



TO: Honorable Mayor and Council
FROM: Steve Kemp, City Attorney
RE: Public Comment on May 1, 2018 Council Meeting on Council Response
DATE: May 10, 2018

At the May 1, 2018 council meeting, a citizen made a comment that the Colorado Open Meetings Act did not prohibit council responses to citizens under Public Comment. This is the response to that inquiry.

Colorado Revised Statutes Section 24-6-402 requires that any public business that will be discussed by a local public body (which includes the Littleton City Council) must be listed on a meeting agenda that is posted not less than 24 hours before the meeting. The Colorado Supreme Court in *Town of Marble v. Darien*¹ held that the notice need not be specific, but must enable an ordinary member of the community to understand what is being discussed. In *Weisfield v. City of Arvada*² the Colorado Court of Appeals held that the beneficiary of the open meeting law is not those who attend council meetings or are on council, rather it is the public who is given the opportunity to obtain information and participate in the legislative process.

Citizens raise concerns under public comment that constitute public business, these comments may lead to legislation or council discussion. If there is council discussion at the public comment item where the substance of the discussion is not listed, this defeats the intent of the Colorado Open Meetings Law which is to give the public the opportunity to obtain information and participate in the legislative process. As our Supreme Court noted in *Cole v. State*³, “.... Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices.”

Based on these decisions, it is my opinion that the proper process in conformance with the Colorado Open Meetings Act is that council should not engage in inquiry and discussion under public comment as the substance of the discussion is not indicated. Rather, council may refer the item to staff for a response or direct its placement on a subsequent agenda in conformance with the Colorado Open Meetings Act

¹ 181 P3d 1148 (2008)

² 361 P3d 1069 (2015)

³ 673 P2d 345 (1983)