



Council Request Update

July 19, 2018

Council Request: 18-089

Requested by: Council Member Sierra

Request: Does Code Enforcement treat habitual offenders differently than first time offenders? Request for Code Enforcement history at 2815 S. Acoma Street.

Assigned to: Community Development/Police Department

Response: Please see the response provided by Chief Building Official Karen Montanez.

Council Request: 18-090

Requested by: Council Member Sierra

Request: Where is the City at with the Courts and citation process for 2957 S. Logan Street? When and should the City abate the property?

Assigned to: Community Development/Police Department

Response: Please see the response provided by Chief Building Official Karen Montanez.

Council Request: 18-092

Requested by: City Council

Request: Request that the PUD noticing distance and minimum area be sent to Planning and Zoning Commission for review and recommendation.

Assigned to: Community Development

Response: The response from Planning Manager Wade Burkholder, "We have placed this on the "future meeting discussion topics" for an upcoming meeting of the Planning and Zoning Commission; I will work with the Chair to settle on a date in the coming months.

Council Request: 18-099

Requested by: Council Member Barrentine

Request: Where in the Charter or policy does it indicate authorization for the City Manager to negotiate on behalf of the City, and to make emergency purchases?

Assigned to: City Attorney's Office

Response: Please see the response from City Attorney Alison McKenney Brown.

Council Request: 18-104

Requested by: Council Member Cheryl Wink

Request: Request for signature events metrics and tracking.

Assigned to: City Manager's Office - Communications

Response: Please see the response from Communications Manager Alison Carney.

Council Request: 18-105

Requested by: Council

Request: Request for the legal process and legal history for franchising solid waste in Englewood.

Assigned to: City Attorney's Office

Response: Please see the response from City Attorney Alison McKenney Brown.

Council Request: 18-106

Requested by: Council

Request: Request for an overview of the Englewood Environmental Foundation.

Assigned to: City Attorney's Office

Response: Please see the response from City Attorney Alison McKenney Brown.

Council Request: 18-107

Requested by: Mayor Linda Olson

Request: Request for an overview of the relationship between elected officials and municipal court processes.

Assigned to: City Attorney's Office

Response: Please see the response from City Attorney Alison McKenney Brown.

Council Request: 18-108

Requested by: Mayor Pro Tem Rita Russell

Request: Request for an understanding of the difference between legislative and quasi-judicial Public Hearings.

Assigned to: City Attorney's Office

Response: Please see the response from City Attorney Alison McKenney Brown.

Council Request: 18-109

Requested by: Council

Request: Request for the approval process for rezoning requests.

Assigned to: City Attorney's Office

Response: Please see the response from City Attorney Alison McKenney Brown.

Council Request: 18-110

Requested by: Council Member Barrentine

Request: Request for Use Tax calculation for Synergy Medical Office Building.

Assigned to: City Manager's Office

Response: Please see the response from City Manager Eric Keck.



TO: Mayor Olson and City Council Members

THRU: Eric Keck, City Manager
Brad Power, Community Development Director

FROM: Karen Montanez, Chief Building Official

DATE: July 12, 2018

SUBJECT: Council Request CR18-089

CR18-089
Request from Council Member Sierra

The building division does not differentiate between first time offenders and habitual offenders on property maintenance offenses. Once a property is posted and the violation has been taken care of, the property maintenance case is closed. Any future notices are treated as a new violation.





TO: Mayor Olson and City Council Members

THRU: Eric Keck, City Manager
Brad Power, Community Development Director

FROM: Karen Montanez, Chief Building Official

DATE: July 12, 2018

SUBJECT: Council Request CR18-090

CR18-090
Request from Council Member Sierra

On April 9, 2018, the building division posted 2957 S. Logan as condemned. The property has been vacant for several years and vagrants had recently broken into the structure. A certified letter was sent to the property owner who resides in Oregon. On April 17, 2018, the building division received a call from the property owner's daughter who is currently acting on the owner's behalf. She immediately had the structure secured.

On June 25, 2018, the building division received a complaint about the overgrown yard. A voice message was left for the owner's daughter. She returned on July 10th and stated that she would immediately schedule the property for maintenance.

The owner wishes to sell the property but currently the property does not have a clear deed. The process has begun to get the deed cleared. Once that occurs, the property will be placed on the market and if not sold immediately, the owner will have the structure razed.

The building division has not proceeded with action through the courts as the all recent requests to the property owner have been addressed in a timely manner. Until such time that the deed is cleared, the owner is limited on what she can do with the property.





MEMORANDUM

To: Mayor Olson
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Friday, July 13, 2018

Re: CR18-099

Requested by: CM Barrentine: Where in the Charter or policy does it indicate authorization for the City Manager to negotiate on behalf of the City, and to make emergency purchases?

Assigned to: City Attorney's Office

#1. Member Barrentine was interested in better understanding the legal analysis associated with the city manager's authority to respond to matters requiring negotiation.

This is primarily an administrative determination which means it is outside the scope of the City Attorney's Office to advise the City Council on the methodology by which the City Manager carries out the functions of his position. While the City Manager's authority to respond to matters requiring negotiation is primarily an administrative analysis, there are a few legal mandates that the City Manager follows:

Englewood City Charter §49: - Appointment; qualifications.

The City Manager shall be the chief executive officer and head of the administrative branch of the City Government.

Fiduciary responsibility to the City.

State law imposes upon all municipal officials, officers, and employees a general statutory obligation to protect the public trust. Where disclosure of confidential information harms the interests of the public, such disclosure may subject the official, officer, or employee to prosecution for the monetary harm inflicted on the public due to such disclosure.

Colorado Open Records Act.

Occasionally the City Manager may seek input from the City Council on matters that are of a sensitive nature which he is preparing to negotiate or in the process of negotiating prior to bringing a final product to the City Council for public action. State law recognizes the need for such discussions to take place outside the view of the public in C.R.S. 24-6-402(4)(e). Procedurally, State law requires 2/3 quorum of the City Council members present to vote in favor of recessing into executive session. With a 7 member body a 2/3rds quorum is 4.62 persons, which is rounded up to 5 actual people. Per Englewood Charter §37 every ordinance requires the affirmative vote of the majority of the membership of the entire Council for final passage (4 votes). Resolutions and motions require the affirmative vote of a majority of the quorum present (3 or 4 votes depending on whether 5, 6, or 7 members are present). So, to recess into executive session to advise the city manager in regard to negotiations requires 5 affirmative votes, but city council approval of a contract negotiated by the city manager requires either 3 or 4 affirmative votes.

#2. Member Barrentine was interested in better understanding the emergency purchase process. Below are the applicable law and applicable provisions of the purchasing policy.

City Charter §118: Emergency purchases.

In case of emergency affecting the public property, health, peace or safety, the Council may waive all provisions for competitive bidding and direct the purchasing officer to purchase necessary supplies in the open market at not more than commercial prices.

City Purchasing Policy: Section I - Policy and Procedures Intent

The City Manager has the authority to prescribe rules, regulations, and policies necessary to control purchasing activities in accordance with the Home Rule Charter and Englewood Municipal Code.

City Purchasing Policy: Section XIV – Emergency Purchases

City Charter allows that “In cases of emergency *affecting the public property, health, peace or safety*, City Council may waive all provisions for competitive bidding and direct the purchasing division to purchase necessary supplies in the open market at not more than commercial prices. Lack of planning or non-compliance with the City’s purchasing policies is not a valid reason for an emergency purchase.

#3. Member Barrentine was interested in better understanding the administrative determination to pay for and accept the Storage Area Network and Backup Solution (SANS) prior to seeking approval from the City Council for a contract to purchase that item.

There is no role for the City Attorney to review any purchasing decision until or unless a contract to purchase is presented for review. Therefore, the City Attorney’s Office has no direct knowledge concerning the determination associated with the SANS purchase. The City Attorney’s Office was first made aware of the SANS purchase when it was asked to review the contract to purchase the SANS, which was after the purchase occurred. Based on the Council Communication that was presented to the City Council on June 18, the following law and provisions of the purchasing policy may be applicable:

City Charter §111: Purchases. The City Manager shall be responsible for contracting for and purchasing all supplies, materials, equipment and contractual services required by any department, office or agency of the City. The purchasing officer shall be the City Manager or such person as he may designate.

City Purchasing Policy: Section III – Overview of General Policies. All purchases must be included in the current budget or have the City Manager’s approval to prepare a supplemental budget appropriation.

City Purchasing Policy: Section VII – Authorization Levels and Required Procedures. \$10,000 and over. Purchase of supplies, materials, equipment and professional services contracts (except legal services) over \$10,000 require the City Manager’s approval prior to committing to the purchase (City Manager Policy).

City Purchasing Policy: Section VII – Cooperative Agreement. The City Manager or his/her designee has the authority to purchase commodities, supplies and equipment under any general bid or purchase contract of the United States Government, State of Colorado or other government jurisdiction at those prices, terms and conditions if the City Manager deems the prices, terms and conditions to be lowest and best bid.

Signature Events Background

In 2017, the Communications Department was tasked with creating a new signature event for the City of Englewood. Parameters included: inviting local business owners to participate in the creation of the event and to build on the success of the newly formed Final Fridays along South Broadway.

On Oct. 14, 2017, the City held the first Englewood Block Party on the 3400 block of South Broadway. Englewood Police Department estimated 3,000 people in attendance.

In 2018, the Parks, Recreation & Library Department asked Communications to take over the Sounds of Summer Concert series.

The Communications Department also runs the City's annual 4th of July Fireworks & Festival for the cities of Englewood, Littleton, Sheridan, and South Suburban Parks & Recreation District.

Questions for City Council

1. What are City Council's goals for the Englewood Block Party?
2. What are City Council's goals for Sounds of Summer Concert Series?
3. What are City Council's goals for 4th of July Fireworks & Festival?

Cities produce free community events for their residents for various reasons: increase revenue, create a sense of community, make the city a place people want to be, stay relevant with surrounding cities, offer something new and different, bring in different demographics than other events, etc...

Staff recommends selecting one or two goals for each event, but no more than two. While it is possible that events touch on a variety of goals, it is not best practice to allow scope creep on one event.

It is also important to note that the overall sense of community and feeling of a place that community events help to create, are intangible and are difficult to measure, other than anecdotal.

It is also difficult to track how many people returned to Englewood to visit bars, restaurants or shops after having a good experience at a community event and wanting to explore more of what Englewood has to offer.

1. What have been the historical successes and challenges for the Block Party and the Signature Series?
2. What initiatives have been taken to manage these challenges (please provide details per individual event)?

Englewood Block Party Historical Successes

- First event in 2017, will be considered our benchmark.
- Englewood Historic Preservation Society's revenue from 2017 – benchmark to compare in following years.
- 3,000 estimated attendance in 2017 – benchmark to compare in following years.



- Anecdotal buzz from 2017: positive emails, comments on social media, people asking about 2018, feedback and comments from public meetings
- Marketing plan to promote the 2018 event
- Streamlined vendor registration from lessons learned from 2017 4th of July, moved to automation.
- 2018 Citizen Survey results showed 50% of residents rated “Sense of Community” Good/Excellent and 57% rate “Signature Events” Good/Excellent.
- Broadway business owners opposed to closing Broadway on Saturday thanked the City for the event and are excited for 2018’s Block Party.

Englewood Block Party Historical Challenges

- If our goal is to increase event attendance and grow the event, one challenge in 2017 was the cold weather. We will address that in 2018, by moving the Block Party up one month to ensure warmer weather.
- Event Space: Event planning staff had to get creative with event space along Broadway to accommodate all of the vendors and ensure adequate access for emergency responders. From lessons learned in 2017, we will be more efficient with assigning booth spaces while also accommodating the necessary emergency entrance/exit route.

Sounds of Summer Concert Series Historical Successes (Collected from Parks, Recreation & Library)

- Feel-good events that the community looks forward to every summer.
- Bring Englewood residents and surrounding communities together.
- Attendance averages 500-600 people/concert. Some have reached 800-1,200.
- City introduced food trucks in 2016 as dinner options for concert-goers. City receives a 10% sales commission.
- In 2018, Communications Department was given SOS to make it a signature event, which increase marketing.
- In 2018, concerts were adjusted from 8 to 6 to allow more money to go toward higher caliber bands.
- 2018 - Anecdotal comments at this year’s concerts have been positive to staff, that people are enjoying the concerts.

Sounds of Summer Concert Series Historical Challenges (Collected from Parks, Recreation & Library)

- Booking quality bands within the budget.
- Weather.
- Getting local businesses to sponsor.
- Budget and staff time to market the concerts.
- Increasing attendance to a wider demographic. Reaching Englewood’s growing younger demographic, since the majority of concert attendees are older adults.

3. Based on historic challenges, what are the current (2018) metrics for success assigned to each concert of the Englewood Summer Series? What tools and methodologies are being used to measure the accomplishment of these metrics?



- 2018 Goal: 500 attendees at every concert. 1,000 at FACE concert.
Metrics:
- Social media event post reach, engagement, comments, shares (social media analytics provided during June 25, 2018 Study Session).
- Recreation staff uses a clicker to count the crowd at peak time (7:15 p.m.).
- Feedback from concert-goers.
- Food truck sales/beer sales at FACE concert.
- Sponsorships.
- Beer sales at July 26, 2018, concert to see if spending more money on a higher caliber band and providing beer will increase attendance.

4. Based on historic challenges, what are the current (2018) metrics for success for the 2018 Englewood Block Party? 5. What tools and methodologies are being used to measure the accomplishment of these metrics?

- 2018 Goal: The former City Council's goal for the Englewood Block Party was to create a community event that supported local businesses. If that is the current goal for the 2018 Block Party, it is hard to track community building
Metrics:
- Social media event post reach, engagement, shares, and followers' comments (social media analytics provided during June 25, 2018 Study Session).
- Sales tax for the month of September.
- Number of vendors paying to participate in the event.
- Food truck sales.
- Beer revenue to nonprofit.
- Sponsorships.
- Estimated attendance.

6. Kindly provide a comparison chart of cost to monetary benefit for the city in terms of the Englewood Block Party and each event of the Englewood Signature Series.

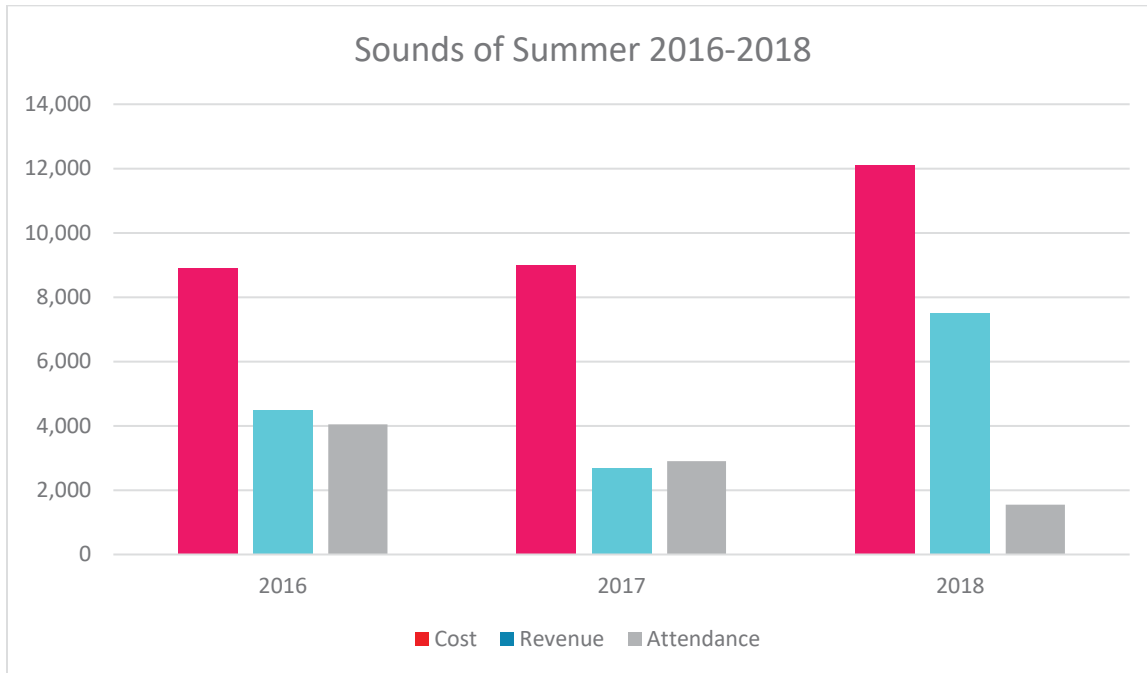
- See page 4.

7. When will the resulting data be shared across community administrative units and with council, and in what format?

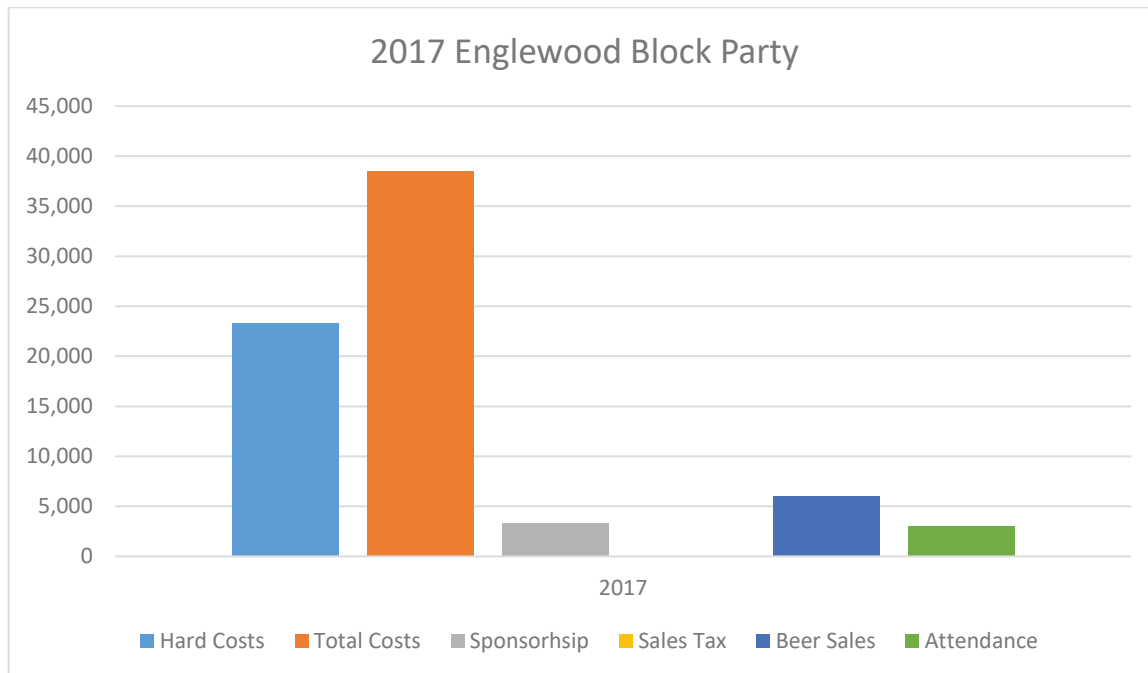
- Council Request response shared with City Council and posted to City website for the public.

6. Kindly provide a comparison chart of cost to monetary benefit for the city in terms of the Englewood Block Party and each event of the Englewood Signature Series.

Sounds of Summer 2016-2018: *Attendance not complete for 2018.



Englewood Block Party



*Sales Tax increased 9.3% in October 2017 over October 2016



MEMORANDUM

To: Mayor Olson
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Friday, July 13, 2018

Re: Requested by a consensus of City Council: Solid Waste Franchising Law

Issue(s): What is the legal process for franchising solid waste in Englewood?
What is the known legal history for franchising solid waste in Englewood?

Facts/Background: In early 1994 the City Attorney's Office provided a written memorandum to the City Council regarding the legal impediments to "franchising trash service" and "contract trash hauling". Later that same year the State of Colorado changed C.R.S. 30-15-401(6) and (7) to allow cities and counties to franchise waste services. In 1995 the Clean, Green and Proud Commission brought the idea of franchising to the City Council. As a result the City Attorney's Office was asked to research the ability of the City to pursue "contract trash hauling". In 1997 the City Attorney was asked to provide the City Council with a breakdown of the legal requirements of C.R.S. 30-14-401(6) and (7) in laymen's terms. In January, 1998, the City Council adopted an ordinance mandating the licensing of trash haulers within the City. In March of 1998, that ordinance was repealed and replaced with a new ordinance mandating residential trash collection by a licensed TRASH hauler in accordance with a recommendation of the Clean, Green and Proud Commission. In 1999 the City Council reviewed alternatives and recommendations from Keep Englewood Beautiful Commission regarding the negative impacts upon the community associated with multiple trash haulers. They determined at that time to pursue designated collection days. In November, 2000, Keep Englewood Beautiful recommended that residential trash hauling and collection within the City be limited to Mondays and Wednesdays, and between the hours of 7:00 a.m. and 10:00 p.m. That recommendation was adopted by ordinance.

Solid Waste management options: Community efforts to reduce the number of solid waste haulers and reduce costs to residents include a variety of different options. In Colorado and nationally, there are thousands of municipal collection systems with individual characteristics too numerous to count.

1. Franchising. A franchise is a right or privilege granted by a government to an individual or corporation to allow use within a public right-of-way or easement. Such right does not ordinarily belong to citizens or corporations in general. Typically, a franchise is offered

only for services deemed public utilities or utilities, and is offered to allow for use of public property to provide the service (right of way, easement, sidewalk).

2. Multiple Hauler Contracts. The City, through a competitive procurement process, selects the hauler for each established trash hauling district within the City.
3. Exclusive Hauler System (LaFayette, Commerce City, Edgewater, Golden, Louisville). This option would rely on a competitive procurement process to award the entire City to a single hauler, who would then become the exclusive provider.
4. Municipal Utility (Denver, Thornton, Grand Junction, Craig, Delta)
5. Municipal solid waste fee (Sheridan). City imposes a residential waste collection fee which is billed to each residence within the City and collected by the City's contractual residential waste hauler or the City. Residents who wish to enter into a waste collection agreement with a separate hauler may do so, but all residents pay the City's waste collection fee regardless of whether the City's residential waste collection services are actually utilized by such residence.
6. Open Subscription System (i.e. Boulder, Fort Collins Englewood, Lakewood, Westminster, Wheatridge). City develops and imposes licensing standards for waste haulers. Residents may select the licensed hauler that they wish to individually contract with to provide waste collection service to their residence.
 - Boulder and Fort Collins mandate recycling be provided by all licensed haulers.
 - Fort Collins mandates "pay as you throw" pricing which is pricing based on the size of the trash receptacle provided.
 - Standard Hauler Licensing. Most cities have established certain minimum criteria in order to operate within the City
 - Enhanced Hauler Licensing. Some cities have expanded licensing mandates to require waste haulers to offer greater recycling and composting opportunities.

Fees/Costs. While information specific to Englewood has not been compiled, information from another community within the Denver metro area is available. In 2011 Arvada completed a study of residential trash hauling, based on a survey of 2000 households within that community. That study found the following cost implications of various trash collection options.

1. The requirement for bundled collection (trash and recycling) and volume-based fees (collectively referred to as pay-as-you-throw, or PAYT) is prevalent in the open subscription - and universal in the single hauler - programs surveyed (all participating Colorado cities require haulers to implement PAYT) - notably, the PAYT requirement (and corresponding high diversion rates) can be included as either a license of contract requirement.
2. All single hauler systems surveyed require contractors to provide automated carts to residents while other programs vary between containers provided by homeowners, city, haulers or a combination (one open subscription program required haulers to provide carts, another did not) - the cart requirement typically increases costs to residents.
3. Monthly fees in the surveyed programs average \$27 for open subscription programs, \$21 for multi-hauler programs and \$13 for single-hauler systems - this finding supports the higher costs (from lower collection efficiencies) typically seen when multiple haulers serve the same neighborhoods.

4. Surveyed programs that include curbside organics collection as a regular service along with trash and recycling have monthly fees 1.4 to 2.4 times higher than programs with trash and recycling only - diversion rates are correspondingly higher, however.

Law: The law applicable to solid waste management is specific to the method of solid waste management selected by the City. Some methods of solid waste management may require a vote of the residents of the City either to approve the action or to amend Charter. Other methods would merely require an ordinance, either with or without a public hearing.

Analysis: The term franchising has become an umbrella term within discussions of solid waste management and collection. It is inappropriate to utilize this narrow legal concept to describe the variety of solid waste management options currently utilized throughout Colorado.

Selecting the solid waste management process appropriate for any city occurs at the legislative level, although it is seldom a quick decision. Many communities describe processes for including the interested community in the process of studying and analyzing the various waste management options, and understanding the pros and cons of each management option upon the community as a whole, and the larger environment. These community involvement processes tend to take place over the course of a year, and involve multiple temporary committees or focus groups made up of residents who volunteered to participate in studying a particular solid waste management option, and then consolidating the findings of all focus groups into a written report available to the community to review. After the community has selected the best option for that community, and modified the option to specifically meet the needs of that community, staff was tasked with implementing the option.



MEMORANDUM

To: Mayor Olson
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Friday, July 13, 2018

Re: Requested by a consensus of the City Council: An overview of the Englewood Environmental Foundation (EEF)

**Issue(s): What is the purposes and powers of EEF?
What is the City Council's authority to review actions of EEF?
What is the City Council's authority over EEF?
What is the COP and how does it impact the existence of EEF?
What is the process to dissolve EEF?**

What is the purposes and powers of EEF? The Englewood Environmental Foundation was formed on August 14, 1997 with the broad purpose and authority to assume management of the lands previously held by the Cinderella City Mall to perform every act necessary or incidental to or connected with the furtherance of its exempt purposes, including: taking title to land, taking title to improvements, carrying out environmental remediation, using and applying the income earned by properties held by EEF, borrow money, become indebted to carry out the goals of EEF, and all other powers expressly or indirectly conferred upon nonprofit corporations in general organized within Colorado. EEF's authority is expressly limited by the limitations placed upon non-for-profit entities by the Internal Revenue Code.

What is the City Council's authority to review actions of EEF? Per Article 4 of EEF's Articles of Incorporation the control and management of the affairs of the Corporation and of the disposition of its funds and property are vested solely in a Board of Directors. The entire voting power for all purposes rests in the Board of Directors, each member of which shall be entitled to one vote on each matter submitted to a vote. EEF indemnifies its board members, all employees and agents, for carrying out their duties and purposes of EEF. EEF is responsible for all reasonable expenses incurred by any member of the Board, current or past, acting within the scope of their capacity as such member with respect to legal costs including judgments, settlements, penalties, and fines.

What is the City Council's authority over EEF? The day to day operations of EEF include common area maintenance concerns, including: security, electricity, snow removal, power washing, fountains, elevator, boiler maintenance, landscaping water and irrigation, litter control,

sidewalk sweeping, seasonal decorations, and traffic/parking matters. Day to day matters are generally addressed by EEF without the oversight of the City Council. While the Articles of Incorporation do not provide for City Council involvement in EEF activities including taking title to land, taking title to improvements, carrying out environmental remediation, using and applying the income earned by properties held by EEF, borrow money, before any of those actions are carried out the EEF board seeks affirmation from the City Council via a resolution of support because these responsibilities are carried out for the benefit of the City of Englewood. In this manner, the EEF Board is affirmed that its determinations in these types of matters are in conformance with the perceptions of the elected representatives of the City of Englewood.

Financing. The City took out a Certificate of Participation (COP) to finance the purchase of the Englewood Civic Center and the environmental remediation associated with the 53 acre site. COPs are a lease-financing mechanism where the government enters into an agreement to make regular lease payments for the use of an asset over some period, after which the title for the asset transfers to the government. Since the government can decide, at any time, to discontinue the lease, COPs do not constitute a multi-year fiscal obligation and so can be issued without voter approval. The City's lease purchase agreement for the Civic Center runs through 2023. There is a prepayment penalty limiting/eliminating the financial benefit associated with prepayment, although in 2015 the City Manager was able to refinance the remainder of this COP to reduce the interest rate on the COP, effectively saving the City over \$1 million dollars in interest. Per the terms of the COP as long as the COP remains outstanding, EEF may not be dissolved.

Dissolution. Upon dissolution of the Corporation all remaining assets transfer to the City of Englewood.

C.R.S. 7-114-101. Authorization of dissolution before issuance of shares.

If a corporation has not yet issued shares, a majority of its directors or, if no directors have been elected, a majority of its incorporators may authorize the dissolution of the corporation.



MEMORANDUM

To: Mayor Olson
City Council
City Manager's Office

From: City Attorney's Office

Date: Friday, July 13, 2018

Re: Requested by Mayor Olson: An overview of the relationship between elected officials and municipal court processes

Issue(s): What is the relationship between the legislative body, or an individual member of the legislative body, and cases/matters pending in municipal court? This is important to understand as more often individuals with court cases are appearing at City Council meetings or sending e-mails asking for council intervention in a pending case.

Facts/Background: Municipal court cases proceed as follows:

A summons and complaint are issued by police or code enforcement officer if such officer has probable cause to believe that an offense has occurred and that the accused committed such offense. The officer, or any other authorized official, may serve the citation and notice to appear in court. A police officer must be involved if the alleged violation involves an arrest of the person charged.

Once a citation has been issued it is no longer under the control of the issuing officer, but moves to the prosecutor and becomes a case. The prosecutor has the authority to dismiss a case if after reviewing all of the evidence he or she determines that there is not enough evidence to support the charges.

The accused is arraigned, at which time he/she informs the judge how he/she will respond to the charges: guilty, not guilty, or no contest. If the accused pleads guilty or no contest the matter will be set for sentencing by the judge. If the accused pleads not guilty the matter is set for a pre-trial conference at which time the prosecutor may offer a plea agreement. If the defendant accepts the offer, the matter will go before the judge for sentencing. If the defendant rejects the offer the case is then set for trial. At trial the prosecutor presents the evidence that he or she determines best supports the allegations. The accused may choose to present evidence that contradicts the evidence presented by the prosecutor. After hearing all the evidence the judge or jury determines if the evidence supports a finding beyond a reasonable doubt that the crime occurred and that the accused is guilty of committing the crime.

Law: In Englewood the City Charter establishes an elected City Council as the legislative authority (§19), and the elected municipal judge to preside over the Englewood Municipal Court (§68). The City Manager, in his capacity as the CEO of the City and head of the administrative branch, establishes the enforcement branch of city government including the police department and code enforcement.(§50) The City Attorney, as legal representative of the City, hires an attorney to prosecute matters pending in the municipal court. (§64) The City Council establishes the law, the City Manager enforces the law through the police department/code enforcement/administrative enforcement, the City Attorney prosecutes those accused of violating the law, and the Municipal Judge or jury determines whether the evidence supports a finding of guilt.

Various State and federal laws criminalize interference with a prosecution, or using the color of one's authority to interfere with a prosecution. An individual, depending on the nature and intent of any action taken on behalf of a citizen facing criminal charges, may be him/herself committing a crime and may subject his/herself to criminal prosecution for the commission of said crime by such interference.

The following is a list of Colorado statutes which could conceivably be violated by such actions, resulting in criminal prosecution: 18-8-102 Obstructing government operations; 18-8-302 Bribery; 18-8-306 Attempt to influence a public servant; 18-8-404/405 First/Second degree Official misconduct; 18-8-616 Retaliation against a Prosecutor; 18-8-704 Intimidating a Witness or Victim; 18-8-706 Retaliation against a Witness or Victim. This list is not intended to be exhaustive nor is it intended to constitute specific legal advice, as criminal acts are determined based upon the underlying facts.

Analysis: The legislative body is responsible for enacting laws, reviewing laws and deciding whether to change the laws. There is no role for a member of the legislative body to intervene in the municipal court process. Once a citation is issued council may not legally become involved in the prosecution of that matter.

MEMORANDUM

To: Mayor Pro Tem Russell
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: January 11, 2018

Re: Understanding the difference between legislative and quasi-judicial **Public Hearings**

Issue: What is the difference between a legislative or administrative public hearing (usually held after an ordinance for a bill has been approved, but before the second reading of an ordinance), and a quasi-judicial public hearing?

Answer: While both administrative actions are referred to as “public hearings” they are different processes. E.M.C. 1-10-2-3 provides an overview of how the two processes differ. Additionally, the outcome of the two forms of public hearings differ. The outcome of a legislative public hearing is a public policy determination, typically an ordinance, which can be challenged by the voters via a referendum as provided for in Englewood City Charter 47. The outcome of a quasi-judicial decision impacts the rights of a specific individual or property and may be challenged in district court, usually to determine whether the deciding body followed the standards set forth in the applicable law or regulation.

Law:

Legislative Action: A legislative action affects the rights of individuals only in the abstract. *Cherry Hills Resort Development Co. v. City of Cherry Hills Village, supra*. The purpose of an legislative public hearing is to obtain information to enable the City Council to determine legislative policy. Public comment by concerned citizens at a regularly scheduled city council meeting does not constitute a quasi-judicial hearing. Merely granting an opportunity to all citizens to comment freely upon matters of public concern at a regularly scheduled city council meeting does not impact a specific individual's rights. Note that City Charter 40 provides for legislative public hearings as part of the ordinance approval process.

Quasi-judicial Action: “**Quasi-judicial**” administrative decision making, as its name connotes, bears similarities to the adjudicatory function performed by courts. (*Widder v. Durango School Dist.* 85 P3d 518 (Sup Ct. Colo. (2004))). An action is **quasi-judicial** if the decision at issue is likely to adversely affect the protected interests of specific individuals, and it is reached by application of preexisting legal standards or policy considerations to the facts presented. Exercise of **quasi-judicial** authority by a city council, unlike legislative authority, is conditioned upon observance of traditional procedural safeguards against arbitrary governmental action. A “**quasi-judicial**” action involves determination of rights, duties, or obligations of specific individuals based upon the application of presently existing legal

standards or policy considerations to past or present facts developed at a hearing conducted for purpose of resolving particular interests in question. In determining when an administrative official's actions are **quasi-judicial**, “[t]he central focus, in our view, should be on the nature of the governmental decision and the process by which that decision is reached.” *Id.* (quoting *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Vill.*, 757 P.2d 622, 627 (Colo.1988)). When a governmental decision is likely to affect the rights and duties of specific individuals and the government agents reach the decision by applying preexisting legal standards or policy considerations to present or past facts, the governmental body is generally acting in a **quasi-judicial** capacity. *Sherman v. City of Colorado Springs Planning Comm'n*, 763 P.2d 292, 295–96 (Colo.1988). (*Churchill v. UC at Boulder*, 293 P.3d 16 (Colo. Ct. App. 2010)).

1-10-2-3: - Nature of Hearings.

- A. *Quasi-Judicial Hearings*: The provisions of Section 1-10-2-7 hereof shall be applicable only to those hearings where the hearing body is called upon to exercise a power of a judicial or quasi-judicial nature, which, for the purpose of this section, shall be deemed to include, but not be limited to, the following:
1. Hearings before the Liquor Licensing Authority upon application for the issuance, or hearings for the suspension or revocation of liquor or fermented malt beverage licenses;
 2. Hearings before the City Council upon ordinances which zone or rezone realty, ordinances which annex property to the City, and upon all appeals from the decisions of any City official, board or commission where such an appeal is authorized by Charter, Statute or ordinance, and which requires an evidentiary hearing to determine such appeal;
 3. Hearings before the Board of Adjustment and Appeals;
 4. Hearings before a Hearing Officer upon appeals from disciplinary actions against employees;
 5. Hearings before the City Council or any board or commission or official respecting the issuance, suspension or revocation of any license issued by the City, or the imposition of any assessments or penalties;
 6. Hearings before other boards or commissions that meet the requirements of a quasi-judicial hearing as established by the Colorado Supreme Court.
- B. *Administrative Hearings*: All other hearings before a hearing body shall be deemed to be administrative hearings, the purpose of which is to obtain information to enable the City Council to determine legislative policy or to enable any board or commission to make recommendations to the Council upon proposed or pending legislation. Such hearings shall be conducted in compliance with the provisions of Sections 1-10-2-4, 1-10-2-5 and 1-10-2-6, and in such a manner so as to enable any person desiring to be heard a reasonable opportunity for the presentation of his views, but there shall be no requirement for compliance with the provisions of Section 1-10-2-7.
- C. The question of whether a hearing is administrative or quasi-judicial shall be raised at the hearing and the hearing body shall rule thereon or may adjourn the hearing for legal assistance. (Code 1985, § 1-10-2-3; Ord. 00-7, § 14, 3-6-00)



MEMORANDUM

To: Mayor Jefferson
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Friday, July 13, 2018 (originally sent out 11-1-17, and resent January 11, 2018)

Re: Approval process for rezoning requests

ISSUE(S): How does the process for acting upon a rezoning request differ from the process for any other action by Ordinance?

RESPONSE: The City Council must hold a public hearing before taking any action upon a rezoning request, and the information received at the public hearing must be incorporated into the decision regarding the rezoning. Additionally, unlike other Ordinance actions, the City Council has three (3) choices: approve the ordinance to rezone, deny the request to rezone, or refer the matter back to Planning and Zoning for comment on a proposed substantial amendment.

LAW:

The process for considering changes to the zoning map, impacting a specific site, is set forth in E.M.C. 16-2-7. Changes to zoning associated with implementation of a PUD are found in E.M.C. 16-2-8(G). Both processes require specific actions of City staff, the Planning Commission, and the City Council. These three bodies are not in conflict, but rather carry out differing roles in association with the process.

STEP 1. 16-2-8(G)(3) provides that the City Manager, or designee, (i.e. Planning and Zoning staff) **shall** develop a report of its recommendations for review by the Planning Commission and the City Council.

STEP 2. 16-2-8(G)(4) provides that the Planning Commission **shall** review the recommendation of City staff, hold a public hearing on the proposed rezoning, and then make a **recommendation** to the City Council to approve, deny, or modify the proposed rezoning. The Planning Commission's written recommendation to the City Council must include the reasoning for the majority opinion, including specific reference to the comprehensive plan, development standards, the Code, the law, and the objectives of the City.

STEP 3. 16-2-8(G)(5) provides that the City Council **shall** review the proposed rezoning, the recommendation of City staff, and the recommendation of the Planning Commission, and **shall** hold a public hearing on the proposed amendment.

STEP 4. Following the public hearing, the City Council may approve, deny, or refer a proposed amendment back to the Planning Commission based upon the criteria set forth in 16-2-8(F), which is set forth in full below.

- 16-2-8(G)(5) provides that a proposed amendment may be referred back to the Planning Commission in lieu of approval or denial. No substantial amendment to an application for a rezoning may be made by the City Council after a recommendation on the rezoning has been made by the Planning Commission, unless it is first referred back to the Planning Commission for comment on the proposed substantial amendment.
- Englewood City Charter 38 provides that the method of action upon a rezoning shall be by Ordinance. *In addition to such acts of the Council as are required by general statute, or by other provisions of this Charter to be by ordinance, every act making an appropriation, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violations of which a penalty is imposed, or **placing any burden upon or limiting the use of private property, shall be by ordinance.***

STEP 5. Following the initial approval of an Ordinance to modify zoning, Englewood City Charter 40 provides for a 2nd opportunity for a public hearing that is associated with any ordinance following its initial approval. This 2nd opportunity would generally not be utilized as it would seem repetitive and a burden upon the applicant/property owner to hold a third public hearing. *An ordinance may be introduced as a bill at any regular meeting by any member of the Council, or by petition of the people as provided by this Charter. Upon introduction, the bill shall be published by reference or in full as Council may determine. Council may set a day and hour at which Council, or a committee of Council, shall hold a public hearing thereon.* Englewood City Charter 40

STEP 6. Final approval of the Ordinance. *A bill, before its final passage, shall be presented at one additional meeting of the Council, which meeting must be held no earlier than seven days after publication of the bill for an ordinance, except in case of emergency as herein provided. After final passage, every ordinance shall again be published by reference or in full as Council may determine.* Englewood City Charter 40

DECISION-MAKING CRITERIA.

E.M.C. 16-2-8(F). PUD rezonings shall be made in the interest of promoting the health, safety, and general welfare of the community, and shall be consistent with the Comprehensive Plan. In addition the review or decision making body shall only recommend approval of, or shall only approve, a proposed PUD rezoning if it finds that the proposed rezoning meets the criteria listed below:

1. The proposed development shall comply with all applicable use, development, and design standards set forth in this Title that are not otherwise modified or waived according to the rezoning approval. In addition, the proposed rezoning shall meet at least one of the following criteria:
 - a. The proposed development will exceed the development quality standards; levels of public amenities; or levels of design innovation otherwise applicable under this Title, and the proposed development would not be allowed or practicable under a standard zone district with conditional uses or with a reasonable number of Zoning Variances or Administrative Adjustments; or
 - b. The property cannot be developed, or no reasonable economic use of the property can be achieved, under the existing zoning, even through the use of conditional uses or a reasonable number of Zoning Variances or Administrative Adjustments.
2. All PUD rezonings shall meet the following criterion:
 - a. The resulting rezoned property will not have a significant negative impact on those properties surrounding the rezoned area and the general public health, safety and welfare of the community will be protected.

Christa Graeve

From: Eric Keck
Sent: Monday, July 16, 2018 8:52 PM
To: #City Council
Subject: Council Request on Building Use Tax

Council:

Member Barrentine asked for the use tax calculated for the Synergy Medical Office Building and claimed that the City's new PD paid \$500,000. Please see the table below from CBRE. The police building project paid the City \$394,308.

Thank you.

Christa Graeve

From: Eric Keck
Sent: Wednesday, July 18, 2018 9:56 AM
To: #City Council
Subject: Council Request on Use Tax

Council:

On Monday night Councilor Barrentine raised the question of use tax calculation during the Synergy Medical Office Building PUD. I forwarded what the City use tax for the Police Department building was, however, I did not provide the Council with the formula for calculating the tax. I apologize for that oversight. The formula is as follows:

City of Englewood Use Tax = (3.5%) * (1/2 of assessed valuation of project)
Arapahoe County Open Space Tax = (0.25%) * (1/2 of assessed valuation of project)

Thank you.

Eric Alexander Keck
City Manager
1000 Englewood Parkway
Englewood, CO 80110
303-762-2312
ekeck@englewoodco.gov



Budget

Description	Current Budget	Committed Costs	Costs To Date
GMP Amount	\$ 21,087,634.48	\$ 21,029,755.00	\$ 2,653,791.48
Additional Project Costs	\$ 4,318,494.54	\$ 2,885,511.79	\$ 1,946,172.57
Planning and Permitting Fees	78,666.00	10,237.00	10,237.00
Tap & Utility Fees	105,741.29	105,741.29	77,525.00
City Use Tax	394,308.00	394,307.91	18,750.00
Owner/Relocation Costs	49,710.00	36,776.63	20,596.00
Design Team	1,644,115.00	1,590,970.00	1,370,588.08
Surveying	-	-	-
Geotechnical	10,000.00	7,900.00	9,600.00
Environmental Consulting/Testing	16,988.25	8,307.50	8,262.00
Commissioning	45,325.00	45,325.00	4,532.00
Project Management	564,375.00	564,375.00	334,650.05
Misc Consulting Fees	60,000.00	53,353.46	48,564.69
Material Testing/Inspections	68,218.00	68,218.00	42,867.75
Furniture	695,070.00	-	-
IT/AV Systems & Equipment	269,275.00	-	-
Security Systems	136,703.00	-	-
Interior Signage	30,000.00	-	-
Gym Equipment	150,000.00	-	-
Project Contingency	\$ 1,593,870.98	\$ -	\$ -
Total	\$ 27,000,000.00	\$ 23,915,266.79	\$ 4,599,964.05

