



**EDGEWATER CHARTER REVIEW
TASK FORCE AGENDA
1800 HARLAN STREET
EDGEWATER, CO 80214**

Or Virtually through the GoTo Meeting App

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JULY 24, 2025

6:00 PM

****Requests for ADA accommodations (including American Sign Language interpretation or CART) can be made by emailing cityclerk@edgewaterco.com****

3 or more other City Board or Commission members may attend this meeting

- 1. Call to Order**
- 2. Roll Call**
- 3. Pledge of Allegiance**
- 4. Public Comment (Non-Agenda Items)**
- 5. General Business**
 - A. Legal Training
 - B. Creation of Rules of Procedure
 - C. Election of Officers
 - D. Discussion of Future Meeting Schedule
- 6. Discussion of Upcoming Agendas**
- 7. Adjournment**



ATTORNEYS AT LAW

TO: Edgewater Charter Review Task Force Members
CC: Dan Maples, City Manager
FROM: Carmen Beery, City Attorney
DATE: July 24, 2025
RE: Legal Training

The following is provided to you in conjunction with the Legal Training agenda item on your July 24, 2025 regular meeting agenda. At that meeting, we will go through the below legal issues. We can also discuss other legal issues of interest to you and scenarios that might implicate those issues.

What is the Charter Review Task Force?

The Edgewater Charter Review Task Force (“Task Force”) is a temporary community committee created by Edgewater City Council Resolution 2025-06 on April 1, 2025. The Edgewater City Council is empowered by Section 11.8 of the Edgewater Home Rule Charter to create such committees to serve a defined purpose for a specified period of time. Members of these temporarily-composed bodies must be volunteers who are not also elected officials, officers or employees of the City.

What is the Task Force’s legal role and function?

The Task Force was formed “for the sole purpose of evaluating the Charter and making recommendations concerning possible amendments thereto to the City Council.” Reso. 2025-06, § 1.

Functionally, the Task Force has been directed by the City Council to meet at least once per calendar month through at least May 2026, which period may be extended by the Council. The Task Force shall be dissolved by City Council resolution after completion of its duties or on September 30, 2026, whichever is first to occur. Reso. 2025-06, § 3.

The Task Force may present periodic progress reports to the City Council as requested by the Council or as proposed by the Task Force. Not later than the City Council’s first regular meeting in May 2026, the Task Force shall present its final evaluation, findings and recommendations concerning possible Charter amendments to the Council. Reso. 2025-06, § 4.

What is the Edgewater Home Rule Charter?

Edgewater is a home rule municipality. Home rule municipalities in Colorado derive their legal authority from Section 6, Article XX of the Colorado Constitution. This Constitutional provision allows communities to adopt a home rule charter which then becomes “its organic law and extend[s] to all its

local and municipal matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.” Duly-adopted home rule charters confer upon a municipality and its citizens “all ... powers necessary, requisite or proper for the government and administration of its local and municipal matters.”

Municipalities that have not adopted a home rule charter may exercise only those powers and authority affirmatively and expressly granted by state statute.

How can a Charter be amended?

Proceedings to amend the Charter may be initiated in two ways:

1. An ordinance approved by at least five (5) City Council members, submitting the proposed amendment(s) to a vote of City electors.
2. A petition meeting the following requirements of State statutes:
 - Registered City electors who wish to initiate a Charter amendment must start by filing a statement of intent to circulate a petition, signed by at least five registered electors, with the City Clerk. Thereafter, the petitioners may circulate the petition and gather signatures for a period of 90 days and return the signed petition to the City Clerk.
 - To submit Charter amendments at a regular election, the petition must be signed by at least 5% of registered City electors and filed with the Clerk at least 90 days prior to the election date;
 - To submit Charter amendments at a special election, the petition must be signed by at least 10% of registered City electors and filed with the Clerk at least 90 days before the approximate date of the proposed special election.

If a majority of electors voting upon the proposed Charter amendment approve, the measure passes and the amendment shall be integrated into the Charter upon its effectiveness. If a majority of electors voting upon the matter disapprove of the proposed amendment, it fails and results in no Charter change.

Colorado Open Meetings Law

Like all other formally constituted boards and commissions of the City, the Task Force is subject to the Colorado Open Meetings Law (§ 24-6-401 *et seq.* C.R.S.). The Colorado Open Meetings Law contains the following as its “Declaration of Policy”:

It is declared to be a matter of statewide concern that the formation of public policy is public business and may not be conducted in secret.

The Colorado Supreme Court has described the Open Meetings Law as “reflect[ing] the considered judgment of the Colorado electorate that democratic government best serves the commonwealth if its decisional processes are open to public scrutiny.” *Benson v. McCormick*, 578 P.2d 651, 653 (Colo. 1978).

1. Who is covered by the law?

The operative provision of the Open Meetings Law states that “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.” § 24-6-402(2)(b) C.R.S. In turn, the statute defines a “local public body” to include any board, committee, commission or other policymaking, rulemaking, advisory or formally constituted body of a political subdivision of the state, such as a municipality. § 24-6-402(1)(a), C.R.S. However, “persons on the administrative staff” of a local public body are specifically excluded from the definition of a “local public body.”

2. What is a “meeting?”

The statute broadly defines a “meeting” as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.” In a recent case, the Colorado Supreme Court explained that for a gathering to be subject to the Open Meetings Law requirements “there must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting.” *Board of Commissioners of Costilla County v. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004). This holding is consistent with the provision of the Open Meetings Law that provides that the Open Meetings Law “does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.” § 24-6-402(2)(e), C.R.S.

In response to technological advances, in recent years the General Assembly amended the Open Meetings Law to include “**electronic**” as well as “other means” of communication under the statutory definition of a “meeting.” At the time of this writing, no reported Colorado case has discussed the requirements of public notice of an “e-mail” meeting, or the way in which an interested member of the public might be privy to such a “meeting.” Many municipal attorneys presume, however, that a serial e-mail that travels between three or more members of a local public body and discusses public business very likely constitutes a “meeting” for which public notice must be given.

Of course, meetings of public officials conducted by Zoom, GoToMeeting, Microsoft Teams and the like – common during the COVID-19 pandemic – are also “meetings” under this law and therefore public access is required.

3. Are “closed” meetings ever permitted (executive sessions)?

Yes, but in very limited circumstances. I strongly suspect that this group will never had the need to convene an executive session. However, you should be aware that there are allowances for such closed-door meetings on the following few topics: the potential acquisition of property; to receive privileged attorney-client communications, legal advice; to discuss matters that must be kept confidential under some state or federal law; to discuss specialized details of security arrangements or investigations; to discuss matters that may be subject to negotiations, to develop a strategy for negotiations, or to instruct negotiators; for personnel matters (if/when the employee

to be discussed consents to the closed-door session); or to discuss documents that are protected under the Colorado Open Records Act (CORA).

The statute also contains detailed provisions concerning the procedure for calling an executive session. Should this Task Force need to conduct an executive session in the future, Staff will assist you in making the proper motion and taking the necessary vote to convene the session.

4. What happens when the law is violated?

The underlying goal of the Open Meeting Law is to create an atmosphere of openness in public matters, not to “punish” those who violate its provisions. In keeping with that philosophy, the Open Meetings Law contains no criminal sanctions for non-compliance. However, any action taken at a meeting that does not comply with the Open Meetings Law requirements is void. § 24-6-402(8), C.R.S. Courts may also enforce the requirements of the Open Meetings Law through an injunctive order. § 24-6-402(9), C.R.S. Of course, the most serious problem that can arise from an Open Meetings Act violation is the loss of confidence in the government that can arise when official actions are invalidated because laws aimed at assuring open government are violated.

In addition, after an *in camera* review of an executive session record, the court may make public any portions of the record that reveal the body getting substantially off topic or engaging in unlawful decision-making while in executive session. § 24-72-204(5.5) C.R.S.

Finally, if the court finds that a public body has violated the Open Meetings Law, it *must* award the prevailing citizen’s costs and reasonable attorney fees. *Id.* A prevailing public body, on the other hand, may only be awarded its costs and attorney fees if the court finds that the action was frivolous, vexatious, or groundless. § 24-6-402(9), C.R.S.

Colorado Open Records Act

Another state statute of which all City board members should be aware is the Colorado Open Records Act (CORA), C.R.S. § 24-72-200.1 *et seq.* As a default rule, CORA declares all records made, kept or maintained by the City to be open for public inspection upon request. Records are defined as “writings,” which in turn are broadly defined to include “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics . . . [also] digitally stored data, including without limitation electronic mail messages, but does not include computer software.”

An important element of CORA is that all communications of which there is a record of any sort – digital, audio, video, visual – are public records (unless some exception applies). You should be keenly aware then, that all of your recorded communications about Task Force matters are potentially open for public inspection – your emails, text messages, left voice mails – any record that is kept and maintained by the City on your behalf as a Task Force member is open record. It is beneficial to keep that in mind as you communicate as a Task Force member. When you do so, you are representing this group and the City in a way that may be called up, reviewed and scrutinized by others in the future.

Conduct of Meetings

The Task Force functions only as a group. No one Task Force member may conduct a “meeting” (recall the definition of meeting = 3 or more), nor can one Task Force member speak on behalf of the entire body. To make recommendations to the City Council, you must act as a group to formulate those recommendations and, ultimately, to vote on whether or not to formally forward them to Council.

While you are an advisory body (versus a group that renders a final City decision on a matter), your meetings perform an important function. As mentioned above, your meetings are subject to the same legal requirements and public accountability as all other Board, Commission and Council meetings. Your meetings are therefore entitled to the same level of decorum, organization and respect, without being overly formal or stuffy.

Running a Meeting. It can be daunting to transform an informal group discussion into a “meeting,” but that is the task of a board/commission/committee Chair. A good Chair can help a meeting move from agenda item to agenda item by simply calling for motions when the time is right and by moving the discussion along. Attached is a brief “cheat sheet” that we have prepared for other City Board/Commission Chairs to assist with Chairing a meeting.

Rules of Procedure. The City Council directed that the “Task Force shall choose its own Chairperson and Vice-Chairperson and shall adopt and operate in accordance with its own rules of procedure, which shall be reviewed and approved by the City Council. The Rules of Procedure shall provide that a quorum must be at least fifty percent (50%) of appointed Task Force members and shall require members to attend meetings in person except when unanticipated, unusual or emergency circumstances render in person attendance impractical.” Reso 2025-06, § 5.

A rules of procedure document assists groups with conducting orderly, efficient and civil meetings. A draft rules of procedure document has been prepared for you as a starting point for you to develop your own.

Conflicts of Interest; Gifts; and Confidentiality

Questions of ethics, particularly those concerning conflicts of interest, arise with some frequency in the context of governmental decision-making. The potential for legal conflicts of interest is lesser with advisory bodies, such as this Task Force, than with decision-making bodies like the Planning Commission or the City Council. The risk of legal conflicts of interest is even further reduced when an advisory body is temporary in nature. Reflecting this, the local “Code of Ethics” (Article 8, Chapter 2, of the City Code) does not apply to community committees formed under Section 11.8 of the Charter. However, members of such committees – such as you – may nonetheless recognize the value in voluntarily abiding by the ethical rules and standards that bind other City officials.

In Edgewater, the conduct of most City officials and employees is governed by state statutory provisions, the City Charter, and the “Code of Ethics” that has been adopted by the City.

Conflicts of Interest – State Statutory Prohibitions

Section 24-18-109 of the Colorado Revised Statutes sets out rules of conduct for local government officials and employees. Among other things, it prohibits local government officials from:

Perform[ing] an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

C.R.S. 24-18-109(2)(b).

This statute is mandatory, and violations of the statute are subject to criminal prosecution. Votes which reflect a conflict of interest by any one member are voidable, even though the vote of that particular member may not have been a deciding vote.

It is difficult to conceive of a matter upon which you could vote that would “directly and substantially” advance your own financial interests. The recommended Charter amendments that you will eventually forward to the City Council do not become effective upon your recommendation. Thereafter, the City Council must consider whether they wish to refer those amendments to City voters. Thereafter, City voters must ultimately vote to approve *any* Charter amendment. The potential for you to violate this statutory prohibition is fairly low.

Conflicts of Interest – City Charter Prohibitions

The City Charter, at Article VII, prohibits officials of the City from acting when there is a conflict of interest, requires disclosure of the conflict by the member (or a determination of conflict by the body when a member fails to disclose), refraining from participation in discussion of the matter, and physical removal of oneself from the dais during any discussion of the matter. For the reasons articulated above, the risk of your conduct on the Task Force implicating this Charter provision is quite low.

Conflicts of Interest – Local Code Provisions

Edgewater’s local ethics code leaves issues of conflict of interest to the Charter provisions, and deals instead with a general prohibition on the acceptance of gifts by public officials, and with providing an enforcement mechanism to maintain the confidential nature of certain types of matters. As mentioned, these Code provisions do not strictly apply to Task Force members; however, you may nonetheless find benefit in being aware of them:

§ 2-8-30. Gift ban.

- (a) It is a violation of this Article for any official, employee or any immediate family member of an official or employee to solicit or to accept any of the following items if the official or employee is in the position to take an official action with regard to the donor or if the City has an existing, ongoing or pending contract, business or regulatory relationship with the donor:
 - (1) A gift that would tend to improperly influence the official or employee to depart from the faithful and impartial discharge of his or her public duties; or

(2) A gift that is solicited or given for the primary purpose of rewarding the official or employee for an official action he or she has taken.

(b) Officials, employees and members of their immediate family may accept the following even if the official or employee is in a position to take official action with regard to the donor or if the official or employee has an existing, ongoing or pending contract, business or regulatory relationship with the donor:

- (1) Gifts from other officials or employees and their immediate family members;
- (2) Campaign contributions as permitted by law;
- (3) Nonpecuniary awards that are publicly presented by an organization in recognition of public service if the award is not extraordinary when viewed in light of the position held by the recipient;
- (4) Educational scholarships and grants available to members of the general public who are similarly situated;
- (5) Grants and services for medical, respite or hospice care or other social welfare needs available to members of the general public similarly situated;
- (6) An occasional, unsolicited gift having a fair market value of fifty dollars (\$50.00) or less;
- (7) Unsolicited informational material, publications or subscriptions related to the official's or employee's performance of his or her official duties;
- (8) Items of perishable or nonpermanent value, including but not limited to meals, lodging or tickets to sporting, recreational, educational or cultural events, provided, however, that the acceptance of any such gift having a value in excess of one hundred dollars (\$100.00) shall be publicly disclosed at the next regular City Council meeting by its recipient;
- (9) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or other similar item;
- (10) Payment of actual and necessary expenditures for registration, travel, lodging and meals for attendance at a convention, training seminar or other meeting at which the official or employee is scheduled to participate as a representative of the City or to attend as part of his or her official duties;
- (11) An occasional unsolicited opportunity to participate in a business meeting or social function where a meal is served or entertainment is provided if the official or employee's attendance would not be considered extraordinary when viewed in light of the position held by the official or employee;
- (12) Gifts received by an official or employee, or one (1) of their immediate family members, that are unrelated to the official's or employee's official duties; and
- (13) Charitable or recreational scholarships received by an official or employee or one (1) of their immediate family members.

Sec. 2-8-40. Confidential information.

All confidential information shall be kept confidential. No disclosure any confidential information shall be made to anyone other than members of the City Council, the City Attorney or the Mayor.

(§ 2-8-20 defines “confidential information” as “matters required by state or federal law or regulation to be kept confidential, as well as attorney-client privileged communications, personnel matters and other matters that may be discussed in executive session.”)

Sec. 2-8-50. Enforcement and penalties.

(a) The City Council shall have exclusive authority for enforcement of violations of this Article by City Council members and the Mayor, the members of any board or commission appointed or overseen by the City Council, any member of the Personnel Board and any volunteer worker overseen by the City Council.

(b) The Mayor shall have exclusive authority for enforcement of violations of this Article by City employees, officers, volunteer firefighters, the members of any board or commission appointed or overseen by the Mayor and volunteer workers overseen by the Mayor.

(c) All complaints hereunder shall be filed with the Mayor or City Council, as appropriate, within sixty (60) days after the date of discovery of the alleged violation. All complaints shall be made in writing and signed by the complainant; anonymous complaints shall not be accepted.

(d) The Mayor or City Council, as appropriate, shall take such action and impose such penalties thereon, if any, as deemed proper. All persons alleged to have violated this Article shall be entitled to be heard on the matter prior to any action being taken. For employees, the procedures shall comply with the City's current personnel manual, and the penalties imposed on employees found to have violated this Article may include termination of employment.

(e) Final action by the Mayor or City Council shall be deemed final action by the City on the matter.

What to do if you have (or think you may have) a Conflict of Interest?

Disclose, or ask for a determination by the body, recuse and physically remove yourself from the dais, and refrain from attempting to influence the remaining decision-makers.

Conflicts of Interest – The Consequences

As discussed above, voting on a matter in which one has a conflict of interest can result in a void, or voidable, act or decision or even criminal liability under state law.

EDGEWATER CHARTER REVIEW TASK FORCE

MEETING CHAIR: PROCEDURAL PROMPTS of a TYPICAL MEETING AGENDA

To open a meeting:

“I now call the [DATE] meeting of the Edgewater Charter Review Task Force to order. It is ____:____ o'clock. May I please have a roll call on who is present?”

Pledge of allegiance:

“If you are able, please rise for the pledge of allegiance.” *[lead the pledge]*

Approval of agenda:

“Are there any requests from Staff to amend the agenda?”

“May I have a motion to approve the agenda as presented? *[or “as amended” if necessary]*

“And a second?” *[if no one seconds it without prompting]*

“All in favor, please say ‘aye’ – all opposed, say ‘nay’”

Public comment:

“Would anyone like to speak as public comment this evening? Please remember that public comment is limited to 3 minutes and is for comments rather than conversations or debate. If you have questions only, we encourage you to contact City Staff. They are usually better equipped to answer questions and to follow up with you outside of meetings.

I now invite anyone interested in public comment to come forward *[or speak up, if virtual]*”

Consent agenda:

“May I please have a motion to approve the consent agenda *[as presented/as amended]*?”

“And a second?” *[if no one seconds it without prompting]*

“All in favor, please say ‘aye’ – all opposed, say ‘nay’”

To provide requested direction to Staff:

“Staff seeks direction on this matter. May I hear a motion giving direction – or Staff, do you have a suggested motion?”

Discussion of upcoming agendas/Staff comments:

“Staff – please tell us about upcoming agenda items and any comments you have this evening.”

Adjournment

“The time is now ____ : ____, and I declare this meeting adjourned.”