

SPECIAL STUDY SESSION AGENDA

CITY COUNCIL
CITY OF WHEAT RIDGE, COLORADO
7500 W. 29th Ave. Wheat Ridge CO
February 14, 2022

To commence at the conclusion of the Regular City Council Meeting

**This meeting will be conducted as a VIRTUAL MEETING ONLY.
No members of the Council or City staff will be physically present at the Municipal building for this meeting. The public may participate in these ways:**

1. Provide comment in advance at www.wheatridgespeaks.org (comment by noon on February 14, 2022).
2. Virtually attend and participate in the meeting through a device or phone:
 - [Click here to join and provide public comment](#)
 - Or call +1-669-900-6833 with Access Code: **862 4362 2407**
 - **Passcode: 194303**
3. View the meeting live or later at www.wheatridgespeaks.org, Channel 8, or YouTube Live at <https://www.ci.wheatridge.co.us/view>

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Contact the Public Information Officer at 303-235-2877 or wrpio@ci.wheatridge.co.us with as much notice as possible if you are interested in participating in a meeting and need inclusion assistance.

Public Comment on Agenda Items

1. Satisfying public notice and publication requirements
2. Staff Report(s)
3. Elected Officials' Report(s)

ADJOURNMENT



Memorandum

To: Mayor and City Council
From: Gerald Dahl, City Attorney
Nicholas Klein, Law Clerk
Date: February 9, 2022
Re: **Satisfying public notice and publication requirements**

Background

The City currently publishes notices of public meetings and hearings on the City's website and in the *Jeffco Transcript*. You have asked me to research the possibility of publishing such notices in the *Wheat Ridge Gazette*, where newspaper publication is permitted or required. Our office has reviewed this and concludes that, because the *Gazette* is only published monthly, it does not qualify as a legal publication for notices under the Colorado statute and the City's Charter and Code. Publication in the *Gazette* is permitted as a supplement to other required means, but not in satisfaction of "publication in a newspaper of general circulation" requirements.

Publication and posting requirements under state law

In 2019, the state Legislature moved to amend the open meeting statutes to first encourage, and then require, that notices be transitioned from posting 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.*" While this statutory requirement only addresses the posting of meeting notices, not publication of notices and ordinances, it does illustrate the general trend toward using online means (website) to advise of public meetings and hearings.

Publication and posting requirements under the Charter and Code

As a home rule municipality, the City has authority to set its notice requirements. Those are summarized in three categories: public notice requirements for meetings, public notice requirements for hearings, and publication requirements for ordinances.

1. Public notice requirements for meetings: While the statute at CRS 24-6-42(2)(c) (III) requires posting of notice of public meetings 24 hours prior to the meeting on the website, the Council Rules require 72 hours advance notice. Council Rule IV.E further requires both physical posted notice in the official location at City Hall, along with public notice on the City's website. There is no requirement for publication of meeting notices in a newspaper.

2. Public notice requirements for hearings: The City's Land Use Code at Section 26-109 requires three forms of notice of public hearings on land use cases. In addition to posted notice on the relevant property and mailed notice to property owners within a certain distance, Code Section 26-109 also requires that notice of these public hearings be published 10 days in advance in a newspaper of general circulation in the City and also be placed on the City's website
3. Publication requirements for ordinances: Publication of ordinances after their adoption is governed by the Home Rule Charter at Section 5.12(h), which requires publication of the ordinance in a newspaper of general circulation in the City, or posting the ordinance in the designated physical posting location at City Hall, or posting on the City's website.

Publication in a [legal] newspaper of general circulation in the City

Where the City's Charter or Code require or allow meeting or hearing notices or ordinances to be published in a newspaper of general circulation, certain statutory requirements apply. The selected newspaper must be both a "legal publication," and be a "newspaper of general circulation" in the City. Both of these requirements are explained below.

Legal publication requirements

The Colorado Statutes have long defined the meaning of a "legal publication" for these purposes. CRS 24-70-102 and 103 govern. CRS 24-70-102 defines a legal publication as one of four types:

- Every newspaper printed and published daily, or daily except Sundays and legal holidays, or on each of any 5 days of every week accepting legal holidays including or excluding Sundays shall be considered and held to be a daily newspaper;
- Every newspaper printed and published at regular intervals three times each week, shall be considered and held to be a triweekly newspaper;
- Every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semi-weekly newspaper; and
- Every newspaper printed and published at regular intervals once each week shall be considered and held to be a weekly newspaper.

CRS 24-70-103 requires *"any and every legal notice or advertisement shall be published only in a daily, a triweekly, a semiweekly, or a weekly newspaper of general circulation."* The *Jeffco Transcript* qualifies as a legal publication because it is a weekly newspaper. However, the *Gazette*, which is published only once monthly, does not qualify as a legal newspaper under the statute, since it is not published any more frequently than monthly. Accordingly, the *Gazette* cannot be used to satisfy the publication requirements of the City for ordinances or notices of public hearings. However, the *Gazette* could be used as a means for notifying the public where legal notices can be found.

What does “general circulation” mean?

I understand Council will also question whether, given the low subscription rate for the *Jeffco Transcript* in the City, that newspaper, even though published weekly and otherwise a “legal publication” under the statute, is still a “newspaper of general circulation” since it arguably reaches only a minority of the City’s residents. While the statutes do not define the term “newspaper of general circulation,” case law does, and holds that the subscription rate is not relevant so long as the newspaper is generally available in the municipality, either by subscription or by purchase, and these things are true for the *Jeffco Transcript*.

One Colorado case is controlling law. In his concurrence in *Rector v. Northglenn Metro. Recreation Dist.*, 404 P.2d 534, 536 (Colo. 1965) Colorado Supreme Court Justice Frantz relied on an Iowa case defining a newspaper of general circulation:

In order to be a newspaper of general circulation, certain tests must be met. Perhaps the best definitive statement appears in the case of Burak v. Ditson, 209 Iowa 926, 229 N.W. 227, 68 A.L.R. 538: A study of the decisions bearing on the question before us suggests the following criteria: First, that a newspaper of general circulation is not determined by the number of its subscribers, but by the diversity of its subscribers. Second, even though a newspaper is of particular interest to a particular class of persons, if it contains news of a general character and interest to the community, although the news may be limited in amount, it qualifies as a newspaper of “general circulation.”

Accordingly, the *Jeffco Transcript* remains both a legal publication and a newspaper of general circulation within the City which may be used to satisfy the City’s publication requirements. The *Gazette* is a newspaper of general circulation under the case law test, but because it is only published monthly, the *Gazette* is not a “legal publication” under CRS 24-70-102 and 103 and may not be used to satisfy legal publication requirements. Certainly, where there are other allowed means of posting and publication, as described above, the City may satisfy its requirements by posting in the designated physical location at City Hall and/or on the City’s website. Having first done this, the City may also choose to publish things in the *Gazette* as a supplement, but, importantly, not in satisfaction of any “publication in a newspaper of general circulation” requirement.

Conclusion

The City’s options for satisfying requirements for publication of notices and ordinances in a newspaper of general circulation can be achieved only by publication in the *Jeffco Transcript* or the *Denver Post*, which is also of general circulation in the City, (and which the City occasionally uses when publication deadlines do not permit use of the *Jeffco Transcript*). The City may not publish in the *Gazette* in satisfaction of these requirements, but may certainly publish in the *Gazette* as a supplement when the requirements have otherwise been satisfied in one of the manners described above.