



## Council Request Update

August 10, 2017

**Council Request: 17-076**

**Assigned to: Utilities Department**

**Request:** Number of flat rate water customers moved to meter in the past five years

**Response:** Please see attached from Director of Utilities Tom Brennan

**Council Request: 17-097 and 17-123**

**Assigned to: City Attorney's Office**

**Request:** Review of Transformation Point Report

**Response:** Please see attached from City Attorney Alison McKenney Brown

**Council Request: 17-098**

**Assigned to: City Attorney's Office**

**Request:** Review of Medici Communities Broadway Lofts use tax exemption

**Response:** Please see attached from City Attorney Alison McKenney Brown

**Council Request: 17-119**

**Assigned to: City Attorney's Office**

**Request:** Review of Agreement between Englewood Housing Authority and Medici Communities Broadway Lofts

**Response:** Please see attached from City Attorney Alison McKenney Brown

**Council Request: 17-139**

**Assigned to: City Attorney's Office**

**Request:** Analysis of Off-track betting and analysis of state statutes that would allow it in Englewood. What would need to be amended in the City's code to allow Off-track betting?

**Response:** Please see attached from City Attorney Alison McKenney Brown



**To:** Mayor Jefferson and City Council Members

**Through:** Eric Keck, City Manager

**From:** Tom Brennan, Director of Utilities [REDACTED]

**Date:** August 7, 2017

**Subject:** Council Request 17-076  
# of flat water customers moved to meter in the past five years

City Council requested the number of water customers that moved to meter in the past five years. A total of 557 water customers moved to meters in the last five years. We have a total of 9,740 residential water customers of that 8261 are metered. All commercial water accounted are metered.





MEMORANDUM

To: Mayor Jefferson  
City Council  
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Wednesday, July 26, 2017

Re: Council Request for review of transformation point report– 17-097 and 17-123

**ISSUE(S):** Provide information to the city council regarding the public status of any or all portions of the transformation point report, which incorporates personnel matters that may be exempt from CORA.

**RESPONSE:** The Transformation Point PowerPoint presentation is a 20 slide presentation providing an overview of Citywide Focus Group Results identifying issues and concerns with the relationship between management and front line employees. The goal of the Transformation Point project was to identify and then address broad employee concerns. This presentation was made to employees by City Administration, and a video of this presentation has been made available via YouTube.

Transformation Point also provided draft PowerPoint presentations, prior to the City Administration accepting the final 20 page slide presentation. The City Administration was looking for a consolidated slide presentation to keep the focus of the presentation on the specific issues presented by the employees rather than individual comments.

The Transformation Point Powerpoint project was reviewed to determine applicability of paperwork under the Colorado Open Records Act (CORA). CORA includes an exemption for certain personnel related documents which is not applicable to this project as nothing contains confidential information associated with an identifiable employee. (C.R.S. 24-72-202(4.5) and C.R.S. 24-72-204(3))

The adopted 20 slide PowerPoint presentation is an open record under CORA and must be made available upon request. It is appropriate to attach a coversheet clarifying any statements that would be easily misconstrued without the supporting information provided by a presenter, and identifying the supporting online presentation.

Draft concepts or versions which are encompassed within the definition of “work product” are not considered public records under CORA unless presented to the Governing Body in a public meeting, or incorporated into the decision making process.



MEMORANDUM

To: Mayor Jefferson  
City Council  
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Tuesday, August 8, 2017

Re: Council Request for review of Medici Communities or Broadway Lofts use tax exemption – 17-098

**ISSUE(S):** Provide an update as to the legal basis for the use tax exemption granted to Medici Lofts.

**RESPONSE:** The Housing Authority of the City of Englewood, Colorado, is a limited partner in the Broadway Lofts housing project. The decision to enter into that partnership agreement is fully within the scope of the EHA's authority as an entity separate from the City, and the City has no authority over that decision. **Roe v. Housing Authority of City of Boulder, 909 F.Supp. 814 (1995).**

House Bill 16-1006, modifying C.R.S. 29-4-227, went into effect on August 10, 2016. That Bill modified a section of the State Law regarding Housing Authorities. C.R.S. 29-4-227 was rewritten to exempt housing authority property from property taxation, and from sales and use tax during construction, all in proportion to the percentage of the project that is for occupancy by persons of low income. The State Department of Revenue recognizes de minimus ownership as qualifying for the exemption provided by State law. The exemption is made retroactive to August 2, 2000, but taxes already paid are not subject to refund if they were paid on or before January 1, 2013.



MEMORANDUM

To: Mayor Jefferson  
City Council  
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Tuesday, August 8, 2017

Re: Council Request for review of Agreement between Englewood Housing Authority and Medici Communities or Broadway Lofts – 17-119.

**ISSUE(S):** Provide a copy of the agreement between EHA and Medici regarding the Broadway Acoma Lofts.

**RESPONSE:** Review of this request will require clarification from the sponsoring council member. Several documents identified by Broadway Lofts, A Colorado Limited Liability Limited Partnership, have been identified as exempt from the requirements of the Colorado Open Records Act pursuant to the confidential commercial and financial documents exemption provided within C.R.S. 24-72-204(3)(a)(IV).

**24-72-204. Allowance or denial of inspection - grounds - procedure - appeal definitions.** (3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person;



MEMORANDUM

To: Mayor Jefferson  
City Council  
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Tuesday, August 8, 2017

Re: Off-track betting regulations within Englewood, Colorado

**ISSUE(S):** Request for modification of code to allow for addition of off track betting location within Englewood. Red and Jerry's, located in Sheridan, sold the building, so the manager wants a new location. Council would like an update on licensing process as it currently exists, and what changes may be necessary. Impact on competition for an active license. What does State law provide? Does the City have the ability to change the Code under State Statute? COUNCIL REQUEST.

**LAW:** There are only two sections of the City Code that reference gambling: 7-6D-10 and 7-2-3.

- Title 7-6D-10 (E)(2) provides "All gambling premises are common nuisances which shall be subject to abatement as provided by law".
- Title 7-6D-10 (D) Gambling is defined as "Risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control . . . ." (7-6D-10(A) EMC).
- 7-6D-10(B) "It is unlawful for any person to engage in gambling in this City". So, and as you know, in order for her to amend the Ordinance she would have to approach the City Council, who in turn would direct staff to amend to allow for OBT.

*Woolverton v. City and County of Denver*, 146 Colo. 247 (1961). State law does not preempt the field regarding regulation of gambling.

- State by enactment of statutes on gambling with inadequate penalties has disclosed manifest intent not to pre-empt field. C.R.S. '53, 139-32-1(52).

**RESPONSE:** Council may direct staff to develop a proposal regarding modification of the gambling provisions of the Code. The update would require more than just amending/modifying/deleting 7-6D-10. Staff would also need to develop a licensing section. The licensing section will need to address appropriate licensing provisions to be adopted including determining rules regarding competition within quadrants of the City for an active license.