



**TO: Honorable Mayor and Council**  
**FROM: Steve Kemp, City Attorney**  
**RE: Zoning and Land Use Practices**  
**DATE: November 13, 2018**

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Recently, at a council meeting there were some citizen comments regarding the council and its approach to zoning and land use. These comments suggested that the city did not follow its procedures for consideration of land use applications.

The city's procedures for the consideration of land use applications are found in Title 10 of the city code. In section 10-1-3, the code describes the purpose of zoning as:

(A) Purpose: It is the purpose of this title to preserve and promote the public health, safety and general welfare of the inhabitants of the city and of the public generally; and to regulate development in such a manner to encourage and facilitate the orderly growth and expansion of the city.

This is the process that the council undertakes each time a land use application is reviewed. The council's review does not occur in a vacuum. Rather it is based on section 10-1-9 of the city code which provides:

(B) Review Procedure:

1. City Staff Review: City staff shall review the request for compliance with city requirements and comment on the concept proposed in light of the city's comprehensive plan, neighborhood goals and policies, the ordained criteria by which the application is to be judged and existing and approved development within the general area.
2. City Staff Recommendation: City staff shall review the proposal in light of the provisions of this title, other applicable regulations, the comprehensive plan, existing and proposed development, comments from affected agencies and shall frame the city staff's formal recommendation on the proposal.

As you may have noticed in council presentations, staff provides this information and addresses these points.

It must be recognized that the power to engage zoning and other land use regulations is the result of statutory authority, not an inherent power that council automatically

exercises. As noted in the purpose statement in the code, land use regulation, including zoning, is the exercise of the police power and is limited by both the United States and Colorado constitutions as well as state legislative authority.

It has been suggested that the code is a mere minimum and council can impose additional regulation as you go forward. This suggestion is not legally defensible, it ignores the police power nature of land use regulation and the limits imposed by both the federal and state constitutions. The council's responsibility in the exercise of the authority to regulate the use of land is to balance a number of competing interests such as public safety, provision of public services, congestion and traffic and encouraging land use consistent with the comprehensive plan and vision.

The suggestion that the focus of the council's regulation should be on the alleged desire of a group of citizens and to imply that it is unethical to consider the responsibilities outlined above is not a correct reading of the council's authority in the area of land use.

It is my opinion that the council is fulfilling the purpose of our code and that staff is providing complete information to the council to provide for the exercise of its responsibilities in an ethical manner. Should you have any further questions, please do not hesitate to contact me.