

RESOLUTION NO. 09-85

INTRODUCED BY:

Councilperson Neely

Councilperson Coppola

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING A CITY POLICY ON EXECUTIVE SESSIONS**

WHEREAS, C.R.S. Section 24-6-401, *et seq.*, known as the Colorado Open Meetings Law (“OML”), provides that all meetings of a local 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, subject to a few exceptions; and

WHEREAS, the OML identifies exceptions to the requirement of conducting open meetings in enumerated circumstances where the public body is authorized to meet in a closed meeting (known as executive sessions); and

WHEREAS, it is the City’s policy to comply with the requirements as well as the spirit and intent of the OML by providing full and timely notice of meetings of City Council and all other boards, commissions, authorities or other formally constituted body of the Council to which the Council has delegated a governmental decision making function; and


WHEREAS, the City Council desires to conduct executive sessions in full compliance with the OML; and

WHEREAS, the City Council desires to set forth a policy to establish general procedures regarding the conduct and recording of executive sessions to enable efficiency and confidentiality and to promote the public trust.


THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

Section I. The City Council hereby approves the City Council Policy on Executive Sessions (“Policy”) substantially in the form attached hereto as Exhibit A and authorizes the Mayor to sign the Policy on behalf of the City.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 23rd day of November, 2009.


Maureen A. Shul, Mayor

ATTEST:


Janie Berry, City Clerk

APPROVED AS TO FORM:


Linda C. Michow, City Attorney

Exhibit A

City Council Policy on Executive Sessions

CITY OF CASTLE PINES NORTH, COLORADO

CITY COUNCIL POLICY FOR EXECUTIVE SESSIONS

I. Conduct of Executive Sessions.

- A. The City Council may call and may conduct one or more executive sessions during any regular or special meeting of the City Council, including study sessions. No advance notice of an executive session shall be required and the intent to hold an executive session need not be noted on a meeting agenda.
- B. The City Council shall comply with applicable requirements of the Colorado Open Meetings Law, C.R.S. §§ 24-6-401 through 24-6-402, in the calling and conduct of executive sessions.
- C. During an executive session, the Mayor shall serve as the presiding officer and chairperson. The City Clerk or Deputy City Clerk shall serve as the recording secretary if either is invited to attend the executive session in accordance with Section II below. If the City Clerk or Deputy City Clerk is not in attendance at the executive session, the Mayor shall informally appoint a Council member to serve as the recording secretary of an executive session. The recording secretary shall be responsible for the recording of the executive session, the sealing or preservation of the recording, and the delivery of the recording (or minutes) to the appropriate City administrative staff person.
- D. The Mayor, Council members, and participants shall have an affirmative obligation to immediately voice objection *during the executive session* regarding the propriety of an executive session and the session's conformance with the Open Meetings Law. Upon the raising of an objection, all discussion or presentation shall cease until such time that the objection is addressed by the Mayor as the presiding officer and the Council is admonished to conform to the appropriate policy or procedure for executive session or the objection is found by the Mayor to be without merit.

II. Attendance at Executive Sessions

- A. Required Attendees. Required attendees at an executive session shall include the legislative body of the City (Mayor and all members of the City Council) present at the meeting unless the Mayor or a Council member is unable to attend due to a conflict of interest. If a Council member or the Mayor has a conflict of interest, as defined under state law, ordinance or Council policy, regarding the subject matter of the executive session, he or she shall so state on the record, shall abstain from voting on the motion to go into executive session, and shall not participate in the executive session nor be entitled to listen to a recording of the executive session, as contemplated in Section VI of this Policy. If a member of Council or

the Mayor believes that another Council member or Mayor has a conflict of interest, as defined under state law, ordinance or Council policy, he or she shall raise the potential conflict for vote by the Council. If a majority of a quorum present determines a conflict of interest exists, the Council member or Mayor with the conflict of interest shall abstain from voting on the motion to go into executive session, and shall not participate in the executive session nor be entitled to listen to a recording of the executive session, as contemplated in Section VI of this Policy. The City Manager and City Attorney shall attend all executive sessions unless the subject matter of the executive session relates to either position and/or a majority of a quorum of Council present votes to exclude the City Manager and/or City Attorney.

- B. Invitees to Executive Sessions. By motion made by the Mayor or any member of City Council, the City Clerk or City Treasurer may be requested or required to attend when an executive session subject or topic pertains to a matter within such elected official's statutory duties or when the official's attendance is requested. A majority of a quorum present and participating in the executive session must consent to the attendance of other elected officials during the executive session. By majority vote of a quorum present, administrative staff of the City, consultants, or other persons may be invited to attend an executive session if such persons will provide information or background information to the Council or otherwise participate in the session. By way of example only, invitees may include:
- For executive sessions involving C.R.S. § 24-6-402(4)(e) (negotiations), invitees may include the negotiator or negotiation team for the City.
 - For executive sessions involving C.R.S. § 24-6-402(4)(b) (legal advice), invitees may include members of the City Attorney staff or contract attorneys representing the City.
 - For executive sessions involving C.R.S. § 24-6-402(4)(f) (personnel matter), invitees may include an employee or group of employees who is/are the subject of the executive session; provided, however, that an employee is not entitled by the Open Meetings Law to attend executive sessions that pertain to the employee unless the governing body authorizes attendance.
- C. Invitees' Participation to be Limited. Attendance by an invitee other than the City Manager and City Attorney should be limited to portions of executive sessions at which the invitee's participation will be necessary. The Mayor should excuse an invitee from attendance upon the conclusion of the invitee's active participation.

III. Recording of Executive Sessions.

Executive session discussions of the City Council shall be electronically recorded by the recording secretary for the executive session, except that:

- A. Electronic recording shall not be required for two successive meetings of the City Council while the regularly used electronic equipment is inoperable; or
- B. If, in the opinion of the attorney who is representing the City and who is in attendance at the executive session, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. Any electronic record of the executive session discussion shall reflect that no further record was kept of the discussion based on the opinion of the attorney representing the City, as stated for the record during the executive session, that the discussion constitutes a privileged attorney-client communication. Any written minutes shall contain a signed statement from the attorney representing the City attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney and a signed statement from the chair of the executive session attesting that the portion of the executive session that was not recorded was confined to the receipt of legal advice pursuant to C.R.S. § 24-6-402(4)(b).

IV. Individual Recording and Written Notes.

Persons in attendance during an executive session shall not take written notes, personally record, or engage in a transcription of discussion during any executive session with the exception of the recording secretary during a malfunction of the recording equipment. Persons in attendance may make abbreviated notations only as may be reasonably necessary to permit the person to later recall information such as dates, names, and other data needed to follow-up on actions subsequent to the executive session or to permit such person to participate in the discussion.

V. Public Access to Recording.

No portion of the recording of an executive session shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of a majority of all members of the City Council, or as provided in C.R.S. § 24-6-402(2)(II)(C) and section 24-72-204(5.5), or as specifically provided in this Policy. Should a majority of all members of the City Council consent to disclosure of an executive session recording in accordance herewith, the procedure in Section VI(B) for access to such recording shall be followed.

VI. Council Member Access to Recording.

A member of the City Council may, *without* prior approval or consent of the City Council, listen to a recording of an executive session in the following circumstances and in accordance with the following procedures:

- A. The Council member must have either attended the executive session or was properly excused from attendance at the regular or special meeting during which the executive session was held.
- B. The Council member shall contact the Deputy City Clerk to arrange a mutually available date and time for listening to the executive session recording. The Deputy City Clerk shall cause the tape recording to be duplicated. The Deputy City Clerk shall provide to the Council member the duplicated tape together with access to a private room, suitable for secure and confidential listening by the Council member.
- C. No person may accompany a Council member during the listening of the executive session recording except for: (1) other Council members who are also qualified to listen to such recording pursuant to subsection A above; (2) the City Manager, if the Manager was in attendance during the executive session; and (3) the City Attorney, if the City Attorney was in attendance during the executive session.
- D. No Council member may copy, record, or otherwise transcribe all or any portion of an executive session recording.
- E. No Council member may remove the recording of an executive session from the private room designated for listening of the recording except for the purpose of returning the recording to the Deputy City Clerk or the Clerk's designee.

VII. Administrative Staff Access to Executive Session Recordings.

The City Manager and/or the City Attorney may, *without* prior approval or consent of the City Council, listen to a recording of an executive session only in the following circumstances and in accordance with the following procedures:

- A. The Manager or Attorney shall have attended the executive session;
- B. The review of the recording is necessary for the purpose of performing the Manager's or Attorney's official functions;
- C. Neither the Manager nor Attorney may copy, record, or otherwise transcribe all or any portion of an executive session recording; and

- D. No person may accompany the City Manager or the City Attorney during the listening of the executive session recording.

VIII. Council May Authorize Access to Executive Session Recordings.

Nothing in this Policy shall limit or preclude the City Council from authorizing access to a recording of an executive session except that such authorization shall require the consent of a majority of all members of the City Council. Should a majority of all members of the City Council consent to disclosure of an executive session recording in accordance herewith, the procedure in Section VI(B) for access to such recording shall be followed.

IX. Council May Prohibit Access.

Notwithstanding any provision of this Policy, the City Council may, by a majority vote of a quorum present, prohibit access to an executive session recording at any time.

X. Retention of Executive Session Recording.

The recording of an executive session shall be retained for not less than ninety (90) days after the date of the executive session. The City Manager shall provide for a procedure to manage retention of executive session recordings in accordance with this Policy.