yes	When matter or motion is pending	Yes	Yes	Majority of quorum
Subsidiary	Close Debate	Yes	When motion pending	Yes	No	2/3rds of quorum
Subsidiary	Table	Yes	When matter or motion is pending	Yes	No	Majority of quorum
Subsidiary	Amend (a pending motion)	Yes		Yes	Yes	Majority of quorum

Type	MOTION	Floor Required?	When in Order?	Second Required?	Debatable ?	Vote Required
Privileged	Recess	Yes	Any time	Yes	No	Majority of quorum
Privileged	Executive Session	Yes	For Legal Advice: Any time For other reason: When no matter or motion pending	Yes	Yes, provided that the debate does not disclose confidential information	2/3rds of quorum
Privileged	Reconsider	Yes	When no matter or motion pending, and at either at the same meeting at which the decision to be reconsidered was made <i>or</i> at the <i>next</i> regular meeting of the body. Otherwise, such motion is unavailable and out of order.	Yes	Yes, as to reason but not to debate original motion	2/3rds of quorum

CML LEGAL CORNER



Is it time to abandon remote public comment?

By Robert Sheesley, CML general counsel

During the COVID-19 pandemic, municipalities widely adopted virtual meeting policies that included options for the public to address the governing body by telephone or video call during general public comment periods and public hearings. These options for remote public comment have been retained despite meetings largely being held in person. Just because technology makes remote comment possible, however, does not mean that continuing it is in the best interests of the municipality.

Recent episodes suggest a need to rethink how to conduct general comment periods when remote options are offered, or whether to have a remote option at all. Public comment periods have frequently become stages for performances to viewers, rather than addresses to the governing body. Worse, this month several Colorado municipalities saw groups of speakers use fake names and addresses to make antisemitic statements and other comments having no bearing on municipal business.

Remote comment options are no longer necessary to ensure public health and have become primarily a method of inclusion in government. (In some instances, remote comment may be considered an accommodation for a person with a disability that is outside the scope of this discussion.) The value of expanded participation is diminished, however, if business is delayed or if members are distracted by the commentary.

BOUNDARIES OF PUBLIC COMMENT

In general, a council or board meeting is for conducting city or town business as reflected in the meeting agenda. Officials and the public expect the body to address

the agenda meaningfully and in a timely manner. As an adjunct to a regular meeting, many municipalities also allow a public comment period, by local law or practice.

A comment period is a venue for free speech (including spoken words and expressive conduct) protected by the First Amendment to the U.S. Constitution and Article 2, Section 10 of the Colorado Constitution. The government typically cannot restrict a speaker based on the viewpoint (or opinion on a subject) they express through speech or expressive conduct. When the right to speak is provided, protecting First Amendment rights should be first in a chairperson's mind.

Often, comment periods allow the public to speak on any topic of their choosing. The content of speech often can be limited in a general comment period, provided the restriction is grounded in the law that creates the comment period. For example, that authorization may permit comment "on matters listed in the agenda" or "on matters related to the business of the city." Even then, determining whether speech relates to a particular item can be a difficult task. Public hearings, in contrast, can be more regulated as to the subject and speakers.

Within constitutional boundaries, local law or practice establishes all other requirements for public comment period. If the law is "viewpoint neutral," the municipality can regulate the "time, place, and manner" of public comment in a uniform way. Note that some speech is not protected, like speech that is directed to incite imminent violence or lawbreaking and is likely to do so.

MODIFYING REMOTE COMMENT OPTIONS

The simplest solution may be to remove remote comment options entirely. If

remote comment options are too valuable to eliminate entirely, then restrictions generally would be appropriate if they do not discriminate based on the speaker's opinion or, except where local law creates a narrow scope for the comment period, the subject of the comments. There can be time limits for individual speakers, a total time limit for public comment, a limit on the number of speakers, or an overall time limit on public comment. Pre-registration, coupled with a lottery or first-come, first-serve system, can complement meeting management. Some communities might hold a public comment period before the business meeting or defer comment until after business is completed.

Speaking at a meeting may carry unique weight, but alternate methods of communication can provide the same or better access to officials. E-mail, online comment submittal forms, town hall-style meetings, and one-on-one communications allow a member of the public to speak directly their representatives. Other means of communicating also support reasonable restrictions on commenters.

The time to evaluate whether this manner of public comment should be tolerated is before it occurs, not as a quick reaction to a troubling meeting. A governing body, in consultation with its attorney, should ask, "Is this tool useful for members of our community or has it become a distraction from public business?" and "Are we willing to allow our meeting to be used this way?" If there is any uncertainty, a body should ensure that its meeting regulations align with the purpose of allowing remote comment.

This column is not intended and should not be taken as legal advice. Municipal officials are always encouraged to consult with their own attorneys.

Antisemitic remarks overtake city council meeting's public comment

Speakers identified themselves with names like Andy Zemite, Judy Stroyer and Sieg Heil.

Author: Marshall Zelinger

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WHEAT RIDGE, Colo. — Antisemitic rants overtook public comment during a city council meeting in Wheat Ridge.

It is the most recent example in a string of public comment takeovers by individuals promoting an antisemitic group's website.

During Monday night's Wheat Ridge council meeting, virtual speakers participated in public comment. Some of the speakers identified themselves as: Andy Zemite, Judy Stroyer and Sieg Heil.

"You know, I think when I got to 'Sieg Heil,' I scratched the name down and somewhere in there I figured out that we were getting bogus people calling," Wheat Ridge Mayor Bud Starker told *Next with Kyle Clark*.

Starker led the meeting and public comment section that began with an in-person comment from a resident talking about the Wadsworth Improvement Project's impact on streets.

After her public comment, the remainder of the speakers participated virtually, a practice that began during the 2020 pandemic.

"We haven't had this problem happen before last night," Starker said.

The public comment included many antisemitic remarks about Jewish people, with several people referencing an antisemitic group's website.

"There was a lot of vitriol," Starker said.

Speakers were given three minutes each, until the council took a recess and shortened the public comment period to one minute each.

"We had business before the council. The council had public hearings and other business that we needed to get to," Starker said.

The council did not end public comment based on the antisemitic comments, and it probably would not have been legal to do so.

“There’s a First Amendment that we have in the United States that’s dear to the freedoms that we enjoy, and part of that is the freedom to express your opinion. We’re a public body. People are welcome to come and talk and speak to the councilors, speak to the representatives. We don’t infringe upon that,” Starker said.

The Anti-Defamation league [recently published an article](#)

{<https://www.adl.org/resources/blog/antisemites-racists-and-other-bigots-are-hijacking-public-meetings>} on antisemitic, racist and bigoted hijackings of public meetings, including meetings that reference the same antisemitic group named in the Wheat Ridge council meeting.

“If it’s a public forum, then the standard for restricting that comment in the public commentary is going to be very high. If it’s not a public forum, you have an easier basis for restricting speech. But that situation was indeed a public forum,” said Jessica Smith, an attorney with constitutional law expertise at Holland & Hart.

Some government agencies have given public comment total time limits, or even limiting the comment to content that relates to items on the current agenda.

“It really becomes a tricky path for government bodies to try and engage in content-based restrictions. It’s something that we really don’t like in this country, regardless of how hateful the messages,” Smith said. “They were incredibly hateful, false, antisemitic, incredibly horrific. They were terrible. And the law protects most of that speech.”

She gave two examples where the speakers, perhaps, opened themselves up to scrutiny or even legal trouble.

“One was a call to an imminent lawless action. And so. there were a couple of speakers that made comments about potentially putting people in camps and rounding people up in the United States and putting them in camps. That would be illegal and that is not protected speech. And so, the question would be whether or not that was imminent enough, whether or not it was a call for imminent action, and if it is, then that is not protected speech. That would be something that they could restrict,” Smith said.

The speakers also named several people in President Biden’s administration, as well as the Trump campaign. Smith said that could be problematic for the speakers, if they were ever identified.

“People whose names were mentioned might have a cause of action against those speakers for defamation, and defamation is not protected by the First Amendment,” Smith said.

Before each speaker received their time, the mayor asked for the person to say and spell their name and provide their address.

Most of the addresses were clearly not in Wheat Ridge city limits, if they were real at all.

“I don’t really think that it’s my role or our councilors’ role to ferret out the honesty of the person that’s calling at the time,” Starker said.

Could the council have limited speakers to only people within Wheat Ridge city limits?

“We ask for people’s names, we ask for an address in order to see whether they are talking about things that are happening in Wheat Ridge, and they’re a resident of Wheat Ridge,” Starker said. “The point of the address is, really, to allow the councilors to understand whether constituents are calling or whether they live out of the city, and we certainly take all comments, inside and outside of the city.”

Even the clearly fake names would not be enough to prevent the person from speaking.

“For the purposes of the First Amendment, you don’t need to know whether or not all of those names are true, accurate names for them to be able to speak at that public forum. That’s not really a requirement for the First Amendment to trigger. It just needs to be that that is a city council meeting, and they opened up the floor to public comment,” Smith said.

In an unusual step, the city tried to track the IP addresses for some of the virtual speakers. A spokesman for the city said they traced locations to Salt Lake City, Chicago, San Jose, Portland and New Jersey. Though, IP addresses can also be masked.

“We don’t normally check IP addresses for typical council meetings but decided to look after what happened last night to confirm our suspicions,” the spokesman said.

At the end of the council meeting, several of the councilmembers took a moment to comment on the public comment period.

“What I wasn’t expecting to do tonight, but I feel compelled to do, is to read back to us our resolution condemning racism and hate that we passed in June of 2020,” Councilwoman Rachel Hultin said.

That [resolution condemning racism and hate](#)

{<https://www.ci.wheatridge.co.us/ArchiveCenter/ViewFile/Item/4828>} was a response to the George Floyd killing at the hands of police in Minneapolis.

“I thought that was gross and disturbing,” Councilmember Korey Stites said.

So, what will the mayor do if there is another antisemitic takeover of public comment?

“I think we’ll listen to those comments again,” Starker said. “I think we’ll try to, once again, balance the First Amendment rights that people have to come and talk to the representatives, even with the vile speech that they put out there.”