



City of Columbia

701 East Broadway, Columbia, Missouri 65201

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: April 19, 2021

Re: Draft Ordinance for Virtual Meetings and Virtual Public Participation

Executive Summary

The attached draft ordinance would establish the authority for all boards and commissions as well as the public to hold and attend meetings virtually during any period of declared state of emergency.

Discussion

At the March 15, 2021 City Council meeting, the Council requested a draft ordinance be prepared and presented as a report for the April 19th Council meeting. Staff was directed to utilize the guidance provided by the Disabilities Commission in their communication to Council dated February 11, 2021. The draft ordinance and the communication from the Disabilities Commission are provided for Council consideration and direction as to the next steps.

Fiscal Impact

Short-Term Impact: A complete financial analysis has not been performed. The cost of additional equipment and software is anticipated to be less than \$50,000; however, a software vendor that can meet the City's requirements for public participation and ADA accessibility has not yet been identified. Most boards and commissions will require an additional staff member to be present during the meeting to handle the virtual meeting and public participation logistics if the meeting is fully virtual. The availability of at least one (1) IT staff member will also be required to assist with technical issues. It has yet to be determined whether the additional staff would be funded through overtime compensation or a reduction of other duties.

Long-Term Impact: Unknown.

Strategic & Comprehensive Plan Impact

Strategic Plan Impacts:

Primary Impact: Operational Excellence, Secondary Impact: Public Safety, Tertiary Impact: Not Applicable

Comprehensive Plan Impacts:

Primary Impact: Mobility, Connectivity, and Accessibility, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable



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Legislative History

Date	Action
04/06/2020	B89-20/Ordinance 024208 Enactment of temporary rules for the submission of public comments
05/18/2020	B107-20 Repealing Ordinance 024208 relating to the temporary rules for submission of public comments
10/05/2020	REP57-20 Council Report on Virtual Meetings
01/19/2021	B45-21 Appropriation of funds to approve purchase of additional equipment and software for video conferencing
03/01/2021	REP18-21 from Disabilities Commission

Suggested Council Action

Staff has no recommendation. However, if Council desires to move forward with authorizing virtual public participation, it would be advisable for the rules governing public comment to be reviewed/revised to ensure adequate public access for both in-person and virtual public participants.



February 11, 2021

Re: Virtual Meeting Policy and Accessibility

To Mr. Mayor and Members of the Columbia, MO City Council:

This letter is written on behalf of the Columbia Disabilities Commission and is in regards to virtual participation in City Council and Commission meetings. This letter is within the Commission's purpose to consider the concerns of residents with disabilities and advise the City Council as necessary. Thank you for hearing this matter of great importance to many persons of our City.

This matter was initially brought to our attention as our own Commission members, some who are immunocompromised or care for those who are, inquired about attending remotely during this time of COVID. The current city policy does not allow for virtual (remote) participation to count as part of a quorum, instead requiring physical presence in the meeting space for a quorum to be met. We were given the choice of not attending the meeting, thereby cancelling our meetings due to no quorum, and essentially halting our progress on several items of importance our commission is addressing. Because our commission members are extremely dedicated, and with the assistance of our city staff, we have been able to consistently meet physical quorum, though the request of virtual attendance and quorum continues to be raised.

While COVID has altered many things, one thing that remains consistent is the need for increased accessibility for all citizens to participate in their city government, through attendance, direct participation or holding an elected position. It is important to note that the need for equal access will not disappear once we are past COVID. COVID has just made it even more clear how as a city, we need to push for increased access for all citizens.

The Commission has reviewed and discussed this topic in detail at its meeting on February 11, 2021. We consulted with Mr. Troy Balthazor, Universal Design and ADA Consultant through the Great Plains ADA Center. We wanted to gather information regarding accessibility rights under the Americans with Disabilities Act (ADA). Attached to this report is Mr. Balthazor's letter. Lastly, we consulted with staff in the City's IT Department to discuss the City's new hardware and software, as well as general information surrounding the logistics of virtual meetings.



It is the Commission's best understanding from Mr. Balthazor's letter that the Missouri Sunshine Law does not prohibit virtual participation in meetings, and that there may be ADA concerns with the City not allowing people with disabilities to serve on commissions and participate remotely. The City has an obligation to make reasonable modifications to existing policies to ensure its meetings are accessible to people with disabilities. And even if there are no legal obligations under the ADA, it is the wish and expectation of the Disabilities Commission that the City of Columbia be committed to expanding accessibility at every opportunity and to go beyond any minimum legal standards. The Disabilities Commission feels that this is an opportunity for the City to demonstrate such a commitment to accessibility.

It is our understanding the City is not prevented from taking action by the law or by the available technology. We understand and recognize there are challenges, but we believe the Council and City staff can come up with creative and working solutions, and respectfully request action to expand the virtual policy.

With this information in mind, the Disabilities Commission would like to make the following suggestions for Council to consider:

1. Immediate implementation of an emergency policy modification that would allow virtual participation either by a citizen to make public comment, or a council person or commission member for meeting attendance and attaining a quorum.

a. Within this emergency policy, the following is recommended:

- i. The chair of each commission or the leader/director of each meeting shall be physically present in the meeting space with at least one city staff person to run a meeting. All other members can attend virtually and a quorum can be met.
- ii. Virtual attendees would retain their vote.
- iii. Each virtual attendee or participant is responsible for their personal electronic devices to access the virtual meeting space.
- iv. Virtual "quorum attendance" will require that the attendee's camera remain on throughout the meeting. If they cannot be seen, they will be considered absent and unable to vote. This can impact required quorum numbers.
- v. Chat box comments will not be recognized as official meeting dialogue, and chat boxes should be disabled during meetings.
- vi. Members of the public who wish to provide verbal comment must request permission for public comment no later than 24 hours prior to the start of the meeting. (NOTE: This will differ between commission and council meetings.) The chair of each commission has



- the ability to waive this 24 hour requirement as they see fit, given the needs of their agenda, etc.
- vii. Time limits for public comment will apply to virtual comments just as they do to in person comment.
 - viii. Written and in-person comment will remain available as is currently stated in policy.
2. When reviewing programming to utilize for virtual attendance and participation, it is imperative that the Columbia IT Department ensure that all programming is accessible, including but not limited to the programming “communicating with” screen readers and magnifiers and closed captioning. It is further recommended that transcripts from City Council meetings are made available in addition to the meeting minutes.
- a. It is strongly encouraged that any contract that the City enters into regarding virtual streaming has a strong ADA clause, ensuring the vendor understands their services may be terminated if they cannot meet the requirements of ADA.

While this specific request is centered around an “emergency implementation”, the Disabilities Commission realizes that barriers to participation are present outside of COVID times. The Disabilities Commission members are eager to continue to work with City Council to develop long term plans to maintain accessibility for all persons once the COVID crisis is over.

The Disabilities Commission appreciates this opportunity to comment, and looks forward to continued collaboration.

Sincerely,

Dr. Jacquelyn Sample
Disabilities Commission Chair

Encl: Letter from Troy Balthazor, Great Plains ADA Center,
Dated December 17, 2020

December 17, 2020

Mrs. Kathryn Graham
102 W Green Meadows Rd
Columbia, Missouri 65203

Mrs. Graham,

Thank you for contacting the Great Plains Americans With Disabilities Act Center for technical assistance and support with your questions. You have contacted us to inquire about how the ADA applies to public meetings under state law and Federal civil rights legislation. The primary question relates to the ability from a legal and technical standpoint to participate in public meetings virtually, as either a member of the public entity or the public at large. I am providing the following summary to address the issue, and will be more than happy to work with you on emerging technical assistance queries.

Does the ADA apply to public meetings?

Yes. In part, Title 2 requires that public entities make public meetings accessible to both the members of the entity as well as members of the public. Local governments accomplish this through a number of means, including providing accessible facilities for in person interaction as well as alternative methods of participation for those who may not be able to participate fully and equally in the mainstream means of conducting meetings. One example is virtual participation, using technology such as Zoom and/or other means of providing inclusive programs that are communicated effectively to members and the public.

Title 2 of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments.

Title 2 of the ADA outlines the administrative processes to be followed, including requirements for self-evaluation and planning; requirements for **making reasonable modifications to policies, practices, and procedures** where necessary to avoid discrimination; architectural barriers to be identified; and the need for **effective communication** with people with hearing, vision and speech disabilities. This title is regulated and enforced by the U.S. Department of Justice.

Do Missouri's open meeting and sunshine laws allow virtual participation of members of government instrumentalities and the public?

In short, I have found no reason why any individual, including an individual with a disability, would be unable to participate in a meeting of a committee or other public designation virtually as opposed to in person. Even in non-pandemic times, Missouri's Attorney General clarifies that attendance, quorums, voting, and other related policy and procedure matters can be conducted virtually without violating open meeting or sunshine legislation. This is contingent upon community members having the opportunity to access and provide input as appropriate and required at such meetings.

<https://ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=4%20>

"Public meeting" means any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, **whether such**

meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, internet chat, or internet message board. The term “public meeting” shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority of the members of a public governmental body, **by electronic communication or any other means**, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business;

(7) “**Public vote**” means any vote, whether conducted in person, by telephone, **or by any other electronic means**, cast at any public meeting of any public governmental body.

For an entity to violate the state’s open meeting or sunshine laws, it would have to do so “purposely”. “Purposely” is defined as “intentionally; designedly; consciously; knowingly.” An act is done ‘purposely’ if it is willed, is product of conscious design, intent or plan that is to be done, and is done with awareness of probable consequences. To purposely violate the open meetings law, a member of a public governmental body must exhibit a “conscious design, intent, or plan” to violate the law and do so “with awareness of the probable consequences.” [SPRADLIN v. CITY OF FULTON, 982 S.W.2d 255 (Mo. 1998)].

Is there guidance and direction available to cities regarding expectations and best practices to providing inclusive meetings during the pandemic?

The National League of Cities has produced a guidance document regarding moving public meetings online during the current pandemic. The document can be found at the following link:

<https://www.nlc.org/article/2020/03/23/moving-city-council-meetings-online-in-response-to-covid-19/>

Conclusion:

Under the ADA, cities and counties in Missouri must provide reasonable modifications to policies and procedures when necessary to ensure non-discrimination in the provision of its programs, including public meetings. This includes any local policy that would prohibit virtual participation in public meetings. It does not appear that Missouri law requires in-person participation for quorums, votes, or provision of input. Thus, cities in Missouri would have to demonstrate that it is not “reasonable” for existing policies and procedures to be amended, and clarify the justification for not making the modification.

As is made clear in the direction from the National League of Cities, allowing virtual participation for members and the public is commonplace. This does not seem to be an issue in other communities across the country. Furthermore, CDC and Boone County guidance in regard to COVID-19 stresses social distancing (and masks), especially for people with who are at risk due to age and health. It is clear that people with a wide variety of disabilities will be well served by limiting their contact with others, especially in close quarters. In addition, many citizens must take public transportation to get to public meetings, creating another opportunity for virus spread in a small space. Modifying current procedures to adjust to the pandemic may save lives and prevent long term health issues for people by.

We at the Great Plains ADA Center appreciate you reaching out, and we are more than willing to assist and support the local community in this and any other disability related civil rights matter that may arise. Please let me know how we can be of further assistance.

Sincerely,

Troy Balthazor
Universal Design and ADA Consultant
Great Plains ADA Center
100 Corporate Lake Drive
Columbia, MO 65203
1-800-949-4232
balthazort@gmail.com

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B -21

ORDINANCE

authorizing virtual meetings and virtual public participation for
public meetings during a declared state of emergency

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS
FOLLOWS:

SECTION 1. Definitions.

“Virtual meeting” is a meeting of a public governmental body in which a quorum of the governmental body is attending the meeting utilizing electronic equipment, including but not limited to, conference call, video conference, or video chat.

“Virtual public participation” is attendance at a meeting of a public governmental body by a member of the public using electronic equipment, including but not limited to, conference call, video conference, or video chat.

SECTION 2. Virtual meetings authorized during any declared state of emergency. During any declared state of emergency within the City, virtual meetings are hereby authorized to be held by the City Council or any board, commission, task force, committee, subcommittee or similar public governmental body constituted by the City. Any board or commission that has a right or obligation to conduct due process public hearings, legislative acts, engage in quasi-judicial decision-making or similar acts may be required to utilize enhanced video conference technology that will meet minimum requirements for due process under law. The following minimum procedures will be implemented for each virtual meeting:

- a. The chair of the governmental body and at least one city staff person shall be physically present in a meeting room accessible to the public.
- b. All members of the governmental body in attendance at the meeting either in person or by virtual participation shall be authorized to vote.
- c. A member of the governmental body who attends a meeting by virtual participation is solely responsible for providing their own personal electronic device and associated internet or telecommunications service necessary to attend the meeting or access the virtual meeting space. A member who has

technical difficulties and is unable to connect to the meeting space through virtual participation shall be deemed to be absent from the meeting.

- d. Any meeting that requires the utilization of video conference technology to obtain a quorum of the public governmental body or to meet minimum requirements for due process under law will require that the member's camera remain turned on throughout the meeting. A member that cannot be seen during a videoconference meeting will be considered to be absent from the meeting.
- e. Chat box comments and emoji's shall be disabled during virtual meetings.
- f. Members of the public who attend a virtual meeting shall keep their video off and microphone muted at all times unless such person is authorized to speak as provided under the rules for virtual public participation. Any member of the public who interrupts the virtual meeting by failing to remain muted or by enabling video shall be immediately disconnected and removed from the virtual meeting room.

SECTION 3. Virtual public participation allowed during any declared state of emergency. During any declared state of emergency within the City, virtual public participation shall be authorized at any meeting of a public governmental body regardless of whether or not the meeting is a virtual public meeting. Virtual public participation shall be in addition to opportunities for in-person and written public comments. The following minimum procedures will be implemented for virtual public participation:

- a. Members of the public who wish to engage in virtual public participation in order to provide public comment must notify the staff liaison, in writing, at least 24 hours prior to the start of the meeting. The notification shall include the name, address, phone number, email address and topic or agenda item.
- b. The staff liaison will send dial-in or video conferencing instructions to the individual prior to the start of the meeting.
- c. Individuals utilizing virtual public comment shall keep their video off and microphone muted until recognized by the chair to speak. An individual who does not respond within a reasonable amount of time following recognition by the chair may be prevented from speaking.
- d. Individuals utilizing virtual public comment shall be limited to verbal statements and shall not be allowed to use slides or other types of video content from a virtual location.
- e. Time limits and rules for public comment apply to virtual comments and any person using virtual public comment will be automatically disconnected at the end of the allotted time period.

SECTION 4. Effective date. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2021.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor