Council Request Update

August 8, 2019

Council Request: 19-121
Requested by: Council Member Sierra
Request: Request for status of proposed Emergency Management IGA with Arapahoe County.
Assigned to: City Manager's Office
Response: Please see the response provided by Acting Deputy City Manager Dorothy Hargrove.

Council Request: 19-124
Requested by: Council Member Barrentine
Request: a) Explain division budgeting as regards the Fire Marshall division. b) How does this relate to requirements in the Denver Fire contract and any Charter provisions.
Assigned to: City Attorney’s Office
Response: Please see the response provided by City Attorney Alison McKenney Brown.

Council Request: 19-125
Requested by: Council Member Barrentine
Request: Can the water at 4300 S. Broadway be turned off? Status of water line leak at the intersection of Broadway and Quincy.
Assigned to: Public Works and Utilities
Response: Please see the response provided by Director of Public Works Maria D’Andrea.
TO: Mayor Olson and Members of City Council
FROM: Dorothy Hargrove, Acting Deputy City Manager
DATE: August 8, 2019
SUBJECT: CR 19-121 Request for status of proposed emergency management IGA with Arapahoe County.

The Arapahoe County Emergency Management IGA will be on the August 19 Regular Session Agenda barring any unexpected delay in Arapahoe County.
MEMORANDUM

To: Mayor Olson
   City Council
   City Manager’s Office

From: Alison McKenney Brown, City Attorney

Date: Wednesday, August 7, 2019

Re: Legal requirements associated with the provision of fire prevention services within the City of Englewood.

ISSUE 1: What provision(s) of the IGA with Denver establish the provision of fire prevention services within the City? Do any provisions of the IGA specifically mention the office of Fire Marshal?

ANALYSIS: The IGA provides that the City of Englewood will provide a liaison between Denver fire and the City of Englewood. The person serving as liaison is referred to as “fire marshal.” The IGA does not speak to the department within which the fire marshal will be housed.

The IGA provides that the City of Englewood will provide its own fire prevention services, but does not speak to the department within which the fire prevention services will be housed. It speaks to the enforcement of both Building and Fire Codes, periodic fire safety inspections, and issuance of building permits and certificates of occupancy.

The City Manager determined to provide building code services, building permits and certificates of occupancy through Community Development. Additionally, the City Manager decided to accommodate the office of Fire Marshal, as well as fire code services and fire safety inspections within the police department.

The IGA does not outline whether the office of Fire Marshal be a dedicated full time position or a liaison duty assigned to an existing full time employee. It does not mandate that the Fire Marshal be responsible for enforcing the fire codes, or the provision of safety inspections.

LAW: Relevant portions of the 2015 Fire Services Agreement between the City of Denver and the City of Englewood are as follows:

4. FIRE PREVENTION:
   4.1 Fire Prevention Services: Englewood reserves and will remain responsible for fire prevention services within the jurisdictional boundaries of the City of Englewood, including without limitation the enforcement of Englewood’s Building and Fire Codes, periodic fire
safety inspections, and issuance of building permits and certificates of occupancy. Recognizing the importance of Denver Fire being acquainted with structures in Englewood as well as fire prevention measures that would protect the lives of Denver firefighters, Englewood, through its Fire Marshal, agrees to cooperate and coordinate with Denver Fire with respect to fire prevention activities, and Denver Fire will be notified and afforded the opportunity to participate in fire prevention activities, as described in Exhibit B attached hereto and incorporated herein.

4.2 Applicable Codes: Englewood and Denver agree that the international fire and building codes for Englewood and Denver should be compatible. Englewood agrees within one (1) year of the Effective Date of this Agreement to adopt the 2015 International Building and Fire Codes and to adopt any subsequent versions of the building and fire codes within six (6) months of Denver’s adoption of said subsequent versions of said codes. Englewood agrees not to adopt any laws or amendments to said codes that conflict with or are materially inconsistent with the applicable uniform building and fire codes without obtaining the prior, written approval of the Denver Fire Chief (which approval will not be unreasonably withheld). Denver has adopted amendments to the 2015 International Fire code which will not be effective in Englewood unless the same or similar amendments are enacted by Englewood. Englewood shall provide Denver with copies of the adoption ordinances, if and when so enacted, in accordance with the notice paragraph of this Agreement.

**ISSUE 2:** What provision(s) of Charter limit the ability of the City Manager to transfer employees or services from one department to another department?

**LAW:**

Article VII. City Manager. Powers and Duties. § 52

(b) Appoint, suspend, transfer and remove City employees unless otherwise provided;

(g) Exercise supervision and control over all executive and administrative departments, including the authority, with prior approval of Council by ordinance to establish, consolidate, or abolish administrative departments;

**ANALYSIS:** The City Charter specifically authorizes the City Manager to transfer employees. The City Charter directs the City Manager to supervise and control all executive and administrative departments, with the limitation of seeking City Council approval when establishing new departments, or consolidating or abolishing existing administrative departments. Nothing within the Charter prevents the City Manager from relocating services from one department to another.
MEMORANDUM

To: Mayor Olson
   City Council
   City Manager’s Office

From: Alison McKenney Brown, City Attorney

Date: Tuesday, August 6, 2019

Re: Charter provisions associated with transfer of appropriations

ISSUE: What does Charter provide in association with transfer of appropriations?

ANALYSIS: The Charter provides that monies appropriated through the regular budget process for one department may be redirected to another department by action of the City Council through a resolution. Additionally, it should be noted that when the budget year has ended, most unused appropriations revert to the general fund. Therefore, a transfer of appropriations associated with 2018 would show the transfer coming from the general fund unassigned fund balance and going to the fund to which such funds are to be transferred, rather than department to department.

LAW: § 92: - Transfers of appropriations.

The City Manager may at any time transfer any unencumbered appropriation balance or portion thereof from one classification of expenditure to another within the same department, office or agency. At the request of the City Manager, the Council may by resolution transfer any unencumbered appropriation balance or portion thereof from one department, office or agency, to another.

§ 94: - Appropriations to lapse.

Any annual appropriation or any portion thereof remaining unexpended and unencumbered at the close of the budget year shall lapse and revert to the General Fund; except for appropriations for construction or maintenance of permanent improvements from the Public Improvement Fund or other such funds designated by City Council which shall not lapse until the purpose for which the appropriation was made shall have been accomplished or abandoned as provided in Article X, Part I, Section 96 of the Englewood Home Rule Charter.
MEMORANDUM

To: Mayor Olson  
City Council  
City Manager’s Office

From: Alison McKenney Brown, City Attorney

Date: Wednesday, August 7, 2019

Re: Issues arising from City Council approval of employment association contracts

ISSUE 1: Why has the City Council historically been asked to approve employment association contracts prior to the budgeting cycle?

ANALYSIS: The Charter provides specific rules and timelines for collective bargaining and for agreement to collective bargaining agreements. Specifically, the Charter mandates that bargaining is to be complete by July 1st of the year during which such agreement is negotiated. The parties negotiating for each side either reach agreement amongst themselves, and take the agreement to the entities for ratification, or they “impasse”.

If the parties participating in the negotiation reach agreement the bargaining unit holds a vote of its members to ratify agreement to a proposed employment association contract prior to July 1st. If it fails, the City Manager and his/her team may attempt to renegotiate in any time left before July 1st. If it is approved the City Manager takes the contract to the City Council to ratify. Englewood Municipal Code requires that a tentatively approved agreement be brought to the City Council “forthwith” for their ratification.

If both parties do not ratify the agreement (“impasse”) the matter goes to arbitration.

The Charter anticipates approvals will occur on or before July 1st, to allow time for the impasse process to be completed, and potentially litigation, prior to January 1st of the year in which the agreement is to go into effect.

LAW:

E.M.C. 3-3-5: - Ratification of Agreement.

A. By the City. A collective bargaining agreement shall not be effective between the parties or binding upon the City until such time as the City Council approves and ratifies the terms of said collective bargaining agreement. Upon tentative agreement with the authorized representative of the City, the City shall forthwith present said agreement to City Council for its approval and ratification, and shall make every reasonable effort to secure said approval and ratification.
B.  *By the Certified Employee Organization.* Upon tentative agreement with the City, the
certified employee organization and its officers shall forthwith present said agreement to its
members for their approval and ratification, and shall make every reasonable effort to secure said
approval and ratification.

**Englewood City Charter § 137:4 - Terms of the collective bargaining agreement.**

The obligation to meet at reasonable times and negotiate in good faith shall commence on or
prior to May 15 of any applicable year in which the Bargaining Agreement expires or in
which collective bargaining is otherwise proper. The Collective Bargaining Agreement
between the City and the certified bargaining representative shall consist of any and all terms
actually agreed upon by parties, which terms are not otherwise inconsistent with the
Ordinances or Charter of the City. The Collective Bargaining Agreement shall be for a term
of not less than one (1) year nor more than three (3) years, provided that all Collective
Bargaining Agreements entered into shall be effective on a January 1 date and shall terminate
on a December 31 date.

**Englewood City Charter § 137:6 - Impasse resolution.**

(a) *Impasse.* In the event the parties are unable to reach agreement on all mandatory subjects
to be contained in the collective bargaining agreement on or before July 1 of the year in
which the parties have met and bargained over these subjects, impasse shall be declared.
Each party shall submit to the City Clerk a statement which contains that party's final offer
regarding any mandatory economic subject upon which the parties are at impasse. The
statement shall be submitted by each party no later than 5:00 p.m. on July 1. If July 1 falls
on a Saturday or Sunday the period is shortened to and ends on the prior business day which
is not a Saturday, Sunday or legal holiday.

(e) *Standards for Decision.* The following factors must be considered by the arbitrator in
arriving at a decision:

1. The interest and welfare of the public and the financial ability of the City to bear the
costs involved;
2. The lawful authority of the City;
3. Stipulations of the parties;
4. Comparison of the wages, hours, benefits and other terms or conditions of employment
   of the employees involved with other employees performing similar services in public
   employment in comparable Colorado communities;
5. The cost of living;
6. The overall compensation presently received by the employees including direct wage
   compensation; vacation, holidays and other excused time; insurance and pension;
   medical and hospitalization benefits; the continuity and stability of employment; and
   all other benefits received.

(f) *Final Offer Procedure.* The arbitrator shall choose either the City's total final offer on all
outstanding mandatory economic subjects or the employee organization's total final offer on
all outstanding mandatory economic subjects as contained in each party's statement of final offer as required in Section (a) and shall state the reasons for choosing such final offer.

(i) *Finality of the Arbitrator's Decision.*

(1) Except as provided in this Section, the decision of the arbitrator shall be final and binding on the employee organization and the City. Nothing herein shall prohibit the parties from agreeing to terms different from the decision of the arbitrator as long as such agreements are made within the fifteen (15) days after receipt of the arbitrator's decision.

**ISSUE 2:** What happens if the City Council does not provide sufficient funds to pay all costs set forth within a collective bargaining agreement in association with existing employees?

**ANALYSIS:** The Charter does not appear to directly correlate collective bargaining agreements with budgetary decision making. It mandates the agreements must be effective for one to three years, and begins the impasse process soon after the July 1st conclusion of negotiations. It does provide that full time employees may be terminated because of lack of funds or lack of work.

Thus, the agreement, once ratified by both parties stays in effect unless both parties agree to renegotiate all of it, or any of its terms.

Council has authority to budget and appropriate at a level that would not fully fund all bargaining unit positions, which would trigger the need for a reduction in force conducted in accordance with Article 24. It is possible that the Association would agree to reopen the compensation article for further negotiation in order to avoid that outcome.

In the end, under the Charter, collective bargaining agreements do not have a means by which to force Council to appropriate any particular amount for wages and salaries and employees within a bargaining unit do not have the right to strike.

**LAW:** The law associated with this agreement is set forth within the agreement itself:

**ARTICLE 1. INTRODUCTION & DEFINITIONS**

G. To relieve Employees from duties because of lack of work or funds, or under conditions where the City determines continued work would be inefficient or non-productive.

**ARTICLE 2. DURATION OF CONTRACT**

This Contract will take effect on the Effective Date, and shall continue in force through and including the Conclusion Date,

B. This Contract, or any part of it, may be terminated or renegotiated at any time by mutual consent of the Parties.
DATE: August 8, 2019
TO: Mayor Olson and City Councilmembers
THROUGH: Shawn Lewis, City Manager
FROM: Maria D’Andrea, Director of Public Works
SUBJECT: Council Request No. 19-125: 4300 S Broadway Water Service Repair

Requested by: CM Barrentine: Can the water at 4300 S. Broadway be turned off? Status of water line leak at the intersection of Broadway and Quincy.

The attached schematic show the location of the city’s main, Denver Water main, and the service line to the building at 4300 S Broadway. The valve to turn off the water to the building is located on the back side of the curb, in the sidewalk in front of the building. The leak is likely somewhere near the Denver Water main out in the street. Therefore, turning off the water to the building at the valve would not stop the water leak. While the city could turn off a portion of its main, which would stop the leak, that would cut off water to many businesses along Broadway. We could also dig down at the city’s main and install a valve to isolate the service line. Those expenses would need to be recouped from the business.

Per the Municipal Code, the property owner is responsible for repairs to the service line from their building to the city’s main.

12-1A-8: - Damage to Fixtures, Responsibility
B. Commercial Service Lines. The City shall not be responsible for the repair or replacement of service lines to commercial properties, or properties with combined residential and commercial use where these lines are a part of the customer’s system as defined in this Title.

The business owner at 4300 Broadway has paid the city $5,400 to upgrade its service line to a 1-inch tap as a part of these repairs. They have informed staff that their contractor is in the process of getting licensed, bonded and insured. Staff will continue to work with the property owner and help expedite the required permitting. We anticipate that they should begin the repair within the next several days.

The leak has not pushed any material out from under the asphalt and there is no settling so at this point so we are not concerned about the stability of the road and do not believe that there is an immediate safety issue.