

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, August 19, 2013
7:30 pm**

Englewood Civic Center – Council Chambers
1000 Englewood Parkway
Englewood, CO 80110

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Roll Call.
5. Consideration of Minutes of Previous Session.
 - a. Minutes from the Regular City Council Meeting of August 5, 2013.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
 - a. Frank Tsu will be present to address Council.
7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

Council Response to Public Comment
8. Communications, Proclamations, and Appointments.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

9. Consent Agenda Items.
 - a. Approval of Ordinances on First Reading.
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 33 – Authorizing the application for, and acceptance of, a grant award from the Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant (JAG) Program.
 - ii. Council Bill No. 34 – Approving a lease agreement for the Byers Biosolids Farm.
 - iii. Council Bill No. 36 – Authorizing the execution of two Intergovernmental Subgrantee Agreements with Arapahoe County for the 2013 Community Development Block Grant (CDBG).
 - iv. Council Bill No. 38 – Authorizing changes to Title 4, Chapter 4, Section 2 of the Englewood Municipal Code (Building Use Taxes).
 - v. Council Bill No. 39 -- Eliminating Title 5, Chapter 17, Going Out of Business and Damaged Goods Sales and adding a new Section 10 to Chapter 1 of the Englewood Municipal Code.
 - vi. Council Bill No. 40 -- Amending Title 5, Chapter 6 (Adult Entertainment Establishments) of the Englewood Municipal Code to reflect actual practices and procedures.
 - vii. Council Bill No. 42 – Vacating utilities easements at 5001 South Broadway and 5084 South Acoma Street.
 - c. Resolutions and Motions.
10. Public Hearing Items.
 - a. A Public Hearing to gather input on Council Bill No. 37, authorizing amendments to Title 16: Unified Development Code regarding distilleries, breweries and wineries.
 - b. A Public Hearing to gather input on adopting the Englewood Light Rail Corridor Plan as a Supplementary Planning Document in support of Roadmap Englewood: The 2003 Englewood Comprehensive Plan.
11. Ordinances, Resolutions and Motions
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 41 -- Recommendation from the Community Development Department to approve a bill for an ordinance authorizing the redemption and sale of 3685 South Fox Street. **Staff Source: Harold Stitt, Senior Planner and Janet Grimmet, Housing Finance Specialist.**

- ii. Council Bill No. 43 – Recommendation from the City Clerk’s Office to adopt a bill for an ordinance submitting to a vote of the registered electors of the City of Englewood at the next scheduled Municipal Election a proposed initiative relating to dedication of Park property. **Staff Sources: Frank Gryglewicz, Director of Finance and Administrative Services and Loucrishia Ellis, City Clerk.**
 - b. Approval of Ordinances on Second Reading
 - i. Council Bill No. 35 – Approving the sale of the Historic Englewood Depot to Tom and Patti Parson.
 - c. Resolutions and Motions
- 12. General Discussion.
 - a. Mayor’s Choice.
 - b. Council Members’ Choice.
- 13. City Manager’s Report.
- 14. City Attorney’s Report.
- 15. Adjournment.

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 33
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT REGARDING THE APPLICATION FOR AND ACCEPTANCE OF AN EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2013 LOCAL SOLICITATION.

WHEREAS, the Englewood City Council previously authorized the application for and acceptance of Justice Assistance Grants (JAG) with the passage of Ordinance #49, Series of 2008; Ordinance #12, Series 2009; and Ordinance #27, Series of 2009; Ordinance #16, Series of 2010; Ordinance #33, Series of 2011; and Ordinance No. 24, Series of 2012; and

WHEREAS, the award is based upon a congressionally mandated JAG formula which is based on the State's share of violent crime and population and Englewood receives an amount based on the City's proportion of the State's three-year violent crime average; and

WHEREAS, the Justice Assistance Grant is a non-matching grant for 2013, awarding the City of Englewood Fourteen Thousand, Four Hundred and Sixty-Five Dollars, (\$14,465.00); and

WHEREAS, the JAG funding will be used to purchase new Personal Protective Equipment (PPE) for the Englewood Police Department and communications equipment for the Englewood SWAT team; and

WHEREAS, the Justice Assistance Grant incorporates funds from the U.S. Department of Justice.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the City to apply for and accept the Justice Assistance Grant from Edward Byrne Justice Assistance Grant Program, attached hereto as Exhibit A.

Section 2. The Mayor is authorized to execute the acceptance of the grant for and on behalf of the City of Englewood.

Section 3. The Justice Assistance Grant incorporates federal funds from the U.S. Department of Justice.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

OMB No. 1121-0329



The U.S. Department of Justice (DOJ), Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA) is seeking applications for funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. This program furthers the Department's mission by assisting state, local, and tribal efforts to prevent or reduce crime and violence.

Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2013 Local Solicitation

Eligibility

Applicants are limited to units of local government appearing on the FY 2013 JAG Allocations List. To view this list, go to www.bja.gov/programs/jag/13jagallocations.html. For JAG Program purposes, a unit of local government is: a town, township, village, parish, city, county, borough, or other general-purpose political subdivision of a state; or, it may also be a federally recognized Indian tribe that performs law enforcement functions (as determined by the Secretary of the Interior). Otherwise a unit of local government may be any law enforcement district or judicial enforcement district established under applicable state law with authority to independently establish a budget and impose taxes. In Louisiana, a unit of local government means a district attorney or parish sheriff. In the District of Columbia or any U.S. Trust Territory, a unit of local government is any agency of the District of Columbia or federal government performing law enforcement functions for the District of Columbia or U.S. Trust Territory.

Deadline

Applicants must register in OJP's Grants Management System (GMS) prior to submitting an application for this funding opportunity. Select the "Apply Online" button associated with the solicitation title. (See "How to Apply," page 19.) All registrations and applications are due by 8:00 p.m. eastern time on July 9, 2013. (See "Deadlines: Registration and Application," page 4.)

Contact Information

For technical assistance with submitting the application, contact the Grants Management System Support Hotline at 1-888-549-9901, option 3, or via e-mail to

Note: The GMS Support Hotline hours of operation are Monday–Friday from 6:00 a.m. to 12 midnight eastern time, except federal holidays.

For assistance with any other requirement of this solicitation, contact the BJA Justice Information Center at 1–877–927–5657, via e-mail to _____ or by live web chat. The BJA Justice Information Center hours of operation are 8:30 a.m. to 5:00 p.m. eastern time, and 8:30 a.m. to 8:00 p.m. eastern time, Monday through Friday, on the solicitation close date. You may also contact your State Policy Advisor:
www.bja.gov/About/Contacts/ProgramsOffice.html.

Funding opportunity number assigned to announcement: BJA-2013-3599

Release date: May 30, 2013

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Edward Byrne Memorial Justice Assistance Grant (JAG) Program: Local Solicitation CFDA #16.738

Overview

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 U.S.C. 3751(a)) is the primary provider of federal criminal justice funding to state and local jurisdictions. The JAG Program provides states and units of local governments with critical funding necessary to support a range of program areas including law enforcement, prosecution and court programs, prevention and education programs, corrections and community corrections, drug treatment and enforcement, crime victim and witness initiatives, and planning, evaluation, and technology improvement programs.

Deadlines: Registration and Application

Applicants must register in GMS prior to submitting application for this funding opportunity. Select the "Apply Online" button associated with the solicitation title. The deadline to register in GMS and the deadline to apply for funding under this announcement is 8:00 p.m. eastern time on July 9, 2013. See "How To Apply" on page 19 for details.

Eligibility

Refer to the title page for eligibility under this program.

Program-Specific Information

Program Areas

JAG funds may be used for state and local initiatives, technical assistance, strategic planning, research and evaluation (including forensics), data collection, training, personnel, equipment, forensic laboratories, supplies, contractual support, and criminal justice information systems that will improve or enhance such areas as:

- Law enforcement programs.
- Prosecution and court programs.
- Prevention and education programs.
- Corrections and community corrections programs.
- Drug treatment and enforcement programs.
- Planning, evaluation, and technology improvement programs.
- Crime victim and witness programs (other than compensation).

Award Recipient Responsibilities: The Chief Executive Officer (CEO) of an eligible unit of local government or other officer designated by the CEO must submit the application for JAG funds. A unit of local government receiving a JAG award will be responsible for the administration of the funds including: distributing the funds; monitoring the award; submitting

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quarterly financial status (SF-425) and performance metrics reports and annual programmatic reports; and providing ongoing oversight and assistance to any subrecipients of the funds.

Governing Body Review: No fewer than 30 days prior to application submission, the applicant agency (fiscal agent in disparate situations) must make the grant application available for review by the governing body (or to the organization designated by the governing body. **See the Review Narrative section on page 15 for additional information.**

Public Comment: At the time of application submission, the applicant agency (the fiscal agent in disparate situations) must provide an assurance that the application was made public and an opportunity to comment was provided to citizens and neighborhood or community organizations to the extent the applicable law or established procedure makes such an opportunity available. **See the Review Narrative section on page 15 for additional information.**

Prohibited Uses: No JAG funds may be expended outside of JAG program areas. Even within these program areas, however, JAG funds cannot be used directly or indirectly for security enhancements or equipment for nongovernmental entities not engaged in criminal justice or public safety. Additionally, **JAG funds may not be used directly or indirectly to provide for any of the following matters unless the BJA Director certifies that extraordinary and exigent circumstances exist;** making them essential to the maintenance of public safety and good order:

- *Vehicles, vessels, or aircraft.
- **Unmanned aerial vehicles/unmanned aircraft, aircraft system, or aerial vehicles (UA/UAS/UAV).
- Luxury items.
- Real estate.
- Construction projects (other than penal or correctional institutions).
- Any similar matters.

***Police cruisers, police boats, and police helicopters are allowable vehicles under JAG and do not require BJA certification.**

****Unmanned Aircraft, Aircraft System, or Aerial Vehicles (UA/UAS/UAV):** No JAG funds may be expended on these items unless the BJA Director certifies that extraordinary and exigent circumstances exist, making them essential to the maintenance of public safety and good order. Also, any grant award using funds for this purpose may be subject to additional reporting criteria, which will be spelled out in a customized special condition attached to the grant award.

For information related to requesting a waiver to obtain BJA certification for any prohibited item, or for examples of allowable vehicles that do not require BJA certification, refer to the JAG FAQs on BJA's [JAG web page](#).

Evidence-Based Programs or Practices

OJP places a strong emphasis on the use of data and evidence in policy making and program development in criminal justice. OJP is committed to:

- improving the quantity and quality of evidence OJP generates;

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- integrating evidence into program, practice, and policy decisions within OJP and the field; and
- improving the translation of evidence into practice.

OJP considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through one or more outcome evaluations. Causal evidence documents a relationship between an activity or intervention (including technology) and its intended outcome, including measuring the direction and size of a change, and the extent to which a change may be attributed to the activity or intervention. Causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change. The strength of causal evidence, based on the factors described above, will influence the degree to which OJP considers a program or practice to be evidence-based.

OJP's CrimeSolutions.gov web site is one resource that applicants may use to find information about evidence-based programs in criminal justice, juvenile justice, and crime victim services. Additionally, when considering evidence-based programs and practices specific to reentry, it is recommended that jurisdictions review the [What Works in Reentry Clearinghouse](#) for important research on the effectiveness of a wide variety of reentry programs and practices. The Clearinghouse provides a one-stop shop for practitioners and service providers seeking guidance on evidence-based reentry interventions.

Amount and Length of Awards

Eligible award amounts under JAG are posted annually on BJA's JAG web page: www.bja.gov/ProgramDetails.aspx?Program_ID=59.

Awards of at least \$25,000 or more are 4 years in length with an award period of October 1, 2012 through September 30, 2016. Extensions beyond a 4-year period may be made on a case-by-case basis at the discretion of BJA and must be requested via the Grants Management System (GMS) **no less than 30 days prior to the grant end date.**

Awards that are less than \$25,000 are 2 years in length with an award period of October 1, 2012 through September 30, 2014. Requests for up to two additional years to complete performance of the award will be granted automatically, pursuant to 42 U.S.C. § 3751(f). Extensions beyond a 4-year period may be made on a case-by-case basis at the discretion of BJA and must be requested via the Grants Management System (GMS) **no less than 30 days prior to the grant end date.**

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law.

Budget Information

Applicants must submit a budget and budget narrative outlining how JAG funds, including administrative funds if applicable, will be used to support and implement the program. **See the budget narrative description under "What an Application Should Include" on page xx for more information.**

Formula: Once each fiscal year's overall JAG Program funding level is determined, BJA partners with the Bureau of Justice Statistics (BJS) to begin a four-step grant award calculation process which consists of:

1. Computing an initial JAG allocation for each state and territory, based on their share of violent crime and population (weighted equally).
2. Reviewing the initial JAG allocation amount to determine if the state or territory allocation is less than the minimum ("de minimus") award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the state or territory is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG funds. Each of the remaining states receives the minimum award plus an additional amount based on their share of violent crime and population.
3. Dividing each state's final award amount (except for the territories and District of Columbia) between state and local governments at a rate of 60 and 40 percent, respectively.
4. Determining local unit of government award allocations, which are based on their proportion of the state's 3-year violent crime average. If a local eligible award amount is less than \$10,000, the funds are returned to the state to be awarded to these local units of government through the state agency. If the eligible award amount is \$10,000 or more, then the local government is eligible to apply for a JAG award directly from BJA.

Administrative Funds: A unit of local government may use up to 10 percent of the award, including interest, for costs associated with administering JAG funds.

Supplanting: Supplanting is prohibited under JAG. Applicants cannot replace or supplant non-federal funds that have been appropriated for the same purpose. See the JAG FAQs on BJA's [JAG web page](#) for examples of supplanting.

Leveraging of Grant Funds: Although supplanting is prohibited, the leveraging of federal funding is encouraged. For example, a city may utilize JAG and Homeland Security Grant Program (HSGP) money to fund different portions of a fusion center project. In instances where leveraging occurs, all federal grant funds must be tracked and reported on separately and may not be used to fund the same line items. Additionally, federal funds cannot be used as match for other federal awards.

Disparate Certification: A disparate allocation occurs when a city or municipality is allocated one-and-one-half times (150 percent) more than the county, while the county bears more than 50 percent of the costs associated with prosecution or incarceration of the municipality's Part 1 violent crimes. A disparate allocation also occurs when multiple cities or municipalities are collectively allocated four times (400 percent) more than the county, and the county bears more than 50 percent of the collective costs associated with prosecution or incarceration of each municipality's Part 1 violent crimes.

- ★ Jurisdictions certified as disparate must identify a fiscal agent that will submit a **joint application** for the aggregate eligible allocation to all disparate municipalities. The joint application must determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG

application process, a Memorandum of Understanding (MOU) that identifies which jurisdiction will serve as the applicant/fiscal agent for joint funds must be completed and signed by the Authorized Representative for each participating jurisdiction. The signed MOU should be attached to the application. For a sample MOU, go to www.bja.gov/Funding/JAGMOU.pdf.

Trust Fund: Award recipients may draw down JAG funds in advance. To do so, a trust fund must be established in which to deposit the funds. The trust fund may or may not be an interest-bearing account. If subrecipients draw down JAG funds in advance, they also must establish a trust fund in which to deposit funds. This trust fund requirement does not apply to direct JAG award recipients or subrecipients that draw-down on a reimbursement basis rather than in advance.

Limitation on Use of Award Funds for Employee Compensation; Waiver: With respect to any award of more than \$250,000 made under this solicitation, recipients may not use federal funds to pay total cash compensation (salary plus cash bonuses) to any employee of the award recipient at a rate that exceeds 110 percent of the maximum annual salary payable to a member of the Federal Government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. The 2013 salary table for SES employees is available at www.opm.gov/oca/13tables/indexSES.asp. Note: A recipient may compensate an employee at a greater rate, provided the amount in excess of this compensation limitation is paid with non-federal funds. (Any such additional compensation will not be considered matching funds where match requirements apply.)

The Assistant Attorney General (AAG) for OJP may exercise discretion to waive, on an individual basis, the limitation on compensation rates allowable under an award. An applicant requesting a waiver should include a detailed justification in the budget narrative of the application. Unless the applicant submits a waiver request and justification with the application, the applicant should anticipate that OJP will request the applicant to adjust and resubmit the budget.

The justification should include the particular qualifications and expertise of the individual, the uniqueness of the service the individual will provide, the individual's specific knowledge of the program or project being undertaken with award funds, and a statement explaining that the individual's salary is commensurate with the regular and customary rate for an individual with his/her qualifications and expertise, and for the work to be done.

Minimization of Conference Costs: OJP encourages applicants to review the OJP guidance on conference approval, planning, and reporting that is available on the OJP web site at www.ojp.gov/funding/confcost.htm. This guidance sets out the current OJP policy, which requires all funding recipients that propose to hold or sponsor conferences (including meetings, trainings, and other similar events) to minimize costs, requires OJP review and prior written approval of most conference costs for cooperative agreement recipients (and certain costs for grant recipients), and generally prohibits the use of OJP funding to provide food and beverages at conferences. The guidance also sets upper limits on many conference costs, including facility space, audio/visual services, logistical planning services, programmatic planning services, and food and beverages (in the rare cases where food and beverage costs are permitted at all).

Prior review and approval of conference costs can take time (see the guidance for specific deadlines), and applicants should take this into account when submitting proposals. Applicants

also should understand that conference cost limits may change and that they should check the guidance for updates before incurring such costs.

Note on food and beverages: OJP may make exceptions to the general prohibition on using OJP funding for food and beverages, but will do so only in rare cases where food and beverages are not otherwise available (e.g., in extremely remote areas); the size of the event and capacity of nearby food and beverage vendors would make it impractical to not provide food and beverages; or a special presentation at a conference requires a plenary address where conference participants have no other time to obtain food and beverages. Any such exception requires OJP's prior written approval. The restriction on food and beverages does not apply to water provided at no cost, but does apply to any and all other refreshments, regardless of the size or nature of the meeting. Additionally, this restriction does not affect direct payment of per diem amounts to individuals in a travel status under your organization's travel policy.

Costs Associated with Language Assistance (if applicable): If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services or benefits for individuals with limited English proficiency may be allowable. Reasonable steps to provide meaningful access to services or benefits may include interpretation or translation services where appropriate.

For additional information, see the "Civil Rights Compliance" section of the OJP "Other Requirements for OJP Applications" web page at www.ojp.usdoj.gov/funding/other_requirements.htm.

Match Requirement: While match is not required under the JAG Program, match is an effective strategy to expand justice funds and build buy-in for local criminal justice initiatives. Matching funds become part of the overall award amount, and as such are subject to audit and must be expended or deobligated prior to closeout.

Other JAG Requirements

Body Armor Certification

- Ballistic-resistant and stab-resistant body armor can be funded through two BJA-administered programs: the JAG Program and the Bulletproof Vest Partnership (BVP) Program.
- The BVP Program is designed to provide a critical resource to state and local law enforcement through the purchase of ballistic-resistant and stab-resistant body armor. A jurisdiction is able to request up to 50 percent of the cost of a vest with BVP funds. For more information on the BVP Program, including eligibility and application, refer to the [BVP web page](#).
- JAG funds may also be used to purchase vests for an agency, but they may not be used to pay for that portion of the ballistic-resistant vest (50 percent) that is not covered by BVP funds. Unlike BVP, JAG funds used to purchase vests do not require a 50 percent match.
- Vests purchased with JAG funds may be purchased at any threat level, make, or model from any distributor or manufacturer, as long as the vests have been tested and found to comply with the latest applicable National Institute of Justice ballistic or stab standards. In addition, vests purchased must be American-made. Information on the latest National Institute of

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justice (NIJ) standards can be found at: www.nij.gov/topics/technology/body-armor/safety-initiative.htm.

- As is the case in BVP, grantees who wish to purchase vests with JAG funds must certify that law enforcement agencies receiving vests have a written "mandatory wear" policy in effect. FAQs related to the mandatory wear policy and certifications can be found at www.bja.gov/Funding/JAGFAQ.pdf. This policy must be in place for at least all uniformed officers before any FY 2013 funding can be used by the agency for vests. There are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty. The certification **must** be signed by the certifying official and **must** be attached to the application. If the grantee proposes to change project activities to utilize JAG funds to purchase bulletproof vests after the application period (during the project period), then the grantee must submit the signed certification to BJA at that time. A mandatory wear concept and issues paper and a model policy are available by contacting the BVP Customer Support Center or toll free at 1-877-758-3787.
- A copy of the certification related to the mandatory wear can be found at: www.bja.gov/Funding/13JAGBVPcert.pdf.

Interoperable Communications

- Grantees (including subgrantees) that are using FY 2013 JAG Program funds to support emergency communications activities (including the purchase of interoperable communications equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission (FCC) Waiver Order) must ensure:
 - Compliance with the *FY 2013 SAFECOM Guidance for Emergency Communication Grants* (including provisions on technical standards that ensure and enhance interoperable communications).
 - Adherence to the technical standards set forth in the FCC Waiver Order, or any succeeding FCC orders, rules, or regulations pertaining to broadband operations in the 700 MHz public safety band.
 - Projects support the Statewide Communication Interoperability Plan (SCIP) and are fully coordinated with the full-time Statewide Interoperability Coordinator (SWIC) in the state of the project. As the central coordination point for their state's interoperability effort, the SWIC plays a critical role, and can serve as a valuable resource. SWICs are responsible for the implementation of the SCIP through coordination and collaboration with the emergency response community. The U.S. Department of Homeland Security Office of Emergency Communications maintains a list of SWICs for each of the 56 states and territories. Contact
 - All communications equipment purchased with grant award funding (plus the quantity purchased of each item) is identified during quarterly performance metrics reporting.

DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database

If JAG program funds will be used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System (CODIS, the national DNA

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database operated by the Federal Bureau of Investigation (FBI)), by a government DNA lab with access to CODIS. No profiles generated with JAG funding may be entered into any other non-governmental DNA database without prior express written approval from BJA. For more information, refer to the NIJ FY 2013 DNA Backlog Reduction Program, available at www.ncjrs.gov/pdffiles1/nij/sl001062.pdf. In addition, funds may not be used for purchase of DNA equipment and supplies when the resulting DNA profiles from such technology are not accepted for entry into CODIS.

Reporting Requirements, Performance Measures, and JAG Showcase

Submission of performance measures data is not required for the application. Instead, applicants should discuss in their application their proposed methods for collecting data for performance measures. Refer to the section "What an Application Should Include" on page 15 for additional information.

Award recipients will be required to submit quarterly financial status (SF-425) and annual programmatic reports through GMS, quarterly performance metrics reports (see Performance Measures section below) through BJA's Performance Measurement Tool (PMT), and Federal Funding Accountability and Transparency Act (FFATA) reports through the FFATA Sub-award Reporting System (FSRS) as necessary (see FFATA section below).

Performance Measures

To assist in fulfilling the Department's responsibilities under the Government Performance and Results Act of 1993 (GPRA), P.L. 103-62, and the GPRA Modernization Act of 2010, Public Law 111-352, applicants who receive funding under this solicitation must provide data that measures the results of their work done under this solicitation. **Quarterly performance metrics reports must be submitted through BJA's Performance Measurement Tool (PMT) web site, available at www.bjaperformancetools.org. The performance measures can be found at: www.bjaperformancetools.org/help/JAGMeasuresQuestionnaire.pdf.**

Note on Project Evaluations

Applicants that propose to use funds awarded through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute "research" for purposes of applicable DOJ human subjects protection regulations. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP's performance measure data reporting requirements likely do not constitute "research." Applicants should provide sufficient information for OJP to determine whether the particular project they propose would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research.

Research, for the purposes of human subjects protections for OJP-funded programs, is defined as, "a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge" 28 C.F.R. § 46.102(d). For additional information on determining whether a proposed activity would constitute research, see the decision tree to assist applicants on the "Research and the Protection of Human Subjects" section of the OJP "Other Requirements for OJP Applications" Web page (www.ojp.usdoj.gov/funding/other_requirements.htm). Applicants whose proposals may involve

a research or statistical component also should review the "Confidentiality" section on that Web page.

Notice of Post-Award FFATA Reporting Requirement

Applicants should anticipate that OJP will require all recipients (other than individuals) of awards of \$25,000 or more under this solicitation, consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA), to report award information on any first-tier subawards totaling \$25,000 or more, and, in certain cases, to report information on the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients. Each applicant entity must ensure that it has the necessary processes and systems in place to comply with the reporting requirements should it receive funding. Reports regarding subawards will be made through the FFATA Subaward Reporting System (FSRS), found at www.fsrs.gov.

Note also that applicants should anticipate that no subaward of an award made under this solicitation may be made to a subrecipient (other than an individual) unless the potential subrecipient acquires and provides a Data Universal Numbering System (DUNS) number.

JAG Showcase

This JAG Showcase was designed to identify and highlight JAG projects that have demonstrated success or have shown promise in reducing crime, positively impacting communities, etc. Because the JAG program provides state, tribal, and local jurisdictions with flexibility to tailor the programs to fit their needs, a wide variety of programs have been funded across the country. Each year, new methods to reduce and prevent crime, violence, and drug abuse; and, to improve the functioning of the criminal justice system are being discovered. BJA strives to increase awareness of JAG funds invested in innovation, evidence-based programs and program evaluations. This page is intended to serve as a resource for criminal justice professionals in the field who seek to stay informed of some of the most interesting, innovative, results oriented projects that have been funded with JAG money in the last several years.

JAG success stories should include the: name and location of program/project; point of contact with phone and e-mail; amount of JAG funding received and in which fiscal year; and a brief summary describing the program/project and its impact. **BJA strongly encourages and appreciates annual (or more frequent) submissions at _____ or via the online form.**

Priorities

BJA recognizes that the downturn in the economy has resulted in significant pressures on state and local criminal justice systems. In these challenging times, shared priorities and leveraged resources can make a significant impact. In light of this, it is important to make SAAs and local JAG recipients aware of several areas of priority that may be of help in maximizing the effectiveness of JAG funding at the state and local level.

In addition to our longstanding and unwavering commitment to keeping violent crime at its lowest level in decades, the following priorities represent key areas where BJA will be focusing nationally and invite each state and local JAG recipient to join us in addressing these challenges as a part of our JAG partnership.

Reducing Gun Violence

In the aftermath of the Sandy Hook Elementary School tragedy and mass shootings in Aurora, Oak Creek, and Tucson, BJA encourages states and localities to invest valuable JAG funds in programs to reduce gun violence, enforce existing firearms laws, and enhance reporting to the FBI's National Instant Criminal Background Check System. Other important priorities include strengthening school safety, improving criminal justice/mental health collaborations, and supporting joint first responder critical incident training.

Recidivism Reduction and Justice System Realignment

In this time of fiscal austerity and smaller state and local budgets, reducing unnecessary incarceration in a manner that promotes public safety is a paramount goal. Effective community supervision coupled with evidence-based program interventions can result in significant reductions in recidivism. A priority funding area is the implementation of effective pretrial services programs and innovative programs and approaches in probation and parole supervision that improve services to offenders and increase collaborative efforts among community supervision agencies with law enforcement and the courts. Currently 17 states and local governments are working to control spiraling incarceration costs through justice system reforms and realignment under the Justice Reinvestment Initiative (JRI). Strategic investment of JAG funds to implement JRI legislation and policy changes in those states and localities can augment federal funds and achieve greater cost savings and reinvestments in programs to promise public safety.

Indigent Defense

Another key priority area in the criminal justice system is support for indigent defense. BJA continues to encourage states and SAAs to use JAG funds to support the vital needs of the indigent defense community. Attorney General Holder has consistently stressed that the crisis in indigent defense reform is a serious concern which must be addressed if true justice is to be achieved in our nation. In 2002, the American Bar Association (ABA) published Ten Principles of a Public Defense Delivery System which represent fundamental building blocks for implementing quality legal representation for indigent defendants. (See [ABA Ten Principles](#).)

Evidence-Based "Smart" Programs

As a result of the current fiscal crisis, many police departments are experiencing unprecedented budget cuts, layoffs, and reductions in force. These challenges must be met by making wider use of advancements in the law enforcement field in the last several decades which rely on use of data, crime analysis, crime mapping and other analytic tools, cutting edge technology, and research and evaluations regarding effective policing strategies and programs. BJA offers a number of program models designed to effectively implement evidence based strategies including Smart Policing and Smart Probation. A useful matrix of evidence-based policing programs and strategies is available through the [Center for Evidence-Based Policy](#) at George Mason University and provides valuable information on policing strategies and programs that work. BJA encourages states to use JAG funds to support these "smart policing" strategies, including a focus on real time crime analysis centers (CACs), and effective partnerships with universities and research partners and with non-traditional criminal justice partners. Counterterrorism continues to be the number one priority for DOJ. At the state and local level,

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high functioning, evidence-based, data-driven public safety agencies are a critical component of our nation's "all crimes" strategy. In addition, the JAG Program has long supported effective and collaborative multi-jurisdictional task forces and justice information sharing programs, which continue as a priority in order to maintain our nation's historic reductions in violent crime.

What an Application Should Include

Applicants should anticipate that if they fail to submit an application that contains all of the specified elements, it may negatively affect the review of their application; and, should a decision be made to make an award, it may result in the inclusion of special conditions that preclude the recipient from accessing or using award funds pending satisfaction of the conditions.

Refer to the BJA Grant Writing and Management Academy and OJP's Grants 101 for an overview of what should be included in each application requirement. These trainings can be found at bj.ncirs.gov/gwma/index.html and www.ojp.gov/grants101/.

OJP strongly recommends use of appropriately descriptive file names (e.g., "Program Narrative," "Budget Narrative," "Memoranda of Understanding," etc.) for all attachments.

1. Information to Complete the Application for Federal Assistance (SF-424)

The SF-424 is a standard form required for use as a cover sheet for submission of pre-applications, applications, and related information. GMS takes information from the applicant's profile to populate the fields on this form.

2. Abstract

Applicants **must** provide an abstract that includes the applicant's name, title of the project, goals of the project, and a description of the strategies to be used. In addition, above or below the abstract narrative, applicants **must identify up to 5 project identifiers** that would be associated with proposed project activities. The list of all identifiers can be found at www.bja.gov/Funding/JAGIdentifiers.pdf. The abstract **should not** exceed a half-page, or 400-500 words.

Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.

3. Program Narrative

Applicants **must** submit a program narrative that generally describes the proposed program activities for the two or four year grant period. The narrative must outline the type of programs to be funded by the JAG award and provide a brief analysis of the need for the programs. Narratives must also identify anticipated coordination efforts involving JAG and related justice funds. Certified disparate jurisdictions submitting a **joint application** must specify the funding distribution to each disparate unit of local government and the purposes for which the funds will be used.

Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.

4. Budget and Budget Narrative

Applicants **must** submit a budget and budget narrative outlining how JAG funds, including administrative funds if applicable, will be used to support and implement the program. This narrative should include a full breakdown of administrative costs, as well as an overview of how funds will be allocated across approved JAG purpose areas. Applicants should utilize the following approved budget categories to label the requested administrative and/or sub-grant expenditures: Personnel, Fringe Benefits, Travel, Equipment, Supplies, Consultants/Contracts, and an Other category. For informational purposes only, a sample budget form may be found at www.ojp.usdoj.gov/funding/forms/budget_detail.pdf.

Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.

5. Review Narrative

Applicants **must** submit information documenting that the date the JAG application was made available for review by the governing body, or to an organization designated by that governing body, not less than 30 days before the application was submitted to BJA. The attachment must also specify that an opportunity to comment was provided to citizens prior to application submission to the extent applicable law or established procedures make such opportunity available.

Below are notification language templates that can be utilized in completing this section of the application.

The (provide name of State/Territory) made its Fiscal Year 2013 JAG application available to the (provide name of governing body) for its review and comment on (provide date); or intends to do so on (provide date).

The (provide name of City/County for Local JAG and name of State for State JAG) made its Fiscal Year 2013 JAG application available to citizens for comment prior to application submission by (provide means of notification); or the application has not yet been made available for public review/comment.

Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.

6. Tribal Authorizing Resolution (if applicable)

Tribes, tribal organizations, or third parties proposing to provide direct services or assistance to residents on tribal lands should include in their applications a resolution, a letter, affidavit, or other documentation, as appropriate, that certifies that the applicant has the legal authority from the tribe(s) to implement the proposed project on tribal lands. In those instances when an organization or consortium of tribes applies for a grant on behalf of a tribe or multiple specific tribes, then the application should include appropriate legal documentation, as described above, from all tribes that would receive services/assistance under the grant. A consortium of tribes for which existing consortium bylaws allow action without support from all tribes in the consortium (i.e., without an authorizing resolution or comparable legal documentation from each tribal governing body) may submit, instead, a copy of its consortium bylaws with the application.

Applicants that are unable to submit with the application a fully-executed (i.e., signed) copy of appropriate legal documentation, as described above, consistent with the applicable tribe's governance structure, should, at minimum, submit an unsigned, draft version of such legal documentation as part of its application (except in cases where, with respect to a tribal consortium applicant, consortium bylaws allow action without the support of all consortium member tribes). If selected for funding, use of and access to funds will be contingent on receipt of the fully-executed legal documentation.

7. **Additional Attachments**

Jurisdictions certified as disparate **must** identify a fiscal agent that will submit a **joint application** for the aggregate eligible allocation to all disparate municipalities. The joint application **must** determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG application process, a Memorandum of Understanding (MOU) that identifies which jurisdiction will serve as the applicant/fiscal agent for joint funds **must** be completed and signed by the Authorized Representative for each participating jurisdiction. The signed MOU **must** be attached to the application. For a sample MOU, go to www.bja.gov/Funding/JAGMOU.pdf.

Failure to submit this required information will result in an application being change requested in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding special condition at the time of award if time does not permit for a change request process.

8. **Applicant Disclosure of Pending Applications**

Applicants are to disclose whether they have pending applications for federally funded assistance that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation. The disclosure should include both direct applications for federal funding (e.g., applications to federal agencies) and indirect applications for such funding (e.g., applications to State agencies that will be subawarding federal funds).

OJP seeks this information to help avoid any inappropriate duplication of funding. Leveraging multiple funding sources in a complementary manner to implement comprehensive programs or projects is encouraged and is not seen as inappropriate duplication.

Applicants that have pending applications as described above are to provide the following information about pending applications submitted within the last 12 months:

- the federal or state funding agency
- the solicitation name/project name
- the point of contact information at the applicable funding agency

Federal or State Funding Agency	Solicitation Name/Project Name	Name/Phone/E-mail for Point of Contact at Funding Agency
DOJ/COPS	COPS Hiring Program	Jane Doe, 202/000-0000; jane.doe@usdoj.gov
HHS/ Substance Abuse & Mental Health Services Administration	Drug Free Communities Mentoring Program/ North County Youth Mentoring Program	John Doe, 202/000-0000; john.doe@hhs.gov

Applicants should include the table as a separate attachment, with the file name “Disclosure of Pending Applications,” to their application. Applicants that do not have pending applications as described above are to include a statement to this effect in the separate attachment page. (e.g., “[Applicant Name] does not have pending applications submitted within the last 12 months for federally funded assistance that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.”)

9. Other Standard Forms

Additional forms that may be required in connection with an award are available on OJP’s funding page at www.ojp.usdoj.gov/funding/forms.htm. For successful applicants, receipt of funds may be contingent upon submission of all necessary forms. Note in particular the following forms:

- a. Standard Assurances*
Applicants must read, certify, and submit this form in GMS prior to the receipt of any award funds.
- b. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements*
Applicants must read, certify and submit in GMS prior to the receipt of any award funds.
- c. Accounting System and Financial Capability Questionnaire
Any applicant (other than an individual) that is a non-governmental entity and that has not received any award from OJP within the past 3 years must download, complete, and submit this form.

*These OJP Standard Assurances and Certifications are forms which applicants accept in GMS. They are not additional forms to be uploaded at the time of application submission.

Review Process

OJP is committed to ensuring a fair and open process for awarding grants. BJA reviews the application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with the solicitation. Applications for formula awards will be reviewed to ensure statutory requirements have been met.

Absent explicit statutory authorization or written delegation of authority to the contrary, all final grant award decisions will be made by the Assistant Attorney General will make all final award decisions.

Additional Requirements

Applicants selected for awards must agree to comply with additional legal requirements upon acceptance of an award. OJP encourages applicants to review the information pertaining to these additional requirements prior to submitting an application. Additional information for each requirement can be found at www.ojp.usdoj.gov/funding/other_requirements.htm.

- Civil Rights Compliance
- Civil Rights Compliance Specific to State Administering Agencies
- Faith-Based and Other Community Organizations
- Confidentiality
- Research and the Protection of Human Subjects
- Anti-Lobbying Act
- Financial and Government Audit Requirements
- National Environmental Policy Act (NEPA)
- DOJ Information Technology Standards (if applicable)
- Single Point of Contact Review
- Non-Supplanting of State or Local Funds
- Criminal Penalty for False Statements
- Compliance with Office of Justice Programs Financial Guide
- Suspension or Termination of Funding
- Nonprofit Organizations
- For-profit Organizations
- Government Performance and Results Act (GPRA)
- Rights in Intellectual Property
- Federal Funding Accountability and Transparency Act of 2006 (FFATA)

- Awards in Excess of \$5,000,000 – Federal Taxes Certification Requirement
- Policy and Guidance for Conference Approval, Planning, and Reporting
- OJP Training Guiding Principles for Grantees and Subgrantees

How To Apply

Applicants must submit applications through the Grants Management System (GMS), which provides cradle to grave support for the application, award, and management of awards at OJP. Applicants **must register in GMS for each specific funding opportunity**. Although the registration and submission deadlines are the same, OJP urges applicants to **register immediately**, especially if this is their first time using the system. Complete instructions on how to register and submit an application in GMS can be found at www.ojp.usdoj.gov/gmscbt/. Applicants that experience technical difficulties during this process should e-mail _____ or call 888-549-9901 (option 3), Monday – Friday from 6:00 a.m. to midnight eastern time, except federal holidays. OJP recommends that applicants **register immediately** to prevent delays in submitting an application package by the deadline.

All applicants should complete the following steps:

1. **Acquire a Data Universal Numbering System (DUNS) number.** In general, the Office of Management and Budget requires that all applicants (other than individuals) for federal funds include a DUNS number in their application for a new award or a supplement to an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and differentiating entities receiving federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Call Dun and Bradstreet at 866-705-5711 to obtain a DUNS number or apply online at www.dnb.com. A DUNS number is usually received within 1-2 business days.
2. **Acquire registration with the System for Award Management (SAM).** SAM replaces the **Central Contractor Registration (CCR) database** as the repository for standard information about federal financial assistance applicants, recipients, and subrecipients. OJP requires that all applicants (other than individuals) for federal financial assistance maintain current registrations in the SAM database. Applicants must **update or renew their SAM registration annually** to maintain an active status.

Applicants that were previously registered in the CCR database must, at a minimum:

- Create a SAM account;
- Log in to SAM and migrate permissions to the SAM account (all the entity registrations and records should already have been migrated).

Information about SAM registration procedures can be accessed at www.sam.gov.

3. **Acquire a GMS username and password.** New users must create a GMS profile by selecting the “First Time User” link under the sign-in box of the GMS home page. For more information on how to register in GMS, go to www.ojp.usdoj.gov/gmscbt/.

4. **Verify the SAM registration in GMS, formerly CCR registration.** OJP requests that all applicants verify their SAM registration in GMS. Once logged into GMS, click the "CCR Claim" link on the left side of the default screen. Click the submit button to verify the SAM (formerly CCR) registration.
5. **Search for the funding opportunity on GMS.** After logging into GMS or completing the GMS profile for username and password, go to the "Funding Opportunities" link on the left side of the page. Select "Bureau of Justice Assistance" and the "Edward Byrne Memorial Justice Assistance Grant (JAG) Program—Local Solicitation."
6. **Register by selecting the "Apply Online" button associated with the solicitation title.** The search results from step 5 will display the solicitation title along with the registration and application deadlines for this funding opportunity. Select the "Apply Online" button in the "Action" column to register for this solicitation and create an application in the system.
7. **Complete the Disclosure of Lobbying Activities, if applicable.** Any applicant that expends any funds for lobbying activities must provide the detailed information requested on the form, *Disclosure of Lobbying Activities (SF-LLL)*.
8. **Follow the directions in GMS to submit an application consistent with this solicitation.** Once submitted, GMS will display a confirmation screen stating the submission was successful. **Important:** In some instances, applicants must wait for GMS approval before they can submit an application. OJP urges applicants to submit the application **at least 72 hours prior** to the due date of the application.

Note: GMS does not accept executable file types as application attachments. These disallowed file types include, but are not limited to, the following extensions: ".com," ".bat," ".exe," ".vbs," ".cfg," ".dat," ".db," ".dbf," ".dll," ".ini," ".log," ".ora," ".sys," and ".zip."

Note: Duplicate Applications

If an applicant submits multiple versions of an application, BJA will review the most recent version submitted.

Experiencing Unforeseen GMS Technical Issues

Applicants that experience unforeseen GMS technical issues beyond their control that prevent them from submitting their application by the deadline, must e-mail the BJA Programs Office staff **within 24 hours after the application deadline** and request approval to submit their application. The e-mail must describe the technical difficulties and include a timeline of the applicant's submission efforts, the complete grant application, the applicant's DUNS number, and any GMS Help Desk or SAM tracking number(s). **Note: BJA does not automatically approve requests.** After the program office reviews the submission, and contacts the GMS Help Desk to validate the reported technical issues, OJP will inform the applicant whether the request to submit a late application has been approved or denied. If the technical issues reported cannot be validated, the application will be rejected as untimely.

The following conditions are not valid reasons to permit late submissions: (1) failure to register in sufficient time, (2) failure to follow GMS instructions on how to register and apply as posted

on its Web site, (3) failure to follow each instruction in the OJP solicitation, and (4) technical issues with the applicant's computer or information technology environment, including firewalls.

Notifications regarding known technical problems with GMS, if any, are posted at the top of the OJP funding Web page at www.ojp.usdoj.gov/funding/solicitations.htm.

Provide Feedback to OJP on This Solicitation

To assist OJP in improving its application and award processes, we encourage applicants to provide feedback on this solicitation, the application submission process, and/or the application review/peer review process. Feedback may be provided to

IMPORTANT: This email is for feedback and suggestions only. Replies are **not** sent from this mailbox. If you have specific questions on any program or technical aspect of the solicitation, **you must** directly contact the appropriate number or email listed on the front of this solicitation document. These contacts are provided to help ensure that you can directly reach an individual who can address your specific questions in a timely manner.

If you are interested in being a reviewer for other OJP grant applications, please email your resume to OJP_Solicitation_Feedback@ojp.usdoj.gov. The OJP Solicitation Feedback email account will not forward your resume. **Note:** Neither you nor anyone else from your organization can be a peer reviewer in a competition in which you or your organization have submitted an application.

Application Checklist

Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2013 Local Solicitation

The application checklist has been created to assist in developing an application.

Eligibility Requirement:

- Jurisdiction listed as the legal name on the application corresponds with the eligible jurisdiction listed on BJA's [JAG web page](#)
- Federal amount requested is within the allowable limit of the FY 2013 JAG Allocations List as listed on BJA's [JAG web page](#)

What an Application Should Include:

- Application for Federal Assistance (SF-424) (see page 14)
- Abstract (see page 15)
- Program Narrative (see page 14)
- Budget and Budget Narrative (see page 15)
- Review Narrative (see page 15)
- Applicant Disclosure of Pending Applications (see page 16)
- Other Standard Forms, if applicable (see page 17)
- DUNS Number (see page 19)
- SAM Registration (see page 19)
- Disclosure of Lobbying Activities, if applicable ([SF-LLL](#)) (see page 20)

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 34
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE AUTHORIZING A FARM LEASE AGREEMENT FOR A FARM IN THE
LITTLETON/ENGLEWOOD WASTEWATER TREATMENT PLANT BIOSOLIDS
MANAGEMENT PROGRAM.

WHEREAS, the Cities of Littleton and Englewood jointly own properties near Byers, Colorado and Bennett, Colorado which are used for the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Biosolids Management Program; and

WHEREAS, this Program uses dryland farm property for long-term applications of domestic wastewater biosolids generated by the (L/E WWTP); and

WHEREAS, the Englewood City Council approved the purchase and 5 year lease back of farmland to Meier in Byers by the passage of Ordinance No. 55, Series of 2007; and

WHEREAS, there is an ongoing biosolids application covered by an existing lease on the Meyer farm which runs through 2013; and

WHEREAS, the Meier’s lease begins on July 6, 2013 for a term of one (1) year, renewable for one (1) additional year.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood hereby authorizes a “Farm Lease” between Gary Meier and Nancy Meier and the cities of Littleton and Englewood commencing on July 6, 2013, for a term of one (1) year, and renewable for one (1) year; attached hereto as Exhibit A.

Section 2. The Mayor is hereby authorized to sign the Meier Farm Lease Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

FARMLEASE

THIS LEASE is dated as of 7-6, 2013, and is made and entered into by and between the Cities of Littleton and Englewood, collectively referred to hereinafter as "Lessor", and Gary and Nancy Meier and Jason Meier, referred to hereinafter as "Lessees". On this date, Lessor has leased to the Lessees the following described premises situated in the Counties of Adams and Arapahoe, State of Colorado, to wit:

[See Exhibit A attached hereto and made a part hereof]

together with all buildings and improvements on the premises (hereinafter referred to as the "Leased Property") in accordance with the following terms:

1. This lease replaces and supersedes in its entirety, any prior lease agreement between the parties. This lease shall be for the term of one (1) year, renewable annually for one (1) additional year commencing on January 1, 2013, at the rent of \$8.00 (Eight dollars) per acre per year on farmable acres on the Leased Property (1,252 acres) for a total annual lease payment of \$10,016.00.

2. The lease payment is to be made payable to the order of:

Littleton/Englewood WWTP

and delivered to:

Littleton/Englewood WWTP
c/o Treatment Division Manager
2900 South Platte River Drive
Englewood, CO 80110

by December 31 (following the harvest) of each year that this lease is in effect.

3. Lessees shall thoroughly plow, cultivate and farm in accordance with good farming practices, all lands comprising the Leased Property that are not in grass, fallowed by mutual agreement of the parties, or otherwise unfarmable.

4. Lessees shall use the Leased Property as a dryland farm and for no other purpose whatsoever, and especially will not let or permit the Leased Property to be used for any other business or purpose whatsoever.

5. Lessees shall be responsible for all costs and expenses associated with use of the Leased Property as a dryland farm, except that Lessor, at its own cost and expense, shall be responsible for furnishing, transporting, and applying all fertilizer, in the form of biosolids, to the Leased Property.

6. All fertilizer to be used on the Leased Property shall be transported, furnished, and applied by Lessor at such times and at agronomic rates as determined by Lessor. Lessees shall

not apply any fertilizer on the Leased Property without the prior written consent of Lessor. Lessor may use a portion of the Leased Property for staging areas for biosolids application. Staging area size and location will be as determined by Lessor.

7. Lessees shall not assign this lease, sublet, or relinquish the Leased Property, under the penalty of a forfeiture of all the rights of the Lessees under or by virtue of this lease, at the election of the Lessor.

8. Lessees shall protect the Leased Property, including buildings, gates, fences, shrubbery, and improvements thereon from all damages and shall keep the same in the same condition as they are now in, or may be at any time placed in by the Lessor, subject to normal wear and tear. Lessees shall do no act whereby any insurance on buildings may be invalidated and shall not remove, or allow any other person to remove, from the Leased Property any of the buildings, gates, fences, shrubbery, and improvements of any kind.

9. Lessees shall not run furrows so as to cause ditches to wash the Leased Property, unless first having a written consent of the Lessor. Lessees shall clean out and maintain in good repair, during the operation of this Lease, all ditches belonging or appertaining to the Leased Property.

10. Lessees shall well and seasonably put in and tend to the crops grown on the Leased Property, shall have all small grain harvested and threshed by October 1 of each year; and if not harvested and threshed as stated, the Lessor may proceed to do so after ten (10) days notice to the Lessee, and take enough of the Lessee's grain to pay expense of such harvesting or threshing.

11. Lessees shall accept the fences upon said Leased Property as they are now existing.

12. Lessees shall, at the expiration of this Lease, or upon a breach by the Lessees of any of the covenants herein contained, without further notice of any kind, quit and surrender the possession and occupancy of Leased Property in as good condition as careful use and natural wear and tear thereof will permit.

13. All goods and chattels, or any other property used or kept on the Leased Property, shall be held for the rent or damages under this Lease, whether exempt from execution or not, meaning or intending hereby to give the Lessor a valid and first lien upon any and all goods and chattels, crops and other property belonging to the Lessees.

14. Lessees shall cultivate around any structures or facilities constructed by Lessor and where applicable, and shall not impair or hinder, but shall cooperate with Lessor in the use of domestic wastewater biosolids application on the Leased Property.

15. The Lessor reserves the right to cancel the lease during its term for any of the following reasons: a) if the Lessees should take any action or fail to take any action that threatens the Lessor's interest in the Leased Property, including the violation of any environmental laws, rules, regulations or standards; b) if the Lessees should fail to abide by the Lessor's instructions concerning residual nitrogen levels in the soil and agronomic rates of

application of biosolids; c) if the Lessees are farming in a manner which limits the Lessor's ability to apply biosolids to the Leased Property; d) if the Lessees are not farming in a manner that constitutes good farming practices; e) if the Lessor determines that it will no longer utilize the Leased Property for the production of crops.

16. Lessor also reserves the right for itself, its agents and its designees, including other government officials, to enter and to have access, at all reasonable times during the term of this lease, to the Leased Property for the purpose of sampling, application, monitoring, testing, screening, mapping, plotting or doing any other procedure, task or function deemed necessary by Lessor in conjunction with its biosolids production and application operation and for any other purpose including, but not limited to, inspecting the Leased Property and to make such repairs, additions, or improvements as Lessor may deem necessary.

17. It is understood and agreed that the Lessor reserves the right to cancel this lease at its sole discretion. Should Lessor elect to exercise its right of cancellation, it must do so in writing, on or before October 1 prior to the anniversary date hereof, in which event this lease shall be terminated effective on the anniversary date and neither party shall be entitled to further payments or damages as the result of said termination except for any payments due and owing at the time of cancellation.

18. All payments from the Lessee shall become due and payable upon forfeiture of said Lease, or upon abandoning said Leased Property, and if it becomes necessary for the Lessor to bring action at law to recover possession, damage or rent, the Lessees agree to pay a reasonable attorney's fee therefore, and all costs attending the same.

19. Lessees shall indemnify, defend and hold harmless Lessor and its successors, assigns and representatives from and against any and all damages, claims, losses, costs, liabilities, and expenses of any kind whatsoever (including but not limited to reasonable attorney fees) which may be asserted against or suffered by Lessor or the Leased Property or any part thereof, as a result of, on account of or arising from (i) any breach of any covenant, representation, promise, warranty or agreement made by Lessee, or (ii) injuries or damages to person or property resulting or alleged to result from any fault or negligence of Lessee or his agents or employees, or from the possession, use, occupancy, or maintenance of the Leased Property by Lessees, their agents, employees, or affiliates.

20. This Lease shall not be sublet or assigned. Any purported sublease or assignment shall be void, and shall result in immediate termination of this lease.

21. Lessor reserves the right to sell, contract to sell, or grant easements or rights-of-way over, through, under, or on, the Leased Property at any time during the term of this lease, subject to the rights and interests of the Lessees hereunder.

22. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO LESSOR:

TO LESSEES:

Littleton/Englewood WWTP
c/o Treatment Division Manager
2900 South Platte River Drive
Englewood, CO 80110

Gary and Nancy Meier
3265 SCR 185
Byers, CO 80103

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

This lease shall be in effect as of the date first above written.

(Signatures follow on separate pages)

LESSOR:

CITY ENGLEWOOD

By: Randy P. Penn, Mayor

CITY OF LITTLETON

By: Debbie Brinkman, Mayor

LESSEES:

By: Gary Meier

By: Nancy Meier

By: Jason Meier

Exhibit A

LEGAL DESCRIPTION

Parcel I:

The East 1/2 of Section 33, Township 3 South, Range 57 West of the 6th P.M., County of Adams, State of Colorado.

Parcel II:

The West 1/2 of Section 8, Township 4 South, Range 57 West of the 6th P.M., EXCEPT the West 40 feet for county road purposes as described in Quit Claim Deed recorded September 8, 1948, in Book 618, at Page 121, County of Arapahoe, State of Colorado.

Parcel III:

Section 17, Township 4 South, Range 57 West of the 6th P.M., EXCEPT the West 40 feet and the South 40 feet thereof as described in Quit Claim Deed recorded September 8, 1948, in Book 618, Page 128, County of Arapahoe, State of Colorado.

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 36
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF TWO INTERGOVERNMENTAL SUBGRANTEE AGREEMENTS FOR 2013 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BETWEEN THE ARAPAHOE BOARD OF COUNTY COMMISSIONERS AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City Council of the City of Englewood approved the execution of an Intergovernmental Agreement between the City of Englewood and Arapahoe County by passage of Ordinance No. 25, Series of 2012, covering the City’s participation in the Arapahoe County CDBG Entitlement Program for funding years 2013 through 2015; and

WHEREAS, the Englewood City Council passed Resolution 82, Series of 2012, supporting Housing and Community Development that authorized submitting an application for 2013 CDBG funding; and

WHEREAS, the Energy Efficient Englewood Project has been categorized as a housing rehabilitation activity; and

WHEREAS, the Housing Rehabilitation Project has been categorized as a housing rehabilitation activity.

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

Section 1. The Subgrantee Agreement for Arapahoe County Community Development Block Grant Funds – Subgrantee: City of Englewood, Project Name: Energy Efficient Englewood (E3) Project Number: ENHS 1315, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

Section 2. The Subgrantee Agreement for Arapahoe County Community Development Block Grant Funds – Subgrantee: City of Englewood, Project Name: Housing Rehabilitation Project Number: ENHS1313, attached hereto as Exhibit B, is hereby accepted and approved by the Englewood City Council.

Section 3. Community Development Block Grant (CDBG) funds are Federal Housing and Urban Development funds which are administered through Arapahoe County, Colorado.

Section 4. The Mayor is hereby authorized to sign said Agreements for and on behalf of the City of Englewood, Colorado.

Section 5. The City Manager shall be authorized to further extend the subgrantee agreements for Project Number EN HS 1315 and Project Number EN HS 1313 attached hereto for the Arapahoe County Community Development Block Grant Program as needed.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

**SUBGRANTEE AGREEMENT FOR
ARAPAHOE COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**SUBGRANTEE: City of Englewood
PROJECT NAME: Energy Efficient Englewood (E3)
PROJECT NUMBER: ENHS 1315**

This Agreement is made by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado, for the Community Development Block Grant Program in the Community Resources Department (hereinafter referred to as the County) and the **City of Englewood** (hereinafter referred to as the SubGrantee) for the conduct of a Community Development Block Grant (CDBG) Project.

I. PURPOSE

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the Community Development Block Grant (CDBG) Program under this Title is the development of viable urban communities, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for low and moderate income persons.

The project by the SubGrantee known as **Energy Efficient Englewood (E3)** (Project) will be carried out in accordance with the Scope of Services, attached to, and incorporated herein as Exhibit A.

The SubGrantee may proceed to incur costs for the Project upon receipt of an official "Notice to Proceed" from the County.

II. WORK TO BE COMPLETED BY THE SUBGRANTEE

The grant funds are to be used only to provide services to Arapahoe County residents, excluding residents of the city of Aurora, per County CDBG guidelines.

A. Payment

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed \$100,000. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance criteria established in Exhibit A Scope of Services. The parties expressly recognize that the SubGrantee is to be paid with CDBG funds received from the federal government, and that the obligation of the County to make payment to SubGrantee is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or, amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee

beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

Upon expiration of this Agreement, as identified by the Agreement Date and Project Deadline (Deadline) in Exhibit A, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. These transferred funds shall revert to the County and be utilized for other purposes.

B. Timeline

All Project activities shall be completed and draw requests submitted by the Deadline unless the Subgrantee notifies the County in writing thirty (30) days prior to the Deadline that the funds cannot be disbursed. An extension may be granted, in writing, in which all draw requests be submitted and Project activities shall be completed by thirty (30) days following the Deadline. In the event that the completion deadline falls on a weekend or holiday, the Deadline will be considered the work day prior to the scheduled completion date. If the project requires additional time past the extended Deadline, the Agreement must be modified by mutual agreement of the County and the SubGrantee.

C. Performance Criteria

In accordance with the funding application submitted by the SubGrantee for the Project, the criteria listed below are to be met during the execution of the Project as identified in Exhibit A Scope of Services.

1. Quantifiable Goals
2. Community Impact
3. Monthly Performance Standards

D. Reporting Requirements

1. Project reports will be due within twenty (20) days following the end of each reporting period as specified in Exhibit A Scope of Services until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.
3. Non-profit organizations that expend \$500,000 or more annually in federal funds shall comply with the Single Audit Act of 1984, as amended, as implemented in OMB Circular A-133, and other applicable federal regulations.

III. RESPONSIBILITIES OF THE SUBGRANTEE

A. Federal Compliance

The SubGrantee shall comply with all applicable federal laws, regulations and requirements, and all provisions of the grant agreements received from the U.S. Department of Housing and Urban Development (HUD) by the County. These include but are not limited to compliance with the provisions of the Housing and Community Development Act of 1974 and all rules, regulations, guidelines and circulars promulgated by the various federal departments, agencies, administrations and commissions relating to the CDBG Program. A listing of some of the applicable laws and regulations are as follows:

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85 as applicable per 24 CFR 570.502;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
9. The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
10. Non-discrimination in employment, established by Executive Order 11246;
11. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
12. Section 3 of the Housing and Urban Development Act of 1968;
The purpose of section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
13. Federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in: 24 CFR Part 85 or through 24 CFR Part 84, as applicable;
14. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
15. Audit requirements established in OMB Circular A-133; and

16. Cost principles established in OMB Circulars A-87 and A-122 as applicable per 24 CFR 570.502;

17. Conflict of Interest:

a) *Applicability.*

(1) In the procurement of supplies, equipment, construction, and services by the County and by the SubGrantee, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of 24 CFR 570.611 (2) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the County or by its SubGrantees to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to 24 CFR 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to 24 CFR 570.203, 570.204, 570.455, or 570.703 (i)).

b) *Conflicts prohibited.* The general rule is that persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may not obtain a financial interest or benefit from a CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, or any designated public agencies, or of the SubGrantee that are receiving funds under this part.

d) *Exceptions.* Upon the written request of the County, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the County has provided the following documentation:

- i. A disclosure of the nature of the conflict, accompanied by an assurance that there has been

public disclosure of the conflict and a description of how the public disclosure was made; and

- ii. An opinion of the County's attorney that the interest for which the exemption is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the County has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the County's program or project, taking into account the following factors, as applicable:

- i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- ii. Whether an opportunity was provided for open competitive bidding or negotiation;
- iii. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
- vi. Whether undue hardship will result either to the County or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- vii. Any other relevant considerations.

18. The SubGrantee cannot engage in a federally funded contract with any entity registered in the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs.

19. Labor Standards (Davis-Bacon)

Except for the rehabilitation of residential property that contains less than eight (8) units, the SubGrantee, and its

contractor and all subcontractors shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates of not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, when the project costs total \$2,000 or more and the work is financed in whole or in part with assistance provided under this Agreement. The applicable Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010.

20. Lead Based Paint Regulations

If the Project involves acquisition, construction, demolition, rehabilitation, or any other activity related to residential housing, and the building was built prior to 1978, Lead Based Paint Laws and Regulations apply, as established in 24 CFR Parts 35 and 24 CFR 570.608. Further, all applicable federal and state laws relating to lead-based paint must be followed, including such regulations promulgated by the U.S. Environmental Protection Agency and the State Department of Public Health and Environment, including regulations for non-housing buildings. If the SubGrantee does not follow and document lead based paint laws and regulation compliance, the SubGrantee will not be eligible for reimbursement.

21. Environmental Review

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and, if required, receipt by Arapahoe County of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on Arapahoe County's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review.

21. Uniform Relocation Act (URA)

The Project is subject to the relocation and acquisition requirements of the Uniform Relocation Act of 1970, as amended, and implemented at 49 CFR Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implemented at 24 CFR Part 42; and Displacement, Relocation, Acquisition, and Replacement of Housing implemented at 24 CFR 570.606. The SubGrantee must comply with the County's Anti Displacement and Relocation Assistance Plan on file.

B. Non-Appropriations Clause

The SubGrantee agrees that it will include in every contract it enters, which relies upon CDBG monies for funding, a non-appropriation clause that will protect itself, and the County from any liability or responsibility or any suit which might result from the discontinuance of CDBG funding for any reason. Because this SubGrantee Agreement involves funds from a federal grant, to the extent there is a conflict the funding provisions of this SubGrantee Agreement, the federal grant and the federal statutes control rather than the provisions of Section 24-91-103.6, C.R.S. with regard to any public work projects.

C. Expenditure Restrictions

All CDBG funds that are approved by HUD for expenditure under the County's grant agreement, including those that are identified for the SubGrantee's Projects and activities, shall be allocated to the specific projects and activities described and listed in the grant agreements. The allocated funds shall be used and expended only for the projects and activities for which the funds are identified.

D. Agreement Changes

No projects or activities, nor the amount allocated therefore, may be changed without approval by the County and acceptance of the revised Final Statement and/or Consolidated Plan by HUD, if required. Changes must be requested in writing and may not begin until a modification to this Agreement is fully executed.

E. Direct Project Supervision and Administration

The SubGrantee shall be responsible for the direct supervision and administration of its respective projects or activities. This task shall be accomplished through the use of the SubGrantee's staff, agency and employees. The SubGrantee shall be responsible for any injury to persons or damage to property resulting from the negligent acts or errors and omissions of its staff, agents and employees. Because the SubGrantee is responsible for the direct supervision and administration of its

projects or activities, the County shall not be liable or responsible for cost overruns by the SubGrantee on any projects or activities. The County shall have no duty or obligation to provide any additional funding to the SubGrantee if its projects or activities cannot be completed with the funds allocated by the County to the SubGrantee. Any cost overruns shall be the sole responsibility of the SubGrantee.

1. The SubGrantee agrees that all funds allocated to it for approved projects or activities shall be used solely for the purposes approved by the County. Said funds shall not be used for any non-approved purposes.
2. The SubGrantee agrees that the funds allocated for any approved projects or activities shall be sufficient to complete said projects or activities without any additional CDBG funding.

F. Indemnity

To the extent allowed by law, the SubGrantee shall indemnify and hold harmless the County and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, actions or costs, including attorneys fees, made, asserted or incurred as a result of any damage or alleged damage to person or property occasioned by the acts or omissions of SubGrantee, its officers, employees, agents, contractors or subcontractors, arising out of or in any way connected with the Project or the performance of this contract.

G. Bonding and Insurance

If the SubGrantee's projects involve construction activities, any Contractor it uses for said activities shall be required to provide and maintain, until final acceptance by the SubGrantee of all work by such Contractor, the kinds and minimum amounts of insurance as follows:

1. Comprehensive General Liability: In the amount of not less than \$1,000,000 combined single limit. Coverage to include:
 - a. Premises Operations
 - b. Products/Completed Operations
 - c. Broad Form Contractual Liability
 - d. Independent Contractors
 - e. Broad Form Property Damage
 - f. Employees as Additional Insured
 - g. Personal Injury
 - h. Arapahoe County and the SubGrantee as Additional Named Insured
 - i. Waiver of Subrogation

2. Comprehensive Automobile Liability: In the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
 - a. Arapahoe County and the SubGrantee as additional Named Insured
 - b. Waiver of Subrogation
3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.
4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
 - a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
 - b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
 - c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
 - d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.
6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.

In accordance with 24 CFR parts 84 and 85, the following bonding requirements shall apply to all projects exceeding the simplified acquisition threshold (currently \$100,000):

1. A bid guarantee from each bidder equivalent to 5% of the bid price;
2. A performance bond on the part of the contractor for 100% of the contract price; and
3. A payment bond on the part of the contractor for 100% of the contract price.

H. Records

The SubGrantee shall maintain a complete set of books and records documenting its use of CDBG funds and its supervision and administration of the Project. Records are to include documentation verifying Project eligibility and national objective compliance, as well as financial and other administrative aspects involved in performing the Project. The SubGrantee shall provide full access to these books and records to the County, the Secretary of HUD or his designee, the Office of Inspector General, and the General Accounting Office so that compliance with Federal laws and regulations may be confirmed. The SubGrantee further agrees to provide to the County upon request, a copy of any audit reports pertaining to the SubGrantee's financial operations during the term of this Agreement. All records pertaining to the Project are to be maintained for a minimum of five years following close-out of the Project.

I. Reporting

The SubGrantee shall file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the County and HUD. This shall include providing to the County the information necessary to complete annual Performance Reports in a timely fashion.

J. Timeliness

The SubGrantee shall comply with the performance standards established in Exhibit A of this Agreement. The SubGrantee understands that failure to comply with the established standards may lead to a cancellation of the Project and a loss of all unexpended funds.

K. Reimbursement for Expenses

The SubGrantee agrees that before the County can distribute any CDBG funds to it, the SubGrantee must submit to the County's Housing and Community Development Services Division documentation in the form required by that Division which properly and fully identifies the amount which the SubGrantee is requesting at that time. The County shall have ten (10) working days to review the request. Upon

approval of the request, the County will distribute the requested funds to the SubGrantee as soon as possible.

L. Program Income

All program income directly derived from the Arapahoe County Community Development Block Grant Program received by the SubGrantee will be returned to the County unless authorized in Exhibit A Scope of Services to be retained by the SubGrantee and dispersed for its approved CDBG Project activities. If the retention and re-use of Program Income is Authorized, it must be dispersed for its approved CDBG Project activities before additional CDBG funds are requested from the County. Following completion of the SubGrantee's Arapahoe County CDBG Projects, all program income directly generated from the use of CDBG funds will be remitted to the County.

M. Real Property

Real property acquired in whole or in part with CDBG funds shall be utilized in accordance with the scope and goals identified in Exhibit A Scope of Services attached to and made a part of this Agreement. Should the property in question be sold or otherwise disposed of, or the approved property usage discontinued, the SubGrantee shall adhere to the requirements of 24 CFR Parts 84 or 85 (as applicable) regarding the use and disposition of real property.

N. State and County Law Compliance

All responsibilities of the SubGrantee enumerated herein shall be subject to applicable State of Colorado statutes and County ordinances, resolutions, rules, and regulations.

O. Subcontracts

If subcontracts are used on the Project, the SubGrantee agrees that the provisions of this Agreement shall apply to any subcontract.

P. Suspension or Termination

This Agreement may be immediately suspended or terminated upon written notification from the County if the SubGrantee materially fails to comply with any term of this Agreement. This Agreement may also be terminated for convenience by mutual agreement of the County and the SubGrantee.

Q. Urban County Designation

In the event that the Unit of General Local Government should withdraw from the County's "Urban County" designation, this Agreement shall terminate as of the termination date of the County's CDBG grant Agreement with HUD.

R. Certification

The SubGrantee certifies that to the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and,
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

S. Disallowance

If it is determined by HUD or other federal agency that the expenditure, in whole or in part, for the SubGrantee's Project or activity was improper, inappropriate or ineligible for reimbursement, then the SubGrantee shall reimburse the County to the full extent of the disallowance.

T. Reversion of Assets

Upon expiration of this Agreement, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the SubGrantee's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the SubGrantee in the form of a loan) in excess of \$25,000 is either:

- (i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such

longer period of time as determined to be appropriate by the County and specified in Exhibit A Scope of Services; or

(ii) Not used in accordance with national objectives in §570.208 (formerly §570.901), in which event the SubGrantee shall pay to the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

IV. RESPONSIBILITIES OF THE COUNTY

A. Administrative Control

The Parties recognize and understand that the County will be the governmental entity required to execute all grant agreements received from HUD pursuant to the County's requests for CDBG funds. Accordingly, the SubGrantee agrees that as to its projects or activities performed or conducted under any CDBG agreement, the County shall have the necessary administrative control required to meet HUD requirements.

B. Performance and Compliance Monitoring

The County's administrative obligations to the SubGrantee pursuant to paragraph A above shall be limited to the performance of the administrative tasks necessary to make CDBG funds available to the SubGrantee and to provide Housing and Community Development Services staff whose job it will be to monitor the various projects funded with CDBG monies to monitor compliance with applicable Federal laws and regulations.

C. Reporting to HUD

The County will be responsible for seeing that all necessary reports and information required of the County are filed with HUD and other applicable Federal agencies in a timely fashion.

V. EXTENT OF THE AGREEMENT

This agreement, including any documents attached as exhibits which are hereby incorporated herein by reference, represents the entire and integrated agreement between the County, and SubGrantee and supersedes all prior negotiations, representations or agreements, either written or oral. Any amendments to this agreement must be in writing and signed by both the County, and SubGrantee. If any portion of this agreement is found by a court of competent jurisdiction to be

void and/or unenforceable, it is the intent of the parties that the remaining portions of this agreement shall be of full force and effect.

VI. NOTICES

Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses set forth:

To the County: Arapahoe County Attorney
 5334 S. Prince Street
 Littleton, CO 80120-1136

and

Arapahoe County Housing and Community Development
1690 W. Littleton Blvd., #300
Littleton, CO 80120-2069

To the SubGrantee: City of Englewood
 ATTN: Janet Grimmett
 1000 Englewood Pkwy
 Englewood, CO 80110

In Witness Whereof, the Parties have caused this Agreement to be duly executed this
_____ day of _____, 2013.

SubGrantee: _____

Signature - Randy P. Penn

Title- Mayor

Board of County Commissioners
Arapahoe County, Colorado

Don Klemme on behalf of the Board of County Commissioners
Pursuant to Resolution #130152

EXHIBIT A

SCOPE OF SERVICES FOR CDBG REHAB

Program Name: Englewood—Energy Efficient Englewood (E3)
CFDA #: CDBG 14.218
Project #: ENHS 1315

AGREEMENT AMOUNT: \$ 100,000

AGREEMENT END DATE AND PROJECT DEADLINE: 4/30/2014

INTRODUCTION

This Scope of Services is attached to and incorporated into the SubGrantee Agreement between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the City of Englewood (SubGrantee) as referenced in the Agreement. The purpose of this Scope of Services is to further describe the project requirements referenced in Section II. C. - Performance Criteria of the SubGrantee Agreement.

1. FEDERAL REGULATORY INFORMATION

CDBG National Objective¹: Benefit to low- and moderate- income (LMI) housing

HUD Matrix Code: 14A Single Unit Proposed Number of beneficiaries*: 12
Residential

*Beneficiaries are to be counted by the number of total number of PEOPLE or HOUSEHOLDS who will benefit from the project (including all members of a household).

The Project will be carried out under the:

CDBG Area Benefit definition CDBG Limited Clientele definition

For Limited Clientele Activities: Select which method of income verification will be used:

Self-Certification Verification with supporting income documentation

If income will be verified², select the method that will be used to determine annual household income:

N/A Part 5 Section 8 Census Long Form IRS Form 1040 Long Form

2. ACTIVITY DESCRIPTION/PERFORMANCE GOALS

¹ Change to appropriate National Objective if necessary.

² For descriptions of each income verification method and required documentation, go to:

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm>

This website provides an on-line income calculator for each of the three verification methods. The use of the calculator is required and a print-out of the completed calculator for each household assisted must be maintained on file.

a. Purpose (short description of program purpose)

The E3 project is available within the City of Englewood to assist low and moderate income families with incentives to encourage conservation and energy efficiency upgrades.

b. Goals and Community Impact

To provide loan and/or grants to 12 single family homeowners within Englewood.

c. Project Address-throughout Arapahoe County

Sites within Englewood addresses unknown at this time.

d. Name of Organization Carrying out the Activity –City of Englewood

Organization is: Another unit of local gov't; Another public agency; CBDO only; Subrecipient only; CBDO designated as subrecipient

e. Local Jurisdictions rules and regulations/ADA

SubGrantee agrees that it has read and understands the local jurisdiction's rules and regulations and local codes pertaining to the work and that all work will be permitted with the municipality and completed according to its rules and regulations. SubGrantee will perform the work in accordance with the Americans with Disabilities Act (ADA).

f. Detailed Program Requirements

The responsibilities of the City of Englewood for implementation of the program will include:

- Market the program;
- Accept all applications;
- Determine applicants' eligibility and approve or deny grants;
- Maintain a list of approved contractors;
- Complete a Site Specific Environmental Review;
- Contact Arapahoe County Weatherization, if eligible refer client;
- Determine needs and develop comprehensive work specifications based on Energy Audit;
- Prepare client documentation;
- Monitor rehab activity;
- Comply with lead-based paint regulations and ensure that tenants, owners and contractors are aware of their rights, responsibilities and options;
- Maintain program activity records and produce reports as set forth in this contract;
- Homeowner selects company/individual to conduct work or purchase materials. Company name and/or individual name is matched against the Federal Excluded Party List System by City to insure eligibility to receive federal funds. This is completed before any work begins. Once cleared the homeowner is instructed to proceed and to ensure appropriate permits are obtained, if required, by the Englewood Building and Safety Division.
- Ensure that costs are reasonable:
 - Does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost;
 - Is consistent with sound business practices; and

- Is consistent with market prices for similar goods and services;
- Payment may be made either directly to homeowner, upon receipt of paid invoices, or paid directly to company/individual. Reimbursement is 80% of the total invoice when a 20% match is required. Copies of checks and invoices are placed in file;
- Items will meet or exceed energy standards set forth at www.energystar.gov; and
- Homeowner sign-off on the job being completed as stated in the description of work.

g. Program Income

Program income is the gross income received by the SubGrantee directly generated from the use of CDBG funds under this Agreement. Program income includes:

- Proceeds from the sale or lease of property purchased or improved with CDBG funds until five years after the termination of this Agreement;
- Proceeds from the sale or lease of equipment purchased with CDBG funds;
- Gross income from the use or rental of real or personal property acquired, constructed or improved by the SubGrantee less costs incidental to the generation of income;
- Payments of principal and interest on loans made by the SubGrantee using CDBG funds;
- Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
- Interest earned on program income pending its disposition (NOTE: interest earned on CDBG funds held in revolving loan funds is not program income and must be remitted to the U.S. Treasury at least annually); and
- Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement.

The County authorizes does not authorize the SubGrantee to retain Program Income to be used for eligible CDBG activities. If authorized, Program income may be used for the following purposes: n/a

Reporting program income: Monthly, the SubGrantee must report to the County on the amount of Program Income received, less costs incidental to the generation of Program Income. Any Program Income in excess of the amount of CDBG funds identified in Section i. Budget must be repaid to the County.

i. Budget

ITEM	TOTAL BUDGET	AMT. PD BY COUNTY
Admin- Personnel Costs	\$29,375	\$1,600
Admin-Lead Based Paint Testing	\$2,400	\$2,400
Grants for Energy Efficiency	\$96,000	\$96,000
TOTAL	\$127,775	\$100,000

The amounts in each budget line item may be adjusted with the written approval of the County; provided, however, that the total amount of the award does not change.

Retainage: Up to 5% of each draw may be retained to ensure that the work is completed satisfactorily. Retainage withheld will be paid within 60 days upon the completion and satisfactory inspection of the work.

3. DRAW REQUESTS

Draw requests are due for each calendar month by the 20th day of the following month. Draw requests must include:

- a. Draw cover sheet showing itemized list of expenditures (HCDS form)
- b. Supporting documentation (check all that apply):

- Third-party invoices or receipts
- Check copies showing payment cashment (cancelled checks)
- Lien Waivers
- Davis-Bacon Certified Payrolls
- Federal Accountability and Transparency Act form (Attachment 1)*

**Per the Federal Accountability and Transparency Act of 2006 as amended, compensation data for certain officials must be reported. The report form is attached herein as Attachment 1. This form must be submitted with the first draw request and updated if there are changes*

- Site Specific Environmental Review checklists

Note: Payments on draws submitted after May 20 may be delayed due to end-of-year HUD reporting

4. REPORTING

Data collection must be completed demonstrating income eligibility and achievements met towards meeting the objectives described in Section 2 Activity Description. The disbursement of funds is contingent upon the receipt of the required information.

Reports are due for each calendar month by the 20th day of the following month. Reports must include:

- No. of beneficiaries served during the reporting period
- Demographic information* for the individual served, or each household
- Household income* (if applicable)
- Brief narrative report on activities contained in Section 2
- Program Income

*HCDS will provide a form for the collection of beneficiary income and demographic information; however, the SubGrantee may use its own form, or a form used for another fund source for the same program, provided that the following information is collected:

- Unique identifier: Name and address
- Whether the head of household is female and/or disabled
- Whether the head of household is aged 62 years or older
- Total number of household members
- Total income of all household members
- Ethnicity: Hispanic or Latino OR Not Hispanic or Latino of each household member
- The race of each household member:
 - White
 - Black or African American

- Asian
- American Indian or Alaska Native
- Native Hawaiian or Other Pacific Islander
- American Indian or Alaska Native and White
- Asian and White
- Black or African American and White
- American Indian or Alaska Native and Black or African American
- Other Multi-Racial

NOTE: Both ethnicity AND race category must be selected for each household member

- Signature attesting to the accuracy of the information submitted.

5. RECORD-KEEPING AND MONITORING

SubGrantee shall retain on file the following documents for a period of five years beyond the final close-out of this grant. Files shall be made available to Arapahoe County, the Department of Housing and Urban Development, the Office of Inspector General, the General Accounting Office, or any other federal regulatory agency, upon request for monitoring purposes.

1. Agreement between County and SubRecipient
2. Draw Requests and supporting documentation (see Section 3 Draw Requests)
3. Annual audits

Each property file must contain:

4. Homeowner application for assistance
5. Source documents used to determine income eligibility and income verification calculator print-out (if HUD income calculator is used)
6. Agreement between the SubRecipient and homeowner
7. Promissory Note and Deed of Trust, including any addenda, if applicable
8. Title check or copy of deed, documenting ownership of property
9. Site Specific environmental reviews approved by the County
10. EPLS check on contractor and subcontractors used
11. Copy of Flood Insurance Certificate or Policy, if property is located in a FEMA 100-year flood plan
12. Work write-up/scope of work
13. Documentation that the work was conducted per the approved rehab standards and the local jurisdiction's housing codes
14. Copies of initial and final inspections and check-lists, performed by a licensed contractor
15. Lien waivers obtained for progress payments and final payment from all contractors and subcontractors
16. Beneficiary Data (see Section 4 Reporting)

FOR COUNTY USE ONLY - FEDERAL IDIS REPORTING

1. Performance Goal: Create suitable living environments; Provide decent affordable housing; Create economic opportunities
2. Performance Outcome: Availability/Accessibility; Affordability; Sustainability
3. Check box if project address is to be marked as confidential
4. Activity Purpose: Prevent Homelessness; Help the Homeless; Help those with HIV/AIDS; Help persons with disabilities
5. Accomplishments to be reported at another activity: IDIS # _____
6. Activity being carried out by Grantee? yes; no If yes, activity is being carried out through: Employees; Contractors; Both

7. If Agreement is with another County department, the activity will be carried out by: County employees; Contractors;
 Both
8. Area Type: CDFO Area; Local Target Area; Strategy Area
9. Special Characteristics: Presidentially Declared major Disaster Area; Historic Preservation Area; Brownfield Redevelopment Area – indicate number of acres remediated: _____
10. Activity Information: One-for-One Replacement; Displacement; Favored Activity; Special Assessment; Revolving Fund;
 Float Funded

Attachment 1

Federal Funding Accountability and Transparency Act (FFATA)

In accordance with Federal Acquisition Regulation Clause 52.204-10, reporting is required for awards of \$25,000 or more.

Information Field <small>Definitions can be found on the reverse of this form.</small>	Response
1. Agency or Jurisdiction DUNS number:	Arapahoe County
2. Subrecipient name Receiving Award:	City of Englewood
3. Subrecipient Parent DUNS number: (report if different from agency number above)	
4. Location of Entity Receiving Award: (full street address)	
5. Primary location of Performance of the Award: (City, State and Congressional District)	
	Answer True or False (below)
6. In the preceding fiscal year, Contractor received:	
a.) \$25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
b.) 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
c.) The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.	

An answer to question 7 is required ONLY when all answers to questions 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

Print Name

Compensation Amount

By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

Signature of Responsible Administrator and Title

Date

Definitions

1. The DUNS Number of the agency receiving the award, which is used as the unique entity identifier.

DUNS Number - Dun and Bradstreet (D&B) – This commercial entity maintains a repository of unique identifiers (D-U-N-S Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.

2. The name of the entity receiving the award; Sub-Grantee, Sub-Recipient, Sub-Awardee.

3. The DUNS Number of the agency receiving the award (if different than Sub-Recipient in box #1), which is used as the unique entity identifier. **DUNS Number - Dun and Bradstreet (D&B)** – This commercial entity maintains a repository of unique identifiers (DUNS Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.

4. The business office location of the entity receiving the award under the award including the city, state, congressional district, and country.

5. The primary location of performance under the award including the city, state, congressional district, and country.

6. The names and total compensation of the five highest-paid officers of an entity if, in the preceding fiscal year, that entity received: 80% or more of its annual gross revenues in Federal awards, \$25,000,000 or more in annual gross revenues from Federal awards, and the public does not already have access to data on executive compensation through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, or section 6104 of the Internal Revenue Code of 1986.

CSHC134514

EXHIBIT B

**SUBGRANTEE AGREEMENT FOR
ARAPAHOE COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**SUBGRANTEE: City of Englewood
PROJECT NAME: Housing Rehabilitation
PROJECT NUMBER: ENHS 1313**

This Agreement is made by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado, for the Community Development Block Grant Program in the Community Resources Department (hereinafter referred to as the County) and the **City of Englewood** (hereinafter referred to as the SubGrantee) for the conduct of a Community Development Block Grant (CDBG) Project.

I. PURPOSE

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the Community Development Block Grant (CDBG) Program under this Title is the development of viable urban communities, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for low and moderate income persons.

The project by the SubGrantee known as **Housing Rehabilitation** (Project) will be carried out in accordance with the Scope of Services, attached to, and incorporated herein as Exhibit A.

The SubGrantee may proceed to incur costs for the Project upon receipt of an official "Notice to Proceed" from the County.

II. WORK TO BE COMPLETED BY THE SUBGRANTEE

The grant funds are to be used only to provide services to Arapahoe County residents, excluding residents of the city of Aurora, per County CDBG guidelines.

A. Payment

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed \$27,500. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance criteria established in Exhibit A Scope of Services. The parties expressly recognize that the SubGrantee is to be paid with CDBG funds received from the federal government, and that the obligation of the County to make payment to SubGrantee is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or, amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee

beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

Upon expiration of this Agreement, as identified by the Agreement Date and Project Deadline (Deadline) in Exhibit A, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. These transferred funds shall revert to the County and be utilized for other purposes.

B. Timeline

All Project activities shall be completed and draw requests submitted by the Deadline unless the Subgrantee notifies the County in writing thirty (30) days prior to the Deadline that the funds cannot be disbursed. An extension may be granted, in writing, in which all draw requests be submitted and Project activities shall be completed by thirty (30) days following the Deadline. In the event that the completion deadline falls on a weekend or holiday, the Deadline will be considered the work day prior to the scheduled completion date. If the project requires additional time past the extended Deadline, the Agreement must be modified by mutual agreement of the County and the SubGrantee.

C. Performance Criteria

In accordance with the funding application submitted by the SubGrantee for the Project, the criteria listed below are to be met during the execution of the Project as identified in Exhibit A Scope of Services.

1. Quantifiable Goals
2. Community Impact
3. Monthly Performance Standards

D. Reporting Requirements

1. Project reports will be due within twenty (20) days following the end of each reporting period as specified in Exhibit A Scope of Services until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.
3. Non-profit organizations that expend \$500,000 or more annually in federal funds shall comply with the Single Audit Act of 1984, as amended, as implemented in OMB Circular A-133, and other applicable federal regulations.

III. RESPONSIBILITIES OF THE SUBGRANTEE

A. Federal Compliance

The SubGrantee shall comply with all applicable federal laws, regulations and requirements, and all provisions of the grant agreements received from the U.S. Department of Housing and Urban Development (HUD) by the County. These include but are not limited to compliance with the provisions of the Housing and Community Development Act of 1974 and all rules, regulations, guidelines and circulars promulgated by the various federal departments, agencies, administrations and commissions relating to the CDBG Program. A listing of some of the applicable laws and regulations are as follows:

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85 as applicable per 24 CFR 570.502;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
9. The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
10. Non-discrimination in employment, established by Executive Order 11246;
11. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
12. Section 3 of the Housing and Urban Development Act of 1968;
The purpose of section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
13. Federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in: 24 CFR Part 85 or through 24 CFR Part 84, as applicable;
14. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
15. Audit requirements established in OMB Circular A-133; and

16. Cost principles established in OMB Circulars A-87 and A-122 as applicable per 24 CFR 570.502;

17. Conflict of Interest:

a) *Applicability.*

(1) In the procurement of supplies, equipment, construction, and services by the County and by the SubGrantee, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of 24 CFR 570.611 (2) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the County or by its SubGrantees to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to 24 CFR 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to 24 CFR 570.203, 570.204, 570.455, or 570.703 (i)).

b) *Conflicts prohibited.* The general rule is that persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may not obtain a financial interest or benefit from a CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, or any designated public agencies, or of the SubGrantee that are receiving funds under this part.

d) *Exceptions.* Upon the written request of the County, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the County has provided the following documentation:

- i. A disclosure of the nature of the conflict, accompanied by an assurance that there has been

public disclosure of the conflict and a description of how the public disclosure was made; and

- ii. An opinion of the County's attorney that the interest for which the exemption is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the County has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the County's program or project, taking into account the following factors, as applicable:

- i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- ii. Whether an opportunity was provided for open competitive bidding or negotiation;
- iii. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
- vi. Whether undue hardship will result either to the County or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- vii. Any other relevant considerations.

18. The SubGrantee cannot engage in a federally funded contract with any entity registered in the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs.

19. Labor Standards (Davis-Bacon)

Except for the rehabilitation of residential property that contains less than eight (8) units, the SubGrantee, and its

contractor and all subcontractors shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates of not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, when the project costs total \$2,000 or more and the work is financed in whole or in part with assistance provided under this Agreement. The applicable Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010.

20. Lead Based Paint Regulations

If the Project involves acquisition, construction, demolition, rehabilitation, or any other activity related to residential housing, and the building was built prior to 1978, Lead Based Paint Laws and Regulations apply, as established in 24 CFR Parts 35 and 24 CFR 570.608. Further, all applicable federal and state laws relating to lead-based paint must be followed, including such regulations promulgated by the U.S. Environmental Protection Agency and the State Department of Public Health and Environment, including regulations for non-housing buildings. If the SubGrantee does not follow and document lead based paint laws and regulation compliance, the SubGrantee will not be eligible for reimbursement.

21. Environmental Review

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and, if required, receipt by Arapahoe County of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on Arapahoe County's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review.

21. Uniform Relocation Act (URA)

The Project is subject to the relocation and acquisition requirements of the Uniform Relocation Act of 1970, as amended, and implemented at 49 CFR Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implemented at 24 CFR Part 42; and Displacement, Relocation, Acquisition, and Replacement of Housing implemented at 24 CFR 570.606. The SubGrantee must comply with the County's Anti Displacement and Relocation Assistance Plan on file.

B. Non-Appropriations Clause

The SubGrantee agrees that it will include in every contract it enters, which relies upon CDBG monies for funding, a non-appropriation clause that will protect itself, and the County from any liability or responsibility or any suit which might result from the discontinuance of CDBG funding for any reason. Because this SubGrantee Agreement involves funds from a federal grant, to the extent there is a conflict the funding provisions of this SubGrantee Agreement, the federal grant and the federal statutes control rather than the provisions of Section 24-91-103.6, C.R.S. with regard to any public work projects.

C. Expenditure Restrictions

All CDBG funds that are approved by HUD for expenditure under the County's grant agreement, including those that are identified for the SubGrantee's Projects and activities, shall be allocated to the specific projects and activities described and listed in the grant agreements. The allocated funds shall be used and expended only for the projects and activities for which the funds are identified.

D. Agreement Changes

No projects or activities, nor the amount allocated therefore, may be changed without approval by the County and acceptance of the revised Final Statement and/or Consolidated Plan by HUD, if required. Changes must be requested in writing and may not begin until a modification to this Agreement is fully executed.

E. Direct Project Supervision and Administration

The SubGrantee shall be responsible for the direct supervision and administration of its respective projects or activities. This task shall be accomplished through the use of the SubGrantee's staff, agency and employees. The SubGrantee shall be responsible for any injury to persons or damage to property resulting from the negligent acts or errors and omissions of its staff, agents and employees. Because the SubGrantee is responsible for the direct supervision and administration of its

projects or activities, the County shall not be liable or responsible for cost overruns by the SubGrantee on any projects or activities. The County shall have no duty or obligation to provide any additional funding to the SubGrantee if its projects or activities cannot be completed with the funds allocated by the County to the SubGrantee. Any cost overruns shall be the sole responsibility of the SubGrantee.

1. The SubGrantee agrees that all funds allocated to it for approved projects or activities shall be used solely for the purposes approved by the County. Said funds shall not be used for any non-approved purposes.
2. The SubGrantee agrees that the funds allocated for any approved projects or activities shall be sufficient to complete said projects or activities without any additional CDBG funding.

F. Indemnity

To the extent allowed by law, the SubGrantee shall indemnify and hold harmless the County and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, actions or costs, including attorneys fees, made, asserted or incurred as a result of any damage or alleged damage to person or property occasioned by the acts or omissions of SubGrantee, its officers, employees, agents, contractors or subcontractors, arising out of or in any way connected with the Project or the performance of this contract.

G. Bonding and Insurance

If the SubGrantee's projects involve construction activities, any Contractor it uses for said activities shall be required to provide and maintain, until final acceptance by the SubGrantee of all work by such Contractor, the kinds and minimum amounts of insurance as follows:

1. Comprehensive General Liability: In the amount of not less than \$1,000,000 combined single limit. Coverage to include:
 - a. Premises Operations
 - b. Products/Completed Operations
 - c. Broad Form Contractual Liability
 - d. Independent Contractors
 - e. Broad Form Property Damage
 - f. Employees as Additional Insured
 - g. Personal Injury
 - h. Arapahoe County and the SubGrantee as Additional Named Insured
 - i. Waiver of Subrogation

2. Comprehensive Automobile Liability: In the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
 - a. Arapahoe County and the SubGrantee as additional Named Insured
 - b. Waiver of Subrogation
3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.
4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
 - a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
 - b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
 - c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
 - d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.
6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.

In accordance with 24 CFR parts 84 and 85, the following bonding requirements shall apply to all projects exceeding the simplified acquisition threshold (currently \$100,000):

1. A bid guarantee from each bidder equivalent to 5% of the bid price;
2. A performance bond on the part of the contractor for 100% of the contract price; and
3. A payment bond on the part of the contractor for 100% of the contract price.

H. Records

The SubGrantee shall maintain a complete set of books and records documenting its use of CDBG funds and its supervision and administration of the Project. Records are to include documentation verifying Project eligibility and national objective compliance, as well as financial and other administrative aspects involved in performing the Project. The SubGrantee shall provide full access to these books and records to the County, the Secretary of HUD or his designee, the Office of Inspector General, and the General Accounting Office so that compliance with Federal laws and regulations may be confirmed. The SubGrantee further agrees to provide to the County upon request, a copy of any audit reports pertaining to the SubGrantee's financial operations during the term of this Agreement. All records pertaining to the Project are to be maintained for a minimum of five years following close-out of the Project.

I. Reporting

The SubGrantee shall file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the County and HUD. This shall include providing to the County the information necessary to complete annual Performance Reports in a timely fashion.

J. Timeliness

The SubGrantee shall comply with the performance standards established in Exhibit A of this Agreement. The SubGrantee understands that failure to comply with the established standards may lead to a cancellation of the Project and a loss of all unexpended funds.

K. Reimbursement for Expenses

The SubGrantee agrees that before the County can distribute any CDBG funds to it, the SubGrantee must submit to the County's Housing and Community Development Services Division documentation in the form required by that Division which properly and fully identifies the amount which the SubGrantee is requesting at that time. The County shall have ten (10) working days to review the request. Upon

approval of the request, the County will distribute the requested funds to the SubGrantee as soon as possible.

L. Program Income

All program income directly derived from the Arapahoe County Community Development Block Grant Program received by the SubGrantee will be returned to the County unless authorized in Exhibit A Scope of Services to be retained by the SubGrantee and dispersed for its approved CDBG Project activities. If the retention and re-use of Program Income is Authorized, it must be dispersed for its approved CDBG Project activities before additional CDBG funds are requested from the County. Following completion of the SubGrantee's Arapahoe County CDBG Projects, all program income directly generated from the use of CDBG funds will be remitted to the County.

M. Real Property

Real property acquired in whole or in part with CDBG funds shall be utilized in accordance with the scope and goals identified in Exhibit A Scope of Services attached to and made a part of this Agreement. Should the property in question be sold or otherwise disposed of, or the approved property usage discontinued, the SubGrantee shall adhere to the requirements of 24 CFR Parts 84 or 85 (as applicable) regarding the use and disposition of real property.

N. State and County Law Compliance

All responsibilities of the SubGrantee enumerated herein shall be subject to applicable State of Colorado statutes and County ordinances, resolutions, rules, and regulations.

O. Subcontracts

If subcontracts are used on the Project, the SubGrantee agrees that the provisions of this Agreement shall apply to any subcontract.

P. Suspension or Termination

This Agreement may be immediately suspended or terminated upon written notification from the County if the SubGrantee materially fails to comply with any term of this Agreement. This Agreement may also be terminated for convenience by mutual agreement of the County and the SubGrantee.

Q. Urban County Designation

In the event that the Unit of General Local Government should withdraw from the County's "Urban County" designation, this Agreement shall terminate as of the termination date of the County's CDBG grant Agreement with HUD.

R. Certification

The SubGrantee certifies that to the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and,
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

S. Disallowance

If it is determined by HUD or other federal agency that the expenditure, in whole or in part, for the SubGrantee's Project or activity was improper, inappropriate or ineligible for reimbursement, then the SubGrantee shall reimburse the County to the full extent of the disallowance.

T. Reversion of Assets

Upon expiration of this Agreement, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the SubGrantee's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the SubGrantee in the form of a loan) in excess of \$25,000 is either:

- (i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such

longer period of time as determined to be appropriate by the County and specified in Exhibit A Scope of Services; or

(ii) Not used in accordance with national objectives in §570.208 (formerly §570.901), in which event the SubGrantee shall pay to the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

IV. RESPONSIBILITIES OF THE COUNTY

A. Administrative Control

The Parties recognize and understand that the County will be the governmental entity required to execute all grant agreements received from HUD pursuant to the County's requests for CDBG funds. Accordingly, the SubGrantee agrees that as to its projects or activities performed or conducted under any CDBG agreement, the County shall have the necessary administrative control required to meet HUD requirements.

B. Performance and Compliance Monitoring

The County's administrative obligations to the SubGrantee pursuant to paragraph A above shall be limited to the performance of the administrative tasks necessary to make CDBG funds available to the SubGrantee and to provide Housing and Community Development Services staff whose job it will be to monitor the various projects funded with CDBG monies to monitor compliance with applicable Federal laws and regulations.

C. Reporting to HUD

The County will be responsible for seeing that all necessary reports and information required of the County are filed with HUD and other applicable Federal agencies in a timely fashion.

V. EXTENT OF THE AGREEMENT

This agreement, including any documents attached as exhibits which are hereby incorporated herein by reference, represents the entire and integrated agreement between the County, and SubGrantee and supersedes all prior negotiations, representations or agreements, either written or oral. Any amendments to this agreement must be in writing and signed by both the County, and SubGrantee. If any portion of this agreement is found by a court of competent jurisdiction to be

void and/or unenforceable, it is the intent of the parties that the remaining portions of this agreement shall be of full force and effect.

VI. NOTICES

Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses set forth:

To the County: Arapahoe County Attorney
 5334 S. Prince Street
 Littleton, CO 80120-1136

and

Arapahoe County Housing and Community Development
1690 W. Littleton Blvd., #300
Littleton, CO 80120-2069

To the SubGrantee: City of Englewood
 ATTN: Janet Grimmatt
 1000 Englewood Pkwy
 Englewood, CO 80110

In Witness Whereof, the Parties have caused this Agreement to be duly executed this
_____ day of _____, 2013.

SubGrantee:

Signature - Randy P. Penn

Title - Mayor

Board of County Commissioners
Arapahoe County, Colorado

Don Klemme on behalf of the Board of County Commissioners
Pursuant to Resolution #130152

EXHIBIT A

SCOPE OF SERVICES FOR CDBG REHAB

Program Name: Englewood--Housing Rehabilitation
CFDA #: CDBG 14.218
Project #: ENHS 1313

AGREEMENT AMOUNT: \$ 27,500
AGREEMENT END DATE AND PROJECT DEADLINE: 4/30/2014

INTRODUCTION

This Scope of Services is attached to and incorporated into the SubGrantee Agreement between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the City of Englewood (SubGrantee) as referenced in the Agreement. The purpose of this Scope of Services is to further describe the project requirements referenced in Section II. C. - Performance Criteria of the SubGrantee Agreement.

1. FEDERAL REGULATORY INFORMATION

CDBG National Objective¹: Benefit to low- and moderate- income (LMI) housing

HUD Matrix Code: 14A Single Unit Proposed Number of beneficiaries*: 3
 Residential

*Beneficiaries are to be counted by the number of total number of PEOPLE or HOUSEHOLDS who will benefit from the project (including all members of a household).

The Project will be carried out under the:

CDBG Area Benefit definition CDBG Limited Clientele definition

For Limited Clientele Activities: Select which method of income verification will be used:

Self-Certification Verification with supporting income documentation

If income will be verified², select the method that will be used to determine annual household income:

N/A Part 5 Section 8 Census Long Form IRS Form 1040 Long Form

2. ACTIVITY DESCRIPTION/PERFORMANCE GOALS

¹ Change to appropriate National Objective if necessary.

² For descriptions of each income verification method and required documentation, go to:
<http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm>

This website provides an on-line income calculator for each of the three verification methods. The use of the calculator is required and a print-out of the completed calculator for each household assisted must be maintained on file.

a. Purpose (short description of program purpose)

The Housing Rehabilitation Project is available within the City of Englewood to assist low and moderate income families with the financing of their major household repairs.

b. Goals and Community Impact

To provide loan and/or grants to 3 single family homeowners within Englewood.

c. Project Address-throughout Arapahoe County

Sites within Englewood addresses unknown at this time.

d. Name of Organization Carrying out the Activity –City of Englewood

Organization is: Another unit of local gov't; Another public agency; CBDO only; Subrecipient only; CBDO designated as subrecipient

e. Local Jurisdictions rules and regulations/ADA

SubGrantee agrees that it has read and understands the local jurisdiction's rules and regulations and local codes pertaining to the work and that all work will be permitted with the municipality and completed according to its rules and regulations. SubGrantee will perform the work in accordance with the Americans with Disabilities Act (ADA).

f. Detailed Program Requirements

The responsibilities of the City of Englewood for implementation of the program will include:

- Market the program;
- Accept all applications;
- Determine applicants' eligibility and approve or deny grants/loans.
- Maintain a list of approved contractors;
- Complete a Site Specific Environmental Review;
- Determine rehab needs and develop comprehensive work specifications;
- Structure contractor bidding process;
- Prepare contractor and client documentation;
- Monitor rehab activity;
- Comply with lead-based paint regulations and ensure that tenants, owners and contractors are aware of their rights, responsibilities and options;
- Maintain program activity records and produce reports as set forth in this contract;
- Inspect each rehab once completed with the contractor, and sign-off on the job being completed as stated in the description of work; and
- Ensure that all City permitting and local standards are met.

g. Program Income

Program income is the gross income received by the SubGrantee directly generated from the use of CDBG funds under this Agreement. Program income includes:

- Proceeds from the sale or lease of property purchased or improved with CDBG funds until five years after the termination of this Agreement;
- Proceeds from the sale or lease of equipment purchased with CDBG funds;

- Gross income from the use or rental of real or personal property acquired, constructed or improved by the SubGrantee less costs incidental to the generation of income;
- Payments of principal and interest on loans made by the SubGrantee using CDBG funds;
- Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
- Interest earned on program income pending its disposition (NOTE: interest earned on CDBG funds held in revolving loan funds is not program income and must be remitted to the U.S. Treasury at least annually); and
- Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement.

The County authorizes does not authorize the SubGrantee to retain Program Income to be used for eligible CDBG activities. If authorized, Program income may be used for the following purposes: The Englewood Housing Rehabilitation Program

Reporting program income: Monthly, the SubGrantee must report to the County on the amount of Program Income received, less costs incidental to the generation of Program Income. Any Program Income in excess of the amount of CDBG funds identified in Section i. Budget must be repaid to the County.

i. Budget

ITEM	TOTAL BUDGET	AMT. PD BY COUNTY	AMT PD BY Englewood
Admin- Personnel Costs	\$56,000	\$2,500	\$53,500
Project Rehab Costs	\$25,000	\$25,000	
TOTAL	\$81,000	\$27,500	\$53,500

The amounts in each budget line item may be adjusted with the written approval of the County; provided, however, that the total amount of the award does not change.

Retainage: Up to 5% of each draw may be retained to ensure that the work is completed satisfactorily. Retainage withheld will be paid within 60 days upon the completion and satisfactory inspection of the work.

3. DRAW REQUESTS

Draw requests are due for each calendar month by the 20th day of the following month. Draw requests must include:

- Draw cover sheet showing itemized list of expenditures (HCDS form)
- Supporting documentation (check all that apply):

- Third-party invoices or receipts
- Check copies showing payment cashment (cancelled checks)
- Lien Waivers
- Davis-Bacon Certified Payrolls—the one unit is considered a gro up home and therefore exempt from Davis Bacon
- Federal Accountability and Transparency Act form (Attachment 1)*
**Per the Federal Accountability and Transparency Act of 2006 as amended, compensation data for certain officials must be reported. The report form is attached herein as Attachment 1. This form must be submitted with the first draw request and updated if there are changes*
- Site Specific Environmental Review checklists

Note: Payments on draws submitted after May 20 may be delayed due to end-of-year HUD reporting

4. REPORTING

Data collection must be completed demonstrating income eligibility and achievements met towards meeting the objectives described in Section 2 Activity Description. The disbursement of funds is contingent upon the receipt of the required information.

Reports are due for each calendar month by the 20th day of the following month. Reports must include:

- No. of beneficiaries served during the reporting period
- Demographic information* for the individual served, or each household
- Household income* (if applicable)
- Brief narrative report on activities contained in Section 2
- Program Income

*HCDS will provide a form for the collection of beneficiary income and demographic information; however, the SubGrantee may use its own form, or a form used for another fund source for the same program, provided that the following information is collected:

- Unique identifier: Name and address
- Whether the head of household is female and/or disabled
- Whether the head of household is aged 62 years or older
- Total number of household members
- Total income of all household members
- Ethnicity: Hispanic or Latino OR Not Hispanic or Latino of each household member
- The race of each household member:
 - White
 - Black or African American
 - Asian
 - American Indian or Alaska Native
 - Native Hawaiian or Other Pacific Islander
 - American Indian or Alaska Native and White
 - Asian and White
 - Black or African American and White
 - American Indian or Alaska Native and Black or African American
 - Other Multi-Racial
- *NOTE: Both ethnicity AND race category must be selected for each household member*
- Signature attesting to the accuracy of the information submitted.

5. RECORD-KEEPING AND MONITORING

SubGrantee shall retain on file the following documents for a period of five years beyond the final close-out of this grant. Files shall be made available to Arapahoe County, the Department of Housing and Urban Development, the Office of Inspector General, the General Accounting Office, or any other federal regulatory agency, upon request for monitoring purposes.

At minimum, files must contain:

1. Agreement between County and SubRecipient
2. Draw Requests and supporting documentation (see Section 3 Draw Requests)
3. Annual audits

Each property file must contain:

4. Homeowner application for assistance
5. Source documents used to determine income eligibility and income verification calculator print-out (if HUD income calculator is used)
6. Agreement between the SubRecipient and homeowner
7. Promissory Note and Deed of Trust, including any addenda, if applicable
8. Title check or copy of deed, documenting ownership of property
9. Site Specific environmental reviews approved by the County
10. EPLS check on contractor and subcontractors used
11. Copy of Flood Insurance Certificate or Policy, if property is located in a FEMA 100-year flood plan
12. Work write-up/scope of work
13. Documentation that the work was conducted per the approved rehab standards and the local jurisdiction's housing codes
14. Copies of initial and final inspections and check-lists, performed by a licensed contractor
15. Lien waivers obtained for progress payments and final payment from all contractors and subcontractors
16. Beneficiary Data (see Section 4 Reporting)

FOR COUNTY USE ONLY - FEDERAL IDIS REPORTING

1. Performance Goal: Create suitable living environments; Provide decent affordable housing; Create economic opportunities
2. Performance Outcome: Availability/Accessibility; Affordability; Sustainability
3. Check box if project address is to be marked as confidential
4. Activity Purpose: Prevent Homelessness; Help the Homeless; Help those with HIV/AIDS; Help persons with disabilities
5. Accomplishments to be reported at another activity: IDIS # _____
6. Activity being carried out by Grantee? yes; no If yes, activity is being carried out through: Employees; Contractors; Both
7. If Agreement is with another County department, the activity will be carried out by: County employees; Contractors; Both
8. Area Type: CDFO Area; Local Target Area; Strategy Area
9. Special Characteristics: Presidentially Declared major Disaster Area; Historic Preservation Area; Brownfield Redevelopment Area - indicate number of acres remediated: _____
10. Activity Information: One-for-One Replacement; Displacement; Favored Activity; Special Assessment; Revolving Fund; Float Funded

Attachment 1

Federal Funding Accountability and Transparency Act (FFATA)

In accordance with Federal Acquisition Regulation Clause 52.204-10, reporting is required for awards of \$25,000 or more.

Information Field <small>Definitions can be found on the reverse of this form.</small>	Response
1. Agency or Jurisdiction DUNS number:	Arapahoe County
2. Subrecipient name Receiving Award:	City of Englewood
3. Subrecipient Parent DUNS number: (report if different from agency number above)	
4. Location of Entity Receiving Award: (full street address)	
5. Primary location of Performance of the Award: (City, State and Congressional District)	
Answer True or False (below)	
6. In the preceding fiscal year, Contractor received:	
a.) \$25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
b.) 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
c.) The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.	

An answer to question 7 is required ONLY when all answers to questions 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

<u>Print Name</u>	<u>Compensation Amount</u>
_____	_____
_____	_____
_____	_____

By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

Signature of Responsible Administrator and Title

Date

Definitions

1. The DUNS Number of the agency receiving the award, which is used as the unique entity identifier.
DUNS Number - Dun and Bradstreet (D&B) – This commercial entity maintains a repository of unique identifiers (D-U-N-S Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.
2. The name of the entity receiving the award; Sub-Grantee, Sub-Recipient, Sub-Awardee.
3. The DUNS Number of the agency receiving the award (if different than Sub-Recipient in box #1), which is used as the unique entity identifier. **DUNS Number - Dun and Bradstreet (D&B)** – This commercial entity maintains a repository of unique identifiers (DUNS Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.
4. The business office location of the entity receiving the award under the award including the city, state, congressional district, and country.
5. The primary location of performance under the award including the city, state, congressional district, and country.
6. The names and total compensation of the five highest-paid officers of an entity if, in the preceding fiscal year, that entity received: 80% or more of its annual gross revenues in Federal awards, \$25,000,000 or more in annual gross revenues from Federal awards, and the public does not already have access to data on executive compensation through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, or section 6104 of the Internal Revenue Code of 1986.

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 38
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE AMENDING TITLE 4, CHAPTER 4, SECTION 2, OF THE ENGLEWOOD MUNICIPAL CODE 2000 RELATING TO BUILDING USE TAXES

WHEREAS, the code provisions allowing periodic payments of building use tax has not been amended since the 1985 code; and

WHEREAS, the Englewood Municipal Code requires a deposit for building use taxes for small projects and allows larger projects to pay building use taxes on a periodic basis; and

WHEREAS, the current threshold is \$200,000 (two hundred thousand dollars) which was reasonable in 1985 but is low today because most projects easily exceed that amount and so those projects valued at \$200,000 (two hundred thousand dollars) or below should be treated as other smaller projects; and

WHEREAS, the changes clarify current code language in describing what is subject to the building use tax; and

WHEREAS, the Director of Finance and Administrative Services met with the Englewood City Council to discuss this matter at the July 1, 2013 Study Session.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 4, Chapter 4, Section 2, entitled “*Definitions*” of the Englewood Municipal Code 2000, by inserting the following terms in alphabetical order, to read as follows:

4-4-2: Definitions.

When used in this Chapter, the following words and phrases shall have the following meanings, unless from the context it clearly appears that a different meaning is indicated:

Realty: Includes land and anything fixed, immovable, or permanently attached to it such as buildings, walls, fixtures, improvements, roads, trees, shrubs, fences, sewers, structures, and utility systems.

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 4, Chapter 4, Section 5 Subsection 3, of the Englewood Municipal Code 2000, entitled Payment and Collection of Use Tax to read as follows:

4-4-5-3: Payment and Collection of Use Tax.

[EDITORS NOTE: 4-4-5-3(A) contains no changes and is therefore not included here.]

B. Payment and Collection on Specific Items: The following special provision shall apply to the payment of any use tax due on the use, consumption or storage of the following items:

2. *Building and Construction Materials and Supplies:* Any person ~~who does not maintain a permanent place of business within the boundaries of the City and~~ who shall build, construct or improve any building, dwelling or other structure or improvement to realty whatsoever (including but not limited to structures, and site work such as landscaping, utility infrastructure, curb/gutter installation, parking lot resurfacing, etc.) within the City shall, upon application for a ~~building permit for improvement to realty~~, pay as a deposit for payment of the tax levied by Section 4-4-5-1 an amount equal to three and one-half percent (3.5%) of fifty percent (50%) of the estimated cost or total contract price of the structure improvement or three and one-half (3.5%) of forty percent (40%) of the estimated cost of the improvement other than to the structure.; ~~provided, however, that if the estimated cost or the total contract price of the improvement to realty is in excess of two hundred thousand dollars (\$200,000.00) three million dollars (\$3,000,000.00) or as set by City Council Resolution, the City Manager or designee, at his/her discretion and~~ upon application to it, may authorize a waiver of said deposit and accept the payment of said tax on a monthly, quarterly or other basis, based upon actual purchases of materials, supplies and equipment for such tax may be due, subject to such rules and regulations as the said City may adopt. In all cases where the deposit required by the provisions of this Section is made, if it is determined at the time of the completion of the building, dwelling or other structure of improvement from the invoices and statements reflecting the purchase therefor, that the deposit made as herein required, together with the actual payments to the City as a sales tax, is in excess of the actual tax due therefor, the person making said deposit or paying said tax may make application to the City for refund of any amount paid in excess of the actual taxes due, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing over-payment of the tax, and, if the said City is satisfied that there has been such overpayment, it shall refund such overpayment to the taxpayer.

Section 3. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 4. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 5. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 6. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 7. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 39
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE ADDING SECTION 10 TO TITLE 5, CHAPTER 1, ENTITLED "SPECIAL CONDITIONS OF THE LICENSE"; AND DELETING TITLE 5, CHAPTER 17, ENTITLED "GOING OUT OF BUSINESS AND DAMAGED GOODS SALES", OF THE ENGLEWOOD MUNICIPAL CODE 2000.

WHEREAS, Title 5 of the Englewood Municipal Code was rewritten in the 1990's; and

WHEREAS, in the 1990's the City believed a license was necessary to address false and misleading "going out of business sales", because a few violators held perpetual going out of business sales; and

WHEREAS, since the 1990's few if any of the licenses have been issued so that such license can be eliminated from the Englewood Municipal Code by adding new language to the Code requiring license holders not to use "untrue, deceptive or misleading advertising"; and

WHEREAS, the passage of this proposed ordinance will add new language requiring the license holder to "conduct sales in strict conformity with representations made in advertising" to insure that customers are not misled and that sales are as advertised or represented; and

WHEREAS, Title 5, Chapter 7 of the Englewood Municipal Code 2000 is outdated; and

WHEREAS, misleading advertising and conducting sales in conformity with representations made in advertising is being inserted into Title 5, Chapter 1 of the Englewood Municipal Code requiring license holders not to employ misleading advertising and requiring them to conduct sales in conformity with representations made in advertising; and

WHEREAS, the Director of Finance and Administrative Services met with the Englewood City Council to discuss these matters at the July 2013 Study Sessions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Chapter 1, by the addition of a new Section 10, entitled "*Special Conditions of the License*" of the Englewood Municipal Code 2000, to read as follows:

5-1-10: Special Conditions of the License.

License holders shall not employ any untrue, deceptive or misleading advertising and shall conduct sales in strict conformity with representations made in advertising.

Section 2. The City Council of the City of Englewood, Colorado hereby repeals Title 5, Chapter 17, "Going Out of Business and Damaged Goods Sales", of the Englewood Municipal Code 2000, in its entirety and reserves Chapter 17 for future legislation.

~~5-17: Going Out of Business and Damaged Goods Sales~~

~~5-17-1: Definitions.~~

~~For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:~~

~~*Damaged Goods:* A sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged by fire, smoke, water, or other reason.~~

~~*Going Out of Business Sale:* A sale held out in such a manner as to reasonably cause the public to believe that, upon the disposal of the stock of goods on hand, the business will cease and will be discontinued, including but not limited to the following sales: adjuster's, adjustment, alteration, assignee's, bankrupt, benefit of administrator's, benefit of creditor's, benefit of trustee's, building coming down, closing, creditors' committee, creditors' end, executor's, final days, forced out, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, mortgage sales, receiver's, trustee's, quitting business.~~

~~*Goods:* Is meant to include any goods, wares, merchandise or other property capable of being the object of a sale regulated by this Chapter.~~

~~5-17-2: License Required.~~

~~It shall be unlawful to conduct a going out of business and/or damaged goods sales prior to obtaining a license from the Licensing Officer except for the following:~~

- ~~A. Persons acting pursuant to an order or process of a court of competent jurisdiction, persons acting in accordance with their powers and duties as public officials, and any publisher of a newspaper, magazine or other publication, who publishes in good faith, any advertisement, without knowledge of its false, deceptive or misleading character or without knowledge that the provisions of this Chapter have not been complied with.~~

~~5-17 3: Application for License.~~

- A. ~~The application for a going out of business and/or damaged goods sale license shall be made in accordance with the provisions of Title 5, Chapter 1.~~
- B. ~~In addition the applicant shall be required to provide the following:~~
 - 1. ~~Proof of sales tax deposit.~~
 - 2. ~~Copy of complete inventory.~~

~~5-17 4: Special Conditions and Restrictions of the License.~~

~~In addition to licensing conditions set forth in Chapter 1 of this Title, the following special provisions shall apply:~~

- A. ~~*Sales Tax Deposit Required.* In addition to all applicable license fees, the applicant shall deposit with the License Officer an amount equal to three and one half percent (3.5%) of the retail value of the goods to be sold during the first week of the sale. The License Officer shall establish the deposit based upon prior sales tax reports filed with the License Officer by the license holder. After the sale, the applicant shall deposit with the License Officer an amount equal to three and one half percent (3.5%) of the retail value of the goods sold in the prior week of the sale. The deposit may be in the form of cash or a bond acceptable to the License Officer. The records and transactions of the applicant shall be subject to weekly review by the License Officer during the period of the sale. License holders failing to comply with the sales tax filing and payment provisions of Title 4, Chapter 4, of this Code shall forfeit their deposit and the License Officer shall pursue the proper collection of all amounts properly due to the City.~~

~~After the payment of all taxes due, and a verification is provided by an appropriate City audit, the City shall return to the license holder any funds deposited by the license holder.~~

- B. ~~*Term of License.* The license shall authorize the sale described in the application for a period of not more than sixty (60) consecutive days. A one time license renewal may be allowed. The renewal shall not exceed thirty (30) consecutive days. After the license expires, all business activities shall cease, and not resume under the same direct or indirect ownership for a period of two (2) years.~~
- C. ~~*Duties of License Holders.* In addition to requirements of Chapter 1 of this title, the following duties are required of license holders under this chapter:~~

1. ~~No additions to inventory may be made during the period of the licensed sale to the stock of goods set forth in the inventory attached to the application for license.~~
 2. ~~License holders shall keep available at the place of sale a duplicate copy of the inventory submitted with the application and shall present such duplicates to inspecting officials upon request. Each license holder shall further keep available for inspecting officials his stock records or other records of his business relating to said sale or his application for a license.~~
 3. ~~License holders shall not employ any untrue, deceptive or misleading advertising.~~
 4. ~~License holders shall conduct the licensed sale in strict conformity with any representations made in advertising.~~
 5. ~~License holders shall keep any goods separate and apart from the goods listed in the filed inventories as being object of sale, and make such distinction clear to the public by placing tags on all inventoried goods in and about the place of sale, apprising the public of the status of all such goods.~~
- D. ~~*Removal of Goods.* If any goods described in the inventory are removed from the place of sale authorized by the license, those goods shall lose their identity as the stock of any of the "sales" defined by the license. No license will be issued under this chapter for conducting a sale of those goods removed from the sale that identifies them with the original license.~~

Section 3. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 4. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 5. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 6. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which

shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 7. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2013

COUNCIL BILL NO. 40
 INTRODUCED BY COUNCIL
 MEMBER WOODWARD

AN ORDINANCE AMENDING TITLE 5, CHAPTER 6, SECTION 4, SUBSECTION A, OF THE ENGLEWOOD MUNICIPAL CODE 2000 RELATING TO SPECIAL LICENSE APPLICATION FOR ADULT ENTERTAINMENT ESTABLISHMENTS.

WHEREAS, the current code language is outdated and does not reflect actual practices and procedures followed by the City to implement and enforce the various licenses issued under Title 5, Chapter 6 of the Englewood Municipal Code; and

WHEREAS, the Director of Finance and Administrative Services met with the Englewood City Council to discuss these matters at the July 1, 2013 Study Session.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Chapter 6, Section 4, Subsection A, entitled "*Special License Application*" of the Englewood Municipal Code 2000, to read as follows:

5-6-4: Special License Application.

A. For all adult entertainment establishments in addition to the license application requirements, in Chapter 1 of this Title, the applicant must comply with the following special application requirements:

1. Diagram requirement:
 - i. The application must be accompanied by a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business and designating the use of each room or other area of the premises.
 - ii. The diagram shall designate all areas of the premises where patrons are not permitted.

- iii. The diagram need not be professionally prepared, but must be drawn to a designated scale, or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").
 - iv. The diagram shall designate the place at which the license will be conspicuously posted.
 - v. No alteration in the configuration of the premises or any change in use of any room or area as shown on the diagram may be made without the prior written approval of the Licensing Officer.
 - vi. The Licensing Officer may waive the diagram requirement for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared and that the use of any area or room in the premises has not changed.
 - vii. The applicant must be qualified according to the provisions of this chapter and the premises ~~must~~ may be inspected by the City ~~and found to be in~~ to insure compliance with the law.
2. No license granted by this chapter shall be transferred. The license holder shall have a copy of the diagram on the licensed premises for inspection at any time.
 3. Self-inspection of licensed premises. The licensee, or his designated representative, shall make sanitary inspections of the licensed premises at least once per month, and shall record the findings on a form supplied by the Licensing Officer. Each licensed premises shall post and maintain in a readily accessible place, a schedule for maintaining the sanitation of the premises.
 4. Sealing for unsanitary or unsafe conditions. A licensed premises, or any part thereof, may be sealed by order of the Licensing Officer upon his finding of a violation of this chapter resulting in an unsanitary or unsafe condition. Prior to sealing, the Licensing Officer shall serve on the licensee, by personal service on him or by posting in a conspicuous place on the licensed premises, a notice of the violation and an order to correct it within twenty-four (24) hours after service. If the violation is not corrected, the Licensing Officer may physically seal the portion of the licensed premises in violation to discontinue use. This shall be in effect until the violation has been corrected and the seal removed by the Licensing Officer. The Licensing Officer shall affix to premises a conspicuous sign labeled "unclean" or "unsafe," as the case may be.

5. All activities, materials, devices, and novelties shall be performed or displayed in such manner that they cannot be seen by anyone other than the customers who have entered the licensed adult entertainment establishment.
6. No person, merchant, employee or agent shall, in the course of selling, renting, or offering for sale or rental, a tangible or intangible product, service or goods, expose "a specified anatomical area" or carry on a "specified sexual activity."
7. It shall be unlawful for any employee of an adult entertainment establishment to receive tips from patrons except as follows:
 - i. A licensee that desires to provide for tips from its patrons shall provide one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the adult entertainment establishment into the tip box.
 - ii. An adult entertainment establishment that provides tip boxes for its patrons as provided in this section shall post one or more signs to be conspicuously visible to the patrons on the premises in letters at least one inch (1") high to read as follows: "all tips are to be placed in tip box and not handed directly to the entertainer. Any physical contact between the patron and entertainer is strictly prohibited."

[EDITORS NOTE: 5-6-4 Subsections (B) through (E), contain no changes and are therefore not included here]

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well

as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

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Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 42
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE VACATING THE UTILITY EASEMENTS LOCATED AT 5001 SOUTH BROADWAY AND 5084 SOUTH ACOMA STREET, IN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, representatives of Cadence Development approached the City regarding potential development of the former Larry Miller Nissan property; and

WHEREAS, there are existing Utility Easements throughout the properties; and

WHEREAS, these Utility Easements are located in the vacated City of Englewood Right-of-Way Grand Avenue, from Broadway to Acoma and in an alley running North and South on the property; and

WHEREAS, the Englewood City Council approved the vacation of Grand Avenue by the passage of Ordinance No. 25, Series of 1969; and

WHEREAS, potential Utility Easement users identified were Xcel Energy, Qwest Corporation d/b/a CenturyLink and the City of Englewood Utilities Department; and

WHEREAS, Xcel Energy and CenturyLink have no objection to vacation the easements

WHEREAS, the Englewood Water and Sewer Board approved the vacation of the Utility Easements at the July 9, 2013 meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes vacation of the Utility Easement at 5001 South Broadway and 5084 South Acoma as shown on Exhibits 1A, 1B, in the City of Englewood attached hereto.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

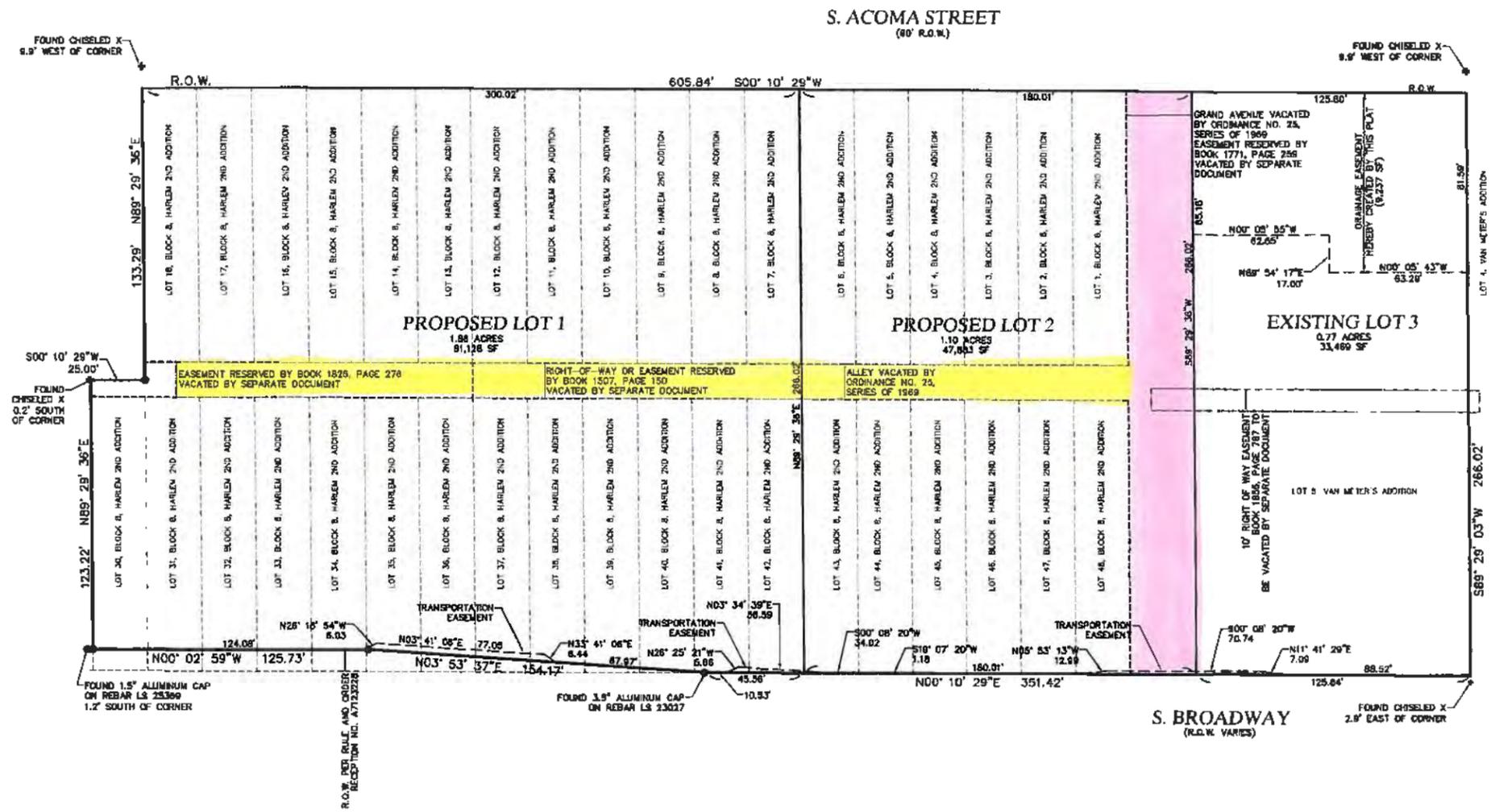
Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

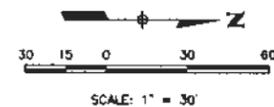
I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis



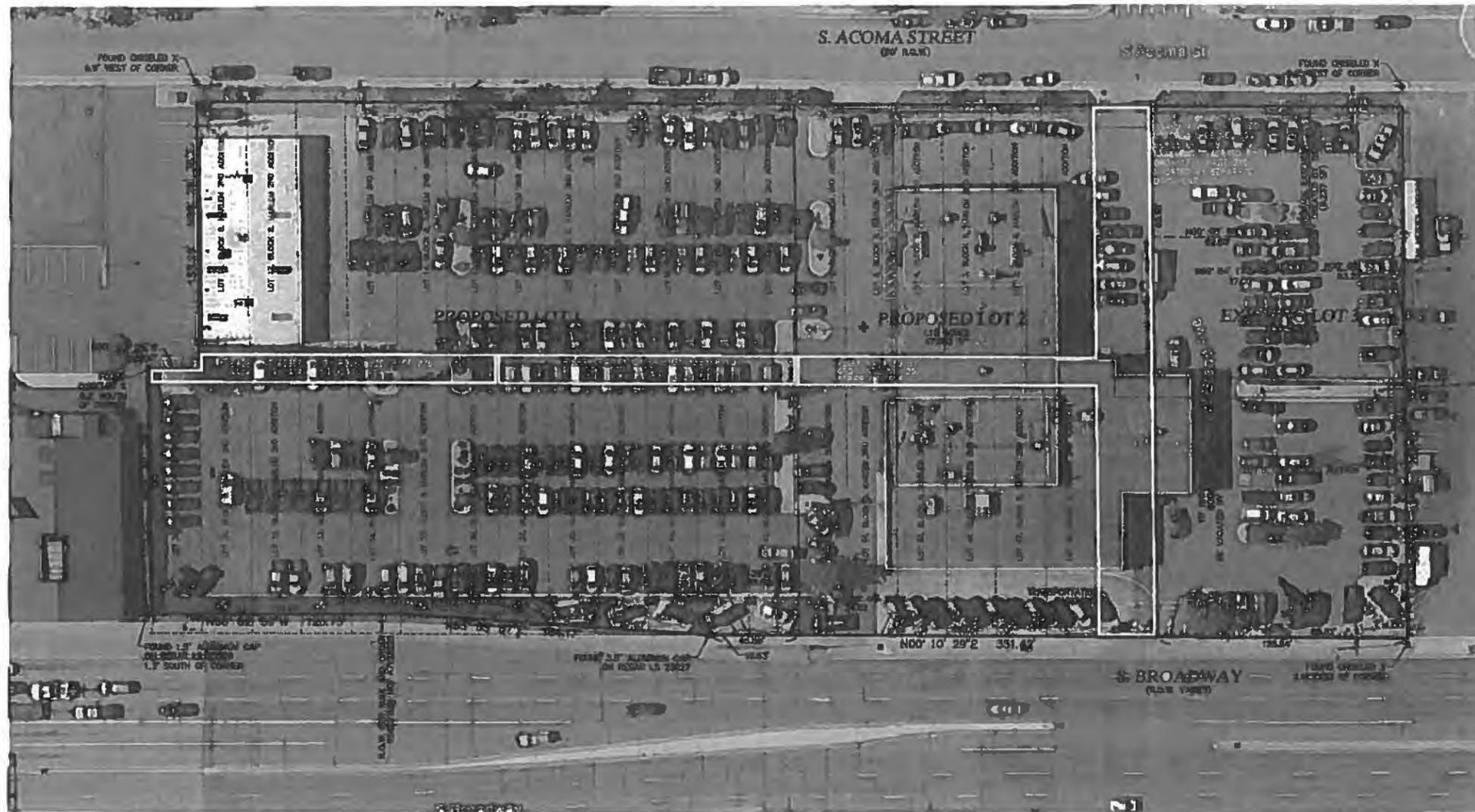
LEGEND

- ◆ FOUND MONUMENT AS NOTED
- SET ϕ REBAR WITH ALUMINUM CAP LS #38344
- PLAT BOUNDARY
- - - - - EXISTING LOT LINE
- - - - - RIGHT-OF-WAY
- - - - - EXISTING EASEMENT



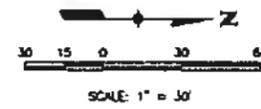
5001 S. BROADWAY

RIGHT-OF-WAY EASEMENT VACATION EXHIBIT 1A 7/23/13



LEGEND

- ◆ FOUND MONUMENT AS NOTED
- SET #5 REBAR WITH ALUMINUM CAP LS #30346
- PLAT BOUNDARY
- - - - - EXISTING LOT LINE
- - - - - RIGHT-OF-WAY
- - - - - EXISTING EASEMENT



5001 S. BROADWAY

RIGHT-OF-WAY EASEMENT VACATION EXHIBIT 1B 7/23/13

COUNCIL COMMUNICATION

Date: August 19, 2013	Agenda Item: 10 a	Subject: Public Hearing for an Ordinance Adopting Amendments to Title 16 Concerning Distilleries, Breweries and Wineries
Initiated By: Community Development Department		Staff Source: Chris Neubecker, Senior Planner

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council discussed this topic at the July 22, 2013 study session. On August 5, 2013, the Council approved the first reading of the ordinance, and set the date of August 19, 2013 for a public hearing.

PREVIOUS PLANNING COMMISSION ACTION

The Planning and Zoning Commission conducted a public hearing on July 2, 2013 to consider the proposed amendments to Title 16: Unified Development Code establishing zoning for distilleries, breweries and wineries. Two members of the public were present, but elected not to testify. Following discussion, the Commission voted 9 to 0 in favor of forwarding to City Council proposed amendments to Chapter 5: Use Regulations, and Chapter 11: Use Classifications, as presented in the attached Bill for an Ordinance.

RECOMMENDED ACTION

The Community Development Department recommends conducting a public hearing and taking testimony on the proposed ordinance concerning distilleries, breweries and wineries.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In August 2012, the Planning and Zoning Commission heard requests for a new brewery and separately heard of plans for a new distillery. The brewery was eventually approved as a conditional use and recently opened as "The Brew on Broadway." Distillation of alcohol, however, is currently prohibited (Sec. 16-11-1 G 2 c (2)). There was consensus from the Planning and Zoning Commission to research these industries and consider code amendments to facilitate new business development.

On July 2, 2013 the Planning and Zoning Commission reviewed the proposed code changes, held a public hearing, and recommended that City Council approve an ordinance to allow distilleries and clarify language on breweries and wineries. The proposed changes would allow distilleries, breweries and wineries as Permitted Uses in I-1 and I-2 districts. The Commission also supported these businesses as Conditional Uses in the M-2, MU-B-1 and MU-B-2 districts as long as the businesses are limited in size and designed to encourage pedestrian traffic with such activities as tap rooms, retail sales, tours, etc.

Some of the key elements of this proposal include:

- Distilleries would no longer be prohibited.
- I-1 and I-2 districts: Distilleries, breweries and wineries would be "Permitted Uses"
- M-2, MU-B-1 and MU-B-2 districts: Distilleries, breweries and wineries would be "Conditional Uses" with a limit of 10,000 square feet of gross floor area.
- Within M-2, MU-B-1 and MU-B-2, distilleries, breweries and wineries would only be allowed in conjunction with a tap room or retail sales area, which would count toward the 10,000 square foot limit. These features would ensure that businesses in these highly visible mixed use districts generate foot traffic and street activity. (Within I-1 and I-2, tap rooms and retail sales areas would be allowed, but not required.)
- Definitions are proposed for "distillery", "brewery", "winery" and "tap room". The definitions are designed to align with the State of Colorado definitions.
- The definition of "Micro-brewery" is proposed for removal. Micro-breweries will fall under the definition of "brewery".

ANALYSIS

The distillation of alcohol is currently prohibited in Englewood. As a result, new distilleries are prohibited. The relatively recent but significant growth of the craft distilling industry in Colorado and the United States has a promising future, and one local resident proposes to open a small distillery in Englewood. Others are also considering small breweries. In order to facilitate businesses development, staff proposes these amendments to the Unified Development Code.

Contrary to many manufacturing businesses, distilleries, breweries and wineries do not generate significant noise, odor or traffic. Distilleries and breweries smell similar to bakeries, and truck deliveries may happen only a few times per month. As a result, smaller craft distillers, brewers and vintners can fit into mixed use business districts with relatively few impacts, provided their size is limited. Large manufacturing operations in mixed use districts, however, could negatively impact the streetscape and the pedestrian experience with large, blank walls facing the street. This is why a size limit of 10,000 sq. ft. is recommended. Production limits (gallons or barrels) were examined but were determined to be too cumbersome to monitor and not necessarily reflective of the character of the operation.

Distilleries, breweries and wineries can also attract visitors into the community. Especially small scale producers focusing on high quality, these businesses often include tours and "tap rooms" that generate pedestrian activity. (This is why these industries would be allowed in mixed use districts only if they include a tap room, retail store, or other elements that generate foot traffic

and/or sales tax.) Tap rooms and tours are supported by the Comprehensive Plan, which envisions Broadway as a walkable and attractive destination with unique specialized products. New manufacturers without these foot traffic generators would need to locate in the industrial districts.

Licensing of distilleries, breweries and wineries is processed at the state level depending on the use. A Brewers Notice from the Bureau of Alcohol, Tobacco and Firearms is also required. Any business that wishes to manufacture and sell "malt, vinous or spirituous liquors" must obtain a Manufacturer's License and Wholesaler's license, respectively, from the State. There are no restrictions on volume of production placed on these licenses. State licensing goes through a staff review process. There are no public hearings or other notices involved.

Currently, the only physical restrictions placed on obtaining these licenses are that the business must be (1) at least 500 feet from schools and (2) at least 500 feet from day labor businesses.

FINANCIAL IMPACT

There is no direct impact to the City as a result of this ordinance. There is currently one local investor that is actively working to open a distillery in the city, and a few others are investigating Englewood for new business locations. Indirectly, it is anticipated that this ordinance will have a positive financial impact on the community by encouraging craft distillers and brewers to locate in the City.

LIST OF ATTACHMENTS

Planning and Zoning Commission Staff Report – June 21, 2013
Planning and Zoning Commission Minutes – July 2, 2013
Planning and Zoning Commission Findings of Fact - Case No. 2012-05
Bill for an Ordinance



M E M O R A N D U M

TO: Planning and Zoning Commission

THRU: Alan White, Community Development Director

FROM: Chris Neubecker, Senior Planner

DATE: June 21, 2013

SUBJECT: Case # 2012-05 Public Hearing
Zoning for Distilleries, Breweries and Wineries

Recommendation:

The Community Development Department requests that the Planning and Zoning Commission review, take public testimony, and forward to City Council a recommendation for adoption as written proposed amendments to the Unified Development Code of the Englewood Municipal Code Title 16, Chapter 16, Use Regulations, and Title 16, Chapter 11, Use Classifications and Definitions of Terms, relating to Distilleries, Breweries and Wineries.

Background:

On June 4, 2013 the Planning and Zoning Commission discussed possible changes to the Unified Development Code (UDC) concerning distilleries, which are currently prohibited (Sec. 16-11-1 G 2 c (2)). At that meeting, the Commission supported moving forward with a change to the UDC to allow distilleries, breweries and wineries in I-1 and I-2 districts. The Commission also supported these businesses as Conditional Uses in the M-2, MU-B-1 and MU-B-2 districts, with a maximum size of 10,000 square feet.

The Commission asked staff to bring the proposed language back for a final review before starting the ordinance process with City Council. Attached for your review is the proposed code language. Some of the key elements of this proposal include:

- Alcohol distillation will no longer be prohibited
- I-1 and I-2 district: Distilleries, breweries and wineries would be "Permitted Uses"
- M-2, MU-B-1 and MU-B-2 districts: Distilleries, breweries and wineries would be "Conditional Uses" with a limit of 10,000 square feet of gross floor area.
- Definitions are proposed for "distillery", "brewery", "winery" and "tasting room". The definition of "microbrewery" is proposed to change to more closely follow the State of Colorado definition.

- Production volume limits have been removed from the definitions (except for brewery and microbrewery), since conditional uses would be regulated by building size, not production volume.
- Tasting rooms would be limited to 30% of gross floor area of manufacturing facility, or 1,000 square feet, whichever is greater.
- Within M-2, MU-B-1 and MU-B-2 all distilleries, breweries and wineries shall only be allowed in conjunction with a tasting room, retail sales area, tavern or restaurant.
- Definitions have been modified to conform to State of Colorado definitions

No additional design standards are proposed for these manufacturing facilities in the M-2, MU-B-1 or MU-B-2 districts.

Analysis

The distillation of alcohol is currently prohibited in Englewood. As a result, new distilleries are prohibited. The relatively recent but significant growth of the craft distilling industry in Colorado and the United States has a promising future, and one local resident has proposed to open such a business in Englewood. In order to allow the new distillery, and facilitate businesses development in Englewood, staff proposes some amendments to the Unified Development Code concerning distilleries, breweries and wineries.

Contrary to many manufacturing businesses, distilleries, breweries and wineries do generate significant traffic, noise or odor. Distilleries and breweries smell similar to bakeries, and deliveries may happen only a few times per month. As a result, smaller craft distillers, brewers and vintners can fit into traditional mixed use business districts with relatively few impacts, provided their size is limited. In industrial zones, the impacts of larger operations would be no greater than other traditional light or heavy industries.

Distilleries, breweries and wineries can also attract visitors in to the community. Especially small scale producers focusing on high quality, these businesses often include tours and "tasting rooms" that generate activity in business or industrial zones.

Recommendation:

Staff believes that the draft ordinance captures the intent and consensus of the Commission from the meeting of June 4th. We believe that these changes help support new business development but will also help protect community character and create active pedestrian environments in the M-2, MU-B-1 and MUB-2 districts.

A motion to recommend approval of the ordinance to City Council is needed.

Next Steps:

If the Planning & Zoning Commission recommends approval, we intend to move forward with first reading of an ordinance by City Council.

Attachments:

Amendments to Title 16 pertaining to Breweries, Distilleries and Wineries

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION
REGULAR MEETING
July 2, 2013**

Minutes and audio are available at:
<http://www.englewoodgov.org/Index.aspx?page=152>

I. CALL TO ORDER



The regular meeting of the City Planning and Zoning Commission was called to order at 7:02 p.m. in the City Council Chambers of the Englewood Civic Center, Chair Brick presiding.

Present: Bleile, Roth, King, Welker, Knoth, Fish, Brick, Kinton, Townley
Freemire (alternate)

Absent: None

Staff: Alan White, Community Development Director
Chris Neubecker, Senior Planner
Dugan Comer, Prosecuting Attorney

II. APPROVAL OF MINUTES

June 4, 2013



Mr. Fish moved:

Mr. Knoth seconded: TO APPROVE THE JUNE 4, 2013 MINUTES

Chair Brick asked if there were any modifications or corrections. Mr. Brick requested one change on page 3, third paragraph. The word "using" be changed to "used".

AYES: Bleile, Roth, Welker, Knoth, Fish, King, Brick, Kinton
NAYS: None
ABSTAIN: Townley
ABSENT: None

Motion carried.

III. PUBLIC HEARING



Case #2012-05, Distilleries, Breweries and Wineries

Mr. Fish moved:

Mr. Bleile seconded: TO OPEN THE PUBLIC HEARING ON CASE #2012-05

AYES: Roth, Knoth, King, Brick, Bleile, Fish, Townley, Welker, Kinton

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

Mr. Neubecker, Senior Planner, was sworn in. He provided background information on the amendments. He noted several changes Staff is recommending to the amendments since the packet went out. He stated Staff approves of the modified amendments and recommends they be forwarded to City Council.

Discussion points included:

- Nuisance definition
- Remove microbrewery in its entirety. Microbrewery would be considered a brewery
- Noise, odor not significant
- Definitions for distillery, brewery, tasting room and winery
- Remove all from TSA district; take up later when TSA is discussed
- Remove language referring to production volume

Mr. Roth moved:

Mr. Bleile seconded: TO CLOSE THE PUBLIC HEARING ON CASE #2012-05

AYES: Roth, Knoth, King, Brick, Bleile, Fish, Townley, Welker, Kinton

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.



Mr. Fish moved:

Mr. Bleile seconded: *CASE#2012-05, AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE RELATED TO DISTILLERIES, BREWERIES AND WINERIES AS STATED BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION WITH THE FOLLOWING CONDITIONS:*



1. Section 2, Brewery definition: strike “and the combined volume of fermented malt beverage and/or malt liquor production exceeds 12,000 barrels per year
2. In Section 2 remove the definition of Microbrewery
3. Section 3, in the Table of Allowed Uses, remove all reference to Microbrewery
4. Section 3, in the Table of Allowed Uses, remove Brewery from the Food and Beverage Service section
4. Section 4, remove 14. e. in its entirety

Mr. Fish stated he feels this issue fit well within the Comprehensive Plan, which promotes business in the city. It will enhance the City and is a great direction for the City to go.

Mr. Welker said he felt it is in substantial agreement with the way we treat other businesses in the districts.

Mr. Kinton felt the amendments were well thought out and is something that is needed as an update to the Comprehensive Plan.

AYES: Roth, Knoth, King, Brick, Bleile, Fish, Townley, Welker, Kinton

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

STUDY SESSION

UPDATE: LIGHT RAIL CORRIDOR PLAN



Mr. Voboril presented a slide show put together by the consultants, Crandall Arambula PC. The Commissioner’s commented throughout the slide show.

This agenda item will go to Public Hearing on July 16th.

MULTI-YEAR CAPITAL PROJECT



Director White stated nothing has changed from the past few years; there is still a limited amount of money available for new projects. There will be approximately \$1 million left for new projects.

He noted the City has received notification of funding availability for "Next Steps" following completion of the Light Rail Plan. Staff is proposing to submit an application for an additional \$200,000 in funding to develop an alignment feasibility and alternatives analysis for the "Rail Trail" protected bikeways and the Floyd extension. The City must provide 20% in matching funds, or \$40,000. Staff is recommending this be considered a priority.

The Commission discussed several items not on Staff's list.

Mr. Knoth moved:

Mr. King seconded: TO ACCEPT STAFF'S RECOMMENDATIONS AS WRITTEN

Mr. Welker offered a Friendly Amendment to consider the Old Hampden Corridor Streetscape a priority also. Mr. Knoth and Mr. King accepted his Friendly Amendment.

AYES: Roth, Knoth, King, Brick, Bleile, Fish, Townley, Welker, Kinton
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.

IV. PUBLIC FORUM



There was no public present at this time.

V. ATTORNEY'S CHOICE



There was no attorney present at this time.

VI. STAFF'S CHOICE



Director White stated the next meeting will be on July 16th, which will be a public hearing on the Light Rail Corridor Plan. He asked that the Commission bring the Light Rail Corridor Plan booklet that was in tonight's packet to the hearing.

Director White informed the Commission that the Recording Secretary, Barbara Krecklow, will be retiring next week. Nancy Fenton will fill in as the Recording Secretary until Barbara's replacement is hired.

VII. COMMISSIONER'S CHOICE



Mr. Bleile asked if anyone knew how long Xcel and Denver Water are going to be working in the City.

Several members congratulated Barbara on her retirement.

Chair Brick thanked City Council for their courtesy and enthusiasm in the Comprehensive Plan discussion two weeks ago. He stated he thought they showed a real positive attitude.

Mr. Fish noted he has many fond memories of Flood Middle School and encouraged the members to stop by the school during the demolition process.

The meeting adjourned at 9:00 p.m.

Nancy G. Fenton, Recording Secretary

CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION

IN THE MATTER OF CASE #2012-05,)	
FINDINGS OF FACT, CONCLUSIONS)	
AND RECOMMENDATIONS RELATING)	FINDINGS OF FACT AND
TO THE UNIFIED DEVELOPMENT CODE)	CONCLUSIONS OF THE
DISTILLERIES, BREWERIES AND)	CITY PLANNING AND
WINERIES AMENDMENTS)	ZONING COMMISSION
)	
)	
INITIATED BY:)	
Community Development Department)	
1000 Englewood Parkway)	
Englewood, CO 80110)	

Commission Members Present: Bleile, Brick, King, Knoth, Roth, Fish, Welker, Townley, Kinton

Commission Members Absent: None

This matter was heard before the City Planning and Zoning Commission on July 2, 2013 in the City Council Chambers of the Englewood Civic Center.

Testimony was received from staff. The Commission received notice of Public Hearing, the Staff Report, and a copy of the proposed amendments to Title 16 Unified Development Code which were incorporated into and made a part of the record of the Public Hearing.

After considering the statements of the witness and reviewing the pertinent documents, the members of the City Planning and Zoning Commission made the following Findings and Conclusions.

FINDINGS OF FACT

1. **THAT** the Public Hearing on the Unified Development Code (UDC) Distilleries, Breweries and Wineries Amendments were brought before the Planning Commission by the Department of Community Development, a department of the City of Englewood.
2. **THAT** notice of the Public Hearing was on the City of Englewood website from June 19, 2013 through July 2, 2013.
3. **THAT** the Staff report was made part of the record.
4. **THAT** in September 2012 a request was made to open a distillery in Englewood.

5. **THAT** a distillery is not listed as a permitted, limited or conditional use in any zone district within the Table of Uses in the UDC.
6. **THAT** the UDC expressly prohibits "alcoholic distillation" as a heavy manufacturing activity in those zone districts where heavy manufacturing is a permitted use (I-1 Light Industrial and I-2 Heavy Industrial).
7. **THAT** the proposed amendments are necessary in order for the City to help support new business development and attract visitors to Englewood.
8. **THAT** distilleries, breweries and wineries do not generate significant traffic, noise or odor.
9. **THAT** within the M-2, MU-B-1 or MU-B-2 districts, no distillery, brewery or winery shall exceed 10,000 square feet of gross floor area.
10. **THAT** within the M-2, MU-B-1 or MU-B-2 districts, any distillery, brewery or winery shall be permitted only in conjunction with a restaurant, tavern, retail sales or tasting room located on the same premises as the manufacturing of the beverage.
11. **THAT** distilleries, breweries and wineries may include an on-premises tasting room as part of the principle use as long as the floor area utilized for the tasting room is less than or equal to thirty percent (30%) of the total floor area of the facility or 1,000 square feet, whichever is greater, subject to state and federal regulations.
12. **THAT** distilleries, breweries and wineries may include the sale of food for consumption on the premises, subject to State Liquor Code, local health department requirements, and local zoning regulations.

CONCLUSIONS

1. **THAT** the Public Hearing on the Unified Development Code Distilleries, Breweries and Wineries Amendments was brought before the Planning Commission by the Department of Community Development, a department of the City of Englewood.
2. **THAT** notice of the Public Hearing was on the City of Englewood website from June 19, 2013 through July 2, 2013.
3. **THAT** the amendments will enhance the City and is a great direction for the City to go.
4. **THAT** the zoning change conforms to Roadmap Englewood: 2003 Englewood Comprehensive Plan Objective 1-2: Actively engage in attracting new businesses to the City.

5. **THAT** the previously discussed revised amendments be forwarded to City Council.

DECISION

THEREFORE, it is the decision of the City Planning and Zoning Commission that Case #2012-05 Unified Development Code Distilleries, Breweries, and Wineries Amendments should be referred to the City Council with a favorable recommendation.

The decision was reached upon a vote on a motion made at the meeting of the City Planning and Zoning Commission on July 2, 2013, by Mr. Fish, seconded by Mr. Bleile, which motion states:

CASE#2012-05, AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE RELATED TO DISTILLERIES, BREWERIES AND WINERIES AS STATED BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION WITH THE FOLLOWING CONDITIONS:

1. Section 2, Brewery definition: strike "and the combined volume of fermented malt beverage and/or malt liquor production exceeds 12,000 barrels per year"
2. In Section 2 remove the definition of Microbrewery
3. Section 3, in the Table of Allowed Uses, remove all reference to Microbrewery
4. Section 3, in the Table of Allowed Uses, remove Brewery from the Food and Beverage Service section
5. Section 4, remove 14. e. in its entirety

AYES: Bleile, Roth, King, Fish, Brick, Knoth, Welker, Townley, Kinton
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.

These Findings and Conclusions are effective as of the meeting on July 2, 2013.

BY ORDER OF THE CITY PLANNING & ZONING COMMISSION

John Brick, Chair

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 37
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 16, CHAPTERS 5 AND 11 PERMITTING
DISTILLERIES, BREWERIES AND WINERIES IN THE CITY OF ENGLEWOOD.

WHEREAS, in 2012 the Englewood Planning and Zoning Commission heard requests for a new brewery and separately heard of plans for a new distillery, which was not allowed under the current Unified Development Code; and

WHEREAS, the State licenses and regulates these industries but the Englewood Planning and Zoning Commission, the Englewood Liquor Authority and the City Council hereby find that the State has not pre-empted the City of Englewood's Home Rule powers relating to the zoning of these industries; and

WHEREAS, there was consensus from the Englewood Planning and Zoning Commission to research these industries and consider Code amendments to facilitate new business development; and

WHEREAS, the Englewood Planning and Zoning Commission recommended that City Council approve an ordinance to allow distilleries and clarify language on breweries and wineries and allow distilleries, breweries and wineries as Permitted Uses in I-1 and I-2 districts and as Conditional Uses in the M-2, MU-B-1 and MU-B-2 Districts as long as the businesses are limited in size and designed to encourage pedestrian traffic with such activities as tap rooms, retail sales, tours, etc.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 1, Subsection C, entitled *Table of Allowed Uses* of the Englewood Municipal Code 2000, to read as follows:

16-5-1(C): Table of Allowed Uses.

TABLE 16-5-1.1 TABLE OF ALLOWED USES																
P = PERMITTED USE C = CONDITIONAL USE A = ACCESSORY USE T = TEMPORARY USE L = LIMITED USE																
C-A = ACCESSORY USE APPROVED CONDITIONALLY L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE																
Use Category	Use Type	Residential						Non-Residential						Additional Regulations		
		R1	R1A	R2	R2A	R3	MUR	MUR	MUR	M1	M2	MU	MUB		TS	L1

[EDITORS NOTE: 16-5-1.1 RESIDENTIAL USES contains no changes and is therefore not included here]

[EDITORS NOTE: 16-5-1.1 PUBLIC/INSTITUTIONAL USES contains no changes and is therefore not included here]

	Membership organization (excluding adult use)											P	P	P	C	P	P	
Dependent Care	Dependent care center (less than 24-hour care, any age)	C	C	C	C	C	P	P	P	P	P	P	P	P	C			16-5-2.C.7
Entertainment/Amusement: Indoor	Amusement establishment											C	C	C	C	C	C	
	Hookah lounge											P	P	P			P	P
	Physical fitness center/spa											P	P	P	P		P	P
	Theater and performance/concert venue, not including adult entertainment													P	P	P		P
Entertainment/ Amusement: Outdoor	General outdoor recreation													C			C	C
Financial Institution	Check cashing facility											P		P			P	P

	<u>Winery</u>																		
	Take out and delivery only								P		P			P					
Medical/Scientific Service	Clinic						P	P	P	P	P	P	P	P	P				
	Hospital						P			P	P		P			P	P		
	Laboratory (dental, medical or optical)					P	P	P	P	P	P	P	P	P	P				
Medical Marijuana	Medical marijuana center									P	P	P			P	P			16-5-2.C.13 16-5-4.C.1.f
	Medical marijuana optional premises cultivation operation									A	A	A			P	P			16-5-2.C.13 16-5-4.C.1.f
	Medical marijuana infused products manufacturer									A	A	A			P	P			16-5-2.C.13 16-5-4.C.1.f

Office	Office, type 1 (general)							P	P	P	P	P	P	P	P	
	Office, type 2 (limited)						P	P	P	P	P	P	P	P	P	16-5-2.C.8
Retail Sales and Service (Personal Service)	Crematorium														C	
	Dry cleaner, drop-off site only									P	P	P	P	P	P	
	Instructional service									P		P	P	P	P	
	Massage therapy								P	P	P	P	P	P	P	
	Mortuary										P		P			
	Personal care										P	P	P	P	P	P
	Service: photography studio and photo lab, upholstery, printer, locksmith, tailor										P	P	P	P	P	P

Studio	Radio/television broadcasting studio, recording/film studio									P		P			P	P	
Vehicle and Equipment	Automobile pawnbroker											P			P	P	16-5-2.C.10
	Automotive sales, rental										L				P	P	16-5-2.C.3
	Automotive service and repair, including body or fender work														P	P	16-5-2.C.4
	Automotive service and repair, not including body or fender work											L			P	P	16-5-2.C.4
	Automotive service station (gasoline facility)											L			P	P	16-5-2.C.5
	Car wash, auto detailing												L		L	L	16-5-2.C.6 16-5-2.C.4
	Commercial storage of														P	P	16-5-2.C.3

	operable vehicles																		
	Fuel dispensing											L			P	P			
	Parking facility, structure (operable vehicles), principal use					C	C			C	C	L	L	C	P	P			16-5-2.C.3 16-5-2.C.14
	Parking area, surface (operable vehicles), principal use					C	C			C	C	L	L	C	P	P			16-5-2.C.9 16-5-2.C.3
	Recreational vehicles and boats, sales or rental												L			P	P		
Visitor Accommodation	Bed and breakfast									P	P			P					
	Hotel									P	P		P	P	P				
	Hotel, extended stay									P	P				P				

	Recycling operation, all processing occurs within enclosed structure																							P	P	16-5-2.D.5
	Recycling operation, some or all processing occurs outside an enclosed structure																							C	C	16-5-2.D.5
	Sanitary service																								C	
	Waste transfer station (not including hazardous waste)																							C	C	

[EDITOR'S NOTE: 16-5-1.1 ACCESSORY USES contains no changes and is therefore not included here]

[EDITOR'S NOTE: 16-5-1.1 TEMPORARY USES contains no changes and is therefore not included here]

[EDITOR'S NOTE: 16-5-1.1 USES NOT MENTIONED contains no changes and is therefore not included here]

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 5, Section 2, Subsection C, by the addition of a new Paragraph 14 entitled "Breweries, Distilleries and Wineries," of the Englewood Municipal Code 2000, to read as follows:

[EDITORS NOTE: 16-5-2(C)(1) through (13) contains no changes and is therefore not included here]

16-5-2: Use-Specific Standards.

C. Commercial Uses.

14. *Breweries, Distilleries, Wineries and Vintner's Restaurants.*

- a. Within the M-2, MU-B-1 and MU-B-2 districts, these uses shall be permitted only in conjunction with a restaurant, tavern, retail sales or sales room located on the same premises as the manufacturing of the beverage.
- b. Within the M-2, MU-B-1 and MU-B-2 districts, these uses shall not exceed 10,000 square feet of gross floor area.
- c. An on-premises sales room may be a part of the principle use as long as the floor area utilized for the sales room is less than or equal to thirty percent (30%) of the total floor area of the facility or one thousand square feet (1,000), whichever is greater, subject to State and Federal regulations.
- d. These uses may include the sale of food for consumption on the premises, subject to State Liquor Code requirements.
- e. These uses shall be designed and operated in such a manner so as not to create nuisance impacts on surrounding uses.

Section 3. . The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11, Section 1, Subsection F(9) of the Englewood Municipal Code 2000, to read as follows:

[EDITORS NOTE: 16-11-1(A) through (F)(8) contains no changes and is therefore not included here]

16-11-1: USE CLASSIFICATIONS.

F. Commercial Uses.

9. Food and Beverage Service.

- a. *Characteristics.* This category includes establishments, for example, restaurants, cafes, coffee shops, bars, taverns, and any food/beverage sales establishments, which sell food for on- or off-premise consumption. Accessory uses may include

decks and patios for outdoor seating, drive-through facilities, customer and employee parking areas, and valet parking facilities.

b. *Specific Use Types.* This category includes the following use types:

- (1) **Caterer.** A service consisting of preparation and delivery of food and beverages for off-site consumption, without provision for on-site pickup or consumption.
- (2) **Microbrewery.** ~~A facility for the production and packaging of beer fermented on the premises for distribution, retail, or wholesale on or off the premises. The volume of beer production of such facility shall not exceed 12,000 barrels of beer per year.~~
- (3 2) **Restaurant, Bar, Tavern (with or without outdoor operations).** A retail establishment where the principal business is the sale of food and beverages in a ready-to-consume state. This use type includes lunch counters and refreshment stands selling prepared food and drinks for immediate consumption. Operations may include outdoor seating areas or outdoor food service, subject to all applicable use and development standards set forth in this Title.
- (4 3) **Restaurant, with Drive-Through Service.** An eating/drinking establishment in which the principal business is the sale of foods or beverages to the customer in a ready-to-consume state and in which the design or method of operation of all or any portion of the business allows food or beverages to be served directly to the customer in a motor vehicle without the need for the customer to exit the motor vehicle.
- (5 4) **Take Out and Delivery Only.** An eating/drinking establishment, generally without patron seating, that provides food and/or beverages to be delivered or to be picked typically for consumption off the premises of such establishment.
- (6 5) **Brew Pub.** ~~A restaurant that included the brewing of beer as an accessory use. The volume of beer production of such facility shall not exceed two thousand four (2,400) barrels per year.~~ A retail establishment that manufactures not more than seventy-four thousand (74,000) gallons (2,400 barrels) of malt liquor or fermented malt beverages on its licensed premises, each calendar year.

[EDITORS NOTE: 16-11-1(F)(10 through 19) contains no changes and is therefore not included here]

Section 4. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11, Section 1, Subsection G(2)(b) and (c) of the Englewood Municipal Code 2000, to read as follows:

G. Manufacturing/Industrial Uses.

2. Manufacturing, Including Processing, Fabrication, or Assembly.

a. *Characteristics.* Industrial establishments involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used in the manufacturing process. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Such uses may also include industries furnishing labor in the case of the refinishing of manufactured articles. Custom industry is included (e.g., establishments primarily engaged in the on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment). Goods are generally not displayed or sold on site, but if so, they are a subordinate part of total sales. Relatively few customers come to the manufacturing site. Accessory activities may include limited retail sales, offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets, and caretaker's quarters.

b. *Specific Use Types.* This category includes the following use types:

(1) *Brewery: Any establishment, licensed by the appropriate State and Federal authorities, where malt liquors or fermented malt beverages are manufactured, except brew pubs as defined. Or, as this definition may be modified in C.R.S. 12-47-103.*

(2) *Distillery: Any establishment, licensed by the appropriate State and Federal authorities where spirituous liquors are manufactured. Or, as this definition may be modified in C.R.S. 12-47-103.*

(3) *Sales Room: An establishment, or portion of a manufacturing establishment, that allows customers to taste samples of wine, beer or spirituous liquors manufactured or produced by a single distillery, brewery or winery and licensed as a sales room pursuant to a State Manufacturer's License (C.R.S. 12-47-402) or a State Limited Winery License (C.R.S. 12-47-403). A sales room may include the sale of such products in addition to related items, marketing events, special events entertainment and/or food. Or, as this definition may be modified in C.R.S. 12-47-103 et. seq.*

(4) Vintner's Restaurant: A retail establishment, licensed by the appropriate State and Federal authorities, that sells food for consumption on the premises and that manufactures not more than two hundred fifty thousand (250,000) gallons of wine on its premises each year.

(5) Winery: Any establishment licensed by the appropriate State and Federal authorities, where vinous liquors are manufactured, except that the term does not include a Vintner's Restaurant licensed pursuant to 12-47-420 C.R.S. Or as this definition may be modified in C.R.S. 12-47-103.

(4 6) Manufacturing, Light: Manufacturing uses that do not involve the generation outside the property of noise, odor, vibration, dust, or hazard. Examples include, but are not limited to : assembly of pre-fabricated parts, manufacture of electric, electronic, or optical instruments or devices; manufacture and assembly of artificial limbs, dentures, hearing aids, and surgical instruments; manufacture, processing, and packing of food products, cosmetics, and manufacturing of components, jewelry, clothing, trimming decorations, and any similar item.

(2 7) Manufacturing, Heavy: Manufacturing uses that may involve the generation outside the property of noise, odor, vibration, dust or hazard. Examples include, but are not limited to: refining or initial processing of raw materials, rolling, drawing, or extruding of metals; and log decking, storage, and ponding.

c. Exceptions. The manufacturing, processing, fabrication, or assembly of the following items is prohibited:

(1) Abrasives, basic manufacture;

(2) ~~Alcoholic distillation;~~

(3 2) Animal by-products, basic manufacture and processing;

(4 3) Asphalt, manufacture and processing;

(5 4) Automobile shredding, crushing, baling, compacting and similar operations;

(6 5) Biological waste, processing;

(7 6) Bone black, basic manufacture;

(8 7) Carbon black or lamp black, basic manufacture;

- (9 8) Charcoal, basic manufacture;
- (~~10~~ 9) Chemicals, heavy or industrial, basic manufacture or processing;
- (~~11~~ 10) Cinder and cinder blocks, basic manufacture or processing;
- (~~12~~ 11) Coal or coke, manufacture or processing;
- (~~13~~ 12) Concrete and concrete products, manufacture or fabrication;
- (~~14~~ 13) Detergents, soaps and by-products, using animal fat, basic manufacture;
- (~~15~~) ~~Fermented fruits and vegetable products, manufacture;~~
- (~~16~~ 14) Fertilizers, manufacture or processing;
- (~~17~~ 15) Fungicides, manufacture;
- (~~18~~ 16) Gasses, other than nitrogen and oxygen, manufacture;
- (~~19~~ 17) Glass manufacture;
- (~~20~~ 18) Glue and size, manufacture;
- (~~21~~ 19) Grain milling;
- (~~22~~ 20) Graphite, manufacture;
- (~~23~~ 21) Gypsum and other forms of plaster base, manufacture;
- (~~24~~ 22) Insecticides, manufacture;
- (~~25~~ 23) Insulations, flammable types, manufacture or fabrication;
- (~~26~~ 24) Matches, manufacture;
- (~~27~~ 25) Meat slaughtering;
- (~~28~~ 26) Metal shredding and similar operations;

- (~~29~~ 27) Metals, extraction or smelting;
- (~~30~~ 28) Metals, ingots, pigs, sheets, or bars, manufacture;
- (~~31~~ 29) Oils and fats, animal and vegetable, manufacture;
- (~~32~~ 30) Paints, pigments, enamels, japans, lacquers, putty, varnishes, whiting, and wood fillers, manufacture or fabrication;
- (~~33~~ 31) Paper pulp and cellulose, basic manufacture;
- (~~34~~ 32) Paraffin, manufacture;
- (~~35~~ 33) Petroleum and petroleum products, manufacture or processing;
- (~~36~~ 34) Portland and similar cements, manufacture;
- (~~37~~ 35) Rubber, manufacture, or reclaiming;
- (~~38~~ 36) Sawmill or planing mills;
- (~~39~~ 37) Serums, toxins, viruses, manufacture;
- (~~40~~ 38) Sugars and starches, manufacture;
- (~~41~~ 39) Tannery;
- (~~42~~ 40) Turpentine, manufacture;
- (~~43~~ 41) Wax and wax products, manufacture; and
- (~~44~~ 42) Wood preserving by creosoting or other pressure impregnation of wood by preservatives.

Section 5. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11, Section 2, Subsection B(2), “*Definition of Words, Terms, and Phrases*”, of the Englewood Municipal Code 2000, by inserting in alphabetical order to read as follows

16-11-2: Definition of Words, Terms, and Phrases.

B. Definition of Words, Terms, and Phrases.

Beer: An alcoholic beverage made by brewing and fermentation from cereals, usually malted barley, and flavored with hops and the like for a slightly bitter taste. Beer shall not contain greater than 6% alcohol by volume, otherwise it shall be classified as a "spirituous liquor". Or, as this definition may be modified in C.R.S. 12-47-103.

Brewery: Any establishment, licensed by the appropriate State and Federal authorities, where malt liquors or fermented malt beverages are manufactured, except brew pubs as defined. Or, as this definition may be modified in C.R.S. 12-47-103.

Distillery: An establishment, licensed by the appropriate State and Federal authorities, where spirituous liquors are manufactured. Or, as this definition may be modified in C.R.S. 12-47-103.

~~Microbrewery:~~ A facility for the production and packaging of beer fermented on the premises for distribution, retail, or wholesale on or off the premises. The volume of beer production of such facility shall not exceed 12,000 barrels of beer per year. See definition of "Food and Beverage Service."

Sales Room: An establishment, or portion of a manufacturing establishment, that allows customers to taste samples of wine, beer or spirituous liquors manufactured or produced by a single distillery, brewery or winery and licensed as a sales room pursuant to a State Manufacturer's License (C.R.S. 12-47-402) or a State Limited Winery License (C.R.S. 12-47-403). A sales room may include the sale of such products in addition to related items, marketing events, special events entertainment and/or food. Or, as this definition may be modified in C.R.S. 12-47-103 et. seq.

Vintner's Restaurant: A retail establishment, licensed by the appropriate State and Federal authorities, that sells food for consumption on the premises and that manufactures not more than two hundred fifty thousand (250,000) gallons of wine on its premises each year.

Winery: Any establishment, licensed by the appropriate State and Federal authorities, where vinous liquors are manufactured, except that the term does not include a Vintner's Restaurant licensed pursuant to 12-47-420 C.R.S. Or as this definition may be modified in C.R.S. 12-47-103.

Section 5. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 7. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 8. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 9. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: August 19, 2013	Agenda Item: 10 b	Subject: Public Hearing regarding the adoption of the Englewood Light Rail Corridor Plan as a Supplementary Planning Document in Support of Roadmap Englewood: The 2003 Englewood Comprehensive Plan
Initiated By: Community Development Department		Staff Source: John Voboril, Long Range Planner II

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Potential infrastructure and planning project submittals for inclusion in the 2012-2017 Transportation Improvement Plan were presented to Council at the September 25th, 2010 City Council Budget meeting. Council directed staff to proceed with preparation of the Englewood, Oxford, and Bates Station Area Master Plan application through the adoption of a resolution at the October 4th, 2010 City Council meeting.

City Council entered into an intergovernmental agreement with the Regional Transportation District (RTD) to conduct the Englewood, Oxford, and Bates Station Area Master Plan at the February 6th, 2012 City Council meeting. City council passed a motion to approve a contract with private consulting firm Crandall Arambula at the June 4th, 2012 City Council meeting.

Community Development staff held study sessions with City Council to report on project progress at the October 29th, 2012 City Council study session, and to go over the draft *Englewood Light Rail Corridor Plan* document at the June 3rd, 2013 City Council study session.

RECOMMENDED ACTION

Staff recommends that Council hold a public hearing to gather public testimony at the August 19th, 2013 City Council meeting on incorporating the *Englewood Light Rail Corridor Plan* into the *Roadmap Englewood: The 2003 Englewood Comprehensive Plan*.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Englewood Light Rail Corridor Plan project was funded through a station area planning grant from the Denver Regional Council of Governments (DRCOG). The light rail system represents a major capital investment for both the federal government and DRCOG. DRCOG has established a policy to encourage station area intensification including increased employment and housing in order to increase light rail system ridership, decrease highway congestion, and improve air quality.

Stakeholder and General Public Notification

A total of 1,312 letters were sent to all addresses within a half mile radius of each of the three stations. A total of 705 letters were sent to absentee landlords owning property within the half mile study area radius. A total of 3,850 postcards were sent to all addresses outside the study area to resident and businesses as far east as Logan Street for Bates Station, Sherman Street for Englewood Station, and Cherokee Street for Oxford Station. The total number of mailings was 5,867. Commercial brokers with property listings within the study area were contracted via email through the CoStar commercial listing service.

Meeting Dates

Project consultant Crandall Arambula traveled to Denver to hold four sets of meetings for stakeholders and the general public on August 8th, September 27th, and November 29th, 2012, and February 27th, 2013.

Planning Process Methodology

Project consultant Crandall Arambula conducted an analysis of existing land use and transportation patterns and developed a forecast for regional housing and employment demand over a twenty year time period, for the purpose of creating a number of development scenarios for the Englewood, Oxford, and Bates station influence areas. The initial scenarios were presented to stakeholders and the general public for their comments and preferences. The project consultant made a series of refinements to a preferred scenario for each station area, and then began to combine the individual station scenarios into a single, system-wide development scenario, presenting the changes to stakeholders and the general public through the course of two additional meetings.

The final land use scenario should not be construed as a rigid development pattern to be enforced by the City, but should rather be seen as a likely development pattern based on transit-oriented real estate development principles and optimal market conditions, to be conducted by private sector property owners and real estate developers over time. The City's involvement in the development of the area is restricted to investments in public infrastructure and zoning regulations. It is City Council policy that eminent domain powers will not be exercised for the purpose of acquiring private property with the intent to convey said properties to private developers within the light rail station areas.

Englewood Station Preferred Scenario

The corridor plan recognizes the Englewood Station area as the station with the most overall growth potential due to its excellent visibility and access from US Highways 85 and 285. The final plan scenario calls for the development of a Floyd Avenue extension to the west underneath the light rail tracks and Santa Fe Drive and over the South Platte River in order to open up a significantly sized, under-utilized area for transit-oriented housing redevelopment. The plan also calls for significant intensification of the area immediately surrounding the station in the form of housing developments above existing park-n-Ride facilities, as well as the development of a hotel next to the station platform. Finally, the plan calls for the eventual transformation of the areas east of the immediate station area (Inca Street to Broadway), centered around a park block corridor that would create a highly attractive amenity drawing office, retail, and housing demand, structured in a more urban format.

Oxford Station Preferred Scenario

The corridor plan projects the Oxford Station area as primarily residential in nature due to its relative lack of visibility and lower level of access. Relatively larger properties that are closest to the existing station are

identified as being the most attractive candidates for housing redevelopment over the long term. Relatively smaller properties that are beyond a quarter mile radius from the station have less redevelopment potential, and are identified as areas where a mix of existing employment and small housing projects may occur. Retail use is projected to be minimal at this location, but may possibly develop directly across from the station at the northeast corner of Oxford and Windermere. The corridor plan recommends the development of park amenities on both sides of Oxford Avenue that will help attract a mix of housing types that include up-scale rental and condo units. Without such park amenities, the project consultant believes that the area will not attract condo or up-scale rental units. Due to comments made by area stakeholders that favored the development of off-street station parking for light rail riders, the project consultant identified potential sites for park-n-Ride facilities north and south of Oxford Avenue.

Bates Station Preferred Scenario

The plan for Bates Station concedes that a future station may not be developed. Nevertheless, the consultant took care to develop a plan that does not preclude development of a station in the future, and advises that an easement be established for future station access. The project consultant reviewed past plans for the site and concluded that the planned employment and retail uses were not viable. The project consultant plan calls for a strictly multi-unit residential development of the General Iron Works and Winslow Crane properties, with townhome developments creating a buffer between the General Iron Works/Winslow properties and the existing residential neighborhood to the east. The proposed plan for this area is viable with or without a light rail station.

Pedestrian and Bicycle Connection Improvements

In order to facilitate pedestrian and bicycle access to the stations, the plan calls for a rail trail featuring bridges over Dartmouth, Hampden, and Oxford Avenues parallel to the light rail line, creating a continuous connection from Bates Station down to the Big Dry Creek Trail. The plan also calls for the development of protected bikeways along Dartmouth, Oxford, and Englewood Parkway to the east, and the new Floyd extension to the west. Protected bikeways have been recognized to significantly increase bicycle commuting as they provide a significant measure of physical separation from automobile traffic that makes people feel much safer and more confident.

Conformance with Roadmap Englewood: The 2003 Englewood Comprehensive Plan

The Englewood, Oxford, and Bates Station areas are prominently highlighted in the vision laid out in Roadmap Englewood: The 2003 Englewood Comprehensive Plan. The comprehensive plan vision recognizes the attractiveness of these areas for intensive redevelopment over time. The following goals from the comprehensive plan are supportive of the Englewood Light Rail Corridor Plan:

Regional Cooperation Goal 3

Develop a range of urban centers that will serve as transit origins and destinations that support retail, employment, and housing, and contain higher densities than average that encourage pedestrian-oriented travel.

Housing Goal 3

Encourage a regional jobs/housing balance in order to reduce vehicle miles traveled, traffic congestion, and commuting times, and improve air quality.

Parks and Open Space Goal 5

Provide a balanced and connected system of open lands, natural areas, recreation facilities, parks, trails, and greenbelts.

Parks and Open Space Goal 6

Integrate planning for parks and open space in the land use, housing, transportation, environmental, economic, and cultural plans for the city.

Business and Employment Goal 5

Recognize the unique characteristics and associated opportunities for enhancing the value of Englewood's commercial, industrial, and mixed-use districts.

Transportation Goal 1

Enhance both the mobility and the accessibility of the transportation system.

Transportation Goal 3

Recognize and enhance the relationships between land use and the transportation system.

Transportation Goal 4

Promote a quality of life transportation philosophy that seeks to create an environmentally attractive, pedestrian-friendly community.

Environmental Quality Goal 5

Conserve energy and improve air quality.

Environmental Quality Goal 7

Preserve and enhance environmentally sensitive lands and restore brownfield properties.

Next Steps

City Council adoption of the Englewood Light Rail Corridor Plan is critical to the successful application to DRCOG for the award of additional 'Next Steps' planning funding for station area master plans. The Englewood Light Rail Corridor Next Steps Study will explore key implementation project design and feasibility in greater detail in order to seek future construction funding for these projects.

FINANCIAL IMPACT

The Englewood Light Rail Corridor Plan project was funded by federal Congestion and Air Quality Mitigation (CMAQ) funds for planning projects that DRCOG reserved for Station Area/Urban Center plans and studies. The City committed a total of \$30,000 in order to leverage \$120,000 in federal funds for a project total of \$150,000. Adoption of the *Englewood Light Rail Corridor Plan* as a supplementary City

planning policy document in support of *Roadmap Englewood: The 2003 Englewood Comprehensive Plan* will not obligate the City to provide additional City funding for projects identified in the plan.

LIST OF ATTACHMENTS

Englewood Light Rail Corridor Plan

Planning and Zoning Commission Findings of Fact

Planning and Zoning Commission July 16th, 2013 Public Hearing Minutes

ENGLEWOOD

LIGHT RAIL CORRIDOR PLAN

GROWING ENGLEWOOD'S ECONOMY

JUNE, 2013



CITY OF
Englewood, Colorado

FOREWORD

The Englewood Light Rail Corridor Plan is a vision of what the future may hold for the redevelopment of the corridor over the next twenty years. The plan is based on analysis of existing conditions, potential economic demand in the future, and knowledge of the development history of transit systems in other metropolitan cities in the United States.

The implementation measures (primarily planning studies, engineering, marketing, and investments in physical infrastructure) identified in the plan will be initiated by the City of Englewood in coordination with the private development sector through public-private partnerships.

Redevelopment of existing, privately-held commercial properties will primarily occur through private transactions between willing buyers and sellers.

It is the policy of the Englewood City Council to not use eminent domain powers for the purpose of redevelopment within the light rail corridor.

ACKNOWLEDGEMENTS

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Mayor Pro Tem, At Large

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District 4

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COE Planning and Zoning Commission

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EXECUTIVE SUMMARY



OVERVIEW

This station area master plan is a coordinated planning effort between the City of Englewood, the Denver Regional Council of Governments (DRCOG) and the Regional Transportation District (RTD) to encourage transit supportive development. The plan was funded through the DRCOG Transportation Improvement Program and the City of Englewood.

ABOUT THE PROJECT

The Englewood Light Rail Corridor Plan project provides for unified high-quality development of the three-station corridor. It identifies the complementary functions, character, uses, and design elements for each station area and the public infrastructure necessary to link the corridor to the surrounding context.

The Plan includes an implementation strategy that identifies the most effective steps toward building projects that are consistent with the City of Englewood Comprehensive Plan and identifies the policy and regulatory adjustments needed to support Transit-Oriented Development (TOD). A primary implementation objective is to strengthen existing desirable uses and identify new economic development opportunities.

The three station areas were planned concurrently in order to efficiently utilize limited planning funds, avoid repeating and revisiting overlapping planning issues, and ensure a cohesive master plan for the three-station corridor. The Englewood Light Rail Corridor Plan process achieved the following objectives:

- Linked the areas surrounding each station into one complementary public involvement process
- Provided development assessment scenarios specific to each station area
- Integrated the three land use and transportation frameworks into one station area master plan document



PUBLIC INVOLVEMENT

The public process was systematic, inclusive, and complete. Public outreach consisted of direct mailings, newsletters, and e-mails. A project website and Facebook page provided those who were not able to attend meetings direct access via the internet to all project materials and presentations throughout the extent of the planning effort. A series of four public engagement sessions were facilitated at key project milestones, beginning in August of 2012 and concluding in February of 2013. Meeting sessions were held over



two-day periods during which advisory committee and stakeholder meetings were held, followed by a corridor-wide community workshop, during which the general public provided assessment and indicated preferences of plan proposals. The process concluded with a presentation to City Council, during which the general public offered comment.

The meetings:

- **Session #1 (August 7 & 8, 2012)**- Examination of background information and the refinement of project objectives
- **Session #2 (September 26 & 27, 2012)**- Assessment of a range of creative and credible station area design alternatives
- **Session #3 (November 28 & 29, 2012)**- Evaluation of a preferred corridor and station area concept
- **Final Presentation (February 27, 2013)**- Presentation of the Final Plan and Implementation Strategies

PROJECT GOALS

The project goals were based upon the DRCOG METRO Vision 2035 Urban Center Goals and were supplemented with additional community-identified goals for the corridor as well as individual station areas. They were used to guide plan development, and serve as an assessment tool for all plan proposals and implementation strategies.

METRO Vision 2035 Urban Center Goals

- Promote density and compact development patterns
- Provide a range of housing, employment, and service opportunities
- Promote pedestrian and bicycle connections
- Create a special sense of place at the station and within the surrounding area
- Stimulate private investment

Community Goals

- Safe pedestrian and bicycle access
- Adequate parking for transit stations & development
- Neighborhood-serving development
- Compatible new development
- Reduce traffic impacts on neighborhoods
- Enhance parks and open spaces
- Link existing buses and shuttles to stations

MOBILITY ORIENTED DISTRICTS- BEYOND TOD

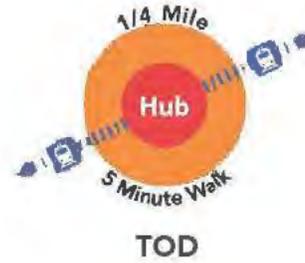
For each station area, short term redevelopment land use concepts were developed for areas adjacent to the station platform. The station's ridershed was increased by linking the station platform to the surrounding one-mile area (a five-minute bike ride) with 'complete streets', where essential auto mobility and parking are maintained while active transportation modes - bicycling, walking and shuttle transit - were promoted.

This approach to station area planning, called a **Mobility-Oriented District (MOD)**, captures potential transit patrons outside the typical TOD range and is an effective means to create a unifying connective transportation thread between the station platforms and the nearby Englewood and Sheridan neighborhoods.

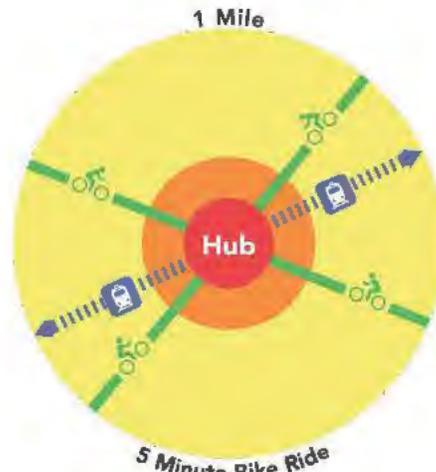
THE GREEN DIVIDEND

Through implementation of the MOD, in addition to increased transit ridership, the Englewood Corridor will have a more balanced transportation 'mode split' where fewer and shorter neighborhood auto trips will result in a local economic stimulus. Less money is likely to be spent on gasoline and more money will be available for food, clothing, housing or other uses at local Englewood businesses.

By assuming that 25% of all trips are on bikes within a mile of the Englewood Station and 15% for Bates and Oxford Stations, the annual savings per household would be \$992 and \$596 respectively. Based on the projected households for Englewood (7,400 households) and Bates/Oxford Stations (5,400 households) the total annual savings for the Corridor would be roughly \$10,550,000. By adding a conservative multiplier of three times the annual savings, the Englewood Corridor MOD is likely to result in a 'green dividend' of a \$32 million dollar economic stimulus every year- local dollars that circulate again and again throughout the community.

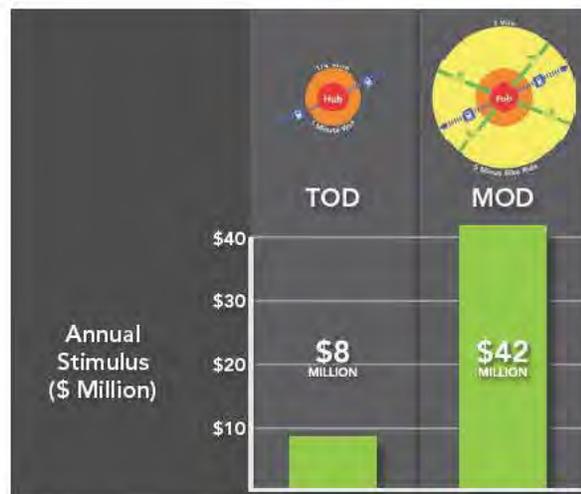


TOD



MOD

Mobility Oriented Districts- Beyond TOD



The Englewood Green Dividend (per station)

CORRIDOR CONCEPT

Focused around the existing Englewood, Oxford and future Bates light rail stations, the Corridor is envisioned as a series of inter-related and complementary station area neighborhoods that support and strengthen each other rather than duplicating or creating competing uses. The station neighborhoods are knitted together with enhanced 'active transportation'- pedestrian, bicycle, and transit improvements that will make it safer, quicker and more enjoyable to access transit, open space amenities, existing and future housing, jobs, and shopping destinations.

Highlights of the corridor concept are described below:

Bates-City Neighborhood North

- Totally comprised of rental apartment housing uses- no mix of uses because there is little market demand for retail or employment uses due to the isolated nature of the station and occasional odors from the waste water treatment plant
- No short term light rail station due to lack of funding; the Bates planning area has been designed to serve as an extension of Englewood Station featuring multi-unit residential development with strong pedestrian and bicycle connections to the existing Englewood station; however the Bates planning area has been designed so as not to preclude a station if funding becomes available
- Strong 'Rail Trail' pedestrian and bicycle transit access connection to Englewood Station; and a linkage to the existing off-street trail that connects to the South Platte River

Englewood - CityCenter and City Neighborhood West

- Two neighborhoods- one east and one west of the Santa Fe Drive/rail corridor
- The CityCenter shopping area would be redeveloped over time as a pedestrian-friendly, mixed-use, new urban center featuring significant increases in employment and residential density
- The new West neighborhood will require the complete redevelopment of existing, low density residential, auto-oriented commercial and industrial

uses into transit-supportive uses; the new neighborhood would include a mix of parks, medium and high density housing, employment and neighborhood-serving small retail shops and restaurants

- A new Floyd Avenue extension would act as a local auto traffic bypass and provide direct and safe access for pedestrians and bicycles to the transit station from the west neighborhood
- The Englewood Station platform will be enlivened by new roadway, pedestrian, and bicycle access improvements and a redesign of the existing piazza into a multi-purpose active space anchored by a new hotel

Oxford- City Neighborhood South

- The station area would be characterized by new high density housing building upon new residential development at the former Martin Plastics site
- Redevelopment will occur at a full block scale closest to the station, or incrementally at a parcel scale, mixing with existing businesses, and generally located beyond one quarter mile from the station.
- Two neighborhood parks, one that is connected to and enlarges the City Recreation facility, and the other located along Navajo Street at Quincy Avenue

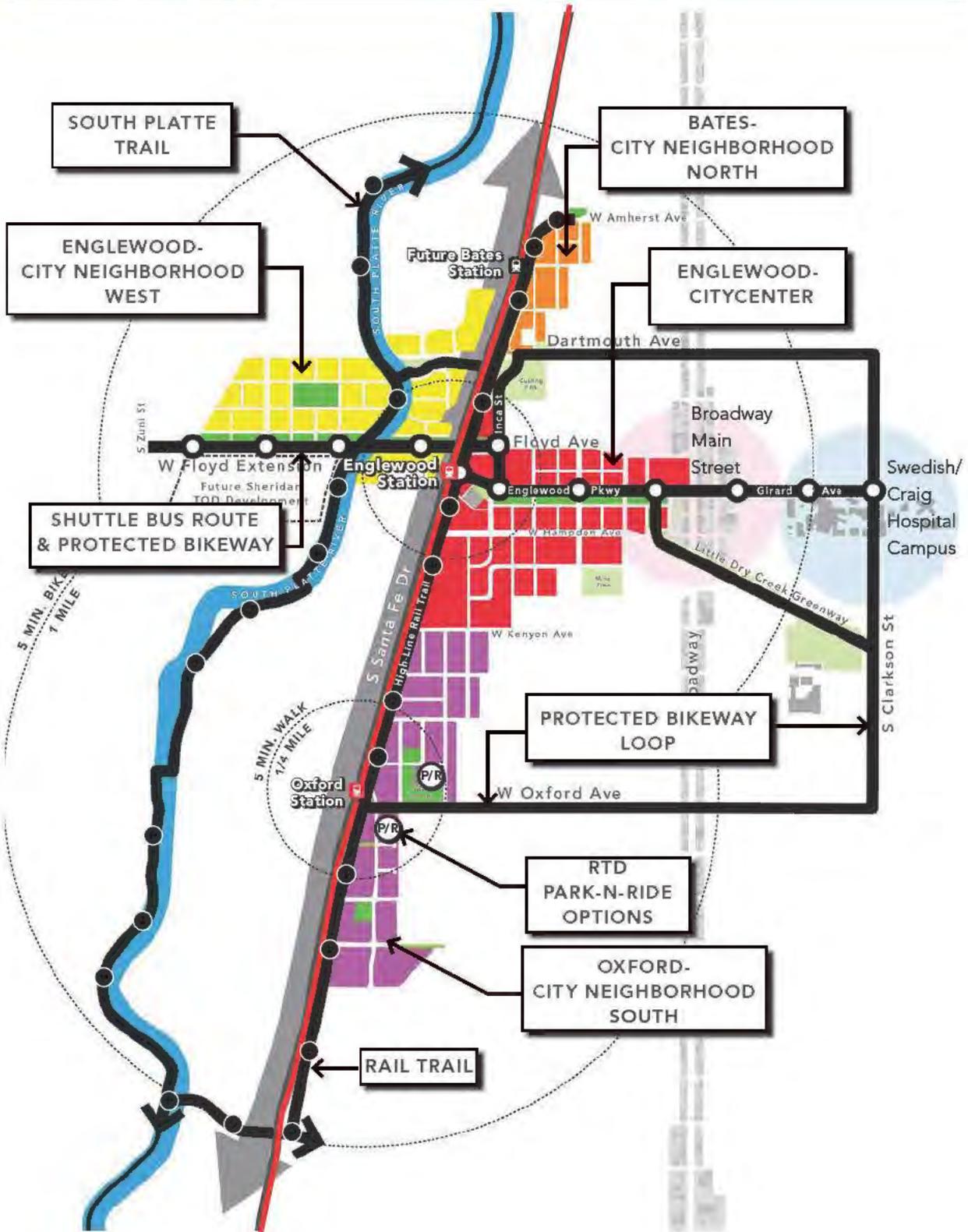
Rail Trail

- A pedestrian and bike recreation route parallel to light rail tracks from Amherst Avenue to the Big Dry Creek Trail south of Layton Avenue provides a safe and direct connection between all neighborhoods; grade separated new bridge crossings provide stress free access across major arterial roadways
- South Platte River Trail routes from Floyd and Dartmouth provide access to desirable regional recreation amenities and an existing bicycle commuting route to downtown Denver

Complete Streets

- 'Protected bikeway' loop along Oxford, Clarkson and Dartmouth links stations to residential neighborhoods and existing employment, commercial and school destinations
- Englewood Parkway/Girard Avenue would serve as the primary east-west local transit shuttle bus and bicycle connection between the Swedish Hospital campus and the Englewood Station. Following the completion of the Floyd Extension, the shuttle route would be extended to the west neighborhood.

CORRIDOR CONCEPT



CORRIDOR IMPLEMENTATION

Corridor implementation requires commitment to ‘game-changing’ public projects that trigger substantial private investment, and increase transit ridership

The implementation projects indicated below represent station area ‘game changers’ which are the essential public projects required to stimulate significant private investment within the corridor and improve community-wide access to transit.

The return on investment ratio, corridor-wide, is likely to be significant. The **INVESTMENTS and BENEFITS** diagram on the right illustrates the amount of public investments (\$123,750,000) that if spent, is anticipated to stimulate substantial private investment (\$2,275,000,000). For every one dollar of public investment an expected eighteen and a half dollars of private investment would likely be generated.

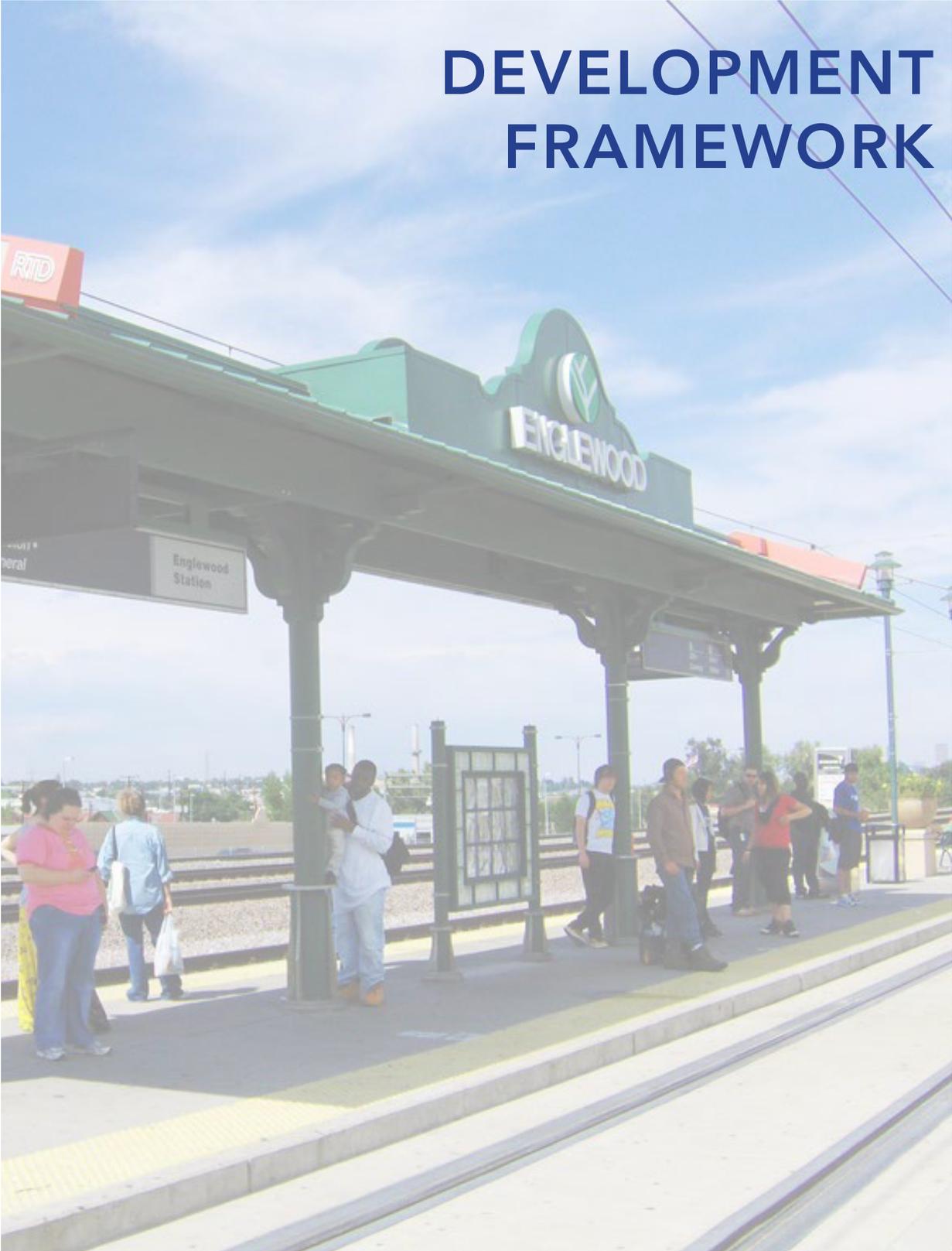
Additionally, it is estimated that investments in public infrastructure such as the rail trail, protected bikeways, and linear park promenades will increase new transit ridership to upwards of 15,000 trips a day and the annual economic stimulus, by substituting some auto trips for walking and biking, will likely be \$31.7 million a year.

INVESTMENT AND BENEFITS	
INVESTMENT	
▪ Public \$ Invested	\$123,750,000
▪ Private \$ Stimulated	\$2,275,000,000
INVESTMENT RATIO	\$1 Public to \$18.5 Private
BENEFITS	
▪ New Housing	8,150 Units
▪ New Employment Bldg. Area	1,235,000 SF
▪ New Retail & Comm. Bldg. Area	385,000 SF
▪ New Jobs (Employment & Retail)	6,900 Jobs
▪ New Transit Ridership (20% of Trips on transit)	15,000 Trips/Day
▪ Annual Economic Stimulus (Corridor Wide)	\$31,675,000

GAME CHANGERS



DEVELOPMENT FRAMEWORK



OVERVIEW

The development framework provides for the character, type, arrangement and intensity of land uses for short and long term development within the corridor. It is based on factors that influenced the design—local demographics, a determination of station types based on the specific station areas and the fundamental real estate development requirements.

A market and demographic analysis of the station areas identified the following capacity for transit-oriented development based on historical growth trends and physical opportunities and constraints inherent within each station area.

Englewood Station

There is sufficient land in low intensity commercial or industrial use such that development within a half mile of this station need not impinge upon existing residential neighborhoods. The station has the potential to create a new Downtown Englewood with new offices, hotels, quality restaurants, pedestrian-oriented shops, and additional higher-density housing development.

Oxford Station

The market opportunity for this station area is incremental transition of an aging industrial strip into a high density residential neighborhood. In the near-term, developers will be interested in building rental apartments. Over the longer term, owner housing in the form of townhouses and condominiums will likely also be supportable if additional park and convenience retail amenities are added.

Future Bates Station

The retail commercial potential of the site is limited by the barrier created by Santa Fe Drive to the west and the RTD maintenance facility to the north, the difficulty of securing commercial frontage on Dartmouth, and the area's walking proximity to retail and commercial uses along Broadway. The market potential here is for medium density housing, most likely rental apartments.



Englewood Station

DEVELOPMENT FRAMEWORK

The development framework locates transit-supportive residential and employment uses that capitalize on the corridor's open space and recreational amenities, proximity to Downtown Englewood, and the regional transit and roadway network.

The Development Framework:

- Identifies redevelopment of 'soft parcels' (vacant, under-utilized parcels)
- Establishes transit supportive density, form, and character of development for a 20-year planning horizon
- Suggests incremental transit-supportive infill for parcels where stable, auto-oriented uses currently exist

- Indicates primary land uses and a vertical mix of uses where economically viable
- Reflects fundamental real estate siting requirements
- Protects and supports existing land uses (existing uses can remain in place and will only redevelop with the property owner's consent)

LAND USE SUMMARY BY STATION NEIGHBORHOOD

BATES- CITY NEIGHBORHOOD NORTH

Land Use	Density (DU/AC) Intensity (FAR)	Dwelling Units (DU) Parking Spaces (SP)	Total Area by Use (Square Feet or Acres)
Housing	35 DU/AC	600 DU 690 SP	—
Parks/Open Space	—	—	.25 AC

ENGLEWOOD- CITYCENTER AND CITY NEIGHBORHOOD WEST

Land Use	Density (DU/AC) Intensity (FAR)	Dwelling Units (DU) Parking Spaces (SP)	Total Area by Use (Square Feet or Acres)
Housing	15/75/100 DU/AC	4100 DU 3700 SP	—
Hotel	—	250 DU 80 SP ²	—
Retail	—	—	275,000 SF (ground floor)
Commercial	—	—	100,000 SF (ground floor)
Employment	0.5 to 1.5 FAR	3,850 SP	1,235,000 SF
Parks/Open Space	—	—	18 AC

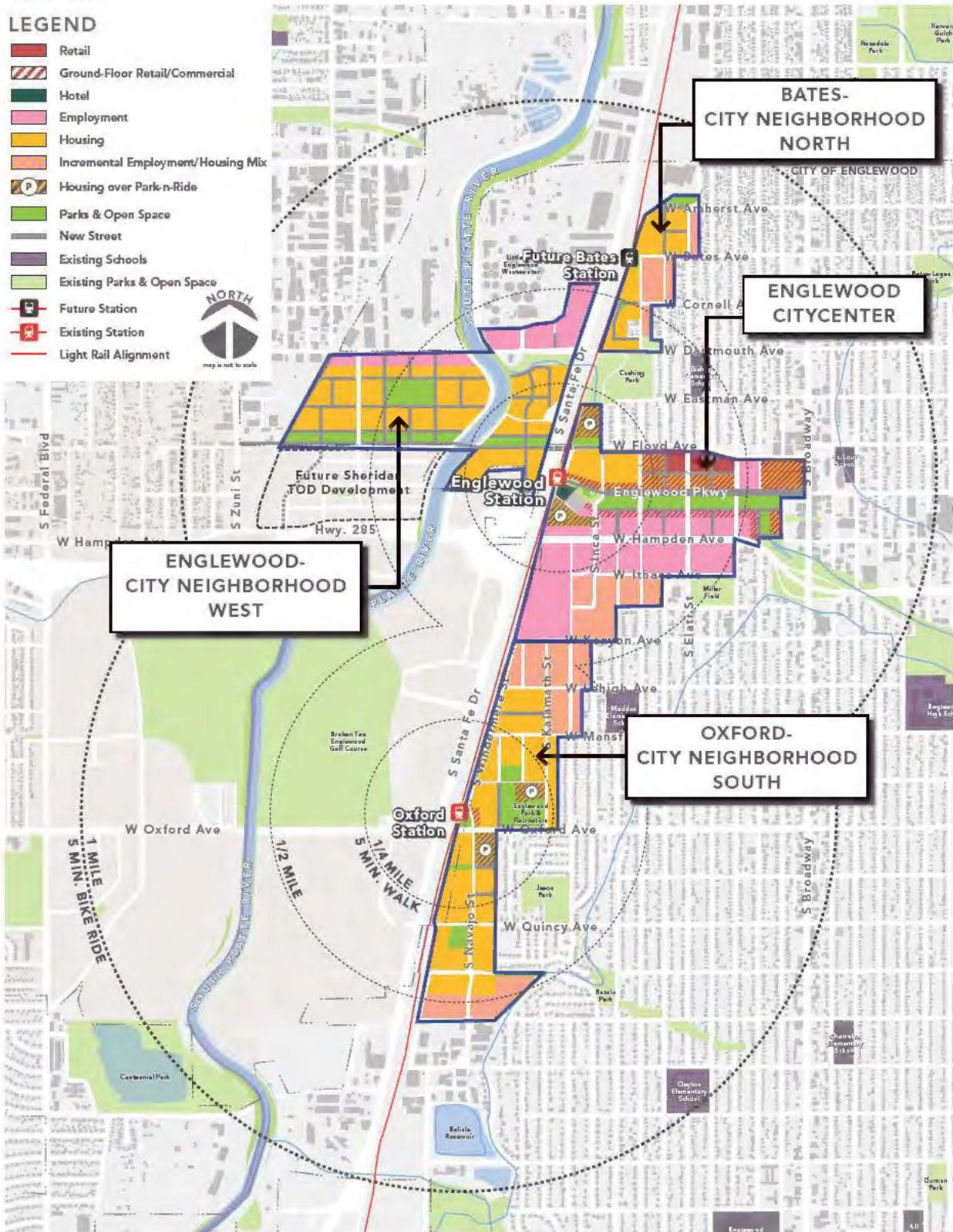
OXFORD- CITY NEIGHBORHOOD SOUTH

Land Use	Density (DU/AC) Intensity (FAR)	Dwelling Units (DU) Parking Spaces (SP)	Total Area by Use (Square Feet or Acres)
Housing	75 DU/AC	3450 DU 3230 SP	—
Retail	—	—	10,000 SF (ground floor)
Parks/Open Space	—	—	5 AC
Park-N-Ride	—	Up to 470 SP	—

Land Use

LEGEND

- Retail
- Ground-Floor Retail/Commercial
- Hotel
- Employment
- Housing
- Incremental Employment/Housing Mix
- P Housing over Park-n-Ride
- Parks & Open Space
- New Street
- Existing Schools
- Existing Parks & Open Space
- S Future Station
- R Existing Station
- Light Rail Alignment



RETAIL AND COMMERCIAL

Over the next 20 years, current auto-oriented ‘big-box’ retail areas will be transformed into pedestrian-friendly, street-oriented retail districts.

A full range of goods and services including grocery stores, restaurants, and banks are envisioned within the Corridor. The retail district is envisioned to provide:

- A rich mix of both national retailers and local merchants. The Plan includes a range of sites that can meet the needs and variety of tenants
- Essential goods and services for residents, employees, and visitors of the Corridor station areas. This will result in a reduction of trips to retail centers outside the district and will, as a result, create an economic dividend for local merchants
- 18 hours of daily activity which will increase neighborhood safety by improving passive surveillance- ‘eyes on the station area’

Englewood CityCenter Retail & Commercial

Over a 20 year planning horizon the current big box, auto-oriented CityCenter shopping development will transition into a new urban mixed use retail district.

- New uses will be oriented along existing and new streets.
- Retail uses (businesses that engage in the sale of merchandise, food, drink and entertainment) will benefit from increased auto drive-by visibility from Englewood Parkway and accessibility from Hampden Avenue and Floyd Avenue
- Generally, retail uses will be located along east-west streets and commercial uses (businesses that engage in the sale of services) will be located on north-south streets
- Along a new Englewood Parkway park block amenity, building frontages are envisioned to include retail shops and restaurants aggregated continuously edge-to-edge without interruption at the ground floor of all new buildings
- Where possible, buildings may be repurposed or remodeled into ‘urban format’ stores
- Retail uses will require considerable parking. A new district-serving, multi-story parking structure with ground floor retail space is envisioned at the intersection of Elati and Floyd

Oxford Station Commercial

Commercial uses are primarily envisioned along Windermere Street fronting the Oxford Station platform.

- Convenience services and retail shops such as restaurants, cafes, hair salons, dry cleaners, banks or daycare centers are envisioned here
- Ground-floor, street oriented commercial storefronts should be integrated into the ground floor of residential development

Additional commercial storefronts should be encouraged along busy streets where curbside parking will be available.

Englewood West Neighborhood Commercial

The specific location of neighborhood-serving commercial will be determined by a master developer when the Corridor Plan is refined in the future. The neighborhood commercial should be:

- Centrally located, within easy walking distance of all in the neighborhood
- Meet essential real estate site requirements- along a busy street with good visibility from passing cars- with adjacent curbside parking
- Street-oriented
- Small in cumulative area (It should not create a competing center to the CityCenter district)

DEVELOPMENT SUMMARY

Englewood CityCenter

Street Oriented Retail	245,000 SF
Street Oriented Commercial	100,000 SF

Englewood City Neighborhood West

Neighborhood Commercial*	30,000 SF
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Oxford City Neighborhood South

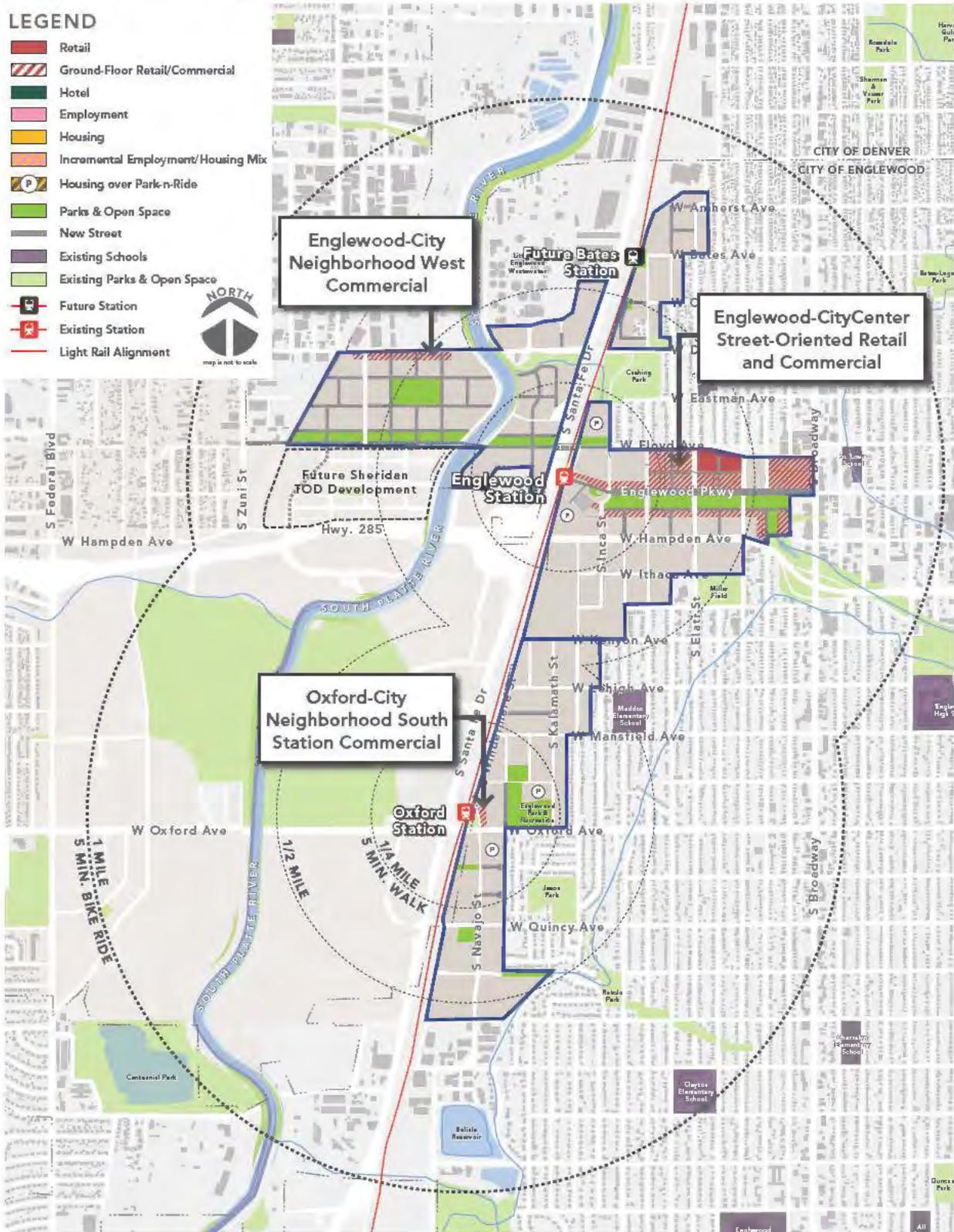
Station Commercial	10,000 SF
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* The specific location of neighborhood retail has not been determined but should be aggregated in an area that provides sufficient access and drive-by traffic and is well located to conveniently serve residents.

Retail and Commercial

LEGEND

- Retail
- Ground-Floor Retail/Commercial
- Hotel
- Employment
- Housing
- Incremental Employment/Housing Mix
- P Housing over Park-n-Ride
- Parks & Open Space
- New Street
- Existing Schools
- Existing Parks & Open Space
- F Future Station
- S Existing Station
- Light Rail Alignment



EMPLOYMENT

A variety of employment opportunities are envisioned throughout the corridor. A new transit-supportive employment district is envisioned for the Englewood Station area along Hampden and Dartmouth Avenues.

Hampden Avenue Employment Corridor

Lining both sides of Hampden Avenue, a ‘health and wellness’ office district consisting of corporate headquarters and office suites for medical, banking, technology, financial, law, engineering, and other professional uses is envisioned. The district:

- Strengthens and builds upon existing office tower and mid-rise buildings
- Provides highly desirable sites with good ‘addresses’ (high visibility and easy access) on a major arterial roadway
- Envisions to be competitive with suburban Class A office districts such as the Denver Tech Center
- Provides new employment sites for uses that may benefit from proximity to the Craig and Swedish Medical Centers east of Broadway
- Envisions redevelopment of the current Sports Authority parcels into a green corporate campus. Redevelopment of the site would consist of mid-rise buildings, a parking structure and private sports fields and other facilities
- Offers access to desirable employee amenities—the Englewood Parkway park blocks and retail and commercial uses

Incremental Employment/Housing Mix Areas

Existing industrial, manufacturing and warehousing uses are not transit supportive because they generally have few employees per business and have operational requirements that are vehicle dependant, which is at odds with a TOD pedestrian-oriented environment. Nevertheless, these areas include many uses that are viable, difficult to relocate and provide important services for the community. These uses should remain as long as property owners desire. Where redevelopment does occur:

- New transit-supportive (high number of jobs) industrial or service businesses are encouraged, first and foremost

- Where change of use occurs, multi-family development (no minimum density) will be required. Single family development should be prohibited
- Adaptive reuse of existing structures is encouraged
- Development is envisioned to occur at an incremental parcel-by-parcel intensity. As such, consideration of adjacent existing industrial use (noise, odors, etc.) should be considered. Buffering, setbacks or other considerations that minimize impact to both uses should be explored

Dartmouth Employment District

New industrial, manufacturing and warehousing uses along with office development is envisioned along Dartmouth Avenue. The new employment development:

- Provides a site for industrial uses to relocate away from Corridor Incremental Employment/Housing Areas while remaining in Englewood
- Provides a buffer between the planned new residential neighborhood and the existing industrial and treatment plant uses north of Dartmouth
- Include 1-2 story buildings lining Dartmouth with parking and loading areas behind
- Should develop as a green campus-like setting
- Include screening and landscape buffering between the employment uses and residential areas

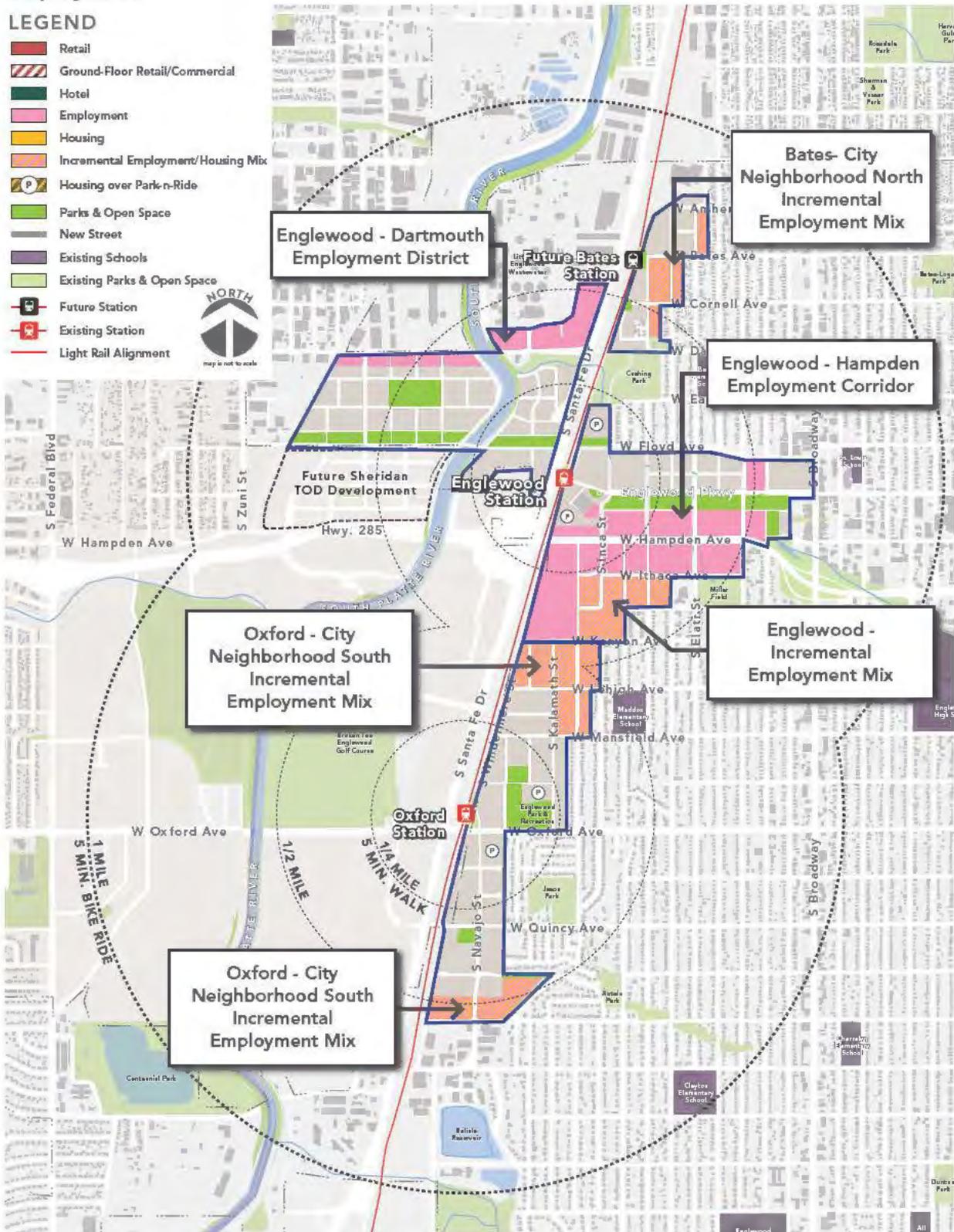
NEW DEVELOPMENT SUMMARY

Englewood CityCenter	
Office	1,600,000 SF
Englewood City Neighborhood West	
Light Industrial & Office	350,000 SF

Employment

LEGEND

- Retail
- Ground-Floor Retail/Commercial
- Hotel
- Employment
- Housing
- Incremental Employment/Housing Mix
- P Housing over Park-n-Ride
- Parks & Open Space
- New Street
- Existing Schools
- Existing Parks & Open Space
- F Future Station
- R Existing Station
- Light Rail Alignment



RESIDENTIAL

Four new transit-supportive housing neighborhoods are envisioned within the corridor providing for a mix of high and medium density housing of market rate and affordable units with apartment, condominium, and townhome building types.

Englewood CityCenter

Redevelopment of the CityCenter parcels is envisioned to include:

- Redevelopment of existing big-box commercial parcels from Broadway to Elati into high-density (5-6 story minimum) apartments and condo housing. Buildings would include ground-floor retail and commercial uses with parking located below grade. 'Texas Doughnut' liner housing (buildings surrounding parking structures) should be discouraged in order to conform buildings to the short block faces and dense grid network laid out as the vision for the plan
- Joint venture redevelopment of the current RTD Park-N-Ride site. The existing park-n-ride use could remain at grade. Apartments (3-4 story min.) and resident parking is envisioned to be built above
- Joint venture apartment housing over the existing Civic Center parking structure. Senior housing or similar low parking needs housing is encouraged; shared parking should be explored

Englewood- City Neighborhood West

A mix of high and medium density multi-story (3 story minimum) apartments, condos and townhomes oriented toward or within easy access to new parks and the South Platte River is envisioned. The housing district should:

- Include development agreements that require numerous builders and designers to ensure architectural variety rather than a 'cookie-cutter' monoculture of similar buildings constructed by a single builder
- Create a 'mixed income' neighborhood, offering both rental and home ownership opportunities. A target ratio of 1 affordable unit to every 4 market rate unit would be ideal
- Distribute affordable units throughout to avoid a concentration of low income units

Oxford-City Neighborhood South

Redevelopment of existing industrial areas as multi-story apartments and condominiums (4 story minimum) is envisioned. Development should:

- Orient to neighborhood parks
- Explore joint venture apartment development over the planned RTD Park-N-Ride; Apartment housing 3-4 story (minimum) and resident parking is envisioned to be built above. Shared parking use should be explored. Ground floor commercial use along Navajo should be encouraged

Bates-City Neighborhood North

Located within the General Iron Works and Winslow Crane sites, new medium density (3 story minimum) apartments and condos are envisioned. The development of these areas should:

- Orient buildings toward roadways and new open spaces
- Include a grid of public streets rather than private drives and parking lots
- Screen parking lots from adjacent existing uses and streets. Locate parking lots behind buildings.
- Development agreements should require numerous builders and designers to ensure architectural variety
- Create a 'mixed income' neighborhood, offering both rental and home ownership opportunities. A target ratio of 1 affordable unit to every 4 market rate unit would be ideal
- Affordable units should be distributed throughout to avoid a concentration of low income units

DEVELOPMENT SUMMARY

Englewood CityCenter	TARGET - 2,950 Units
Residential Density-	Min. 75/ Max. 125 DU/AC
Total Number of Units-	1,150 Dwelling Units
Parking Ratio-	1 Space Per Unit
Housing Types-	Apartment, Condo

Englewood City Neighborhood West	TARGET - 1,150 Units
Density-	Min. 15/ Max. 75 DU/AC
Total Number of Units-	2,950 Dwelling Units
Parking Ratio-	1 Space Per Unit
Housing Types-	Townhome, Apartment, Condo

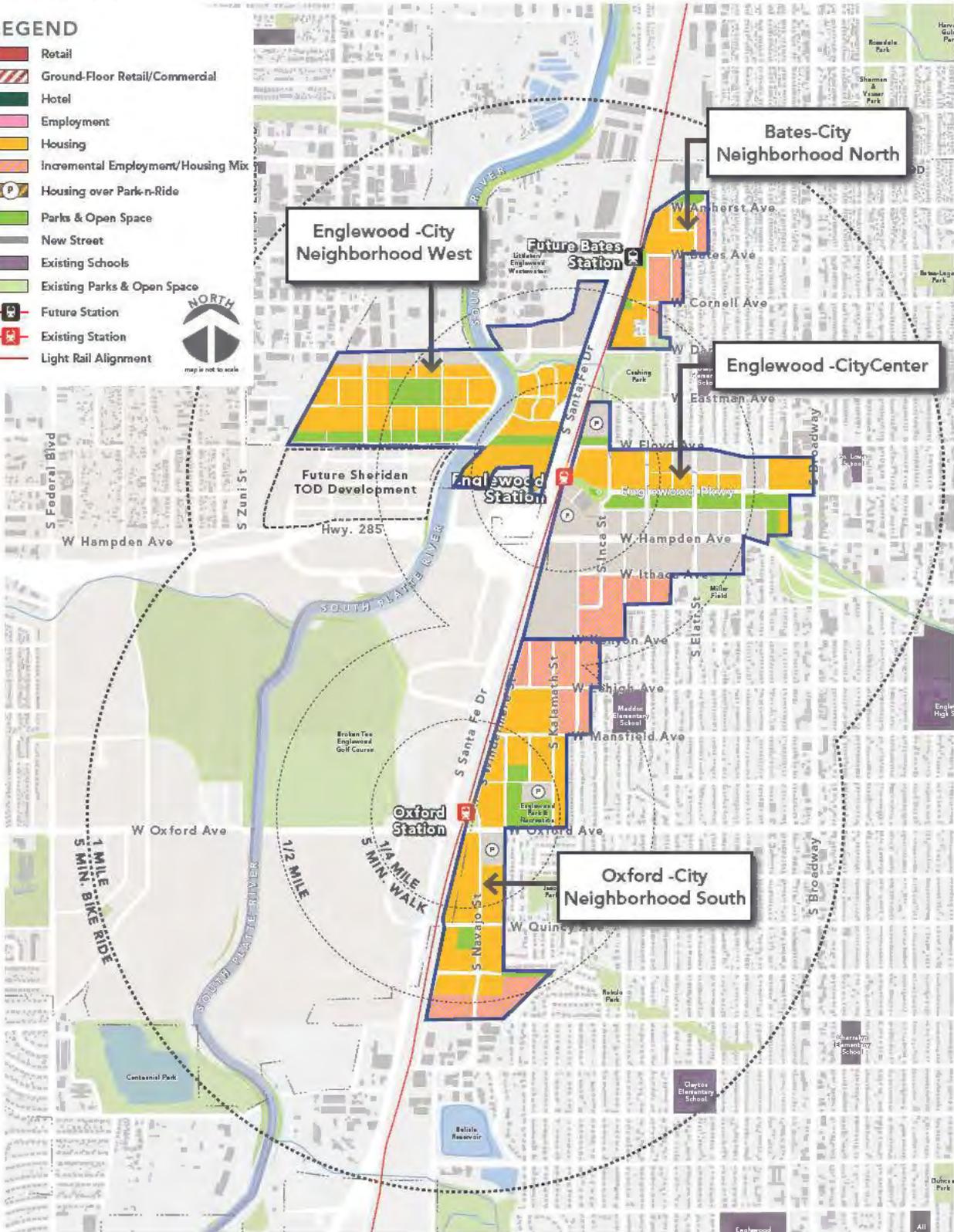
Oxford City Neighborhood South	TARGET - 3,450 Units
Density-	Min. 15/ Max. 75 DU/AC
Total Number of Units-	3,450 Dwelling Units
Parking Ratio-	1 Space Per Unit
Housing Types-	Townhome, Apartment, Condo

Bates City Neighborhood North	TARGET - 600 Units
Density-	Min. 15/ Max. 75 DU/AC
Total Number of Units-	600 Dwelling Units
Parking Ratio-	1 Space Per Unit
Housing Types-	Townhome, Apartment, Condo

Residential

LEGEND

- Retail
- Ground-Floor Retail/Commercial
- Hotel
- Employment
- Housing
- Incremental Employment/Housing Mix
- P Housing over Park-n-Ride
- Parks & Open Space
- New Street
- Existing Schools
- Existing Parks & Open Space
- MC Future Station
- R Existing Station
- Light Rail Alignment



PARKING

Private and public parking needs within the station area will be met through on-street parking, within existing structures and existing or new park-n-Ride facilities.

Private Parking

Although transit is provided within the corridor, parking will nevertheless be required for new development. To ensure that new development is competitive with similar uses outside the corridor and existing adjacent uses are not adversely impacted by overflow parking, all new development parcels have been planned to accommodate parking, at the following minimum ratios:

- Residential - 1 space per residential dwelling unit
- Retail/Commercial - 3 spaces per 1000 square feet
- Employment- 3 spaces per 1000 sf
- Wherever parking is constructed, it should be:
 - Screened from sidewalks and bikeways
 - Built behind, to the side or within buildings
 - Shared wherever viable
 - Reduced. Maximums rather than minimums should be encouraged but not required

park-n-Ride

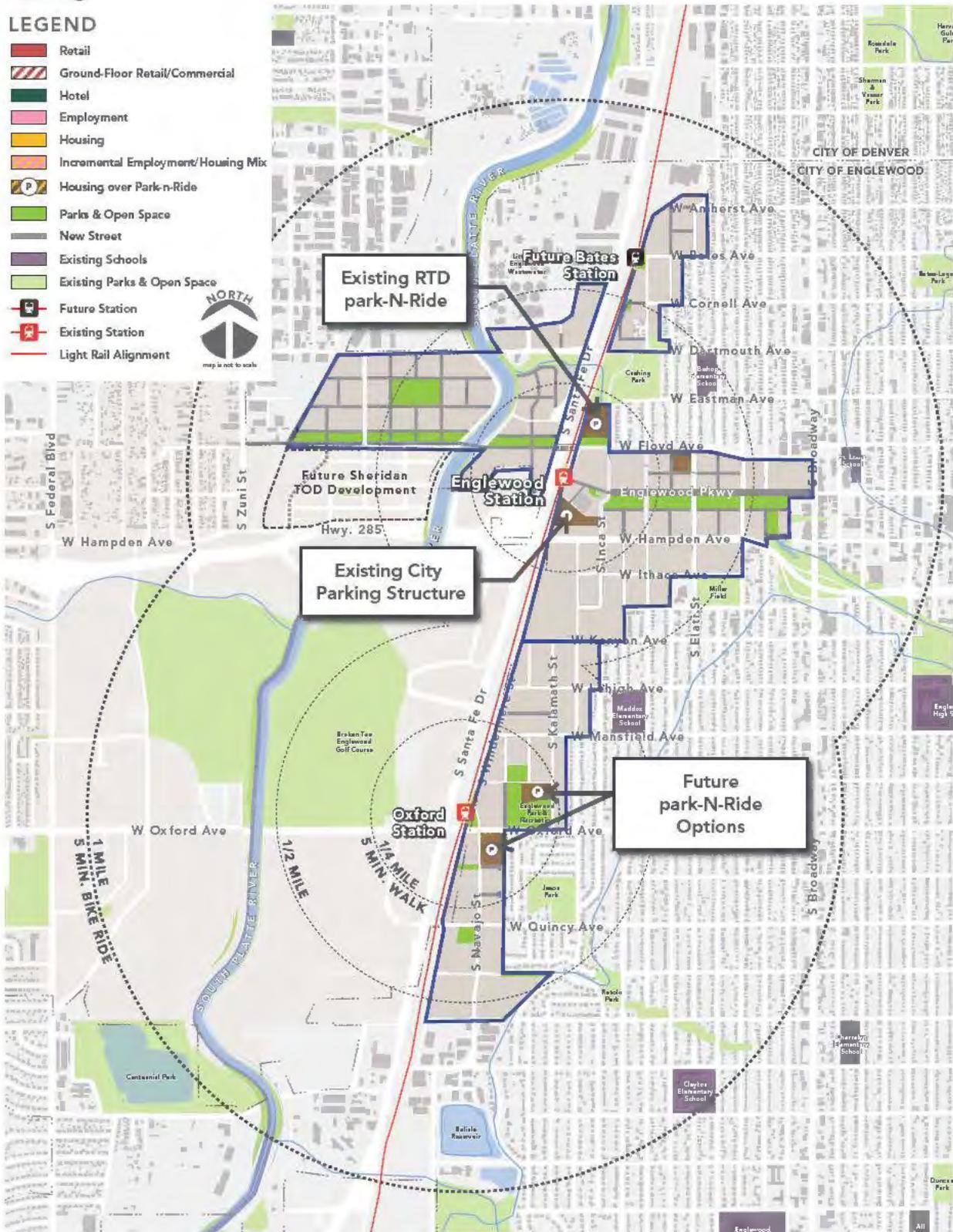
Currently, existing park-n-Ride facilities are at or near capacity at peak periods. As a result, LRT commuters are parking on-street at the Oxford Station, impacting existing business operations and lessening potential client parking spaces. Likewise, LRT commuters are also causing parking impacts north of Englewood Station at Cushing Park and in the surrounding residential neighborhood. To meet parking demand and address the Oxford issues, a new RTD park-n-Ride facility could be located near but not adjacent to the Oxford Station. Constructing a new facility at Oxford would address past Englewood park-n-Ride expansion issues voiced by the community. The Englewood park-n-Ride lot would not need to be enlarged. No acquisition or impact to current site or adjacent parcels would be required. The Oxford park-n-Ride could be constructed either at the southwest intersection of Oxford and Navajo or within the current Meadow Gold parcel directly north of the City's Recreation Center. Further analysis by RTD and consultations with City Council will be required to determine if either of these sites (or another within the vicinity) will be built. At a minimum 400 spaces should be provided.

Joint venture partnerships that meet both parking and private development goals should be encouraged.

Parking

LEGEND

- Retail
- Ground-Floor Retail/Commercial
- Hotel
- Employment
- Housing
- Incremental Employment/Housing Mix
- P Housing over Park-n-Ride
- Parks & Open Space
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- Light Rail Alignment



PARKS

New parks and open spaces are necessary amenities for high density development. Parks and open spaces encourage private investment and improve the quality of life for those who live, work or visit the Englewood corridor.

The parks framework provides active and passive amenities including linear parks, neighborhood parks, and recreation facilities and plazas. The framework:

- Links the Little Dry Creek open space corridor via a linear park promenade through CityCenter and connects with the Englewood Station Piazza, the South Platte River corridor and the new City Neighborhood West and North
- Serves both existing and future station area residents, employees, and visitors
- Parks are located as a focus for redevelopment within each station area
- Includes long-term modifications to the piazza to further activate the Englewood station area and promote greater use of the space for daily and community-wide events

DEVELOPMENT SUMMARY	
Englewood CityCenter	
Englewood Parkway Linear Parks	6 AC
Piazza Enhancements	1 AC
Englewood City Neighborhood West	
Floyd Avenue Linear Parks	6.5 AC
Central Park	4.5 AC
Oxford City Neighborhood South	
Neighborhood Park 1	1.2 AC
Neighborhood Park 2	2.4 AC
Neighborhood Park 3	1.4 AC
Bates City Neighborhood North	
Pocket Park	.25 AC

REGULATORY RECOMMENDATIONS

Regulatory changes are required to ensure the corridor plan is developed as envisioned.

Generally, areas identified for redevelopment in the Englewood LRT corridor consist primarily of industrial zoned parcels and other use categories that permit low density or auto-oriented site development. Updates or new zoning regulations are required to align current code requirements to envisioned transit supportive and pedestrian-friendly development. Possible options:

- Rezone I-1 and I-2 industrial zones to more transit supportive existing zoning categories
- Preserve the existing Planned Unit Development (PUD-2) and the Mixed Use -B1 base zones and address vision concepts on a development-by-development basis
- Replace existing inconsistent zoning categories with a new mixed-use transit station area zone

Zoning Reform

The regulatory recommendations include:

- Maintaining current base zoning and providing new permitted uses and development regulations as an 'overlay'
- Establishing specific subareas that ensure development character consistent with the station area plan
- Implementing new and modifying existing development standards consistent with the plan and identified on the following pages

Station Area Zones/Overlays

Zone/overlay districts recommended for the corridor include the following designations:

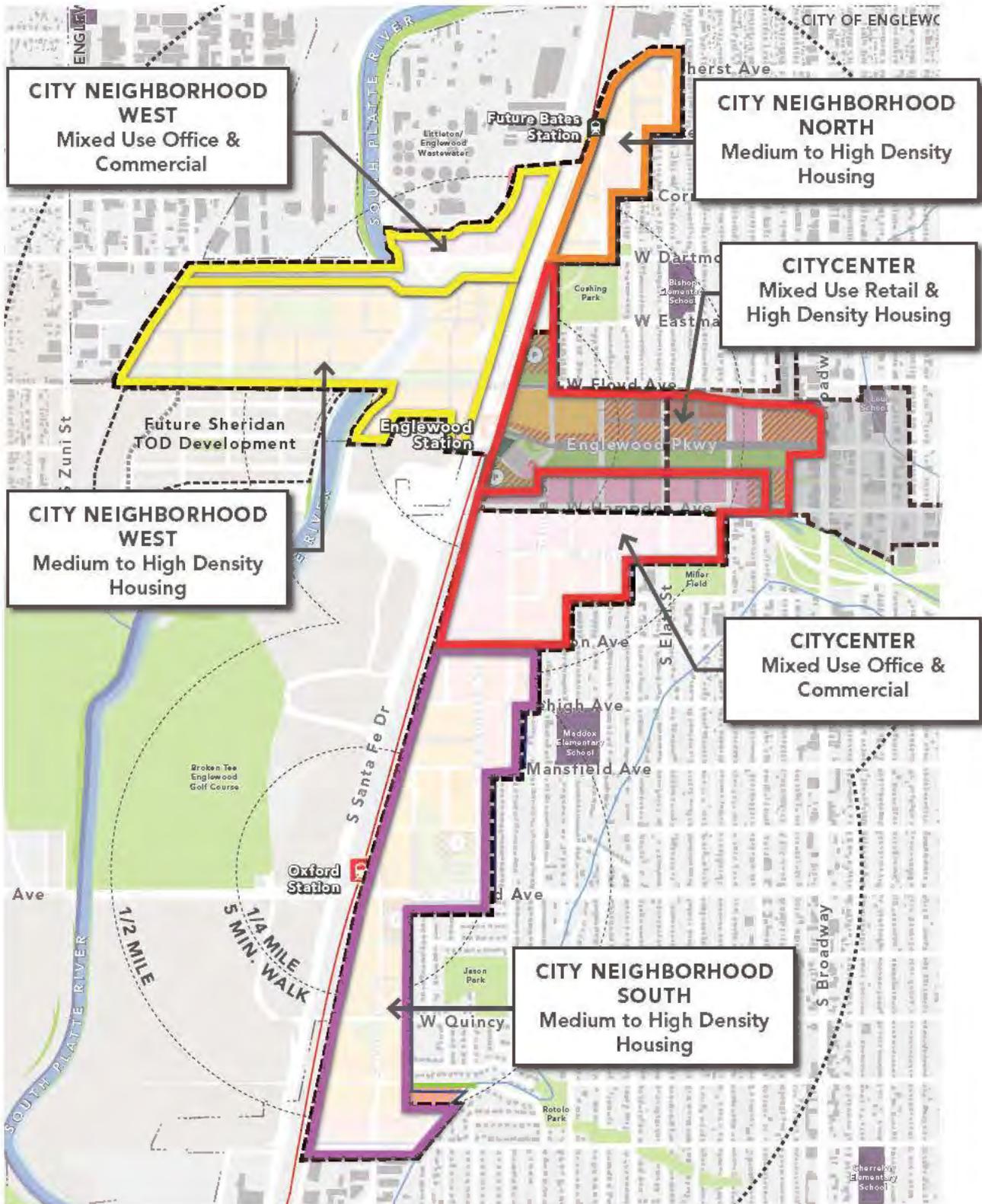
- Mixed-Use-Transit Station Area (MX-TSA) Designation
- Mixed Use-Industrial (MX-IND) Designation
- Mixed Use Business (MU-B1), (MU-B-2) Designation

Subareas

Six character subareas are identified within the three zoning/overlay district designations. Each subarea consists of primary land uses that establish the architectural character of the built environment.

- CityCenter Mixed-Use Retail and Housing Sub-District—Street-oriented retail, commercial and upper floor high density housing
- CityCenter Mixed-Use Office and Commercial Sub-District—Mid-rise corporate and professional office uses, supporting ground floor retail and commercial uses
- City Neighborhood West Mixed-Use Office and Commercial Sub-District— Low-rise light industrial, office, commercial, and services uses
- City Neighborhood West Housing Sub-District— Medium to high density housing and neighborhood serving retail and commercial uses
- City Neighborhood North Housing Sub-District— Medium density housing
- City Neighborhood South Housing District— Medium to high density housing and neighborhood-serving commercial and employment uses.

Recommended Subareas



DEVELOPMENT STANDARDS

Key development standards for each land use are identified.

RETAIL & COMM. DEVELOP. STANDARDS	
Building Setback from Street	0 feet max. for groundfloor uses*
Entries	Ground level to provide a primary street-facing entry
Transparency	70% transparency at street level**
<p>* Setbacks apply to ground floors only. Buildings may be setback on any floor above the ground floor.</p> <p>** Measured as linear feet of total building frontage at 5 feet above the finished grade of the adjacent streets to promote optimum visibility for passers-by; Shall be entirely transparent with the exception of applied window signs that shall be no larger than 10% of any single opening; Shall not include tinted, reflective or other opaque materials or treatments</p>	

RESIDENTIAL DEVELOPMENT STANDARDS	
Building Setback from Street	10 feet max. for groundfloor uses*
Entries	Ground level units fronting a street to provide a primary street-facing entry Ground level units fronting accessway or courtyard to provide a primary exterior entry
Transparency	50% transparency at street level**
<p>* Setbacks apply to ground floors only. Buildings may be setback on any floor above the ground floor.</p> <p>** The percent of transparency is measured at 5 feet above the building's first finished-floor height to account for raised stoops or terraces, which provide privacy, and a transition and separation from the street. Linear transparency measurement encompasses the entire building frontage.</p>	

EMPLOYMENT DEVELOPMENT STANDARDS

Building Setback from Street	10 feet max. for groundfloor uses*
Entries	Ground level uses fronting a street to provide a primary street-facing lobby entry
Transparency	50% transparency at street level**
Heights	Mid-Rise Office at 3 to 8 Stories Low-Rise Office at 1 to 3 Stories

* Setbacks apply to ground floors only. Buildings may be setback on any floor above the ground floor.

** The percent of transparency is measured at 5 feet above the building's first finished-floor height to account for raised stoops or terraces, which provide privacy, and a transition and separation from the street. Linear transparency measurement encompasses the entire building frontage.

CIRCULATION FRAMEWORK



OVERVIEW

The circulation framework establishes a network of complete streets within the study area that allow pedestrians, bicyclists, motorists and transit users to move directly, conveniently, and safely throughout the corridor.

A COMPLETE STREETS FRAMEWORK

The circulation framework establishes a network of Corridor-wide 'Complete Streets' that reduce auto dependency by enabling pedestrians, bicyclists, and shuttle transit users to move directly, conveniently, and safely throughout the corridor.

Currently, the Corridor is characterized by a circulation framework that is dominated by automobiles and trucks. Pedestrian and bicycle facilities are substandard and as a result, the ability of area residents, shoppers, employees and visitors to access transit is severely constrained. The Complete Streets Framework aims to create a balanced Corridor transportation network that will in turn result in higher transit ridership and an improved quality life.

While essential motor vehicle mobility will be maintained, design of the streets and rail corridor will have a strong bias toward active transportation modes. The Corridor will be a place where pedestrians and cyclists are on equal footing with motorists. Safe and direct access routes are planned to link transit station platforms and key destinations within the Corridor. Auto, truck, pedestrian and cyclist conflicts with will be minimized.



Complete Street Modes

CIRCULATION FRAMEWORK

The circulation framework identifies a full network of circulation improvements to safely and conveniently access transit stations.

The Circulation Framework:

- Fosters 5 minute or shorter pedestrian and bicycle trips. The transportation network is integrated into the land use framework. Daily destinations—shopping and employment uses are linked. Access to existing residential neighborhoods is emphasized
- Minimizes barriers. 360 degree access to all stations is emphasized
- Improves under-utilized recreation routes and access to recreational facilities. A new 'Rail Trail' will link the stations together and existing neighborhoods and redevelopment areas to the South Platte River. Considers pedestrian and bicycle travel at night and during inclement weather. Routes are located where 'eyes-on-the-street' passive surveillance will be prevalent
- Considers pedestrian and bicycle travel at night and during inclement weather. Routes are located where 'eyes-on-the-street' passive surveillance will be prevalent
- Addresses capacity limitations of major roadway corridors—In particular, the circulation framework included a new collector street, the Floyd Extension, that provides new roadway capacity to reduce impacts on congested existing streets and intersections
- Balances transportation modes while maintaining auto and truck access. The framework also provides transportation improvements for pedestrians and bicycles that will greatly increase their use
- Improves livability—The framework is more than a functional transportation network; it also establishes streets and sidewalks as 'places' to stop and linger

The circulation framework consists of four major circulation elements and additional detail for priority streets and rail trail improvements.

Mobility Emphasis—primary auto routes to existing and future neighborhoods, light rail stations and through the corridor

Pedestrian and Bicycle—'5-minute' safe and convenient station access routes

Bus Transit and Shuttle—A local circulator between the stations and employment and residential uses

New and Enhanced Streets—Additions to the local street grid to accommodate new development

Circulation Framework

LEGEND

- Rail Trail
- Protected Bikeway Emphasis
- Bike Lane/Bike Boulevard Emphasis
- Mobility Emphasis
- Bus Route
- Shuttle Route
- Existing Schools
- Existing Parks & Open Space
- Existing Ped/Bike Trails
- Future Station
- Existing Station
- Light Rail Alignment

Dashed lines are outside of City of Englewood limits or require additional study.



MOBILITY EMPHASIS

The **Mobility Emphasis Framework** identifies essential multi-modal routes to light rail stations and essential motor vehicle regional routes through the corridor.

Minimizing Roadway Capacity Impacts

Currently, arterial roads are at capacity during peak travel periods. High traffic volumes along Santa Fe Drive and Hampden Avenue impact the ability to access the station area and land uses within the corridor. Any future corridor development has the potential to exacerbate existing peak-hour, near grid-lock conditions.

While the mobility emphasis and improvements do not solve roadway congestion at a regional level, the improvements do provide the ability for those traveling locally within Englewood and Sheridan an opportunity to access stations and land uses within the corridor more efficiently.

The Floyd Avenue Extension ‘Ventilator’

Extending Floyd Avenue west from Inca Street under Santa Fe Drive and over the South Platte River to Zuni Street is intended to:

- Provide Englewood station multimodal access to redevelopment sites west of Santa Fe Drive
- Improve peak period intersection operations within Englewood and Sheridan by enabling short length motor vehicle trips to by-pass Hampden and Dartmouth Avenues resulting in fewer trips through these peak-hour congested intersections

Rail Trail Bridge Congestion Benefits

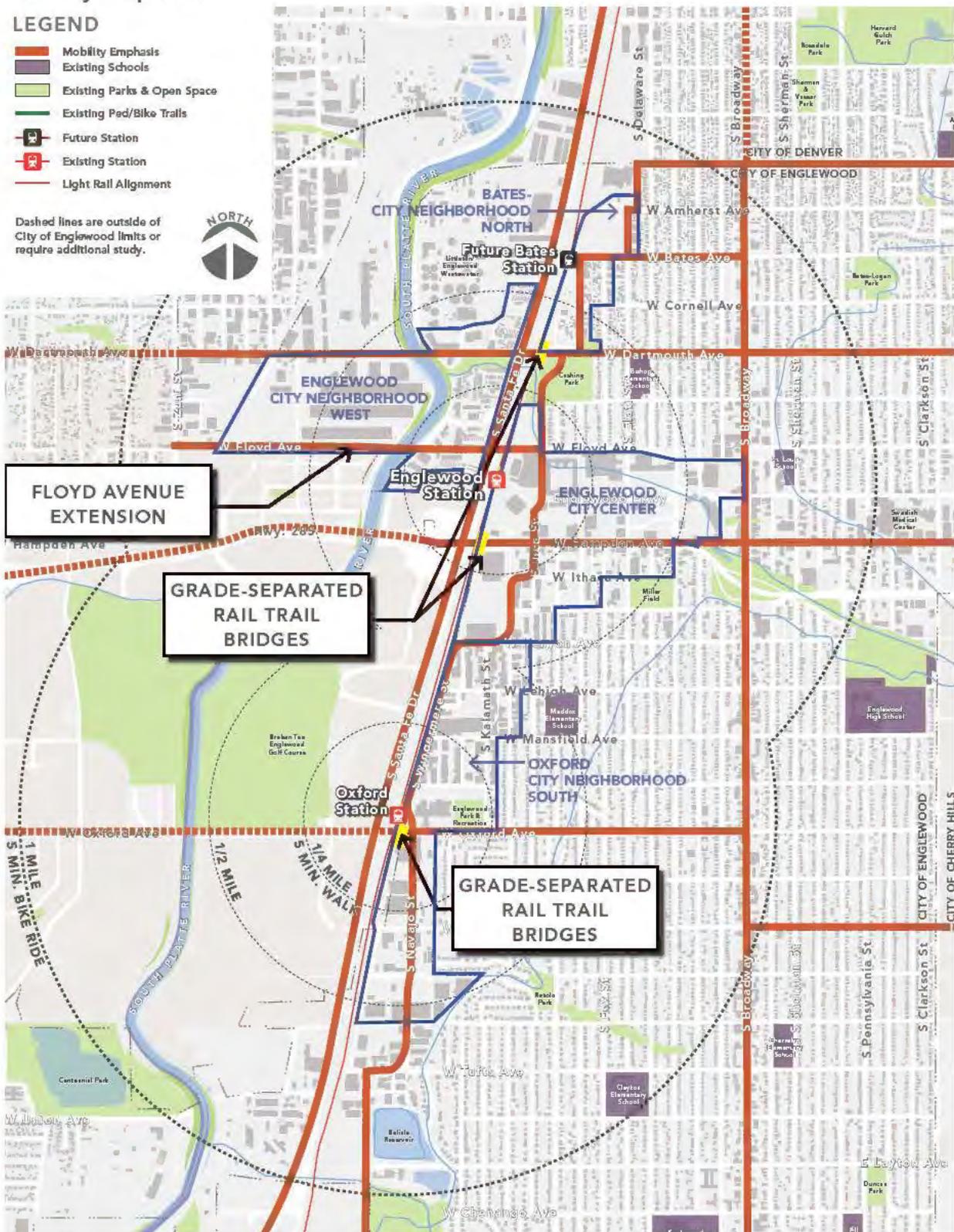
A multi-purpose rail trail featuring arterial road overpass bridge crossings will provide safe pedestrian and bicycle crossings, as well as, improved vehicle mobility on roadways below. The separated bridge crossings will result in a reduction in the volume and frequency of at-grade pedestrian crossings at existing arterial intersection crosswalks, thereby providing more available green through time for automobile traffic on Hampden, Oxford and Dartmouth Avenues.

Mobility Emphasis

LEGEND

- Mobility Emphasis
- Existing Schools
- Existing Parks & Open Space
- Existing Pod/Bike Trails
- Future Station
- Existing Station
- Light Rail Alignment

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PEDESTRIAN AND BICYCLE

A five-minute network of sidewalks, bikeways, and trails is planned that provides safe and direct access between transit stations, new development, and existing neighborhoods.

The pedestrian and bicycle elements:

- Increase access to station platforms by bridging existing barriers, such as Santa Fe Drive.
- Decrease auto dependency
- Improve access to existing local and regional recreation amenities such as the South Platte River Trail
- Build upon, reinforce and enhance the existing Englewood Master Bicycle Plan

Rail Trail

A recreation and station access loop primarily within the existing BNSF right of way adjacent to the RTD trackway. The location of the trail route would begin, on the north, at the General Iron Works site adjacent to Amherst Avenue and Elati Street intersection. It would then continue south along the existing LRT corridor and terminate at the Big Dry Creek Trail near Littleton. The trail would be completely separated from conflicts with automobile traffic through the construction of bridges over existing arterial roadways. Existing linkages to the South Platte Trail would be enhanced at Dartmouth and Layton Avenues. The multi-use trail would accommodate both pedestrians and bicyclists exclusively. Excluding maintenance and emergency vehicles, no motorized vehicles would be permitted. The City will be required to negotiate rail trail easements or rights-of-way acquisitions along the rail corridor and dedications or easements within future development proposals.

Protected Bikeways

Physically separated from auto traffic by a vertical extruded curb, landscaping, sidewalk and/or curb-side parked cars, protected bikeways provide a safe bike facility that has a proven ability to significantly increase bicycle ridership above 'paint-on-the-street' bike lanes. Protected bikeways are planned along wide arterial streets where existing roadway width will enable their construction to occur without impacting adjacent properties or pedestrian sidewalks or crosswalks. The planned

routes provide safe and protected linkages between link station platforms to existing neighborhoods, employment centers, and new development areas on busy streets where cycling is currently generally unsafe. Protected bikeway lanes should be at least 5' wide. Bidirectional protected bikeways must be a minimum of 10' in width.

Bike Lanes and Bike Boulevards

Corridor bike lanes (on-street striped bicycle facilities) will compliment planned protected bikeways. Bike lanes will only be constructed where protected bikeways are constrained by narrow roadway dimensions. Planned routes are generally consistent with routes currently identified in the City's Master Bicycle Plan. In all instances bike lanes should not be narrower than five feet.

Bike boulevards are envisioned exclusively for quiet, low traffic volume neighborhood streets where average daily auto trips are less than 3,000. On these bike boulevard routes, cyclists will share travel lanes with autos. Roadway painted bike symbols will be used to alert drivers of a shared roadway condition.

Sidewalks and Crosswalks

At a minimum, along major routes connecting to the transit stations, direct and safe sidewalks will be provided. Including:

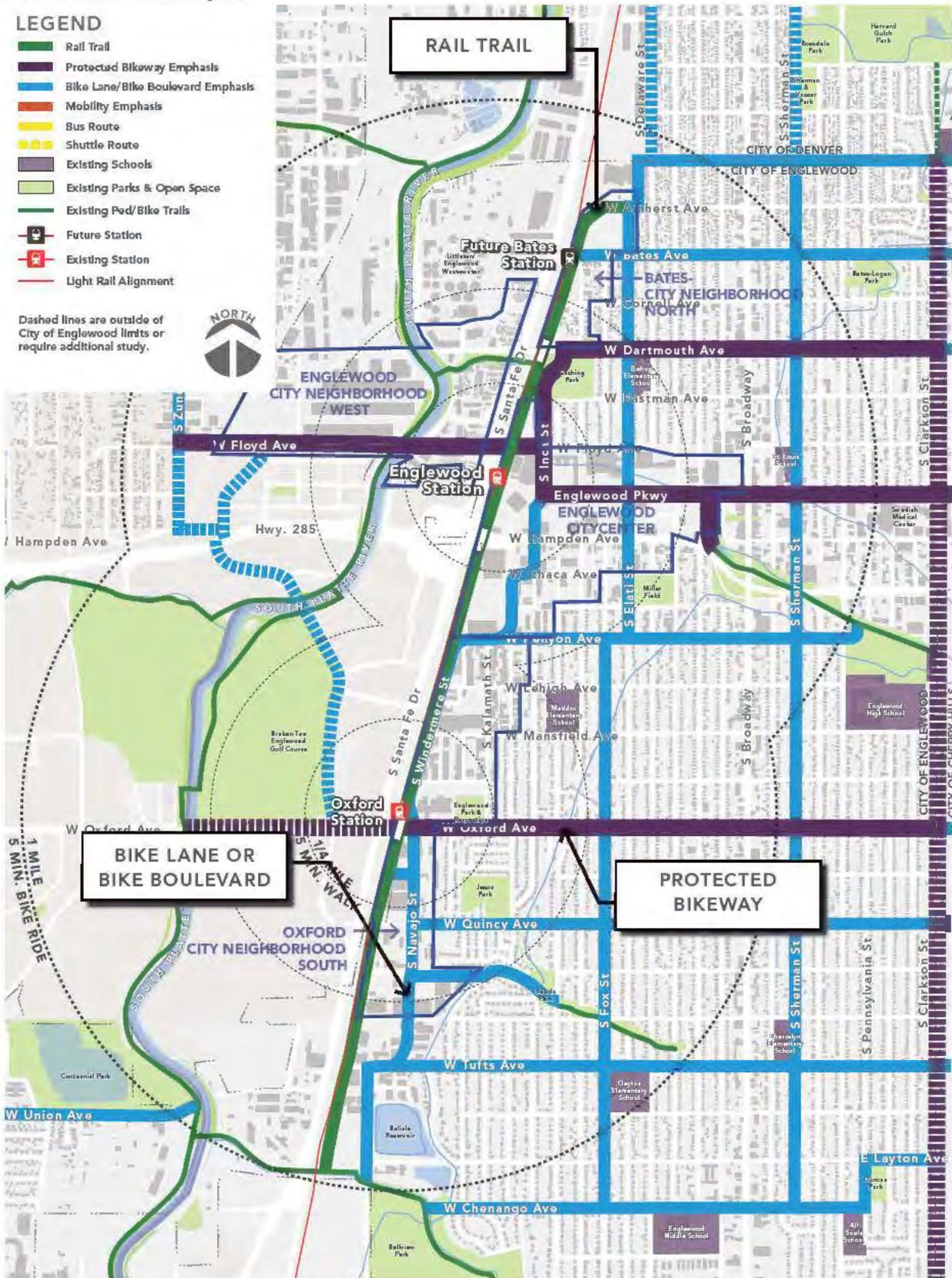
- 8-foot minimum width of sidewalks through residential neighborhoods
- 12-foot minimum width of sidewalks through retail and commercial areas
- Marked crosswalks at all arterial and collector streets
- Adequate street lighting
- Canopy trees and/or weather protecting awnings along commercial and retail buildings
- Benches in retail and commercial areas
- Pedestrian signals at signalized intersections

Pedestrian and Bicycle

LEGEND

-  Rail Trail
-  Protected Bikeway Emphasis
-  Bike Lane/Bike Boulevard Emphasis
-  Mobility Emphasis
-  Bus Route
-  Shuttle Route
-  Existing Schools
-  Existing Parks & Open Space
-  Existing Ped/Bike Trails
-  Future Station
-  Existing Station
-  Light Rail Alignment

Dashed lines are outside of City of Englewood limits or require additional study.



TRANSIT

Feeder bus service provides important LRT station access for those beyond walking or biking distance. Additionally, the bus service provides safe and comfortable transit access during inclement weather and at night.

RTD Bus Service

Line changes have not been proposed for the Englewood LRT Corridor. However, when a Bates Station is added in the future, an additional service or adjustments to current routes could be made to serve the station platform.

The planned extension of Englewood Parkway will require some adjustments to the circulation patterns of buses that serve the Englewood Station. This new mixed traffic roadway connection will create a more vibrant station environment and provide essential access to a planned hotel adjacent to the station. The new roadway will connect the platform to Inca Street through the existing Piazza, continue through the existing busway and connect to Floyd Avenue. To accommodate this improvement, operational changes to the existing exclusive busway will be necessary.

Local Circulator (art Shuttle Bus) Service

The art shuttle bus currently provides a loop service connecting the Englewood Station to the Craig/Swedish Medical Centers. A new, direct route is planned along Englewood parkway/Girard Street and includes a future extension to west of Sante Fe along the planned Floyd extension.

Light Rail Stations

Englewood and Oxford Stations- Existing station platform enhancements include:

- Additional bike parking
- Rail trail pedestrian/bike access improvements
- Improvements to platforms at Englewood Station include:
 - Wind protection at existing canopies
 - Overhead rain and sun protection between the existing canopies and over the existing pedestrian bridge
 - New stairways that provide direct access to Englewood Parkway and future hotel development site

Future Bates Station- As part of the Southwest Corridor Light Rail Plan, RTD has identified a future Bates Station. However, due to high construction costs and operational obstacles combined with a lack of a viable public-private funding strategy, it is not likely to be constructed. Should the City and RTD agree to abandon plans for a Bates Station, the City should pursue negotiations with RTD to reallocate the Bates Station resources to improving pedestrian and bicycle connections to the Englewood and Oxford Stations.

Potential Tufts-Union Station- In looking at the corridor in a comprehensive fashion, an opportunity for an additional station was identified approximately $\frac{3}{4}$ of a mile south of the Oxford Station, near Tufts Avenue. Preliminary assessment of this area indicates that potential TOD may be greater at this location than at the Bates Station. Additional station area planning will be required to assess TOD potential for this area, the impacts on the operations of the transit corridor, possibilities for additional park-n-ride, required improvements to roadways to access the station platform and station area TOD, and an economic assessment and cost estimate of the funding and construction of a potential Tufts-Union Station.

NEW AND ENHANCED STREETS

A street grid establishes appropriately scaled development blocks and disperses vehicle traffic away from existing congested streets.

The purpose of new and enhanced streets is to:

- Improve access to the station
- Provide for smaller block sizes that support convenient and direct pedestrian access to the stations
- Promotes smaller buildings rather than monolithic architecture associated with large block development sites

New Local (Neighborhood) Streets

All new streets will be constructed to public street standards and include:

- On-street parking along all curbs
- Two-way auto travel lanes
- Bicycle facilities where indicated in the pedestrian and bicycle framework
- Pedestrian-scaled streetlights
- Canopy trees
- Landscaped curb extensions
- Sidewalks on both sides of streets at 8-foot minimum
- Pedestrian crosswalks at all arterial and collector street intersections

Enhanced Streets

Enhanced streets provide a continuation of the existing street grid or provide additional pedestrian and bicycle facilities.

Floyd Avenue Extension

- Floyd Avenue will be extended west of Inca Street providing direct access to a major redevelopment area west of Santa Fe Drive, establishing a new east/west parallel route to Dartmouth Avenue and Hampden Avenue

Englewood Parkway

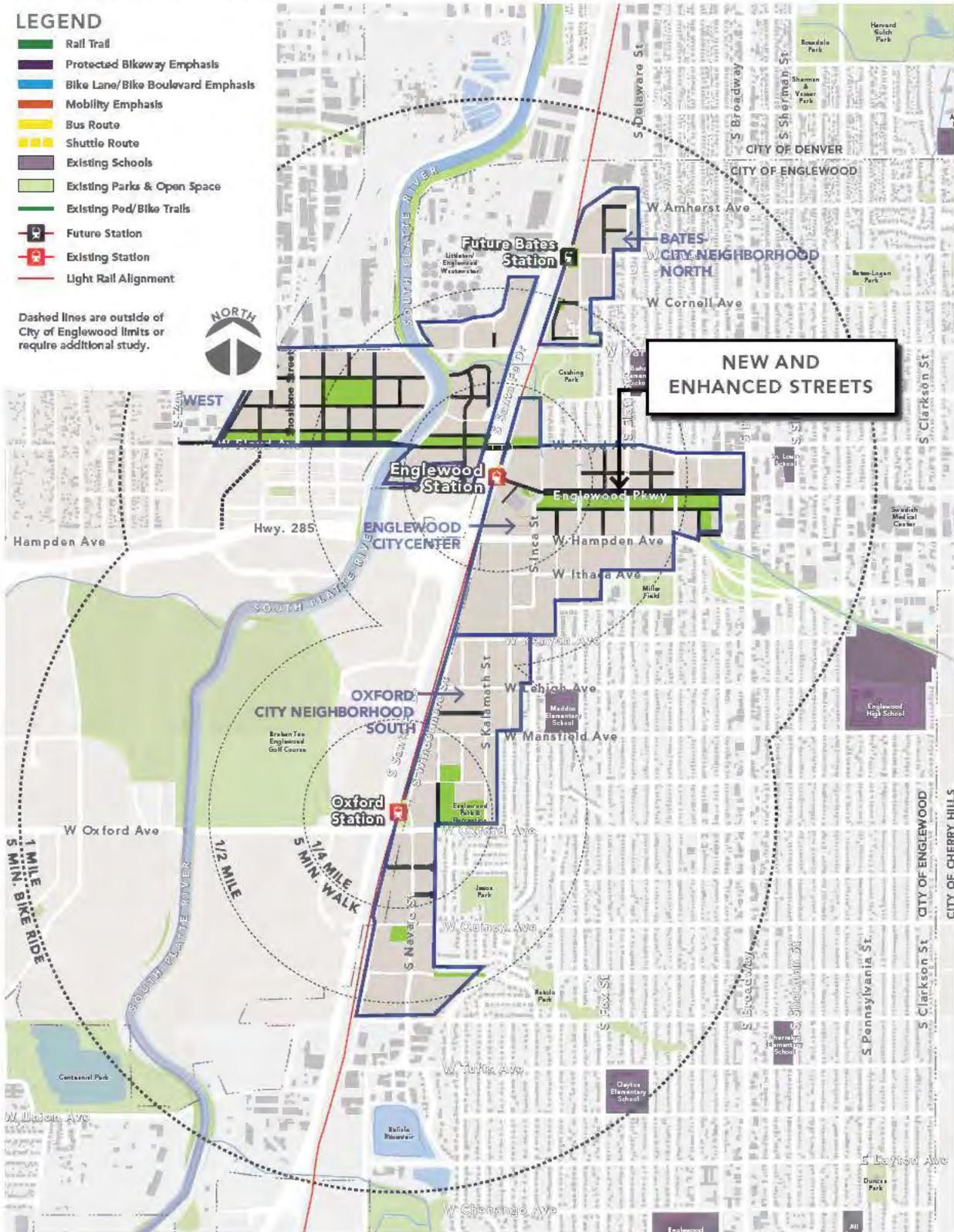
- Englewood Parkway is enhanced with a protected bikeway and sidewalk enhancements that provide improved pedestrian and bicycle access between the CityCenter piazza, Englewood Station and the Broadway commercial corridor

New and Enhanced Streets

LEGEND

- Rail Trail
- Protected Bikeway Emphasis
- Bike Lane/Bike Boulevard Emphasis
- Mobility Emphasis
- Bus Route
- Shuttle Route
- Existing Schools
- Existing Parks & Open Space
- Existing Ped/Bike Trails
- Future Station
- Existing Station
- Light Rail Alignment

Dashed lines are outside of City of Englewood limits or require additional study.



IMPLEMENTATION



OVERVIEW

TOD implementation requires the identification of public actions ('game-changing' projects) that will produce a sustained and widespread private market reaction.

Numerous projects are identified in the Corridor Plan. Not all projects are equal, some are time sensitive, others will require additional study and coordination and some will require substantial financial commitment. The Implementation Strategy identifies a concise list of manageable projects that best address the project objectives and are essential for significant positive change.

The Implementation Strategy identifies the following:

- Public actions required to stimulate private investment
- Private investment stimulated by public actions
- Responsibilities for implementing public projects

A well defined 'road map and 'business case' for implementation includes the following:

- Conceptual cost estimates for public and private projects.
- A schedule identifying projects and timelines for programming, designing, and constructing projects

IMPLEMENTATION PROJECTS

The List below identifies projects for each of the station areas in the corridor.

STATION ACTIVATION

Public Projects

- Englewood Parkway Extension
- Plaza Enhancements
- Station Platform Enhancements

Private Projects

- Retail Storefronts
- Hotel
- Housing Over park-n-Ride
- Housing Over Parking Structure

FLOYD AVENUE EXTENSION

Public Projects

- Acquire Land, Buildings & Demolition
- Design & Construct Roadway Extension, Underpasses, Bridges and Signalization

Private Projects

- New Housing
- New Parks
- New Street Grid

ENGLEWOOD PARKWAY

Public Projects

- Acquire Land, Buildings & Demolition
- Design & Construct Parks
- Design & Construct Local Street

Private Projects

- New Mixed-Use Retail & Housing
- New Mixed-Use Office & Commercial
- New Street Grid

OXFORD PARKS

Public Projects

- Acquire Land, Buildings & Demolition
- Design and Construct Two Parks

Private Projects

- New Housing

NEIGHBORHOOD CONNECTIONS

Public Projects

- Rail Trail & Three Bridges
- Protected Bikeway (Englewood Station to Broadway)

Private Projects

- Easements for Rail Trail and Rail Trail Access

IMPLEMENTATION PROJECTS



STATION ACTIVATION

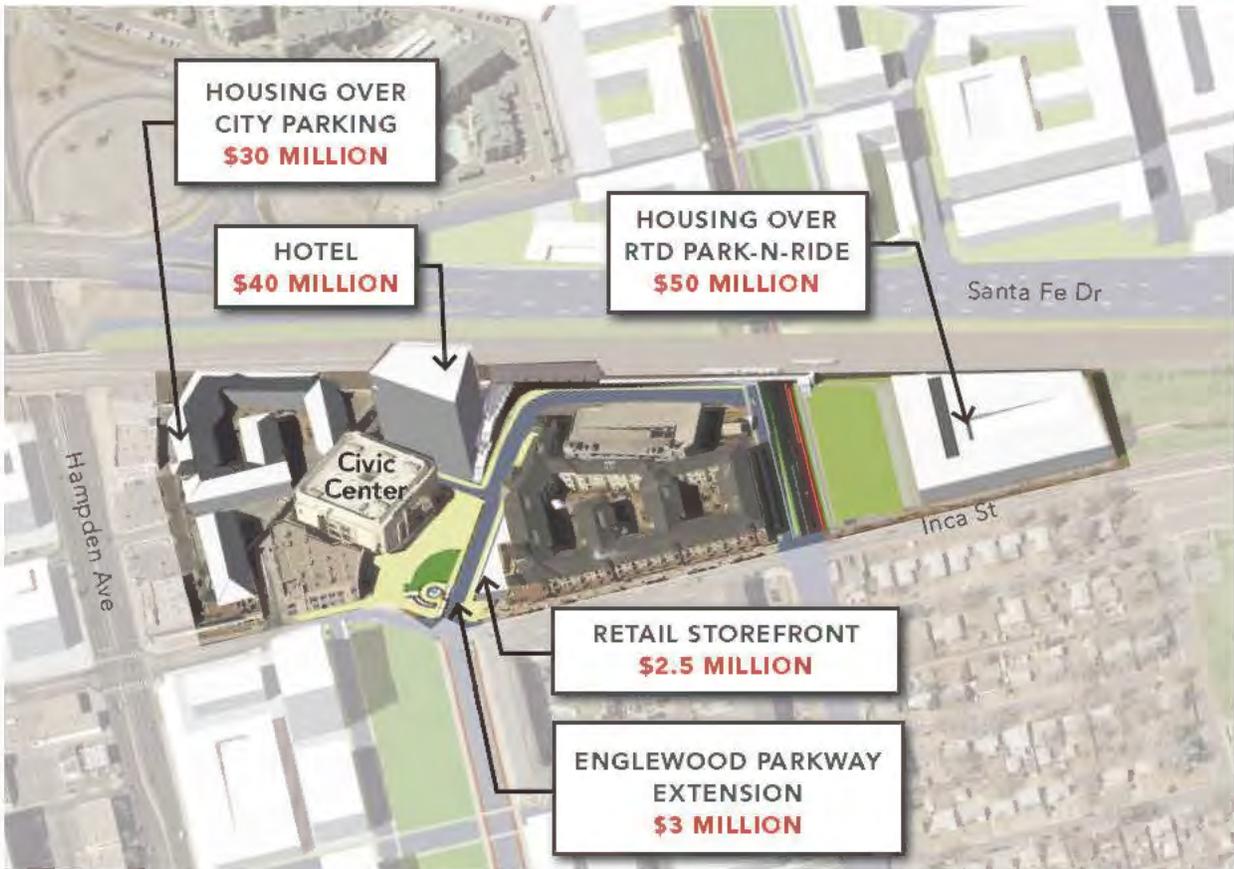
Station activation projects improve access to the station and create a more active station environment.

PUBLIC PROJECTS	
Project	Cost
ENGLEWOOD PARKWAY EXTENSION	
Demolish Existing Roadway/ Reconstruct Piazza	\$ 2,000,000
New Roadway	\$ 1,000,000
PUBLIC INVESTMENT TOTAL: \$ 3,000,000	

PRIVATE PROJECTS		
Project	Units	Cost
Hotel	250 Rooms	\$ 36,500,000
Parking	80 Spaces	\$ 3,500,000
Housing over RTD park-n-Ride	250 DU	\$ 50,000,000
Housing Over Parking	150 DU	\$ 30,000,000
Retail	15,000 SF	\$ 3,750,000
PRIVATE INVESTMENT TOTAL: \$ 123,750,000		

PUBLIC ACTION PLAN	
Required Steps	Who
ENGLEWOOD PARKWAY EXTENSION 1) Prepare Englewood Extension Concept Design 2) Prepare Contract Documents 3) Bid Project 4) Construct Project	City/RTD City/Consultant City/Consultant City/Contractor
HOTEL 1) Prepare Site Development Framework 2) Prepare Developer Offering 3) Review Developer Proposal 4) Prepare Contract Documents 5) Construct Project	City/Consultant City City/Consultant City/Developer City/Developer

STATION ACTIVATION PROJECTS



FLOYD AVENUE EXTENSION

The Floyd Avenue extension projects include extending Floyd Avenue west of Inca Street to leverage investment west of Santa Fe Drive.

PUBLIC PROJECTS	
Project	Cost
FLOYD AVENUE EXTENSION	
BNSF/LRT Bridge	\$ 3,200,000
Santa Fe Drive Bridge	\$ 4,800,000
Underpass Retaining Walls	\$ 9,500,000
Underpass Earthwork	\$ 1,500,000
Shoofly for Structures	\$ 7,000,000
Roadway Extension & Acquisition (Inca to S Platte)	\$ 6,000,000
South Platte Bridge	\$ 6,000,000
Future Floyd Ave (West of S Platte) & Darmouth Ave Upgrade	\$ 10,000,000
Pump Station	\$ 5,000,000
Misc.	\$ 4,500,000
PUBLIC INVESTMENT TOTAL:	\$ 57,500,000

PRIVATE PROJECTS		
Project	Units	Cost
Housing	2,950 DU	\$ 590,000,000
Parking	3,000 SP	\$ 86,000,000
Parks	11 AC	\$ 9,000,000
Retail	30,000 SF	\$ 7,500,000
Office	350,000 SF	\$ 87,500,000
Parking	1,050 SP	\$ 3,500,000
PRIVATE INVESTMENT TOTAL:		\$ 783,500,000

PUBLIC ACTION PLAN	
Required Steps	Who
FLOYD AVENUE EXTENSION 1) Land Acquisition and Demolition 2) Prepare Floyd Extension Concept Design 3) Prepare Contract Documents 4) Bid Project 5) Construct Project	City City/BNSF/RTD/CDOT City/Consultant City/Consultant City/Contractor

FLOYD AVENUE EXTENSION PROJECTS



* Does Not Include Miscellaneous Underpass/Bridges Costs or Pump Station



ENGLEWOOD PARKWAY

The Englewood Parkway projects include linear park blocks from Inca Street to Acoma Street that transform the investment environment along Englewood Parkway and provide a high quality amenity for street oriented retail, housing and professional office development.

PUBLIC PROJECTS	
Project	Cost
ENGLEWOOD PARKWAY	
Land Acquisition and Demo	\$ 41,000,000
Construct Parks	\$ 8,000,000
Construct Local Street	\$ 2,000,000
PUBLIC INVESTMENT TOTAL:	\$ 51,000,000

PRIVATE PROJECTS		
Project	Units	Cost
Mixed-Use Retail & Housing		
Housing	750 DU	\$ 151,000,000
Parking	750 Spaces	\$ 22,500,000
Retail	230,000 SF	\$ 58,000,000
Parking	600 Spaces	\$ 15,500,000
Mixed-Use Office & Commercial		
Office	885,000 SF	\$ 221,000,000
Parking	3540 Spaces	\$ 78,000,000
Commercial	100,000 SF	\$ 20,000,000
PRIVATE INVESTMENT TOTAL:	\$ 566,000,000	

PUBLIC ACTION PLAN	
Required Steps	Who
ENGLEWOOD PARKWAY- 1) Land Acquisition and Demolition 2) Prepare Englewood Parkway Parks and Local Street Concept Design 3) Prepare Contract Documents 4) Bid Project 5) Construct Project	City City/Consultant City/Consultant City/Contractor

ENGLEWOOD PARKWAY PROJECTS



OXFORD PARKS

The Parks Projects provides a green space amenity required for market rate, high density housing.

PUBLIC PROJECTS	
Project	Cost
PARK 1	
Land Acquisition & Demolition	\$ 2,500,000
Construct Park	\$ 1,000,000
PARK 2	
Land Acquisition	\$ 500,000
Construct Park	\$ 1,000,000
PUBLIC INVESTMENT TOTAL:	\$ 5,000,000

PRIVATE PROJECTS		
Project	Units	Cost
Housing	3,450 DU	\$ 690,500,000
Parking	3,450 SP	\$ 95,000,000
Retail	10,000 SF	\$ 2,500,000
PRIVATE INVESTMENT TOTAL:		\$ 788,000,000

PUBLIC ACTION PLAN	
Required Steps	Who
PARK 1	
1) Land Acquisition and Demolition	City
2) Prepare Park Concept Design	City/Consultant
3) Prepare Contract Documents	City/Consultant
4) Bid Project	City/Consultant
5) Construct Project	City/Contractor
PARK 2	
1) Land Acquisition and Demolition	City
2) Prepare Park Concept Design	City/Consultant
3) Prepare Contract Documents	City/Consultant
4) Bid Project	City/Consultant
5) Construct Project	City/Contractor

OXFORD PARKS PROJECTS

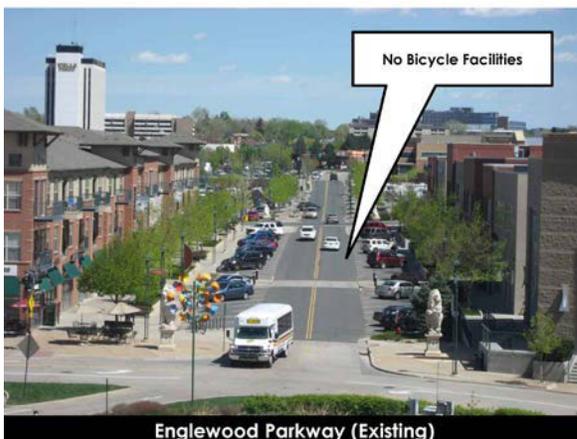


NEIGHBORHOOD CONNECTIONS

Connections provide safe and direct pedestrian and bike access between existing neighborhoods, new development and station platforms.

PUBLIC PROJECTS	
Project	Cost
RAIL TRAIL	
Trail	\$ 1,500,000
Bridges	\$ 3,500,000
ENGLEWOOD PARKWAY ENHANCEMENTS	
Protected Bikeway & Streetscape	\$ 1,750,000
PUBLIC INVESTMENT TOTAL:	\$ 6,250,000

PUBLIC ACTION PLAN	
Required Steps	Who
RAIL TRAIL and BRIDGES 1) Negotiate Easement with RTD and BNSF 2) Prepare Rail Trail Concept Design 3) Prepare Contract Documents 4) Bid Project 5) Construct Project	City/RTD/BNSF City/Consultant City/Consultant City/Consultant City/Contractor
ENGLEWOOD PARKWAY ENHANCEMENTS 2) Prepare Bikeway and Streetscape Concept Design 3) Prepare Contract Documents 4) Bid Project 5) Construct Project	City/Consultant City/Consultant City/Developer City/Developer



NEIGHBORHOOD CONNECTIONS PROJECTS



SCHEDULE

The schedule calls for action on all projects within the first six years to ensure that plan momentum is established

PROJECTS	TIMELINE					
	YEAR 1-2	YEAR 3-5	YEAR 6-8	YEAR 9-12	YEAR 13-16	YEAR 17-20
ALL STATIONS						
REGULATORY UPDATES	Codes & Guidelines					
NEIGHBORHOOD CONNECTIONS (Rail Trail & Protected Bikeways)	Program	Design & Construct				
OXFORD STATION						
OXFORD PARK-N-RIDE	Program	Design & Construct				
OXFORD PARKS		Program	Design & Construct			
ENGLEWOOD STATION						
FLOYD AVENUE EXTENSION (West Neighborhood Development)		Program	Design	Construct		
STATION ACTIVATION (Housing Over Park-N-Ride)		Program	Design & Construct			
STATION ACTIVATION (Englewood Pkwy Extension)		Program	Design	Construct		
ENGLEWOOD PARKWAY (East of Elati Street)			Program	Design	Construct	
ENGLEWOOD PARKWAY (West of Elati Street)				Program	Design	Construct



CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION

**IN THE MATTER OF CASE #2012-06,)
FINDINGS OF FACT, CONCLUSIONS)
AND RECOMMENDATIONS RELATING) FINDINGS OF FACT AND
TO THE ENGLEWOOD LIGHT RAIL) CONCLUSIONS OF THE
CORRIDOR PLAN) CITY PLANNING AND
) ZONING COMMISSION
)
)
)
)
)
)
**INITIATED BY:)
Community Development Department)
1000 Englewood Parkway)
Englewood, CO 80110)****

Commission Members Present: Bleile, Brick, King, Knoth, Roth, Fish, Welker, Townley, Kinton

Commission Members Absent: None

This matter was heard before the City Planning and Zoning Commission on July 16, 2013 in the City Council Chambers of the Englewood Civic Center.

Testimony was received from staff and the public. The Commission received notice of Public Hearing, the Staff Report, and a copy of the proposed Light Rail Corridor Plan which were incorporated into and made a part of the record of the Public Hearing.

After considering the statements of the witnesses and reviewing the pertinent documents, the members of the City Planning and Zoning Commission made the following Findings and Conclusions.

FINDINGS OF FACT

1. **THAT** the Public Hearing on Case #2012-06, Englewood Light Rail Corridor Plan, was brought before the Planning and Zoning Commission by the City of Englewood Community Development Department.
2. **THAT** notice of the Public Hearing was published on the City of Englewood website from June 26, 2013 through July 16, 2013. The notice was also published in the *Englewood Herald* on July 5, 2013.
3. **THAT** stakeholders and members of the general public who attended plan development meetings were notified of the Public Hearing directly by email.

4. **THAT** City Council entered into an Intergovernmental Agreement with the Regional Transportation District to develop a light rail station area master plan in February of 2012.
5. **THAT** project kickoff notices were mailed to 5,867 residences and businesses within approximately three quarters of a mile from the existing Englewood and Oxford Stations and the potential Bates Station.
6. **THAT** four sets of meetings were held by project consultant Crandall Arambula with the purpose of crafting a preferred land use and transportation network scenario for the Englewood light rail corridor.
7. **THAT** the Englewood Light Rail Corridor Plan conforms to the vision, goals, and objectives outlined in Roadmap Englewood: The 2003 Englewood Comprehensive Plan.
8. **THAT** Planning and Zoning Commission and City Council study sessions were held to review the development and final draft of the Englewood Light Rail Corridor Plan.

CONCLUSIONS

1. **THAT** the Public Hearing on Case #2012-06, Englewood Light Rail Corridor Plan, was brought before the Planning and Zoning Commission by the City of Englewood Community Development Department
2. **THAT** notice of the Public Hearing was published on the City of Englewood website from June 26, 2013 through July 16, 2013. The notice was also published in the *Englewood Herald* on July 5, 2013.
3. **THAT** the Plan supports taking advantage of opportunities for growth along the Englewood industrial corridor through a strong urban mix of land uses.
4. **THAT** the Plan recognizes the value of park land through the identification of the Englewood Parkway/Floyd Avenue park block scheme and the Oxford Station parks.
5. **THAT** the Plan promotes transportation through the development of key mobility infrastructure projects.
6. **THAT** the Plan will lead to the cleanup of Brownfield properties and create and enhance community connections.
7. **THAT** the Englewood Light Rail Corridor Plan conforms to Roadmap Englewood: 2003 Englewood Comprehensive Plan, specifically:

- Regional Cooperation Goal 3,
 - Housing Goal 3
 - Business and Employment Goal 5
 - Parks and Open Space Goals 5 and 6
 - Transportation Goals 1, 3 and 4
 - Environmental Quality Goals 5 and 7
8. **THAT** the Englewood Light Rail Corridor Plan be adopted as a supplementary planning document in support of Roadmap Englewood: The 2003 Englewood Comprehensive Plan.
9. **THAT** the Englewood Light Rail Corridor Plan be forwarded to City Council with a favorable recommendation.

DECISION

THEREFORE, it is the decision of the City Planning and Zoning Commission that Case #2012-06 Englewood Light Rail Corridor Plan be referred to City Council with a favorable recommendation.

The decision was reached upon a vote on a motion made at the meeting of the City Planning and Zoning Commission on July 16, 2013, by Mr. Roth, seconded by Mr. Knoth, which motion states:

*THAT CASE #2012-06, THE ENGLEWOOD LIGHT RAIL
CORRIDOR PLAN BE FORWARDED TO CITY COUNCIL WITH A
FAVORABLE RECOMMENDATION*

AYES: Bleile, Roth, King, Fish, Brick, Knoth, Welker, Townley, Kinton
 NAYS: None
 ABSTAIN: None
 ABSENT: None

Motion carried.

These Findings and Conclusions are effective as of the meeting on July 16, 2013.

BY ORDER OF THE CITY PLANNING & ZONING COMMISSION

John Brick, Chair

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION
REGULAR MEETING
July 16, 2013**

Minutes and audio are available at:
<http://www.englewoodgov.org/Index.aspx?page=152>



I. CALL TO ORDER

The regular meeting of the City Planning and Zoning Commission was called to order at 7:00 p.m. in City Council Chambers of the Englewood Civic Center, Chair Brick presiding.

Present: Bleile, Roth, King, Welker, Knoth, Fish, Brick, Kinton, Townley
Freemire (alternate)

Absent: None

Staff: Alan White, Community Development Director
Chris Neubecker, Senior Planner
John Voboril, Planner II



II. APPROVAL OF MINUTES

July 2, 2013

Mr. Fish moved:

Mr. Kinton seconded: TO APPROVE THE July 2, 2013 MINUTES

Chair Brick asked if there were any modifications or corrections.

Mr. Fish noted that on pages 2, 3, and 4 the name "Calonder" should be "Townley."
The Minutes were approved as amended.

AYES: Bleile, Roth, Welker, Knoth, Fish, King, Brick, Kinton, Townley

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.



III. APPROVAL OF FINDINGS OF FACT

Case #2012-05
Distilleries, Breweries and Wineries

Mr. Roth moved:

Mr. King seconded: TO APPROVE THE FINDINGS OF FACT FOR CASE #2012-05, DISTILLERIES, BREWERIES AND WINERIES

Chair Brick asked if there were any modifications or corrections. There were none.

AYES: Bleile, Roth, Welker, Knoth, Fish, King, Brick, Kinton, Townley
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.



IV. PUBLIC HEARING

Case #2012-06
Englewood Light Rail Corridor Plan

Mr. Bleile moved:

Mr. Kinton seconded: TO OPEN THE PUBLIC HEARING FOR CASE #2012-06, ENGLEWOOD LIGHT RAIL CORRIDOR PLAN

AYES: Bleile, Roth, Welker, Knoth, Fish, King, Brick, Kinton, Townley
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.

John Voboril, Long Range Planner II, was sworn in. Mr. Voboril stated proof of publication from the *Englewood Herald* and the City's website had been received. Suggested findings were presented to the Commission.

A brief discussion on the background was provided.

- The Light Rail Corridor Plan (Plan) was funded by a grant from the Denver Regional Council of Governments (DRCOG). The light rail system represents a major capital investment for both the federal government and DRCOG. DRCOG established policy to encourage station area intensification including increased employment and housing in order to increase light rail system ridership, decrease highway congestion, and improve air quality.
- The opening of the Southwest Light Rail Line spurred redevelopment along the Corridor, and currently a second phase of redevelopment is occurring.
- The City recognized other uses for the grant, including pedestrian crossings, bicycle connections, and parking which are currently deficient.
- Public participation was accomplished by mailing notices to 5,867 residences and businesses within .75 miles of all three stations. From that mailing, there were 50 stakeholders, who are people who own property within the planning areas for the Plan. In addition, there were 96 participants who were not in the planning areas that participated in general meetings.
- Four public meetings were held to develop the vision and goals; develop and review land use scenarios; refine and review the preferred combined scenario; and to review the Plan.



Mr. Voboril provided a brief synopsis of the proposed major projects for each station area.

Englewood Station: The Plan calls for extending Floyd Avenue; intensifying projects adjacent to the station; and redevelopment and intensification along Englewood Parkway.

Oxford Station: Identified projects include Park-n-Ride sites; housing redevelopment; and two new parks.

Bates Station: The Plan acknowledges the station may never be developed. The Plan does recommend obtaining an easement for a potential, future station. Land uses envisioned are multi-unit residential.

Circulation projects identified include the rail trail (the top project); protected bikeways; and extension and improvements of the Southwest Greenbelt Trail.



The Light Rail Plan is in conformance with the goals and objectives of the Comprehensive Plan, particularly:

- Regional Cooperation Goal 3
- Housing Goal 3
- Business and Employment Goal 5
- Parks and Open Space Goals 5 and 6
- Transportation Goals 1, 3 and 4
- Environmental Quality Goals 5 and 7

The Plan supports these goals by calling for taking advantage of opportunities for growth along the Englewood industrial corridor through a strong urban mix of land uses. Further, the Plan recognizes the value of park land through the identification of the Englewood Parkway/Floyd Avenue park block scheme and the Oxford Station parks. The Plan promotes the transportation goals through the development of key mobility infrastructure projects. Realization of the development called for in the Plan will shift significant amounts of daily trips from cars to mass transit and pedestrian/bicycle modes. Additionally, it will lead to the cleanup of Brownfield properties and create and enhance community connections.



Mr. Voboril responded to questions from the Commission. The areas included in the Plan are zoned either industrial or Planned Unit Development (PUD). Existing single family developments are a non-conforming use within the industrial district. Meetings with the major employers in the plan area are still in the works. The benefit of the Plan for citizens is better access to the stations; increased property values; and more business.

The Plan is a visionary plan for 30 years, and is a very fluid document. The planning process is just beginning. Future steps include applying for additional funding from DRCOG to conduct a Next Steps Study; considering the feasibility of some of the projects; conducting regulatory planning and reforms.



Chair Brick set forth the parameters of public testimony.

Michael Sroczyński, 3755 South Jason Street, was sworn in. Mr. Sroczyński testified that he is an Englewood business owner and is concerned about the cost of implementing the Plan. He expressed unease over mixing residential with industrial, and fears that industrial businesses will be eliminated. Mr. Sroczyński enumerated various items within the Plan that he believes will never happen.

Zealand Peterson, business owner of 3975 South Lipan Street, was sworn in. Mr. Peterson expressed concern about the proposed changes which will eliminate a large area of industrial work and whether eminent domain would be utilized.



Dave Campbell, business owner of 3778 South Kalamath Street, was sworn in. Mr. Campbell believes the industrial businesses are being placed in a corner and is concerned about the future of his businesses if the Plan is approved.

Christopher Diedrich, property owner of 2946 South Bannock Street, was sworn in. Mr. Diedrich testified regarding the items within the Plan that he supports and opposition to other parts of the Plan. The younger generation desires living close to grocery stores, eateries, walking or biking to/from work and good paying jobs.

James Veno, property owner of 3297 and 3325 South Santa Fe, was sworn in. Mr. Veno testified he is attempting to redevelop his properties, and access is always the issue. Mr. Veno stated a project timeline would be extremely beneficial; it would assist business owners in planning their business' future.



Jennifer Henninger of the City of Sheridan Planning Department was sworn in. Ms. Henninger thanked the City for including the City of Sheridan in the process. The process was very thorough and Sheridan is in support of the proposed connections.

John Spedding business owner at 3330 South Platte River Drive was sworn in. Mr. Spedding testified he favors the Plan; the Platte River is a good place to redevelop. He expressed interest in whether the City would provide relocation assistance to businesses affected by the Plan.

Jonathan Bush, owner of the former Martin Plastic building, was sworn in. Mr. Bush endorsed the Plan. He applauded the efforts of the City in planning for its future. He further testified that communities that thrive have mixed uses.



Alan White, Director of Community Development, was sworn in. Mr. White provided the following testimony:

- The Plan sets the stage for the City's long-term future. The Plan will be revisited as conditions change.
- The Plan provides ideas for capital improvements and setting the foundation for future zoning changes. This Plan does not rezone property; that will be a separate process which will involve the Commission and the public.
- It is not the City's intent to force out any businesses.

- Under industrial zoning, residential uses are not permitted. A Planned Unit Development (PUD) rezoning is the only current avenue in which to permit residential in an industrial district. The process is lengthy and costly.
- *“Redevelopment of existing or privately held commercial properties will primarily occur through private transactions between willing buyers and sellers.” “Further, it is the policy of the Englewood City Council to not use eminent domain powers for the purpose of redevelopment within the Light Rail Corridor.”* Whenever a business wishes to relocate or sell, the transaction will be between the willing buyer and seller – not the City.
- The controversy around the West Corridor Line was due to RTD acquiring right-of-way for the rail line, parking, and platforms. City of Englewood already has those right-of-ways; further the line and stations are already built.
- Any existing business or use would be permitted under any new zoning regulations. New standards would apply to new development.
- The public notification process for the Plan included mailing out over 5,000 postcards. From that mailing, a distribution list was developed for those registered to receive continuing communication. Updates were provided on the City’s website, which linked to an outside project website. Also, an article was in the *Englewood Citizen*. Regarding the public hearing, emails or letters were sent to those registered; the meeting was also posted in the *Englewood Herald* and on the City’s website.
- If the Plan is adopted by City Council, the foundation is in place to implement zoning changes with public input. It also provides direction on future capital improvement projects and direction to future developers. All meetings are open to the public.



Mr. Fish moved:

Mr. Bleile seconded:

TO CLOSE THE PUBLIC HEARING FOR CASE #2012-06,
ENGLEWOOD LIGHT RAIL CORRIDOR PLAN

AYES: Bleile, Roth, Welker, Knoth, Fish, King, Brick, Kinton, Townley
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.

Mr. Roth moved;

Mr. Knoth seconded:

THAT CASE #2012-06, THE ENGLEWOOD LIGHT RAIL
PLAN BE FORWARDED TO CITY COUNCIL WITH A
FAVORABLE RECOMMENDATION

Discussion points included:

- The Plan is a building block and a method of moving forward.
- The City must balance not alienating existing businesses and planning for the City's future.
- Accessibility to the stations, businesses, and parks needs to be universal
- The Comprehensive Plan will be updated over the next couple of years, which may or may not incorporate all the ideas of the Light Rail Corridor Plan.
- The goal is to make a viable, healthy community that embraces change through a long-term visionary plan.
- The Plan does not address buffering between existing businesses and new development. There is no discussion on the impacts to residential areas caused by overly tall development. The employment and development standards limit the height to 8 stories; Mr. Roth stated he believes that limitation should also be placed on residential, retail and commercial development standards.
- Mr. Roth put forth a statement he wished to have included in the Plan.

Mr. Roth offered a friendly amendment; Mr. Knoth did not accept.

Mr. Roth moved:

Mr. Brick seconded:

TO AMEND THE MOTION TO INCLUDE:

1. Extending the height standards for up to eight story structures to the residential, retail, and commercial development standards in addition to the current employment development standards.
2. Adding the following statement to the Plan: *"There are numerous homes in Englewood situated on the hillside along the upper eastern bank area of the South Platte River. These properties have historically enjoyed panoramic views of the mountains to the west and many of these homes were constructed to take advantage of those views. A significant portion of their property value derives from those views. Development in these areas has the potential to create a wall blocking those views. This is due to the*

proposed proximity of the areas in the Plan as well as the fact that the rail line runs along the western border of the City. Height restrictions on development in these areas are needed to protect those views."

There was no discussion. Chair Brick called for the vote on the Amendment.

Mr. Fish voted no; the character and nature of the Plan is visionary. Details will be discussed in the future.

Mr. Knoth voted no; concurring with Mr. Fish.

Mr. Welker voted no; it is not the appropriate time to include details. Details will be discussed during zoning changes.

Mr. Kinton voted no; concurring with Messrs. Fish and Welker.

Mr. Roth voted yes. It is an important part of the vision.

Ms. Townley voted no; preserving the view sheds for the residence in that area is important, but she is not comfortable determining that height limit at this time. It needs to be studied further.

Mr. Bleile voted yes; protection of view sheds is an important part of a vision statement.

Mr. King voted no; the views should be protected and believes it is already accomplished within the current Plan. The matter will be addressed at a later time.

Chair Brick voted yes; it is good to set the standard early.

AYES: Bleile, Brick Roth
NAYS: Welker, Knoth, Fish, King, Kinton, Townley
ABSTAIN: None
ABSENT: None

Motion failed.



Discussion on the original motion continued:

- The underlying tenets of the Plan are well constructed.
- Concern was expressed on the Plan not including single family residential.
- It is important to nurture the industrial district; it could be a larger job creator.

- As a visionary document, the Plan is a starting point which will be implemented incrementally. It is an opportunity to start a dialogue with business owners.
- The Plan is only a cornerstone of a lengthy process, but it provides a starting point.
- Currently redevelopment can occur around the stations through assembling land and creating a PUD.



With no further discussion Chair Brick called for the vote on the original motion.

Mr. Fish voted yes; the Plan is in conformance with the Englewood Comprehensive Plan. The Plan extends and provides more detail in a number of areas. The Commission has no power to protect any business; it only provides recommendations to City Council.

Mr. Knoth, Mr. Welker, Mr. Kinton, Mr. Roth, Ms. Townley, Mr. Bleile, and Mr. King voted yes.

Chair Brick voted yes; the Plan enumerates various items within the Englewood Comprehensive Plan.

AYES: Bleile, Roth, Welker, Knoth, Fish, King, Brick, Kinton, Townley
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.



V. STUDY SESSION

Case #2013-04
Home Occupations

It was the consensus of the Commission to reschedule the Study Session to August 6, 2013.

VI. PUBLIC FORUM

There was no public who wished to address the Commission.

VII. ATTORNEY'S CHOICE

Ms. Reid was not present.



VIII. STAFF'S CHOICE

The Home Occupation Study Session will be held on August 6, per the Commission's request. Chair Brick stated there may be a desire to discuss Ms. Reid's memo on PUD precedence at that meeting as well.



IX. COMMISSIONER'S CHOICE

Mr. Bleile encouraged the public to participate, enter into a dialogue with the City, and attend meetings. He thanked the audience for attending and providing testimony. The other Commissioners echoed the same comments.

Mr. Freemire suggested Ms. Reid provide a legal opinion regarding protected views and eminent domain based on Colorado case law.

Ms. Townley stated there will be another opportunity to provide testimony when the Plan proceeds to City Council.

Chair Brick thanked the Commissioners and staff for their productivity and efficiency.

Mr. Roth conveyed that the Urban Renewal Authority is currently reviewing development proposals for the Acoma parcel.

The meeting adjourned at 9:30 p.m.

Nancy G. Fenton, Recording Secretary

Planning and Zoning Commission
Study Session or Public Hearing
Case #2012-06
Case #2013-04
July 16, 2013

Subject: FW: City Council

From: Don Roth [mailto:[mailto:](#)]
Sent: Tuesday, August 13, 2013 3:33 PM
To: Council
Subject: City Council

I am writing you concerning your public hearing on the Light Rail Corridor Plan.

I noted that the 3 station areas overlap each other creating in effect a single area running from Yale Ave. to Quincy Ave., much of it along the western border of the City. With the intense development that the plan envisions, tall development could result in a wall of buildings blocking the panoramic mountain views enjoyed by many Englewood residences. By keeping heights below some level would certainly change the foreground but not block those panoramic views. Since page 35 of the Plan showed an 8 story height for Office Development, I proposed an amendment to the Light Rail Corridor Plan at the July 16, 2013 PNZ meeting that would set height limits to 8 stories on all 3 types of development shown on pages 34 and 35 of the plan. After discussion the Commission rejected the amendment by a vote of 6 to 3. After further consideration of the discussion that night I would like to propose modified amendments to that plan, that I hope you would adopt.

Remove the 8 story height limit for Office Development Standards on page 35. The current MU-B1 zoning allows buildings up to 100ft tall, and there are already two office buildings taller than 8 stories. Since both elevation and distance play into the visual effect of tall development, height studies could be done to provide for informed decisions about appropriate heights.

The recent development proposals are all less than 8 stories but who knows what the future will bring. If adopted this plan could be used for as many as 30 years, so I believe that that it is very important that the users of the plan be required to consider how the impact of tall development reaches beyond the actual station areas. I propose the following statement to be included in the plan:

There are numerous homes in Englewood situated on the hillside along the eastern upper bank area of the South Platte River. These properties have historically enjoyed panoramic views of the mountains to the west and many of the homes were constructed to take advantage of those views. A significant portion of their property value derives from those views.

Due to the close proximity of the station areas in this plan, as well as the fact that the rail line runs along the western border of the City, development in those areas has the potential to create a wall blocking those views. Height restrictions on development in these areas are needed to protect those views.

-
I hope you will agree that this plan, although quite optimistic in places, provides a number of worthy goals for even the near the future.

Thanks

Don Roth

COUNCIL COMMUNICATION

Date August 19, 2013	Agenda Item 11 a i	Subject: Redemption and Sale of Property acquired through the Housing Rehabilitation Fund
INITIATED BY: Community Development Dept.		STAFF SOURCE: Harold Stitt, Senior Planner Janet Grimmett, Housing Finance Specialist

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council passed Ordinance No. 23, Series 1999 accepting assignment from the Englewood Housing Authority of all rights, assets and liabilities associated with the Housing Rehabilitation Loan Program and also passed Ordinance No. 26, Series, 1999 amending Title 4, Chapter 3, by the addition of a new Section 13 entitled "Housing Rehabilitation Fund".

In 2005, 2006, 2007 and 2013, Council passed seven different ordinances approving redemption and sale of seven other properties acquired through the foreclosure process.

RECOMMENDED ACTION

Approve an ordinance for the redemption and subsequent sale of 3685 South Fox Street (a single family home) acquired through the foreclosure process as defined by Colorado State statutes.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Housing Rehabilitation Program was created in 1976 by the City of Englewood to preserve the existing housing stock in Englewood, and to also address the problems that homeowners experience with the financing of major household improvements. The City Attorney required that the new Housing Rehab Program not be administered directly by the City to avoid any conflicts with a State statute that prohibited any municipal government from making loans to its citizens. It was decided to use the Englewood Housing Authority (EHA) as the conduit to manage and operate the Program.

The legal authority to operate and manage the Rehab Program was assigned to the City in 1999 through an agreement with the EHA. It was determined at that time that the Program and city staff should be under the direct management of the Community Development Director. In order to avoid any conflict with Colorado State Statutes, an enterprise fund was created under TABOR regulations known as the Housing Rehabilitation Fund (Fund). The Rehab Program retained its own funding sources designated as Fund 45 and Fund 46 that are used to support the operations of the Program.

One of the functions of the Fund is to redeem properties that have gone through the foreclosure process. The Housing Rehabilitation Loan Program approves home improvement loans that are secured by deeds of trust, generally as second or third mortgages (junior liens). The procedures of the Program require staff to have all foreclosures reviewed by the Rehab Loan Committee (RLC).

The foreclosure process is the primarily tool for lenders to use to insure repayment of their loans. When a homeowner defaults, the lien holder is able to initiate the foreclosure process to collect the monies that are owed to them. This process is started by filing the required legal documents with the Public Trustee's Office. This filing triggers a whole sequence of events that is dictated by state statues. The Public Trustee will set a Public Sale date for the property and publish this information in a newspaper of general circulation. Each recorded lien holder receives a copy of that advertisement as well as a Public Trustee's Notice of Rights to Cure or Redeem. The homeowner can cure the default any time from the initial notification prior to the Public Sale date. If the homeowner redeems the property, then the foreclosure process is ended and there is nothing the junior lien holder is required to do. All liens remain in full effect. If the homeowner does not redeem prior to the Public Sale date, all junior lien holders must file a Notice of Lienor Intention to Redeem and Affidavit of Amount Owed (Intent) within 8 business days after the Public Sale date if they are interested in redeeming the property to collect their own indebtedness. If the Intention to Redeem is not filed, then the lien holder loses their rights under the deed of trust provisions and the property is no longer collateral for their loan.

The initial foreclosure notification for 3685 South Fox Street was received in April 2013. The Public Trustee's Sale was set for June 12, 2013, but was continued until June 26, 2013. The property was sold to Colorado Housing and Finance Authority, the first mortgagee who had initiated the foreclosure. The RLC was consulted via email on July 2, 2013 and they voted to file the Intent with the Public Trustee's Office. The Intent was filed on July 8, 2013. As the only junior lien holder to file the Intent, the City of Englewood was notified on July 17 of the redemption amount to be submitted no later than noon on July 24, 2013. A wire transfer from the Housing Rehabilitation Fund 46 was sent on July 23, 2013 to the Public Trustee's Office. An email requesting that a Public Trustee's deed be issued in the name of the City of Englewood-Housing Rehabilitation Fund was sent on July 29 2013. A Public Trustee's Confirmation Deed was electronically filed and was recorded on July 30, 2013 at Reception #D3095828.

Given the very short time frame of the junior lien holder's redemption period, properties redeemed through the Housing Rehab Program are always brought to the Council after the fact for ordinance approval. Section 72 of the Home Rule Charter requires that real property may be sold, but only by ordinance, not using the emergency provision. Each property is brought before Council as early in the process as possible so that marketing efforts can begin. This process will expedite the subsequent sale and closing of the property.

The property will be listed for sale as soon as a staff inspection has been completed and any necessary repairs have been made. The property will be sold to a private owner-occupied party who has secured their own permanent financing. The proceeds from the sale of the property will be returned to the Housing Rehabilitation Fund 46. If an offer to purchase the property is received from any City of Englewood employee, their family members, or any business in which a City employee has a financial interest, then staff will submit the offer to the City Council for approval.

FINANCIAL IMPACT

Fund 46 will cover all costs of the redemption and the subsequent sale of 3685 South Fox Street. There are no other financial impacts to the City.

LIST OF ATTACHMENTS

Notice of Lienor Intention to Redeem and Affidavit of Amount Owed
Public Trustee's Confirmation Deed in name of City of Englewood-Housing Rehabilitation Fund
Bill for an Ordinance

NOTICE OF INTENT TO REDEEM AND AFFIDAVIT OF AMOUNT OWED

TO THE PUBLIC TRUSTEE OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO

Information Regarding Public Trustee's Foreclosure Sale:

0305-2013 Public Trustee Sale Number
June 26, 2013 Date of Sale
November 21, 2005 Date of Deed of Trust
Kathleen S. Pontius Grantor on Deed of Trust
Colorado Housing & Finance Authority Original Beneficiary of Deed of Trust
B5177069 Reference Nos. of Recorded Deed of Trust

Reception No. and/or Page & Book No.
February 14, 2013 Recording Date of Notice of Election and Demand
D3019498 Reference No of Recorded Notice of Election and Demand
Reception No. and/or Page & Book No.

Information Regarding Right to Redeem:

City of Englewood-Housing Rehabilitation Fund Name of Redeeming Junior Lienor
1000 Englewood Pkwy Address of Redeeming Junior Lienor
Englewood, CO 80110
303.762.2349 Phone
____ Email address
Deed of Trust Lien or Encumbrance Entitling the Redemption*
November 21, 2011 Recording Date of Junior Lien
Arapahoe County of Recording of Junior Lien
D1114962 Reference Nos. of Recorded Junior Lien

*If this is an HOA lien, the following is also required:

- If lien is recorded after the NED, a complete recorded copy of the HOA Declarations
- Notarized affidavit from the HOA officer or attorney stating amounts due on lien, super lien versus junior lien (Cannot redeem on super lien)

You are hereby notified that the undersigned is entitled to redeem from the Public Trustee's Sale described above. Be further advised that the undersigned is entitled to redeem as the owner of the lien or encumbrance described above.

You are further notified that the amount owed on the lien or encumbrance, evidenced by the attached instrument, is as follows:

\$13,026.78 Principal
\$ 1,563.21 Total of per diem interest from 02-11-11 through the date of this statement
\$14,589.99 TOTAL
\$ 1.81 Per Diem interest @ 5.0 % per annum

I certify that the above amounts are true and correct to the best of my knowledge.

City of Englewood-Housing Rehabilitation Fund (Junior Lienor)

July 5, 2013
DATE

by: Alan White, Director

The foregoing Statement of Amount Required to Redeem Lienor's Lien was acknowledged before me this 5th day of July, 2013, by Alan White, Director, City of Englewood.

Witness my hand and official seal

My commission expires: Sept. 22, 2013

Notary Public

*Attach a true and correct copy of the recorded instrument with evidence of recording affixed by the Clerk and Recorder's Office

Reception #: D3095828, 07/30/2013 at 10:32 AM, 1 OF 1, Recording Fee \$11.00
Electronically Recorded Official Records Arapahoe County, CO Matt Crane, Clerk
& Recorder

CONFIRMATION DEED

(CRS §38-38-502)

Public Trustee's Foreclosure Sale No. 0305-2013

THIS DEED is made July 30, 2013 between Cynthia D Mares as the Public Trustee in and for the County of Arapahoe, State of Colorado, grantor and CITY OF ENGLEWOOD-HOUSING REHABILITATION FUND, grantee, the holder of the certificate of redemption whose legal address is 1000 ENGLEWOOD PARKWAY, ENGLEWOOD, CO 80110.

WHEREAS, the Grantor(s) described below did convey to the public trustee, in trust, the property hereinafter described to secure the payment of the indebtedness provided in said deed of trust:

Original Grantor(s)	KATHLEEN S. PONTIUS
Original Beneficiary(ies)	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR PREMIER MORTGAGE GROUP, L.L.C.
Current Holder of Evidence of Debt	COLORADO HOUSING AND FINANCE AUTHORITY
Date of Deed of Trust	November 21, 2005
County of Recording	Arapahoe
Recording Date of Deed of Trust	November 23, 2005
Recording Information (Reception Number)	B5177069

WHEREAS, a violation was made in certain of the terms and covenants of said deed of trust as shown by the notice of election and demand for sale filed with the Public Trustee; the said property was advertised for public sale at the place and in the manner provided by law and by said deed of trust; combined notice of sale and right to cure and redeem was given as required by law; said property was sold according to said combined notice; and a certificate of purchase thereof was made and recorded in the office of said county Clerk and Recorder; and

WHEREAS, all periods of redemption have expired.

NOW, THEREFORE, the Public Trustee, pursuant to the power and authority vested by law and by the said deed of trust, confirms the foreclosure sale and sells and conveys to grantee the following described property located in the County of Arapahoe, State of Colorado, to wit:

LOTS 13 AND 14, BLOCK 20, ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO.

Also known by street and number as: 3685 S FOX STREET, ENGLEWOOD, CO 80110

THE PROPERTY DESCRIBED HEREIN IS ALL OF THE PROPERTY CURRENTLY ENCUMBERED BY THE LIEN OF THE DEED OF TRUST.

To have and to hold the same, with all appurtenances, forever.

Executed on: July 30, 2013

Cynthia D Mares, Public Trustee in and for the County of Arapahoe, State of Colorado



By: Cynthia D Mares, Public Trustee

When Recorded Return to: Arapahoe County Public Trustee

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 41
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING THE REDEMPTION AND SALE OF PROPERTY ACQUIRED THROUGH THE HOUSING REHABILITATION PROGRAM LOCATED AT 3685 SOUTH FOX STREET IN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City Council of the City of Englewood accepted assignment from the Englewood Housing Authority of all rights, assets and liabilities associated with the Housing Rehabilitation Loan Program by the passage of Ordinance No. 23, Series 1999; and

WHEREAS, Englewood City Council authorized amending Title, 4, Chapter 3, with the addition of a new Section 13 entitled "Housing Rehabilitation Fund" by the passage of Ordinance No. 26, Series 1999; and

WHEREAS, the Englewood Housing Rehabilitation Program was created in 1976 to preserve the existing housing stock in Englewood and to address the problems of low-income families with the financing of major household repairs; and

WHEREAS, the Rehab Program approves home improvement loans that are secured by deeds of trust recorded on the property representing generally second or third mortgages; and

WHEREAS, the homeowner defaulted on her loans and the first mortgage holder initiated foreclosure; and

WHEREAS, this property went to public sale on June 26, 2013; and

WHEREAS, the Englewood Rehab Loan Committee recommended filing the Intention to Redeem Notice with the public Trustee's Office; and

WHEREAS, the City redeemed the property on July 23, 2013 and on July 30, 2013 received a Public Trustee's Confirmation Deed issued to the City of Englewood Housing Rehabilitation Fund; and

WHEREAS, the property will be sold to a private owner-occupied party who has secured his own financing and any remaining funds will be returned to the Housing Rehabilitation Fund; and

WHEREAS, if an offer to purchase is received from any City employee, their family members, or any business in which a City employee has a financial interest, the offer will be submitted to the Englewood City Council for approval;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood hereby authorizes the redemption, and subsequent sale of a Housing Rehabilitation Property acquired through the foreclosure process located at 3685 South Fox Street.

Section 2. The Mayor and the City Clerk are authorized to execute the proper form of deed for the conveyance of the property located at 3685 South Fox Street, Englewood, Colorado pursuant to Section 71 of the Englewood Home Rule Charter.

Introduced, read in full, and passed on first reading on the 19th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 19th day of August, 2013.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date August 19, 2013	Agenda Item 11 a ii	Subject Proposed bill for an ordinance submitting to the registered electors of the City of Englewood a question regarding official designation of Park property within the City of Englewood.
INITIATED BY City Clerk's Office		STAFF SOURCE Frank Gryglewicz, Director Loucrishia A. Ellis, City Clerk

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council discussed this Initiative at the August 12, 2013 Study Session.

RECOMMENDED ACTION

Approve the proposed bill for an ordinance placing this issue on the November 5, 2013 ballot. As the Initiative Petition has been declared valid and sufficient, and the City Clerk has certified those results to City Council, the City Clerk must certify the proposed ballot question to the Arapahoe County Clerk and Recorder.

On July 9, 2013, a written notice of the proposed ordinance was filed with the City Clerk's Office in accordance with Colorado Revised Statutes § 31-11-104 (1).

The deadline to turn in the petition was August 7, 2013 by 5:00 p.m. and they needed at least 519 valid signatures of City of Englewood registered electors.

On July 11, 2013, the City Clerk certified the Initiative Petition as to form.

On August 7, 2013, the Initiative Petition was filed with the City Clerk's Office.

Englewood City Charter, Article VI § 46...If the petition is sufficient, Council shall pass the proposed ordinance without alterations within 30 days, or shall submit same to a vote of the electors at the next general municipal election.

FINANCIAL IMPACT

If Council does not pass the ordinance without alterations, the proposed ballot question will be placed on the ballot at the City's November 5, 2013 General Municipal Election.

The cost of this additional ballot question is unknown at this time, but should not exceed the amount budgeted for 2013.

LIST OF ATTACHMENTS

Written notice of the proposed ordinance

Memo to Mayor Penn and City Council, dated August 12, 2013, certifying the validity and sufficiency of the Petition

Proposed bill for an ordinance

A QUESTION FOR THE NOVEMBER 5, 2013 BALLOT. BLC

BLL
DEDICATE

Shall The Englewood Municipal Code of the City of Englewood, Colorado be amended to include official designation of Park property within the City of Englewood in order to protect the people of Englewood and their right to vote on the sale of Park property by: designating as "Park" any property identified on 2006 Englewood Parks and Recreation Master Plan as a Park including but not limited to: Baker, Barde, Bates-Logan, Bellview, Centennial, Clarkson, Cushing, Depot, Duncan, Emerson, Hosanna, Jason, Miller Fields, Romans and Rotolo?

Beverly Cummins
3048 South Acoma Street
Englewood, Colorado 80110
303 789-1415

Signature: _____

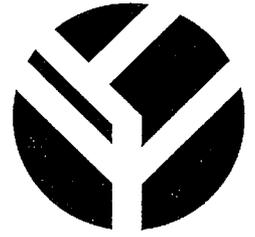
7/8/13

Elaine Hults
3333 South Lincoln St #706
Englewood, Colorado 80113
303 781-0198

Signature: _____

9/9/13

RECEIVED
CITY OF ENGLEWOOD, CO
JUL 9 2013
OFFICE OF
THE CITY CLERK



MEMORANDUM

TO: Mayor Penn and City Council Members

FROM: Loucrishia A. Ellis, City Clerk

DATE: August 12, 2013

SUBJECT: Initiative Petition:

Shall The Englewood Municipal Code of the City of Englewood, Colorado be amended to include official designation of Park property within the City of Englewood in order to protect the people of Englewood and their right to vote on the sale of Park property by: dedicate as "Park" any property identified on 2006 Englewood Parks and Recreation Master Plan as a Park including but not limited to: Baker, Barde, Bates-Logan, Bellview, Centennial, Clarkson, Cushing, Depot, Duncan, Emerson, Hosanna, Jason, Miller Fields, Romans and Rotolo?

State of Colorado)
) ss
County of Arapahoe)

I, the undersigned, do hereby certify, pursuant to Colorado Revised Statutes §31-11-109, that the Initiative Petition filed with the City Clerk's Office on August 7, 2013 has been reviewed and it has been determined to be valid and sufficient.

Attest:

Loucrishia A. Ellis, City Clerk

Kerry Bush, Deputy City Clerk

cc: Gary Sears, City Manager
Dan Brotzman, City Attorney
Mike Flaherty, Deputy City Manager
Frank Grylewicz, Director of Finance and Administrative Services

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. 43
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF ENGLEWOOD AT THE NEXT SCHEDULED MUNICIPAL ELECTION A QUESTION REGARDING OFFICIAL DESIGNATION OF PARK PROPERTY WITHIN THE CITY OF ENGLEWOOD.

WHEREAS, on August 7th an initiative petition was submitted to the City Clerk's Office; and

WHEREAS, the Englewood Home Rule Charter and State Statutes provide that this matter be forwarded to the Englewood City Council after the City Clerk certifies the validity and sufficiency of such initiative petition; and

WHEREAS, the Englewood City Clerk has certified the validity and sufficiency of the signatures for the initiative petition; and

WHEREAS, the City must own property or have the consent of the owner to dedicate the property as a park; and

WHEREAS, Hosanna is owned by Arapahoe School District No. 1; and

WHEREAS, the District has not consented to dedication; and

WHEREAS, Council Bill No. 35, Series of 2013 was passed earlier on the agenda selling the Englewood Depot; and

WHEREAS, the Englewood Home Rule Charter Section 46 does not allow alteration of the initiative petition language to clarify the Hosanna and Depot properties.

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

Section 1. It has been determined that this initiated ordinance shall be enacted without alterations as provided for in Section 46, of the Englewood Home Rule Charter.

Section 2. There is hereby submitted to the registered electors of the City of Englewood at the next scheduled municipal election on November 5, 2013 a proposed ballot question regarding official designation of Park property in the City of Englewood, to read as follows:

Question No.

Shall the Englewood Municipal Code of the City of Englewood, Colorado be amended to include official designation of Park property within the City of Englewood in order to protect the people of Englewood and their right to vote on the sale of Park property by: dedicate as "Park" any property identified on 2006 Englewood Parks and Recreation Master Plan as a Park including but not limited to: Baker, Barde, Bates-Logan, Bellview, Centennial, Clarkson, Cushing, Depot, Duncan, Emerson, Hosanna, Jason, Miller Fields, Romans and Rotolo?

_____ Yes _____ No

Section 3. Each elector voting at said election and desirous of voting shall indicate his/her choice by depressing the appropriate counter of the voting machine or by the appropriate marking upon paper ballots where used.

Section 4. The proper officials of the City of Englewood shall give notice of said next scheduled municipal election, such notice shall be published in the manner and for the length of time required by law, and the ballots cast at such election shall be canvassed and the result ascertained, determined, and certified as required by law.

Section 5. Only if the question is approved by the registered electors of the City of Englewood shall the Englewood Municipal Code be amended.

Section 6. If any section, paragraph, clause, or other portion of this Ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability shall not affect any of the remaining portions of this Ordinance.

Introduced, read in full, and passed on first reading on the 19th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 19th day of August, 2013.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2013

COUNCIL BILL NO. 35
 INTRODUCED BY COUNCIL
 MEMBER WOODWARD

AN ORDINANCE AUTHORIZING THE SALE OF THE ENGLEWOOD DEPOT PROPERTY
 TO TOM AND PATTI PARSON.

WHEREAS, the Englewood Depot was built in the early 1900's and was located along the railroad tracks near what is now the intersection of Hampden Avenue and Santa Fe Drive; and

WHEREAS, as railroad freight and passenger traffic declined in the 1950's it was closed; and

WHEREAS, the Englewood Depot was moved to a vacant lot owned by the City; and

WHEREAS, late in 2012 the Englewood City Council made the decision to seek a buyer and sent out a request for proposal to restore the building and put it to use; and

WHEREAS, two proposals were received; and

WHEREAS, an Englewood Historic Preservation Society a proposal was to turn the Englewood Depot into a museum; and

WHEREAS the proposal by Parson would undertake historic restoration of the Englewood Depot and turn the inside into a letterpress operation and museum using their own resources and seeking historic restoration grants; and

WHEREAS, the Englewood City Council created a five-member committee to evaluate the two proposals for restoration and reuse of the Englewood Depot submitted as a result of the City's request for proposal; and

WHEREAS, the Evaluation Committee was made up of three professionals, with expertise related to historic preservation and financing of historic structures and two Englewood residents; and

WHEREAS, the Evaluation Committee recommended moving forward with the Parson proposal; and

WHEREAS, during the June 17, 2013 Study Session, Englewood City Council discussed the findings offered by the Evaluation Committee; and

WHEREAS, City Council approved Resolution No. 66, Series of 2013 authorizing the City Manager to negotiate a sale of the Englewood Depot to Tom and Patti Parson; and

WHEREAS, City staff can not find a record of the property being dedicated for park purposes; and

WHEREAS, the Parks and Recreation Master Plan of 2006 anticipates the transfer of the property to other, more economically productive uses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the City Manager to sign a Sales Agreement containing the conditions listed in the City's Request for Proposal including a preservation easement through the Colorado Historical Foundation and a first right of refusal for this property in the event the Buyer sells the property in the future. The right of first refusal will not be triggered if the Buyer transfers the property to a limited liability company or non-profit owned and controlled by Tom and Patti Parson or if title is transferred to their son by inheritance.

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes the Mayor to sign the Quit Claim Deed for the sale of the Englewood Depot property to Tom and Patti Parson.

Introduced, read in full, and passed on first reading on the 5th day of August, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of August, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of August, 2013 for thirty (30) days.

Read by title and passed on final reading on the 19th day of August, 2013.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2013, on the 23rd day of August, 2013.

Published by title on the City's official website beginning on the 21st day of August, 2013 for thirty (30) days.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2013.

Loucrishia A. Ellis

Dan Brotzman

From: Lou Ellis
Sent: Tuesday, August 13, 2013 9:57 AM
To: Dan Brotzman
Cc: Gary Sears; Michael Flaherty; Frank Gryglewicz; Nancy Reid; Nancy Fritz; Leigh Ann Hoffhines; Sue Carlton-Smith; Kerry Bush; Erin McGarry
Subject: FW: Referendum Process

From: Matthew Crabtree
Sent: Tuesday, August 13, 2013 9:54 AM
To: City Clerk
Cc: Lou Ellis; Kerry Bush; 'L B BARRENTINE'
Subject: Referendum Process

Lou,

Per our discussion last week, we would like to proceed with a referendum process if council chooses to proceed with the sale of the Depot and park land on the 19th. For clarification this referendum would apply to council bill 35.

As stated in the Englewood City Charter under section 47:

"The referendum shall apply to all ordinances passed by Council, except ordinances making the tax levy, the annual appropriation ordinance, or the ordering of improvements initiated by petition and to be paid for in whole or part by special assessments."

The first reading of Council bill 35 reads as follows:

Council Bill No. 35 – Recommendation from the City Manager's Office to consider a bill for an ordinance approving the sale of the Historic Englewood Depot to Tom and Patti Parson.

As Council Bill 35 is written it seems to clearly apply to the referendum process, we have also received outside legal counsel (former City Attorney for another home rule municipality in Colorado) and confirms this for us.

Please let us know the process for the referendum and any other applicable details.

Thanks again!

Matthew Crabtree

Lindsay Von Colditz

From: Dan Brotzman
Sent: Thursday, August 15, 2013 12:20 PM
To: Rick Gillit; Gary Sears
Cc: Council; Lou Ellis
Subject: RE: Council Request - Referendum Period after Vote on Depot

There is a memo attached to the Ordinance selling the Depot in this weeks packet which explains why the Colorado Supreme Court has held that the referendum provision does not apply in this circumstance.

-----Original Message-----

From: Rick Gillit
Sent: Thursday, August 15, 2013 12:13 PM
To: Gary Sears; Dan Brotzman
Cc: Council
Subject: Council Request - Referendum Period after Vote on Depot

Gary & Dan,

I have heard a rumor that concerns me and I would like to get some clarity if possible. I have heard that there is discussion out of the City Managers and Attorneys office that there will be no referendum period after the ordinance to sell the Depot. Is this correct??? From what I understand once we pass an ordinance our Charter tells us that we are to have a 30-Day Referendum period. I know we have used this numerous times before unless it was an emergency ordinance. I also believe we cannot sell property on an Emergency Ordinance so I continue to be concerned if this is the case.

I am not an attorney nor do I play one on TV but there seems to be some language by my understanding in our Charter as well as in State Statute that will dictate how we move forward.

Here is our City Charter Language:

47: Referendum.

The referendum shall apply to all ordinances passed by Council, except ordinances making the tax levy, the annual appropriation ordinance, or the ordering of improvements initiated by petition and to be paid for in whole or part by special assessments.

If at any time within thirty (30) days after the final passage of an ordinance to which the referendum is applicable a petition signed by registered electors equal in number to at least ten percent (10%) of the preceding gubernatorial vote in the City, is presented to the Council protesting any ordinance going into effect, it shall reconsider such ordinance. If the ordinance is not entirely repealed, Council shall submit it to a vote of the electors of the City as provided in the Initiative and Section 14 of this Charter, at the next general municipal election, special municipal election or general state election. Such ordinance shall then go into effect without further publication if a majority of the electors voting thereon vote in favor of it. The Council, on its own motion, shall have the power to submit any proposed ordinance to a vote of the electors at a general municipal election, special municipal election or general state election as provided and limited in this Charter. No provision of this Charter shall be construed as limiting the right of Council to refer to any

ordinance subject to referendum. If provisions of two or more proposed ordinances adopted or approved at the same election conflict, the ordinance receiving the highest affirmative vote shall become effective.

(Amended 11-2-1965; 11-5-1991; 11-6-2001)

48: Amendments.

An ordinance adopted or rejected by electoral vote under either the initiative or referendum, cannot be revised, repealed, or amended except by electoral vote; but the Council shall have the power to submit a proposition without a petition therefor, subject to the limitations set forth in Section 14 of this Charter.

(Amended 11-2-1965)

Here is what the State Statute says pertaining to Referendum:

Colorado Revised Statutes pertaining to Referendum:

31-11-105. Ordinances - when effective - referendum.

(1) No ordinance passed by the legislative body of any municipality shall take effect before thirty days after its final passage and publication, except an ordinance calling for a special election or necessary to the immediate preservation of the public peace, health, or safety, and not then unless the ordinance states in a separate section the reasons why it is necessary and unless it receives the affirmative vote of three-fourths of all the members elected to the legislative body taken by ayes and noes.

(2) Within thirty days after final publication of the ordinance, a referendum petition protesting against the effect of the ordinance or any part thereof may be filed with the clerk. The petition must be signed during the thirty-day period by at least five percent of the registered electors of the municipality registered on the date of final publication.

(3) If a referendum petition is filed, the ordinance or part thereof protested against shall not take effect, and, upon a final determination of petition sufficiency, the legislative body shall promptly reconsider the ordinance. If the petition is declared not sufficient by the clerk or found not sufficient in a protest, the ordinance shall forthwith take effect, unless otherwise provided therein.

(4) If, upon reconsideration, the ordinance or part thereof protested is not repealed, the legislative body shall submit the measure to a vote of the registered electors at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance or part thereof shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

Colorado Revised Statutes pertaining to initiative:

31-11-104. Ordinances - initiative - conflicting measures.

(1) Any proposed ordinance may be submitted to the legislative body of any municipality by filing written notice of the proposed ordinance with the clerk and, within one hundred eighty days after approval of the petition pursuant to section 31-11-106 (1), by filing a petition signed by at least five percent of the registered electors of the city or town on the date of such notice. The proposed ordinance may be adopted without alteration by the legislative body within twenty days following the final

determination of petition sufficiency. If vetoed by the mayor, the proposed ordinance may be passed over the mayor's veto within ten days after the veto.

If the proposed ordinance is not adopted by the legislative body, the legislative body shall forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

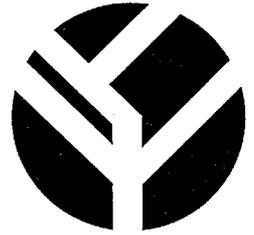
(2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Can you please let us know exactly how we are going to move forward Monday evening after the vote to sell the Depot? It would be really helpful for me to understand how we handle this.

Thanks for your assistance!

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email: _____
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

MEMORANDUM



TO: Mayor Penn
City Council Members

FROM: Dan Brotzman, City Att

DATE: August 14, 2013

REGARDING: Referendum Legislative v. Administrative.

Citizen petitions may only propose an initiative or a referendum that is legislative in character, not administrative. See Witcher v. Canon City, 716 P.2d 445 (Colo. 1986); Margolis v. District Court, 638 P.2d 297 (Colo. 1981); Vagneur v. City of Aspen, 232 P.3d 222 (Colo. App. 2009); Colorado Springs v. Bull, 143 P.3d 1127 (Colo. App. 2006); and Wright v. City of Lakewood, 608 P.2d 361 (Colo. App. 1979).

Section 47 of the Englewood Home Rule Charter in relevant part:

47: Referendum.

The referendum shall apply to all ordinances passed by Council, except ordinances making the tax levy, the annual appropriation ordinance, or the ordering of improvements initiated by petition and to be paid for in whole or part by special assessments. ...

The Colorado Supreme Court ruling on Aurora's Charter language found that a referendum would not apply in similar circumstances, see City of Aurora v. Zwerdinger, 571 P.2d 1074 (Colo. 1977). In the Aurora case, a referendum petition was filed after the Council passed an ordinance to revise water rates. Aurora's Charter referendum provision reads as follows:

"The referendum shall apply to all ordinances passed by the council, except ordinances fixing the rate of taxation on property each year for municipal purposes, making the annual appropriation, calling a special election, or ordering improvements initiated by petition and to be paid for by special assessments ..."

The Colorado Supreme Court found that references in municipal charters to "all ordinances" have generally been interpreted as meaning only ordinances which are legislative in character. The Colorado Supreme Court concluded that the Aurora Charter reserved the referendum power only as to legislative ordinances. See also Witcher v. Canon City, 716 P.2d 445 (Colo. 1986), where the Colorado Supreme Court made a similar finding concerning a lease entered into by the City.

Sale of the Englewood Depot is an administrative matter not subject to referendum.

CC: Gary Sears
Lou Ellis

The right to have blood tests performed cannot be denied an indigent defendant without violating the equal protection clause of the Fourteenth Amendment of the United States Constitution.¹

[5] Accordingly, the rule is made absolute, and the district court is directed to determine whether the petitioner is, in fact, indigent and unable to pay for blood grouping tests and, if so, to order the blood grouping tests be made at county expense.



CITY OF AURORA, Colorado, a Municipal Corporation, Petitioner,

v.

Jack ZWERDLINGER, Morris Dickhart and Jo Coates, Individually and as representatives of a class of persons signing that certain referendum petition protesting the going into effect of Ordinance No. 74-146 enacted by the City Council of the City of Aurora, Colorado, and entitled "Utility Rates," and establishing rates for water services in the City of Aurora, Colorado, Respondents.

No. C-1102.

Supreme Court of Colorado,
En Banc.

Oct. 24, 1977.

Rehearing Denied Nov. 21, 1977.

City filed declaratory judgment action seeking declaration that ordinance raising rates and charges for water supplied by city was not subject to referendum process. The District Court, Arapahoe County, M. O. Shivers, Jr., J., found ordinance was not

1. Other courts have characterized paternity actions as being "quesi-criminal" in nature and have analogized the cost of blood grouping tests to the cost of trial transcripts in criminal actions under *Griffin v. Illinois*, 351 U.S. 12, 76

subject to referendum, and representatives of class of persons signing referendum petition appealed. The Court of Appeals, 558 P.2d 998, reversed and remanded with directions, and city sought certiorari. The Supreme Court, Erickson, J., held that under city charter and Colorado Constitution, ordinance raising rates and charges for water supplied by city was administrative ordinance not subject to referendum powers.

Reversed and returned with directions.

1. Statutes ⇐ 302, 342

Terms of state constitutional article reserving initiative and referendum powers to the people are to be liberally construed to effectuate their purpose. Const. art. 5, § 1 et seq.

2. Statutes ⇐ 303, 343

Constitutional article reserving initiative and referendum powers to the people applies only to acts which are legislative in character and not to administrative actions. Const. art. 5, § 1 et seq.

3. Municipal Corporations ⇐ 108.5

If referendum powers reserved by city charter exceed powers reserved by the State Constitution, those powers are operative and will be given effect. Const. art. 5, § 1 et seq.

4. Municipal Corporations ⇐ 108.8

Aurora city charter which provided that referendum power applied to "all ordinances" except four listed exemptions would be construed to reserve referendum power only as to all legislative ordinances with the exception of four exempted matters. Const. art. 5, § 1 et seq.

5. Municipal Corporations ⇐ 108.8

Generally, municipal corporation's actions which relate to subject of a permanent or general character are legislative, while those actions which are temporary in operation and effect are not.

S.Ct. 585, 100 L.Ed. 891 (1956). See *Walker v. Stokes*, 45 Ohio App.2d 275, 344 N.E.2d 159 (1975); *Commonwealth v. Possehl*, 355 Mass. 575, 246 N.E.2d 667 (1969).

Cite as, Colo., 571 P.2d 1074

6. Municipal Corporations ⇌ 108.7, 108.8

Municipal corporation's acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are generally deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative.

7. Municipal Corporations ⇌ 108.7

Utility rate ordinances are administrative in character.

8. Municipal Corporations ⇌ 108.7

City ordinance which raised utility rates was administrative in character and, thus, was not subject to referendum powers reserved to Aurora electors by either Colorado Constitution or Aurora charter. Const. art. 5, § 1 et seq.

Leland M. Coulter, Richard Kaufman, Aurora, for petitioner.

Bader & Dufty, Robert A. Dufty, Denver, for respondents.

Dawson, Nagel, Sherman & Howard, Robert M. Johnson, Michael L. Cheroutes, Jane E. Roberts, Denver, for amicus curiae, The Colorado Municipal Bond Dealers Association, Inc.

Susan K. Griffiths, Wheat Ridge, for amicus curiae the Colorado Municipal League.

ERICKSON, Justice.

We granted certiorari to review the court of appeals' decision in *City of Aurora v. Zwerdinger*, Colo.App., 558 P.2d 998 (1976).

On July 22, 1974, the Aurora City Council enacted Ordinance No. 74-146, raising the rates and charges for water supplied by the city. This ordinance was passed to satisfy the requirements of Ordinance No. 73-221. In the earlier ordinance, the city had authorized the issuance of certain bonds and covenanted "that it will establish, maintain, collect and enforce rates and charges for the connection to, use of and services furnished by the municipal water system of the City. . . ." The revenues thus generated, together with other available tax proceeds, were covenanted to be suffi-

cient to pay the costs of operation and maintenance and the principal and interest on the bonds.

A referendum petition demanding the repeal of Ordinance No. 74-146 or its submission to a vote of the qualified electors of Aurora was subsequently filed with the city. The petition was proper in all procedural respects and was timely filed. Aurora refused to repeal the ordinance or to call an election and filed an action seeking declaratory judgment.

The trial court entered a declaratory judgment in behalf of Aurora, holding that the ordinance was not subject to the referendum process. The court of appeals reversed, holding that the Aurora City Charter provided that a referendum could be applied to "all ordinances," unless specifically exempted. Since no exemption existed for utility rate ordinances, the present ordinance was, in the opinion of the court of appeals, subject to the referendum power. We reverse the court of appeals.

Petitioner City of Aurora's primary allegation of error concerns the court of appeals' interpretation of the referendum powers reserved by the Colorado Constitution and the Aurora City Charter. Two questions of first impression are presented: (1) Do the referendum powers in this case apply to administrative, as well as legislative actions?, and (2) Is a municipal ordinance which increases utility rates an administrative or legislative action?

I.

Article V of the Colorado Constitution reserves the initiative and referendum powers to the people:

"Section 1. General assembly—initiative and referendum. The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls"

"The initiative and referendum powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special and municipal *legislation of every character* in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws, except that cities, towns and municipalities may provide for the manner of exercising the initiative and referendum powers as to their *municipal legislation* . . ." (Emphasis added.)

[1] We have held that the purpose of these constitutional provisions is to expeditiously permit the free exercise of legislative power by the people. *Brooks v. Zabka*, 168 Colo. 265, 450 P.2d 653 (1969); *Brownlow v. Wunsch*, 103 Colo. 120, 83 P.2d 775 (1938). The terms of the article, being a reservation of powers to the people, are to be liberally construed to effectuate their purpose. *Colorado Project-Common Cause v. Anderson*, 178 Colo. 1, 495 P.2d 220 (1972); *Burks v. City of Lafayette*, 142 Colo. 61, 349 P.2d 692 (1960).

[2] The intention evidenced by Article V of the Colorado Constitution is to vest only legislative power directly in the people. The language of the article itself refers specifically to the initiative and referendum powers as the means by which the people can exercise the legislative power. It is also not unimportant that these powers are reserved in the article of our Constitution which deals expressly and singularly with the legislative branch of government. We, therefore, construe the constitutional provisions to apply only to acts which are legislative in character, which is consistent with the majority view. *Carson v. Oxenhandler*, 334 S.W.2d 394 (Mo.App.1960); *Keigley v. Bench*, 97 Utah 69, 89 P.2d 480 (1939); see also *People v. Graham*, 70 Colo. 509, 203 P. 277 (1921).

The City of Aurora Charter also reserves the referendum power to the people. Article VI, Section 4 of the Charter provides: "The referendum shall apply to all ordinances passed by the council, except ordinances fixing the rate of taxation on

property each year for municipal purposes, making the annual appropriation, calling a special election, or ordering improvements initiated by petition and to be paid for by special assessments . . ."

[3] Notwithstanding the limitation of the constitutional referendum power to legislative actions, the terms of the City Charter must be examined because the two reservations are independent of each other. The Charter provisions cannot limit powers reserved by the Constitution. However, if the powers reserved by the Charter exceed the powers reserved by the Constitution, those powers are operative and will be given effect. *Burks v. City of Lafayette, supra*; *Leach & Arnold Homes, Inc. v. City of Boulder*, 32 Colo.App. 16, 507 P.2d 476 (1973).

[4] Aurora's Charter provides that the referendum power applies to "all ordinances" except the four listed exemptions. Respondents contend that this language must be read literally to include the ordinance in this case. But references in municipal charters to "all ordinances" have generally been interpreted as meaning only ordinances which are legislative in character. This general rule was reviewed in *Carson v. Oxenhandler, supra*:

"The rule that only acts legislative in their nature are subject to referendum is particularly applicable in the field of municipal corporations. The legislative body of a municipality, whether it be designated a city council, board of aldermen, or otherwise, is frequently called upon to act in an administrative as well as a legislative capacity by the passage of ordinances and resolutions. From an early date in the history of the right of referendum it has been recognized that to subject to referendum any ordinance adopted by a city council, whether administrative or legislative, could result in chaos and the bringing of the machinery of government to a halt.

" . . . The general rule which has developed is stated in *Seaton v. Lack-*

ey, 298 Ky. 188, 182 S.W.2d 336, 338, as follows:

"Although initiative and referendum provisions widely differ in their terminology, it is the general rule that they are applicable only to acts which are legislative in character, and not to those dealing with administrative or executive matters.

"In accordance with this rule the words 'any ordinance' in a provision for referendum have frequently, and almost universally, been construed to mean ordinances which are legislative in character. *Keigley v. Bench*, 97 Utah 69, 89 P.2d 480, 122 A.L.R. 756; *Tillamook Peoples' Utility District v. Coates*, 174 Or. 476, 149 P.2d 558; *Dooling v. City Council of City of Fitchburg*, supra) 242 Mass. 599, 136 N.E. 616; *Hopping v. Council of City of Richmond*, 170 Cal. 605, 150 P. 977"

We conclude that the Aurora Charter reserved the referendum power only as to all legislative ordinances with the exception of the four exempted matters. Whether the four exempted matters are legislative or administrative so not to have been subject to the referendum in the first instance need not be addressed.

II.

[5, 6] Numerous tests have been employed by various courts to determine whether a particular ordinance is legislative or administrative. It has been held that an action that relates to subjects of a permanent or general character are legislative, while those which are temporary in operation and effect are not. Additionally, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. *Whitehead v. H and C Development Corp.*, 204 Va. 144, 129 S.E.2d 691 (1963); *Keigley v. Bench*, supra; *Monahan v. Funk*, 137 Or. 580, 3 P.2d 778. (1931).

Substantial disagreement exists in different jurisdictions as to whether certain types

of ordinances are administrative or legislative. Such is the case with municipal ordinances which set utility rates. 5 *McQuillin, Municipal Corporations*, 3rd ed. §§ 16.55, 16.57.

[7] Nonetheless, we are in agreement with those jurisdictions which hold that utility rate ordinances are administrative in character. The reasons for this conclusion are well expressed in *Whitehead v. H and C Development Corp.*, supra :

"The successful operation of a public utility is a business proposition involving the exercise of discretion and good judgment in management. Expenses incident and essential to proper operation are necessarily based on the cost of labor, material and other factors at the time the services are rendered. They are of such a fluctuating nature, due to economic and other temporary conditions, as to make it impractical, if not impossible, for the general public to appraise them in the absence of specific data, facts and information necessary to arrive at a fair and accurate judgment upon the subject. The changing expense factor goes to the very heart of the operation.

"While the establishment of the city-owned water system may have been in pursuance of a broad public policy and, therefore, a legislative matter, the receipts and expenses incidental to its maintenance and management are executive or administrative matters. It is clear that the provisions of the proposed ordinance of the electors are merely temporary in operation and effect. The ordinance does not propose to make a new law; it is one executing a law already in existence, merely changing an expense factor in the maintenance of a public utility. It pursues no new policy. It pursues a plan already adopted by the city council. Judged by these tests, it is administrative rather than legislative."

[8] Such an approach results in the conclusion that the challenged ordinance in this case was administrative in character. Since the ordinance was administrative in character, it was not subject to the referendum

powers reserved to the Aurora electors by either the Colorado Constitution or the Aurora Charter.

Accordingly, the judgment is reversed, and the cause is returned to the court of appeals for remand, with directions to reinstate the trial court's judgment.

KELLEY, LEE and CARRIGAN, JJ., do not participate.



The PEOPLE of the State of Colorado,
Plaintiff-Appellee,

v.

Darrell Vernon PICKETT,
Defendant-Appellant.

No. 27614.

Supreme Court of Colorado,
En Banc.

Oct. 24, 1977.

Defendant was convicted in the District Court, Arapahoe County, Richard D. Greene, J., of felony menacing, possession of an illegal weapon and carrying a concealed weapon. Defendant appealed, and the Supreme Court, Lee, J., held that: (1) constitutional issues which were not presented to the trial court or otherwise preserved for appellate review were not properly before the Supreme Court; (2) evidence sufficiently supported the jury's determination that the knife taken from the defendant was a "gravity knife"; (3) evidence sufficiently established that the overall length of the blade of the knife taken from defendant was more than three and one-half inches; (4) identification evidence was sufficient for the jury to find that defendant was in fact the man who accosted and menaced the victim; (5) the trial judge did not abuse discretion in denying a

severance of the offenses; (6) there was probable cause to arrest defendant; (7) defendant was not entitled to the suppression of a knife seized from him during a search incident to the valid arrest; (8) evidence supported the trial court's ruling that the positive in-court identifications of defendant were based on a reasonable opportunity to observe the assailant; (9) no impropriety resulted from the fact that the jury was permitted to view the photographic array shown to the victim, and (10) no error resulted from admission of testimony relating to a note and a dummy allegedly found in the victim's backyard after the attack.

Affirmed.

1. Criminal Law ⇐ 1030(3), 1064(1),
1130(3)

Contention, raised on appeal from conviction of felony menacing, possession of an illegal weapon and carrying a concealed weapon, that criminal code sections under which defendant was convicted were unconstitutionally vague and overbroad was not preserved for review where defendant did not raise the issue in the district court or in his new trial motion and did not even mention the issue in his opening brief to the Supreme Court. Colo.R.Crim.P. rule 33(a); C.A.R. 1(d).

2. Criminal Law ⇐ 561(1)

Test for determining whether evidence was sufficient to support guilty verdict is whether the evidence, when viewed in its totality and in the light most supportive of the verdict, is sufficient to support a conclusion in the minds of reasonable persons that defendant is guilty beyond a reasonable doubt.

3. Weapons ⇐ 17(4)

Evidence including knife which was taken from defendant and demonstration of the knife's operation warranted jury in finding that the knife taken from defendant was a "gravity knife" as statutorily defined and, therefore, was an illegal weapon. C.R.S. '73, 18-12-101(1)(e).