



City of Colorado Springs

Work Session Meeting Agenda

Council Work Session

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

City Council meetings are broadcast live on Channel 18. In accordance with the ADA, anyone requiring an auxiliary aid to participate in this meeting should make the request as soon as possible but no later than 48 hours before the scheduled event.

Monday, July 11, 2016

1:00 PM

Council Chambers

1. Call to Order

2. Changes to Agenda

3. Regular Meeting Comments

4. Review of Previous Meeting Minutes

4.A. [16-470](#) City Council Work Session Meeting Minutes June 27, 2016

Presenter:
Sarah Johnson, City Clerk

Attachments: [2016-06-27 Work Session Draft](#)

5. Executive Session

5A. Open

5B. Closed

6. Staff and Appointee Reports

6.A. [16-472](#) Financial Report - City of Colorado Springs

Presenter:
Kara Skinner, Chief Financial Officer

Attachments: [071116 July 2016 Financial Update Presentation.pptx](#)

6.B. [15-00793](#) Agenda Planner Review

Presenter:
Eileen Lynch Gonzalez, City Council Administrator

Attachments: [071116 Agenda Planner Review MEMO](#)

7. Presentations for General Information**7.A. [16-228](#)** Downtown Colorado Springs Update

Presenter:

Susan Edmondson, President & CEO, Downtown Partnership of Colorado Springs

Attachments: [07.11.16 Downtown Update slides](#)**7.B. [16-412](#)** Pikes Peak Small Business Development Center (PPSBDC) Update

Presenter:

Aikta Marcoulier, Executive Director, PPSBDC

Attachments: [071116 SBDC update](#)**8. Items for Introduction****8.A. [16-420](#)** A resolution approving and authorizing the Mayor to execute a revised amendment to an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) regarding funding for the Woodmen Road Widening Project

Presenter:

Mike Chaves, P.E., CIP Engineering Manager

Attachments: [Resolution Woodmen Amendment 1](#)
[Exhibit A Woodmen Amendment 1](#)**8.C. [CPC CA](#)
[16-00008](#)** An ordinance repealing and reordaining section 906 (appeals) of part 9 (notice, hearings and appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the code of the City of Colorado Springs 2001, as amended, pertaining to appeals.

(Legislative)

Presenter:

Peter Wysocki, Planning and Community Development Director
Carl Schueler, Comprehensive Planning Manager, Planning & Development Department

Attachments:[Appeal Ordinance version A](#)[Appeals Ordinance version B with Don Knight edits](#)[6.13.16 Figure 2 - Code Scrub Committee 2015-2016](#)[6.13.16 Figure 3 -Jurisdictional Comparison- Standing for Appeals](#)[6.13.16 Figure 4 -Calendar Showing Impact of 10 vs. 14 days](#)[6.13.16 Figure 5 - 7-ANALYSIS OF MAJOR ISSUES AND CHANGES APPEAL](#)[6.13.16 Figure 6 - Current Appeals Text in the City of Colorado Springs Zoning](#)[AppealsCode Change CPC Staff Report 4-12-16](#)[6.13.16 Appeals PP](#)[6.13.16 Planning Appeal Period - Don Knight's](#)**8.D. [16-468](#)**

An Ordinance amending all sections of Article 3 (Code of Ethics) of Chapter 1 (Administration, Personnel and Finance) of the Code of the City of Colorado Springs 2001, as amended.

Presenter:

Andy Pico, City Council Member, District 6

Tracy Lessig, Division Chief-Employment, City Attorney's Office

Craig Valentine, Commissioner, Independent Ethics Commission

William Schmidt, Commissioner, Independent Ethics Commission

Attachments:[EthicsCodeORD-2016-06-29-FINAL](#)[CodeRevisions-AttachmentOriginalCode](#)[CodeRevisions-AttachmentResolution41-13](#)[CodeRevisions-AttachmentResolution58-13](#)[2016-7-11 Ethics Code slides](#)**9. Items Under Study****10. Councilmember Reports and Open Discussion****11. Adjourn**



Memorandum

File #: 16-470, Version: 1

City Council Work Session Meeting Minutes June 27, 2016

Presenter:

N/A

Summary:

N/A

Previous Council Action:

N/A

Background:

N/A

Financial Implications:

N/A

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A

Alternatives:

N/A

Proposed Motion:

City Council Work Session Meeting Minutes June 27, 2016

N/A



City of Colorado Springs

City Hall
107 N. Nevada Avenue
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Meeting Minutes - Draft Council Work Session

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Monday, June 27, 2016

1:00 PM

Council Chambers

1. Call to Order

Present 9 - Councilmember Larry Bagley, President Merv Bennett, Councilmember Helen Collins, President Pro Tem Jill Gaebler, Councilmember Keith King, Councilmember Don Knight, Councilmember Bill Murray, Councilmember Andy Pico, and Councilmember Tom Strand

2. Changes to Agenda

Council President Bennett stated the executive session will be held at the end of the meeting.

3. Regular Meeting Comments

Sarah Johnson, City Clerk, stated agenda items 4.B.R and 4.B.S will be pulled off the Consent Calendar as there were some last minute language changes made to these items.

Eileen Gonzalez, City Council Administrator, reviewed some last minute changes made to the agenda.

Councilmember Murray requested agenda items 4.B.G through 4.B.J., the Woodmen Heights items, be pulled from the Consent Calendar.

Councilmember Knight requested agenda items 4.B.L through 4.B.O, the Banning Lewis Ranch items, be pulled from the Consent Calendar.

4. Review of Previous Meeting Minutes

4.A. [16-444](#) City Council Work Session Meeting Minutes June 13, 2016

Presenter:
Sarah Johnson, City Clerk

The Meeting Minutes were approved as presented.

5. Executive Session

5A. Open

There was not an Open Executive Session.

5B. Closed**5B.A. [16-449](#) Closed Executive Session**

Presenter:

Wynetta Massey, City Attorney

David Andrews, Legislative Counsel, stated the purpose of the closed executive session is to receive legal advice and negotiation consultation with the City Attorney regarding a franchise agreement.

Council President Bennett polled Council regarding the desire to proceed with the discussion in a closed session. Consensus of Council agreed to proceed with the Closed Executive Session.

6. Staff and Appointee Reports**6.A. [15-00792](#) Agenda Planner Review**

Presenter:

Eileen Lynch Gonzalez, City Council Administrator

Ms. Gonzalez noted a few changes to the agenda planner.

Councilmember Pico stated he requested the ethics issue be presented at two work sessions prior to being presented in a regular meeting.

6.B. [16-00141](#) Financial Report - Memorial Health System Enterprise

Presenter:

Kara Skinner, Chief Financial Officer

There were no questions or comments on the Memorial Health System Enterprise financial report.

7. Presentations for General Information

There were no presentations for general information.

8. Items for Introduction**8.A. [16-429](#) 2017 Audit Plan Approval**

Presenter:

Denny L. Nester, City Auditor, Office of the City Auditor

Denny Nester, City Auditor, presented an overview of the proposed audit plan which has been approved by the Audit Committee.

Councilmember Murray asked about the division of time between the City entities. Mr. Nester explained how time is allotted based on projects, budget and other factors. The audit process is risk based and the time allocation process has been effective for his office.

Councilmember Strand asked if the office has sufficient staff to meet the City needs. Mr. Nester stated his staff is able to handle the work load.

Councilmember Strand asked about the changes at Colorado Springs Utilities and asked if the projects will be covered by the audit process. Mr. Nester stated the audit team will be able to cover the projects without any trouble.

- 8.B.** [16-435](#) Consideration of Decision and Order and a Resolution Regarding Changes to Electric Rate Schedule, Industrial Service - Time-of-Day 1,000 kWh/day Minimum (ETL) Rates within the Service Areas of Colorado Springs Utilities

Presenter:

Sonya Thieme, Pricing Manager

Jerry Forte, P.E., Chief Executive Officer, Colorado Springs Utilities

Res/Ord Number: 70-16

There were no questions or comments on this agenda item.

9. Items Under Study

- 9.A.** [CPC CA](#) Consideration of possible amendments to the City's requirements and
[16-00079](#) processing of geologic hazard studies.

Presenter:

Peter Wysocki, AICP, Director of Planning and Community Development

Peter Wysocki, Director of Planning and Community Development, presented an overview of the current procedures and the proposed amendments to the process.

Councilmember Murray asked if the proposed amendment includes a process to avoid drainage issues caused by increased water flow from the development. Mr. Wysocki stated drainage is addressed in the

development plan; post-construction flow levels are not to exceed pre-construction flow levels.

Councilmember Collins stated she would like to see areas east of I-25 included in the proposal as south Academy Boulevard is built on old land fill and portions of the south east were built on a high water table. Councilmember Knight stated this is addressed in the proposal as it talks about known hazard areas.

Councilmember Knight provided additional information about the considerations included in the proposed amendments. He stressed the importance of this legislation and urged Council to include this item on the July 26 meeting agenda.

Councilmember Strand asked if these recommendations can be placed into practice prior to City Council approval. David Andrews, Legislative Counsel, stated this is a possibility that will have to be researched.

Councilmember Murray stated he is reluctant to practice these measures prior to City Council passing the amendments due to enforcements issues. Council President Bennett shared these concerns. Mr. Wysocki stated Planning staff will try to have this proposal ready for presentation at the second meeting in July and reminded Council there are multiple entities involved in this change including, builders, Pikes Peak Regional Building and inspectors who must be included in the process.

10. Councilmember Reports and Open Discussion

Councilmember King asked what type of agreement the City has with Mountain Metro Transit in regard to the advertising on bus stop benches. Jeff Greene, Chief of Staff, stated the advertising allowed on the bus stop benches is under review by the City Attorney's Office.

Council President Pro Tem Gaebler provided an update on the CML Conference attended by several City Staff and Councilmembers. Ms. Gaebler stated it was the best conference she has attended yet and encouraged other Councilmembers to attend. Councilmember Strand also spoke about the CML Conference and the great guidance and leadership provided in the sessions.

Councilmember Pico reminded Council about the Utility Governance

meeting scheduled for Wednesday June 29, 2016 at 8 am.

Councilmember Knight provided an update from the Conference of the Department of Defense Communities he attended in Washington D.C.

Councilmember Murray asked what the City's official position is regarding the agreement with Mr. Perdue and the advertising on the bus stop benches. Mr. Greene stated the City's position is to maintain the current contract and seek advice from the City Attorney's Office.

11. Adjourn

There being no further business to come before City Council, Council adjourned.

Sarah Johnson, City Clerk



Memorandum

File #: 16-472, Version: 1

Financial Report - City of Colorado Springs

Presenter:

Kara Skinner, Chief Financial Officer

Summary:

This financial update will include an overview of end-of-year revenue and expenditure estimates, details regarding Sales and Use Tax collections, and a number of economic indicators.

Previous Council Action:

On November 24, 2015, per Ordinance No. 15-86, City Council approved the 2016 Budget. On April 12, 2016, per Ordinance No. 16-36, City Council approved a supplemental appropriation for City funded City projects from Fund Balance that was attributed to 2015 Public Works expenditure savings.

Background:

Beginning August, 2015, the Finance Department began presenting monthly financial reports to City Council at the second Worksession following the month through which the report was based. With that timing, the actual report could not be included in the agenda packet before the meeting. For the presentation to be included in the agenda packet the Finance Department moved the presentation to the first Worksession of the next month. This report follows that timeline.

The initial 2015 reports included end-of-year estimates. At the beginning of 2016, the reporting methodology was changed to report year-to-date budget to actual comparisons. At the June 13, 2016 City Council Worksession, City Council had many questions regarding the tables and the methodology used to present those year-to-date budget and actual comparisons. After further consideration, this monthly report reverts back to the methodology of providing end-of year revenue and expenditure estimates and provides a simplified format for more direct communication regarding those estimates.

The Finance Department considers these reports to be a work-in-progress and is open to modifying content and presentation as City Council requests.

Financial Implications:

Based upon the current end-of-year estimates, the City's General Fund, its most significant fund used to provide core municipal services, is trending close to budget for revenue and approximately 1% under budget for expenditures.

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A

Alternatives:

N/A

Proposed Motion:

N/A

N/A

July 2016 Financial Update

(activity thru May 2016)

July 11, 2016

Kara Skinner

Chief Financial Officer



General Revenue Information

Property Taxes are collected mainly in March-July. 98% of the total revenue is typically collected by the end of July.

Other Taxes includes specific ownership tax, admissions tax, and occupational liquor taxes. Specific ownership tax is the state automobile tax and is collected throughout the year; however, there are no collections booked for January and two months of collections are booked in December.

Charges for services include court costs, development review fees, excess police alarm fees, hazardous material fees, youth and adult recreation programs, and community center classes. This category includes revenue which are not smooth throughout the year or received in the same months year to year. Also, program managers monitor program revenues and monitor and adjust expenditures accordingly.

Fines are collected for violations including parking and traffic violations.

Intergovernmental includes HUTF, state cigarette tax, and road and bridge revenue. HUTF is collected by the state and distributed locally throughout the year, although collections are typically slightly higher in the last half of the year – sources include motor fuel taxes and vehicle registration fees. Cigarette tax is lagged such that no revenue is collected January or February, but December has three months of collections booked.

Other Financing Sources includes shared services, utilities surplus revenue, and sale of capital assets. Shared services revenue is collected from enterprises for services provided by General Fund employees such as the City Attorney, City Auditor, and the City Clerk. Some of the charges are determined through a cost allocation model and the revenue received is smooth throughout the year, other charges are billed as services are provided and can vary greatly by month each year. Beginning in 2014, fuel for the City and Colorado Springs Utilities was purchased by the General Fund. Colorado Springs Utilities reimburses the General Fund for its fuel usage, which results in a much higher shared services amount. Utilities surplus revenue is collected throughout the year; however, no revenue is booked in January and two months of revenue are booked in December.

General Fund Revenue

- Sales Tax Revenue – trending ~\$1M below budget
- Property Tax – trending ~\$900k above budget
- Intergovernmental – trending ~\$1M above budget
- Fines and Utilities Surplus – trending ~\$1M below budget
- Other Taxes, Charges for Services, Licenses – trending to budget

Summary – total GF revenue trending on budget

General Fund Expenditures

- City Council – trending on budget
 - Dues and Memberships (over 75% of operating budget) was expended within the first 5 months
- City Attorney, Municipal Court, Information Technology – trending under budget due to vacancies
- Public Safety – trending slightly under budget
- Balance of departments – trending on budget

Summary – total GF expenditures trending ~ 1% under budget

Sales Tax Trends

2.0% Sales and Use Tax:

- S&U combined – up 3.86% for the month and up 4.44% year-to-date
 - Sales tax – up 5.25% for the month and up 3.99% year-to-date
 - Use tax – down 17.09% for the month and up 12.07% year-to-date

2.0% Lodger's Tax & 1.0% Auto Rental Tax:

- LART Combined – up 12.52% for the month and up 18.64% year-to-date
 - Lodger's Tax – up 13.56% for the month and up 19.92% year-to-date
 - Auto Rental Tax - up 2.68% for the month and up 9.39% year-to-date

0.62% Road Tax:

- \$3,721,454

Sales Tax Trends

Industries with Largest Month over Month % Increase

Medical Marijuana	25.36%
Grocery Stores	16.22%
Commercial Machines	11.29%

Industries with Largest Month over Month \$ Increase

Miscellaneous Retail	\$73,711
Grocery Stores	\$62,143
Hotel/Motel	\$47,933

Industries with Largest Month over Month % Decrease

Business Services	(13.71%)
Utilities	(13.40%)
Department and Discount	(5.31%)

Industries with Largest Month over Month \$ Decrease

Department and Discount	(\$56,198)
Business Services	(\$49,053)
Utilities	(\$36,296)

Sales Tax Trends

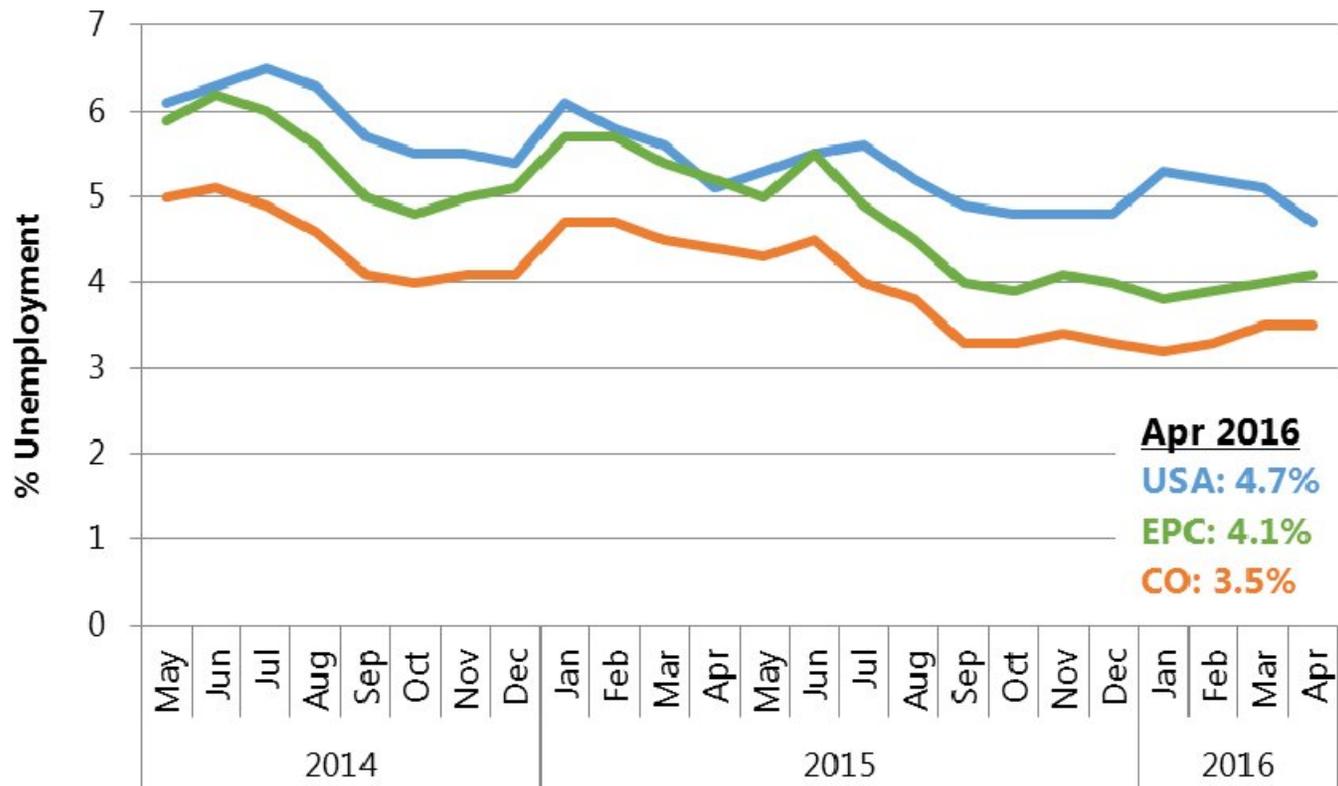
Category	\$ Change 2016 YTD compared to 2015 YTD	% Change 2016 YTD compared to 2015 YTD
Auto Dealers	(213,903)	(4.9%)
Auto Repair, Leases	66,702	3.4%
Building Materials	282,196	7.3%
Business Services *	(83,438)	(7.3%)
Clothing	108,050	6.9%
Commercial Machines *	54,994	6.4%
Department/Discount	(156,276)	(3.6%)
Furniture/Appliances/Electronics	176,063	7.9%
Grocery	277,616	18.6%
Hotel/Motel	244,586	18.1%
Medical Marijuana	117,432	27.3%
Miscellaneous Retail	21,720	2.6%
Restaurants	151,428	2.6%
Utilities	(147,343)	(12.2%)

*The most volatile categories

Economic Indicators



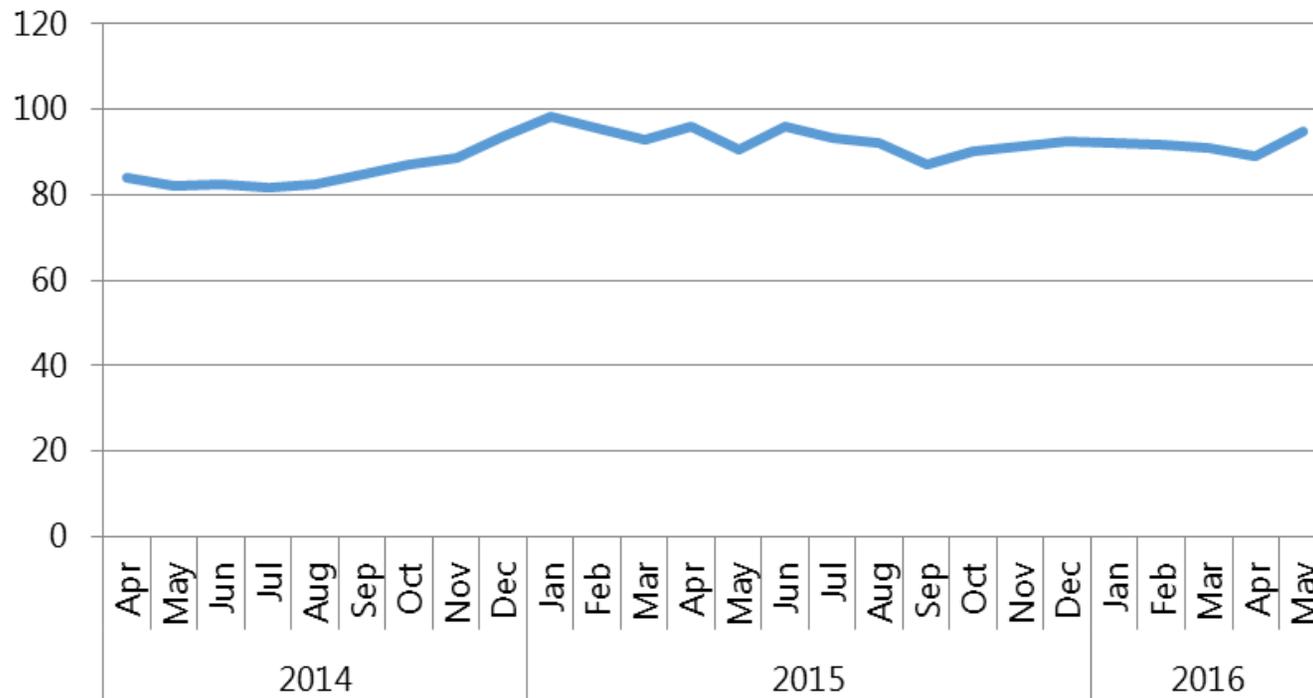
Unemployment Rate



Economic Indicators



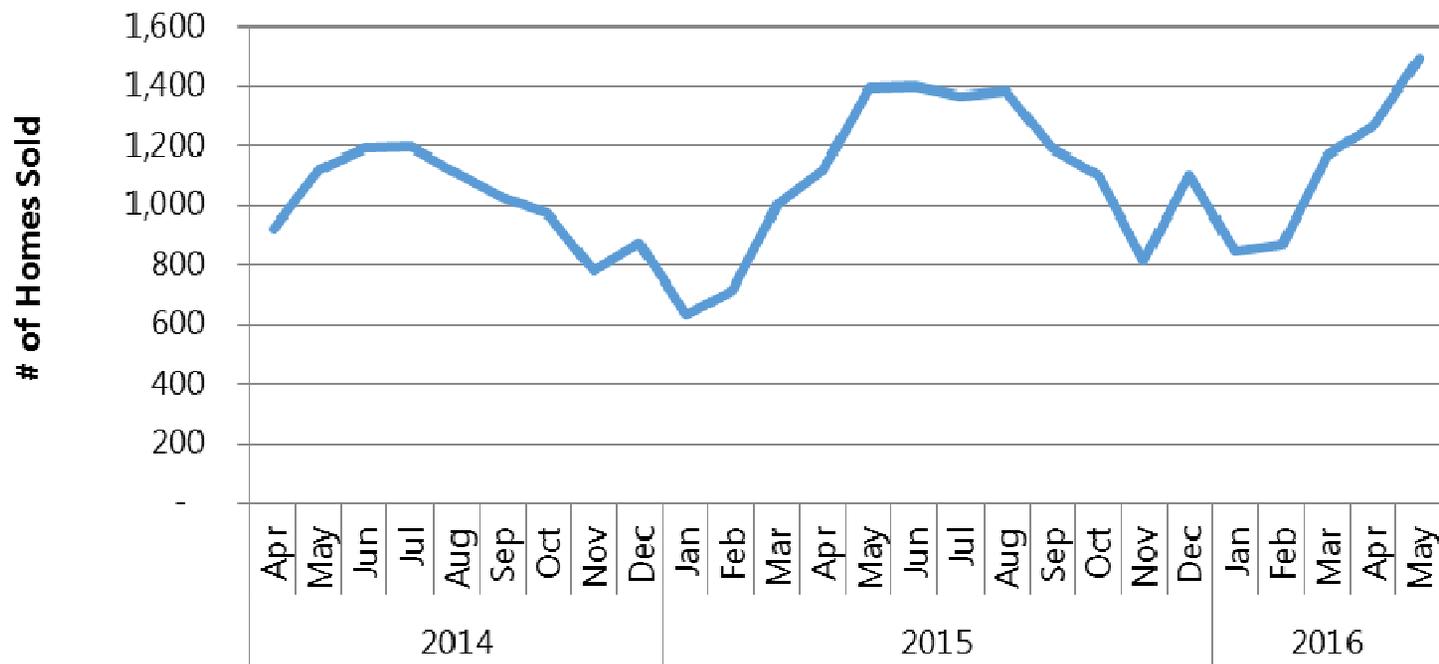
Index of Consumer Sentiment





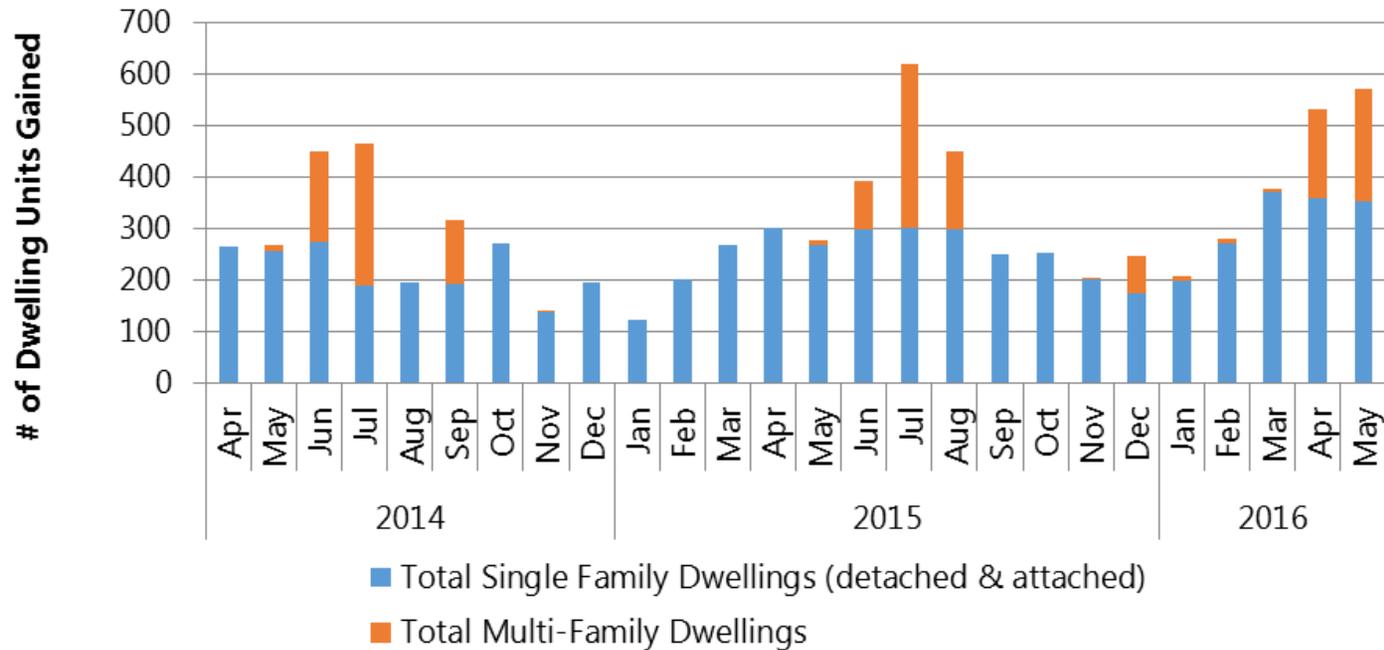
Economic Indicators

Pikes Peak Region Home Sales Single Family/Patio Homes



Economic Indicators

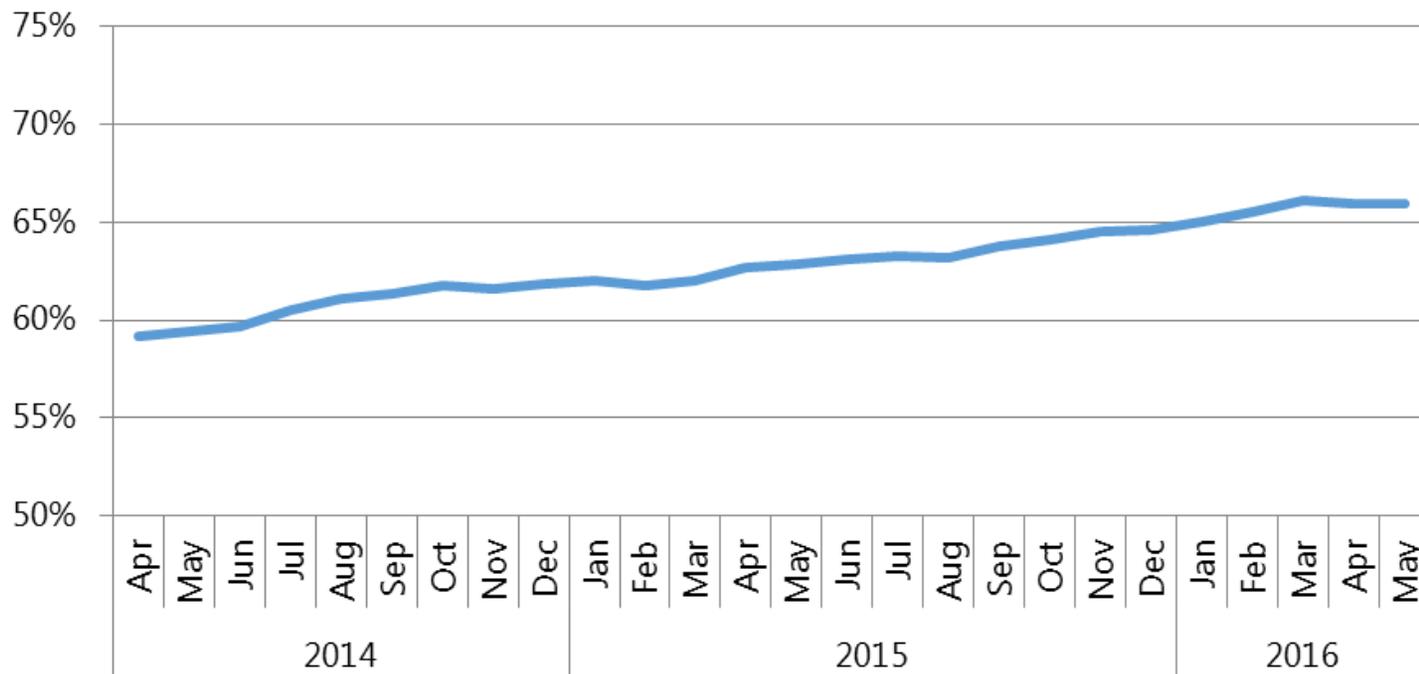
Pikes Peak Region Residential Building Permits



Economic Indicators



Colorado Springs Hotel Occupancy Rate (12 Month Moving Average)



Questions?



Memorandum

File #: 15-00793, **Version:** 2

Agenda Planner Review

Presenter:

Eileen Lynch Gonzalez, City Council Administrator

Summary:

The attached memo provides a preview of proposed items for upcoming Council work session and regular meetings, subject to change as needed.

Previous Council Action:

N/A

Background:

N/A

Financial Implications:

N/A

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A

Alternatives:

N/A

Proposed Motion:

N/A

N/A



WORK SESSION ITEM

COUNCIL MEETING DATE: July 11, 2016

TO: President and Members of City Council

FROM: Eileen Lynch Gonzalez, City Council Administrator

SUBJECT: Agenda Planner Review

The following agenda items have been proposed for the regularly scheduled Work Session and Regular Meetings on July 25 & 26 and August 8 & 9, 2016.

Work Session Meeting – July 25

Staff and Appointee Reports

1. Strategic Plan Implementation Update – Strategic Advisory Team

Presentations for General Information

1. Pikes Peak Library District Briefing & Update – John Spears, Executive Director
2. Transit's Status Update for the Downtown Transit Station Study – Craig Blewitt, Transit Manager

Items for Introduction

1. An ordinance creating a new Appendix P (Indoor Flora Grow Operations in Residential Occupancies) to Chapter 8, Article 4, Section 105 of the Code of the City of Colorado Springs, 2001, as amended - Ted Collas, Interim Fire Chief, CSFD; Brett Lacey, Fire Marshal, CSFD
3. A Resolution authorizing the disposal of City owned property to WH Capital, LLC as the one logical, potential purchaser - Mike Chaves, Engineering Manager; Aaron Egbert, Senior Civil Engineer
4. A Resolution approving and authorizing the Mayor to execute an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) regarding funding for the Platte Avenue Bridge Replacement over Sand Creek - Mike Chaves, Engineering Manager/CIP; Aaron Egbert, Senior Engineer
5. Request for a Public Hearing relating to a demolition order for the house on the property located at 418 East Cucharras Street to consider an ordinance assessing costs for work performed at 418 East Cucharras Street, Colorado Springs, Colorado – Mike Chaves, CIP Engineering Manager; Aaron Egbert, Senior Engineer

Items Under Study

1. Code Review Project Update – Councilmembers Don Knight, Larry Bagley, and Tom Strand

Regular Meeting – July 26

Recognitions

1. A resolution proclaiming August 2015 to be Science, Technology, Engineering and Math (STEM) Education month in the City of Colorado Springs – Councilmember Don Knight

New Business

1. A proposed amendment to change medical marijuana cultivation operations and infused product manufacturers (non-hazardous) from permitted uses to conditional uses throughout the FBZ. Medical marijuana infused product manufacturers (hazardous) are to be prohibited throughout the FBZ (Legislative) – Peter Wysocki, Director of Planning and Community Development
2. An ordinance amending Section 206 (Parking Exempt Districts) of Part 2 (Off-street Parking Standards) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to the Old Colorado City Parking Exempt District (Legislative) – Michael Turisk, Planner II, Planning & Community Development
3. An ordinance relating to amendments to the City's requirements and processing of geologic hazard studies – Peter Wysocki, AICP, Director of Planning and Community Development
4. The Reserve at Northcreek Annexation consisting of 17.023 acres and located on the north side of New Life Drive between Voyager Parkway and State Highway 83 (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development
5. The Reserve at Northcreek concept plan for an attached single-family residential development with a maximum 8 dwelling units per acre on a 9.99-acre site (Quasi-Judicial) – Michael Schultz, Principal Planner, Planning and Community Development
6. The establishment of a PUD (Planned Unit Development; Attached Single-Family, 8 Dwelling Units Per Acre, 35 Foot Maximum Building Height) zone district pertaining to 9.99 acres located on the north side of New Life Drive between Voyager Parkway and State Highway 83 (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development
7. A development plan legalizing the four unit apartment building at 2428 North Cascade Avenue and the two single-family homes located at 2432 and 2434 North Cascade Avenue (Quasi-Judicial) – Michael Schultz, Principal Planner, Planning and Community Development

8. A change of zone of .959-acre from R-1 6000 (Single-Family Residential) and M-1 (Light Industrial) to R-5 (Multi-Family Residential) involving properties located at 2428 - 2434 North Cascade Avenue & 2428 West Van Buren Street (Quasi-Judicial) – Michael Schultz, Principal Planner, Planning and Community Development
9. A PUD Concept Plan for veterinary services located at 5520 and 5540 North Nevada Avenue (Quasi-Judicial) – Conrad Olmedo, Planner II, Planning & Community Development
10. A Zone Change of 4.23 acres from OC/CR (Office Commercial with Conditions of Record) to PUD (Planned Unit Development: Commercial and Large Animal Veterinary Service, 45 Foot Maximum Building Height) Located at 5520 and 5540 North Nevada Avenue (Quasi-Judicial) – Conrad Olmedo, Planner II, Planning & Community Development
11. An adjustment to The Farm Master Plan changing the alignment of New Life Drive, integrating 1.49 acres from the Interquest at Marketplace Master Planned area into this planned area, and changing land use designation for the integrated land from deeded right-of-way and Regional Commercial to High Density Residential (12-24 Dwelling Units per Acre), located to the northwest of the New Life Drive and Voyager Parkway intersection (Quasi-Judicial) – Daniel Sexton, Senior Planner, Planning & Community Development
12. An adjustment to the Interquest at Marketplace Master Plan changing the alignment of New Life Drive and moving 1.49 acres from this planned area to The Farm Master Planned area to the north, located to the northwest of the New Life Drive and Voyager Parkway intersection (Quasi-Judicial) – Daniel Sexton, Senior Planner, Planning & Community Development
13. Continental Apartments at Voyager concept plan for a multi-family residential development with 280 dwelling units contained within 14 multi-family buildings, located to the northwest of the New Life Drive and Voyager Parkway intersection (Quasi-Judicial) – Daniel Sexton, Senior Planner, Planning & Community Development
14. Continental Apartments at Voyager PUD zone change of 18 acres from PUD/A/CR (Planned Unit Development and Agricultural with Conditions of Record) to PUD (Planned Unit Development: Multi-Family Residential, 15.58 dwelling units per acre, 40-foot height maximum), located to the northwest of the New Life Drive and Voyager Parkway intersection (Quasi-Judicial) – Daniel Sexton, Senior Planner, Planning & Community Development

Work Session Meeting – August 8

Presentations for General Information

1. Transit's Fall Service Changes Presentation – Craig Blewitt, Transit Manager
2. 2015 Comprehensive Annual Financial Report and Governmental Accounting Standards Board (GASB) Statement 68 Update – Kara Skinner, Chief Financial Officer
3. 2015 Financial Update and 2017 Budget Outlook – Kara Skinner, Chief Financial Officer

4. Districting Process Advisory Committee Preliminary Report to City Council and City Clerk – Chair, Districting Process Advisory Committee
5. UCCS Sports Medicine and Performance Center – Steve Johnson, Director

Items for Introduction

1. A resolution amending the Articles of Incorporation of the Colorado Springs Health Foundation – BJ Scott, Chair, Colorado Springs Health Foundation Board of Trustees; Cari Davis, Executive Director, Colorado Springs Health Foundation

Regular Meeting – August 9

New Business

1. Colorado Springs Airport Annexation Filing #1 located southwest of Space Village Drive and Marksheffel Road consisting of 31.158 acres (Legislative) – Michael Schultz, Principal Planner, Land Use Review Division of the Planning and Community Development Department
2. Colorado Springs Airport Annexation Filing #2 located between Highway 94 and Airport Lane and totaling 18.89 acres (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development
3. Colorado Springs Airport Annexation Filing #3 located southeast of the intersection of Highway 24 and Powers Boulevard and consisting of 47.484 acres. (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development
4. Establishment of the APD/AO/APZ (Airport Planned District with Airport Overlay and Accident Potential Zone) for the Colorado Springs Airport Annexation Filing #1 (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development Department
5. Establishment of the APD/AO/APZ (Airport Planned District with Airport Overlay and Accident Potential Zone) zone district for Colorado Springs Airport Annexation Filing #2. (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development
6. Establishment of the APD/AO/APZ (Airport Planned District with Airport Overlay and Accident Potential Zone) zone district for the Colorado Springs Airport Annexation Filing #3. (Legislative) – Michael Schultz, Principal Planner, Planning and Community Development Department



Memorandum

File #: 16-228, **Version:** 2

Downtown Colorado Springs Update

Presenter:

Susan Edmondson, President & CEO, Downtown Partnership of Colorado Springs

Summary:

Susan Edmondson will provide Council with her regular update on the Downtown Partnership's recent activities.

Previous Council Action:

N/A

Background:

N/A

Financial Implications:

N/A

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A

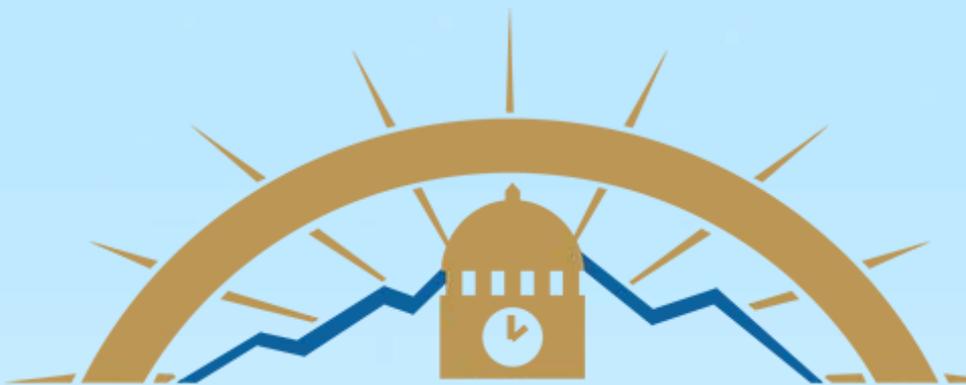
Alternatives:

N/A

Proposed Motion:

N/A

N/A



DOWNTOWN
COLORADO SPRINGS



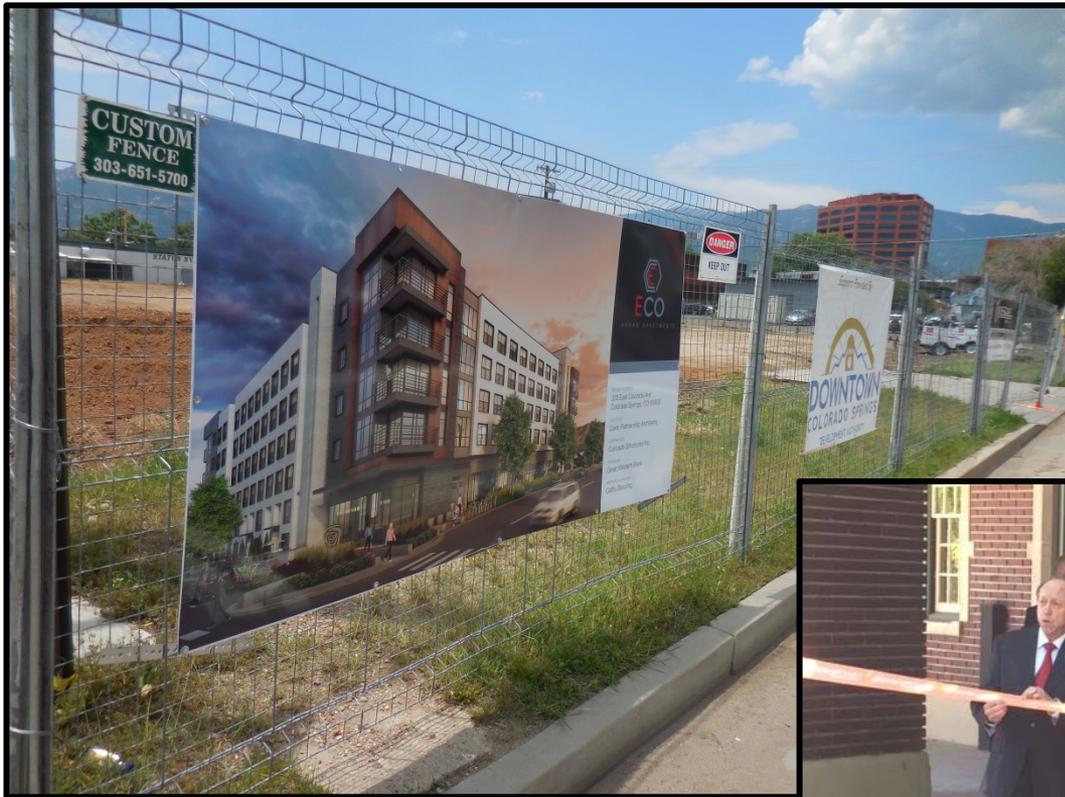
Economic development



15-plus new street-level businesses, Q1-Q2



Economic development



Catalyst Campus,
residential, hotel



Economic development

Urban Land Institute Explorer Series

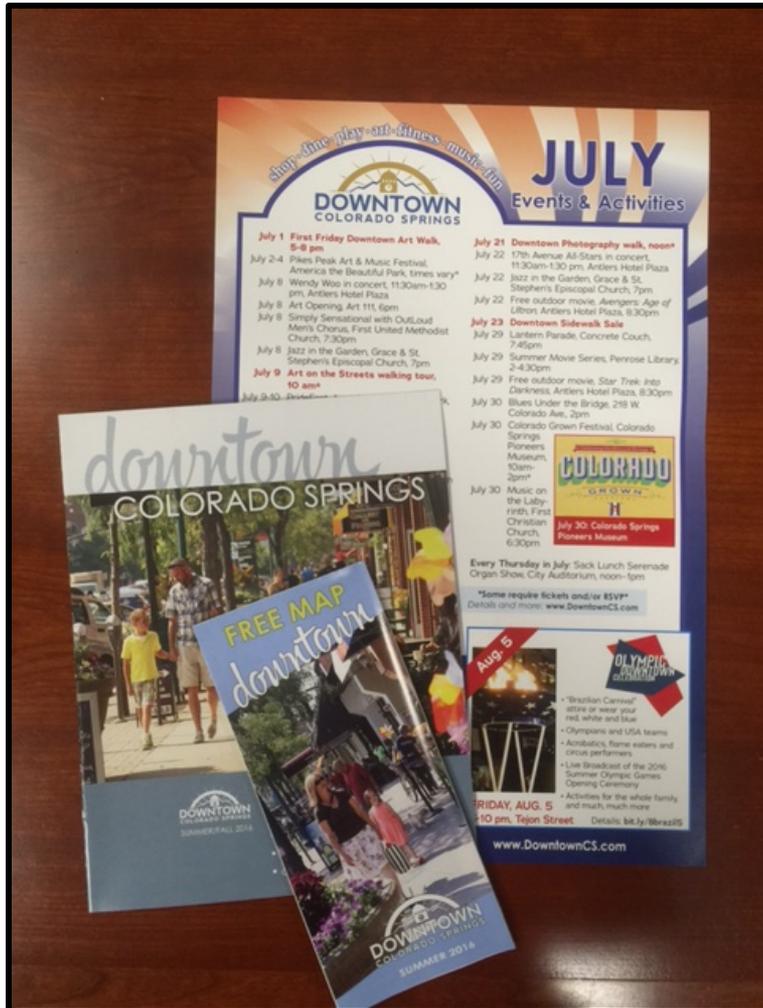


Planning



- **Near completion:** Update to Imagine Downtown Plan of Development and Master Plan
- **Ongoing:** Envision Shooks Run, Southwest Downtown Urban Renewal, Transit Center Relocation, Bike Master Plan, Cimarron/I-25 interchange, bike sharing

Summer



- Marketing
- Tourism focus
- Landscaping
- Downtown Summer Market
- Mitigating events
- Increased foot traffic

Safety



- Private security
- Communication with CSPD
- Support for Ambassadors

Art on the Streets



Art on the Streets



Downtown Colorado Springs
Published by Susan J. Edmondson (?) · June 3 at 2:30pm · 🌐

This moment of surprise and delight brought to you by artist Scott Burgess and #artonthestreets. (Have you seen the yellow footprints?)



1,269 people reached

Like Comment Share Hootlet Boost Post

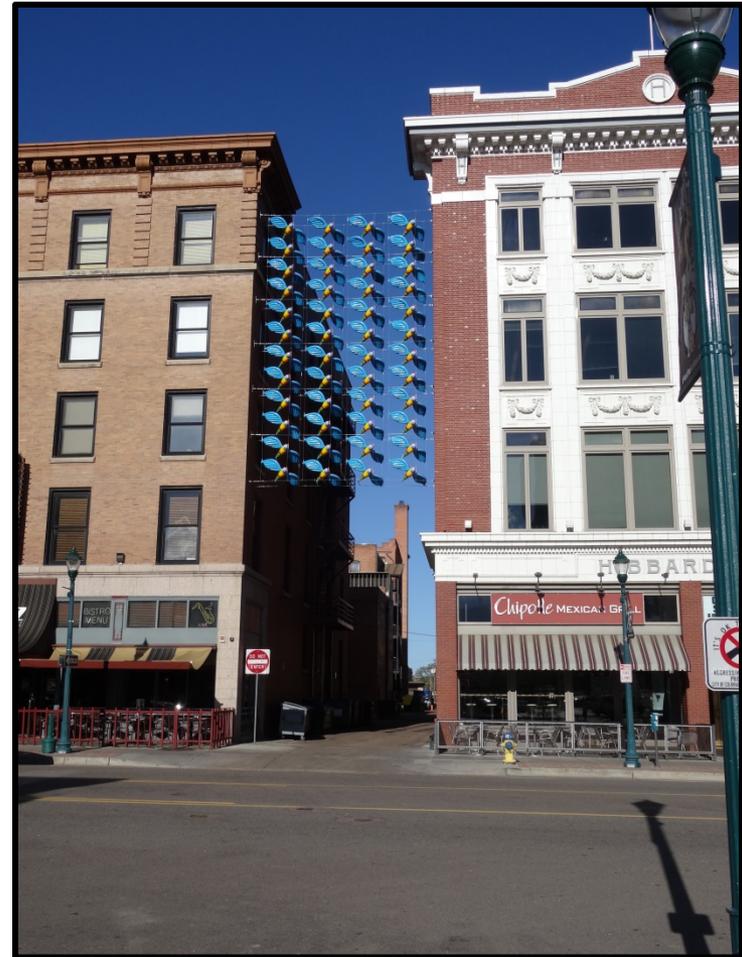
- Mountain Chalet** So amazing!
Unlike · Reply · Message · 👍 1 · May 26 at 5:12pm
- Mina** Love Colorado Springs public art display each year ❤️
Unlike · Reply · Message · 👍 1 · May 26 at 7:14pm
- Kristen** Beautiful!
Unlike · Reply · Message · 👍 1 · May 26 at 2:44pm
- Deluxe** Awesome!
Unlike · Reply · Message · 👍 1 · May 26 at 3:05pm

Art on the Streets



Art on the Streets

Americans for the Arts
Public Art Network
Year in Review



Upcoming

- Experience Downtown Plan of Development and Master Plan completion
- Baseline services agreement
- Event impact fee
- Downtown Living Initiative
- Holiday prep
- Annual Breakfast: September 27





Memorandum

File #: 16-412, Version: 1

Pikes Peak Small Business Development Center (PPSBDC) Update

Presenter:

Aikta Marcoulier, Executive Director, PPSBDC

Summary:

Ms. Marcoulier will provide Council with an update on PPSBDC's recent activities.

Previous Council Action:

N/A

Background:

N/A

Financial Implications:

N/A

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A

Alternatives:

N/A

Proposed Motion:

N/A

N/A

2013–2015 DISASTER PROGRAM

PIKES PEAK SBDC

219 CLIENTS

48% FEMALE

16% VETERAN

15% MINORITY

2,652 SESSIONS

2,986 HOURS

6 STARTS

63 JOBS

252 RETAINED

\$6.2M CAPITAL

\$288,530 SALES

\$276,850 CONTRACTS

\$4,000 MISC.

CLIENTS CONSULTED

WOMEN-OWNED BUSINESSES CONSULTED

VETERAN-OWNED BUSINESSES CONSULTED

MINORITY-OWNED BUSINESSES CONSULTED

CONSULTING SESSIONS

CONSULTING HOURS

BUSINESS STARTS

JOBS CREATED

JOBS RETAINED

CAPITAL FORMATION

SALES INCREASE

CONTRACTS AWARDED

MISCELLANEOUS IMPACT

TOP 5 INDUSTRIES SERVED:



2015 DISASTER PROGRAM

PIKES PEAK SBDC

52 CLIENTS

60% FEMALE

17% VETERAN

8% MINORITY

635 SESSIONS

776 HOURS

2 STARTS

7 JOBS

37 RETAINED

\$579,447 CAPITAL

\$128,600 SALES

\$15,500 CONTRACTS

CLIENTS CONSULTED

WOMEN-OWNED BUSINESSES CONSULTED

VETERAN-OWNED BUSINESSES CONSULTED

MINORITY-OWNED BUSINESSES CONSULTED

CONSULTING SESSIONS

CONSULTING HOURS

BUSINESS STARTS

JOBS CREATED

JOBS RETAINED

CAPITAL FORMATION

SALES INCREASE

CONTRACTS AWARDED

TOP 5 INDUSTRIES SERVED:



2013–2015 IMPACT

PIKES PEAK SBDC

1,343 CLIENTS

45% FEMALE

34% VETERAN

15% MINORITY

5,076 SESSIONS

6,440 HOURS

51 STARTS

345 JOBS

607 RETAINED

\$24.2M CAPITAL

\$9.5M SALES

\$1.4M CONTRACTS

\$4,000 MISC.

CLIENTS CONSULTED

WOMEN-OWNED BUSINESSES CONSULTED

VETERAN-OWNED BUSINESSES CONSULTED

MINORITY-OWNED BUSINESSES CONSULTED

CONSULTING SESSIONS

CONSULTING HOURS

BUSINESS STARTS

JOBS CREATED

JOBS RETAINED

CAPITAL FORMATION

SALES INCREASE

CONTRACTS AWARDED

MISCELLANEOUS IMPACT

TOP 5 INDUSTRIES SERVED:



2015 IMPACT

PIKES PEAK SBDC

CLIENTS CONSULTED

WOMEN-OWNED BUSINESSES CONSULTED

VETERAN-OWNED BUSINESSES CONSULTED

MINORITY-OWNED BUSINESSES CONSULTED

CONSULTING SESSIONS

CONSULTING HOURS

BUSINESS STARTS

JOBS CREATED

JOBS RETAINED

CAPITAL FORMATION

SALES INCREASE

CONTRACTS AWARDED

400 CLIENTS

49% FEMALE

39% VETERAN

18% MINORITY

1,417 SESSIONS

1,939 HOURS

31 STARTS

88 JOBS

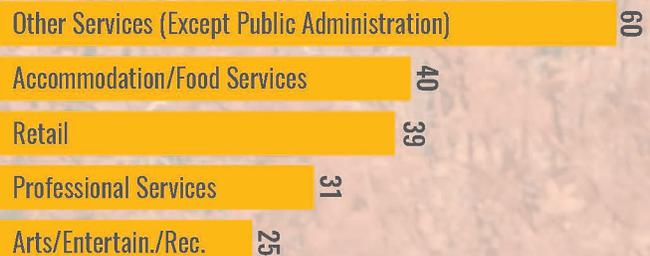
105 RETAINED

\$15.3M CAPITAL

\$7.3M SALES

\$4.8M CONTRACTS

TOP 5 INDUSTRIES SERVED:



2013–2015 VETERAN PROGRAM

PIKES PEAK SBDC

543 CLIENTS

23% FEMALE

26% MINORITY

1,267 SESSIONS

2,087 HOURS

17 STARTS

83 JOBS

142 RETAINED

\$4M CAPITAL

\$1M SALES

\$4.6M CONTRACTS

CLIENTS CONSULTED

WOMEN-OWNED BUSINESSES CONSULTED

MINORITY-OWNED BUSINESSES CONSULTED

CONSULTING SESSIONS

CONSULTING HOURS

BUSINESS STARTS

JOBS CREATED

JOBS RETAINED

CAPITAL FORMATION

SALES INCREASE

CONTRACTS AWARDED

TOP 6 INDUSTRIES SERVED:



2015 VETERAN PROGRAM

PIKES PEAK SBDC

154 CLIENTS

29% FEMALE

27% MINORITY

530 SESSIONS

759 HOURS

8 STARTS

12 JOBS

27 RETAINED

\$1.1M CAPITAL

\$559,791 SALES

\$4.4M CONTRACTS

CLIENTS CONSULTED

WOMEN-OWNED BUSINESSES CONSULTED

MINORITY-OWNED BUSINESSES CONSULTED

CONSULTING SESSIONS

CONSULTING HOURS

BUSINESS STARTS

JOBS CREATED

JOBS RETAINED

CAPITAL FORMATION

SALES INCREASE

CONTRACTS AWARDED

TOP 4 INDUSTRIES SERVED:





Memorandum

File #: 16-420, **Version:** 3

A resolution approving and authorizing the Mayor to execute a revised amendment to an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) regarding funding for the Woodmen Road Widening Project

Presenter:

Mike Chaves, P.E., CIP Engineering Manager

Summary:

In April, 2016, City Council approved an IGA Amendment (Amendment) from CDOT and the Federal Highway Administration (FHWA) requesting to move \$6.3M of funding for the Woodmen Road Widening Project from the original contract and to add approximately \$1.0M in 2016 TIP funding to the contract for funding Woodmen Road Phase 2 construction. Subsequent to the approval, CDOT requested a change of the Construction Phase funds from \$10,393,248 to \$10,559,548. That allocation change is the only change to the IGA Amendment from the one approved in April.

This revision to the Amendment requires City Council approval of the attached resolution approving the revised Amendment authorizing the Mayor to execute the revised Amendment with CDOT, Amendment No. 1 to Original Contract CMS No. 14 HA2 66003, Project # STU M240-148 (19450)), attached as Exhibit A and authorizing the Mayor to execute any subsequent amendments to the IGA that do not increase or decrease the amount of CDOT funding for the Project or expand or decrease the scope of the Project.

Previous Council Action:

- Ordinance No. 00-24: On February 22, 2000, City Council approved funding in the amount of \$1,788,134 (\$312,816 Local, \$1,475,318 Federal) for the widening of Woodmen Road from I-25 to Lexington.
- Ordinance No. 02-193: On November 12, 2002, City Council approved increased funding in the amount of \$5,245,266 (\$903,759 Local, \$4,341,507 Federal) for the widening of Woodmen Road from I-25 to Powers Boulevard, bringing the total to \$7,033,400.
- Ordinance No. 04-97: On June 22, 2004, City Council approved increased funding in the amount of \$2,774,000 (\$477,405 Local, \$2,296,595 Federal) for the widening of Woodmen Road from I-25 to Powers Boulevard, bringing the total to \$9,807,400.
- Ordinance No. 05-65: On April 26, 2005, City Council approved increased funding in the amount of \$3,028,000 (\$521,119 Local, \$2,506,881 Federal) for the widening of Woodmen Road from I-25 to Powers Boulevard, bringing the total to \$12,835,400.

- Ordinance No. 06-61: On April 11, 2006, City Council approved increased funding in the amount of \$2,704,000 (\$530,465 Local, \$2,173,535 Federal) for the widening of Woodmen Road from I-25 to Powers Boulevard, bringing the total to \$15,539,400.
- Ordinance No. 09-11: On January 13, 2009, City Council approved increased funding in the amount of \$9,772,983 (\$1,618,931 Local, \$8,091,052 Federal) for the widening of Woodmen Road from I-25 to Powers Boulevard, bringing the total to \$25,312,383.
- Resolution No. 91-10: On June 8, 2010, City Council approved increased funding in the amount of \$2,948,157 (\$505,852 Local, \$2,442,305 Federal) for the widening of Woodmen Road from I-25 to Powers Boulevard, bringing the total to \$28,260,540.
- Resolution No. 109-11: On June 28, 2011, City Council approved increased funding in the amount of \$6,338,562 (\$6,338,562 Federal), bringing the total to \$34,599,102.
- Resolution No. 77-12: On June 12, 2012, City Council approved increased funding in the amount of \$4,776,600 (\$4,776,600 Federal), bringing the total to \$39,365,700.
- Resolution No. 4-14: On January 28, 2014, City Council approved increased funding in the amount of \$3,602,052 (\$2,982,139 Federal) for Project #STU M240-046 (12717).
- Resolution No. 42-14: On May 13, 2014, City Council approved moving \$4,950,133 (\$4,098,215 Federal) from Project #STU M240-046 (12717) to a new contract for Project #STU M240-148 (19450).
- Resolution No. 44-16: On May 13, 2016, City Council approved Amendment #1 to the IGA for Project #STU M240-148 (19450) (prior to the revision presented in this item).

Background:

In 2014, City Council authorized the Mayor to execute an IGA (Contract CMS No. HA2 66003, Project # STU M240-148 (19450)) (“IGA”) with CDOT regarding funding of the Woodmen Road Widening Project (“Project”). Earlier this year, CDOT and the Federal Highway Administration requested an amendment to the IGA to increase funding for the Project and to move funding from the right of way and design phases of the Project to the Construction Phase of the Project. City Council approved the IGA amendment by Resolution 44-16. Subsequent to City Council’s approval of the amendment and prior to the execution of the amendment by CDOT, CDOT requested a change to the amendment. CDOT’s change to the amendment is an increase in the amount of funds to be encumbered for the construction phase of the Project.

The City’s Public Works Department requests that City Council approve the Amendment to the IGA, as revised, and authorize the Mayor to execute the Amendment and any subsequent amendments to the IGA that do not increase or decrease the amount of CDOT funding for the Project or expand or decrease the scope of the Project. The cost share for the Project continues to be 82.79% federal funds and 17.21% local funds. All funds have been appropriated.

The Project supports the City’s strategic goal relating to investing in infrastructure.

Financial Implications:

This is not a request for additional funding and all Project funding has already been appropriated. The proposed Resolution approves an Amendment to the IGA that simply designates a portion of previously approved funding for the construction phase of the Project.

Board/Commission Recommendation:

Inclusion of the Woodmen Road Widening Project in the Transportation Improvement Plan (TIP) was approved in previous years by the Pikes Peak Area Council of Governments (PPACG) Board.

Stakeholder Process:

N/A

Alternatives:

N/A

Proposed Motion:

Motion to approve the Resolution.

N/A

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A REVISED AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) REGARDING FUNDING OF THE WOODMEN ROAD WIDENING PROJECT

WHEREAS, by Resolution No. 42-14, City Council authorized the Mayor to execute Contract CMS No. 14 HA2 66003, Project # STU M240-148 (19450) ("IGA") with the Colorado Department of Transportation ("CDOT") regarding funding of the Woodmen Road Widening Project (I-25 to Powers Boulevard) (the "Project"); and

WHEREAS, CDOT and the Federal Highway Administration requested an amendment, which is identified as Amendment No. 1 to Original Contract CMS No. 14 HA2 66003, Project # STU M240-148 (19450) ("Amendment"), to the IGA to increase funding for the Project and move funding from the Right of Way and Design Phases of the Project to the Construction Phase of the Project; and

WHEREAS, by Resolution 44-16, City Council approved the Amendment and authorized the Mayor to execute the Amendment; and

WHEREAS, subsequent to City Council's approval of the Amendment and prior to the execution thereof by CDOT, CDOT requested a change to the Amendment, namely an increase to the amount of funds to be encumbered for the Construction Phase of the Project; and

WHEREAS, the City's Public Works Department recommends approval of the proposed revised Amendment, a copy of which is attached hereto and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council hereby approves the revised Amendment.

Section 2. The Mayor is hereby authorized to execute the revised Amendment and any subsequent amendments to the IGA that do not increase or decrease the amount of CDOT funding for the Project or expand or decrease the scope of the Project.

Section 3. Any amendments to the IGA that would increase or decrease the amount of CDOT funding for the Project or expand or decrease the Project scope must be approved by City Council resolution.

Dated at Colorado Springs, Colorado this _____ day of _____, 2016.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

AMENDMENT

Amendment No.:	Original Agreement Routing No.:	Amendment Routing No.:
1	14 HA2 66003	14-HA2-XC-00138-ZM0003

1. PARTIES

This Amendment to the above-referenced Original Agreement (hereinafter called the “Agreement”) is entered into by and between City of Colorado Springs (hereinafter called the “Local Agency”), and the State of Colorado (hereinafter called the “State”) acting by and through the Department of Transportation, (hereinafter called “CDOT”).

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

The Parties entered into the Agreement to widen Woodmen Road from a 4-lane section that exists between Stinson and Lexington to a 6-lane section, improve intersection capability and add bicycle lanes between Lexington and Powers Boulevard.

4. CONSIDERATION – COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Agreement and any modification thereto were effective) as part consideration for this Amendment.

5. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6. MODIFICATIONS

The Agreement and all prior amendments thereto, if any, are modified as follows:

- a) decrease ROW Phase encumbrance of \$500,000.00 by \$23,078.00 to a new ROW Phase encumbrance of \$476,922.00;
- b) decrease Design Phase encumbrance of \$1,000,000.00 by \$651,290.00 to a new Design Phase encumbrance of \$348,710.00;
- c) encumber Construction Phase funds of \$10,559,548.00;
- d) increase the federal funds of \$4,098,215.00 by \$6,007,929.00 to a new total of \$10,106,144.00;
- e) increase the Local Agency matching funds of \$851,918.00 by \$1,248,900.00 to a new total of \$2,100,818.00;
- f) increase the total budgeted funds of \$4,950,133.00 by \$7,256,829.00 to 12,206,962.00; and
- g) Exhibit C-1 shall be replaced by Exhibit C-2. Any reference in the Agreement, as previously modified, to Exhibit C or C-1 shall be a reference to Exhibit C-2.

7. EFFECTIVE DATE OF AMENDMENT

The effective date hereof is upon approval of the State Controller or their delegate.

8. ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Agreement or any amendment shall always control other provisions in the Agreement or any amendments.

9. AVAILABLE FUNDS

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENT AGREEMENT

*** Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

STATE OF COLORADO John W. Hickenlooper, GOVERNOR	
LOCAL AGENCY CITY OF COLORADO SPRINGS	COLORADO DEPARTMENT OF TRANSPORTATION Shailen P. Bhatt, Executive Director
Name: _____ (print name)	
Title: _____ (print title)	
_____	By: Joshua Laipply, P.E., Chief Engineer
*Signature	Date: _____
Date: _____	
Additional Local Agency Signature (If Necessary)	LEGAL REVIEW Cynthia H. Coffman, Attorney General
Name: _____ (print name)	
Title: _____ (print title)	
_____	By: Assistant Attorney General
*Signature	Date: _____
Date: _____	

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD
By: _____ Colorado Department of Transportation
Date: _____

30. EXHIBIT C-2 – FUNDING PROVISIONS

STU M240-148 (19450)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$12,206,962.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (82.79% of Participating Costs)				\$10,106,144.00
b. Local Agency Matching Funds (17.21% of Participating Costs)				\$2,100,818.00
TOTAL BUDGETED FUNDS				\$12,206,962.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Share				\$0.00
Local Agency Share of Participating Costs		\$0.00		
Local Agency Share of Non-Participating Costs		\$0.00		
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$10,106,144.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
c. State Funds Budgeted (1c)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$10,106,144.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$12,206,962.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109 (Federal share of \$680,353.00 and Local Agency share of \$141,429.00)				\$821,782.00
Net to be encumbered as follows:				\$11,385,180.00
WBS Element 19450.10.10	ROW	3114		\$476,922.00
WBS Element 19450.10.30	Design	3020		\$348,710.00
WBS Element 19450.20.10	Const	3301		\$10,559,548.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20.205) to 17.21% Local Agency funds, it being understood that such ratio applies only to the \$12,206,962.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$12,206,962.00, and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$12,206,962.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$9,425,791.00 (total federal funds of \$10,106,144.00 minus federal share of ROW Acquisition 3111 and/or ROW Relocation 3109 of \$680,353.00 [the ROW Acquisition funds of \$821,782.00 will be encumbered and paid through the Fair Market Value process and not through this Agreement]; for CDOT accounting purposes, the federal funds of \$9,425,791.00 and the Local Agency matching funds of \$1,959,389.00 [total Local Agency matching funds of \$2,100,818.00 minus Local Agency share of ROW Acquisition 3111 and/or ROW Relocation 3109 of \$141,429.00] will be encumbered for a total encumbrance of \$11,385,180.00), unless such amount is decreased as described in Sections B. and C. 1. of this **Exhibit C-2**, or increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$750,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure more than \$750,000-Highway Funds Only

If the Local Agency expends more than \$750,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure more than \$750,000-Multiple Funding Sources

If the Local Agency expends more than \$750,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.



Memorandum

File #: CPC CA 16-00008, **Version:** 5

An ordinance repealing and reordaining section 906 (appeals) of part 9 (notice, hearings and appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the code of the City of Colorado Springs 2001, as amended, pertaining to appeals.

(Legislative)

Presenter:

Peter Wysocki, Planning and Community Development Director
Carl Schueler, Comprehensive Planning Manager, Planning & Development Department

Summary:

The proposed ordinance was introduced to the City Council at the June 13, 2016 Council Work Session. Subsequent to the Work Session, staff met with Councilmember Knight to further discuss the ordinance and his proposed changes.

Attached, are two versions of the ordinance.

“Version A” is the draft initially presented at the June 13th Work Session, and recommended by the City Planning Commission and supported by the Code Scrub Committee.

“Version B” incorporates changes requested by Councilmember Knight. The changes have been redlined in “track changes”. Of particular note are edits to the definition and expansion of who has standing to file an appeal, postponements of appeal hearings and re-instatement of the automatic postponements for both parties.

(Note: The Summary below is from the June 13, 2016 Council cover memo.)

This proposal is to amend City Code Section 7.5.906 pertaining to zoning and other land use-related appeals and to make other limited conforming amendments in other areas of Chapter 7. The draft Ordinance is attached. The most significant changes involve the parties that may appeal and elements of the Code pertaining to scheduling and allowable periods in which to file an appeal.

The current Code allows “any aggrieved person” to be the appellant for any appealable administrative or hearing-based decisions as currently allowed under this section of Code. The revised Code section limits appellants to “parties-in-interest” that are defined based on whether the otherwise final decision is administrative or hearing-based. The amendment would also limit the one “automatic continuance” now available to both the applicant and the appellant, to only the applicant (although the applicant could also be the appellant in some cases). Both the applicant and appellant (if different) would continue to have the ability to request and potentially be granted a continuance by

the applicable hearing body, and the hearing bodies would continue to have their existing discretion act on, continue or remand back to a lower decision making body, as applicable. The revised ordinance would also remove the option to appeal any decision until it has proceeded through the otherwise final decision-making process. The Code revision also clarifies and formalizes the standards to be applied by City Council for certain appeals, and clarifies the content of appeals. The revision also specifies the types of active homeowners, property owners or neighborhood associations that could qualify as appellants if noticed.

The proposed amendment also includes a change to the period in which an appeal may be filed that would extend the current ten (10) day period to twelve (12) days. The method for computation of days (as calendar days) would remain the same.

In conjunction with these changes, the content of Section 7.5.906 has also been substantially re-organized. Organizational changes include moving separately listed references of appealable decisions into one table. Altogether, the extent of the reorganization dictated a “repeal and reordaining” of the Section rather than using a “strike and replace” approach.

The proposed ordinance also establishes appeal criteria for the City Council that are the same that currently apply to the Planning Commission. The lack of appeal criteria for the City Council was noted in the recent District Court decision on the Dublin Terrace Townhome project appeal of entitlements forfeiture.

Finally, in addition to changes to Section 7.5.906, the Ordinance includes several conforming amendments elsewhere in the Code. These are technical in nature, and are necessary to maintain consistency within the overall Code.

As currently drafted, this particular Code amendment would not substantively change the types of decisions that can be appealed, the order and precedence of appeals, the standards and criteria to be used in deciding appeals, nor does it limit the current discretion of City Council to hear appeals de novo versus limiting the appeal hearing specifically to the matter(s) being appealed.

Previous Council Action:

N/A. The last time City Council made substantive changes to this section of the City Code was in 2001.

Background:

One impetus for this recommended Code change has been the City’s Infill Steering Committee and the Infill Supplement to the Comprehensive Plan along with its associated Infill Action Plan (IAP).

“Revise appeals section of the Code (7.5.906) to more clearly limit the standing of parties who can appeal and the basis for appeals”

Under “Problem Statement/ Justification” the IAP there is the following additional language:

“As currently written the land use appeals section of the Code allows "any aggrieved person" to appeal almost any administrative or hearing-based decision for reasons that maybe tied to fairly open-ended criteria. For property owners and developers, this creates an extra measure of uncertainty and potential delay. "Tightening up" the appeals process could preserve the appeal rights and

options of the most impacted parties, while at the same time reducing the potential for the appeals process to result in delay in getting to final decisions”

The IAP goes on to recommend that this code change should be a near term priority and should be processed through the Code Scrub Committee.

Financial Implications:

N/A

Board/Commission Recommendation:

The Planning Commission considered this item at their March 17, 2016 meeting, and again at their May 19, 2016 hearing. On March 17th they unanimously recommended approval of the version before them with direction to allow limited clarifying and legal text changes by the City Attorney's Office and Planning Department staff.

The Planning Commission recommended two changes to staff's proposed ordinance at that time:

1. Reducing the then-recommended number of days allowed for filing an appeal from 14 days to 12 days. The Planning Commission felt that increasing from 10 to only 12 days will have less impact to the applicants, particularly items being appealed from Planning Commission to City Council.
2. Expanding the definition of who can file an appeal to include informal neighborhood associations/organizations that are on the Planning Department's list and receive a notification. This change was largely due to CONO's concern that the definition presented in the staff's proposed ordinance was too limiting.

During the May 19, 2016 Planning Commission meeting, Council Member Knight presented additional changes to the proposed ordinance. The Planning Commission considered his suggestions; however, the Commission only supported the 12-day period for filing of the appeal. Council Member Knight's powerpoint presentation is attached.

Stakeholder Process:

Standard notification is not utilized for legislative code changes, as the proposed application affects all City residents and property owners. However, adequate public outreach and input was achieved principally through the City's Code Scrub Committee ("Committee"). This topic and proposed change have been discussed at several Committee meetings in late 2015 and early 2016. A listing of Code Scrub Committee members is attached. The Committee includes staff of Planning & Development Department and City Attorney's Office as well as community members representing stakeholder interests including Council of Neighbors and Organizations (CONO), the Housing and Building Association (HBA), architects, planning consultants and engineers. The process ultimately relies on staff putting forward and carrying forward the code changes with Committee input, and the opportunity for the individual Committee members and other stakeholders to continue to represent their perspectives throughout the process.

Staff drafted the general content of this ordinance and then presented it to the Code Scrub Committee beginning at a meeting on November 4, 2015. Revisions were presented and discussed at a meeting on November 18, 2015. An initial codified version was presented to the Committee on January 6, 2016, followed by additional input and discussion on January 20, 2016. Additional

discussion occurred at the February 17, 2016 meeting.

Alternatives:

City Council can approve, deny or amend the proposed ordinance.

Proposed Motion:

No action required as this is a Work Session introduction and discussion item only.

An ordinance repealing and reordaining Section 906 (Appeals) of Part 9 (Notice, Hearings and Appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to appeals.

ORDINANCE NO. 16-_____

AN ORDINANCE REPEALING AND REORDAINING SECTION 906 (APPEALS) OF PART 9 (NOTICE, HEARINGS AND APPEALS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO APPEALS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Section 906 (Appeals) of Part 9 (Notice, Hearings and Appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

7.5.906: Appeals

A. Parties That May Appeal:

1. Administrative Decisions:

Any party-in-interest may appeal to the Planning Commission, an FBZ Review Board or Historic Preservation Board any appealable final administrative decision made by the Manager. For purposes of appealing an administrative decision, a "party-in-interest" shall be defined as one (1) of the following:

a. The applicant and owners of the property or properties directly subject to the decision, including any party holding a legal or equitable interest in the subject property;

b. Persons who own or reside within or lease a real property any part of which is located within five hundred (500) feet of the specific real property which is the subject of the administrative decision, or the board of any active homeowners, property owners, neighborhood, or merchants association the boundaries of which include the subject property or are within five hundred (500) feet of the subject property. For purposes of this section an "active homeowners, property owners, or neighborhood association" shall mean:

i. A unit owners' association currently registered with the Colorado HOA Information and Resource Center under the

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Colorado Common Interest Ownership Act (C.R.S. §§ 38-33.3-101, et seq.), as amended;

ii. A homeowners, property owners, or neighborhood association registered to do business in the State of Colorado and in good standing with the Colorado Secretary of State; and/or

iii. A homeowners, property owners, or neighborhood association with defined geographic boundaries that is included in the Department's database of homeowners, property owners, or neighborhood associations.

c. Any person to whom the City mailed notice in accord with section 7.5.902(C)(3) of this article.

2. Hearing-Based Decisions:

Any party-in-interest may appeal to the City Council any final decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board to City Council. For purposes of an appeal of a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, a "party-in-interest" shall be defined as one (1) of the following:

a. Any party-in-interest identified in subsection (A)(1) above;

b. Any person or organization that provided written comments, including by email, to the appropriate City staff for delivery to the Planning Commission, an FBZ Review Board, or Historic Preservation Board prior to or at the hearing on the decision being appealed. Signing a petition, in and of itself, shall not be considered providing written comment for purposes of this provision;

c. Any person or organization that appeared and provided testimony before the Planning Commission, an FBZ Review Board, or Historic Preservation Board at the hearing on the decision being appealed; or

d. The City of Colorado Springs administration.

B. Criteria and Contents of Appeals:

In the written appeal application, the appellant must substantiate the following:

1. Provide full contact information for the party-in-interest appealing, and the party-in-interest's property that is impacted by the decision being appealed, if applicable.

2. Identify the specific paragraph in Section A above under which the appellant claims to be a "party-in-interest". If the appellant is a "legally constituted and active homeowners, property owners or neighborhood association the boundaries of which include the subject property" the appellant

must provide documentation from either the Colorado HOA Information and Resource Center or the Colorado Secretary of State, or both, showing that it is currently registered with that agency; a map of the association's boundaries; and documentation of the association's board authorizing the association to file the appeal.

3. Identify the explicit ordinance provisions which are in dispute and show that the decision is incorrect because of one or more of the following grounds:

- a. It was against the express language of this Chapter, or
- b. It was against the express intent of this Chapter, or
- c. It is unreasonable, or
- d. It is erroneous, or
- e. It is clearly contrary to law.

4. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

C. Appeals of Administrative Decisions:

1. Appealable Decisions:

The following administrative decisions are appealable:

- a. Appeals from all notice and orders alleging violations associated with Chapter 6 or Chapter 7 of this Code that are to be filed and heard in accord with the Zoning Code.
- b. Decisions Appealable to FBZ Review Board: Administrative decisions are appealable to an FBZ Review Board in accord with an approved FBZ regulating plan.
- c. Decisions Appealable to the Historic Preservation Board or its Minor Works Committee.
- d. Appeals to the Planning Commission from otherwise final administrative decisions relating to the following sections and articles of this Code as outlined in the following table:

Code Sections Applicable to Appealable Administrative Decisions	
CODE SECTION:	TOPIC:
7.2.108	Similar Use Determinations
7.3.504	Hillside Grading Plan

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7.4.308	Landscape Plan
7.5.302.C	Site Plan
7.5.501	Concept Plans
7.5.502	Development Plans
7.5.503	Concept and Development Plan Application Review Procedures (minor amendments)
7.5.802	Nonuse Variances
7.5.1101-1107	Administrative Relief
7.5.1201-1208	Nonconforming Development
7.5.1301-1304	Sexually Oriented Business
7.5.1401-1405	Temporary Uses
7.5.1501-1506*	Home Occupations
7.7.304	Modifications (plat)
7.7.201-205	Preliminary Platting Procedures
7.7.301-306	Final Platting Procedures
7.7.501	Property Boundary (Lot Line) Adjustments
7.7.502	Preservation Area Boundary Amendments
7.7.503	Resolutions for Amending Plat Restrictions
7.7.504	Issuance of Building Permits to Unplatted Lands
7.7.505	Issuance of Building Permits to Previously Platted Lands or Waiver of Replat
7.7.506	Issuance of Building Permits Prior to Platting

2. Scheduling:

A party-in-interest must file a written appeal application with the Department within twelve (12) days from the date of the final decision. If the written appeal application conforms to the criteria in subsection (B) above, the Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission, an FBZ Review Board or Historic Preservation Board occurring a minimum of twenty (20) days and a maximum of forty-eight (48) days after the date the appeal application is received.

3. Action on the Appeal:

After a public hearing, the Planning Commission, an FBZ Review Board or Historic Preservation Board shall have the power to affirm, reverse, or modify these decisions. The applicable body shall decide the appeal based on the applicable standards contained or referenced in this Chapter. The scope of the hearing may be limited to matters raised on appeal.

4. Stays of Administrative Decisions:

A perfected appeal shall operate as a stay of the administrative decision unless the Manager certifies in writing that a stay would cause or result in an imminent hazard to the public health, safety, and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site. The time frame in which violations of this nature operate is such that a stay of proceedings will make the enforcement process ineffective. Examples of short term violations include, but are not limited to, temporary vendors, promotional events, and temporary signs.

5. Filing Fees:

Any person pursuing an appeal pursuant to this subsection A shall be responsible for the payment of all fees and for the completion of all forms which may be prescribed by the Manager. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal; provided however, that if the City of Colorado Springs is the party-in-interest any fees shall be waived.

D. Appeals of Planning Commission, an FBZ Review Board and Historic Preservation Board Decisions:

1. Appealable Decisions:

All final actions of the Planning Commission, an FBZ Review Board or Historic Preservation Board may be appealed to City Council.

2. Scheduling, Postponement:

a. Scheduling: An appellant must file a written appeal application with the City Clerk within twelve (12) days from the date of the hearing at which the final decision is made. If the appeal conforms to the criteria in subsection (B) above, the City Clerk shall place the appeal on the agenda of the next regularly scheduled City Council meeting occurring a minimum of twenty (20) days after the appeal has been filed.

b. Postponement of Items on Appeal to the City Council: As a matter of course, the applicant may postpone the first scheduled Council hearing or consideration of an appeal from a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, made in accord with this subsection, to the next regularly scheduled City Council meeting. Any other requests for postponement shall be granted only for good cause shown to and found by the City Council. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further hearing and recommendations.

3. Action on the Appeal:

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a. The Manager shall prepare a staff report including relevant facts and the record of the decision of the hearing body.

b. The City Council shall hold a public hearing. Before the public hearing is commenced, the City Council may entertain a motion to uphold the action of the Planning Commission, an FBZ Review Board or Historic Preservation Board or refer the matter back to the appropriate body with direction for further consideration and recommendation.

c. After a public hearing, City Council shall have the power to affirm, reverse, or modify the prior decisions. City Council may hear the appeal de novo, or may limit the hearing to matters raised on appeal.

City Council shall make findings to support their decision based on the applicable standards contained or referenced in this Chapter.

4. Failure to Appeal: The failure to appeal the decision of the Planning Commission, or an FBZ Review Board or Historic Preservation Board within the twelve (12) day period shall be deemed to be a waiver of the applicant's or a party in interest's right to appeal to the courts under Rule 106 of the Colorado Rules of Civil Procedure for failure to exhaust administrative remedies.

5. Final Decision; Court Review: On such appeals, the decision of the City Council shall be final agency action, and shall be subject to review by the courts pursuant to applicable rules and statutes, unless the matter is remanded to the Planning Commission, or an FBZ Review Board or Historic Preservation Board.

6. Filing Fee: The filing fee shall be borne by the appellant; provided however, that if the City of Colorado Springs is the party-in-interest the fee shall be waived.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2016.

Finally passed: _____

Council President

Mayor's Action:

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- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

ORDINANCE NO. 16-_____

AN ORDINANCE REPEALING AND REORDAINING SECTION 906 (APPEALS) OF PART 9 (NOTICE, HEARINGS AND APPEALS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO APPEALS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

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7.5.906: Appeals

A. Parties That May Appeal:

1. Administrative Decisions:

Any party-in-interest may appeal to the Planning Commission, an FBZ Review Board or Historic Preservation Board any appealable final administrative decision made by the Manager. For purposes of appealing an administrative decision, a "party-in-interest" shall be defined as one (1) of the following:

a. The applicant and owners of the property or properties directly subject to the decision, including any party holding a legal or equitable interest in the subject property;

b. Persons who own or reside within or lease a real property any part of which is located within five hundred (500) feet of the specific real property which is the subject of the administrative decision, or the board of any active homeowners, property owners, neighborhood, or merchants association the boundaries of which include the subject property or are within five hundred (500) feet of the subject property. For purposes of this section an "active homeowners, property owners, or neighborhood association" shall mean:

i. A unit owners' association currently registered with the Colorado HOA Information and Resource Center under the

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Colorado Common Interest Ownership Act (C.R.S. §§ 38-33.3-101, et seq.), as amended;

ii. A homeowners, property owners, or neighborhood association registered to do business in the State of Colorado and in good standing with the Colorado Secretary of State; and/or

iii. A homeowners, property owners, or neighborhood association with defined geographic boundaries that is included in the Department's database of homeowners, property owners, or neighborhood associations.

c. Any person to whom the City mailed notice in accord with section 7.5.902(C)(3) of this article;

d. Any person or organization that provided written comments, including by email, to the appropriate City staff prior to the decision being appealed. Signing a petition, in and of itself, shall not be considered providing written comment for purposes of this provision; or

e. Any person who has an injury in fact to a protected legal interest.

2. Hearing-Based Decisions:

Any party-in-interest may appeal to the City Council any final decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board to City Council. For purposes of an appeal of a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, a "party-in-interest" shall be defined as one (1) of the following:

a. Any party-in-interest identified in subsection (A)(1) above;

b. Any person or organization that provided written comments, including by email, to the appropriate City staff for delivery to the Planning Commission, an FBZ Review Board, or Historic Preservation Board prior to or at the hearing on the decision being appealed. Signing a petition, in and of itself, shall not be considered providing written comment for purposes of this provision;

c. Any person or organization that appeared and provided testimony before the Planning Commission, an FBZ Review Board, or Historic Preservation Board at the hearing on the decision being appealed; or

d. The City of Colorado Springs administration.

B. Criteria and Contents of Appeals:

In the written appeal application, the appellant must substantiate the following:

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1. Provide full contact information for the party-in-interest appealing, and the party-in-interest's property that is impacted by the decision being appealed, if applicable.
2. Identify the specific paragraph in Section A above under which the appellant claims to be a "party-in-interest". If the appellant is a "legally constituted and active homeowners, property owners or neighborhood association the boundaries of which include the subject property" the appellant must provide documentation from either the Colorado HOA Information and Resource Center or the Colorado Secretary of State, or both, showing that it is currently registered with that agency; a map of the association's boundaries; and documentation of the association authorizing the association to file the appeal.
3. Identify the explicit ordinance provisions which are in dispute and show that the decision is incorrect because of one or more of the following grounds:
 - a. It was against the express language of this Chapter, or
 - b. It was against the express intent of this Chapter, or
 - c. It is unreasonable, or
 - d. It is erroneous, or
 - e. It is clearly contrary to law.
4. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

C. Appeals of Administrative Decisions:

1. Appealable Decisions:

The following administrative decisions are appealable:

- a. Appeals from all notice and orders alleging violations associated with Chapter 6 or Chapter 7 of this Code that are to be filed and heard in accord with the Zoning Code.
- b. Decisions Appealable to FBZ Review Board: Administrative decisions are appealable to an FBZ Review Board in accord with an approved FBZ regulating plan.
- c. Decisions Appealable to the Historic Preservation Board or its Minor Works Committee.

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d. Appeals to the Planning Commission from otherwise final administrative decisions relating to the following sections and articles of this Code as outlined in the following table:

Code Sections Applicable to Appealable Administrative Decisions	
CODE SECTION:	TOPIC:
7.2.108	Similar Use Determinations
7.3.504	Hillside Grading Plan
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7.7.504	Issuance of Building Permits to Unplatted Lands
7.7.505	Issuance of Building Permits to Previously Platted Lands or Waiver of Replat
7.7.506	Issuance of Building Permits Prior to Platting

2. Scheduling:

A party-in-interest must file a written appeal application with the Department within twelve (12) days from the date of the final decision. If the written appeal application is timely filed and substantially conforms to the criteria in subsection (B) above, the Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission, an FBZ Review Board or Historic Preservation Board occurring a minimum of twenty (20) days and a

maximum of forty-eight (48) days after the date the appeal application is received.

3. Action on the Appeal:

After a public hearing, the Planning Commission, an FBZ Review Board or Historic Preservation Board shall have the power to affirm, reverse, or modify these decisions. The applicable body shall decide the appeal based on the applicable standards contained or referenced in this Chapter. The scope of the hearing may be limited to matters raised on appeal.

4. Stays of Administrative Decisions:

A perfected appeal shall operate as a stay of the administrative decision unless the Manager certifies in writing that a stay would cause or result in an imminent hazard to the public health, safety, and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site. The time frame in which violations of this nature operate is such that a stay of proceedings will make the enforcement process ineffective. Examples of short term violations include, but are not limited to, temporary vendors, promotional events, and temporary signs.

5. Filing Fees:

Any person pursuing an appeal pursuant to this subsection A shall be responsible for the payment of all fees and for the completion of all forms which may be prescribed by the Manager. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal.

D. Appeals of Planning Commission, an FBZ Review Board and Historic Preservation Board Decisions:

1. Appealable Decisions:

All final actions of the Planning Commission, an FBZ Review Board or Historic Preservation Board may be appealed to City Council.

2. Scheduling, Postponement:

a. Scheduling: An appellant must file a written appeal application with the City Clerk within twelve (12) days from the date of the hearing at which the final decision is made. If the appeal is timely filed and substantially conforms to the criteria in subsection (B) above, the City Clerk shall place the appeal on the agenda of the next regularly scheduled City Council meeting occurring a minimum of twenty (20) days after the appeal has been filed.

b. Postponement of Items on Appeal to the City Council: As a matter of course, the appellant or the applicant may postpone the first

scheduled Council hearing or consideration of an appeal from a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, made in accord with this subsection, to the next regularly scheduled City Council meeting. Requests for any additional postponement shall be granted only for good cause shown to and found by the City Council. Prior to the publication of the agenda for the first scheduled Council hearing, the President of City Council may postpone the first scheduled Council hearing to the next regularly scheduled City Council meeting. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further hearing and recommendations.

3. Action on the Appeal:

a. The Manager shall prepare a staff report including all relevant facts and the record of the decision of the hearing body.

b. The City Council shall hold a public hearing. Before the public hearing is commenced, the City Council may entertain a motion to uphold the action of the Planning Commission, an FBZ Review Board or Historic Preservation Board or refer the matter back to the appropriate body with direction for further consideration and recommendation.

c. After a public hearing, City Council shall have the power to affirm, reverse, or modify the prior decisions or to refer the matter back to the appropriate body with direction for further consideration and recommendation. City Council may hear the appeal de novo, or may limit the hearing to matters raised on appeal.

City Council shall make findings to support their decision based on the applicable standards contained or referenced in this Chapter.

4. Failure to Appeal: The failure to appeal the decision of the Planning Commission, or an FBZ Review Board or Historic Preservation Board within the twelve (12) day period shall be deemed to be a waiver of the applicant's or a party in interest's right to appeal to the courts under Rule 106 of the Colorado Rules of Civil Procedure for failure to exhaust administrative remedies.

5. Final Decision; Court Review: On such appeals, the decision of the City Council shall be final agency action, and shall be subject to review by the courts pursuant to applicable rules and statutes, unless the matter is remanded to the Planning Commission, or an FBZ Review Board or Historic Preservation Board.

6. Filing Fee: The filing fee shall be borne by the appellant; provided however, that if the City of Colorado Springs is the appellant the fee shall be waived.

E. Appeals of the Parks and Recreation Advisory Board. With the exception of the requirements contained in subsection (B) above, all appeals under Section 105 of

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Article 1 of Chapter 4 of this Code shall conform to subsection D of this section of this Code.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2016.

Finally passed: _____
Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

DRAFT

2015-2016 Code Scrub Committee			
2/10/2016			
Name	Representing	Comments	
Peter Wysocki	Planning	Director	pwyssocki@springsgov.com
Meggan Herington	Planning	City PM for Committee	mherington@springsgov.com
Marc Smith	City Attorney's Office	attorney	msmith@springsgov.com
Robert Shonkwiler	Planning Commission		rtcsprings@gmail.com
Jan Doran	CONO		jdoran1003@aol.com
Rick Hoover	CONO		rhuover.cos@comcast.net
Dave Munger	CONO		dave@cscono.org
John Goodloe	AIA	Architects	jpg@csnaarchitects.com
Andrea Barlow	NES, planning consultants	planning	abarlow@nescolorado.com
Tim McConnell	engineering consultants		tmccConnell@drexelbarrell.com
Jim Nass	design; landscape architecture	design	jim@nassdesign.net
Kyle Campbell	engineering consultants		Kcampbell@classicconsulting.net
Jenny Elliott	infill developer		elliottproperties@gmail.com
Additional Staff Resources			
Ryan Tefertiller	Urban Planning		rtefertiller@springsgov.com
Carl Schueler	Comprehensive Planning	Infill Plan and strategies	cschueler@springsgov.com
Connie Perry	Planning and Parks	landscape and streetscape	cperry@springsgov.com
Mike Schultz	Planning	parking and microbreweries	
Hannah Van Nimwegan	Planning	ADUs	
Renee Congdon	City Attorney's Office		
David Andrews	City Attorney's Office		
Kari Volarie	Paralegal	codification	

FIGURE 2

Standing for Appeals for Land Used Decisions by Colorado and Other Jurisdictions										
last revised 10/27/15										
Sources: Combination of reviews of Web-based codes and conversations with planning officials										
Disclaimer: Not represented as being entirely, complete, accurate or up-to-date; intended to present the range of approaches										
	Colorado Springs	El Paso County	Aurora	Denver	Fort Collins	Arvada	Pueblo	Boulder	Centennial	Greeley
Standing for Appeals of Administrative Decisions										
Applicant	Inclusive	Inclusive	Yes	Inclusive	Yes	Yes	inclusive	Yes	Inclusive	Yes
Property Interest in Subject Property	Inclusive	Inclusive	?	Inclusive	Yes	Yes	inclusive	inclusive	Inclusive	No
Directly abutting property owner	Inclusive	Inclusive	Yes	Inclusive	inclusive	?	inclusive	inclusive	Inclusive	No
Property owner with a given distance (e.g. 500 feet)	Inclusive	Inclusive	Not specifically	Inclusive	Yes	?	inclusive	inclusive	Inclusive	No
Notified property owner or organization	Inclusive	Inclusive	Not specifically	Inclusive	No	?	inclusive	inclusive	Inclusive	No
Provided written comments	Inclusive	Inclusive	Not specifically	Inclusive	No	?	inclusive	inclusive	Inclusive	No
Impacted property owner	Inclusive	Inclusive	Yes?	Inclusive	No	?	inclusive	inclusive	Inclusive	No
"any person with standing under Colorado law"	Inclusive	Inclusive	No	Inclusive	No	Yes	inclusive	inclusive	Inclusive	No
PC/Planning Board member	No	?	No	?	No		?	Yes	?	No
Any single City Council member or Commissioner	Inclusive	No?	No	?	No	?	?	?	?	No
"Department or officer"	Inclusive?	?	No	Yes	No	?	Yes	?	?	No
"Affected party"	Inclusive	Inclusive	No	Inclusive	No	Inclusive	Inclusive	Inclusive	Yes	No
"Any aggrieved ("interested") person"	Yes	No limit on standing	No	Yes	No	?	Yes	Yes-interested	Inclusive	No

FIGURE 3

Standing for Appeals of Hearing-based Decisions										
Applicant	Inclusive	N/A	Yes		Yes	Yes	N/A	?	Inclusive	Yes
Property Interest in Subject Property	Inclusive	N/A	?		Yes	Yes	N/A	?	Inclusive	No
Directly abutting property owner	Inclusive	N/A	Yes		Inclusive	Inclusive	N/A	?	Inclusive	No
Property owner with a given distance (e.g. 500 feet)	Inclusive	N/A	No		Possibly	Inclusive	N/A	?	Inclusive	No
Notified property owner	Inclusive	N/A	No		Yes	Inclusive	N/A	?	Inclusive	No
Provided written comments	Inclusive	N/A	No		Yes		N/A	?	Inclusive	Yes
Testified at original hearing	Inclusive	N/A	No		Yes		N/A	?	Inclusive	Yes
Impacted property owner	Inclusive	N/A	No		?		N/A	?	Inclusive	No
"any person with standing under Colorado law"	Inclusive	N/A	No		No	Yes	N/A	?	?	No
Any single City Council members	Inclusive	N/A	No		Yes		N/A	Majority of Council	?	No
"Affected party"	Inclusive	Inclusive	No	Inclusive	No	Inclusive	Inclusive	Inclusive	Yes	No
"Any agrieved person"	Yes	N/A	No		No	?	N/A	?	Inclusive	No
Notes:										
1) Essentially no final decisions made by Planning Commission in El Paso County, Pueblo and Parker										
2) In Greeley, a number of administrative decisions (e.g. development approvals and non-use variances) cannot be appealed w/in City process on assumption authority is vetoed in staff										
3) In Centennial, most appeals go directly to City Council										
4) In Parker the range of administrative decisions that can be appealed is										
5) In Denver administrative decisions are appealed to the Board of Adjustment										

FIGURE 3

2016



- = Planning Commission
- = City Council
- = Holiday

- = 10 Days (Calendar)
- = 10 Business Days / 14 Calendar Days
- △ = 12 Calendar Days
- → = Minimum 20 Days to CC

FIGURE 4

ANALYSIS OF MAJOR ISSUES AND CHANGES: APPEALS CODE CHANGE

1. Parties that may appeal

The current Code (7.5.906.A.1) allows “any person aggrieved” to be a party that may appeal any otherwise appealable administrative or hearing-based decisions related to decisions and applications covered under this section. Staff and some Committee members have a concern that this broad a definition could allow an individual with little or no direct or property-related interest in the outcome to appeal. This, in combination with some of the generally worded standards in the Code (e.g. current Development Plan Review Criteria in 7.5.502.E, or Comprehensive Plan language), at least creates the potential for appeal of almost any decision by any party. With an open-ended approach to standing for appeals, there can also be a concern with a member of participating or later decision-making body

Across the State of Colorado, local governments have a wide range of approaches to standing for appeal. An attached is provided summarizing of some of these approaches. It should be noted that the content of this table is based on high level review of documents of discussion with those staff, so its contents are not represented as being fully complete and accurate. However, it is clear that the continuum of approaches to standing varies from the same essentially unlimited approach used by the City to very limited approaches used some other communities. If this Code change were approved, it would bring the City more in line with communities that use a more restrictive approach. It should also be noted that some jurisdictions (including El Paso County) vest very little authority in their Planning Commission as the final decision-making authority. Some communities are much narrower in defining which decisions are appealable and on what basis.

This Code change provides for essentially a two-stage definition for “parties in interest” that have standing to appeal. A more narrow definition applies to administrative decisions beginning with the applicant and including any owner of lessee of property within five hundred (500) feet. Standing in this category is also extended to any other property owner that was mailed official notice. Additionally, “legally constituted and active” home owners associations and similar entities also have standing if they include the subject property.

For hearing-based decisions, the definition of parties in interest is inclusive of all of the above, but also includes parties that provided comments or appeared at the applicable hearing.

The opinions of stakeholder participants in the Code Scrub Committee vary on this topic. Generally, the industry and planning professional representatives concur with the proposed changes, whereas neighborhood representatives prefer few if any restrictions as to parties that may appeal.

2. Neighborhood association issue

Associations such as “.....active homeowners, property owners or neighborhood associations the boundaries of which include the subject property” have standing to file an appeal. This provision was added in particular to allow an association with a direct interest in the decision (e.g. due to its maintenance or enforcement roles) to formally participate in appeals. This topic engendered a lot of discussion at the Committee level, especially on the part of Council of Neighbors and Organizations (CONO) representatives. Staff are concerned that more ad hoc or unofficial neighborhood groups might not be in a position to formally, legally present an appeal representing the concerns of the most impacted property owners. This said, there is nothing

that would prevent these groups from paying the cost of, supporting, or participating in an appeal filed by a qualifying party-in-interest

3. Automatic continuance

The current Code allows either the applicant or the appellant (if different) one postponement of the scheduled City Council appeal hearing “as a matter of course” without a requirement to demonstrate cause. The premise behind this provision is it can efficiently allow the parties to either better prepare or potentially work out an agreed-upon solution prior to the hearing. However these automatic continuances can also be used as a form of delay by a project opponent. The revised Code would continue to allow the applicant to have one automatic postponement, but would not allow this for the appellant (if not the applicant). However, Council (and bodies such as the Planning Commission) would continue to have the discretion to continue their hearings for reasons that could include an argument for such continuance, made by the appellant.

4. Allowable period within which to appeal

The current Code allows ten (10) days within which to file an appeal of either an administrative or hearing-based final decision. Days are interpreted as calendar days rather than business days, consistent with appeal provisions in most of the rest of City Code as well as with the typical approach in State statutes. Days are calculated beginning on the day after the decision, and the final deadline day has to fall on a day that City offices are open to accept the appeal. Therefore, in the case of the Planning Commission which ordinarily meets on Thursdays, the appeals “clock” starts on a Friday. Because the 10th day falls on a Sunday, the deadline is close-of-business on the following Monday, effectively allowing 11 calendar days during which to file. Once an appeal is filed there is then a minimum number of days required (usually 20) between the date of filing of the appeal and the next available hearing.

There has been interest and request by Council Member Knight in extending the appeal filing period in order to allow concerned parties more time to consider, prepare for and organize an appeal. Conversely, there is a counterbalancing concern with limiting the appeal period, in part because, during this period, the applicant has some risk associated with relying on a decision that could be overturned.

Options for a further extension of time could involve allowing for either 12 or 14 calendar days (or 10 business day)s. The agreed-upon staff preference is to continue with calendar days because this approach is most consistently used in Statute.

The impact of extending the appeal period will vary depending on the date filed and nature of the appeal. However, Planning Commission and City Council should be aware that in the case of an administrative appeal, there will be some instances where the extra few days will result in a full month delay because the Planning Commission ordinarily meets only monthly. In the case of an appeal of a Planning Commission decision, there will be some months in which the effect will be to extend the time it takes to get to City Council by as much as three full weeks. In other months there will be no difference if ultimate scheduling.

A 2016 calendar is provided as an attachment. It tracks out and depicts the scheduling and potential delay associated with an example of a Planning Commission being appealed to City Council on the last available day of a 10 versus 12 or 14- day maximum allowable appeal period. For the 11 months evaluated, a change to 14 from 10 days would have no scheduling

impact for six of the 11 months. For one of the months the delay would be two weeks (14 days), and for four of the months, the delay would be three weeks (21 days). This 21-day scenario occurs when a 5th Tuesday extends the period between City Council meetings from two to three weeks. With 12 days there is no adverse scheduling impact associated with this PC hearing scenario. With the Downtown Review Board (DRB) and the Historic Preservation Board (HPB) there will be few if any instances of a scheduling delay because dates these regularly fall on the calendar.

It should also be noted that, with many administrative decisions, there are two different opportunities to appeal, first to the Planning Commission and then to City Council.

Regardless of the exact length of a relatively limited appeal period, it is assumed to be in the best interest of the community and the process to reduce any potential for miscommunication. Staff suggests the best approach is to very clearly communicate the appeals deadlines both in conjunction with applicable hearings and using other means such as notifications and the City web site. As part of the Planning Commission process, clear appeals instructions are already provided at the conclusion of their decision process. For potentially appealable decisions, the communications process is often more challenging because of the wide variety of decisions and because, oftentimes not all the neighboring property owners are notified that of the final decisions. Nevertheless, there are additional options to assure information on appeals rights and deadlines is reasonably available.

5. Cost to file an appeal

Currently, the cost to file an appeal under 7.5.906 is \$176.00. In conjunction with the overall topic of appeals there has been interest in the question of the appropriateness this fee from the perspective of balancing the interest of maintaining affordable access to the public process, while also keeping the bar high enough to limit the potential for frivolous or nuisance motivated appeals. A change to the current fee structure is **not** being considered in association with this Code change. It is expected that this topic will be considered in conjunction with a future comprehensive review of land use-related fees.

Current Text in the City of Colorado Springs Zoning Code

7.5.906: APPEALS:

A. Appeals Of Administrative Decisions:

1. **Scheduling Appeals:** Any person aggrieved by an appealable administrative decision made by the Manager may file a formal appeal application with the Department within ten (10) days from the date of the final decision. The Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission or an FBZ Review Board occurring a minimum of twenty (20) days and a maximum of forty eight (48) days thereafter. After a public hearing, the Planning Commission or an FBZ Review Board shall have the power to affirm, reverse, or modify these decisions.

2. **Decisions Appealable To Planning Commission:** The following administrative decisions are appealable to the Planning Commission:

a. Appeals from all notice and orders alleging violations to the following sections:

(1) Chapter 6, article 3 of this Code (solid waste disposal; public health and sanitation);

(2) Articles 2, 3, and 4 of this chapter, and this article (zoning);

(3) Articles 7 and 8 of this chapter (subdivision).

b. Appeals from administrative decisions relating to the following sections of articles 2 and 3 of this chapter and this article (zoning):

(1) Section [7.2.108](#) of this chapter (similar use determinations);

(2) Section [7.3.504](#) of this chapter (hillside site grading plan);

(3) Part 3 of this article (site plan);

(4) Part 11 of this article (administrative relief);

(5) Part 12 of this article (nonconforming uses);

(6) Part 13 of this article (sexually oriented business permits);

(7) Part 14 of this article (temporary use permits);

(8) Part 15 of this article (home occupation permits);

(9) Part 8 of this article (nonuse variance).

c. Appeals from administrative decisions relating to the following sections of [article 7 of this chapter](#) (subdivision) and this article (subdivision minor administrative procedures):

- (1) Section [7.7.501](#) of this chapter (property boundary amendments);
 - (2) Section [7.7.502](#) of this chapter (preservation area boundary amendments);
 - (3) Section [7.7.504](#) of this chapter (issuance of building permits to unplatted lands);
 - (4) Section [7.7.505](#) of this chapter (issuance of building permits to previously platted lands);
 - (5) Section [7.7.506](#) of this chapter (issuance of building permits prior to platting);
 - (6) Section [7.7.304](#) of this chapter (modifications).
- d. Appeals from administrative decisions relating to the following sections of [article 4 of this chapter](#) (site development standards), this article (zoning) and [article 7 of this chapter](#) (Subdivision Code):
- (1) Section [7.5.501](#) of this article (concept plan or concept plan amendment);
 - (2) Section [7.5.502](#) of this article (development plan or development plan amendment);
 - (3) Section [7.5.503](#) of this article (minor amendment to a concept, development, or conditional use plan);
 - (4) Section [7.4.308](#) of this chapter (final landscape plan or landscape plan amendment);
 - (5) Article 7, parts 2 and 3 of this chapter (preliminary or final subdivision plat).
3. Decisions Appealable To FBZ Review Board: Administrative decisions are appealable to an FBZ Review Board in accord with an approved FBZ regulating plan.
4. Criteria For Review Of An Appeal Of An Administrative Decision: In the written notice, the appellant must substantiate the following:
- a. Identify the explicit ordinance provisions which are in dispute.
 - b. Show that the administrative decision is incorrect because of one or more of the following:
 - (1) It was against the express language of this zoning ordinance, or
 - (2) It was against the express intent of this zoning ordinance, or
 - (3) It is unreasonable, or
 - (4) It is erroneous, or
 - (5) It is clearly contrary to law.
 - c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

5. Stays Of Administrative Decisions: A perfected appeal shall operate as a stay of the administrative decision unless the Manager certifies in writing that a stay would cause or result in an imminent hazard to the public health, safety, and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site. The time frame in which violations of this nature operate is such that a stay of proceedings will make the enforcement process ineffective. Examples of short term violations include, but are not limited to, temporary vendors, promotional events, and temporary signs.
6. Fees: Any person pursuing an appeal pursuant to this subsection A shall be responsible for the payment of all fees and for the completion of all forms which may be prescribed by the Manager. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal.

B. Appeals Of Planning Commission, An FBZ Review Board And Historic Preservation Board Decisions:

1. Notice Of Appeal: Any person may appeal to the City Council any action of the Planning Commission or an FBZ Review Board or Historic Preservation Board in relation to this Zoning Code, where the action was adverse to the person by filing with the City Clerk a written notice of appeal. The notice of appeal shall be filed with the City Clerk no later than ten (10) days after the action from which appeal is taken, and shall briefly state the grounds upon which the appeal is based.
2. Action And Procedure By The City Council: Upon receipt of the notice of appeal required by this subsection B, the City Clerk shall schedule a public hearing before the City Council at the next regular meeting of the City Council occurring a minimum of twenty (20) days after receipt. The City Council shall hold a public hearing on appeals from the Planning Commission, an FBZ Review Board or Historic Preservation Board upon the date so scheduled or upon the date to which the same may be postponed or continued. Before the public hearing is commenced, the City Council may entertain a motion to uphold the action of the Planning Commission, an FBZ Review Board or Historic Preservation Board or refer the matter back to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further consideration and recommendation.
3. Postponement Of Items On Appeal To The City Council: As a matter of course, any person may postpone the first scheduled Council hearing or consideration of an appeal from a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, made in accord with this subsection, to the next following regular Council meeting. Request for any additional postponement shall be only for good cause shown to and found by the City Council. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further hearing and recommendations.
4. City Council's Powers Upon Appeal: The City Council shall have the power to refer any matter appealed back to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further consideration or Council may affirm, reverse or modify the action of the Planning Commission, an FBZ Review Board or Historic Preservation Board. City Council may hear the appeal de novo, or may limit the hearing to matters raised on appeal.
5. Failure To Appeal: The failure to appeal the decision of the Planning Commission, or an FBZ Review Board or Historic Preservation Board within the ten (10) day period shall be deemed to be a waiver of the applicant's or a party in interest's right to appeal to the courts under rule 106 of the Colorado Rules of Civil Procedure for failure to exhaust administrative remedies.

6. Final Decision; Court Review: On such appeals, the decision of the City Council shall be final agency action, and shall be subject to review by the courts pursuant to applicable rules and statutes, unless the matter is remanded to the Planning Commission, or an FBZ Review Board or Historic Preservation Board.

7. Filing Fee: The filing fee shall be borne by the appellant. (Ord. 80-131; Ord. 84-159; Ord. 86-66; Ord. 88-190; Ord. 89-7; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 01-127; Ord. 01-164; Ord. 03-16; Ord. 03-216; Ord. 04-280; Ord. 07-35; Ord. 09-76; Ord. 12-24)

CITY PLANNING COMMISSION AGENDA

STAFF: CARL SCHUELER

FILE NO:
CPC CA 16-00008 – LEGISLATIVE

PROJECT: RECONSIDERATION OF APPEALS CODE CHANGE
ORDINANCE REPEALING AND REORDAINING SECTION 906 (APPEALS) OF PART 9 (NOTICE, HEARINGS AND APPEALS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO APPEALS

APPLICANT: CITY OF COLORADO SPRINGS – PLANNING AND DEVELOPMENT DEPARTMENT

PROJECT SUMMARY:

1. Code Change Description: This proposal is to amend City Code Section 7.5.906 pertaining to zoning and other land use-related appeals and to make other limited conforming amendments in other areas of Chapter 7. The draft Ordinance for reconsideration is attached as **(FIGURE 1)**. The Ordinance proposed for reconsideration includes a number of changes provided subsequent to the original recommendation made by the Planning Commission at their March 17, 2016 hearing. The most significant change would apply to the maximum number of days within which to file an appeal. The proposed ordinance now specifies a maximum of 10 (ten) days (calculated as calendar days). This is consistent with current Code. On March 17, 2016, the staff recommendation had allowed for up to 14 (fourteen) days, and the Planning Commission recommended 12 (twelve) days in their motion.

Attached as **FIGURE 2** is the Planning Commission record of decision from March 17, 2016. Attached as **FIGURE 3** is a redline version of the currently proposed Ordinance highlighting all changes from the version as presented to Planning Commission on March 17th.

2. Planning & Development Department's Recommendation: Approval of the proposed revised code change ordinance.

BACKGROUND

On March 17, 2016, the CPC recommended approval of this draft ordinance subject to certain revisions and authorizing staff to make certain minor text amendments and to process conforming amendments elsewhere in the Code as applicable

Subsequent to this hearing, there has been additional stakeholder input such that the Council of Neighbors and Organizations (CONO) and industry representatives now concur that a maximum of 10 (ten) days is now adequate for the period in which to file an appeal. Neighborhood

representatives have requested additional language broadening the definition and location of associations with standing to appeal.

Staff is processing this item as a reconsideration of a prior recommendation; on the assumption that Planning Commission may be interested in amending their recommendation now that all key stakeholders (and staff) support a single ordinance. This option could allow staff to go forward with a single recommendation to City Council. Modifications made to the Ordinance subsequent to March 17, 2016 generally consist of the following:

- 1) Most importantly, staff is back to recommending 10 days, versus the 14 we had recommended and the 12 days the PC recommended. CONO now supports 10 days, subject to one of the changes noted below
- 2) Per the PC recommendation, associations with a right to appeal include those in the Department's data base
- 3) Parties that may appeal any appealable decision are expanded to include associations with boundaries within 500 feet of the subject property. "Merchants associations" have been included as associations
- 4) Giving the department the right to not schedule appeals to CPC, HP and FBZ DRB if they are not filed correctly (was implied but now its spelled out)
- 5) The Clerk will only schedule appeals to City Council if they are filed correctly (was implied but now its spelled out)

STAKEHOLDER PROCESS AND INVOLVEMENT:

As noted, key stakeholders have been communicated with and support this revised Ordinance. The Infill Steering Committee has not met since March 17, 2016, but has been kept informed of this reconsideration and related communication

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

These aspects were evaluated at length in the March 17, 2016 staff report and original considered at that hearing.

STAFF RECOMMENDATION: Approve the revised attached Ordinance

ITEM NO: -- CPC CA 16-00008 – Appeals Code Change-

Recommend adoption to City Council of a reconsidered ordinance repealing and reordaining Section 906 (Appeals) of Part 9 (Notice, Hearings and Appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of Colorado Springs 2001, as amended, pertaining to appeals.

Appeals Code Change City Council Work Session

Amendment of Code Section 7.5.906
June 13, 2016

Peter Wysocki, Planning and Community Development
Director

Carl Schueler, Comprehensive Planning Manager

CONO and Industry Representatives



Background



- Impetus
 - Infill Steering Committee/ Infill Action Plan
 - Councilman Don Knight (on the maximum days to appeal)
- Process
 - Staff Recommendation with Code Scrub Committee Input
 - City Attorney's Office Assistance
- Issues and Topics
 - Open-ended Appellants
 - Scheduling and Timing
 - Risk and Uncertainty

Legal Process



- Ordinance
- “Repeal and Re-ordain”
 - Driven by combination of changes and reformatting
 - Code citations for appealable decisions moved to a table
- Conforming changes to be added

Planning Commission Hearings and Recommendation



- Considered March 17, 2016
 - Extend maximum appeals period from 10 to 12 (but not 14) days
 - Expand eligibility as an appealing party to noticed associations maintained as part of City database
- Reconsidered May 19, 2016
 - Subsequent stakeholder discussions
 - Back to 10 days
 - Further expansion of parties that may appeal
 - Text refinements
- Current PC Recommendation
 - Recommend all recent changes – but go back to 12 days

Changed/ Not Changed



Changed

- Parties that may appeal defined
- Removal of “automatic bump” for non-applicant appellants
- Ability to appeal non-final decisions
- Increase in time to file appeal
 - 10 to 12 days

Not Changed

- Decisions that can be appealed
- Basis or standards for appeals
 - Other than clarification
- PC or City Council options (e.g. limited or de novo hearing)
- Cost to appeal
 - To be addressed later

Administrative vs. Hearing-Based Decisions



- Administrative (e.g.)
 - Code interpretation
 - Development plans
 - Permits
 - Minor amendments
 - Administrative relief
- Often but not always with notice of application but not necessarily decision
- Hearing-based
 - Historic Preservation Board
 - Downtown Review Board
 - Planning Commission
- Always with notice including date of hearing

Parties That May Appeal



- Current
 - “Any aggrieved person”
- Proposed:
 - Differentiation between administrative and hearing-based decisions

Administrative Appellants



- Applicant
- Within 500 Feet or receiving written notice
- Representative association (e.g. HOA) within 500 feet

Hearing-based Appellants



- All Applicable to Administrative Decisions ----
and
 - Provided written comments or testimony on the item at the hearing
 - City Administration



Parties that May Appeal for Comparison Jurisdictions

No Limit	Limited	Few Appeals
Colorado Springs (now)	Aurora	El Paso County
Denver	Fort Collins	Centennial
Boulder	Greeley	Greeley
El Paso County		Parker
Arvada		Pueblo

Examples of Parties That Could Not Appeal



- For Administrative Decisions
 - Located beyond 500 feet (or noticed area) and not a qualifying HOA etc.
- For Hearing-based Decisions
 - Located beyond 500 feet (or noticed area) and did not provide written comments or testimony prior to hearing

Comments and Concerns on Parties



- RBA has concerns with open ended options for appeals of hearing-based decisions
 - (2.b and 2.c)
 - Right to appeal if comments in person or on record.
- CONO would like a high level of access to the process

“Automatic Bump”



- Only applicable to continuance from City Council hearings
- No longer allowed for appellant unless appellant is applicant
- Case for City Council continuance can still be made

(limited stakeholder concerns)

Only Final Decisions Can Be Appealed



- Removes ability to appeal a decision going to City Council anyway
 - Can save some time and process

(no significant Stakeholder concerns)

Changing from 10 to (12 or 14) Days



- Brought up as a concern by Councilman Knight
- Discussed in Committee and in other meetings
 - Allows more time to prepare file an appeal
 - Corresponding scheduling and risk impact to applicant
 - Scheduling impact depends on type and timing of appeal
- Days computed as calendar days
 - Starting the day after with due date after weekends and holidays

Effect on Scheduling of 12 Days



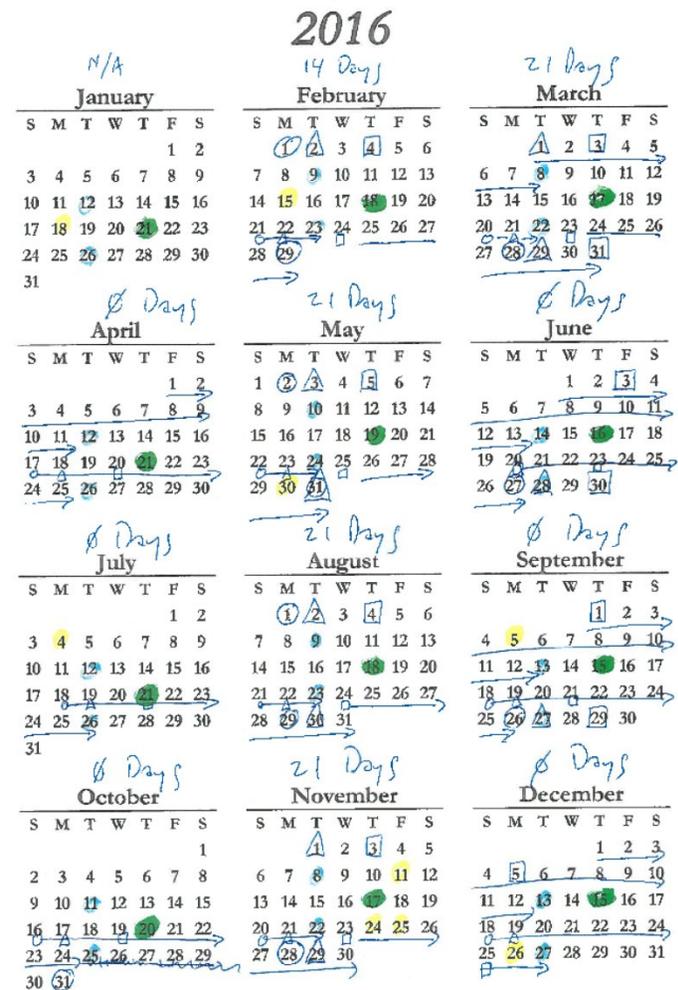
- Will vary for administrative decisions
 - Basically adds 2 days
 - For monthly hearings, most commonly no impact
 - but could extend the schedule by a full month
- Will also vary for hearing-based decisions
 - With PC hearings, 10 days always = 11 days
 - Assuming the appellant waits for the deadline, the impact of going to 14 days would be 0 days, 2 weeks or 3 weeks
 - Limited or no impact for 12 days with PC hearings
 - Limited or no impact for 12 or 14 days with DRB or HPB meetings

PC Example 14 Days

- 11 months in 2016
 - 6 = No delay
 - 1 = 2 week delay
 - 4 = 3 week delay*

* Due to period between 4th Tuesday and 2nd Tuesday

No delay for DRB or HPB



- = Planning Commission
- = City Council
- = Holiday
- = 10 Days (Calendar)
- = 10 Business Days
- △ = 12 Calendar Days
- = Minimum 20 Days to CC

Other Jurisdictions- Days to Appeal



- Examples included in Councilman Knight's attached PowerPoint
 - Variable by jurisdiction
 - 10 to 30 days (business or calendar)
 - Some "apples and oranges"
 - Processes, what decisions can be appealed



Time Periods for “Peer” Cities

City	Days	
Colorado Springs (now)	10	
Oklahoma City	10	Business
Huntsville	15	
Austin	14-20	
Columbus	10-20	
Aurora	10	
Denver	15	

Comments and Concerns on Days to Appeal



- Neighbor time to get familiar with process and possibly arrange counsel
- Development industry and practitioners prefer current period
 - Delay or risk of delay
 - Up to 3 weeks (worst case) for City Council
 - Up to 1 month (worst case) for Planning Commission
 - Testimony that many developers wait out the review period

Comments and Concerns



- CONO:
 - Okay with 10 days
 - Appeals are a vital part of process
 - Prefer a broad definition of eligible parties
- Industry and Practitioners:
 - Concerned with risk of delay or “frivolous” appeals
 - Both actual and potential appeals

Planning Commission Hearing and Recommendation



- Full hearings
 - HBA/ RBA representation; CONO written comments
- Focus on balance between delay and acknowledgment that neighbors can be at a disadvantage in this process
 - 12 days provides some additional time to respond without triggering many long delays

Supporting Materials



- Existing Code
- Ordinance
- Code Scrub Committee List
- PC Record of Decision
- Councilman Knight's May 19, 2016 PC PowerPoint
- Parties that May Appeal for Other Colorado Cities
- Staff Analysis of issues

Recommendation and Schedule



- Approve ordinance as recommended by Planning Commission
 - 12 days maximum
- Conforming changes pending the decision on days to appeal
- New Business- June 28, 2016

Request for Planning Appeal Change

Councilmember Don Knight

May 19, 2016

Background

- In my first two years on Council, I witnessed two cases where an appeal was denied because of missing the current 10 (calendar) day deadline
 - In March 2015, the appeal application was less than one day late
- At our August 21, 2015 joint meeting, I asked about extending the deadline to 10 business days
 - Received verbal concurrence from all with no objections
- On September 9, 2015, I requested Council Administrator to begin process for a new ordinances to come before Council in October 2015.
 - Change appeal period of administrative decision to PC to 10 business days
 - Change appeal period of PC decision to Council to 10 business days
 - Change scheduling of appeal to Council from minimum of 20 days to minimum of 20 days and a maximum of 48 days
 - Identical to current language for appeals to Planning Commission

Background (Continued)

- Council Administrator sent a draft ordinance to Planning and Council Attorney on September 11, 2015
 - Planning replied this would be addressed by a code scrub committee recently formed
- No further word until Council received a Chapter 7 City Code amendment relating to fences on January 25, 2016
 - Planning staff notified me that appeals were still in the code scrub committee
 - No Council members were part of that committee
- On January 26, I requested an ordinance by February 23, 2016 work session
 - Planning staff responded on February 9
 - Scheduled to go to Planning Commission on March 17
 - Recommend not changing to business days as other parts of City Code already defined days as calendar days
 - Recommend changing from 10 (calendar days) to 14 days
 - Expressed concern extension would delay Council hearings by two weeks
 - Creates impacts to developers
 - On February 10, I responded that March 17 appearance at Planning Commission was acceptable

Background (Continued)

- On February 16, met with Planning staff, Council Attorney, and Deputy Chief of Staff
 - Agreed to stay with calendar days
 - Agreed to propose 14 days to Planning Commission
 - I brought a chart showing that a change to 14 days would move the appeal hearing to a later Council meeting in only three months out of nine in 2016
- Planning Commission met on March 17
 - I failed to appear due to scheduling error on my part; Planning staff fairly presented my arguments
 - HBA requested staying at 10 days
 - Planning Commission voted for 12 days

Background (Continued)

- Subsequently, HBA and CONO meeting recommended going back to 10 days
 - Planning made the change and rescheduled for April Planning Commission meeting
 - I found out the week of the Planning Commission meeting and requested a delay until we could meet
- Met on May 11, 2016
 - Myself, Chief of Staff, Planning staff, CONO, HBA, RBA
 - No agreement reached on appeal time period
 - My arguments
 - Common citizen does not know their rights, so part of appeal time involves learning curve
 - The appeal period includes 4 weekend days where City offices closed
 - Closed 6 days for any November Planning Commission actions
 - Closed 5.5 days for any December Planning Commission actions
 - HBA argument against:
 - Developers do not secure funding until appeal period is over
 - Discussed in detail at March Planning Commission meeting
 - RBA argument against:
 - Extending time period would make us less competitive for out-of-town developers if we are out of sync with other cities

Appeal Deadlines

- From March Planning Commission minutes on this item:

Commissioner Shonkwiler said his concern was whatever the number of days that were selected but the biggest impact caused by the 14 days is it can delay getting to the Planning Commission by another month, which can add extra time prior to a City Council meeting. If there was a time frame that would be workable without causing delays, he would support that.

- 7.5.906(A)1 – Appeals of Administrative decisions to Planning Commission
 - Any person...may file a formal appeal application with the Department within ten (10) days from the date of the final decision.
 - The Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission or an FBZ Review Board occurring a minimum of twenty (20) days and a maximum of forty-eight (48) days thereafter.
- As administrative decisions can be made any day of the week and any week of the month, there is no calculating the impact of changing from 10 days

Appeal Deadlines (Continued)

- 7.5.906(B)2 – Scheduling of Planning Commission appeals to Council
 - Any person may appeal to the City Council any action of the Planning Commission or an FBZ Review Board or Historic Preservation Board ... no later than ten (10) days after the action from which appeal is taken
 - The City Clerk shall schedule a public hearing before the City Council at the next regular meeting of the City Council occurring a minimum of twenty (20) days after receipt.

- With Code definition of calendar days, we are already at 11 days
 - 1.1.105 – Computation of Time
 - In computing any period of time prescribed or allowed for the transaction of business within a City office, including, but not limited to, the filing of papers, notices, applying for licenses or permits or similar transactions, the time shall be computed by excluding the first and including the last day. *If however, the last day is a Saturday, Sunday or legal holiday, it shall be excluded and the time prescribed or allowed shall conclude on the next business day.*
 - Planning Commission meets on the third Thursday of the month
 - 10 day period concludes on a Sunday
 - Actual deadline is then close of business on Monday

Appeal Deadlines (Continued)

- With the minimum of 20 days before next Council meeting, extending deadline to 12 days (Tuesday), or even 13 days (Wednesday) does NOT move the appeal to a subsequent Council meeting.
 - 14 days (Thursday) is the trip point as Council meets on Tuesdays and 20 days is a Wednesday.

CALENDAR YEAR 2016					
Planning Commission Meeting	10-Day Appeal Deadline	Council Hearing Date	Does 12 Days Delay Council Hearing?	Does 13 Days Delay Council Hearing?	Does 14 Days Delay Council Hearing?
21-Jan-16	1-Feb-16	23-Feb-16	No	No	Yes
18-Feb-16	29-Feb-16	22-Mar-16	No	No	Yes
17-Mar-16	28-Mar-16	26-Apr-16	No	No	No
21-Apr-16	2-May-16	24-May-16	No	No	Yes
19-May-16	31-May-16	28-Jun-16	No	No	No
16-Jun-16	27-Jun-16	26-Jul-16	No	No	No
21-Jul-16	1-Aug-16	23-Aug-16	No	No	Yes
18-Aug-16	29-Aug-16	27-Sep-16	No	No	No
15-Sep-16	26-Sep-16	25-Oct-16	No	No	No
20-Oct-16	31-Oct-16	22-Nov-16	No	No	Yes
17-Nov-16	28-Nov-16	10-Jan-17	No	No	No
15-Dec-16	27-Dec-16	24-Jan-17	No	No	No

CALENDAR YEAR 2017					
Planning Commission Meeting	10-Day Appeal Deadline	Council Hearing Date	Does 12 Days Delay Council Hearing?	Does 13 Days Delay Council Hearing?	Does 14 Days Delay Council Hearing?
19-Jan-17	30-Jan-17	28-Feb-17	No	No	No
16-Feb-17	27-Feb-17	28-Mar-17	No	No	No
16-Mar-17	27-Mar-17	25-Apr-17	No	No	No
20-Apr-17	1-May-17	23-May-17	No	No	Yes
18-May-17	30-May-16	27-Jun-17	No	No	No
15-Jun-17	26-Jun-17	25-Jul-17	No	No	No
20-Jul-17	31-Jul-17	22-Aug-17	No	No	Yes
17-Aug-17	28-Aug-17	26-Sep-17	No	No	No
21-Sep-17	2-Oct-17	24-Oct-17	No	No	Yes
19-Oct-17	30-Oct-17	28-Nov-17	No	No	No
16-Nov-17	27-Nov-17	9-Jan-18	No	No	No
21-Dec-17	2-Jan-18	23-Jan-18	No	No	Yes

Appeal Deadlines (Continued)

- Draft Ordinance increases burden on HOAs to file
 - 7.5.906(B)(2) If the appellant is a “legally constituted and active homeowners, property owners or neighborhood association the boundaries of which include the subject property” the appellant must:
 - Provide documentation from either the Colorado HOA Information and Resource Center or the Colorado Secretary of State, or both, showing that it is currently registered with that agency
 - A map of the association’s boundaries
 - Documentation of the association’s board authorizing the association to file the appeal.
 - Requires HOA Board to meet and vote
 - This is not easily accomplished overnight
- Appeal can be thrown out if the appeal does not conform to the criteria in subsection B
 - Includes something as small as not providing “full contact information”
 - “Full” is undefined

How Would We Compare to Other Cities?

- Competing Cities
 - Huntsville, AL: 15 days from date of decision
 - Austin, TX: 14 days from a Board or Commission decision, 20 days from an administrative decision
 - Columbus, OH: 20 days from date of decision
 - Salt Lake City, UT: 10 days from date of decision
- Same Size Cities
 - Omaha, NE (41st largest city): Reasonable time; Building Board of Review is 15 days
 - Raleigh, NC (43rd largest city): 30 days from date of decision
- Other Colorado Cities
 - Denver, CO: 15 days of action
 - Aurora, CO: 10 days from date of decision

Appeal Recommendations

- Extend appeal deadline from 10 to 13 calendar days
 - Worst case is to stay with your 12-day decision from March Planning Commission meeting
 - Neither delays appeal of a Planning Commission decision to Council, and keeps us within competitive range of other Cities
 - Every citizen deserves their day in court, NOT their week in court
 - Current 10-day period HAS already prevented two cases from filing appeals
 - Plus, I receive numerous phone calls about people not knowing about decision,
 - OR not knowing their rights and/or the process until it's too late
 - Per Staff slides, Planning Commission recognized in March 17 meeting “neighbors have a lack of proficiency with the process”

Appeal Recommendations (Continued)

- Allow a one-time opportunity to correct an appeal application if it does not conform to criteria
 - Current criteria is ambiguous, leading to subjective decisions
 - On marijuana clubs, the appellant would have had an additional 30 days to correct if number of signatures fell below required number

- Include Parks and Recreation Advisory Board in list of Board decisions reviewable to Council
 - Sections A.2; D; and D.4
 - Authorized by City Code 4.1.105
 - 4.1.105: COORDINATE WITH PLANNING COMMISSION:
The Board shall coordinate its work with that of the Colorado Springs Planning Commission so that both shall be working for the accomplishment of the same general purposes with reference to park, trail, open space and recreation development. The Board shall review and approve all park master plans, subject to appeal to City Council, in accord with the City Comprehensive Plan and Zoning Code. (Ord. 1757; 1968 Code §1-159; Ord. 88-265; Ord. 97-99; Ord. 01-42)
 - In second case, Parks staff did not even know Parks Board decision was appealable

Council Appeal Hearing Schedule

- Recommendation : Provide Council flexibility of dividing appeal hearings among two consecutive meetings
 - Section D.2(a) - the City Clerk shall place the appeal on the agenda of the next regularly scheduled City Council meeting occurring a minimum of twenty (20) days **and a maximum of forty-eight (48 days)** after the appeal has been filed.
- Unlike Planning Commission, Council agendas include more than just land use
 - Council starts meetings at 1:00pm instead of 8:30am
- By Council rules, Public Hearings are scheduled at the end of Council's agenda
 - Includes not only appeals, but any issue passed by Planning Commission on a less than unanimous vote
 - In April 2013, we went to about midnight on gas station in Fox Run
 - Record is 12:47am after starting the hearing at 6:30pm
- Above additional would mimic scheduling standards of administrative appeals to Planning Commission



Memorandum

File #: 16-468, Version: 1

An Ordinance amending all sections of Article 3 (Code of Ethics) of Chapter 1 (Administration, Personnel and Finance) of the Code of the City of Colorado Springs 2001, as amended.

Presenter:

Andy Pico, City Council Member, District 6
Tracy Lessig, Division Chief-Employment, City Attorney's Office
Craig Valentine, Commissioner, Independent Ethics Commission
William Schmidt, Commissioner, Independent Ethics Commission

Summary:

The Ordinance amends all sections of the Code of the Ethics, adds City Code §§ 1.3.109 through 1-3-113, and incorporates with revisions the provisions of Resolution No. 41-13 (A Resolution Approving the Payment of Legal Expenses for Ethics Complaints under the City Code of Ethics) and Resolution No. 58-13 (A Resolution Approving the Procedures for Investigation and Hearing of Ethics Complaints under the City Code of Ethics).

Previous Council Action:

The City Council passed the City Code of Ethics by Ordinance No. 07-59 on April 10, 2007. The Code of Ethics created the Independent Ethics Commission ("Commission"). The Commission approved the Independent Ethics Commission Rules of Procedure ("Rules of Procedure") on November 15, 2007, which were approved by Resolution No. 257-07 on December 11, 2007. The Code of Ethics was amended by Ordinance No. 11-18 on March 22, 2011, to increase the number of Commissioners from (3) three to (5) five. The Rules were amended by City Council on January 22, 2012 to reflect that a quorum is three (3) members instead of two (2) members. On April 9, 2013, Council passed Resolution No. 41-13 (A Resolution Approving the Payment of Legal Expenses for Ethics Complaints under the City Code of Ethics). On May 28, 2013, Council passed Resolution No. 58-13 (A Resolution Approving the Procedures for Investigation and Hearing of Ethics Complaints under the City Code of Ethics). The Code of Ethics was amended by Ordinance No. 15-62 on September 25, 2015 to change "Memorial Health System" to "MHS Enterprises."

Background:

In early 2014, a committee was formed to review and suggest changes to the Code of Ethics and the Rules of Procedure. The members of the committee are Councilmembers Don Knight and Andy Pico, Attorney Tracy Lessig, Former Independent Ethics Commissioner Brigadier General Malham Wakin, and Independent Ethics Commissioner Thomas Conter ("Committee"). The goal of the Committee was to conduct a complete review of the Code of Ethics and Rules of Procedure, recommend amendments designed to clarify the gift and conflict of interest provisions, improve the procedures for complaints and advisory opinions, and ensure consistency between the Code of Ethics and the Rules of Procedure. The Committee met regularly and eventually included the

Commission in the review.

The proposed amendments to the Code of Ethics include changes to all sections and add several sections. The recommendations include, among other things, substantive changes to the legislative purpose, the addition of definitions and changes to existing definitions, clarification and changes to the Commission's jurisdiction, additional requirements for filing a complaint or an inquiry for consideration, a definition of the Commission's option to dismiss a complaint as frivolous, the addition of a City Attorney advisory opinion as a defense to an ethics complaint, inclusion (with modifications) of Resolution No. 41-13 (A Resolution Approving the Payment of Legal Expenses for Ethics Complaints under the City Code of Ethics), inclusion of (with significant modifications and additions) Resolution No. 58-13 (A Resolution Approving the Procedures for Investigation and Hearing of Ethics Complaints under the City Code of Ethics), additional possible sanctions, substantive changes to the gift and conflict of interest provisions, and the addition of a section stating there is no private right of action for noncompliance with the Code of Ethics.

The attached Ordinance is the product of the hard work of the Committee and the Commission. Although there is substantial agreement on the recommended amendments set forth in the attached Ordinance, the Committee and the Commission are seeking direction from Council on a few matters. The Ordinance promotes the City's strategic goal of excelling in City Services because the recommendations substantially improve the Code of Ethics by providing clarity to the substantive and procedural provisions of the Code of Ethics.

Financial Implications:

N/A

Board/Commission Recommendation:

The Commission is in substantial agreement with the proposed Ordinance. However, the Committee and the Commission are seeking direction from Council on a few matters.

Stakeholder Process:

The Commission and the Committee held numerous meetings to discuss the proposed changes. In September of 2014, the Committee met with members of the Fire Department, the Police Department, the City Human Resources Department, Colorado Springs Utilities, International Association of Firefighters Local 5, and the Colorado Springs Police Protective Association to discuss potential changes to the gift and conflict of interest provisions.

Alternatives:

N/A

Proposed Motion:

N/A

The Ordinance amends all sections of the Code of the Ethics, adds City Code §§ 1.3.109 through 1-3-113, and incorporates with revisions Resolution No. 41-13 (A Resolution Approving the Payment of Legal Expenses for Ethics Complaints under the City Code of Ethics) and Resolution No. 58-13 (A Resolution Approving the Procedures for Investigation and Hearing of Ethics Complaints under the City Code of Ethics).

ORDINANCE NO. 16-____

AN ORDINANCE AMENDING ALL SECTIONS OF ARTICLE 3 (CODE OF ETHICS) OF CHAPTER 1 (ADMINISTRATION, PERSONNEL, AND FINANCE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. All Sections of Article 3 (Code of Ethics) of Chapter 1 (Administration, Personnel and Finance) of the Code of the City of Colorado Springs 2001, as amended, are amended to read as follows:

1.3.101: LEGISLATIVE PURPOSE:

1.3.102: DEFINITIONS:

1.3.103: INDEPENDENT ETHICS COMMISSION:

1.3.104: CITY COUNCIL PROCEDURES:

1.3.1045: GIFTS:

1.3.1056: LOBBYING ACTIVITIES:

1.3.1067: CONFLICTS OF INTEREST:

1.3.108: CONFLICTS OF INTEREST – APPEARANCE OF IMPROPRIETY:

1.3.109: CONFLICTS OF INTEREST – DISCLOSURE AND RECUSAL/DISCLOSURE AND DECLARATION:

1.3.110: CONFLICTS OF INTEREST – EXCEPTION:

1.3.107111: ETHICS EDUCATION:

1.3.108112: FURTHER ETHICS RULES AND REGULATIONS:

1.3.113 NO PRIVATE RIGHT OF ACTION:

1.3.101: LEGISLATIVE PURPOSE:

A. There is hereby adopted by the City Council "The City of Colorado Springs Code of Ethics" which shall apply to the Mayor and Council Members; all their appointed boards, committees, and commissions; the Utilities Chief Executive Officer; ~~MHS Enterprise Chief Executive Officer~~, the City Attorney; the City Clerk; the City Auditor; Municipal Court Judges; department, division, office, and agency heads appointed by the Mayor or City Council; and all employees of the City's municipal government and its enterprises, including Colorado Springs Utilities and ~~MHS Enterprise~~.

B. The City of Colorado Springs shall aspire to conduct its businesses, operations and services in accord with the law and the highest standards of business practices and ethics. The City of Colorado Springs is committed to complete honesty, utmost integrity, fair dealing, and ethical behavior as the basis of its businesses, operations, and services to the community.

C. Public service and public employment is a public trust. The Mayor and Council Members; members of ~~all their~~ appointed boards, committees and commissions; the Utilities Chief Executive Officer; ~~MHS Enterprise Chief Executive Officer~~, the City Attorney; the City Clerk; the City Auditor; Municipal Court Judges; department, division, office, and agency heads appointed by the Mayor or City Council; and all employees of the City's municipal government and its enterprises, including Colorado Springs Utilities, ~~and MHS Enterprise~~ should employ independent, objective judgment in performing their duties; ~~and~~ should assure that businesses, operations, and services are conducted openly to the extent required by law to safeguard public confidence in the integrity of the City; and should strive to ~~by avoiding~~ any conduct creating ~~the~~ an appearance of impropriety.

D. The City of Colorado Springs, through its municipal government and all its enterprises, including Colorado Springs Utilities ~~and MHS Enterprise~~, exists for the purpose of serving the community through its businesses, operations, and services.

E. The City of Colorado Springs Code of Ethics is hereby deemed to be a matter of ~~City Council's exclusive~~ exclusively within the City's home rule authority and ~~supersedes~~ a proper exercise of the City Council's legislative authority on behalf of the City, superseding any other applicable Colorado statutes. Moreover, this Code of Ethics is in compliance with, and therefore ~~supersedes~~ by its own terms, unless otherwise expressly adopted herein, Colorado Constitution, article XXIX, "Ethics in Government".

1.3.102: DEFINITIONS:

The following definitions are applicable to the City Code of Ethics:

ADMINISTRATIVE OFFICERS: As defined by City Charter, article XIII, section 13-10. ~~All heads of departments appointed by the Mayor.~~

APPOINTEES: ~~Are "administrative officers" and shall mean and include all persons appointed by the Mayor and/or members of City Council pursuant to the City Charter and this City Code, to include the City Attorney, City Auditor, City Clerk, Municipal Court Judges and Utilities Chief Executive Officer and all members of boards, committees and commissions appointed by the Mayor and/or City Council. For purposes of this Code, the term "appointee" shall also include the MHS Enterprise Chief Executive Officer.~~

ADVISORY OPINION: A response to an inquiry for consideration by the Commission or an opinion given by the City Attorney's Office to a covered person regarding the applicability of the Code of Ethics to a future action.

CITY: The municipal government and all its enterprises as defined by the Colorado Constitution, article X, section 20 and City Charter, article VII, section 7-90, ~~including, but not limited to, Colorado Springs Utilities and MHS Enterprise. The City's municipal government and the municipal enterprises are subject to the management and control of the Mayor. The City's Colorado Springs Utilities enterprise is subject to the management and control of City Council's appointed Chief Executive Officer. The City's MHS Enterprise is subject to the general supervision and control of City Council~~

~~and is subject to the daily management and control of City Council's appointed Board of Trustees, who appoints a Chief Executive Officer.~~

CLEAR AND CONVINCING EVIDENCE: Evidence that persuades the fact finder that the contention is highly probable and free from serious or substantial doubt.

~~COVERED PERSONS: Elected officials, appointees, administrative officers, employees, independent contractors and volunteers in connection with their work for the City.~~

COMMISSION: Independent Ethics Commission.

COMPLAINT: A request for an investigation of or report on an alleged violation of the Code of Ethics.

CONFIDENTIAL INFORMATION: Information that is not available to the general public under applicable laws, ordinances, privileges, and/or regulations, and which is obtained by reason of a position or legal relationship with the City.

COVERED PERSONS: Elected officials, administrative officers, employees, independent contractors, and volunteers of the City.

COVERED PERSONS SUBJECT TO THE COMMISSION'S JURISDICTION: Elected officials; administrative officers; and members of boards, committees, or commissions appointed by City Council, the President of Council, or the Mayor.

COVERED PERSONS SUBJECT TO HUMAN RESOURCES' JURISDICTION: All other covered persons not subject to the Commission's jurisdiction, including employees, volunteers, and independent contractors.

DIRECT OFFICIAL ACTION: Any action that involves:

A. Negotiating, approving, disapproving, administering, enforcing or recommending for or against a ~~franchise~~, contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use, or any other matter to which the City is a party. "Recommending" shall mean someone in the formal line of decision making for the matter;

B. Enforcing laws or regulations or issuing, enforcing, or ~~regulating~~ administering permits and licenses;

C. Appointing and terminating employees, temporary workers, volunteers, and independent contractors ~~as defined by the Internal Revenue Code~~; or

* * *

E. "Direct official action" does not include acts that are purely ministerial, including pro forma signing of documents on behalf of the City and approval as to form. ~~It also does not include signatures by the Mayor, City Council, City Auditor, City Attorney, City Clerk, Utilities Chief Executive Officer or MHS Enterprise Chief Executive Officer unless these individuals initiate the contract or are involved in the selection of the contractor~~

~~or the negotiation or administration of the contract.~~ Also, a A person who abstains from a vote is not exercising direct official action.

* * *

~~GIFT: A payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given, to include food, lodging, transportation, golf or other recreation or entertainment, and reimbursement for other than necessary expenses for official business on behalf of the City, unless consideration of equal or greater value is received.~~

~~IMMEDIATE FAMILY MEMBER: The employee's spouse and his or her dependents. A spouse, domestic partner, fiancé/fiancée, parent(s), child(ren), brother(s), sister(s), aunt(s), uncle(s), niece(s), nephew(s), grandparent(s), grandchild(ren), great grandparent(s), great grandchild(ren), first cousin(s), including step relatives and in-laws, and an individual who is a member of a covered person's household regardless of familial relationship.~~

~~INDEPENDENT CONTRACTORS: Those persons as individuals defined as such by the Internal Revenue Code, in their work for the City.~~

~~INQUIRY FOR CONSIDERATION: A request for an advisory opinion from the Commission regarding whether a future action by a covered person subject to the Commission's jurisdiction would be a violation of the Code of Ethics, or the means by which a future action could be taken without violating the Code of Ethics.~~

~~PREPONDERANCE OF THE EVIDENCE: Evidence that would cause a reasonable person to conclude that the contention is more probably true than not.~~

~~SUBSTANTIAL INTEREST: A situation in which a reasonable person faced with making a decision, after considering the relevant circumstances, would tend to have their decision influenced by a personal or financial stake or consideration.~~

* * *

1.3.103: INDEPENDENT ETHICS COMMISSION:

A. Creation And Purpose: There is hereby created an Independent Ethics Commission. The purpose of this Commission shall be to render written recommendations to City Council on ethics complaints and to issue written advisory opinions ~~on ethical issues~~ in response to inquiries for consideration.

B. Members: City Council shall appoint five (5) members to the ~~Independent Ethics Commission~~ to serve staggered terms, who shall have expertise in ethical matters, acquired through education or experience. An alternate may be appointed pursuant to this City Code. Each member of the initial ~~Independent Ethics Commission~~ shall serve at least one term and those initial terms shall be one (1), two (2) and three (3) years.

* * *

D. Compensation: Members of the ~~Independent Ethics~~ Commission shall be "volunteers" as defined by this Code and shall serve without compensation. Members may be reimbursed for reasonable expenses they incur by providing service to the Commission.

E. At Will: Each member of the ~~Independent Ethics~~ Commission shall serve at the pleasure of City Council and shall be subject to the City Charter, particularly City Charter subsection 3-60(d) and section 9-10, ~~this~~ the City Code, and the rules and procedures of City Council.

F. Majority Vote: The ~~Independent Ethics~~ Commission shall make decisions/recommendations based upon a majority vote.

G. City Attorney: The City Attorney, or a designee of the City Attorney, shall be the chief liaison and legal advisor to the ~~Independent Ethics~~ Commission, but shall have no vote. In the event the City Attorney is the subject of a pending complaint, City Council may, in its sole discretion, appoint outside counsel to serve as the legal advisor to the Commission, appoint a City employee not within the Office of the City Attorney to serve as Secretary to the Commission for the complaint against the City Attorney, and if necessary, appoint special counsel to prosecute allegations of ethics violations brought against the City Attorney.

H. Disqualification: Any member of the ~~Independent Ethics~~ Commission shall disqualify himself or herself from participating in any matter before the Commission in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where he or she has a substantial interest, a personal bias or prejudice concerning a party, or personal knowledge of or involvement in disputed evidentiary facts concerning the matter. In that case, the alternate may sit in place of the disqualified member.

I. ~~Subpoena And Recommendations Power~~: The ~~Independent Ethics~~ Commission shall have the power to subpoena documents and witnesses, and to enforce such power by judicial action. ~~The determination of a recommendation by the Independent Ethics Commission shall be made based upon the preponderance of evidence before it.~~

J. Rules Of Procedure: The ~~Independent Ethics~~ Commission shall promulgate its own ~~Rules of~~ Procedure to be approved by City Council.

K. Complaints; Inquiries: Complaints must be filed confidentially. A complaint may only be considered for matters occurring within the last twelve (12) months and shall be filed with the appropriate authority as designated below:

1. Covered Persons Subject to the Commission's Jurisdiction: Any person may file a written complaint or an inquiry for consideration ~~by~~ with the ~~Independent Ethics~~ Commission through the City Attorney regarding a covered person subject to the Commission's jurisdiction. ~~matter involving an elected official, an appointee including members of boards, committees and commissions; administrative officer; or a member of a board, committee, or commission appointed by City Council, the President of Council or the Mayor, or~~

~~an independent contractor. Any written complaint or inquiry shall be filed confidentially and processed in accord with the Independent Ethics Commission Rules of Procedure. The written complaint or inquiry may only be considered for matters occurring within the last twelve (12) months. Any person may file a written complaint or inquiry for consideration directly with the Mayor, Utilities Chief Executive Officer, MHS Enterprise Chief Executive Officer, City Attorney, City Auditor, City Clerk or Presiding Municipal Judge for covered persons within those organizations or for covered persons who work for the City in a volunteer capacity, not including members of boards, committees and commissions appointed by City Council or the Mayor.~~

2. Covered Persons Subject to Human Resources' Jurisdiction: Any person may file a written complaint with the City's Human Resources Department or the Colorado Springs Utilities' Human Resources Department regarding a matter involving a covered person not subject to the Commission's jurisdiction.

~~L. Frivolous Complaints; Inquiries: The Independent Ethics Commission may dismiss frivolous complaints or inquiries without further action. A record of dismissal as deemed frivolous shall be maintained as confidential by the Independent Ethics Commission.~~

L. Requirements for Complaints/Inquiries for Consideration:

1. A complaint shall set forth the following to the best of the complainant's ability:

a. The name of the individual, either personally or on behalf of an organization, submitting the complaint, best available contact information including mailing address, telephone number, and electronic mail address. A complaint submitted anonymously may be dismissed by the Commission.

b. The identity of the person(s) alleged to have committed a violation of the Code of Ethics.

c. A full description of the facts known to the person filing the complaint which are alleged to constitute a violation of the Code of Ethics.

d. The identities and contact information (if known) of other persons who have knowledge of such facts.

e. A signature of the person submitting the complaint with a verification stating the following:

"The undersigned hereby certifies or affirms that the information contained within this complaint is true to the best of my knowledge, information, and belief. I have not filed this complaint for the purpose of harassment or to falsely disparage the individual(s) claimed to have committed violations of the Code of Ethics."

2. An inquiry for consideration shall set forth the following:

- a. The name of the individual, either personally or on behalf of an organization making the inquiry for consideration, best available contact information including mailing address, telephone number, and electronic mail address. An inquiry for consideration may not be anonymously submitted.
- b. The identity of the covered person subject to the Commission's jurisdiction and his or her title or position.
- c. A full description of the facts known to the person filing the inquiry for consideration.

~~M. Nonfrivolous, Formal Complaints; Inquiries: The Independent Ethics Commission shall take such steps as necessary pursuant to its rules to investigate nonfrivolous, formal complaints. Within ten (10) days of the conclusion of its investigation and deliberations, the Commission shall issue a confidential written recommendation to City Council containing findings of fact and conclusions of law.~~

M. Initial Review of Complaints/Inquiries for Consideration: The Commission may dismiss frivolous complaints or dismiss inquiries for consideration without further action for any of the following reasons:

1. The Commission has no jurisdiction over the individual(s) named in the complaint or inquiry for consideration;
2. The alleged violation, even if true, would not constitute a violation of the Code of Ethics;
3. The allegations/issues were previously asserted in another complaint or inquiry for consideration that is already being considered or was resolved by the Commission;
4. The alleged violation, even if true, is minor in nature and fails to justify the use of public resources to prosecute;
5. The allegations/issues involve actions or events that occurred more than twelve (12) months prior to the date of the filing of the complaint;
6. The complaint is, on its face, groundless, or brought for purposes of harassment;
7. The individual who is the subject of the complaint previously obtained an advisory opinion from the Commission or the City Attorney's Office that identifies the conduct as not being in violation of the Code of Ethics;
8. The Commission is referring the complaint to another agency with jurisdiction over the allegations/issues set forth in the complaint and such referral will better serve the public interest (e.g., City Council, the Mayor, City

department or enterprise, law enforcement, District Attorney, state or federal Attorney General, or Department of Justice);

9. The complaining party failed to follow the Commission's Rules of Procedure for filing a complaint;

10. The complaining party failed to file the complaint confidentially as required by the Commission's Rules of Procedure; and/or

11. The complaint was filed anonymously.

~~N. Penalty: Any individual who is found to have breached the public trust and has been found to have done so for private gain, and any person or entity inducing such breach, shall be liable to the City for double the amount of financial equivalent of any benefits obtained by such actions. The manner of recovery and any additional penalties may be as provided by law.~~

N. A record of dismissal of a complaint as deemed frivolous shall be maintained as confidential by the Commission. The City expressly adopts Colorado Constitution, article XXIX, § 5(3)(b) for the discrete purpose of allowing the Commission to dismiss frivolous complaints without conducting a public hearing and to require complaints dismissed as frivolous be maintained as confidential. The Code of Ethics is a matter exclusively within the City's home rule authority and a proper exercise of the City Council's legislative authority on behalf of the City, superseding any other applicable Colorado statutes. Other than as set forth in this subsection, this Code of Ethics is in compliance with, and therefore supersedes Colorado Constitution, article XXIX, "Ethics In Government" by its own terms.

~~O. Final Action: Any decision of the City Council made upon confidential written recommendation of the Independent Ethics Commission may be deemed to be a final action, subject to any appeal to a court with proper jurisdiction.~~

O. Commission Investigation/Review of Complaints and Inquiries for Consideration/Findings:

1. Investigation. The Commission shall take such steps as necessary pursuant to the Commission's Rules of Procedure to respond to inquiries for consideration or to investigate complaints not dismissed pursuant to § 1.3.103(M). During its investigation, if the Commission discovers potential violations of the Code of Ethics not raised in the original complaint, it may amend the scope of the investigation and the subject of the investigation shall be notified of the additional possible violations as soon as practicable.

2. Findings. Within fourteen (14) days of the conclusion of its investigation and deliberations regarding a complaint, the Commission shall issue a confidential written recommendation to City Council containing its investigative findings. The Commission's recommendation shall include fact findings and a determination, with citation to specific provisions of the Code of Ethics, regarding whether or not by a preponderance of the evidence the Commission concludes one or more violations of the Code of Ethics has occurred. The Commission's

written recommendation to City Council is work product prepared for elected officials. Such work product is not a public record under the Colorado Open Records Act, C.R.S. § 24-72-202(6)(b), as amended. Therefore, the Commission's deliberations and preparation of its confidential recommendation to City Council is not public business subject to the City's Open Meetings Law, adopted by City Charter § 3-60(d).

P. City Attorney Advisory Opinion: Any covered person may request a confidential or non-confidential advisory opinion from the City Attorney whenever a question arises as to the applicability of the Code of Ethics to a future action. Provided all pertinent facts and circumstances are fully disclosed in writing to the City Attorney by the covered person, such covered person shall be entitled to rely upon the advisory opinion issued for purposes of determining compliance with the Code of Ethics for a future action. No covered person shall be found to have violated the Code of Ethics if, in good faith, the covered person has acted in accordance with an advisory opinion issued as described in this section. Any verbal advisory opinion issued by the City Attorney shall be documented at the request of the covered person. It shall be the obligation of the covered person to provide the advisory opinion to the Commission. Any verbal advisory opinion shall not be binding on any complaint investigation by the Commission.

Q. Legal Representation:

1. An elected official; administrative officer; or board, committee, or commission member appointed by City Council, the President of Council, or the Mayor who is the subject of an investigation as a result of a complaint(s) filed with the Commission, upon the Commission's finding that it has jurisdiction over the complaint(s) and that the complaint(s) is non-frivolous, is entitled to an independent legal representative of his or her choice at the City's expense, subject to the limitations contained in this subsection Q. The legal expenses paid by the City shall not exceed ten thousand dollars (\$10,000.00) per investigation unless good cause is shown to exceed this limit. City Council shall have sole discretion to determine whether good cause exists to extend the payment for legal expenses beyond the ten thousand dollar (\$10,000.00) limit. No decision with regard to legal expenses may be appealed or challenged.

2. The term "legal expenses" shall include attorney fees, witness fees, stenographer fees, investigator fees, and other direct costs in connection with defending the individual against an ethics complaint.

3. Before the City shall pay any legal expenses, the accused party shall acknowledge in writing the City's full reservation of right to reimbursement for all legal expenses if the accused party is found to have committed a violation of the Code of Ethics.

4. Requests for payment of legal expenses shall be submitted to the City Attorney and, once verified, paid within ten (10) days or as soon as practicable, subject to the monetary limitations above. Requests for payment of legal expenses shall be submitted no later than forty-five (45) days after the matter is closed.

5. Within thirty (30) days of the expiration of exhaustion of all rights to appeal any final decision by City Council concerning the ethics complaint, an accused party found to have committed a violation of the City's Code of Ethics shall be required to reimburse the City for all legal expenses paid by the City for the accused party's defense.

1.3.104: CITY COUNCIL PROCEDURES:

A. Commission Recommendation: Upon receipt of the Commission's recommendation, City Council may, by majority vote:

1. Issue a notice to proceed with those allegations of ethics violations which City Council determines, in its independent judgment, are appropriate, or issue a finding of no violation(s);
2. Dismiss all or any part of the Commission's recommendation due to insufficient evidence to proceed if, in the opinion of City Council, the standard of proof is not met;
3. Dismiss all or any part of the Commission's recommendation because in the opinion of City Council, there is no substantial likelihood of success on the merits through an adversarial hearing;
4. Stay proceedings or dismiss all or any part of the Commission's recommendation after referring the matter for action by law enforcement, regulatory, or other authorities with jurisdiction over the matter;
5. Dismiss all or any part of the Commission's recommendation, with or without findings for or against the accused party, in the interests of justice, including the presence of circumstances in which proceeding with the matter would be contrary to the interest of the City or the citizens; or
6. Dismiss all or any part of the Commission's recommendation, with or without findings for or against the accused party, if the person committed the violation due to oversight and/or comes into voluntary compliance.

City Council shall provide the accused party, the complaining party, the Commission, and the City Attorney's Office with written notice of its decision, including any notice to proceed with allegations of ethics violations issued by City Council.

B. Notice to Proceed with Allegations of Ethics Violations/Mandatory Recusal:

1. If City Council elects to issue a notice to proceed with allegations of ethics violations based on the recommendation of the Commission, City Council will notify the accused party, the complaining party, and the City Attorney's Office of the ethics charges in writing within seven (7) days after the decision is made.
2. The accused party shall be given fourteen (14) days to respond in writing to the City Attorney or designee and the City Council President

either admitting the violations or requesting a public evidentiary hearing. City Council will consider the accused party's failure to respond within fourteen (14) days to be an admission and may then move to impose sanctions. The time for response may be extended or the matter may be reconsidered by City Council upon a showing of good cause for failure to timely respond. The City Council President will determine whether good cause exists.

3. If the accused party is a member of City Council, he/she is automatically recused from participating in the matter as a member of City Council and is required to refrain from voting on or taking any direct official action concerning the matter.

4. If the accused party is subject to a criminal investigation or a criminal charge is pending against the accused party and the investigation or charge is related to the conduct underlying the allegations of ethics violations, the accused party may submit a request to the City Council President to stay the proceedings until the conclusion of the investigation of criminal charges. The City Council President will have sole discretion to stay the proceedings pursuant to a request under this subsection.

C. Administrative Hearing: If the accused party requests a hearing in writing within fourteen (14) days, City Council will elect by a majority vote of a quorum present either to serve as the hearing body or to appoint a Hearing Officer to conduct the proceedings. Any Hearing Officer selected by City Council shall be a Colorado licensed attorney in good standing. If City Council elects to conduct the administrative hearing, it will sit as a quasi-judicial body and may hold a special meeting.

1. Legal Representation. If City Council elects to serve as the hearing body, City Council's designated legal advisor shall advise the City Council during the proceedings. Subject to § 1.3.103(G), a member of the Prosecution Division of the City Attorneys' Office will prosecute the charges or, in the sole discretion of the City Attorney, the City Attorney may appoint another attorney in the City Attorney's Office or special counsel to prosecute the charges. The accused party is entitled to be represented by counsel at his or her expense or as provided in § 1.3.103(Q).

2. Burden of Proof. The prosecution bears the burden to establish, by clear and convincing evidence, the existence of a violation of the Code of Ethics.

3. Hearing Date. The hearing shall be held no sooner than sixty (60) days and no later than ninety (90) days after receipt by the City Council President and the City Attorney of the accused party's request for a hearing. The accused party, the complaining party, and the City Attorney's Office shall be notified as soon as practicable after the date and time of the hearing is set. The City Council President/Hearing Officer may continue the hearing in his or her sole discretion and may grant a request for a continuance by the accused party or the prosecution for good cause.

4. Discovery. Within ten (10) days after City Council's issuance of notice to proceed with ethics allegations, the accused party and the prosecution shall be entitled to a copy of the Commission's investigation file, including the Commission's confidential recommendation to City Council. Within twenty (20) days after receipt of the notice of hearing date, the accused party and the prosecution shall exchange copies of all relevant documents and other tangible things within their possession, and a list, including any known contact information, of all persons who have relevant information or knowledge about the matter with a short statement regarding the relevant facts or opinions about which they have information or knowledge. Each party has an ongoing duty to supplement disclosures in a timely manner when additional information is received.

5. Subpoenas. At the request of the accused party, the prosecution, or in the City Council President/Hearing Officer's discretion, the City Council President/Hearing Officer shall have the power to subpoena documents and to subpoena witnesses to make statements and produce documents. Requests for subpoenas by the accused party or the prosecution must be submitted to the City Council President/Hearing Officer no later than thirty (30) days prior to the hearing. Subpoenas must be served in accordance with the rules governing service followed by courts of general jurisdiction within the state of Colorado.

6. Witnesses and Exhibits. At least ten (10) days before the hearing, the parties shall exchange and submit to the City Council President/Hearing Officer a proposed list of witnesses and a list of proposed exhibits to be introduced at the hearing, except for witnesses called or exhibits presented solely for rebuttal purposes. The City Council President/Hearing Officer shall have the sole discretion to exclude any witness or exhibit disclosed to the opposing party fewer than ten (10) days prior to the hearing.

7. Hearing Presentation. The City Council President/Hearing Officer shall have sole discretion to determine the hearing procedures. However, at a minimum, the hearing procedures shall include affording each side the opportunity to make opening statements and closing arguments, to call and cross examine witnesses, and to introduce evidence. Testimony by telephone/videophone may be permitted at the discretion of the City Council President/Hearing Officer. All arrangements for taking of testimony by telephone or videophone shall be made by the party requesting the testimony, who shall be responsible for all costs associated with that testimony.

8. Hearing Matters/Evidence. The City Council President/Hearing Officer shall determine all pre-hearing matters; preside over the hearing; administer oaths; and decide all points of order, procedure, and evidence. The hearing is an administrative hearing and, as such, need not be conducted according to the Colorado Rules of Civil Procedure or the Colorado Rules of Evidence. The City Council President/Hearing Officer may admit any relevant evidence of probative value, including hearsay or unauthenticated documents, and may exclude or strike evidence that is incompetent, immaterial, irrelevant, cumulative, or unduly repetitious.

9. Record. An electronic or stenographic record of the hearing shall be made by the City as the official record of proceeding and retained with all exhibits admitted in the hearing in the Office of the City Clerk for no less than the time required by the applicable records retention schedule.

10. Hearing Officer Decision. The Hearing Officer, if conducting the hearing, will render a decision with findings of fact, a summary of the evidence supporting each finding, conclusions of law, a determination of whether or not the accused party violated the Code of Ethics, and a recommended sanction for each violation. In recommending a sanction, the Hearing Officer may consider the severity of the offense; the credibility of the witnesses and reliability of the evidence; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and/or whether the incident was isolated or part of a pattern. The decision will be submitted to City Council, the accused party, and the prosecutor within thirty (30) days after the hearing. The City Council President may extend this deadline for good cause. The accused party and the prosecution will be permitted to file responses or written objections to the initial decision within fifteen (15) calendar days after receipt of the initial decision. Responses or written objections must be double-spaced, twelve (12) point font, no more than fifteen (15) pages in length, and shall be provided to City Council and the opposing party.

11. City Council Deliberations.

a. Deliberations by City Council after Council Hearing. As soon as practicable after the conclusion of the hearing in which City Council sits as the hearing body, City Council shall, in a public meeting, review the evidence and determine by a majority vote whether each violation alleged in the notice to proceed with allegations of ethics violations has been proven by clear and convincing evidence. Only Councilmembers present for all of the hearing may participate and vote in the deliberations. City Council may consider, when making findings and imposing sanctions, the severity of the offense; the credibility of the witnesses and reliability of the evidence; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and/or whether the incident was isolated or part of a pattern. City Council shall dismiss any allegation in its notice to proceed with allegations of ethics violations that it determines was not a violation of the Code of Ethics.

b. Deliberations by City Council after Hearing Officer Decision.

i. As soon as practicable after receipt of the Hearing Officer's decision, City Council shall, in a public meeting, review the decision and any responses or written objections to the decision filed by the accused party and the prosecution, review the record including the transcript of proceedings and evidence before the Hearing Officer, and determine whether or not there is competent evidence in the record to support the Hearing Officer's findings on each of the violations alleged in the notice to proceed with

allegations of ethics violations.

ii. Council shall affirm each of the Hearing Officer's findings unless there is no competent evidence in the record to support the finding.

iii. If there is no competent evidence in the record to support one or more of the Hearing Officer's findings, then City Council may reverse that finding or remand the matter back to the Hearing Officer for further proceedings.

iv. No new evidence will be submitted to the City Council unless a majority of the City Council determines that such evidence could not have been reasonably presented at the time the matter was heard by the Hearing Officer. If the City Council decides to hear such new evidence, it may hear the new evidence or remand the matter back to the Hearing Officer for further proceedings.

v. Council may affirm, reject, or modify the Hearing Officer's recommended sanction(s). City Council may consider, when imposing sanctions, the severity of the offense; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and/or whether the incident was isolated or part of a pattern.

12. City Council Resolution: A final decision by City Council regarding whether or not the accused party committed a violation of the Code of Ethics and any sanctions imposed shall be expressed in a written resolution passed by City Council. City Council's resolution shall be final agency action.

D. Sanctions: If City Council finds that a violation of the Code of Ethics has occurred, whether pursuant to an admission or at the conclusion of a full administrative hearing, City Council may, by a majority vote, impose any of the following sanctions:

1. Reprimand. Issue an oral or written reprimand;

2. Monetary Fine. A monetary fine is appropriate if the individual who committed an ethics violation financially benefitted from his or her action(s) or an immediate family member financially benefitted from the action(s) of the covered person. The monetary fine shall be no more than double the amount of financial equivalent of any benefits obtained by the unethical action(s). The manner of recovery and any additional penalties may be as provided by law;

3. Censure. Censure is a formal official reprimand by City Council of one of its members. This penalty carries no fine or suspension of the rights of the member as an elected official; and/or

4. Suspension/Removal. Suspension or removal of City Council appointees or members of boards, committees, or commissions appointed by City Council. If the covered person found to have violated the Code of Ethics is a Mayoral appointee, City Council may make a recommendation to the Mayor that the appointee be suspended or removed.

E. Ex-parte Communications: Ex-parte communications with any Councilmember or the Hearing Officer concerning any ethics matter pending before the Commission, City Council, or a Hearing Officer are strictly prohibited.

F. Deadlines: The City Council President may extend or shorten any time limitations set forth in this Section 1.3.104 for good cause shown.

1.3.1045: GIFTS:

A. Hospitality And Gifts: No covered person shall solicit for, accept, or give any gift or thing of value related solely to the covered person's duties and responsibilities on behalf of the City.

B. Exceptions: Providing that the gift could not be reasonably considered a bribe or a means of improper influence on a direct official action, no violation of this Code of Ethics shall be found to apply to the following:

1. * * *

2. An unsolicited item or items of value less than fifty dollars (\$50.00) per vendor or third party per year (annually adjusted for inflation after calendar year 2007 using the percentage change in U.S. Bureau of Labor Statistics Consumer Price Index, All Consumers, All Items, for Denver-Boulder-Greeley MSA).

a. ~~The item or items shall not be cash or cash equivalent such as gift cards, checks or money orders.~~

ba. * * *

eb. For a charity event, the cost of the event is the fair market value of the activity received as opposed amount the event organizer reports to the full amount of the ticket Internal Revenue Service as the non-deductible portion of the event.

ec. * * *

* * *

4. A component of compensation paid or other recognition given in the normal course of employment, appointment or, volunteer services, or business.

5. Any scholarship or grant or other financial aid for education given to any covered person or immediate family member for any reason—so long as the award is not based upon the influence of the covered person.

* * *

7. Any gift solicitation for a charitable purpose as determined to be appropriate by the City or its affiliated organization.

8. Any gift, whether solicited or not, to benefit a public safety or community purpose. However, covered persons must not solicit or receive gifts that will directly or indirectly benefit themselves.

~~9. Any gift provided as a result of the recipient's outside business or employment activities that do not pertain to the City.~~

~~109. Awards or prizes given at competitions or drawings at events open to the public, so long as there is not an appearance of impropriety.~~

~~110. Reasonable cost (e.g., fees, meals, lodging, and/or transportation) and frequency of vendor sponsored or other professional educational conferences, seminars, events, or meetings, so long as the conferences, seminars, events, or meetings are documented; and:~~

- a. The person is scheduled to deliver a speech, participate in a presentation, participate on a panel, or receive an award;
- b. The cost of the conference, seminar, event, or meeting is paid pursuant to a vendor agreement or contract; or
- c. The cost of the conference, seminar, event, or meeting is paid by a governmental entity or a IRC 501(c)(3) organization.

~~1211. * * *~~

~~1312. * * *~~

~~1413. * * *~~

~~1514. * * *~~

~~1615. * * *~~

16. A non-pecuniary award of reasonable value and frequency publicly presented by a IRC 501(c)(3) organization in recognition of public service.

17. Discounts that are similarly available to all employees of the City, or discounts that are offered to the public generally or to a large segment of

the public (i.e., all uniformed personnel, all government employees, or all first responders).

~~1718. * * *~~

~~1819. Any other exceptions as may be approved by the City Council Commission through an inquiry for consideration.~~

~~C. Inappropriate Hospitality And Gifts: Inappropriate hospitality or gifts involves offering or receiving accommodations, tours, event tickets, recreation, entertainment, meals or other similar personal benefits when a personal or financial relationship exists that could influence or be perceived to influence objectivity when interacting with, representing, or conducting business for or on behalf of the City. (Ord. 11-18)~~

1.3.105106: LOBBYING ACTIVITIES:

~~* * *~~

1.3.106107: CONFLICTS OF INTEREST/CONFIDENTIAL INFORMATION:

~~Every covered person owes a duty of loyalty to the City. A conflict of interest exists when there is any personal or financial relationship that could influence or be perceived to influence the representation or conduct of business for, or on behalf of, the City. A conflict of interest also exists when any improper and undue influence can be exercised, or be perceived to be exercised, concerning a direct action involving the City. A conflict of interest may exist when there is an appearance of impropriety. No conflict of interest is allowed.~~

~~Covered persons are prohibited from engaging in any behavior that constitutes a conflict of interest as set forth in this section.~~

~~A. No covered person shall hold financial interests that conflict with the conscientious performance of duty, knowingly use any confidential information gained in his or her official capacity with the City or allow the use of any such confidential information to further the financial or personal interest of the covered person or to further the financial or personal interest of an immediate family member of the covered person.~~

~~B. No covered person shall disclose confidential information gained in his or her official capacity with the City to persons not authorized to receive the confidential information, except as required or permitted by law. engage in business activities including financial transactions using nonpublic government or enterprise private information, or allow the improper use of that information to further any private interest or gain.~~

~~* * *~~

~~D. No covered person in his or her official capacity with the City shall give preferential treatment to endorse any private organization or individual, or request or~~

grant to any private organization or individual any special consideration, treatment, or advantage beyond that which would be made available to every other private organization or individual in similar circumstances.

E. No covered person shall directly or indirectly participate in any matter involving the City where the covered person or an immediate family member of the covered person has a substantial interest ~~they or a member of their family has a direct or indirect substantial financial interest. If a direct or indirect substantial financial interest exists, the covered person shall make known that interest to the appropriate persons and shall refrain from participating in the matter as it is dealt with by the City.~~

F. No covered person shall engage in ~~outside employment or activities, including seeking or negotiating for employment that~~ conflicts with ~~their~~ his or her official duties and responsibilities or his or her fiduciary duty to the City.

G. No covered person shall ~~tolerate waste, fraud, abuse and corruption in government or any of its businesses, operations or~~ misappropriate services or other resources of the City for personal benefit.

~~H. No covered person shall engage in any actions that may create, or do create, the appearance that they are violating the law or ethical standards.~~

~~I. No covered persons shall engage in any activity that may create, or does create, the appearance of impropriety.~~

1.3.108: CONFLICTS OF INTEREST – APPEARANCE OF IMPROPRIETY:

An appearance of impropriety is created when a covered person will or may take a direct official action that, although not constituting a conflict of interest, will or may create a reasonable perception that the covered person's ability to carry out his or her official duties with integrity, impartiality, and competency is impaired.

A covered person who determines that his or her action(s) may cause an appearance of impropriety should consider (but is not required to) disclosing and recusing or disclosing and declaring impartiality as prescribed by the voluntary provisions of § 1.3.109.

1.3.109: CONFLICTS OF INTEREST – DISCLOSURE AND RECUSAL/DISCLOSURE AND DECLARATION:

A. Mandatory Disclosure and Recusal: A covered person with a prohibited conflict of interest shall:

1. Disclose the prohibited interest in writing to the proper authority or orally at an appropriate public meeting; and
2. Recuse himself or herself from participating in the matter by:
 - a. Refraining from voting on or taking any direct official action concerning the matter;

- b. Refraining from communicating with or attempting to influence any covered person with authority to take direct official action regarding the matter which includes, but is not limited to, commenting on the matter through public or private statements, emails, blogs, tweets, or other social media; and
- c. Physically leaving any room or premises at which the matter is being discussed or considered.

B. Voluntary Disclosure and Recusal: A covered person with an appearance of impropriety may (but is not required) to:

- 1. Disclose the appearance of impropriety in writing to the proper authority or orally at an appropriate public meeting; and
- 2. Recuse himself or herself from participating in the matter by:
 - a. Refraining from voting on or taking any direct official action concerning the matter;
 - b. Refraining from communicating with or attempting to influence any covered person with authority to take direct official action regarding the matter which includes, but is not limited to, commenting on the matter through public or private statements, emails, blogs, tweets, or other social media; and
 - c. Physically leaving any room or premises at which the matter is being discussed or considered.

OR

- 3. Declare in writing to the proper authority, or orally at an appropriate public meeting, that the appearance of impropriety will not impact the covered person's ability to participate in the matter fairly and impartially.

1.3.110: CONFLICTS OF INTEREST – EXCEPTION

It shall not be a conflict of interest for a covered person to take direct official action on the annual City budget or annual appropriations ordinance, or Utilities annual budget or annual appropriations ordinance, even if the person or an immediate family member would receive benefit thereunder.

1.3.111: ETHICS EDUCATION:

Ethics education using this ~~Ethics Code of Ethics and other ethics training~~ shall be given annually to every covered person. The current gift limit set forth in § 1.3.105(B)(2) shall be included in the annual ethics training.

1.3.112: FURTHER ETHICS RULES AND REGULATIONS:

Nothing in this Code of Ethics shall prohibit the Mayor, City Attorney, City Auditor, City Clerk, Utilities Chief Executive Officer, or ~~MHS Enterprise Board of Trustees or Chief Executive Officer~~, or Presiding Judge of the Municipal Court from enacting further ethics rules and regulations pertaining to those who report to them that may be as strict or more strict than this Code of Ethics.

1.3.113: NO PRIVATE RIGHT OF ACTION:

Nothing in this Code of Ethics is intended to, or does, create a private right of action against the City of Colorado Springs or against any covered person based upon noncompliance with its provisions. Authority to enforce compliance with this Code of Ethics is vested exclusively in the City pursuant to the provisions of the Code.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2016.

Finally passed: _____
Merv Bennett, Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

DRAFT

ORIGINAL ETHICS CODE

1.3.101

1.3.102

CHAPTER 1 ADMINISTRATION, PERSONNEL AND FINANCE

ARTICLE 3 CODE OF ETHICS¹

SECTION:

- 1.3.101: Legislative Purpose
- 1.3.102: Definitions
- 1.3.103: Independent Ethics Commission
- 1.3.104: Gifts
- 1.3.105: Lobbying Activities
- 1.3.106: Conflicts Of Interest
- 1.3.107: Ethics Education
- 1.3.108: Further Ethics Rules And Regulations

1.3.101: LEGISLATIVE PURPOSE:

- A. There is hereby adopted by the City Council "The City of Colorado Springs² Code of Ethics" which shall apply to the Mayor and Council Members, all their appointed boards, committees and commissions, the Utilities Chief Executive Officer, Memorial Health System Chief Executive Officer, City Attorney, City Clerk, City Auditor, Municipal Court Judges, department, division, office and agency heads appointed by the Mayor and all employees of the City's municipal government and its enterprises, including Colorado Springs Utilities and Memorial Health System.
- B. The City of Colorado Springs shall conduct its businesses, operations and services in accord with the law and the highest standards of business practices and ethics. The City of Colorado Springs is committed to complete honesty, utmost integrity, fair dealing and ethical behavior as the basis of its businesses, operations and services to the community.
- C. Public service and public employment is a public trust. The Mayor and Council Members, all their appointed boards, committees and commissions, the Utilities Chief Executive Officer, Memorial Health System Chief Executive Officer, City Attorney, City Clerk, City Auditor, Municipal Court Judges, department, division, office and agency heads appointed by the Mayor and all employees of the City's municipal government and its enterprises, including Colorado Springs

Utilities and Memorial Health System should employ independent objective judgment in performing their duties and should assure that businesses, operations and services are conducted openly to safeguard public confidence in the integrity of the City by avoiding any conduct creating the appearance of impropriety.

- D. The City of Colorado Springs, through its municipal government and all its enterprises including Colorado Springs Utilities and Memorial Health System, exists for the purpose of serving the community through its businesses, operations and services.

- E. The City of Colorado Springs Code of Ethics is hereby deemed to be a matter of City Council's exclusive home rule authority and supersedes any other applicable Colorado statutes. Moreover, this Code of Ethics is in compliance with, and therefore supersedes by its own terms, Colorado Constitution, article XXIX, "Ethics In Government". (Ord. 11-18)

- 1.3.102: **DEFINITIONS:** The following definitions are applicable to the City Code of Ethics:

ADMINISTRATIVE OFFICERS³: All heads of departments appointed by the Mayor.

APPOINTEES: Are "administrative officers"³ and shall mean and include all persons appointed by the Mayor and/or members of City Council pursuant to the City Charter and this City Code, to include the City Attorney, City Auditor, City Clerk, Municipal Court Judges and Utilities Chief Executive Officer and all members of boards, committees and commissions appointed by the Mayor and/or City Council. For purposes of this Code, the term "appointee" shall also include the Memorial Health System Chief Executive Officer.

CITY: The municipal government and all its enterprises as defined by the Colorado Constitution, article X, section 20 and City Charter article VII, section 7-90, including, but not limited to, Colorado Springs Utilities and Memorial Health System. The City's municipal government and the municipal enterprises are subject

1. Prior ordinance history: Ord. 94-160; Ord. 98-185; Ord. 01-42; Ord. 07-59; Ord. 10-30.

2. The "City" is the sole legal entity pursuant to City Charter, article I, sections 1-10, 1-20, and owns all its enterprises as defined by Colorado Constitution, art. X, §20 and City Charter, article VII, section 7-90.

3. See City Charter, article XIII, section 13-10.

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to the management and control of the Mayor. The City's Colorado Springs Utilities enterprise is subject to the management and control of City Council's appointed Chief Executive Officer. The City's Memorial Health System enterprise is subject to the general supervision and control of City Council and is subject to the daily management and control of City Council's appointed Board of Trustees, who appoints a Chief Executive Officer.

COVERED PERSONS: Elected officials, appointees, administrative officers, employees, independent contractors and volunteers in connection with their work for the City.

DIRECT OFFICIAL ACTION: Any action that involves:

- A. Negotiating, approving, disapproving, administering, enforcing or recommending for or against a contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use or any other matter to which the City is a party. "Recommending" shall mean someone in the formal line of decision making for the matter.
- B. Enforcing laws or regulations or issuing, enforcing or regulating permits and licenses.
- C. Appointing and terminating employees, temporary workers, volunteers and independent contractors as defined by the Internal Revenue Code.
- D. Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are conducted in connection with that person's job performance.
- E. "Direct official action" does not include acts that are purely ministerial. It also does not include signatures by the Mayor, City Council, City Auditor, City Attorney, City Clerk, Utilities Chief Executive Officer or Memorial Health System Chief Executive Officer unless these individuals initiate the contract or are involved in the selection of the contractor or the negotiation or administration of the contract. A person who abstains from a vote is not exercising direct official action.

ELECTED OFFICIALS: The Mayor and Council Members.

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EMPLOYEE: Any person in the employ of the City or any of its enterprises, agencies, departments, or organizations.

GIFT: A payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given, to include food, lodging, transportation, golf or other recreation or entertainment, and reimbursement for other than necessary expenses for official business on behalf of the City, unless consideration of equal or greater value is received.

IMMEDIATE FAMILY: The employee's spouse and his or her dependents.

INDEPENDENT CONTRACTORS: Those persons as defined by the Internal Revenue Code in their work for the City.

VOLUNTEERS: Those persons who contribute their services to the City without compensation. (Ord. 11-18)

1.3.103: **INDEPENDENT ETHICS COMMISSION:**

- A. **Creation And Purpose:** There is hereby created an Independent Ethics Commission. The purpose of this Commission shall be to render recommendations and advisory opinions on ethical issues.
- B. **Members:** City Council shall appoint five (5) members to the Independent Ethics Commission to serve staggered terms, who shall have expertise in ethical matters, acquired through education or experience. An alternate may be appointed pursuant to this City Code. Each member of the initial Independent Ethics Commission shall serve at least one term and those initial terms shall be one, two (2) and three (3) years.
- C. **Term Of Appointment:** The term of a Commission member following the initial terms shall be three (3) years.
- D. **Compensation:** Members of the Independent Ethics Commission shall be "volunteers" as defined by this Code and serve without compensation. Members may be reimbursed for reasonable expenses.
- E. **At Will:** Each member of the Independent Ethics Commission shall serve at the pleasure of City Council and shall be subject to City Charter,

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particularly City Charter subsection 3-60(d) and section 9-10, this City Code and the rules and procedures of City Council.

- F. **Majority Vote:** The Independent Ethics Commission shall make recommendations based upon a majority vote.
- G. **City Attorney:** The City Attorney, or a designee of the City Attorney, shall be the chief liaison and legal advisor to the Independent Ethics Commission, but shall have no vote.
- H. **Disqualification:** Any member of the Independent Ethics Commission shall disqualify himself or herself from participating in any matter before the Commission in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where he or she has a personal bias or prejudice concerning a party or personal knowledge of or involvement in disputed evidentiary facts concerning the matter. In that case, the alternate may sit in place of the disqualified member.
- I. **Subpoena And Recommendations:** The Independent Ethics Commission shall have the power to subpoena documents and witnesses. The determination of a recommendation by the Independent Ethics Commission shall be made based upon the preponderance of evidence before it.
- J. **Rules Of Procedure:** The Independent Ethics Commission shall promulgate its own rules of procedure to be approved by City Council.
- K. **Complaints; Inquiries:** Any person may file a written complaint or an inquiry for consideration by the Independent Ethics Commission through the City Attorney regarding a matter involving an elected official, an appointee including members of boards, committees and commissions appointed by City Council, the President of Council or the Mayor, or an independent contractor. Any written complaint or inquiry shall be filed confidentially and processed in accord with the Independent Ethics Commission Rules of Procedure. The written complaint or inquiry may only be considered for matters occurring within the last twelve (12) months. Any person may file a written complaint or inquiry for consideration directly with the Mayor, Utilities Chief Executive Officer, Memorial Health System Chief Executive Officer, City Attorney, City Auditor, City Clerk or Presiding Municipal Judge for covered persons within those organizations or for covered per-

sons who work for the City in a volunteer capacity, not including members of boards, committees and commissions appointed by City Council or the Mayor.

- L. **Frivolous Complaints; Inquiries:** The Independent Ethics Commission may dismiss frivolous complaints or inquiries without further action. A record of dismissal as deemed frivolous shall be maintained as confidential by the Independent Ethics Commission.
- M. **Nonfrivolous, Formal Complaints; Inquiries:** The Independent Ethics Commission shall take such steps as necessary pursuant to its rules to investigate nonfrivolous, formal complaints. Within ten (10) days of the conclusion of its investigation and deliberations, the Commission shall issue a confidential written recommendation to City Council containing findings of fact and conclusions of law.
- N. **Penalty:** Any individual who is found to have breached the public trust and has been found to have done so for private gain, and any person or entity inducing such breach, shall be liable to the City for double the amount of financial equivalent of any benefits obtained by such actions. The manner of recovery and any additional penalties may be as provided by law.
- O. **Final Action:** Any decision of the City Council made upon confidential written recommendation of the Independent Ethics Commission may be deemed to be a final action, subject to any appeal to a court with proper jurisdiction. (Ord. 11-18)

1.3.104: GIFTS:

- A. **Hospitality And Gifts:** No covered person shall solicit for, accept or give any gift or thing of value related solely to the covered person's duties and responsibilities on behalf of the City.
- B. **Exceptions:** Providing that a gift could not be considered a bribe or a means of improper influence on a direct official action, no violation of this Code of Ethics shall be found to apply to the following:
 1. A campaign contribution as defined by law.
 2. An unsolicited item or items of value less than fifty dollars (\$50.00) per vendor or third party

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per year (adjusted for inflation using the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder-Greeley).

a. The item or items shall not be cash or cash equivalent such as gift cards, checks or money orders.

b. The cost of the gift is the retail value of the item unless the receiver has knowledge that the giver paid more than the retail value, in which case the cost is the amount actually paid.

c. For a charity event, the cost of the event is the fair market value of the activity received as opposed to the full amount of the ticket.

d. It is not permissible to pay part of the cost of a gift that is offered with a value exceeding fifty dollars (\$50.00) (as adjusted) to reduce the value to less than fifty dollars (\$50.00) (as adjusted) and then accept the gift.

3. An unsolicited token or award of appreciation that is reasonable in value and purpose, such as plaques and professional awards.

4. A component of compensation paid or other recognition given in the normal course of employment, appointment or volunteer services or business.

5. Any scholarship or grant or other financial aid for education given to any covered person or immediate family member for any reason so long as the award is not based upon the influence of the covered person.

6. Any charity event benefiting the City and any of its affiliated organizations.

7. Any gift solicitation for a charitable purpose as determined appropriate by the City or its affiliated organization.

8. Any gift, whether solicited or not, to benefit a public safety or community purpose. However, covered persons must not solicit or receive gifts that will directly or indirectly benefit themselves.

9. Any gift provided as a result of the recipient's outside business or employment activities that do not pertain to the City.

1.3.105

10. Awards or prizes given at competitions or drawings at events open to the public, so long as there is not an appearance of impropriety.

11. Reasonable cost and frequency of vendor sponsored or other professional educational conferences, seminars or meetings, so long as the conferences, seminars or meetings are documented.

12. Reasonable cost and frequency of City sponsored educational events, so long as the events are documented.

13. Reasonable cost and frequency of business meals for covered persons, so long as the meals are documented.

14. Perishable or consumable gifts given to a City department or group.

15. Gifts accepted in a covered person's official capacity that will become property of the City.

16. For elected officials, reasonable cost and frequency of meals and event tickets pertaining to their official duties as Mayor or members of Council so long as the gift is documented and is not intended, and does not affect, a direct official action.

17. Any exemption granted or exception recognized pursuant to Federal or State law.

18. Any other exceptions as may be approved by the City Council.

C. Inappropriate Hospitality And Gifts: Inappropriate hospitality or gifts involves offering or receiving accommodations, tours, event tickets, recreation, entertainment, meals or other similar personal benefits when a personal or financial relationship exists that could influence or be perceived to influence objectivity when interacting with, representing, or conducting business for or on behalf of the City. (Ord. 11-18)

1.3.105: **LOBBYING ACTIVITIES:** Any covered person who performs lobbying services for the City, and any paid lobbyist who acts on behalf of the City shall abide by all applicable State and Federal laws. (Ord. 11-18)

ORIGINAL ETHICS CODE

1.3.106

1.3.108

1.3.106: **CONFLICTS OF INTEREST:** Every covered person owes a duty of loyalty to the City. A conflict of interest exists when there is any personal or financial relationship that could influence or be perceived to influence the representation or conduct of business for, or on behalf of, the City. A conflict of interest also exists when any improper and undue influence can be exercised, or be perceived to be exercised, concerning a direct action involving the City. A conflict of interest may exist when there is an appearance of impropriety. No conflict of interest is allowed.

- A. No covered person shall hold financial interests that conflict with the conscientious performance of duty.
- B. No covered person shall engage in business activities including financial transactions using nonpublic government or enterprise private information, or allow the improper use of that information to further any private interest or gain.
- C. No covered person shall knowingly make unauthorized commitments or promises of any kind purporting to bind the City.
- D. No covered person shall give preferential treatment to any private organization or individual.
- E. No covered person shall directly or indirectly participate in any matter involving the City where they or a member of their family has a direct or indirect substantial financial interest. If a direct or indirect substantial financial interest exists, the covered person shall make known that interest to the appropriate persons and shall refrain from participating in the matter as it is dealt with by the City.
- F. No covered person shall engage in outside employment or activities, including seeking or negotiating for employment that conflicts with their official duties and responsibilities.
- G. No covered person shall tolerate waste, fraud, abuse and corruption in government or any of its businesses, operations or services.
- H. No covered person shall engage in any actions that may create, or do create, the appearance that they are violating the law or ethical standards.

- I. No covered persons shall engage in any activity that may create, or does create, the appearance of impropriety. (Ord. 11-18)

1.3.107: **ETHICS EDUCATION:** Ethics education using this Ethics Code and other ethics training shall be given annually to every covered person. (Ord. 11-18)

1.3.108: **FURTHER ETHICS RULES AND REGULATIONS:** Nothing in this Code of Ethics shall prohibit the Mayor, City Attorney, City Auditor, City Clerk, Utilities Chief Executive Officer or Memorial Health System Board of Trustees or Chief Executive Officer, or Presiding Judge of the Municipal Court from enacting further ethics rules and regulations pertaining to those who report to them that may be as strict or more strict than this Code of Ethics. (Ord. 11-18)

ORIGINAL ETHICS CODE

[The following text is extremely faint and illegible due to the quality of the scan. It appears to be a list of ethical principles or a code of conduct.]



RESOLUTION NO. 41-13

A RESOLUTION APPROVING THE PAYMENT OF LEGAL EXPENSES FOR ETHICS COMPLAINTS UNDER THE CITY CODE OF ETHICS.

WHEREAS, City Council adopted the Code of Ethics by Ordinance No. 07-59 on April 10, 2007, creating the Independent Ethics Commission for the purpose of rendering recommendations and advisory opinions on ethical issues; and

WHEREAS, the Independent Ethics Commission has jurisdiction to investigate complaints and make recommendations to City Council regarding ethics complaints involving an elected official, an appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, or an independent contractor; and

WHEREAS, City Council has determined that elected officials, appointees including members of boards, committees, and commissions appointed by City Council, the President of Council and the Mayor should be represented by legal counsel at the City's expense subject to a full reservation of the City's right to reimbursement for all legal expenses if the subject is found to have committed a violation of the City's Code of Ethics.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Any elected official, appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, who is the subject to an investigation as a result of a complaint(s) brought before the Independent Ethics Commission pursuant to the City Code of Ethics § 1.3.101 et seq., upon the Independent Ethics Commission's finding that it has jurisdiction over the complaint(s) and that the complaint(s) is non-frivolous, is entitled to independent legal representation of their choice at the City's expense, subject to the limitations herein. The amount of legal expenses paid for by the City shall not exceed ten thousand dollars (\$10,000.00) per investigation unless good cause is shown to exceed this limit. City Council shall have sole discretion to determine whether good cause exists to extend the payment of legal expenses beyond the ten thousand dollar (\$10,000.00) limit. No decision with regard to legal expenses may be appealed or challenged.

Section 2. The term "legal expenses" shall include attorney fees, witness fees, stenographer fees, investigator fees, and other direct costs in connection with defending the individual against an ethics complaint.

Section 3. Requests for payment of legal expenses shall be submitted to the City and, once verified, paid within ten (10) days, subject to the monetary limitations of Section 1.

Section 4. Before the City shall pay any such legal expenses, the subject party shall acknowledge in writing the City's full reservation of right to reimbursement for all legal expenses if the subject is found to have committed a violation of the City's Code of Ethics.

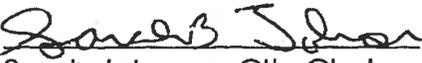
Section 5. Within thirty (30) days of the expiration of exhaustion of all rights to appeal any final decision by City Council concerning the ethics complaint, a subject party found to have committed a violation of the City's Code of Ethics shall be required to reimburse the City for all legal expenses paid by the City for the subject's defense.

DATED at Colorado Springs, Colorado this 9th day of April, 2013.



Scott Hente, Council President

ATTEST:



Sarah Johnson, City Clerk

RESOLUTION NO. 58-13

**A RESOLUTION APPROVING THE PROCEDURES FOR
INVESTIGATION AND HEARING OF ETHICS COMPLAINTS
UNDER THE CITY CODE OF ETHICS**

WHEREAS, City Council adopted the Code of Ethics by Ordinance No. 07-59 on April 10, 2007, creating the Independent Ethics Commission for the purpose of rendering recommendations and advisory opinions on ethical issues;

WHEREAS, the Independent Ethics Commission has jurisdiction to investigate and make recommendations to City Council regarding ethics complaints involving an elected official, an appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, or an independent contractor; and

WHEREAS, City Council has determined that additional guidelines are needed concerning the investigatory role of the Independent Ethics Commission and City Council's practices and procedures upon receipt of recommendations for ethics charges from the Independent Ethics Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The Independent Ethics Commission ("IEC") should investigate any non-frivolous complaint over which it has jurisdiction in the manner the IEC determines is most thorough and efficient. The party accused in the complaint, however, must be given the opportunity to review any relevant documents considered by the IEC during its investigation and an opportunity to present, in the manner directed by the IEC, his or her position regarding the complaint to one or more IEC members of the IEC's election prior to the IEC issuing recommendations of appropriate charges to City Council.

Section 2. At the conclusion of its investigation, the IEC shall forward to City Council its recommendations of ethics charges, if any, the IEC determines are supported by a preponderance of the evidence.

Section 3. Upon receipt of the IEC's recommendations of appropriate ethics charges, City Council may, by majority vote, pursuant to City Council's rules:

- A. Issue any formal ethics charges City Council determines, in its independent judgment, are appropriate;
- B. Dismiss all or any part of the complaint due to insufficient evidence to proceed to formal charges if, in the opinion of City Council, a preponderance of the evidence does not support the ethics charges proposed by the IEC;
- C. Dismiss all or any part of the complaint because there is no substantial likelihood of success on the merits if, in the opinion of City Council, a preponderance of the evidence exists to justify formal charges but there is no substantial likelihood that the burden of clear and convincing evidence could be met through an adversarial hearing;
- D. Dismiss after referring the matter for action by law enforcement, regulatory, or other authorities with jurisdiction over the matter;
- E. Dismiss all or any part of the complaint in the interest of justice if, in the opinion of City Council, justice so requires, including if proceeding with the matter would be contrary to the interest of the City or the citizens; or
- F. Dismiss all or any part of the complaint due to mootness if, in the opinion of City Council, the matter is moot because the accused party is no longer an appointee or elected official.

Section 4. If City Council elects to issue any formal ethics charges based on the recommendations of the IEC, City Council will notify the accused party of such formal ethics charges in writing within five (5) business days after the decision is made. The accused party shall be given ten (10) business days to respond in writing submitted to the City Attorney and the President of City Council, either admitting the violations or requesting an evidentiary hearing. The City Council will consider the accused party's failure to respond within ten (10) business days to be an admission and will then move to impose sanctions.

Section 5. If the accused party requests an evidentiary hearing in writing within ten (10) business days, City Council will elect, in its sole discretion, to either serve as the hearing body or appoint a hearing officer to conduct the proceedings. The accused party and the complainant shall also be notified of the date and time of the hearing.

- A. Minimum hearing procedures. Either Council or the hearing officer will oversee the proceedings and adopt rules and procedures to ensure appropriate due process is afforded the accused party but, at a minimum, each side shall be afforded the opportunity to call and cross examine witnesses; make opening statements and closing arguments; the evidentiary burden shall be clear and convincing; and the hearing shall be conducted publically.
- B. Hearing Officer Option. Any hearing officer selected by City Council shall be a licensed attorney. The hearing officer will render an Initial Decision which will be submitted to City Council for approval, denial, or modification. The parties will be permitted to file written objections to the Initial Decision for City

Council consideration. City Council's affirmation, rejection, or modification of the findings in the Initial Decision will be the final agency action.

C. City Council Option. If City Council elects to conduct the evidentiary hearing, it will sit as a quasi-judicial body. At the conclusion of the proceeding, City Council shall issue written findings which will be a final agency action.

D. The City Council's designated legal advisor shall advise the Council during the proceedings. A member of the Prosecution Division of the City Attorneys' Office will prosecute the charges.

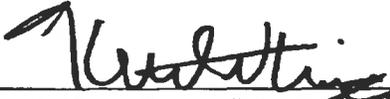
Section 6. If City Council finds that a violation of the City's Code of Ethics has occurred, whether pursuant to an admission or at the conclusion of a full evidentiary hearing, City Council shall then proceed to impose any of the following sanctions:

A. Monetary Fine: A monetary fine is appropriate per the City's Code of Ethics if the individual who committed an ethics violation financially benefitted from their actions. Such penalty shall be double the amount of financial equivalent of any benefits obtained by such actions. The manner of recovery and any additional penalties may be as provided by law. *City Code §1.3.101 et seq.*

B. Censure: Censure is a formal, official reprimand by City Council of one of its members. Such penalty carries no fine or suspension of the rights of the member as an elected official. *City Charter, Article III, § 50.*

C. Removal: Removal is available for City Council appointees and member of boards, committees and commissions appointed by City Council. *City Charter, Article IX, § 10(a).* If the violator is a Mayoral appointee, City Council may make a recommendation to the Mayor that the appointee be removed.

DATED at Colorado Springs, Colorado this 28th day of May, 2013.


Keith King, Council President

ATTEST:


Sarah Johnson, City Clerk



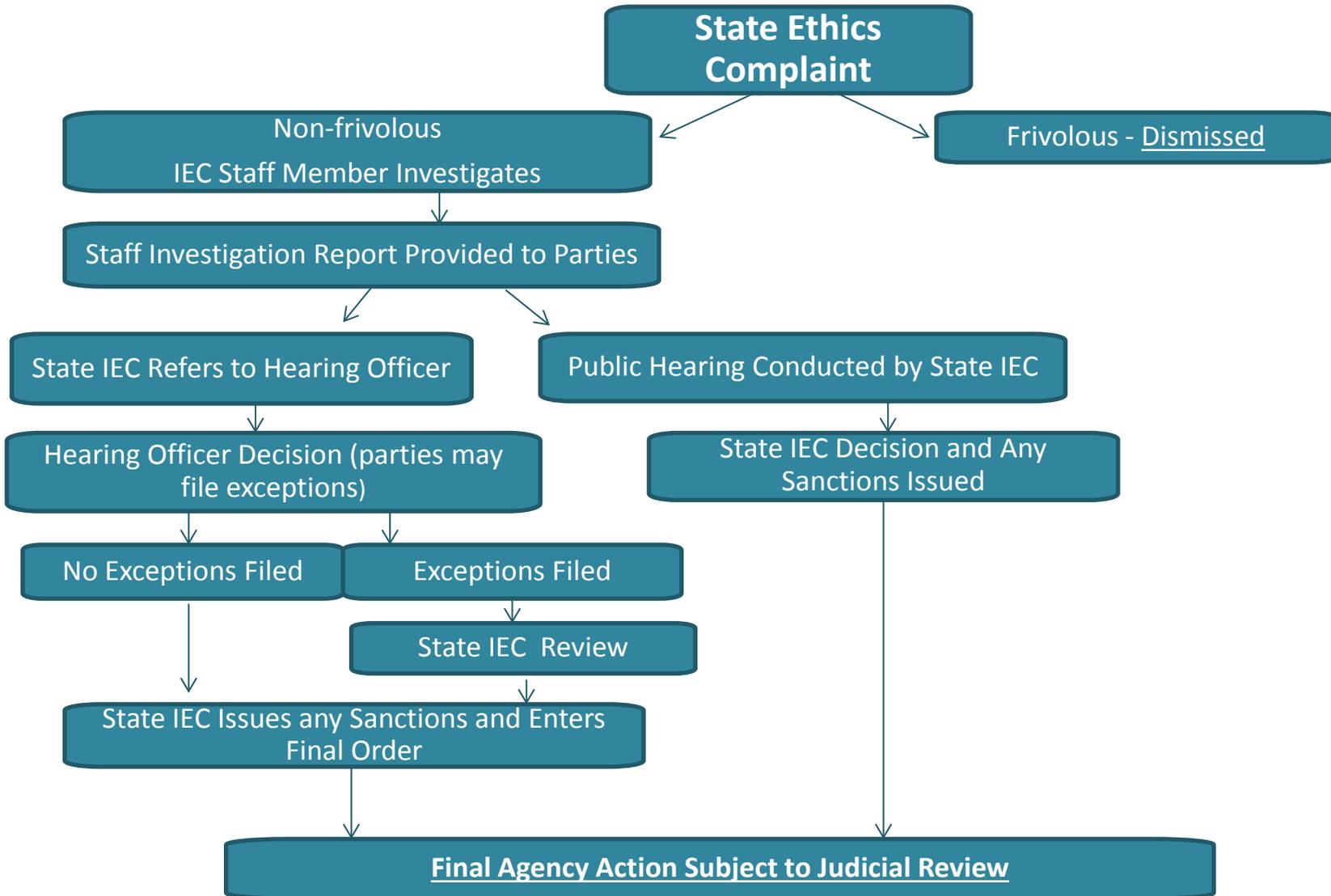
Proposed Amendments to the City Code of Ethics

City Council Work Session
July 11, 2016

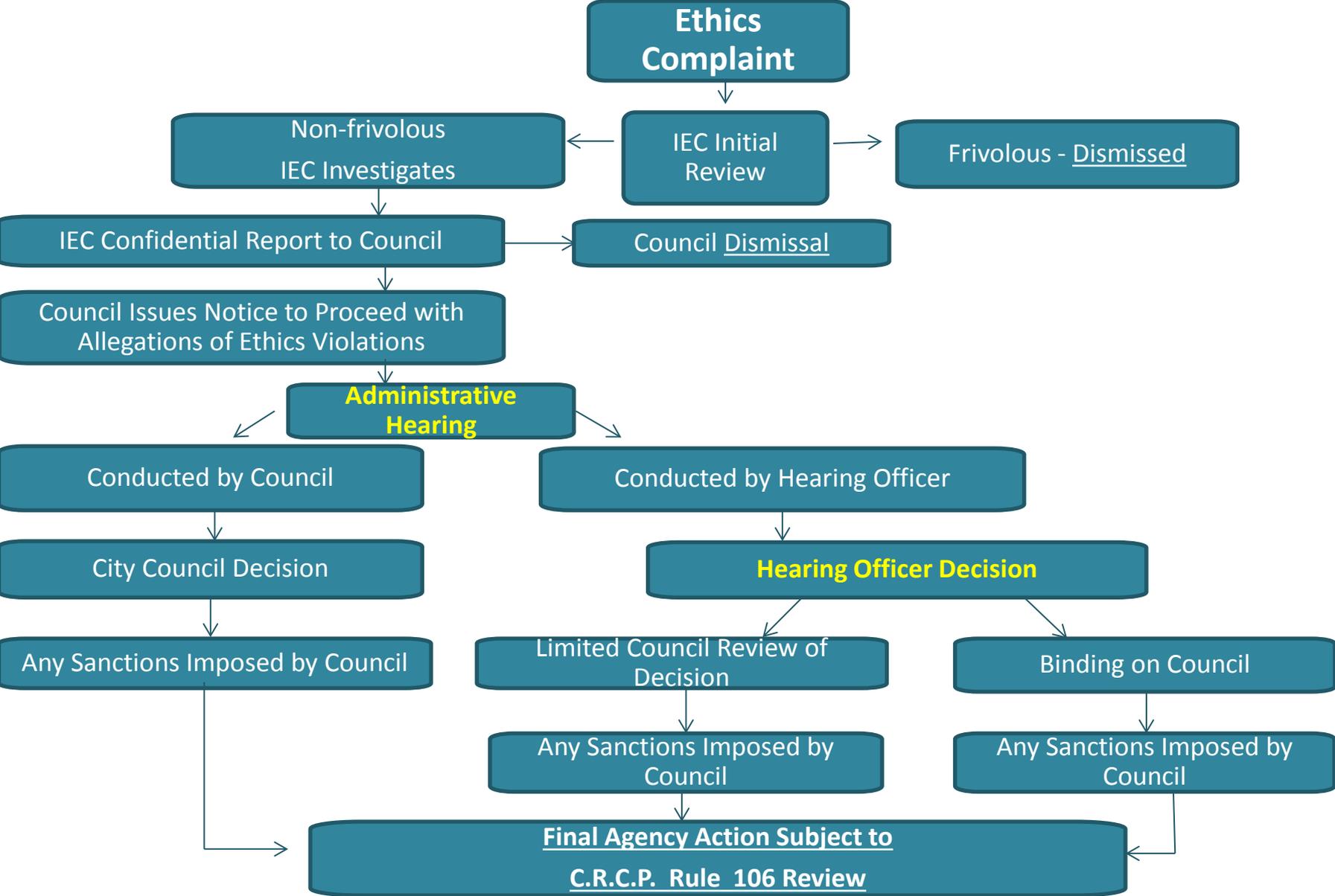
Introduction

- Overview of Code of Ethics revision process.
- Goals of July 11th Work Session:
 - Draft of revisions.
 - Council direction on open issues.
- Plan for adoption of Code of Ethics revisions.

State of Colorado Independent Ethics Commission Complaint Process



City of Colorado Springs Code of Ethics Complaint Process Options



Issue #1: Council's Options Following IEC Recommendation – Current

- Issue ethics charges.
- Dismiss for insufficient evidence.
- Dismiss because no substantial likelihood of success at hearing.
- Dismiss and refer to another agency.
- Dismiss in the interests of justice.
- Dismiss as moot because accused no longer a covered person.

(Res. No. 58–13, § 3)

Issue #1: Council's Options Following IEC Recommendation – Proposed

- Issue notice to proceed with allegations of ethics violations.
- Dismiss for insufficient evidence.
- Dismiss because no substantial likelihood of success at hearing.
- Stay/dismiss and refer to another agency.
- Dismiss in the interests of justice.
- Dismiss because violation was an oversight or later voluntary compliance.
(Draft Ord. §1.3.104(A))

Issue # 1: Council's Options Following IEC Recommendation – Open Issues

- Stay or dismiss and refer to another agency.
- Dismiss in the interests of justice.
- Dismiss because violation was an oversight or later voluntary compliance.

(Draft Ord. § 1.3.104(A))

Issue # 2: Role of Council After Ethics Investigation – Current Process

- Commission issues recommendation to Council (City Code § 1.3.104(M)).
- Council may dismiss the complaint or issues ethics charges (Res. No. 58–13, § 3).
- If Council issues ethics charges and the accused requests a hearing, Council votes to hear the matter or refer it to a Hearing Officer (Res. No. 58–13, § 5).

Issue # 2: Role of Council After Ethics Investigation – Current Process

- If Council chooses to hear the matter:
 - Council conducts hearing, renders decision, and imposes sanctions (if any) (Res. No. 58–13, §§ 5, 6).
 - Council decision is final agency action (City Code § 1.3.104(O)).

Issue # 2: Role of Council After Ethics Investigation – Current Process

➤ If Council votes to appoint Hearing Officer:

- Hearing Officer conducts hearing, renders decision, and recommends sanctions (if any) (Res. No. 58–13, § 5).
- Council reviews decision, votes on final decision, and imposes sanctions (if any) (Res. No. 58–13, § 5).
- Council decision is final agency action (City Code § 1.3.104(O)).

Issue # 2: Role of Council After Ethics Investigation – Options

- Do not change current process.
- All hearings conducted by a Hearing Officer:
 - Hearing Officer decision binding on Council; OR
 - Council conducts limited review of Hearing Officer decision (no competent evidence to support the findings).

Issue # 2: Role of Council After Ethics Investigation – Options

- Keep current process but allow accused to choose Council/Hearing Officer:
 - Hearing Officer chosen:
 - Hearing Officer decision is binding on Council, OR
 - Council conducts limited review of Hearing Officer decision.
- Under all scenarios, Council retains current authority over sanctions.

(Draft Ord. § 1.3.104(C))

Issue # 3: Sanctions – Current Options

- Monetary fine: limited to double the amount of financial benefit to the individual.
- Censure: City Councilmembers only.
- Removal: Council appointees, boards and commissions only; may recommend removal of Mayoral appointees.

(Res. No. 58-13, § 6)

Issue # 3: Sanctions – Proposed Options

- Oral or written reprimand.
- Monetary fine: limited to double the amount of financial benefit to the individual or immediate family member.
- Censure: City Councilmembers only.
- Suspension/Removal: Council appointees, boards/commissions only; may recommend removal of Mayoral appointees.

(Draft Ord. § 1.3.104(D))

Issue # 3: Sanctions – Open Issue

- Monetary fine: limited to double the amount of financial benefit to the individual or immediate family member.
 - Should Council have the option to impose a monetary fine even if there is no financial benefit?

(Draft Ord. § 1.3.104(D)(2))

Issue # 4: Exceptions to Gift Prohibition– New Proposed Exception

- A non-pecuniary award of reasonable value and frequency publicly presented by an IRC 501(c)(3) organization in recognition of public service.

(Draft Ord. § 1.3.105(B)(17))

Issue # 4: Exceptions to Gift Prohibition – Current

- Reasonable cost and frequency of vendor sponsored or other professional educational conferences, seminars, or meetings, so long as the conferences, seminars, or meetings are documented.

(City Code § 1.3.104(B)(11))

Issue # 4: Exceptions to Gift Prohibition – Proposed

Reasonable cost (e.g., fees, meals, lodging, and/or transportation) and frequency of conferences, seminars, events, or meetings, so long as the conferences, seminars, events, or meetings are documented and:

- a. The person is scheduled to deliver a speech, participate in a presentation, participate on a panel, or receive an award;
- b. The cost of the conference, seminar, event, or meeting is paid pursuant to a vendor agreement or contract; or
- c. The cost of the conference, seminar, event, or meeting is paid by a governmental entity or a IRC 501(c)(3) organization. (Draft Ord. § 1.3.104(B)(10))

Issue # 4: Exceptions to Gift Prohibition – Open Issue

Proposed gift exceptions:

1. Non-profits only (includes IRC 501(c)(4));
2. IRC 501(c)(3) only; OR
3. All organizations (includes private entities).

Thank You!