



CITY CLERK'S OFFICE MEMORANDUM
#7-2024

DATE: April 22, 2024
TO: Honorable Mayor Meredith Leighty and City Council Members
THROUGH: Heather Geyer, City Manager 
FROM: Johanna Small, City Clerk 
SUBJECT: CB-2020 – Executive Session Process

PURPOSE

To consider CB-2020, an ordinance on second reading amending the process for City Council to meet in executive session.

BACKGROUND

The City Attorney recommended that City Council consider an ordinance to comply with State law regarding the process for entering into executive sessions as authorized by both Section 4.5 of the City Charter and the Colorado Open Meetings Law (the "OML"). A legal memorandum outlining the recommendation was provided to City Council on Feb. 9, 2024, and City Council discussed the matter in executive session on Feb. 26, 2024.

Electing to follow the OML procedures in C.R.S. § 24-6-402 for meeting in executive session is a proactive measure to reduce risk to the City. While the new process would be more formal, the substance of the information City Council would receive in executive session remains unchanged.

The executive session process provided in the OML requires:

- City Council to make a motion to meet in executive session by reading a specific script verbatim during the open meeting;
- The motion to meet in executive session to pass by a 2/3 majority instead of a simple majority;
- The Mayor and/or City Attorney to cite the specific provision of the City Charter which applies to each topic during the executive session;
- Recording the executive session separately from the regular or special City Council meeting recording, except for attorney-client privileged communications;
- Retaining the executive session recording for at least 90 days; and
- Providing the executive session recording to district court for judicial review if a person files an application demonstrating a reasonable belief that the City Council engaged in substantial discussion off the topic for which the executive session was announced, or that the City Council adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session.

The recording of the executive session is not a public record and is not subject to disclosure under the Colorado Open Records Act. However, if, after a judicial review, the court finds that City Council engaged in substantial discussion of matters not authorized or adopted a proposed

policy, position, resolution, rule, regulation, or formal action in the executive session, the remedy is for the court to order that the record of the executive session be open to public inspection.

Proposed Municipal Code Amendment

CB-2020 would amend Municipal Code Section 3-3-3(d) by the addition of the following language:

While under no legal obligation to do so, the City Council elects to follow the procedures for meeting in executive session as set forth in C.R.S. § 24-6-402. For purposes of this subsection (d), consideration of “(3) claims against the City whether in litigation or otherwise”, “(4) legal consultation and advice”, and “(5) litigation” under Section 4.5 of the City of Northglenn Home Rule Charter shall all be considered a conference with the City Attorney within the meaning of C.R.S. § 24-6-402(4)(b).

This amendment would change the procedure used by City Council to meet in executive session by requiring the use of a specific script to identify the particular matter to be discussed, a 2/3 majority vote to approve the motion to meet in executive session, statements regarding the topics of discussion during the executive session, recording the executive session (except for attorney-client privileged communications), and retention of the recordings. The amendment also clarifies that three of the City’s purposes for meeting in executive session (claims against the City, legal consultation and advice, and litigation) would be considered conferences with the City Attorney within the meaning of the OML.

BUDGET/TIME IMPLICATIONS

There are no budget impacts. If approved on second reading, the proposed ordinance will take effect five days following publication.

RECOMMENDATION

Staff recommends approval of CB-2020 on second reading.

STAFF REFERENCE

If Council members have any questions, please contact Johanna Small, City Clerk, at jsmall@northglenn.org or 303.450.8757.

ATTACHMENTS

1. Sample Executive Session Script
2. C.R.S. § 24-6-402 – Open Meetings Law

EXECUTIVE SESSION PROCEDURES/SCRIPT

1. BEFORE THE EXECUTIVE SESSION IN THE OPEN MEETING: A City Council member must state as follows:

"I move that the City hold an executive session to consider. . . "

CHOOSE ONE OR MORE OF THE FOLLOWING:

- a. Personnel matters pursuant to Section 4.5(a) of the City of Northglenn Home Rule Charter;
- b. Review of applications for any appointive position; interviews and appointments shall be conducted in an open meeting pursuant to Section 4.5(b) of the City of Northglenn Home Rule Charter;
- c. Claims against the City, whether in litigation or otherwise, pursuant to Section 4.5(c) of the City of Northglenn Home Rule Charter;
- d. Legal consultation and advice pursuant to Section 4.5(d) of the City of Northglenn Home Rule Charter
- e. Litigation pursuant to Section 4.5(e) of the City of Northglenn Home Rule Charter.
- f. Deliberation and/or review of any matters heard by Council in a quasi-judicial capacity pursuant to Section 4.5(f) of the City of Northglenn Home Rule Charter¹; and
- g. Negotiations concerning the purchase, sale, lease or other acquisition of real or personal property, or interests therein, or concerning any contracts except those required to be the subject of competitive bidding pursuant to Section 4.5(g) of the City of Northglenn Home Rule Charter.

2. VOTE: After a second to the motion, the City Council must vote on the motion. The motion must pass by a two-thirds (2/3) majority.

3. IN THE EXECUTIVE SESSION: The executive session must be recorded. Before each separate topic for discussion, the Mayor and/or City Attorney must state as follows:

"The following discussion is . . . "

CHOOSE ONE OR MORE OF THE FOLLOWING:

- a. Personnel matters pursuant to Section 4.5(a) of the City of Northglenn Home Rule Charter;

¹ This basis for executive session is no longer lawful based on the laws regarding how City Council acts in a quasi-judicial capacity; thus, the city should not enter an executive session for this purpose.

- b. Review of applications for any appointive position; interviews and appointments shall be conducted in an open meeting pursuant to Section 4.5(b) of the City of Northglenn Home Rule Charter;
- c. Claims against the City, whether in litigation or otherwise, pursuant to Section 4.5(c) of the City of Northglenn Home Rule Charter;
- d. Legal consultation and advice pursuant to Section 4.5(d) of the City of Northglenn Home Rule Charter;
- e. Litigation pursuant to Section 4.5(e) of the City of Northglenn Home Rule Charter; and
- f. [Intentionally deleted; see footnote ¹ on page 1]
- g. Negotiations concerning the purchase, sale, lease or other acquisition of real or personal property, or interests therein, or concerning any contracts except those required to be the subject of competitive bidding pursuant to Section 4.5(g) of the City of Northglenn Home Rule Charter.

4. ATTORNEY-CLIENT PRIVILEGE DURING THE EXECUTIVE SESSION: If a matter involves attorney client privilege, the attorney must state the following on the recording:

"I, Corey Hoffmann, am the attorney for the City of Northglenn, and it is my opinion that the following discussion constitutes a privileged attorney-client communication, so no further record shall be kept of the discussion."

Then the recording may be turned off. As soon as the attorney-client privileged discussion is completed, the recording must be restarted.

5. AFTER EXECUTIVE SESSION: The recording of the executive session must be retained for ninety (90) days.

Colorado Revised Statutes § 24-6-402 – Open Meetings Law

24-6-402. Meetings - open to public - legislative declaration - definitions. (1) For the purposes of this section:

(a) (I) “Local public body” means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, 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.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), in order to assure school board transparency “local public body” shall include members of a board of education, school administration personnel, or a combination thereof who are involved in a meeting with a representative of employees at which a collective bargaining agreement is discussed.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), “local public body” includes the governing board of an institute charter school that is authorized pursuant to part 5 of article 30.5 of title 22, C.R.S.

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

(c) “Political subdivision of the state” includes, but is not limited to, any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district.

(d) (I) “State public body” means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education including the regents of the university of Colorado, a nonprofit corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or the general assembly, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the state public body.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), “state public body” does not include the governing board of an institute charter school that is authorized pursuant to part 5 of article 30.5 of title 22, C.R.S.

(2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) 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 are declared to be public meetings open to the public at all times.

(c) (I) 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 twenty-four 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.

(II) The general assembly hereby finds and declares that:

(A) It is the intent of the general assembly that local governments transition from posting physical notices of public meetings in physical locations to posting notices on a website, social media account, or other official online presence of the local government to the greatest extent practicable;

(B) It is the intent of the general assembly to relieve a local government of the requirement to physically post meeting notices, with certain exceptions, if the local government complies with the requirements of online posted notices of meetings;

(C) A number of factors may affect the ability of some local governments to easily establish a website, post meeting notices online, and otherwise benefit from having an online presence, including the availability of broadband or reliable broadband, the lack of cellular telephone and data services, and fiscal or staffing constraints of the local government;

(D) Local governments are encouraged to avail themselves of existing free resources for creating a website and receiving content management assistance from the Colorado statewide internet portal authority and statewide associations representing local governmental entities; and

(E) It is the intent of the general assembly to closely monitor the transition to providing notices of public meetings online over the next two years and, if significant progress is not made, to bring legislation mandating in statute that all notices be posted online except in very narrow circumstances that are beyond the control of a local government.

(III) On and after July 1, 2019, a local public body shall be deemed to have given full and timely notice of a public meeting if the local public body posts the notice, with specific agenda information if available, no less than twenty-four hours prior to the holding of the meeting on a public website of the local public body. The notice must be accessible at no charge to the public. The local public body shall, to the extent feasible, make the notices searchable by type of meeting, date of meeting, time of meeting, agenda contents, and any other category deemed appropriate by the local public body and shall consider linking the notices to any appropriate social media accounts of the local public body. A local public body that provides notice on a website pursuant to this subsection (2)(c)(III) shall provide the address of the website to the department of local affairs for inclusion in the inventory maintained pursuant to section 24-32-116. A local public body that posts a notice of a public meeting on a public website pursuant to this subsection (2)(c)(III) may in its discretion also post a notice by any other means including in a designated public place pursuant to subsection (2)(c)(I) of this section; except that nothing in this section shall be construed to require such other posting. A local public body that posts notices of public meetings on a public website pursuant to this subsection (2)(c)(III) shall designate a public place within the boundaries of the local public body at which it may post a notice no less than twenty-four hours prior to a meeting if it is unable to post a notice online in exigent or emergency circumstances such as a power outage or an interruption in internet service that prevents the public from accessing the notice online.

(IV) For purposes of this section, "local public body" includes municipalities, counties, school districts, and special districts.

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials exchange electronic mail to discuss pending legislation or other public business among themselves, the electronic mail is subject to the requirements of this section. Electronic mail communication between elected officials that does not relate to the merits or substance of pending legislation or other public business, including electronic mail communication regarding scheduling and availability or electronic mail communication that is sent by an elected official for the purpose of forwarding information, responding to an inquiry from an individual who is not a member of the state or local public body, or posing a question for later discussion by the public body, shall not be considered a "meeting" within the meaning of this section. For purposes of this subsection (2)(d)(III), "merits or substance" means any discussion, debate, or exchange of ideas, either generally or specifically, related to the essence of any public policy proposition, specific proposal, or any other matter being considered by the governing entity.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV). Notwithstanding any other provision of this section, a vote to elect leadership of a state or local public body by that same public body may be taken by secret ballot, and a secret ballot may be used in connection with the election by a state or local public body of members of a search committee, which committee is otherwise subject to the requirements of this section, but the outcome of the vote shall be recorded contemporaneously in the minutes of the body in accordance with the requirements of this section. Nothing in this subparagraph (IV) shall be construed to affect the authority of a board of education to use a secret ballot in accordance with the requirements of section 22-32-108 (6), C.R.S. For purposes of this subparagraph (IV), "secret ballot" means a vote cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public.

(d.5) (I) (A) Discussions that occur in an executive session of a state public body shall be electronically recorded. If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

(B) If, in the opinion of the attorney who is representing a governing board of a state institution of higher education, including the regents of the university of Colorado, and is in attendance at an executive session that has been properly announced pursuant to paragraph (a) of subsection (3) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a state public body in accordance with section 24-72-204 (5.5) and after an in camera review of the record of the executive session, that the state public body engaged in substantial discussion of any matters not enumerated in subsection (3) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of paragraph (a) of subsection (3) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (3) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204 (5.5).

(D) No portion of the record of an executive session of a state public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body or as provided in sub-subparagraph (C) of this subparagraph (I) and section 24-72-204 (5.5).

(E) The record of an executive session of a state public body recorded pursuant to sub-subparagraph (A) of this subparagraph (I) shall be retained for at least ninety days after the date of the executive session.

(II) (A) Discussions that occur in an executive session of a local public body shall be electronically recorded. If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of subsection (4) of this section.

(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at an executive session that has been properly announced pursuant to subsection (4) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the local public body may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a local public body in accordance with section 24-72-204 (5.5) and after an in camera review of the record of the executive session, that the local public body engaged in substantial discussion of any matters not enumerated in subsection (4) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of subsection (4) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (4) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204 (5.5).

(D) No portion of the record of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the local public body or as provided in sub-subparagraph (C) of this subparagraph (II) and section 24-72-204 (5.5).

(E) Except as otherwise required by section 22-32-108 (5)(e), C.R.S., the record of an executive session of a local public body recorded pursuant to sub-subparagraph (A) of this subparagraph (II) shall be retained for at least ninety days after the date of the executive session.

(e) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

(f) The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners. Except as set forth in this paragraph (f), the provisions of this paragraph (f) shall not be interpreted to alter any requirements of paragraph (c) of this subsection (2).

(2.5) (a) For purposes of applying subsections (2)(c)(I) and (2)(d)(I) of this section to a meeting of a state public body of the general assembly, a quorum must be contemporaneous.

(b) Notwithstanding subsections (1)(b) and (2)(d)(III) of this section, any form of written communication, electronic or otherwise, exchanged by two or more members of the general assembly is not subject to this part 4, but any records of the communication are subject to disclosure to the extent required by the "Colorado Open Records Act", part 2 of article 72 of title 24.

(c) For purposes of the application of this part 4 to the general assembly, "public business":

(I) Means:

(A) Introduced legislation, including bills, resolutions, and memorials;

(B) Proposed legislation, which includes a bill, resolution, or memorial, if a draft of the proposed legislation prepared by the office of legislative legal services is being discussed by a quorum of a statutory committee or a committee of reference during a regular or special legislative session of the general assembly or by a quorum of any type of interim committee; or

(C) Other matters before a statutory committee, any type of interim committee, or a committee of reference; and

(II) Does not include matters that are by nature interpersonal, administrative, or logistical or that concern personnel, planning, process, training, or operations, if the merits or substance of matters set forth in subsection (2.5)(c)(I) of this section are not discussed. As used in this subsection (2.5)(c)(II), "merits or substance" has the same meaning as set forth in subsection (2)(d)(III) of this section.

(3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and 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, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in subsection (3)(b) of this section or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subsection (2)(d.5)(I) of this section, shall occur at any executive session that is not open to the public:

(I) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

(II) Conferences with an attorney representing the state public body concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a state public body is not sufficient to satisfy the requirements of this subsection (3).

(III) Matters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and house of representatives pertaining to lobbying practices or workplace harassment or workplace expectations policies;

(IV) 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;

(V) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;

(VI) With respect to the board of regents of the university of Colorado and the board of directors of the university of Colorado hospital authority created pursuant to article 21 of title 23, C.R.S., matters concerning the modification, initiation, or cessation of patient care programs at the university hospital operated by the university of Colorado hospital authority pursuant to part 5 of article 21 of title 23, C.R.S., (including the university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity;

(VII) With respect to nonprofit corporations incorporated pursuant to section 23-5-121 (2), C.R.S., matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(VIII) With respect to the governing board of a state institution of higher education and any committee thereof, consideration of nominations for the awarding of honorary degrees, medals, and other honorary awards by the institution and consideration of proposals for the naming of a building or a portion of a building for a person or persons.

(b) (I) All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this paragraph (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the state public body and only upon the announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to discussions concerning any member of the state public body, any elected official, or the appointment of a person to fill the office of a member of the state public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(d) Notwithstanding any provision of paragraph (a) or (b) of this subsection (3) to the contrary, upon the affirmative vote of two-thirds of the members of the governing board of an institution of higher education who are authorized to vote, the governing board may hold an executive session in accordance with the provisions of this subsection (3).

(3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall name one or more candidates as finalists for the position of chief executive officer. The state or local public body shall make public the finalist or finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing a finalist to fill the position. No offer of appointment or employment shall be made prior to this public notice. Records submitted by or on behalf of a finalist for such position shall be subject to section 24-72-204 (3)(a)(XI). Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to this subsection (4) authorizing the body to meet in an executive session and 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, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subsection (2)(d.5)(II) of this section, shall occur at any executive session that is not open to the public:

(a) The 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;

(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 satisfy the requirements of this subsection (4).

(c) Matters required to be kept confidential by federal or state law or rules and regulations. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(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;

(e) (I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

(II) Subsection (4)(e)(I) of this section shall not apply to a meeting of the members of a board of education of a school district:

(A) During which negotiations relating to collective bargaining, as defined in section 8-3-104 (3), are discussed; or

(B) During which negotiations for employment contracts, other than negotiations for an individual employee's contract, are discussed.

(III) Notwithstanding subsection (4)(e)(II) of this section, the members of a board of education of a school district may hold an executive session in accordance with the requirements of this subsection (4)(e) for the purpose of developing the strategy of the school district for negotiations relating to collective bargaining or employment contracts.

(f) (I) 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. With respect to hearings held pursuant to the "Teacher Employment, Compensation, and Dismissal Act of 1990", article 63 of title 22, C.R.S., the provisions of section 22-63-302 (7)(a), C.R.S., shall govern in lieu of the provisions of this subsection (4).

(II) The provisions of subparagraph (I) of this paragraph (f) shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(g) Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act", part 2 of article 72 of this title; except that all consideration of documents or records that are work product as defined in section 24-72-202 (6.5) 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 this subsection (4);

(h) Discussion of individual students where public disclosure would adversely affect the person or persons involved.

(i) (I) If the local public body is the board of education of a school district, the governing body of a district charter school that is authorized pursuant to part 1 of article 30.5 of title 22, or the governing board of an institute charter school that is authorized pursuant to part 5 of article 30.5 of title 22, negotiations concerning the terms of an employment contract with one or more finalists for the position of chief executive officer if:

(A) The board or governing body has named more than one candidate as a finalist for the position of chief executive officer pursuant to subsection (3.5) of this section; and

(B) The board or governing body holds a forum open to the public to conduct interviews with each of the finalists.

(II) The board or governing body may, in addition to interviewing finalists in a public forum, interview finalists in executive session.

(III) The board or governing body may instruct personnel and representatives to begin contract negotiations with one or more candidates in executive session, including the necessary process

to prioritize, for the purposes of negotiation, one or more finalists after public forums have been completed.

(IV) Prioritizing among the finalists and beginning negotiations with one or more of the finalists shall not constitute formal action or adoption by the board or governing body. Such formal action occurs only when the board or governing body comes into public session and casts votes on their preferred next chief executive officer. No formal adoption is deemed to have taken place until a public vote has occurred.

(V) As used in this subsection (4)(i), "chief executive officer" means a superintendent of a school district or a chief executive officer of a charter school.

(5) (Deleted by amendment, L. 96, p. 691, §1, effective July 1, 1996.)

(6) The limitations imposed by subsections (3), (4), and (5) of this section do not apply to matters which are covered by section 14 of article V of the state constitution.

(7) The secretary or clerk of each state public body or local public body shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting. The provisions of this subsection (7) shall not apply to the day-to-day oversight of property or supervision of employees by county commissioners, as provided in paragraph (f) of subsection (2) of this section.

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9) (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.

(b) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees. In the event the court does not find a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

(10) Any provision of this section declared to be unconstitutional or otherwise invalid shall not impair the remaining provisions of this section, and, to this end, the provisions of this section are declared to be severable.

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S BILL

ORDINANCE NO.

No. CB-2020
Series of 2024

Series of 2024

A BILL FOR AN ORDINANCE AMENDING SECTION 3-3-3(d) OF THE NORTHGLENN MUNICIPAL CODE REGARDING THE APPLICATION OF STATE LAW TO THE NORTHGLENN CITY CHARTER REGARDING EXECUTIVE SESSIONS

WHEREAS, Section 4.5 of the City of Northglenn Home Rule Charter (the "Charter") organically authorizes the City Council to meet in executive session for those purposes enumerated in Section 4.5 of the Charter;

WHEREAS, the City believes that the public meetings and operation of individual local governments is a strong example of a matter of "purely local concern", and that detailed open meeting procedures such as those in Section 4.5 of the City Charter prevail over the provisions of the Colorado Open Meetings Law; and

WHEREAS, notwithstanding the organic nature of the City Council's authorization to meet in executive session under the Charter, the City Council desires to follow the procedures set forth in C.R.S. § 24-6-402(4)(b) of the Colorado Open Meetings Law as set forth below.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Section 3-3-3(d) of the City of Northglenn Municipal Code is amended to read as follows:

(d) Meetings to be public – All regular and special meetings of the Council shall be open to the public and citizens shall have a reasonable opportunity to be heard under such rules and regulations as the Council may prescribe provided, however, that Council may meet in executive session for the following purposes:

- (1) Personnel matters.
- (2) Review of applications for any appointive position; interviews and appointments shall be conducted at an open meeting.
- (3) Claims against the City whether in litigation or otherwise.
- (4) Legal consultation and advice.
- (5) Litigation.
- (6) Deliberation and or review of any matters heard by the Council in a quasi-judicial capacity.
- (7) Negotiations concerning the purchase, sale, lease or other acquisition of real or personal property or interests therein or concerning any contracts, except

those required to be the subject of competitive bidding. No formal action shall be taken in any executive meeting of the City Council.

WHILE UNDER NO LEGAL OBLIGATION TO DO SO, THE CITY COUNCIL ELECTS TO FOLLOW THE PROCEDURES FOR MEETING IN EXECUTIVE SESSION AS SET FORTH IN C.R.S. § 24-6-402. FOR PURPOSES OF THIS SUBSECTION (d), CONSIDERATION OF "(3) CLAIMS AGAINST THE CITY WHETHER IN LITIGATION OR OTHERWISE", "(4) LEGAL CONSULTATION AND ADVICE", AND "(5) LITIGATION" UNDER SECTION 4.5 OF THE CITY OF NORTHGLENN HOME RULE CHARTER SHALL ALL BE CONSIDERED A CONFERENCE WITH THE CITY ATTORNEY WITHIN THE MEANING OF C.R.S. § 24-6-402(4)(b).

INTRODUCED, READ AND ORDERED POSTED this 8th day of April, 2024.


SHANNON LUKEMAN-HIROMASA
Mayor Pro Tem

ATTEST:


JOHANNA SMALL, MMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____, 2024.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, MMC
City Clerk

APPROVED AS TO FORM:


COREY Y. HOFFMANN
City Attorney