

# **STUDY SESSION AGENDA**

## **CITY COUNCIL CITY OF WHEAT RIDGE, COLORADO**

7500 W. 29th Ave.  
Wheat Ridge CO

May 7, 2018

6:30 p.m.

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Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

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### Citizen Comment on Agenda Items

1. Staff Report(s)
  - a) Code change to allow electric bikes on Clear Creek Trail
2. Harlan Street Streetscape Maintenance
3. Special Use Permit Review Criteria
4. Amendment to Code to allow electric fences under certain conditions
5. Free Standing Emergency Rooms
6. Elected Officials' Report(s)

### ADJOURNMENT



# Memorandum

**TO:** Mayor and City Council

**THROUGH:** Patrick Goff, City Manager

**FROM:** Joyce Manwaring, Parks and Recreation Director

**DATE:** May 7, 2018

**SUBJECT:** Electrical Assisted Bicycles

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Park Rules and Regulations do not allow motorized vehicles on City trails. Due to the increased popularity and use of electric bicycles, there is a demand by riders to allow this usage.

Attached is an ordinance revising Chapter 17 of the Code of Laws, to allow these bicycles on the Clear Creek Trail. The changes to the Code include defining bicycles, defining vehicles and adding those items to the definition section in Chapter 17. This change is consistent with what other agencies across the metro area are allowing.

This item is scheduled for discussion and a formal recommendation from the Park and Recreation Commission at their May 16, 2018 meeting.

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_**  
**COUNCIL BILL NO. \_\_\_\_\_**  
**ORDINANCE NO. \_\_\_\_\_**  
**Series 2018**

**TITLE: AN ORDINANCE AMENDING CHAPTER 17 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING PARKS AND RECREATION TO ADDRESS THE USE OF ELECTRICAL ASSISTED BICYCLES**

**WHEREAS**, the City of Wheat Ridge (the "City") is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

**WHEREAS**, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

**WHEREAS**, the Council previously adopted and amended Chapter 17 of the Wheat Ridge Code of Laws (the "Code") concerning parks and recreation; and

**WHEREAS**, the Council now wishes to further amend Chapter 17 of the Code to address and include the use of electrical assisted bicycles within the City.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:**

**Section 1.** Section 17-1 of the Wheat Ridge Code of Laws concerning "Definitions," is hereby amended by the addition of the following definitions in the appropriate alphabetical order:

*Bicycle* means and includes bicycles and electrical assisted bicycles, as those terms are defined in C.R.S. 42-1-102;

*Vehicle* means any device which is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks. Vehicle includes any bicycle, any off highway vehicle, snowmobile, farm tractor or any implement of husbandry designed primarily or exclusively for use and used in agricultural operations or any device moved by muscular power or moved exclusively over stationary rails or tracks or designed to move primarily through the air. Vehicle shall not include a wheelchair.

**Section 2.** Section 17-52 of the Wheat Ridge Code of Laws concerning "Vehicles" is hereby amended as follows:

**Sec. 17-52. - Vehicles.**

(a) It shall be unlawful for any person operating a motorized vehicle of any description whatsoever in any park or recreation area of the city to fail or refuse to obey any and all traffic signs, or other traffic-control devices regulating the operation, stopping or parking of vehicles. It shall be unlawful for other than authorized personnel to park or drive on lawns, fields or any other places other than upon roadways and parking areas clearly constructed and established for such purposes within the parks, trails or other recreational facilities of the city. Laws pertaining to streets and highways pertain also to park roads, except that pedestrians shall have the right-of-way over vehicles in park areas.

(b) Parking within or upon parks, open space, trails, parkways or recreation areas shall not be permitted at any time a park is closed, or in any area ordered closed by the director. It shall be unlawful to park so as to obstruct access roadways and parking areas or areas designated by sign for emergency vehicles use only. Vehicles may be parked in park and recreation areas only if the occupants are engaged in an activity connected with the areas.

(c) Washing or servicing of vehicles in any park or recreation area in the city is prohibited.

(d) All bicycle riders shall obey traffic signs and laws regulating the operation, stopping or parking of vehicles. Bicycle riding will be governed further by safe riding practices and consideration for the use of park and recreation areas and trails by others. Bicycle riding is prohibited on playgrounds, tennis courts and game courts, in pavilions, in the conservation area or in any area where other activities are in progress. (See section 17-50)

**(e) IT SHALL BE UNLAWFUL FOR ANY PERSON OPERATING A VEHICLE TO SIGNIFICANTLY EXCEED THE SPEED OF SIMILAR USES IN THE SAME AREA. TRAFFIC FLOW AND INDIVIDUALS USING OUTDOOR SPACES SHALL MAINTAIN A SAFE SPEED AT ALL TIMES. TRAFFIC FLOW OF INDIVIDUALS USING OR APPROACHING COMMUNITY BUILDINGS SHALL NOT EXCEED SPEEDS OF FIVE (5) MPH.**

**Section 3. Severability, Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 4. Effective Date.** This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of \_\_\_\_ to \_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 2018, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on

final passage set for \_\_\_\_\_, 2018 at 7:00 p.m., in the Council Chambers, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of \_\_\_\_ to \_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

SIGNED by the Mayor on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bud Starker, Mayor

ATTEST:

\_\_\_\_\_  
Janelle Shaver, City Clerk

Approved as to Form

\_\_\_\_\_  
Gerald E. Dahl, City Attorney

First Publication:  
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Published:  
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## Memorandum

**TO:** City Council

**THROUGH:** Patrick Goff, City Manager

**FROM:** Scott Brink, Public Works Director

**DATE:** April 27, 2018 (for May 7, 2018 Study Session)

**SUBJECT:** Harlan Avenue Streetscape (48<sup>th</sup> Avenue to 38<sup>th</sup> Avenue)

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### **ISSUE:**

In 2002 and 2003, streetscape improvements were constructed along the west side of Harlan Street between 48<sup>th</sup> Avenue and 44<sup>th</sup> Avenue, and along both sides of Harlan Street between 44<sup>th</sup> Avenue and 38<sup>th</sup> Avenue. The improvements included pedestrian lighting, trees, turf, sidewalks, masonry units, colored concrete, and other hardscape fixtures.

Due to the age of the improvements and a lack of consistent maintenance, the improvements have deteriorated in several locations. The City has received periodic complaints over the years by both adjacent property owners and the general public regarding the appearance and state of the improvements. Complaints have included a poor condition or lack of turf, weeds, dead trees, and deteriorating masonry units.

Staff seeks to facilitate a discussion with Council to determine if improvements or repairs to the streetscape is desired, and if stronger maintenance activities and needed resources be allocated to better maintain and sustain the streetscape improvements.

### **PRIOR ACTION:**

In 2002, the City engaged in the construction of streetscape enhancements along Harlan Avenue as the corridor was considered a “Gateway” to the City from I-70. The constructed improvements were based on streetscape and architectural guidelines established at that time by the City. These improvements included a combination of green and hardscape features, including lighting and sidewalk enhancements.

### **BACKGROUND:**

Prior to construction of the Harlan Street improvements, a public input and design process was followed. This was also a period where the City was experiencing an unusual and significant challenge with revenue shortfalls, including the cutting of staff positions and inducing other cost saving measures as part of project designs. As part of reducing expenditures, the installation cost and long-term maintenance of an irrigation system was evaluated, and whether the maintenance of improvements should be performed by the City or adjacent property owners.

Ultimately, the City became responsible for maintaining the boulevard trees and hardscape features, such as sidewalks, decorative masonry units, lighting, etc. while adjacent property owners were responsible for maintaining the grass and turf areas. This is typical of most other locations in the City where property owners are responsible for maintaining the space (right of way) between the property line and the street. Similar to other areas in the City, effective maintenance of boulevard areas by adjacent property owners can be mixed. A significant difference for streetscape areas along busier streets however is that watering and extra care of the turf areas is especially critical. At the time of the Harlan Street improvements, an irrigation system was apparently not included as a cost saving measure, along with a mutual understanding and agreement with adjacent property owners that they would accept specific maintenance responsibilities.

As a result, the appearance and condition of the Harlan Streetscape, especially between the sidewalk and back of curb, can be described as a mixed bag. As shown per the attached photographs (Attachment A), it is apparent that some property owners exercise a deliberate amount of care and maintenance to the boulevard areas while others not as much or at all. From the photographs, it is also noted that the space between the sidewalk and curb also includes a variety of features – turf, concrete, rock landscaping, and other. Many of these features were constructed by adjacent property owners, likely as a way to improve the appearance and reduce maintenance.

**DISCUSSION:**

Staff is seeking guidance from Council to determine what measures Council may wish to pursue with regards to improving or maintaining the existing streetscape. This would include an assessment of existing practices and resources, and determining the extent of additional efforts and resources that may be needed to address specific outcomes or goals. It is anticipated that any further actions (public or private) would also need to include an effective public outreach component to ensure a sustainable outcome.

**ATTACHMENTS:**

1. Harlan Avenue Streetscape



# HARLAN AVENUE STREETSCAPE ATTACHMENT A (PG 1)





# HARLAN AVENUE STREETSCAPE ATTACHMENT A (PG 2)



# HARLAN AVENUE STREETSCAPE ATTACHMENT A (PG 3)





# HARLAN AVENUE STREETSCAPE ATTACHMENT A (PG 4)



# Memorandum

**TO:** Mayor and City Council

**FROM:** Kenneth Johnstone, Community Development Director

**THROUGH:** Patrick Goff, City Manager

**DATE:** April 27, 2018 (for May 7 Study Session)

**SUBJECT:** Special Use Permit Criteria

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**ISSUE:**

At a City Council study session earlier this year, Councilpersons Hoppe and Duran requested consideration of an ordinance amending the City's special use permit regulations. Specifically, the request was to consider adding a criterion for approval relative to applicable comprehensive planning documents.

**PRIOR ACTIONS:**

None.

**FINANCIAL IMPACT:**

None.

**BACKGROUND:**

As noted above, City Council recently requested consideration of a potential Chapter 26 Code amendment related to the criteria against which special use permits are reviewed for approval. Attached is an ordinance that would amend Chapter 26 of the Code of laws to add a ninth special use permit review criterion, as follows: "The proposed special use is in substantial conformance with applicable portions of the City's Comprehensive Plan and any Subarea Plan applicable to the subject property."

As City Council is aware, in all zoning districts, there are uses that are permitted, not permitted and those that are allowed after review and approval of a special use permit (SUP). Special uses are considered "discretionary uses, which, if properly designed, developed, operated and maintained may be approved for a specific location..."

The code further states: "The primary issues to be addressed are those related to justification of need and special design and operational considerations which mitigate potential detrimental impacts of a special use on surrounding land uses, the street system, or public services or facilities. In order to protect the public interest, a special use may be approved, approved with

modifications (conditions) or denied. Previously approved special use permits may be revoked “if at any time the stipulations or conditions (of the previous approval) are not adhered to or are found to have been materially altered in scope, application or design...” Such revocation may only occur after a revocation hearing before City Council.

Procedurally, special use permits begin as an administrative permit application eligible for review and approval by the Community Development Director (CDD), upon a finding that the application complies with the criteria for review in Section 26-114.D. In three instances, SUPs are forwarded to City Council to be heard at a public hearing.

- If the CDD finds that one or more of the criteria for review are not met,
- If a written objection is received during the public noticing period,
- If the CDD recommends a condition of approval, to which the applicant objects.

In taking action on a special use permit, City Council also may approve, approve with conditions or deny said applications. Both the CDD and City Council, when approving a special use must decide whether a special use:

- Runs with the land in perpetuity,
- Is personal to the applicant and may or may not be inherited; and/or
- Shall be granted only for a defined period, after which time the special use permit shall expire unless renewed subject to all of the procedural requirements described above.

Following are the codified criteria for reviewing special use permits:

*D. Criteria for review. The community development director or city council shall base its decision in consideration of the extent to which (underline added) the application demonstrates the following criteria have been met:*

- 1. The special use will not have a detrimental effect upon the general health, welfare, safety and convenience of persons residing or working in the neighborhood.*
- 2. The special use will not create or contribute to blight in the neighborhood by virtue of physical or operational characteristics.*
- 3. The special use will not create adverse impacts greater than allowed under existing zoning for the property.*
- 4. The special use will not result in undue traffic congestion or traffic hazards, or unsafe parking, loading, service or internal traffic conflicts to the detriment of persons whether on or off the site.*
- 5. The property is appropriately designed, including setbacks, heights, parking, bulk, buffering, screening and landscaping, so as to be in harmony and compatible with the character of the surrounding areas and neighborhood, especially with adjacent properties.*
- 6. The special use will not overburden the capacities of the existing streets, utilities, parks,*

*schools and other public facilities and services.*

7. *There is a history of compliance by the applicant and/or property owner with Code requirements and prior conditions, if any, regarding the subject property.*
8. *The application is in substantial compliance with the applicable standards set forth in the Architectural and Site Design Manual.*

It has been the City's practice in applying the above criteria to interpret the above underlined text such that it would be possible to approve (with or without condition) a SUP even if one or more of the above criteria have not been fully met. As noted, these permits are discretionary by design.

Staff has taken the liberty of drafting language based on previous Council direction that would add a ninth criterion, as follows: "The proposed special use is in substantial conformance with applicable portions of the City's Comprehensive Plan and any subarea plan applicable to the subject property."

**RECOMMENDATIONS:**

Staff requests City Council direction on the attached draft ordinance. If Council desires to move forward, a recommendation from the Planning Commission will also be required.

**ATTACHMENTS:**

1. Council Bill 12 - Draft Ordinance

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_**  
**COUNCIL BILL NO. 12**  
**ORDINANCE NO. \_\_\_\_\_**  
**Series 2018**

**TITLE: AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS TO INCLUDE AN ADDITIONAL CRITERION FOR REVIEW OF APPLICATIONS FOR SPECIAL USE PERMITS**

**WHEREAS**, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

**WHEREAS**, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

**WHEREAS**, in the exercise of this authority the City Council has previously enacted Section 26-114 of the Wheat Ridge Code of Laws, which provides for the approval of special uses of real property under specific conditions; and

**WHEREAS**, in the further exercise of this authority, the City has adopted a comprehensive master plan and several subarea plans to guide land use and development within the City; and

**WHEREAS**, the City Council finds that it is appropriate to include, within the criteria for review of special use applications under Section 26-114, an additional criterion concerning applicable planning documents.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:**

**Section 1. Code of Laws amended.**

Section 26-114.D of the Wheat Ridge Code of Laws is amended by the addition of a new criterion (9), to read:

D. Criteria for review. The community development director or city council shall base its decision in consideration of the extent to which the applicant demonstrates the following criteria have been met:

(1) . . .

(9) THE PROPOSED SPECIAL USE IS IN SUBSTANTIAL CONFORMANCE WITH APPLICABLE PORTIONS OF THE CITY'S COMPREHENSIVE PLAN AND ANY SUBAREA PLAN APPLICABLE TO THE SUBJECT PROPERTY.



**Section 2. Severability, Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 3. Effective Date.** This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of \_\_\_\_ to \_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 2018, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for \_\_\_\_\_, 2018 at 7:00 p.m., in the Council Chambers, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of \_\_\_\_ to \_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2018.

SIGNED by the Mayor on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Bud Starker, Mayor

ATTEST:

\_\_\_\_\_  
Janelle Shaver, City Clerk

Approved as to Form

\_\_\_\_\_  
Gerald E. Dahl, City Attorney

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# Memorandum

**TO:** Mayor and City Council

**FROM:** Kenneth Johnstone, Community Development Director

**THROUGH:** Patrick Goff, City Manager

**DATE:** April 27, 2018 (for May 7 Study Session)

**SUBJECT:** Electric Fences

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**ISSUE:**

The City has recently been approached by an electric fencing company with a proposal to construct an electric fence around the perimeter of the Ketelsen Camper property off of Kipling. Camping World now operates the business through a long-term lease, though it is still owned by the Ketelsens. The same parties have approached staff previously, when the Ketelsens were still also the operators of the property. That history is important and is discussed in the “Background” section of this memo.

Historically, the City has interpreted the zoning code to prohibit electric fences, deeming them unsafe and therefore a prohibited fence type. This interpretation of the City Code is also discussed more fully in the Background section of this memo.

**PRIOR ACTIONS:**

None by City Council.

**FINANCIAL IMPACT:**

There would be minimal direct financial impact to the City, other than the fees and use tax associated with a building permit, should Council’s direction be to allow electric fences in some manner.

**BACKGROUND:**

As stated above, historically, staff has interpreted electric fences to be a prohibited fence type. Chapter 26-603 of the Code defines various types of permitted fences, including: masonry walls, ornamental iron, wove wire and chain link (with some limitations), wood, hedges, and barbed wire (with some limitations). The code also defines fence types prohibited: “any fence, if in the opinion of the chief building inspector, public works director or chief of police that would constitute a hazard to the health or safety of any person.” Based on this language, electric fences have been treated as a prohibited fence type.

In spring 2014, city staff was approached by Electric Guard Dog (EGD), an electric fence company based in South Carolina, on behalf of Ketelsen Campers. Ketelsen had been

experiencing after hours break-ins and they were requesting a ten-foot tall electric fence, to be located around the entire perimeter of their property. Initially, staff informed them that electric fences were prohibited for public safety reasons.

They persisted in their request and of course staff was certainly sympathetic to the desire to reduce the criminal activities occurring at a longstanding Wheat Ridge business. Ultimately, a variance request was submitted and administratively approved by the Community Development Director for a nine-foot (50% maximum administrative variance) electric fence, with three conditions:

- That said fence be setback three feet behind the existing six-foot chain link fence
- That it only be turned on after normal business hours
- That it not be electrified where adjacent to the Pennington Elementary School to the south

The thinking behind the first condition was two-fold: 1) it would generally prevent someone from being able to reach through the chain link fence and be exposed to the electrification; and 2) it would avoid a situation where someone would climb the six-foot fence and become entrapped between the two fences and not have room to separate themselves from extended duration contact with the electrified fence. The school district had been contacted during the variance application process and they initially expressed great concern with the potential for an electric fence in this location; however, they found this compromise design to be acceptable.

The applicant generally objected to the conditions, including the three-foot separation as they had requested a one-foot separation for various reasons. They did not appeal the variance decision or conditions of approval. In 2015, EGD applied to the Board of Adjustment for an interpretation that an electric fence located only 1-foot from a perimeter fence constituted a safety hazard and therefore was prohibited. The BOA denied their interpretation and essentially affirmed the staff recommendation that a three-foot separation was required to not create a safety concern.

Earlier this year, Camping World (Ketelsen) and EGD approached their District IV Councilpersons to re-engage the City in options for obtaining approval of an electric fence. Criminal activities and break-ins have increased recently. The Councilmembers then set up a meeting with the City Manager, other City Staff, store manager and EGD representatives. EGD is generally proposing a nine-foot fence around the entire perimeter of the property, to be inset four to eight inches from the existing fence and to be turned on after normal business hours. Staff agreed to look at options for reconsidering the previous actions.

Subsequently the City Manager and Community Development Director engaged the City Attorney to consider options that could be offered to the property owner. The City Attorney determined that because the BOA decision affirmed the requirement for a three-foot set back of the electric fence, that it would be very difficult to overturn that determination through an administrative action, such as consideration of a new variance application.

**RECOMMENDATIONS:**

Based on the City Attorney's determination, staff is requesting direction from City Council, whether Council wishes to consider a legislative approach to allowing electric fences. If a legislative solution were to be pursued, it would also be an opportunity to further evaluate in what locations and under what circumstance or design parameters electric fences might be allowed in other locations within the City.

The City has also initiated a City Attorney and City Manager listserve request to identify in what manner other Colorado jurisdictions regulate electric fences. As of the writing of this staff memo the following information was received:

- Alamosa prohibits electric fences except in the agricultural zone district
- Arvada prohibits electric fences throughout the city
- Aurora prohibits electric fences throughout the city
- Boulder allows electric fences, with a permit, only in certain zone districts and under certain conditions
- Durango prohibits electric fences throughout the city
- Edgewater prohibits electric fences anywhere in the city
- Englewood prohibits electric fences throughout the city
- Ft. Collins prohibits electric fences throughout the city
- Golden prohibits electric fences unless specifically permitted in a PUD ODP or required by the city as a condition of a SUP
- Greeley allows electric fences, with a permit, under certain conditions
- Lakewood allows electric fences only for livestock under certain conditions
- Ridgway allows electric fences only if their location is made inaccessible to persons who would not know that the fence is electrified
- Westminster prohibits electric fences throughout the city

# Memorandum

**TO:** Mayor and City Council

**FROM:** Kenneth Johnstone, Community Development Director

**THROUGH:** Patrick Goff, City Manager

**DATE:** May 2, 2018 (for May 7 study session)

**SUBJECT:** Freestanding Emergency Rooms

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**BACKGROUND:**

On April 11, 2016, City Council adopted Ordinance 1595 placing a 365-day temporary moratorium on the submission, acceptance, processing and approval of applications for “freestanding emergency rooms.” As defined in Section 3 of the ordinance, such facilities were defined as follows: “a medical facility that is not physically attached to a hospital facility that has the capacity of providing medical care and services to patients with emergency medical conditions in a manner similar to emergency rooms located within hospitals. Features of a freestanding emergency room facility may include, but are not limited to: expanded hours of operation, drive-lanes or vehicle bays to accommodate ambulance arrivals and departures, board certified emergency physicians, board-certified emergency nurses, on-site lab and imaging capabilities and similar equipment, services and treatments not commonly available in urgent care facilities.” The ordinance was effective on April 28, 2016 and was set to expire on April 27, 2017.

Prior to the moratorium’s expiration, at a March 6, 2017 study session, staff updated City Council on the status of state level discussion of possible regulation of this industry. Subsequently, Council adopted Ordinance 1616 extending the temporary moratorium for an additional year through April 27, 2018. The state legislature did not take any action during the 2017 legislative session.

Staff had heard from industry representatives that state level legislation may be gaining some headway for the 2018 legislative session. On December 18, 2017, City Council discussed the possibility that the State was considering taking legislative action on this matter during the 2018 State legislative session. Based on that understanding, on January 22, 2018, City Council passed Council Bill 02-2018, an ordinance further extending said moratorium to August 27, 2018, to be able to draft any local regulations in context with any adopted state level regulations.

With the moratorium again expiring on August 27, 2018, it is time to begin discussing what, if any, additional regulations the City wishes to adopt regarding freestanding emergency rooms. If Council wishes to adopt additional local regulations, those of course need to go through the standard public hearing ordinance process. If such regulations were to amend the City's zoning regulations in Chapter 26 of the Code, such amendments would require review and a recommendation from the Planning Commission.

The following text is generally repeated from previous memorandums and is included as additional background for reference and context on this topic.

### Existing Regulations

The concept of freestanding emergency rooms is relatively new and has only emerged in the state of Colorado in the past few years. The business model has existed in some other states for somewhat longer. Because it is a relatively new land use concept, the municipal code is silent to this specific use. The City's zoning code defines hospitals and allows them in certain zoning districts. The City's zoning code also defines medical offices and allows those in certain zone districts. These freestanding emergency rooms have characteristics of both of these uses and likely fall somewhere between the two in terms of the intensity of the use and associated impacts.

With the code being silent to this specific use, the Community Development Director has determined that the use is most similar to a hospital emergency room and therefore allowed to be located in the same manner. Hospitals are not permitted in any of the City's "straight" zoning districts, based on those use charts being silent to hospitals as a use group. However, hospitals are allowed in the City's Planned Hospital Districts (PHD) upon approval of a rezoning of a property to that district. Currently only the Exempla Lutheran hospital campus is zoned PHD. The recently approved Clear Creek Crossing Planned Commercial Development also allows hospitals in certain planning areas. Hospital are also listed as a permitted use in the City's Mixed Use Commercial (MU-C) zone district, which is most prevalent along the Wadsworth corridor. Hospitals are not allowed in the Mixed Use Neighborhood (MU-N) district.

### Potential Code Amendments

Local regulations could include:

- Modifications to Chapter 26 (Zoning and Development Code) defining freestanding emergency rooms and allowing them to be located in specific zoning districts. Some of the zoning approaches that might be considered would include:
  - Defining freestanding emergency rooms and disallowing them in all zoning districts
  - Limiting the number of zoning districts within which they would be allowed
  - Requiring a special use permit or conditional use permit to authorize these uses
  - Limiting the total number of such facilities within the City
  - Establishing certain spacing requirements between such uses and/or between such

uses and other existing emergency room facilities or otherwise requiring the demonstration of “need” for such a facility

- Establishing other operational requirements such as limiting hours of operation
- Modifications to Chapter 11 (Licensing) creating unique licensing and permitting requirements for freestanding emergency rooms. Certain operational requirements could also be located in this chapter, including the possibility of allowing such licenses only upon a demonstration of “need,” relative to the location and spacing of other similar medical facilities.

**NEXT STEPS:**

Staff seeks direction from City Council on how to proceed regarding freestanding emergency rooms.

Option 1: Do nothing. The moratorium would expire on August 27, 2018 and these businesses would be regulated under existing codes, and allowed in locations as discussed above.

Option 2: Begin the process of adopting local regulations for freestanding emergency rooms, beginning with initial policy direction at this study session and subsequently with a study session to review draft regulations in June 2018. As noted, if any regulations amend Chapter 26, Planning Commission would need to conduct a public hearing, which could occur in late June or early July. It would be important to receive input from Council on how much, if any, additional public input you would desire beyond the standard public hearing processes for adopting an ordinance.

Option 3: While it is also possible for Council to consider adoption of an ordinance extending the existing moratorium, staff does not recommend that approach. With the state legislature’s inaction on this topic in the past 3 sessions, it seems less likely the state will adopt regulations anytime soon. Therefore, the logic of waiting at a local level in order to be aligned with state regulations is becoming less compelling.