



# City of Colorado Springs

City Hall  
107 N. Nevada Avenue  
Colorado Springs, CO  
80903

## Meeting Minutes City Council

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Tuesday, December 29, 2020

10:00 AM

Council Chambers

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### Special Meeting

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### 1. Call to Order

**Present:** 7 - Councilmember Yolanda Avila, Councilmember David Geislinger, Councilmember Don Knight, Councilmember Bill Murray, Councilmember Andy Pico, President Richard Skorman, and Councilmember Wayne Williams

**Excused:** 2 - Councilmember Jill Gaebler, and President Pro Tem Tom Strand

### 2. Invocation and Pledge of Allegiance

There was no Invocation and Pledge of Allegiance.

### 3. Executive Session

#### 3.A. [21-012](#)

In accord with the City Charter Art. III, § 3-60(d) and its incorporated Colorado Open Meetings Act, C.R.S. § 24-6-402(4)(b),(c) and (g), the City Council, in Open Session, is to determine whether it will hold an electronic Closed Executive Session. The topic of the electronic Closed Executive Session is Formal Ethics Complaint 2020-01. The issues to be discussed involve: (1) conferences with the City Attorney's Office for the purpose of receiving legal advice (C.R.S. § 24-6-402(4)(b)); (2) matters required to be kept confidential by federal or state law or rules

and regulations (C.R.S. § 24-6-402(4)(c); C.R.S. § 24-72-202(6)(a)(II)(A) & (6)(b)(II) (work product prepared for elected officials); and C.R.S. § 24-72-204(3) (a)(XIII) (deliberative process materials)); and (3) consideration of documents protected by the mandatory nondisclosure provisions of part 2 of article 72 of title 24, commonly known as the "Open Records Act" (C.R.S. § 24-6-402(4)(g); C.R.S. § 24-72-202(6)(a)(II)(A) & (6)(b)(II) (work product prepared for elected officials); and C.R.S. § 24-72-204(3) (a)(XIII) (deliberative process materials)).

The President of Council shall poll the City Councilmembers, and, upon consent of two-thirds of the members present, may conduct an electronic Closed Executive Session. Each City Councilmember participating in the electronic Closed Executive Session shall affirmatively state for the record that no other member of the public not authorized to participate in the electronic Closed Executive Session is present or able to hear the matters discussed as part of the electronic Closed Executive Session. If consent to the electronic Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

Presenter:

Wynetta Massey, City Attorney

Tracy Lessig, Division Chief, Office of the City Attorney, stated that in accord with City Charter art. III, § 3-60(d) and its incorporated Colorado Open Meetings Act, C.R.S. § 24-6-402(4)(b) and (e), the City Council, in Open Session, is to determine whether it will hold a Closed Executive Session. The topic of the electronic Closed Executive Session is Formal Ethics Complaint 2020-01. The issues to be discussed involve: (1) conferences with the City Attorney's Office for the purpose of receiving legal advice (C.R.S. § 24-6-402(4)(b)); (2) matters required to be kept confidential by federal or state law or rules and regulations (C.R.S. § 24-6-402(4)(c); C.R.S. § 24-72-202(6)(a)(II)(A) & (6)(b)(II) (work product prepared for elected officials); and C.R.S. § 24-72-204(3) (a)(XIII) (deliberative process materials)); and (3) consideration of documents protected by the mandatory nondisclosure provisions of part 2 of article 72 of title 24, commonly known as the "Open Records Act" (C.R.S. § 24-6-402(4)(g); C.R.S. § 24-72-202(6)(a)(II)(A) & (6)(b)(II) (work product prepared for elected officials); and C.R.S. § 24-72-204(3) (a)(XIII) (deliberative process materials)).

Councilmember Murray stated if no new information has become available, there was no need to go into a Closed Executive Session and this matter should be a public discussion.

Councilmember Avila stated City Council should have a discussion regarding the issues before going into Closed Executive Session.

Councilmember Knight stated because it is a personnel issue, it by nature is not for public information.

Ms. Lessig stated the Ethics Commission report is a confidential report unless released by City Council and the investigation as well as the recommendation to City Council is confidential even if the complaint is public record.

Councilmember Murray stated everything should be made public.

Councilmember Geislinger asked if the discussion to release the IEC report should be made in a Closed Executive Session. Ms. Lessig confirmed the decision whether or not to release the confidential report can be made during the Closed Executive Session.

President Skorman polled City Council regarding the desire to proceed with an electronic Closed Executive Session. At least two-thirds of City Council agreed to proceed in an electronic Closed Executive Session. Councilmember Murray voted "no" to proceeding with the electronic Closed Executive Session. Each City Councilmember participating the electronic Closed Executive Session affirmatively stated for the record that no other member of the public not authorized to participate in the electronic Closed Executive Session was present or able to hear the matters discussed as part of the electronic Closed Executive Session.

#### **4. New Business**

##### **4.A. [21-007](#) Decision on Ethics Complaint 2020-01**

Presenter:

Tracy Lessig, Division Chief - Employment, City Attorney's Office

**Motion by Councilmember Geislinger, seconded by Councilmember Pico, that pursuant to City Code § 1.3.106(C)(4), City Council shall provide written notice of its decision in Ethics Complaint 2020-01. City Council has determined to issue a finding of no violation of the City Code of Ethics under City Code § 1.3.106(C)(4) (a). It is the opinion of City Council that, considering the facts that are specific to this complaint when there is no evidence of personal interest or gain, compliance with the procedural guidelines related to quasi-judicial matters before City Council are not within the scope of the City Code of Ethics. The Colorado Rules of Civil Procedure Rule 106(a)(4) is the appropriate remedy to**

**contest final agency action on quasi-judicial matters brought before City Council.  
The motion passed by a vote of 6-1-2-0**

**Aye:** 6 - Avila, Geislinger, Knight, Pico, Skorman, and Williams

**No:** 1 - Murray

**Excused:** 2 - Gaebler, and Strand

**Motion by Councilmember Geislinger, seconded by Councilmember Murray, to  
release the report of the Independent Ethics Commission in Complaint 2020-01  
and the exhibits to the report. The motion passed by a vote of 7-0-2-0**

**Aye:** 7 - Avila, Geislinger, Knight, Murray, Pico, Skorman, and Williams

**Excused:** 2 - Gaebler, and Strand

Councilmember Murray stated he has concerns regarding the quasi-judicial and Independent Ethics Commission (IEC) process . He recommended City Council publicly release all documents, exhibits and statements related to this complaint, modify Council Rules in regards to quasi-judicial proceedings, review the IEC process, practices and procedures, and appropriate measures be taken for failure to disclose ex parte communications to the IEC.

Councilmember Geislinger stated based on the IEC report, the issue that was addressed was whether an inadvertent, careless, or negligent failure to disclose something to the Ethics Commission or follow Council Rules showed zero evidence of an attempt for personal gain or an ethics violation and he stands by the factual findings of the IEC.

Councilmember Knight stated elected officials need to be held to a higher standard and there needs to be a review of policy regarding the reconsideration of hearings as well as the IEC investigation procedures.

Councilmember Williams expressed appreciation for the efforts of the IEC and stated he does not believe that a Councilmember going to a site and speaking with a neighbor should automatically be determined as an ethics violation or a procedural violation because there was no evidence of personal gain or personal interest.

## **5. Adjourn**

Councilmember Pico expressed appreciation for his fellow City Councilmembers, City Council staff, and City Staff.

There being no further business to come before City Council, Council adjourned.

Sarah B. Johnson, City Clerk