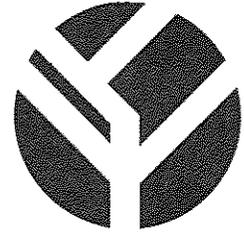


MEMORANDUM



To: Laurette Barrentine, Council Member
Mayor Jefferson
City Council
City Manager's Office

From: Dugan Comer, Acting City Attorney

Re: Council Short Term No. 16-021 – Planning & Zoning/EURA Membership

Date: January 19, 2016

There has been a question put forth whether there exists a conflict of interest for a resident to be appointed to both the Planning & Zoning Commission and the Englewood Urban Renewal Authority.

The Planning & Zoning Commission is created by Part II, Section 56 of the Englewood Charter. The establishment language for the Planning & Zoning Commission as to appointments reads as follows:

The Council shall establish by ordinance a City Planning and Zoning Commission consisting of nine (9) members appointed by Council, who shall be citizens-at-large with overlapping four (4) year terms. The City Manager shall appoint an ex officio nonvoting member of the Commission. Members shall be qualified electors, residents of the City at least one (1) year immediately prior to the day of their appointment, and shall hold no paid office or position in the City Administration. The recording secretary shall sign any documents or communications from the Board, "by order of the City Planning and Zoning Commission".

The conflict of interest issue is also addressed in section six (6) of the Commissions bylaws:

In case of conflict of interest between a Commission member and any business under consideration by the Commission, the Commissioner shall notify the Commission as soon as such conflict becomes apparent. If, in the opinion of the Commission, a conflict does exist, the member should disqualify herself or himself from voting on the matter.

In 1972 the Englewood Urban Renewal Authority was created by Resolution number 49, pursuant to section 31-25-104 of the Colorado Revised Statutes. The Authority consists of seven members that are appointed by the Mayor, and traditionally subject to approval by Council. The Mayor's authority to appoint the commissioners arises from the statute.

As with the Planning and Zoning Commission the Englewood Urban Renewal Authority has a set of bylaws, with Section 8 of those bylaws addressing the issue of conflicts of interest, and states as follows:

No Commissioner, other officer, or employee of an Authority nor any immediate member of the family of such commissioner, officer, or employee shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner, other officer, or employee of an Authority owns or controls an interest, direct or indirect, in property included or planned to be included in any project, he shall immediately disclose the same in writing to the Authority and such disclosure shall be entered upon the minutes of the Authority. Upon such disclosure, such commissioner, officer, or other employee shall not participate in any action by the Authority affecting the carrying out of the project planning or the undertaking of the project unless the Authority determines that, in the light of such personal interest, the participation of such member in any such act would not be contrary to the public interest. Acquisition or retention of any such interest without such determination by the Authority that is not contrary to the public interest or willful failure to disclose any such interest constitutes misconduct in office. (See also, §31-25-104(3) C.R.S.)

Neither the enabling language of the Charter for the Planning and Zoning Commission, nor the enabling language of the Colorado Revised Statutes creating the Englewood Urban Renewal Authority, prohibits a citizen from serving simultaneously on each of the respective Boards. In reviewing both the Englewood Municipal Code and Colorado Statutes, again there is no prohibition of a citizen sitting on both the Planning and Zoning Commission and the Englewood Urban Renewal Authority.

Both sets of bylaws, as outlined above, require a member who may have a conflict of interest in a matter appearing before the Commission or Authority, to reveal the conflict, and to abstain from any action that may be taken by the Commission or Authority, including casting any votes on the matter.

Attachments

PLANNING COMMISSION BYLAWS

Meetings:

1. The Planning Commission shall choose its own Chairperson and Vice-Chairperson from the membership for a term of one year, with the provision for one consecutive re-election. The Commission shall operate in accordance with the Robert's Rules of Order.
2. Five members of the Commission shall constitute a quorum.
3. The regular meeting of the Commission shall be held on the Tuesday following the first and third Monday of each month, and such meeting shall commence at 7:00 p.m. If the regular meeting of the Planning Commission should fall on a legal holiday, the Commission shall set another date for such meeting. All members of the Commission shall be notified, either by telephone or in writing, of the time and date of said meeting, and notice shall be given in the official newspaper of the City of Englewood in time for at least one publication of such change in date.
4. Special meetings may be called by the Commission or by a majority of the members of the Commission. All members shall be notified by telephone or in writing of any such special meetings.
5. Each Commission member shall be obligated to attend each regularly scheduled and special meeting of the Commission in order to assure the efficient operation of the Commission. If for any reason, a member knows he will not be able to attend a meeting, he will notify the Department of Neighborhood & Business Development in advance.
6. In case of a conflict of interest between a Commission member and any business under consideration by the Commission, the Commissioner shall notify the Commission as soon as such conflict becomes apparent. If, in the opinion of the Commission, a conflict does exist, the member should disqualify herself or himself from voting on the matter.
7. Where any Charter provision, statute, ordinance, or other law requires a Hearing before the Planning and Zoning Commission, voting on such matter shall only be by those members present at the Hearing or examining verbatim the record of the Hearing.
8. When a meeting has been set to consider a request which involves property at a specific location, the members shall make an effort to view the location prior to the specified meeting. The Commission members shall also be thoroughly familiar with any special materials, maps, or reports they may have received prior to the meeting.

for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Commissioners present.

Section 5. Attendance of Members. It is the policy of the Englewood Urban Renewal Authority that absence from three consecutive meetings with prior notice, or two consecutive meetings without prior notice, is grounds for communication from the Authority to City Council.**

Members of the Authority shall attend at least 75% of the meetings on a yearly basis.**

The Recording Secretary shall announce, at the time of initial roll call, whether an absence is with prior notice, or without prior notice.**

Section 6. Order of Business. At the regular meetings of the Authority the following shall be the order of business.

1. Roll call.
2. Reading and approval of the minutes of the previous meeting.
3. New Business.
4. Old Business.
5. Reports of Committees.
6. Report of the Secretary/Director.
7. Commissioner's Choice.
8. Public Forum.
9. Adjournment.

All resolutions shall be reduced to writing and shall be copied in the official minute book or journal of the proceedings of the Authority.

Section 7. Manner of Voting. The voting on all questions coming before the Authority shall be roll call, and the ayes, nays, and abstentions shall be entered upon the minutes of each meeting, except on the election of officers, which may be by ballot. Every member of the Authority, when present, must vote, except he shall be excused from voting on matters involving the consideration of his own official conduct or when his personal or financial interest is involved. Any member of the Authority must state at the time of abstention the reason for abstention.

Section 8. Conflict of Interest. No Commissioner, other officer, or employee of an Authority nor any immediate member of the family of such commissioner, officer, or employee shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner, other officer, or employee of an Authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project, he shall immediately disclose the same in writing to the Authority and such disclosure shall be entered upon the minutes of the Authority. Upon such disclosure, such commissioner, officer, or other employee shall not participate in any action by the Authority affecting the carrying out of the project planning or the undertaking of the project unless the Authority determines that, in the light of such personal interest, the participation of such member in any such act would not be contrary to the

public interest. Acquisition or retention of any such interest without such determination by the Authority that it is not contrary to the public interest or willful failure to disclose any such interest constitutes misconduct in office.

ARTICLE IV - AMENDMENTS

Amendments to Bylaws. The bylaws of the Authority shall be amended only with the approval of at least four of the members of the Authority at a regular or a special meeting, but no such amendment shall be adopted until at least seven days written notice thereof has been previously given to all of the members of the Authority.

*Amendment approved 9/13/00

**Amendment approved 4/18/01

31-25-104. Urban renewal authority. (1) (a) Any twenty-five registered electors of the municipality may file a petition with the clerk, setting forth that there is a need for an authority to function in the municipality. Upon the filing of such a petition, the clerk shall give notice of the time, place, and purpose of a public hearing, at which the local governing body will determine the need for such an authority in the municipality. Such notice shall be given at the expense of the municipality by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the municipality or, if there is no such newspaper, by posting such a notice in at least three public places within the municipality at least ten days preceding the day on which the hearing is to be held.

(b) Upon the date fixed for said hearing held upon notice as provided in this section, a full opportunity to be heard shall be granted to all residents and taxpayers of the municipality and to all other interested persons. After such a hearing, if the governing body finds that one or more slum or blighted areas exist in the municipality, and finds that the acquisition, clearance, rehabilitation, conservation, development, or redevelopment, or a combination thereof of such area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality, and declares it to be in the public interest that the urban renewal authority for such municipality created by this part 1 exercise the powers provided in this part 1 to be exercised by such authority, the governing body shall adopt a resolution so finding and declaring and shall cause notice of such resolution to be given to the mayor, who shall thereupon appoint, as provided in paragraph (a) of subsection (2) of this section, commissioners to act as an authority. A certificate signed by such commissioners shall then be filed with the division of local government in the department of local affairs and there remain of record, setting forth that the governing body made the findings and declaration provided in this paragraph (b) after such hearing and that the mayor has appointed them as commissioners. Upon the filing of such certificate, the commissioners and their successors are constituted an urban renewal authority, which shall be a body corporate and politic. The boundaries of such authority shall be coterminous with those of the municipality.

(c) If the governing body, after a hearing, determines that the findings and declaration enumerated in paragraph (b) of this subsection (1) cannot be made, it shall adopt a resolution denying the petition. After six months have expired from the date of the denial of such petition, subsequent petitions may be filed and new hearings and determinations made thereon; except that there shall be at least six months between the time of filing of any subsequent petition and the denial of the last preceding petition.

(d) In any suit, action, or proceeding involving the validity or enforcement of any bond, contract, mortgage, trust indenture, or other agreement of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part 1 upon proof of the filing of said certificate. A copy of such certificate, duly certified by the director of the division of local government, shall be admissible in evidence in any such suit, action, or proceeding.

(2) (a) An authority shall consist of any odd number of commissioners which shall be not less than five nor more than eleven, each of whom shall be appointed by the mayor, who shall designate the chairman for the first year. Such appointments and designation shall be subject to approval by the governing body. Not more than one of the commissioners may be an official of the municipality. In the event that an official of the municipality is appointed as commissioner of an authority, acceptance or retention of such appointment shall not be deemed a forfeiture of his office, or incompatible therewith, or affect his tenure or compensation in any way. The term of office of a commissioner of an authority who is a municipal official shall not be affected or curtailed by the expiration of the term of his municipal office.

(b) The commissioners who are first appointed shall be designated by the mayor to serve for staggered terms so that the term of at least one commissioner will expire each year. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies other than by reason of expiration of terms shall be filled by the mayor for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the clerk a certificate of

the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(c) When the office of the first chairman of the authority becomes vacant and annually thereafter, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and it shall determine their qualifications, duties, and compensation. An authority may call upon the municipal counsel or chief legal officer of the municipality for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such duties as it deems proper.

(3) No commissioner, other officer, or employee of an authority nor any immediate member of the family of any such commissioner, officer, or employee shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner, other officer, or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner, officer, or other employee shall not participate in any action by the authority affecting the carrying out of the project planning or the undertaking of the project unless the authority determines that, in the light of such personal interest, the participation of such member in any such act would not be contrary to the public interest. Acquisition or retention of any such interest without such determination by the authority that it is not contrary to the public interest or willful failure to disclose any such interest constitutes misconduct in office.

(4) The mayor, with the consent of the governing body, may remove a commissioner for inefficiency or neglect of duty or misconduct in office but only after the commissioner has been given a copy of the charges made by the mayor against him and has had opportunity to be heard in person or by counsel before the governing body. In the event of the removal of any commissioner, the mayor shall file in the office of the clerk a record of the proceedings, together with the charges made against the commissioner and minutes thereon.

Source: L. 75: Entire title R&RE, p. 1161, § 1, effective July 1. L. 76: (L)(b) and amended, p. 597, § 11, effective July 1.

Editor's note: This section is similar to former § 31-25-104 as it existed prior to 1975.

ANNOTATION

Standard on review. The reviewing court's task is to exercise an independent determination to insure that a city council's decisions are based on evidence presented at council hearings, that any ordinance is supported by fact findings, and

that the council applied the legislative scheme set out in this part. *Tracy v. City of Boulder*, P.2d 907 (Colo. App. 1981).

Applied in *James v. Bd. of Comm.*, Colo. App. 27, 595 P.2d 262 (1978).

31-25-105. Powers of an authority. (1) Every authority has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including, but not limited to, the following powers in addition to others granted in this part:

- (a) To sue and to be sued; to adopt and have a seal and to alter the same at pleasure; to have perpetual succession; to make, and from time to time amend and repeal, orders, rules, and regulations to effectuate the provisions of this part.
- (b) To undertake urban renewal projects and to make and execute any and all contracts