



**AGENDA FOR THE  
ENGLEWOOD CITY COUNCIL  
STUDY SESSION  
MONDAY, NOVEMBER 21, 2011  
COMMUNITY ROOM  
5:30 P.M.**

- I. **Centennial King Soopers Redevelopment**  
Community Development Director Alan White will discuss the redevelopment for the Centennial King Soopers.
- II. **Financial Report – 6:30 p.m.**  
Financial and Administrative Services Director Frank Gryglewicz will discuss the financial report from October, 2011.
- III. **Ballot Initiative – Board and Commission Terms – 6:45 p.m.**  
City Council will discuss the terms of boards and commissions from the November 1, 2011 election.
- IV. **Flat 14ers IGA with School District – 7:00 p.m.**  
Parks and Recreation Director Jerrell Black will discuss the Flat 14ers IGA with the School District.
- V. **City Manager's Choice**
- VI. **City Attorney's Choice**

Please Note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood, 303-762-2407, at least 48 hours in advance of when services are needed. Thank you.



CITY OF ENGLEWOOD  
COMMUNITY DEVELOPMENT

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**TO:** Mayor Penn and City Council  
**THRU:** Gary Sears, City Manager  
**FROM:** Alan White, Community Development Director ✓  
Darren Hollingsworth, Economic Development Coordinator ✗  
**DATE:** November 21, 2011  
**SUBJECT:** King Soopers – Federal/Belleview Redevelopment Assistance Request

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**SUMMARY:**

Attached is a proposal for financial participation from the City of Englewood to assist King Soopers with the proposed redevelopment and expansion of a new grocery store in the Centennial Shopping Center at Belleview and South Federal Boulevard. King Soopers anticipates investing \$17 million in the proposed expansion, which includes furniture, fixtures and equipment, development costs, and incremental leasing commitments. King Soopers is working to obtain a lease commitment of 20 years and the ability to renew the lease for up to 99 years.

The existing King Soopers was built in 1960 and was remodeled in 1988. The store is outdated and the site is in need of rehabilitation in order to meet the expectations of today's shoppers. The existing store would be demolished along with all retail space that surrounds the existing store. The parking lot will be reconfigured and a significant amount of landscaping will be added to the site. The redevelopment effort will result in increased visibility and provide customers with direct access to a much improved shopping experience.

The redevelopment plan increases the size of the store from 42,298 square feet to 78,000 square feet, including a drive-thru pharmacy. A fuel center will be included on the south side of the store. King Soopers hopes to begin demolition of the existing site in January 2012, with a projected grand opening in November 2012.

Based upon Council's desire to attract new sales and use tax to the City of Englewood and retain and expand existing jobs in the City, the proposed agreement is presented for City Council consideration. If Council approves the agreement, any assistance would be contingent upon the opening of the new King Soopers no later than August 31, 2013.

Assistance is being requested to offset the cost of certain improvements that benefit a larger area beyond the redevelopment site. Under the proposed agreement, King Soopers would fund the

construction of these improvements and the City would rebate the cost of the improvements. These improvements and their estimated costs are listed in Exhibit A of the King Soopers request.

The requested assistance would be provided by rebating new sales and use tax derived from the reconstruction and expansion of the store. The proposed agreement includes the following provisions:

- The City would rebate 50% of the use tax revenues actually collected by the City that are derived from the City's 3.5% use tax on equipment (furniture, fixtures and equipment) at move-in.
- The City would rebate 50% of the sales tax revenues actually collected by the City that are derived from the City's 3.5% sales tax on taxable retail sales during the first four years of operation.
- Total assistance would be capped at \$510,500.
- The City would retain all permit fees and building use tax at move-in.
- The maximum four-year rebate would run concurrent with the opening of the new store.

The proposed agreement provides that rebate payments are based upon actual revenues generated by the store and that rebate payments cease after \$510,500 or at four years, whichever comes first. After that time, all revenues accrue to the City. It is estimated that new sales tax revenues generated by the new store will be between \$300,000 and \$350,000 per year. These estimates are reasonable given that the size of the store is nearly doubling. The additional uses of pharmacies and fuel stations also tend to increase customer spending.

This agreement follows the City's goals of retaining and expanding existing jobs, generating new sales and use tax to Englewood, and encouraging the revitalization of an existing shopping center. Staff concurs with King Soopers that redevelopment of the anchor store for this shopping center will encourage increased patronage and interest in the entire shopping center.

#### **FISCAL IMPACT:**

The City would rebate 50% of the sales and use tax revenue from the new King Soopers store, for a period of up to four years, or a maximum of \$510,500, whichever comes first. The 50% rebate on use tax on furniture, fixtures and equipment will be a one-time rebate upon move-in and 50% of the sales tax will be rebated in years one through four. The remaining 50% of the use and sales tax revenue will go to the City's general funds. The proposed rebates exclude one-time permit fees and building use tax, which will be paid upon issuance of a building permit. King Soopers estimates that new revenue to the City will total \$1.877 million during the first five years of operation. After the requested assistance payments, the City would net \$1.367 million in new revenue.

#### **Attachments:**

King Soopers Business Assistance Request to the City  
Draft Redevelopment Assistance Agreement



## Real Estate

Denver Mailing Address • P.O. Box 5567, Denver, Colorado 80217  
General Office & Warehouse • 65 Tejon St., Denver, Colorado 80223  
(303) 778-3346 • Fax (303) 715-4546



### **Business Assistance Request for King Soopers Redevelopment and Expansion at Belleview and Federal**

Presented to: City Council of the City of Englewood  
November 21, 2011

#### **Project Background**

King Soopers is considering redevelopment of the store at Belleview and Federal in the City of Englewood "the City". This store was built in 1960 and was remodeled in 1988. The redevelopment of this store will increase the store size from 42,298 square feet to 78,000 square feet, include a drive-thru pharmacy, and provide a fuel center on site, representing an investment of over \$17 million.

Pending a lease agreement with the ownership, King Soopers hopes to begin demolition of the existing site in January 2012, with a projected grand opening in November 2012.

#### **Benefits to the City of Englewood**

Redevelopment and expansion of King Soopers at this location offers the following benefits to the City:

- Provides necessary neighborhood services and brings revenue to the City from surrounding communities – a true definition of economic development.
- Preserves and protects existing sales and use tax revenue to the City.
- Brings new taxable sales to the City, thus increasing dollars to the general fund.
- Retains 90 full-time jobs and creates an additional 35 full-time jobs at move-in.
- Creates new revenue through permit fees and the construction use tax, resulting in new dollars toward the City's capital improvement fund.
- Spurs redevelopment of the remaining center on this signature corner in Englewood, thus enhancing and preserving the economic viability of the center.
- The new store is anticipated to produce over \$1,877,100 in new revenue the first five years of operation. This includes permit fees; building use tax; use tax on furniture, fixtures, and equipment; and sales tax.
- The store is projected to generate from \$300,000 to \$350,000 in new sales tax, per year.
- More than 20% of sales will be taxable (excluding food sales), based on new store projections and historical data for 78,000 square foot King Soopers stores.

Business assistance for public improvement costs is important in remaining competitive in attracting and retaining quality business and development. Additionally, City staff concurs that the redevelopment of King Soopers will encourage traffic and interest in the entire shopping center.



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### Public Improvement Costs

King Soopers has been working with the land owner for five years on a redevelopment strategy. The recent economic downturn has provided an opportunity to re-negotiate a proposed redevelopment plan within the site. However, no lease has been signed with the current owner.

During the development review process, staff has estimated public infrastructure improvements, which serve the City and the residents, to cost \$510,500. These improvements include:

- Stormwater improvements within Belleview and South Federal
- Improving fire protection by adding hydrants and looping the line
- Improving access and traffic movement along Belleview
- Improving storm water quality for the City Englewood
- Moving overhead Xcel power lines underground

King Soopers is willing to front the costs for these public improvements during the construction of the new store; however, King Soopers is requesting assistance from the City to help offset these costs.

### Redevelopment Assistance Request for Public Improvement Costs

Based upon an overall investment of \$17 million, projected new revenue to the City exceeding \$1.87 million in the first five years of operation, and the community benefits that a new 78,000 square-foot store will provide, King Soopers is requesting reimbursement from the City of Englewood for this project's public improvement costs (Exhibit A).

Under this agreement, the City's estimated revenue from King Soopers will exceed the requested rebate amount within the first year of store operation. The reimbursement request is as follows:

- The City would enter into an agreement with King Soopers based upon the City's goals to retain and expand existing jobs, generate new sales and use tax to Englewood, and encourage revitalization in the existing shopping center.
- The City will receive 100% of the permit fees and building use tax at move-in.
- The City will rebate 50% of the sales and use tax revenues actually collected by the City and attributable to revenue from new store activity in the City of Englewood for the first four years of operation.
- The total amount rebated to King Soopers will be capped at \$510,500 or four years of actual sales and use tax collection, whichever comes first.
- King Soopers will provide a letter to the City no later than the second quarter of 2013 verifying public improvement expenses.

**Exhibit A**

November 4, 2011

Drew Warot/  
Kroger/King Soopers Inc.  
65 Tejon Street  
Denver, Colorado 80223

**Re: King Soopers Store #4/109 required public infrastructure cost**

Dear Drew,

Below is our cost estimate for the public works cost of Store #109

1) Removal existing 310 l.f. 36" rcp and inlets, installation new inlets, manholes and rcp storm pipes that cross the site. Provides storm water conveyance for portions of Belleview Avenue, Federal Boulevard and public area's west of the development.	\$ 104,000
2) Provide improved fire protection by the addition of fire hydrants and looping an 8" line.	\$ 80,500
3) Relocation/modification access points (2) on Belleview Ave.	\$ 80,000
4) Storm water quality improvements Englewood portion only	\$ 156,000
5) 50% of the costs associated with undergrounding the Xcel power line (estimated at \$ 180,000)	\$ 90,000
<b>Total</b>	<b>\$ 510,500</b>

Sincerely,  
**Galloway**  
Matthew Duhaime P.E., P.L.S.  
Project Manager  
mattduhaime@gallowayUS.com  
cc: File

KSS00109-MFD-Public works cost 2011-10-31.docx

# DRAFT

## REDEVELOPMENT ASSISTANCE AGREEMENT FOR DILLON COMPANIES, INC., A KANSAS CORPORATION (KING SOOPERS), IN THE CITY OF ENGLEWOOD

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the CITY OF ENGLEWOOD, a Colorado home rule municipal corporation (the "City"), and DILLION COMPANIES, INC., a KANSAS CORPORATION (King Soopers).

WHEREAS, the City wishes to provide certain business assistance in connection with King Soopers' redevelopment and expansion to an approximately 78,000 square foot store at 5050 South Federal Boulevard in Englewood, Colorado (the project); and

WHEREAS, King Soopers plans to lease this space for 20 years, with options to continue the lease for 99 years; and

WHEREAS, King Soopers plans for the project to generate new sales and use tax revenue, and create new jobs in the City; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by retaining and expanding this store within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Dillon Companies, Inc. a Kansas corporation, agree as follows:

1. Sales and Use Tax Rebates. The City shall rebate to King Soopers, 50% of the sales and use tax revenues derived from the imposition of the City's 3.5% general sales and use tax that are actually collected by the City and attributable to retail sales occurring at the project location of 5050 South Federal Boulevard and generated by King Soopers for the first four years of operation. The rebate period shall commence upon the temporary certificate of occupancy for King Soopers. Rebates shall not exceed \$510,500 or four years of operation, whichever ever comes first.

2. Payment of Rebates. The sales and use tax rebates shall be paid by the City in annual installments and shall be made on or before January 31st. No interest shall be paid on amounts subject to rebate.

3. Use of Funds. Funds rebated pursuant to this Agreement shall be used by King Soopers solely for obligations and/or improvements permitted in Exhibit B.

4. Entire Agreement. This instrument shall constitute the entire agreement between the City and King Soopers and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. Contact information is as follows:

Drew Warot, Real Estate  
King Soopers, Inc.  
65 Tejon Street  
Denver, CO 80223

5. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by August 31, 2013, King Soopers has not completed the project (as evidenced by the issuance of a temporary certificate of occupancy); or should fail to comply with any City code, after written notice of such failure and expiration of a 30 day cure period.

6. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

7. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provision, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. King Soopers understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or recourse to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

8. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with the City of Englewood City Charter and the City of Englewood Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experienced mediator or panel of mediators for the purpose of resolving such dispute. In the event such dispute is not fully resolved by mediation or otherwise within 60 days after a request for mediation by either party, then either party may commence legal proceedings regarding the dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Arapahoe County, Colorado.

9. Legal Challenge; Escrow. The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party. .

10. Assignment. This Agreement is personal to King Soopers. King Soopers may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part

without the expressed written authorization of the City Council. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

11. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and Dillon Companies, a Kansas corporation and the City shall never be liable or responsible for any debt or obligation of Dillon Companies, a Kansas corporation.

**DILLON COMPANIES, INC., A KANSAS  
CORPORATION  
(KING SOOPERS, INC.)**

**CITY OF ENGLEWOOD**

By: \_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Clerk



**Exhibit B**

November 4, 2011

Drew Warot/  
Kroger/King Soopers Inc.  
65 Tejon Street  
Denver, Colorado 80223

**Re: King Soopers Store #4/109 required public infrastructure cost**

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**Galloway**  
Matthew Duhaime P.E., P.L.S.  
Project Manager  
mattduhaime@gallowayUS.com  
cc: File

KSS00109-MFD-Public works cost 2011-10-31.docx



City of Englewood

**To:** Mayor Randy Penn and City Council  
**From:** Frank Gryglewicz, Director of Finance and Administrative Services  
**Date:** November 14, 2011  
**Subject:** October 2011 Financial Report

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### Summary of the October 2011 General Fund Financial Report

#### REVENUES:

- Through October 2011, the City of Englewood collected **\$32,696,716 or \$1,676,523 or 5.4 percent more** than last year (See the chart on page 3 and the attached full report for details on changes in revenue in past year)
- The City collected \$2,956,191 in property and \$189,819 in specific ownership tax through October.
- **Year-to-date sales and use tax revenues were \$18,600,302 or \$1,052,769 or six percent more than October 2010**
- Cigarette tax collections were down \$4,415 compared to last year.
- Franchise fee collections were \$71,874 more than last year.
- Licenses and permit collections were \$40,195 more than 2010.
- Intergovernmental revenues were \$493,240 more than the prior year.
- Charges for services increased \$152,100 from last year.
- Recreation revenues increased \$119,878 from 2010.
- Fines and forfeitures were \$153,762 less than last year (the estimate for the year will be most likely be reduced next month)..
- Investment income was \$38,405 less than last year.
- Miscellaneous revenues were \$81,750 less than last year.

#### OUTSIDE CITY:

- Outside City sales and use tax receipts (cash basis) were up \$1,504,803 or 27.4 percent compared to last year, \$1,188,000 of the total amount collected is due to the receipt of *one-time sales and use tax revenue* from several taxpayers and \$56,000 is due to a refund in 2010. The City has classified \$600,000 as “unearned” at this time.
- At this time potential refunds total approximately \$1,500,000 for claims submitted to Englewood but not completed; the balance of the account to cover intercity claims is \$1,150,000.

#### CITY CENTER ENGLEWOOD (CCE):

- Sales and use tax revenue collected through October 2011 were \$1,734,388 or \$18,043 less than last year during the same period.

#### EXPENDITURES:

- Expenditures through October were \$32,313,917 or \$146,220 (.45 percent) more than the \$32,167,697 expended through October 2010. The City refunded \$32,392 in sales and use tax claims through October.

#### RESERVES:

- Total fund balance is estimated at \$8,604,001. The unreserved/undesignated reserves for 2011 are estimated at \$4,442,022 or 11.7 percent of projected revenues. The 2011 estimated Long Term Asset Reserve (LTAR) balance is \$2,713,467 (please refer to page 11) A \$127,000 reduction of the reserves will be done for next month’s report to reflect a transfer to the Public Improvement Fund for Santa Fe Drive light pole replacement.

#### TRANSFERS:

- Net 2011 transfers-in to date of \$1,796,151 were made by the end of October 2011 (please refer to page 11 for the make-up).

#### REVENUES OVER/UNDER EXPENDITURES:

- Revenues exceeded expenditures by \$382,799 this year compared to expenditures exceeding revenues by \$1,147,504 in 2010.

#### PUBLIC IMPROVEMENT FUND (PIF):

- The PIF has collected \$1,534,389 in revenues and spent \$3,688,654 year-to-date. Estimated year-end fund balance is \$290,211. Based on a five year average approximately 88% of building use tax and 83% of vehicle use tax is collected through October.

# City of Englewood, Colorado

## October 2011 Financial Report

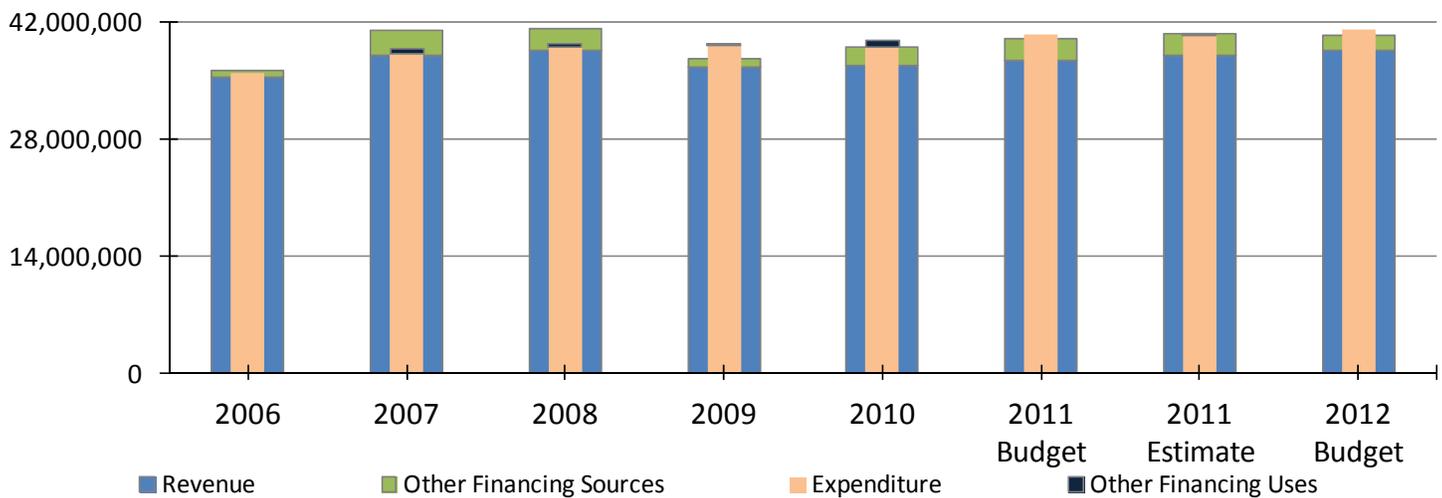
### GENERAL FUND OVERVIEW AND ANALYSIS

The General Fund accounts for the major “governmental” activities of the City. These activities include “direct” services to the public such as police, fire, public works, parks and recreation, and library services. General government also provides administrative and oversight services through the offices of city manager and city attorney; the departments of information technology, finance and administrative services, community development, human resources, municipal court and legislation. Debt service, lease payments, and other contractual payments are also commitments of the General Fund.

#### General Fund - Surplus and Deficits

The graph below depicts the history of sources and uses of funds from 2006 to 2012 Budget. As illustrated, both surpluses and deficits have occurred in the past. The gap has narrowed over the past few years by reducing expenditures, freezing positions, negotiating lower-cost health benefits, increased revenue collections. Continued efforts will be required to balance revenues and expenditures, especially with persistent upward pressure on expenditures due to increases in the cost of energy, wages and benefits.

**General Fund: Total Sources and Uses of Funds**



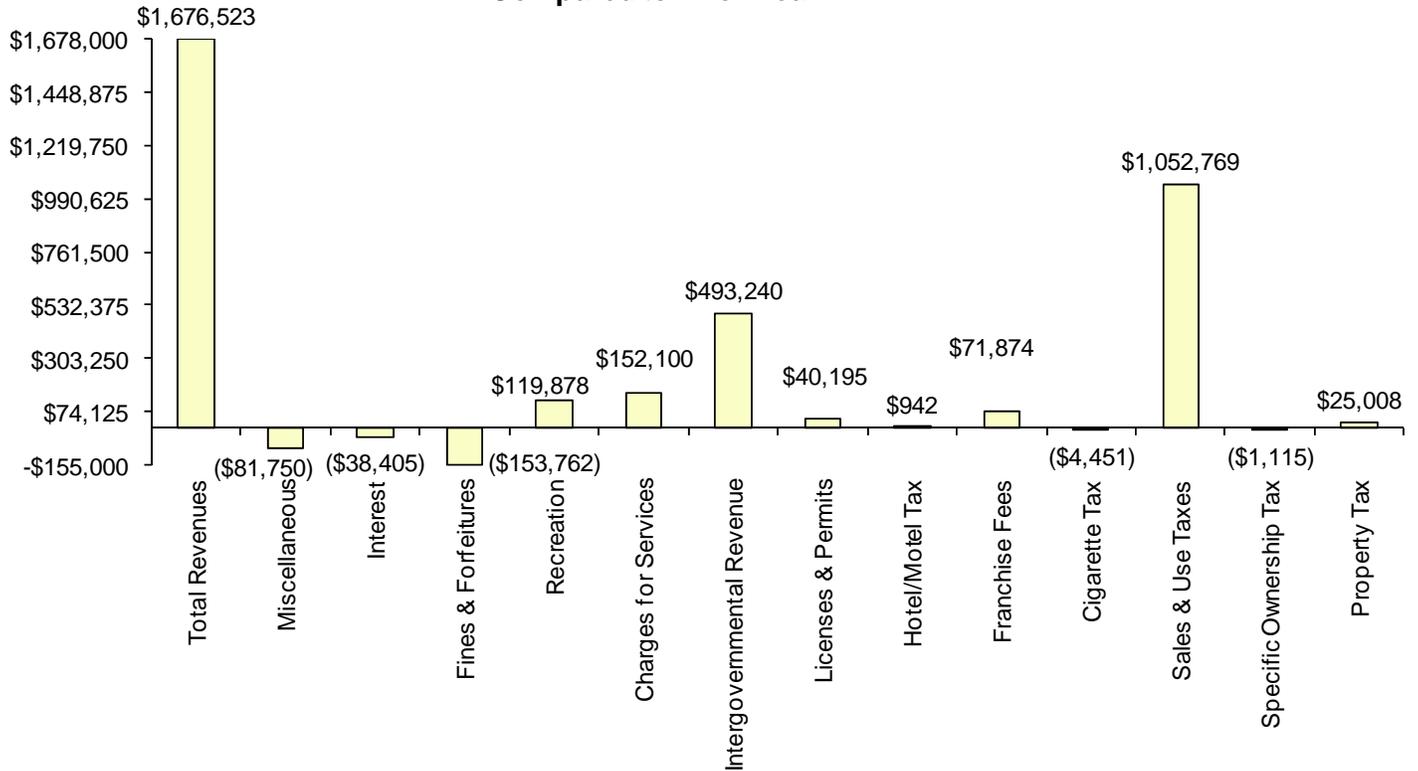
The table below summarizes General Fund Year-To-Date (YTD) Revenue, Expenditure, Sales & Use Tax Revenue and Outside City Sales & Use Tax Revenue for the month ended October, 2011. Comparative figures for years 2010 and 2009 are presented as well. The table also highlights the dollar and percentage changes between those periods.

	2011	2011 vs 2010 Increase (Decrease)		2010	2010 vs 2009 Increase (Decrease)		2009
<b>General Fund</b>							
Year-To-Date Revenue	\$ 32,696,716	\$ 1,676,523	5.40%	\$ 31,020,193	\$ 10,695	.03%	\$ 31,009,498
Year-To-Date Expenditure	32,313,917	\$ 146,220	.45%	32,167,697	\$ 382,921	1.20%	31,784,776
Net Revenue (Expenditure)	\$ 382,799	\$ 1,530,303		\$ (1,147,504)	\$ (372,226)		\$ (775,278)
Estimated Unreserved/ Undesignated Fund Balance	\$ 4,442,022	\$ (473,625)	(9.64%)	\$ 4,915,647	\$ 21,870	.45%	\$ 4,893,777
Sales & Use Tax Revenue YTD	\$ 18,600,302	\$ 1,052,769	6.00%	\$ 17,547,533	\$ 127,164	.73%	\$ 17,420,369
Outside City Sales & Use Tax YTD	\$ 6,988,391	\$ 1,504,803	27.44%	\$ 5,483,588	\$ (158,094)	(2.80%)	\$ 5,641,682

**General Fund - Revenues**

The City of Englewood’s total budgeted revenue is \$37,424,105. Total revenue collected through October 2011 was \$32,696,716 or \$1,676,523 (5.4 percent) more than was collected in 2010. The chart below illustrates changes in General Fund revenues this year as compared to last year.

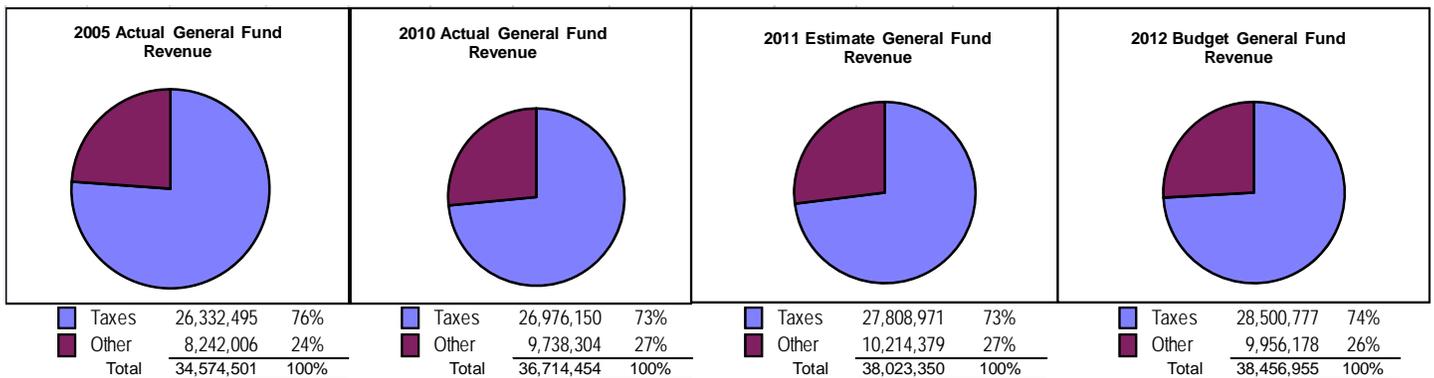
**2011 Year-To-Date Change in General Fund Revenue as Compared to Prior Year**



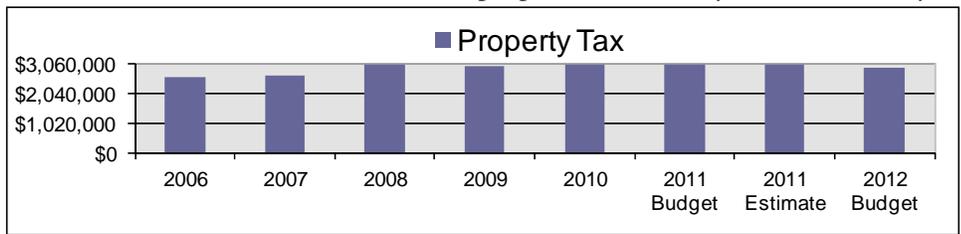
**General Fund - Taxes**

The General Fund obtains most of its revenue from taxes. In 2010 total audited revenues were \$36,714,454 of which \$26,976,150 (73.5 percent) came from tax collections. Taxes include property, sales and use, specific ownership, cigarette, utilities, franchise fees, and hotel/motel. The following pie charts illustrate the contribution of taxes to total revenue for 2005, 2010, 2011 Estimate and 2012 Budget. Taxes as a percentage of total revenue have declined slightly as other fees and charges have been increased to help offset rising costs and relatively flat tax revenues.

**General Fund Revenues  
Taxes vs. Other**



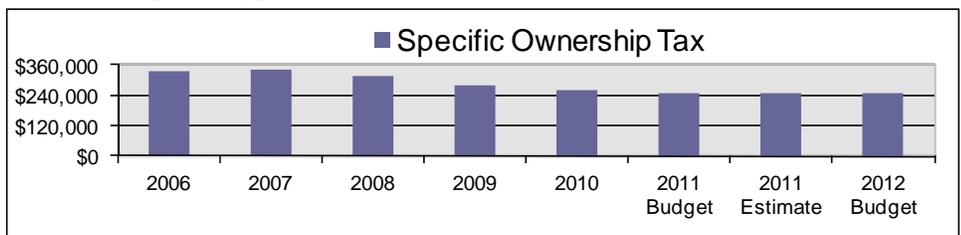
**Property taxes:** These taxes are collected based on the assessed value of all the properties in the City and the mill levy assessed against the property. The City's total 2009 mill levy collected in 2010 is 7.911 mills. The 2010 mill levy for general operations collected in 2011 is 5.880 mills. Voters approved a separate, dedicated mill levy for principal and interest



payments on the City's general obligation debt for the construction of parks and recreation projects. The dedicated general obligation debt mill levy is accounted for in the Debt Service Fund. The dedicated general obligation debt 2010 mill levy dedicated for the City's general obligation debt collected in 2011 is 2.130 mills. Property tax collections grew from \$2,559,369 in 2006 to \$3,020,884 in 2010. This was an increase of \$461,515 or 18 percent. In 2010 the City collected \$3,020,884 or 11.2 percent of 2010 total taxes and 8.2 percent of total revenues from property taxes. The City budgeted \$3,017,000 for 2011; and collected \$2,956,191 through October 2011. The estimate for the year remains at \$3,017,000.

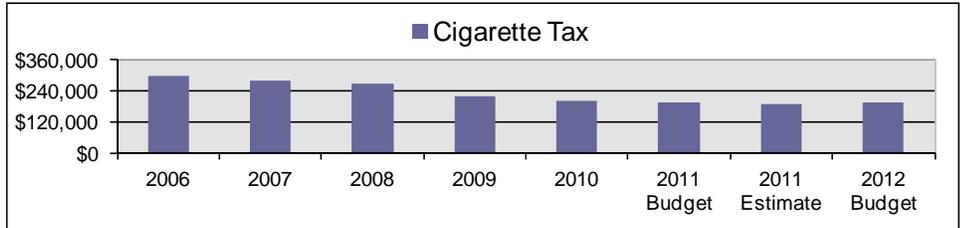
**Specific ownership:** These taxes are based on the age and type of motor vehicles, wheeled trailers, semi-trailers, etc.

These taxes are collected by the County Treasurer and remitted to the City on the fifteenth day of the following month. The City collected \$333,018 in 2006 and \$263,434 in 2010 which is a decrease of \$69,584 or 20.9 percent. The City collected



\$263,434 in 2010 which is less than one percent of total revenues and one percent of total taxes. The City budgeted \$250,000 for 2011 and collected \$189,819 through October 2011. The estimate for the year remains \$250,000.

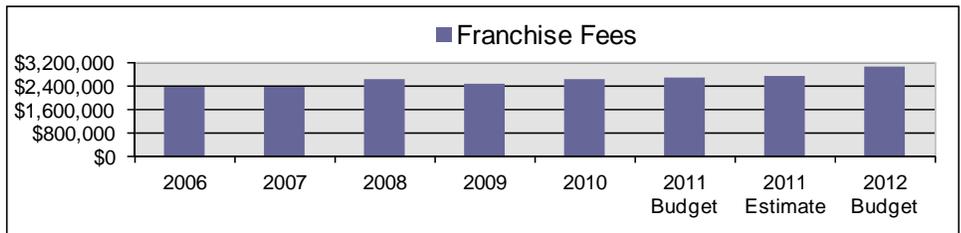
**Cigarette Taxes:** The State of Colorado levies a \$.20 per pack tax on cigarettes. The State distributes 46 percent of the gross tax to cities and towns based on the pro rata share of state sales tax collections in the previous year. These taxes have fallen *significantly* in the past and continue to fall after the 2009 federal tax increase of



approximately \$.62 per pack went into effect. This federal tax increase will fund the State Children's Health Insurance Program (SCHIP). In 2006 the City collected \$293,776, but in 2010 the City collected \$196,320, which is a *decrease* of \$97,456 or 33.2 percent. These taxes

accounted for less than one percent of total taxes and less than one percent of total revenues in 2010. The City budgeted \$190,000 for the year and collected \$156,363 through October 2011, which is \$4,451 or 2.8 percent less than the \$160,814 collected through October 2010. The estimate for the year is \$185,000.

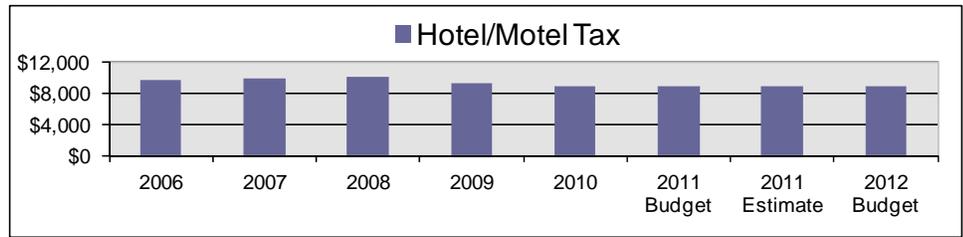
**Franchise Fees:** The City collects a number of taxes on various utilities. This includes franchise tax on water, sewer, and public services, as well as



occupational taxes on telephone services. The City collected \$2,362,000 in 2006 and \$2,620,191 in 2010, an increase of \$258,191 or 10.9 percent. These taxes accounted for 9.7 percent of taxes and 7.1 percent

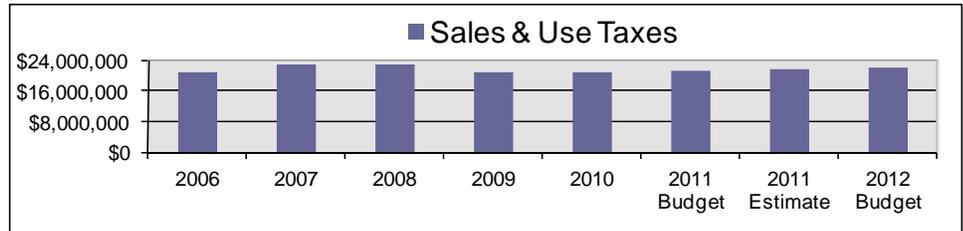
of total revenues in 2010. The City budgeted \$2,650,851 for the year; collections through October totaled \$2,074,725 compared to \$2,002,851 collected during the same period last year. The estimate for the year is \$2,702,938.

**Hotel/Motel Tax:** This tax is levied at two percent of the rental fee or price of lodging for under 30 days duration. The City budgeted \$8,713 for the year and has collected \$8,418 through October 2011. The estimate for the year is \$8,713.



### Sales and Use Taxes Analysis

Sales and use taxes are the most important (and volatile) revenue sources for the City. Sales and use taxes generated 77.5 percent of all taxes and 56.9 percent of total revenues collected in 2010. In 2006, this tax generated \$20,688,258 for the City of Englewood; in 2010 the City collected \$20,866,515, an increase of less than one percent.



This tax is levied on the sale price of taxable goods. Sales tax is calculated by multiplying the sales price of taxable goods times the sales tax rate of 3.5 percent. Vendors receive a .25 percent fee for collecting and remitting the taxes to the City by the due date (vendors will no longer be allowed to collect the fee after December 31, 2011). Taxes for the current month are due to the City by the twentieth day of the following month. The City budgeted \$21,216,000 for 2011. Sales and Use Tax revenue through October 2011 was \$18,600,302 while revenue year-to-date for October 2010 was \$17,547,533, an increase of \$1,052,769.

Collections (cash basis) for October 2011 were \$2,038,138 while collections for October 2010 and October 2009 were \$2,038,327 and \$1,714,342 respectively. October 2011 collections were less than one percent or \$189 less than October 2010 and \$323,796 or 18.9 percent more than 2009 collections.

Outside City sales and use tax collections through October were \$6,988,391 an increase of approximately \$1,471,803 over 2010 of which \$988,000 of this increase is due to the receipt of one-time sales and use tax revenue from several taxpayers and \$56,000 is due to a refund in 2010.

A portion (\$600,000) of the collections from outside city has been put into the “unearned revenue” account because staff believes it could be subject to an intergovernmental claim. If no claim is made after three years, the funds will be recognized as revenue at that time.

Based on historical sales tax collections, the City of Englewood collects 86.6 percent of total year’s sales tax collections through October; if this pattern holds this year, 13.4 percent is left to collect over the next three months. Based on October collections, the City will collect an additional \$2,878,107 over the next few months for a total of **\$21,478,409**.

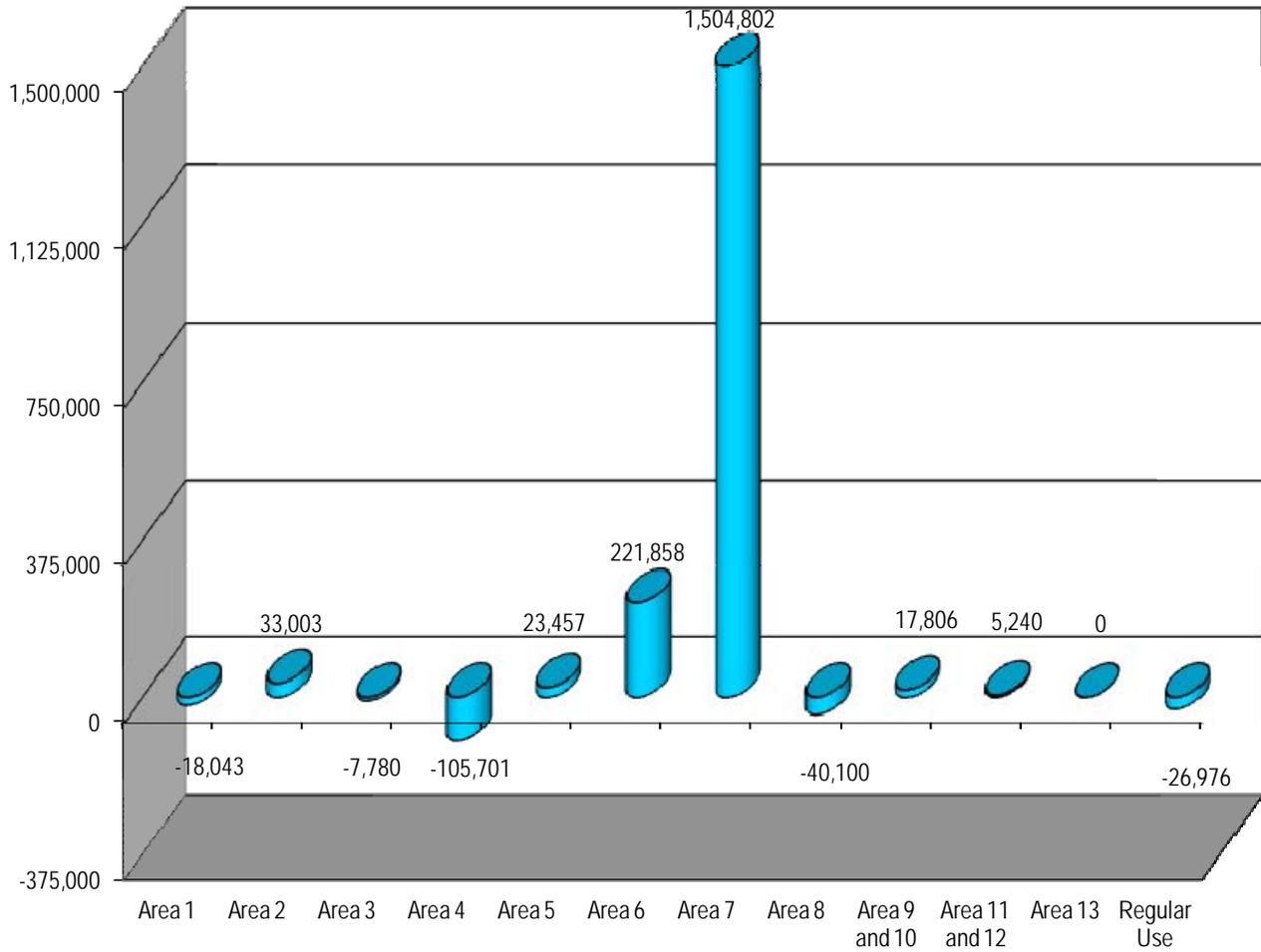
The City collected 106 percent of last year; if this pattern holds for the entire year the City could collect **\$22,118,506** for the year. The average of the two forecasts is **\$21,798,457**.

The estimate for the year is \$21,640,320 at this time, but could adjusted depending on sales tax growth/decline trends prior to year-end.

This revenue source tends to ebb and flow (often dramatically) with the economy, growing during economic expansions and contracting during downturns. The past two years of sales tax collections have been exceptionally erratic with no discernable trend to make accurate short or long term forecasts. It is important to continually review and analyze sales and use tax data including trends in the various geographic areas of the City.

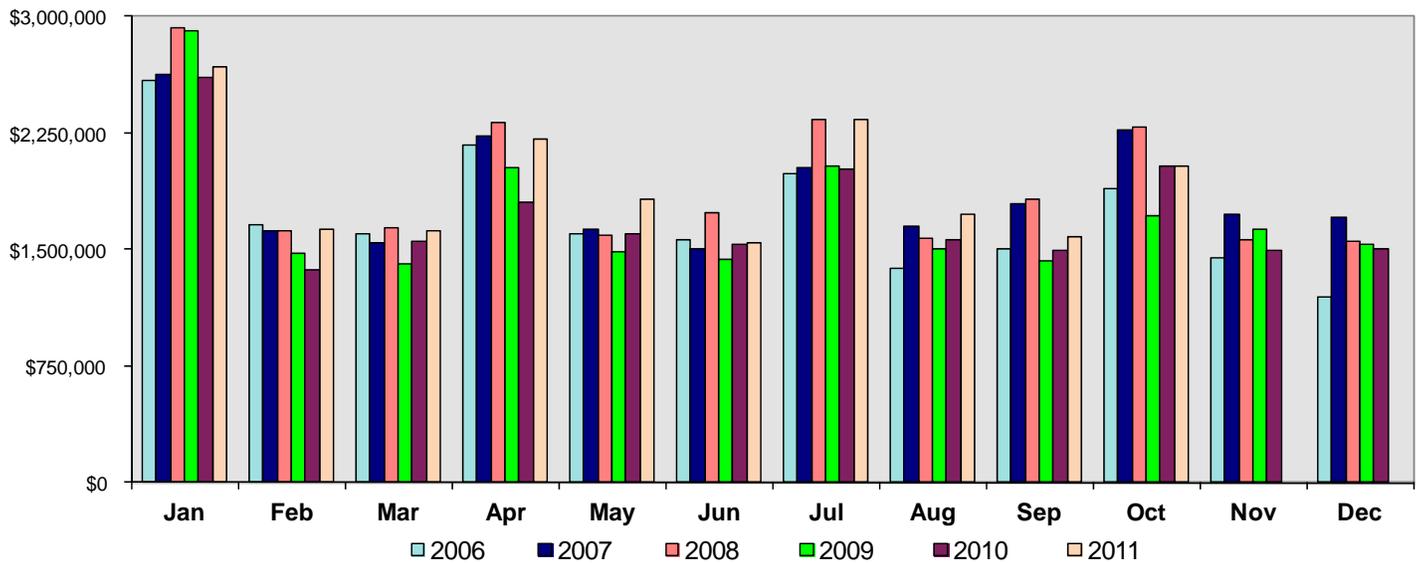
The chart on the next page, “Change in Sales/Use Tax Collections by Area 2011 vs. 2010” indicates that most of the increase in sales tax collections is due to Outside City (Area 7) and Miscellaneous Areas throughout the City (Area 6). Economic conditions, judged by sales tax collections, appears to be a “mixed bag” with some geographic areas increasing and some decreasing compared to the same period last year.

### Change in Sales/Use Tax Collections by Area 2011 vs 2010



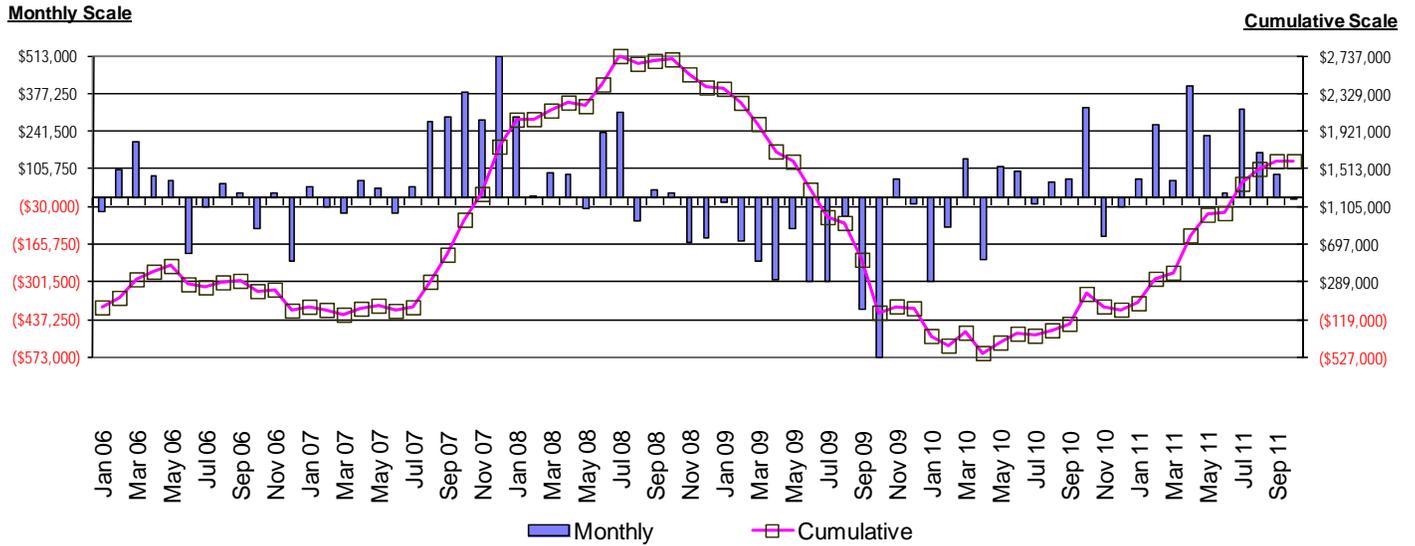
The bar graph below shows a comparison of monthly sales tax collections (cash basis) for 2006 through 2011.

### 2006-2011 YTD Sales/Use Tax Collections by Month - Cash Basis



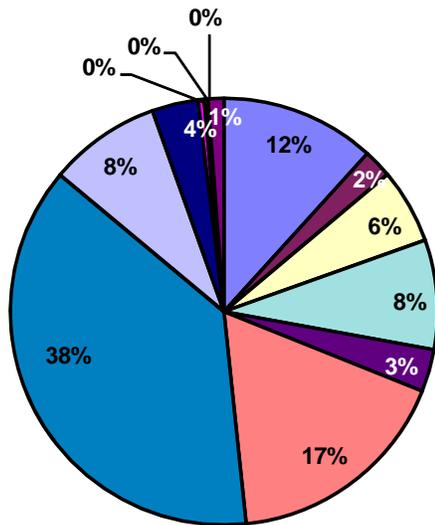
The next chart illustrates sales tax collections (cash basis) by month and cumulative for the years presented.

### 2006 - 2011 Monthly Change Sales and Use Tax



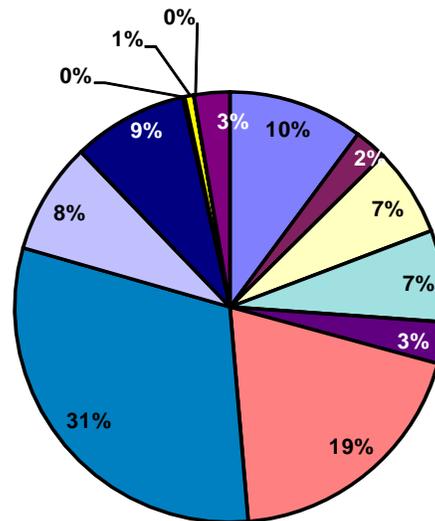
Sales tax collections are reported by various geographic areas as illustrated in the following pie charts. These illustrate the changing collection patterns for 2005 and 2010.

### Geographic Sales Tax Collection Areas



**2005 Actual Cash Receipts by Area**

Area 1	12%	Area 8	8%
Area 2	2%	Area 9	4%
Area 3	6%	Area 10	0%
Area 4	8%	Area 11	0%
Area 5	3%	Area 12	0%
Area 6	17%	Regular Use	1%
Area 7	38%		



**2010 Actual Cash Receipts by Area**

Area 1	10%	Area 8	8%
Area 2	2%	Area 9	9%
Area 3	7%	Area 10	0%
Area 4	7%	Area 11	1%
Area 5	3%	Area 12	0%
Area 6	19%	Regular Use	3%
Area 7	31%		

A brief description and analysis of the significant geographic areas follows:

**Area 1:** This geographic area accounts for the sales tax collections from CityCenter Englewood. CityCenter Englewood had collections of \$1,734,388 year-to-date 2011, \$18,043 or one percent less was collected last year.

**Area 6:** This geographic area is up 6.5 percent from last year. Part of the increase is due to the receipt of \$72,000 from an audit in January 2011.

**Area 7:** This geographic area records the outside city sales tax collections (Outside City). Outside City has been the geographic area responsible for much of the sales tax growth (and decline) in past years. Outside City collections have increased 27.4 percent from the same period last year. The chart below illustrates this area’s contribution to total sales and use taxes (cash basis) as well as total revenues since 2007 for collections through the month of October. The importance of Outside City has declined as a percentage of sales and use tax collections but it continues to remain an important impact on the City’s General Fund as illustrated by the following:

	2007	2008	2009	2010	2011
Total Sales and Use Taxes	18,920,356	19,865,867	17,427,099	17,581,905	19,189,471
Outside City Collections	7,045,305	7,158,821	5,641,682	5,483,588	6,988,391
Percentage of Total	37.2%	36.0%	32.4%	31.2%	36.4%
Total General Fund Revenues	31,912,117	33,512,285	31,009,498	31,020,193	32,696,716
Outside City Collections	7,045,305	7,158,821	5,641,682	5,483,588	6,988,391
Percentage of Revenues	22.1%	21.4%	18.2%	17.7%	21.4%

The City records the proceeds of some returns from Outside City into an unearned revenue (liability) account. The criteria staff uses to decide if proceeds should be placed in the unearned account is if a reasonable probability exists for another municipality to claim the revenue. This account currently has a balance of \$1,150,000 to cover intercity claims. The City paid \$32,392 in refunds including intercity sales/use tax claims through October 2011 compared to \$199,682 through October 2010. At this time *potential* refunds total approximately \$1,500,000 for claims submitted to Englewood but not completed.

**Area 8:** This geographic area consists of collections from public utilities. Collections through October were down \$40,100 or 2.7 percent under last year. Weather conditions, energy usage conservation, and rising energy prices play an important role in revenue collections. Collections could increase or decrease if the remainder of the year is significantly hotter/colder than normal.

### Other Sales Tax Related Information

Finance and Administrative Services Department collected \$176,618 in sales and use tax audit revenues and general collections of balances on account through the month of October; this compares to \$373,417 collected in 2010 and \$465,506 collected in 2009.

Of the 76 sales tax accounts reviewed in the various geographic areas, 50 (65.8 percent) showed improved collections and 26 (34.2 percent) showed reduced collections this year compared to the same period last year.

The Department issued 396 new sales tax licenses through October 2011; 322 and 308 were issued through October 2010 and 2009 respectively.

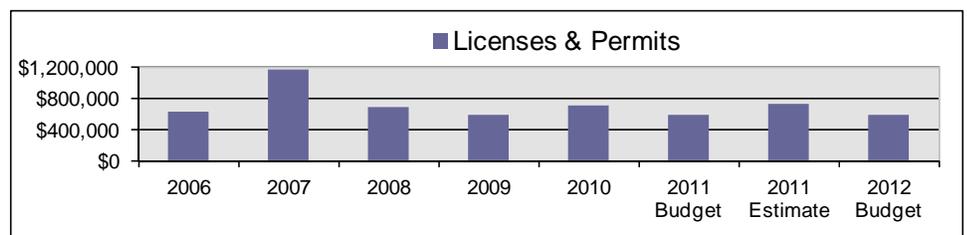
City records indicate that year-to-date 185 businesses closed (110 of them were outside the physical limits of Englewood) and 396 opened (277 of them were outside the physical limits of Englewood).

### **General Fund - Other Revenue**

Other revenues accounted for \$9,738,304 or 26.5 percent of the total revenues for 2010; the City budgeted \$10,091,541 for 2011.

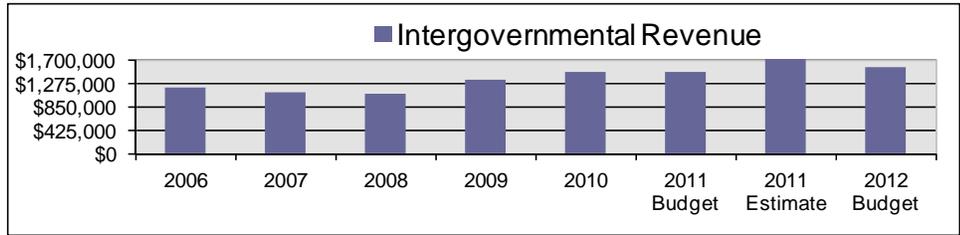
The following provides additional information on the significant revenue sources of the General Fund:

**Licenses and Permits:** This revenue category includes business and building licenses and permits. This revenue source generated



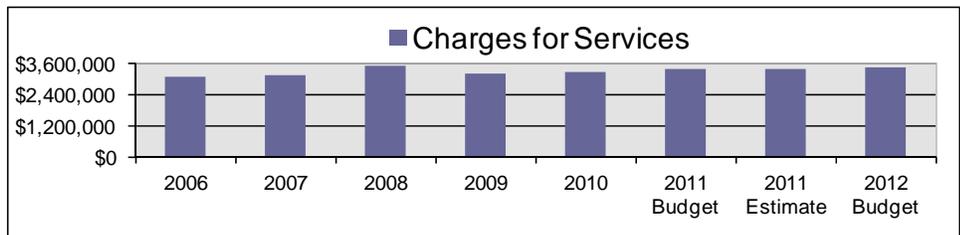
\$695,663 during 2010 or 1.9 percent of total revenue and 6.8 percent of total other revenue. This revenue source totaled \$623,945 in 2006 and increased to \$695,663 in 2010, an 11.5 percent increase. The City budgeted \$575,100 for 2011 and year-to-date the City collected \$603,399 or \$40,195 (7.1 percent) more than the \$563,204 collected through October 2010. The estimate for the year is \$719,000.

**Intergovernmental Revenues:** This revenue source includes state and federal shared revenues including payments in lieu of taxes. These revenues are budgeted at \$1,459,564 for 2011. This revenue source totaled \$1,193,863 in 2006 and the City collected \$1,465,970 in 2010, a 22.7 percent increase. The City collected \$1,606,892 through October 2011 this is \$493,240 (44.3

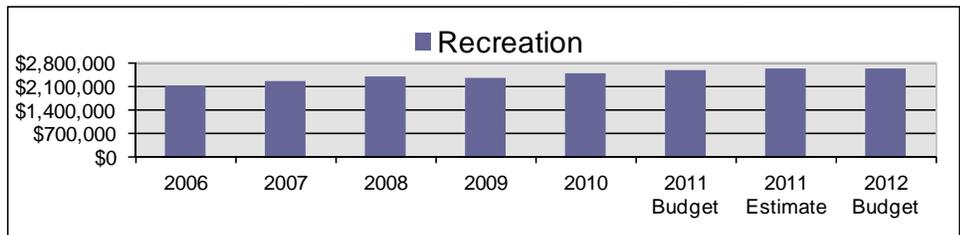


percent) more than the \$1,113,652 collected in the same period in 2010. The estimate for the year is \$1,753,114. Part of the reason for the large increase in intergovernmental revenue from 2010 to 2011 is the City received grant funds from CPPW for the following projects: \$150,000 for a Bike/Pedestrian Study (CD), \$88,000 for a Downtown Street Assessment Study (CD) and \$83,000 for the Community Garden (P&R)

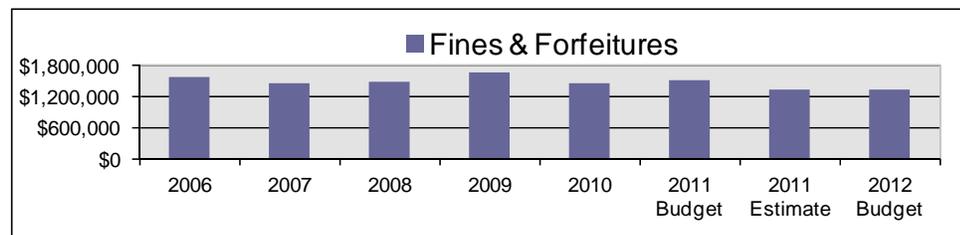
**Charges for Services:** This includes general government, public safety, fees for the administration of the utilities funds, court costs, highway and street and other charges. This revenue source is budgeted at \$3,318,587 for 2011. This revenue source totaled \$3,053,106 in 2006 and increased to \$3,254,830 in 2010, a 6.6 percent increase. Total collected year-to-date was \$2,710,250 or \$152,100 (5.9 percent) more than the \$2,558,150 collected year-to-date in 2010. The estimate for the year is \$3,359,004.



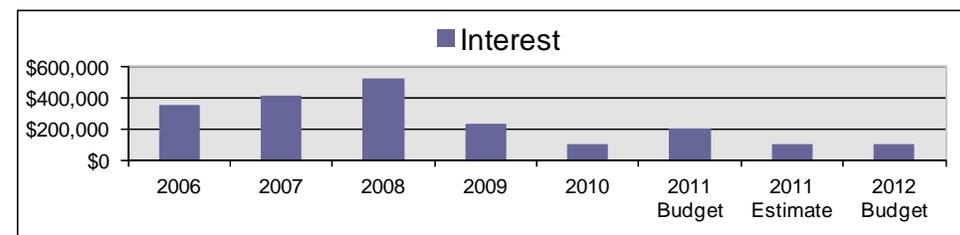
**Recreation:** This category of revenue includes the fees and charges collected from customers to participate in the various programs offered by the Parks and Recreation Department. This revenue source is budgeted at \$2,587,653 for 2011. This revenue source totaled \$2,099,202 in 2006 and increased to \$2,489,781 in 2010, an 18.6 percent increase. Total collections through October 2011 were \$2,446,040 compared to \$2,326,162 collected in 2010. The estimate for the year is \$2,620,158.



**Fines and Forfeitures:** This revenue source includes court, library, and other fines. The 2010 budget for this source is \$1,426,801 or 14.7 percent of total other revenue. This revenue source totaled \$1,543,353 in 2006 and decreased to \$1,437,957 in 2010, a 6.8 percent decrease. Total collected year-to-date was \$1,080,789 or \$153,762 (12.4 percent) less than the \$1,234,551 collected in the same time period last year. The estimate for the year is \$1,318,450 but may be adjusted next month.

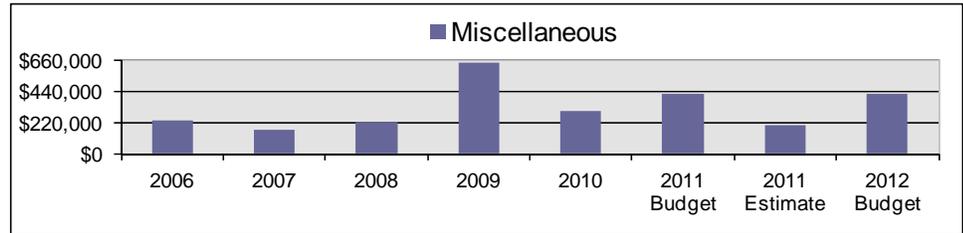


**Interest:** This is the amount earned on



the City's cash investments. The 2011 budget for this source is \$200,000. This revenue source totaled \$353,575 in 2006 and decreased to \$100,544 in 2010, a 71.6 percent decrease. The City earned \$79,854 through October 2011; while the City earned \$118,259 through October 2010. The estimate for the year is \$100,000.

**Miscellaneous:** This source includes all revenues that do not fit in another revenue category. The 2011 budget for this source is \$421,507. This revenue source totaled \$229,675 in 2006 and increased to \$293,658 in 2010, a 27.9 percent increase. Total collected year-to-date is \$183,674 (30.1 percent) less compared to the \$265,424 collected last year during the same period. The estimate for the year is \$200,000.



**General Fund - Expenditures**

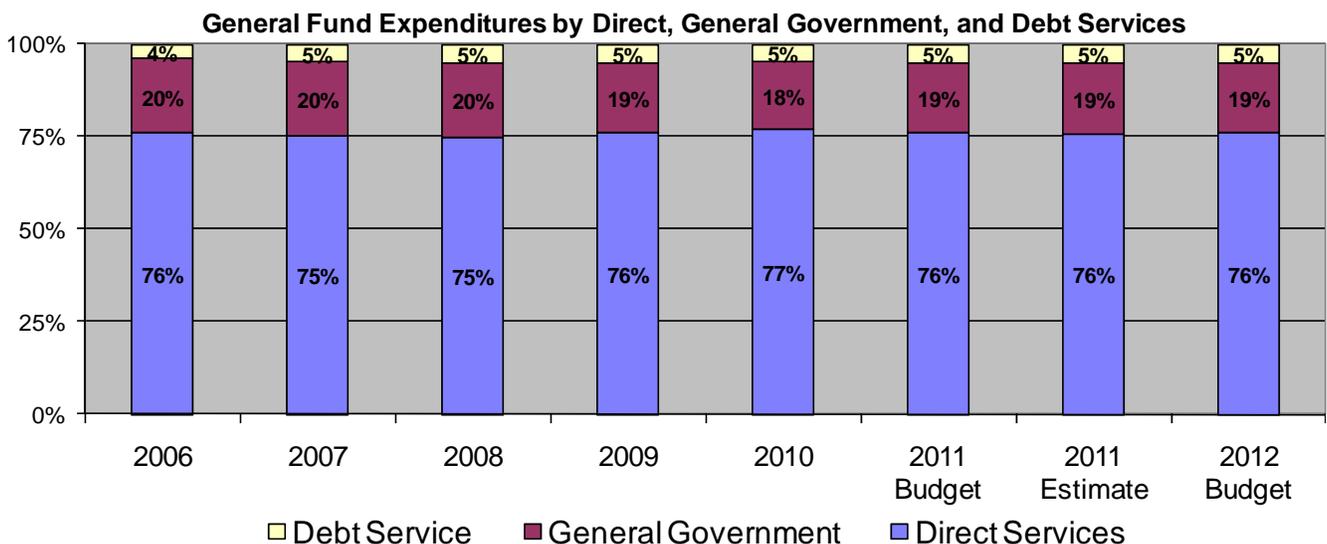
In 2006 the City adopted an outcome based budgeting philosophy. City Council and Staff outlined five outcomes to reflect, more appropriately, the desired result of the services delivered to the citizens of Englewood. The five outcomes identified are intended to depict Englewood as:

- ▶ A City that provides and maintains quality infrastructure,
- ▶ A safe, clean, healthy, and attractive City,
- ▶ A progressive City that provides responsive and cost efficient services,
- ▶ A City that is business friendly and economically diverse, and
- ▶ A City that provides diverse cultural, recreational, and entertainment opportunities.

Outcome based budgeting is an additional tool the City Council and staff use to better develop ways to serve our citizens. This type of budgeting is refined and reviewed on an on-going basis to help us better focus our resources in meeting the objectives of our citizens.

The City budgeted total expenditures at \$40,430,513 for 2011, this compares to \$38,901,342 and \$38,997,977 expended in 2010 and 2009 respectively. Budgeted expenditures for 2011 general government (City Manager, Human Resources, etc.) totals \$8,387,284 or 20.2 percent of the total. Direct government expenditures (Police, Fire, etc.) are budgeted at \$31,064,182 or 75.0 percent of the total. Debt service (fixed costs) payments are \$1,993,682 or 4.8 percent of the total. Total expenditures through October were \$32,313,917 compared to \$32,167,697 in 2010 and \$31,784,776 in 2009. The year-end expenditure estimates were provided by the departments as part of the 2012 budget process.

The chart below illustrates the breakdown of expenditures into debt service, general and direct government.



## General Fund - Transfers

The General Fund has provided funds to and has received funds from Special Revenue Funds, Capital Projects Funds, Internal Service Funds and Component Units in order to buffer temporary gaps in revenue and expenditure amounts. In 2011 the General Fund was not in the position to provide funding to the Capital Projects Funds but has received the following net transfers:

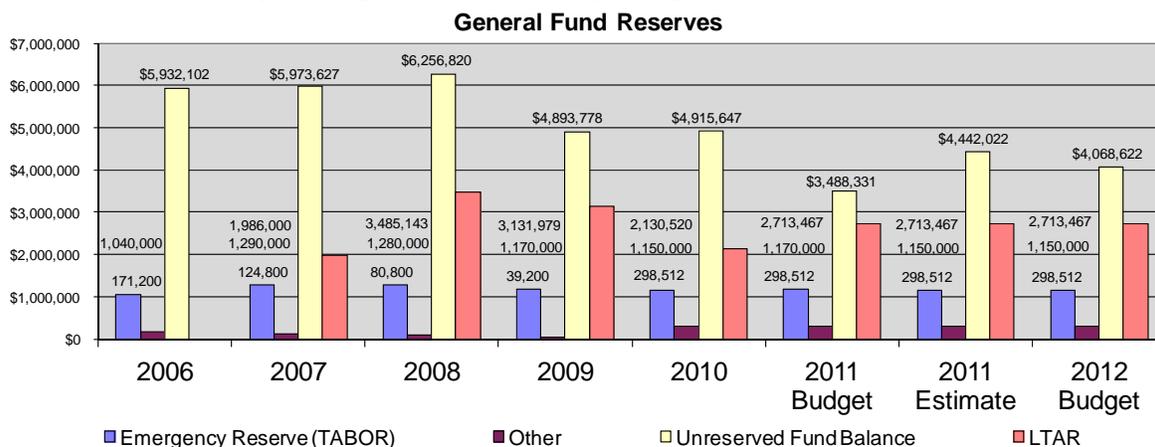
Source of Funds	Budget Amount	YTD Amount
<b>Special Revenue Funds</b>		
Neighborhood Stabilization Program Fund*	\$ 750,000	\$ 32,760
<b>Capital Project Funds</b>		
Public Improvement Fund (PIF)	471,815	471,815
<b>Internal Service Funds</b>		
Central Services Fund	100,000	100,000
Servicenter Fund	105,278	100,000
Risk Management Fund	546,000	546,000
Employee Benefits Fund	200,000	200,000
<b>Component Units</b>		
Englewood/McLellan Reservoir Foundation, Inc (EMRF)	325,000	345,576
<b>Enterprise Funds</b>		
Transfers Total	<u>\$ 2,519,204</u>	<u>\$ 1,796,151</u>

\*In addition to the 2011 amount received, the Neighborhood Stabilization Program Fund returned \$47,052 received in 2010 of the \$750,000 borrowed in 2010.

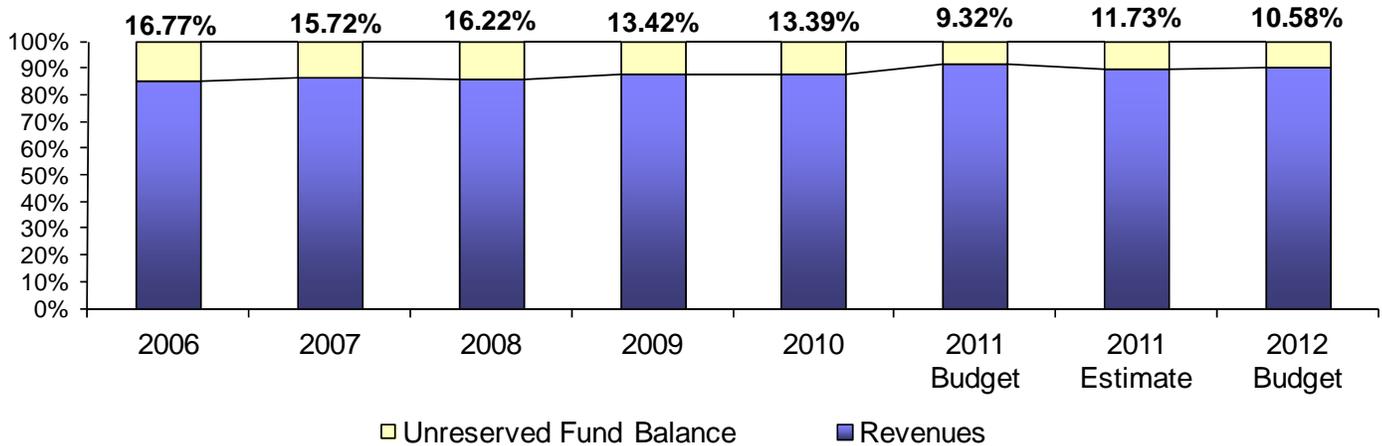
## General Fund - Fund Balance

The City designates the fund balance into two categories. A portion of the fund balance which is restricted is referred to as the "Reserves" while the unrestricted portion is referred to as the unreserved/undesignated fund balance. The unreserved/undesignated fund balance represents funds the City sets aside for a "rainy day". Another way to view these unrestricted funds is as a stabilization fund, the intent of which is to smooth over unexpected fluctuations in revenues and expenditures. The fund balance is normally built up when revenues exceed expenditures. In the past, excess funds have been transferred out, usually for capital projects identified in the Multiple Year Capital Plan (MYCP). The unreserved/undesignated fund balance is not adequate to provide for a transfer from the General Fund to the capital projects funds.

**Long Term Asset Reserve (LTAR)** At the 2008 Budget workshop held on October 22, 2007, City Council discussed and directed staff to establish a General Fund reserve account to accumulate funds from the sale, lease, or earnings from long-term assets. It was also determined that these funds should be used in a careful, judicious and strategic manner. The funds restricted in this account are to be expended if the funds are appropriated in the annual budget or by supplemental appropriation. The 2011 estimated year-end balance in the account is \$2,713,467. The balance reflects a \$750,000 transfer that was appropriated in 2010 for the purchase of two homes and rehabilitation of ten homes. A portion of the funds transferred will be returned to the LTAR in 2011. *The balance also includes a \$120,000 transfer from LTAR to fund the Community Development Department's 2011 Catalyst Program.*



### Unreserved Fund Balance As A Percentage of Revenue



The City's General Fund ended 2010 with a fund balance of \$8,494,679, and an unreserved/undesignated fund balance of \$4,915,647 or 13.4 percent of revenues. The General Fund's 2011 estimates a year end fund balance at \$8,604,001 and an ending balance of \$4,442,022 or 11.7 percent of projected revenues or 11 percent of estimated expenditures. The \$4,442,022 (this will be reduced by \$127,000 next month for the transfer to the Public Improvement Fund for light poles) would allow the City to operate for approximately 40.1 days (using average daily budgeted expenditures) if all other revenues and financing sources ceased. In these times of economic uncertainty, it is more important than ever to maintain reserves to help the City make up for revenue shortfalls and unexpected expenditure increases given that the one-time transfers made to the General Fund to help maintain reserves are no longer available.

### PUBLIC IMPROVEMENT FUND OVERVIEW

The Public Improvement Fund (PIF) accounts for the City's "public-use" capital projects (e.g. roads, bridges, pavement, etc.). The PIF funding is from the collection of vehicle and building use taxes, intergovernmental revenues, interest income, and other miscellaneous sources.

Provided for your information is the table below that illustrates the PIF Year-To-Date (YTD) revenues and expenditures for the years 2009 through 2011. The dollar and percentage change between each year is also provided. The Estimated Ending Fund Balance is included in order to account for the remaining PIF appropriation in addition to the remaining annual revenue anticipated for the fund.

	2011	2011 vs 2010 Increase (Decrease)		2010	2010 vs 2009 Increase (Decrease)		2009
<b>Public Improvement Fund (PIF)</b>							
YTD Revenues	\$ 1,534,389	\$ 114,389	8.06%	\$ 1,420,000	\$ (1,067,779)	(42.92%)	\$ 2,487,779
YTD Expenditures	3,688,654	\$ 1,515,438	69.73%	2,173,216	\$ (826,263)	(27.55%)	2,999,479
Net Revenues (Expenditures)	\$ (2,154,265)	\$ (1,401,049)		\$ (753,216)	\$ (241,516)		\$ (511,700)
Beginning PIF Fund Balance	\$ 2,686,457			\$ 1,515,399			\$ 1,067,525
Ending PIF Fund Balance Before Remaining Annual Revenue and Appropriation	\$ 532,192			\$ 762,183			\$ 555,825
Plus: Remaining Annual Revenue	278,345			427,321			593,737
Less: Remaining Annual Appropriation	(520,326)			(618,977)			(975,044)
Estimated Ending Fund Balance	\$ 290,211			\$ 570,527			\$ 174,518
<b>Unappropriated Fund Balance as of December 31,</b>				<u>\$ 440,771</u>			<u>\$ 339,405</u>

The three main funding sources for the PIF are Vehicle Use Tax, Building Use Tax and Arapahoe County Road and Bridge Tax.

	2011 Estimate	2011 Adopted Budget	2011 YTD Actual	2011 Vs 2010 Amount	2011 Vs 2010 %	2010 YTD Actual	2010 Vs 2009 Amount	2010 Vs 2009 %	2009 YTD Actual
Vehicle Use Tax	\$ 1,000,000	\$ 1,000,000	\$ 749,375	\$ 71,111	10%	\$ 678,264	\$ (46,418)	-6%	\$ 724,681
Building Use Tax	\$ 550,000	\$ 400,000	\$ 537,750	\$ 41,868	8%	\$ 495,882	\$ 226,740	84%	\$ 269,142
Arapahoe County Road and Bridge Tax	\$ 191,000	\$ 191,000	\$ 181,992	\$ (512)	0%	\$ 182,503	\$ (8,437)	-4%	\$ 190,940

**Vehicle Use Tax** is based on the valuation of new vehicles purchased by City of Englewood residents. This tax is collected and remitted by Arapahoe County at the time the vehicle is registered. **Building Use Tax** is based on the valuation of building permits issued by the City of Englewood. We will monitor these revenue sources are monitored periodically to determine the revision of the 2011 Estimate. **Arapahoe County Road and Bridge Tax** is restricted to the construction and maintenance of streets and bridges. This tax is based on a mill levy established by Arapahoe County multiplied by the City's assessed valuation multiplied by 50%.

### 2011 Year-To-Date City Funds At-A-Glance

**(Please refer to "Funds Glossary" for a Brief Description of Funds and Fund Types)**

	Beginning Balance	Revenue	Expenditure	Other Sources (Uses)	Reserved Balance	Ending Balance
<b>Governmental Fund Types (Fund Balance)</b>						
<b>General Fund</b>	8,494,679	32,681,306	32,295,586	(276,398)	4,161,979	4,442,022
<b>Special Revenue Funds</b>						
Conservation Trust	1,052,255	238,770	169,108	(1,026,001)	-	95,916
Open Space	1,072,979	148,128	276,941	(599,799)	-	344,367
Neighborhood Stabilization Program	718,290	1,162,029	1,200,837	(679,482)	-	-
Donors	167,852	75,045	83,059	-	-	159,838
Community Development	-	229,133	229,064	(69)	-	-
Malley Center Trust	291,667	3,670	16,385	-	-	278,952
Parks & Recreation Trust	449,303	4,753	8,131	-	-	445,926
<b>Debt Service Fund</b>						
General Obligation Bond	9,616	1,081,125	173,280	-	-	917,462
<b>Capital Projects Funds</b>						
PIF	2,686,457	1,533,032	2,411,897	(1,517,382)	-	290,211
MYCP	1,061,738	7,500	684,330	(429,145)	-	(44,238)
<b>Proprietary Fund Types (Funds Available Balance)</b>						
<b>Enterprise Funds</b>						
Water	7,027,103	6,790,272	6,818,195	-	-	6,999,180
Sewer	6,792,828	12,594,701	12,697,864	-	1,000,000	5,689,665
Stormwater Drainage	903,814	303,760	103,469	-	137,818	966,287
Golf Course	713,451	1,761,235	1,450,125	-	293,500	731,062
Concrete Utility	277,905	663,578	490,131	-	-	451,352
Housing Rehabilitation	404,633	153,145	209,604	-	-	348,173
<b>Internal Service Funds</b>						
Central Services	234,309	266,495	243,575	(100,000)	-	157,229
ServiCenter	902,008	1,845,642	1,475,808	(100,000)	-	1,171,841
CERF	728,781	629,353	249,097	-	-	1,109,037
Employee Benefits	210,918	4,301,262	4,543,929	(200,000)	47,826	(279,575)
Risk Management	1,201,929	1,390,383	810,917	(546,000)	-	1,235,395

## CLOSING

The Finance and Administrative Services Department staff works closely with the City Manager's Office and the various departments to help identify revenue and expenditure threats, trends and opportunities as well as strategies to balance revenues and expenditures. I will continue to provide Council with monthly reports. It is important to frequently monitor the financial condition of the City so City staff and Council can work together to take action, if necessary, to maintain service levels, employees, and fiscal health of the City.

I plan to discuss this report with Council at an upcoming study session. If you have any questions regarding this report, I can be reached at **303.762.2401**.

## FUNDS GLOSSARY

**Capital Equipment Replacement Fund (CERF)** – Accounts for the accumulation of funds for the scheduled replacement of City-owned equipment and vehicles.

**Capital Projects Funds** account for financial resources to be used for the acquisition and/or construction of major capital facilities (other than those financed by proprietary funds).

**Central Services Fund** – Accounts for the financing of printing services and for maintaining an inventory of frequently used or essential office supplies provided by Central Services to other departments of the City on a cost reimbursement basis.

**Community Development Fund** – Accounts for the **art** Shuttle Program which is funded in part by the Regional Transportation District (RTD). **art** provides riders free transportation to 19 stops connecting CityCenter Englewood, businesses in downtown Englewood, and the medical facilities in and near Craig Hospital and Swedish Medical Center.

**Concrete Utility Fund** – Accounts for revenues and expenses associated with maintaining the City's sidewalks, curbs and gutters.

**Conservation Trust Fund** – Accounts for the acquisition of parks and open space land not previously owned by the City and for improvements to existing park and recreation facilities. Financing is provided primarily from State Lottery funds.

**Debt Service Funds** account for the accumulation of resources and payment of general obligation bond principal and interest from governmental resources and special assessment bond and loan principal and interest from special assessment levies when the government is obligated in some manner for payment.

**Donors' Fund** – Accounts for funds donated to the City for various specified activities.

**Employee Benefits Fund** – Accounts for the administration of providing City employee benefit programs: medical, dental, life, and disability insurance.

**Enterprise Funds** account for operations that: (a) are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges, or (b) where the City Council has decided that periodic determination of revenue earned, expenses incurred and/or net income is appropriate for capital maintenance, public policy, management controls, accountability or other purposes.

**Fund** is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The City, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

**General Obligation Bond Fund** – Accounts for the accumulation of monies for payment of General Obligation Bond principal and interest.

**Golf Course Fund** – Accounts for revenues and expenses associated with the operations of the Englewood Municipal Golf Course.

**Governmental Funds** distinguish functions of the City that are principally supported by taxes and intergovernmental revenues (governmental activities) from other functions that are intended to recover all or a significant portion of their costs

## FUNDS GLOSSARY

through user fees and charges (business-type activities). These funds focus on the near-term *inflows and outflows of spendable resources*, as well as on balances of spendable resources available at the end of the year.

**Housing Rehabilitation Fund** – Accounts for revenues and expenses associated with the City’s housing rehabilitation program.

**Internal Service Funds** are used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the City on a cost-reimbursement basis.

**MOA** – Museum of Outdoor Arts

**Malley Center Trust Fund** – Accounts for a trust established by Elsie Malley to be used for the benefit of the Malley Senior Recreation Center.

**Multi-Year Capital Projects Fund (MYCP)** - Accounts for the acquisition and/or construction of major capital improvements and facilities. Financing is provided primarily with transfers from other City Funds.

**Neighborhood Stabilization Program Fund** – Accounts for the federal grant awarded to acquire, rehabilitate and resale approximately eleven foreclosed residential properties located in the City.

**Open Space Fund** – Accounts for the acquisition of parks and open space land not previously owned by the City and for improvements to existing park and recreation facilities. Financing is provided from the Arapahoe County Open Space Sales Tax of .25%. The Open Space Tax was created on January 1, 2004 and expires on December 31, 2013.

**Parks and Recreation Trust Fund** – Accounts for a trust established by the City, financed primarily by donations, to be used exclusively for specific park and recreation projects.

**Proprietary Funds** account for operations that are financed and operated in a manner similar to private business enterprises. It is the intent that the cost of providing such goods or services will be recovered through user charges.

**Public Improvement Fund (PIF)** – Accounts for the acquisition and/or construction of major capital improvements and facilities. Financing is provided primarily from building and vehicle use taxes.

**Risk Management Fund** – Accounts for the administration of maintaining property and liability and workers’ compensation insurance.

**ServiCenter Fund** – Accounts for the financing of automotive repairs and services provided by the ServiCenter to other departments of the City, or to other governmental units, on a cost reimbursement basis.

**Sewer Fund** – Accounts for revenues and expenses associated with providing wastewater services to the City of Englewood residents and some county residents.

**Special Assessment Funds** account for and pay special assessment bond principal and interest and/or inter-fund loan principal and interest: Following are funds to account for special assessments: **Paving District No. 35, Paving District No. 38, and Concrete Replacement District 1995.**

**Special Revenue Funds** account for the proceeds of specific revenue sources that are legally restricted to expenditure for specified purposes.

**Storm Drainage Fund** – Accounts for revenues and expenses associated with maintaining the City’s storm drainage system.

**Water Fund** – Accounts for revenues and expenses associated with providing water services to City of Englewood residents.

# General Fund Comparative Revenue, Expenditure & Fund Balance Report

## as of October 31, 2011

**Percentage of Year Completed = 83%**

Fund Balance January 1	\$ 8,157,514		\$ 8,494,679		\$ 8,494,679		\$ 9,234,957		\$ 9,234,957		\$ 11,102,763		\$ 11,102,763	
	2011						2010			2009				
	Revenues	Budget	Oct-11	% Budget	YE Estimate	Dec-10	Oct-10	% YTD	Dec-09	Oct-09	% YTD			
Property Tax	3,017,000	2,956,191	97.98%	3,017,000	3,020,884	2,931,183	97.03%	2,971,303	2,933,027	98.71%				
Specific Ownership Tax	250,000	189,819	75.93%	250,000	263,434	190,934	72.48%	276,415	217,356	78.63%				
Sales & Use Taxes	21,216,000	18,600,302	87.67%	21,640,320	20,866,515	17,547,533	84.09%	20,624,659	17,420,369	84.46%				
Cigarette Tax	190,000	156,363	82.30%	185,000	196,320	160,814	81.91%	218,448	184,258	84.35%				
Franchise Fees	2,650,851	2,074,725	78.27%	2,702,938	2,620,191	2,002,851	76.44%	2,452,611	1,899,205	77.44%				
Hotel/Motel Tax	8,713	8,418	96.61%	8,713	8,806	7,476	84.90%	9,141	7,950	86.97%				
Licenses & Permits	575,100	603,399	104.92%	719,000	695,563	563,204	80.97%	588,303	427,152	72.61%				
Intergovernmental Revenue	1,459,564	1,606,892	110.09%	1,753,114	1,465,970	1,113,652	75.97%	1,333,688	953,036	71.46%				
Charges for Services	3,338,567	2,710,250	81.18%	3,359,004	3,254,830	2,558,150	78.60%	3,163,735	2,624,461	82.95%				
Recreation	2,587,653	2,446,040	94.53%	2,620,158	2,489,781	2,326,162	93.43%	2,315,598	2,108,211	91.04%				
Fines & Forfeitures	1,509,150	1,080,789	71.62%	1,318,450	1,437,957	1,234,551	85.85%	1,639,678	1,417,822	86.47%				
Interest	200,000	79,854	39.93%	100,000	100,545	118,259	117.62%	229,999	219,536	95.45%				
Miscellaneous	421,507	183,674	43.58%	200,000	293,658	265,424	90.39%	643,311	597,115	92.82%				
<b>Total Revenues</b>	<b>37,424,105</b>	<b>32,696,716</b>	<b>87.37%</b>	<b>37,873,697</b>	<b>36,714,454</b>	<b>31,020,193</b>	<b>84.49%</b>	<b>36,466,889</b>	<b>31,009,498</b>	<b>85.03%</b>				
<b>Expenditures</b>														
Legislation	346,120	211,861	61.21%	341,236	309,870	288,941	93.25%	346,045	260,593	75.31%				
City Attorney	762,518	573,546	75.22%	747,268	702,228	582,849	83.00%	678,038	544,473	80.30%				
Court	999,105	697,317	69.79%	978,735	901,469	741,408	82.24%	914,493	755,944	82.66%				
City Manager	664,732	529,369	79.64%	638,800	659,882	584,238	88.54%	674,170	562,444	83.43%				
Human Resources	481,102	355,848	73.97%	435,833	419,421	345,700	82.42%	456,275	363,447	79.66%				
Financial Services	1,550,906	1,178,676	76.00%	1,519,463	1,445,581	1,190,679	82.37%	1,575,924	1,271,750	80.70%				
Information Technology	1,338,543	1,097,099	81.96%	1,343,419	1,280,660	1,044,614	81.57%	1,360,237	1,068,788	78.57%				
Public Works	5,498,891	4,164,379	75.73%	5,395,714	5,137,364	4,238,455	82.50%	5,152,891	4,117,260	79.90%				
Fire Department	7,465,775	6,206,885	83.14%	7,492,341	7,425,903	6,001,548	80.82%	7,320,268	5,888,410	80.44%				
Police Department	10,587,026	8,443,187	79.75%	10,599,704	10,312,633	8,502,988	82.45%	10,183,891	8,315,389	81.65%				
Community Development	1,344,556	1,114,347	82.88%	1,466,766	1,301,473	1,003,212	77.08%	1,366,437	1,105,696	80.92%				
Library	1,256,520	924,675	73.59%	1,228,286	1,284,083	1,071,639	83.46%	1,275,554	1,071,977	84.04%				
Recreation	5,969,515	4,910,188	82.25%	5,823,758	5,811,809	5,002,359	86.07%	5,727,968	4,955,552	86.52%				
Debt Service	2,075,204	1,762,388	84.93%	2,111,112	1,860,827	1,527,733	82.10%	1,805,208	1,453,747	80.53%				
Contingency	90,000	144,152	160.17%	150,000	48,139	41,334	85.86%	160,578	49,306	30.71%				
<b>Total Expenditures</b>	<b>40,430,513</b>	<b>32,313,917</b>	<b>79.92%</b>	<b>40,272,435</b>	<b>38,901,342</b>	<b>32,167,697</b>	<b>82.69%</b>	<b>38,997,977</b>	<b>31,784,776</b>	<b>81.50%</b>				
Excess revenues over (under) expenditures	(3,006,408)	382,799	-12.73%	(2,398,738)	(2,186,888)	(1,147,504)		(2,531,088)	(775,278)					
Net transfers in (out)	2,519,204	1,796,151	71.30%	2,508,060	1,446,610	1,191,099	82.34%	663,282	51,445	7.76%				
<b>Total Fund Balance</b>	<b>\$ 7,670,310</b>	<b>\$ 10,673,629</b>	<b>139.16%</b>	<b>\$ 8,604,001</b>	<b>\$ 8,494,679</b>	<b>\$ 9,278,552</b>	<b>109.23%</b>	<b>\$ 9,234,957</b>	<b>\$ 10,378,930</b>	<b>112.39%</b>				

### Fund Balance Analysis

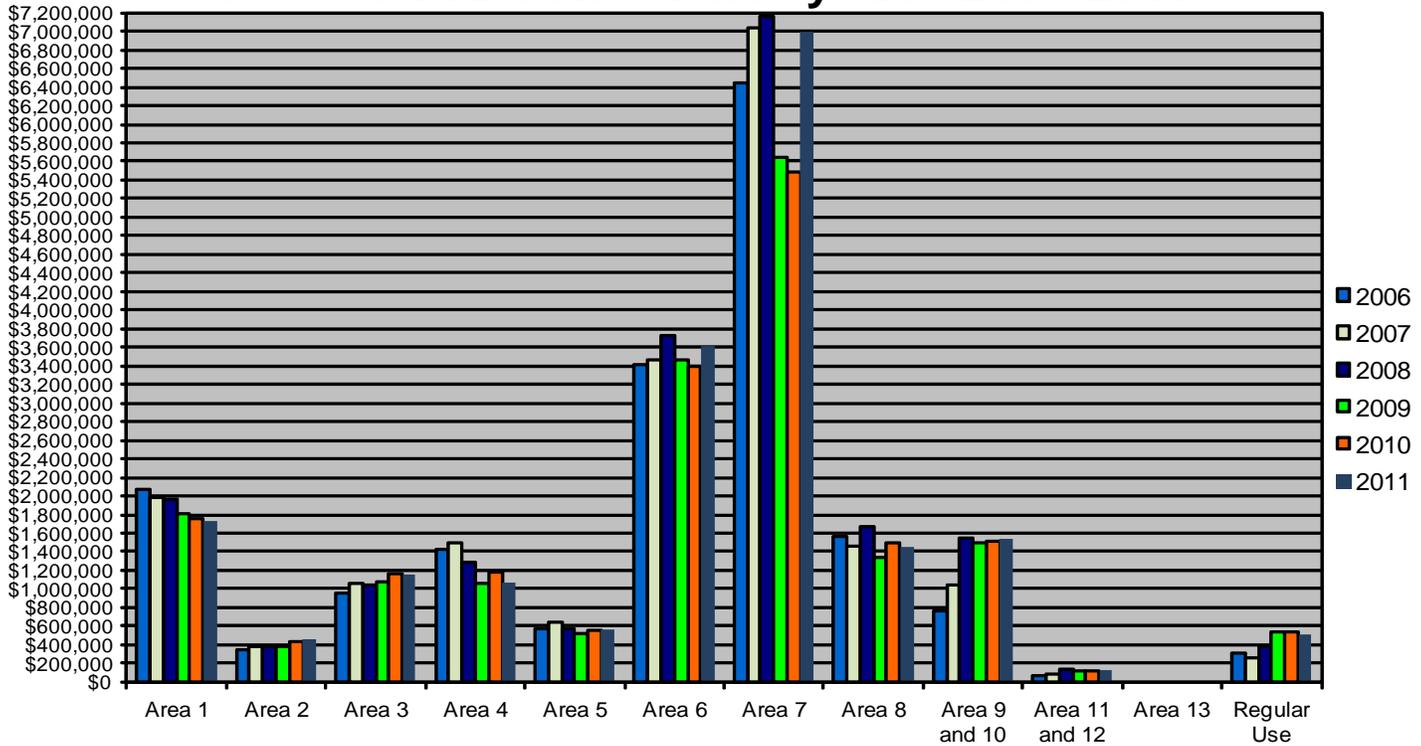
<b>Total Fund Balance</b>	\$ 7,670,310	\$ 10,673,629	\$ 8,604,001	\$ 8,494,679	\$ 9,234,957
<b>Reserves/designations:</b>					
-Emergencies (TABOR)	1,170,000	1,150,000	1,150,000	1,150,000	1,170,000
-LTAR	2,713,467	2,096,094	2,713,467	2,130,520	3,131,980
-MOA	-	-	-	-	39,200
-COPS Grant	298,512	298,512	298,512	298,512	-
<b>Unreserved/undesignated</b>					
<b>Fund Balance</b>	<b>\$ 3,488,331</b>	<b>\$ 7,129,023</b>	<b>\$ 4,442,022</b>	<b>\$ 4,915,647</b>	<b>\$ 4,893,777</b>
Potential reserves/designations	-	-	-	-	-
<b>Estimated unres/undesignated</b>					
<b>Fund Balance</b>	<b>\$ 3,488,331</b>	<b>\$ 7,129,023</b>	<b>\$ 4,442,022</b>	<b>\$ 4,915,647</b>	<b>\$ 4,893,777</b>
As a percentage of projected revenues	9.21%		11.73%	13.39%	13.42%
As a percentage of budgeted revenues	9.32%		11.87%		
<b>Target</b>	3,742,411	-	5,613,616		

**Sales & Use Tax Collections Year-to-Date Comparison  
for the month of October 2011**

**Cash Basis**

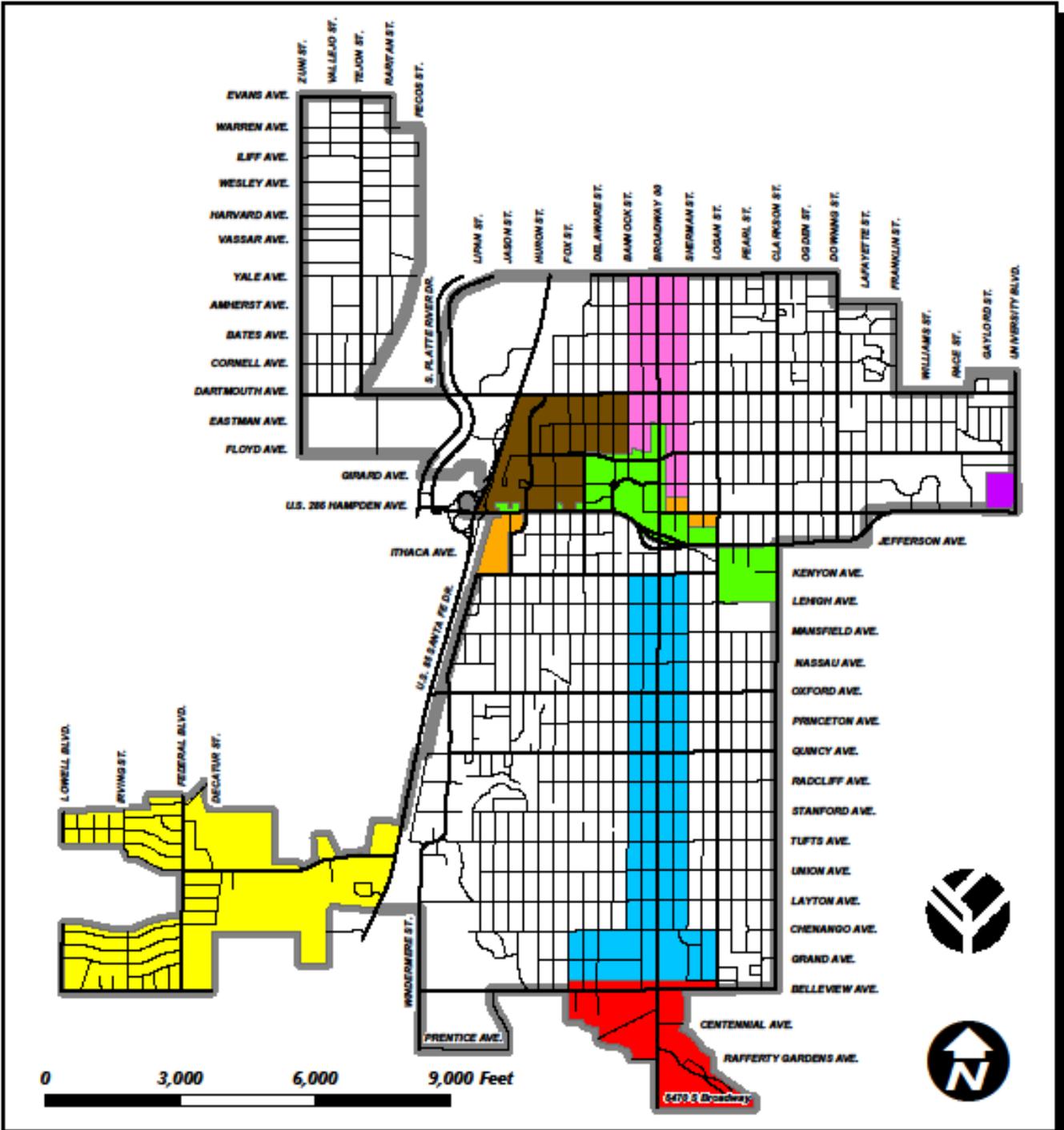
	2006	% Change	2007	% Change	2008	% Change	2009	% Change	2010	% Change	2011	% Change
<b>Area 1</b>	2,075,575	2.08%	1,984,801	-4.37%	1,960,354	-1.23%	1,810,165	-8.80%	1,752,431	-10.61%	1,734,388	-1.03%
<b>Area 2</b>	343,446	-9.72%	377,190	9.83%	388,445	2.98%	385,664	2.25%	424,928	9.39%	457,931	7.77%
<b>Area 3</b>	959,657	-1.35%	1,056,915	10.13%	1,048,199	-0.82%	1,070,072	1.24%	1,163,366	10.99%	1,155,586	-0.67%
<b>Area 4</b>	1,427,973	-1.63%	1,497,990	4.90%	1,288,261	-14.00%	1,056,591	-29.47%	1,173,986	-8.87%	1,068,286	-9.00%
<b>Area 5</b>	574,050	0.33%	641,130	11.69%	566,120	-11.70%	518,074	-19.19%	546,085	-3.54%	569,542	4.30%
<b>Area 6</b>	3,408,837	13.80%	3,470,560	1.81%	3,728,579	7.43%	3,462,618	-0.23%	3,386,598	-9.17%	3,608,456	6.55%
<b>Area 7</b>	6,449,188	-6.36%	7,045,305	9.24%	7,158,821	1.61%	5,641,682	-19.92%	5,483,588	-23.40%	6,988,391	27.44%
<b>Area 8</b>	1,556,746	5.91%	1,460,847	-6.16%	1,677,371	14.82%	1,335,413	-8.59%	1,487,713	-11.31%	1,447,613	-2.70%
<b>Area 9 and 10</b>	760,768	-6.34%	1,046,680	37.58%	1,546,709	47.77%	1,489,994	-3.67%	1,513,458	1.57%	1,531,264	1.18%
<b>Area 11 and 12</b>	61,761	3.48%	88,330	43.02%	129,252	46.33%	120,878	-6.48%	120,410	-0.39%	125,649	4.35%
<b>Area 13</b>											0	0.00%
<b>Regular Use</b>	317,377	84.79%	250,609	-21.04%	373,755	49.14%	535,947	113.86%	529,342	41.63%	502,366	-5.10%
<b>Total</b>	<b>17,935,378</b>	<b>-3.98%</b>	<b>18,920,356</b>	<b>5.49%</b>	<b>19,865,867</b>	<b>5.00%</b>	<b>17,427,099</b>	<b>-7.89%</b>	<b>17,581,905</b>	<b>-11.50%</b>	<b>19,189,471</b>	<b>9.14%</b>
Refunds	227,581	83.40%	241,870	6.28%	487,132	101.40%	266,452	-45.30%	199,682	-25.06%	33,486	-83.23%
Audit & Collections Revenue*	405,921	-35.79%	498,688	22.85%	676,794	35.71%	465,506	-31.22%	373,417	-19.78%	187,641	-49.75%
*included Above												
Unearned Sales Tax	650,000	-7.14%	650,000	0.00%	650,000	0.00%	600,000	-7.69%	600,000	0.00%	1,150,000	91.67%
Building Use	786,852	39.50%	1,901,726	141.69%	694,855	-63.46%	269,142	-61.27%	495,882	84.25%	537,750	8.44%
Vehicle Use	1,035,503	-14.32%	1,169,056	12.90%	1,122,225	-4.01%	808,266	-27.98%	765,700	-5.27%	820,062	7.10%

**October YTD Collections by Area 2006-2011**



**Area Descriptions**

- |   |   |
|---|---|
| Area 1 - CityCenter (Formerly Cinderella City)  | Area 6 - All other City locations                                 |
| Area 2 - S of Yale, N of Kenyon between Bannock & Sherman   | Area 7 - Outside City limits                                      |
| Area 3 - S of Kenyon, N of Chenango between Bannock & Sherman and S of Chenango, N of Bellewood between Logan & Delaware  | Area 8 - Public Utilities   |
| Area 4 - Brookridge Shopping Center (Between Fox and Sherman and North side of Belleview and to the Southern City Limits) | Area 9 and 10 - Downtown & Englewood Pkwy                         |
| Area 5 - Centennial Area W of Santa Fe  | Area 11 and 12 - S of 285, N of Kenyon between Jason and Santa Fe |
|   | Area 13 - Hampden Avenue (US 285) and University Boulevard        |



**City of Englewood, Colorado: Sales Tax Areas**

- |        |                |                          |
|--------|----------------|--------------------------|
| Area 1 | Area 5         | Arterials and Collectors |
| Area 2 | Area 9 and 10  | Local Streets            |
| Area 3 | Area 11 and 12 | Englewood City Limits    |
| Area 4 | Area 13        |                          |

Areas Not Depicted on Map:  
 Area 6 - Other City Locations      Area 7 - Outside City Limits      Area 8 - Public Utilities

H:\data\gis\cityofenglewood\salesmap2011.pdf

MEMORANDUM



TO: Dan Brotzman, City Attorney  
FROM: Nancy Reid, Assistant City Attorney  
DATE: November 15, 2011  
REGARDING: Term Limits for Boards and Commission Members.

The Englewood Board of Adjustment has raised a question as to whether the limitation on the number of terms for board and commission members would be improper as proposed. The Board argued that 2C should be read in the same manner as the term limits in the Colorado Constitution Article V, Section 3, which was passed as an initiated Constitutional Amendment in 1990. The distinction between the State initiated Constitutional Amendment and the initiated Ordinance is that the 1990 Constitutional Amendment question specifically set a prospective date:

“This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1991.”

The initiated ordinance passed in the City of Englewood does not have that particular prospective date limitation. The plain reading of the City of Englewood’s initiated Ordinance would limit those Board and Commission Members to terms already served.

Attachment

NNR/nf

**AGO 05-07.**

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**Colorado Attorney General Opinions**

**2005.**

**AGO 05-07.**

STATE OF COLORADO  
OFFICE OF THE ATTORNEY GENERAL

FORMAL OPINION OF  
JOHN W. SUTHERS  
Attorney General

Opinion No. 05-07  
AG Alpha No. ST AD AGBBR

October 18, 2005

This opinion, requested by Secretary of State Donetta Davidson and resubmitted by Secretary of State Gigi Dennis, concerns the counting of partial terms for purposes of legislative term limits.

**QUESTIONS PRESENTED AND CONCLUSION**

*Question:* What is the meaning of "one-half of a term" as used in Article V, Section 3(2)? In particular, how does one determine whether a person appointed or elected to fill a vacancy in the House of Representatives or the State Senate served "at least one-half of a term"?

The request also asks that I address "whether the partial terms served by Senator Joan Fitz-Gerald and Senator Lois Tochtrop should count as full terms for purposes of the term limit provisions in Article V, Section 3."

*Answer:* For purposes of the partial term provision of Article V, Section 3(2), a State senator serves "at least one-half of a term of office" if that person takes the oath of office on or before the first day of the third legislative session of the term being completed. Likewise, a State representative serves "at least one-half of a term of office" if that person takes the oath of office on or before the first day of the second legislative session of the term that is being completed. Under this definition, the partial terms served by Senator Fitz-Gerald and Senator Tochtrop count as full terms under Article V.

**BACKGROUND**

Under the original 1876 Colorado Constitution, senators and representatives served a "term of two years." Art. V, § 3 (amended 1974). Senate terms were amended to a "term of four years" in 1974. Art.

V, § 3(1). In 1990, Colorado voters initiated and passed an amendment to Article V, Section 3(2), imposing term limits on members of the General Assembly. Article V, Section 3, now states:

Section 3. Terms of senators and representatives.

(1) Senators shall be elected for the term of four years and representatives for the term of two years.

(2) In order to broaden the opportunities for public service and to assure that the general assembly is representative of Colorado citizens, no senator shall serve more than two consecutive terms in the senate, and no representative shall serve more than four consecutive terms in the House of Representatives. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1991. Any person appointed or elected to fill a vacancy in the general assembly and who serves at least one-half of a term of office shall be considered to have served a term in that office for purposes of this subsection (2). Terms are considered consecutive unless they are at least four years apart.

(emphasis added). This amendment, along with a similar amendment to executive branch terms, see Colo. Const. Art. IV, § 1, passed overwhelmingly with 71% of the vote.

For purposes of calculating when a person has served the maximum number of terms in office, Section 3(2) includes the above emphasized language stating that a partial term of "at least one-half of a term of office" shall count as a full term. As requested, this opinion attempts to define when a period of service constitutes "at least one-half of a term of office."

## DISCUSSION

Construing the phrase "at least one-half of a term of office" necessitates a defining of two separate concepts: (1) a legislative "term of office," and (2) what it means to serve "at least one-half" of such a term. In construing constitutional language, I must look first to the text of the Constitution. See *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004). When the meaning of a constitutional provision is unambiguous, no further inquiry is necessary. *Id.* Only if a term is not clearly defined, either expressly or by the context in which it appears, are alternative methods of construction utilized. *Id.*

In the legislative context of Article V, a "term of office" is defined as both a "term of four years" for senators and a "term of two years" for representatives. Art. V, § 3(1)(fn1). Those phrases, in turn, are defined not as a fixed number of days, months or years, but rather as a period of time beginning upon "the convening of the first regular session of the general assembly next after [the] election," and ending upon the convening of the fifth (for senators) or third (for representatives) subsequent session. Art. V, §§ 3(1), 7. Within the parameters of this definition, the exact beginning date is determined by joint resolution of the General Assembly or, if the General Assembly fails to set a date, by the Executive Committee of Legislative Council, which is made up of the legislative leadership (the four highest ranking majority party members and the two highest ranking minority party members).

Because the General Assembly and its leadership have plenary authority to start a session anytime between January 1 and the second Wednesday of January, the exact number of days in a

"term of four years" or a "term of two years" cannot be ascertained until shortly before that term expires when the General Assembly or the Executive Committee sets the start date of the final session in that term. Moreover, the number of days in any given term can vary by up to almost one month. A "term of four years" in the Senate can range from 1,447 days to 1,474 days, while a "term of two years" in the House of Representatives can vary between 716 and 744 days.(fn2)

Having defined a "term of office," the next question is what constitutes "at least one-half" of such a term. Because the phrase "one-half" is not defined in the Constitution, I must rely on other methods of construction, keeping in mind that the ultimate goal is to reflect the intent of the electorate adopting the amendment. See *Bolt v. Arapahoe County Sch. Dist. No. Six*, 898 P.2d 525, 532 (Colo. 1995). If the intent of the electorate is not clear from the language of an amendment, the provision at issue should be construed in light of the objective sought to be achieved and the mischief to be avoided by the amendment. See *In the Interest of Y.D.M.*, 593 P.2d 1356, 1359 (Colo. 1979). I may not engage in a narrow or technical reading of language if such a reading would defeat the intent of the voters. See *Grossman v. Dean*, 80 P.3d 952, 962 (Colo. 2003).

The clearest expression of voter intent comes from the term limit provision itself. Its stated purpose is to "broaden the opportunities for public service" and to "assure that elected officials of governments are responsive to the citizens of those governments." Art. V, § 3(2) and Art. XVIII, § 11(1). These twin purposes were more fully described in the 1990 Blue Book sent to every registered voter. It states, inter alia:

(1) Our founding fathers believed holding elected office was a public service to be performed only for a limited time. Today, however, we refer to some elected officials as "career" or "professional" politicians

and many such officials view their positions as career or lifetime jobs. This careerism stems partly from the fact that incumbents seeking reelection nearly always win. Once in office for long periods of time, incumbents tend to lose touch with the interests of their constituents and focus more of their attention on issues over which they have gained power through the seniority system. The result is a system in which political participation is discouraged, office holders are unresponsive to constituents, and elected officials spend more time on election campaigns than they do on their duties as public officials. A return to a "citizen" government through the limitation of terms is the answer to this political congestion.

(2) Long periods of service by public office holders does provide for experience but does not necessarily provide citizens with better lawmakers. Limiting terms of office will allow more individuals, particularly those with established professions or occupations outside of public office, the opportunity to serve the public. Broadening public service will invigorate the political system by making room for new policy-makers with new perspectives on addressing public policy issues. Realizing that terms of office are limited, public office-holders will be more productive, devote more time to their duties as elected officials, and will be more bold in political decision-making without fearing the potential impact of such decisions on future reelection efforts.

The documented history of the 1990 ballot measure echoes this sentiment. As part of this analysis I reviewed: (1) audio recordings of the February 21, 1989 hearing before the Title Setting Board at which the proposed ballot language was reviewed by representatives of the Attorney General's office,

the Secretary of State and Legislative Legal Services; (2) the Staff Summary of the September 6, 1990 joint "review and comment" hearing of the Legislative Council and Legislative Legal Service Committee(fn3); and (3) caselaw and attorney general opinions from other states with similar constitutional provisions.(fn4) While none of these secondary sources were helpful in defining "one-half" of a legislative term of office, the Blue Book and hearings all provide overwhelming evidence that the voters' intent in initiating and adopting term limits was to limit the disproportionate influence over the legislative process (perceived or otherwise) associated with "career" or "professional" politicians. As stated several times in the Blue Book, the central purpose of the term limits provision is to shorten terms of office, and thus the number of years and legislative sessions served by members of the General Assembly. Any interpretation of the partial term provision must reflect this intent. *See generally* Opinion of Attorney General Ken Salazar No. 2000-05 (July 10, 2000) (when assessing voter initiatives, courts should "give effect to the likely understanding of the 'average voter' and generally eschew subtle legal nuances").

In my view, there are two possible methods of determining when a legislator has served "one-half" of a term of office. The first method is to retroactively take the total number of days in the term and divide by two. If the legislator has served more days than this number, they have exceeded one-half of that term. The second method is simply to define the half-way point of a House or Senate term as the first day of the second or third session, respectively. Thus, if a senator is sworn in any time prior to the start of the third legislative session after being elected, such that the senator will ultimately serve during two of the four sessions in that term of office, he or she has served "at least one-half" of the term of office. Each of these methods is discussed in greater detail below.

#### *1. Retroactively counting the number of days served and dividing by two.*

As a method of calculating "one-half" of a term of office, counting the number of days served and dividing by two provides a certain degree of mathematical exactitude (at least in hindsight once the starting date of the final session is set). As a method of carrying out the purposes of the term limit provision, however, it is fraught with problems. As demonstrated through the examples below, this method creates uncertainty in determining how long a legislator can serve, provides an opportunity for the political party in power to manipulate the number of terms a legislator can serve, subverts the will of the voters by allowing someone who falls one or two days over an arbitrary line to serve four more years and four more legislative sessions, and ultimately fails to serve the voters' intent to limit the number of terms and years served by any one person.(fn5)

#### Example #1:

The chart below shows that Senator A was elected in November 2000 to fill the remainder of a term commencing on January 6, 1999. Senator A's partial term ran from January 10, 2001 (upon the convening of the General Assembly) to January 7, 2003, for a total of 728 days.(fn6) Because the number of days in that full term was 1,463, a mathematical "one-half" is 731.5 days, which is less than 50% of the full term. Senator A's partial term would therefore not count as a full term, and he is eligible to serve two more four-year terms.

Beginning of

Beginning of

End of term

Days in full

One-half of

Days in partial full term

partial term

term

days in full

term served

term Senator A Jan. 6, 1999

Jan. 10, 2001

Jan. 7, 2003

1463

731.5

728 ([less] 50%) Senator B

Jan. 10, 2001

Jan. 8, 2003

Jan. 12, 2005

1463

731.5

735 ([less] 50%)

Like Senator A, Senator B also served two years of a four year term. The full term began on January 10, 2001, and the partial term began on January 8, 2003. The term ended on January 12, 2005. As was the case with Senator A, the full term was 1,463 days. But because of when each

session started, Senator B's partial term was 735 days, which is mathematically greater than 50% of the full term (731.5 days). Thus, Senator B's partial term counts against her for term limit purposes, and she may only run for election once more.

The inconsistency and unfairness of this outcome is obvious. Because the 2003 session happens to start on January 8, Senator A may serve ten years, while Senator B is limited to six years. This is true even though both full terms are 1,463 days and both senators were elected during regular elections to fill the final two years of a vacant term.

Moreover, a person who was: (1) elected to the House of Representatives on the same day Senator B is elected, (2) sworn in on the same day as Senator B, and (3) completes his or her first term on the same day Senator B completes her partial term, will be eligible for eight years of service in the General Assembly while Senator B will be eligible for only six years.

#### Example #2:

Senator A begins a four-year term on January 12, 2005, but vacates the office in 2006. Senator B wins the vacancy election in November 2006, and begins a partial term on January 10, 2007. His term ends upon the convening of the General Assembly in 2009. If the legislative leaders start the 2009 session on January 1, the total number of days in the full term is 1,450, half of which is 725 days. Because Senator B's partial term is 722 days - three days less than the half-way point - the term does not count towards the two term limit. Senator B is therefore eligible to serve ten years.

If, on the other hand, the leadership in the General Assembly wishes to limit Senator B to six years in office, it can start the session anytime after January 8, 2009, because his partial term will then exceed one-half of the number of days in the full term. Thus, if the 2009 session starts on January 9, the full term is 1,458 days, half of which is 729 days. Because the partial term would then be 730 days, it is more than 50% of the full term and would count as a full term for purposes of the term limit provision.

This example demonstrates how the majority party in the legislature can, for purposes of political gain, manipulate the length of a fellow legislator's time in office. This allows the controlling party to further strengthen its majority position by either: (a) helping an

incumbent member of that party retain that seat, or (b) creating an open seat that would otherwise be held by a member of the opposite party. While there is no evidence of any attempt to manipulate the terms of Senator Fitz-Gerald or Tochtrop, such results are possible if we rely upon a "number of days served" methodology to determine when a legislator's partial term constitutes a full term. It is incontrovertible that the voters did not intend such results.

*2. Using the first day of the second or third session to determine if a partial term constitutes "at least one-half" of a term of office.*

The alternative method is to define "at least one-half" of a term as any term that begins on or before the start of the third (second for House members) legislative session in the full term. Under this simple method, a senator that has served two full sessions has served "at least one-half" of the term of

office for purposes of the term limit provision. Likewise, a House member sworn in on or before the start of the second session of the full term has served "at least one-half" of the term.

Under this method, the possible length of any person's time in office will be known from the moment that person is sworn-in. This method precludes most of the potential for manipulation, as the length of a term of office is no longer tied to the exact number of days served in the partial term. Finally, and perhaps most importantly, this method accurately reflects the intent of the voters to limit any one elected official's influence over the legislative process. The "average voter" who voted to approve the term limit initiative surely intended to count the serving of two full Senate sessions, or one full House session, as "at least one-half" of a full term of office. See Op. Att'y Gen. No. 2000-05.

Defining one-half of a term by the start of a legislative session is wholly consistent with the text of Article V, which defines a legislative "term of office" not in terms of days, months or calendar years, but by when the majority party decides to convene the General Assembly. Under this reading, the beginning, middle and end of a term of office are all measured consistently with the start of each legislative session. See C.R.S. § 2-4-101 (2005) ("words and phrases shall be read in context").

While this method greatly reduces the opportunities for manipulation, it does allow for one opportunity to affect a legislator's time in office. If, for example, a person is appointed or elected to fill a vacancy after the second session of a Senate term, the swearing-in date could be intentionally postponed until the second day of the third session, thereby putting them under the "one-half" mark and allowing them to serve an additional four years in office. Given that every other new senator will likely be sworn in the previous day, however, waiting another day to take the oath would surely be viewed as a purely political act. While that circumstance is not at issue here, I previously stated in Formal Opinion 2005-04 that intentional efforts to undermine the term limit laws should not be legally condoned.

## CONCLUSION

For the reasons described above, it is my legal opinion that a person serves "at least one-half of a term of office" in the Colorado Senate if he or she takes the oath of office on or before the first day of the third legislative session of the term that person has been elected or appointed to fill. Likewise, I conclude that a person serves "at least one-half of a term of office" in the Colorado House of Representatives if he or she takes the oath of office on or before the first day of the second legislative session of the term that person has been elected or appointed to fill. This conclusion is supported by the text of the Colorado Constitution, the history surrounding the adoption of the term limit provision, and other rules of constitutional construction described above. I am obligated to construe the term limit provision in such a manner as will prevent an evasion of its ultimate purpose. See *Common Cause v. Bledsoe*, 810 P.2d 201, 207 (Colo. 1991); Op. Att'y Gen. No. 2005-04 (Aug. 16, 2005), p. 4. This method best serves the voters' intent and the public interest by precluding opportunities for the manipulation of specific legislative terms by those in control of the General Assembly.(fn7)

Under this analysis, the partial terms served by Senators Joan Fitz-Gerald and Lois Tochtrop count as full terms under Article V. Senator Fitz-Gerald was elected in November 2000 to fill the vacated term of Senator Tony Grampsas. His term began on January 6, 1999, and concluded on January 8, 2003. Senator Fitz-Gerald took office on January 10, 2001, the first day of what would have been Senator Grampsas' third session. Thus, under the rule announced herein, Senator Fitz-Gerald served "at least one-half of a term of office" under Article V.

Senator Tochtrop's partial term also counts as a full term under Article V. She was appointed to fill Senator Alice Nichol's term, which began on January 8, 2003. Senator Tochtrop's partial term began on January 12, 2005, and will end upon the convening of the 2007 session. Because she was sworn-in on or before the start of the third legislative session, her current term counts as "at least one-half of a term of office" for purposes of Article V.

Issued this \_\_\_\_\_ day of October, 2005.

JOHN W. SUTHERS

Colorado Attorney General

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Footnotes:

1 See also Formal Opinion of Attorney General Ken Salazar, No. 2000-05 ("the term 'office' in the second sentence appears only to be a shorthand reference to the more specific phrases of the first sentence.").

2 In contrast, the exact start date and length of a "term of four years" for Governor, Lieutenant Governor, Attorney General, Secretary of State, or Treasurer, is known in advance and is not subject to the will of any elected official. Article IV, Section 1, states that executive officers begin their term on the "second Tuesday of January" in the year following their election, and end on the day the subsequent officer holder is sworn-in.

3 Audio recordings of this meeting were not available.

4 At least three other states (Michigan, Nebraska and Louisiana) use the term "one-half" in their constitutional partial term limit provision. The term is not defined by any of those state constitutions, caselaw, or attorney general opinions.

5 Moreover, counting the number of days served is not consistent with how legislators are paid, which occurs monthly during their term of service and does not factor in the number of days served. For the first January in a term of service, a legislator is paid for the entire month even if the legislator does not take office until January 14 (the latest possible date). Thus, the outgoing legislator, though technically still in office until their successor is sworn-in, is not paid for that portion of January served.

6 A legislative term officially ends upon the swearing in of the subsequent office holder upon the convening of the General Assembly. For purposes of this analysis, however, the previous day is deemed the final day in office.

7 This legal opinion applies only to Article V, and should not be construed as applicable to the executive branch offices of Article IV, where the beginning and ending dates of a term of office are more concrete. See Art. IV, § 1.



MEMORANDUM



TO: Dan Brotzman, City Attorney  
FROM: Nancy Reid, Assistant City Attorney  
DATE: November 8, 2011

Ballot Question 2C on the municipal election on November 1, 2011 was passed, which read as follows:

Shall THE ENGLEWOOD MUNICIPAL CODE of the City of Englewood, Colorado be amended by changing the Code to provide:

In order to broaden the opportunities for public service and guard against excessive concentrations of power, no appointed voting member of any Board or Commission in the City of Englewood shall hold any elected public office unless specifically designated by the Englewood City Charter. In the event an existing member of any Board or Commission is elected to public office that member shall be required to resign their position. Each member of a Board or Commission will have the opportunity to serve up to three terms per Board or Commission, when a term expires that member will have the opportunity to be reappointed to that same Board or Commission after a 4 year period.

In evaluating the impact of the new Code changes relating to term limits for Boards and Commissions I offer the following:

1. The effective date of this Ordinance will be the date of the election, November 1, 2011.
2. When a current member's term ends, IF that was the third term, the member may not be reappointed to that Board or Commission.
3. If an alternate is appointed to fill a partial term, they are limited to two full terms after the partial term because the amendment allows "up to three terms".
4. A non-voting alternate or a voting alternate (Board of Adjustment only) is not an "appointed voting member" until that person is appointed as a full member. Therefore, the time they are on the Board or Commission as an alternate is not counted as a part of the three terms.
5. If a member is term limited on one Board or Commission, they may be appointed to another without having to wait for four years. The four year period only applies to reappointment to the same Board or Commission.
6. The wording is vague but it appears that when a member of a Board or Commission is elected to public office he or she must resign from the board, not from the elected position.



## Memorandum

**TO:** Gary Sears, Englewood City Manager  
**THROUGH:** Jerrell Black, Director of Parks and Recreation ✓  
**FROM:** Joe Sack, Recreation Services Manager ✓  
**DATE:** November 17, 2011  
**RE:** Englewood Schools Flat 14ers Project



“Flat 14ers” is a movement-based initiative that challenges individuals to virtually climb Colorado’s 14ers by utilizing resources and open spaces in their own neighborhood. By walking, running, playing, and engaging in sports and other activities, participants will accumulate steps that will then be used to track how many Colorado Flat 14ers they have “climbed.” Designation of local parks, paths, walking trails, and school spaces are a key component of this initiative. By simply walking a designated space a certain number of times (e.g. six times around Centennial Park Trail Loop), participants will understand that they have gathered enough steps to climb the designated Colorado 14er. Children, parents, residents and non-residents alike are encouraged to participate in this program in order to increase the physical activity of the entire community and utilization of our open spaces.

Several local and national organizations have come together to develop, implement, and promote the Flat 14ers concept including CBS4, The Children’s Hospital, America on the Move, Colorado Parks and Recreation Association, and Tri-County Health Department. Utilizing funds from the Communities Putting Prevention to Work Initiative grant (CPPW), Tri-County Health Department is implementing and promoting Flat 14ers at fourteen school districts and their associated Parks and Recreation Departments within the Tri-County area (Adams, Arapahoe, and Douglas Counties).

Englewood Schools has requested the City of Englewood Parks and Recreation Department enter into a Cooperative Agreement in support of developing Flat 14ers courses within the City. Funding for this project has been acquired through a CPPW grant received by Englewood Schools. There are no required City funds for this project. Staff will bring the Cooperative Agreement for formal approval on Monday, December 5, 2011.

Selected Flat 14er Routes:

**City of Englewood**  
Centennial Park Trail Loop

**Englewood Schools**  
Bishop Elementary  
Charles Hay World School  
Cherrellyn Elementary  
Clayton Elementary  
Englewood High School  
Englewood Middle School

## **Cooperative Agreement**

### **Partnership between Englewood Schools and the City of Englewood**

This Cooperative Agreement ("CA") describes and confirms the expectations and responsibilities of The City of Englewood ("City") and Englewood Schools ("District") related to the "Flat 14ers Initiative" ("Initiative") as described in this CA. The term of this CA will be from the date of final signature(s) will be school years 2011-2015 for the involved District and City sites (Exhibit A), unless partially or wholly terminated earlier pursuant to the conditions outlined in Section III. Colorado Statute C.R.S. §22-32-118 allows for off-hour use of School District open-air playgrounds.

#### **I. DESCRIPTION OF PROJECT**

"Flat 14ers" is a movement-based initiative that challenges individuals to virtually climb Colorado Flat 14ers by utilizing resources and open spaces in their own neighborhood. By walking, running, playing, and engaging in sports and other activities, participants will accumulate steps which will then be used to track how many Colorado Flat 14ers they have "climbed." Designation of local parks, paths, walking trails, and school spaces (including school perimeters, tracks, gyms, etc.) are a key component of this initiative. Activity tracking will be achieved via a free, special website that is being developed by America on the Move, which will offer a child-friendly logged-in area. It is not necessary to have access to the Internet to engage in this program, however. By simply walking a designated space a certain number of times (e.g. six times around Centennial Park), participants will understand that they have gathered enough steps to climb a certain Colorado 14ers.

Several local and national organizations have come together to develop, implement, and promote the Flat 14ers concept including CBS4, The Children's Hospital, America on the Move, Colorado Parks and Recreation Association, and Tri-County Health Department. Utilizing funds from the Communities Putting Prevention to Work Initiative grant (CPPW), Tri-County Health Department is implementing and promoting Flat 14ers at fourteen school districts and their associated Parks and Recreation departments within the Tri-County area (Adams, Arapahoe, and Douglas Counties.)

An initial focus of the program is on middle school students, due to a 19.6% increase in obesity of children aged 6-11 from 1980 to 2008<sup>1</sup>. Parents, staff, residents and non-residents alike are encouraged to participate in this program as well in order to increase the physical activity of the entire Tri-County population and utilization of our open spaces.

The schools and park identified as viable Flat 14ers routes are listed in Exhibit A.

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<sup>1</sup> Healthy Youth: Childhood Obesity. Centers for Disease Control. <http://www.cdc.gov/healthyyouth/obesity/>

**B. City Responsibilities:**

1. Gain approval of this Initiative and the parameters herein by City Council/Governance Board
2. Designate responsible person who will:
  - a. Participate in meetings with appointed student work group
  - b. Promote use of the City and District Flat 14ers routes and encourage usage of all Englewood Flat 14ers routes.
3. Identify and name a Flat 14ers route at a City park (a 14,000 foot mountain name such as "Mount Evans")
4. Measure the distance of the identified route and the number of steps required to complete the route.
5. Participate in "Annual Summit" \*\*
6. Maintain the Flat 14ers signs that are located on the grounds of the designated Flat 14ers City park. This means that the City will make every effort to remove graffiti from the signs. When it is not possible to remove graffiti, or if a sign is badly damaged and negatively affects the appearance of the route or city property, it will be removed and the City is not obligated to replace it.

**C. District Responsibilities:**

1. Gain approval of this Initiative and the parameters herein by respective School Board.
2. Designate a responsible person (the Wellness Committee chairperson) at the District who will:
  - a. Facilitate annual meeting with appointed student work group
3. Appoint a District-wide student work group that will:
  - a. Promote use of the City and District Flat 14ers routes and encourage usage of all Englewood Flat 14ers routes.
  - b. Monitor and evaluate the Flat 14ers Initiative within the District.
  - c. Participate in "Annual Summit."
4. Identify and name Flat 14ers routes around school grounds (a 14,000 foot mountain name such as "Mount Evans").
5. Measure the distance of the identified route and the number of steps required to complete the route.

6. Maintain the Flat 14ers signs that are located on the grounds of the designated Flat 14ers school routes. This means that the District will make every effort to remove graffiti from the signs. When it is not possible to remove graffiti, or if a sign is badly damaged and negatively affects the appearance of the route or school property, it will be removed and the District is not obligated to replace it.

**D. Mutual Responsibilities:**

1. A work group will meet at least annually to monitor the Flat 14ers Initiative and this group will hold conference calls or meetings, as appropriate, to review the performance of the Initiative.
2. The City and District will determine the number of signs required, along with the appropriate language for each sign, to be posted along the created City and District routes. These signs will measure the distance(s) traveled.
3. The City and District will review and evaluate the Flat 14ers Initiative prior to the beginning of the school year to review successes and plans for expansion (of the Flat 14ers Initiative).
4. Subject to the terms and conditions of this CA, the City and District staff agrees to cooperate and use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this CA.
5. Neither the City nor the District are required to replace damaged or stolen Flat 14ers signs; each party may do so, however at their own discretion.
6. All signs must be installed by March 1, 2012.

**II. TERMINATION**

This CA may be wholly or partially terminated at any time during this Initiative with 48 hours of written notice by either party.

**III. NOTICE TO ALL PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and registered, as follows:

**TO THE DISTRICT:** Assistant Superintendent or designee, Englewood Schools, 4101 S. Bannock, Englewood, CO 80110.

**TO THE City:** Director of Parks and Recreation, City of Englewood Parks and Recreation, 1155 W. Oxford Ave., Englewood, CO 80110.

IV. MISCELLANEOUS

1. Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made in the sole and absolute discretion of the City, and all approvals, consents and determinations to be made by the District hereunder may be made in the sole and absolute discretion of the District.
2. This instrument contains the entire agreement between the parties with respect to matters set forth herein and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.
3. The section and other headings of this CA are for convenience of reference only and shall be disregarded in the interpretation of this CA.

V. PARTY SIGNATURES TO CA

I have read all of the provisions outlined in this CA, and agree to comply with every provision listed herein.

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City

Date

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District

Date

\*\* Annual Summit: Annual meeting of all involved to come together to acknowledge successes and plan for future.

Exhibit A – selected schools and park

## EXHIBIT A

The District schools that have been identified as viable Flat 14ers routes are:

Bishop Elementary  
Charles Hay World School  
Cherrelyn Elementary  
Clayton Elementary  
Englewood High School  
Englewood Middle School

The City of Englewood Park that has been identified as a viable Flat 14ers route is:

Centennial Park Trail Loop