



AGENDA
CITY COUNCIL WORK SESSION
October 20, 2020
5:30 PM
City Council Chambers – 1100 37th Street

OPTIONAL VIRTUAL MEETING PARTICIPATION

Please click on this URL to join virtually: <https://us02web.zoom.us/j/89807826991>
Or join by phone: 1-669-900-9128
Webinar ID: 898 0782 6991

1. COVID-19 Response Update (5 Minutes)
James L. Becklenberg, City Manager
2. Discussion About Repeal and Replacement of Land Use Development Section of Land Use Code (15 Minutes)
James L. Becklenberg, City Manager
Randy L. Ready, Asst. City Manager
Anne Best Johnson, Community Development Director
3. Decriminalization of the Evans Municipal Code (30 Minutes)
Scott Krob, City Attorney
Drew Lyman, Assistant City Attorney
4. Legislative Update for 2020 (15 Minutes)
Scott Krob, City Attorney
5. Council Discussion

CITY OF EVANS – MISSION STATEMENT
“To deliver sustainable, citizen-driven services for the health, safety, and welfare of the community”

CITY COUNCIL WORK SESSION AGENDA REPORT

DATE: October 20, 2020
SUBJECT: COVID-19 Response Update
NAME & TITLE James L. Becklenberg, City Manager

ITEM DESCRIPTION:

The City's response to the COVID-19 virus circumstances continue, with continuous Emergency Operations Center (EOC) operations to monitor evolving conditions, coordinate with the Weld County Department of Public Health and Environment, and plan the City's operational response. The structure of the EOC, along with staffing roles, is attached to this report. Response strategies are consistent with the City's Emergency Operations Plan (EOP), which is intended to serve as a high-level guide for all emergencies.

In addition to the broader EOP, staff has developed specific responses to the pandemic conditions presented by COVID-19, which are shown in the attached "Pandemic Response Plan." At the March 17, 2020 staff described the "Operational Response Progression" and noted that at that time, the City was in Phase 3 response. At this time, the City remains in Phase 3, as most City services remain operational, due to capabilities for remote work and social distancing strategies.

At the work session, the City Manager will provide an update on local COVID-19 statistics and any significant COVID-19 operational issues and impacts since the October 5, 2020 work session.

FINANCIAL SUMMARY:

None

REQUESTING FROM CITY COUNCIL:

Discussion and questions about the City's response to COVID-19.

ATTACHMENTS:

None

CITY COUNCIL WORK SESSION AGENDA REPORT

DATE: October 20, 2020

SUBJECT: Discussion About Repeal and Replacement of Land Use Development Section of Land Use Code

NAME & TITLE: James L. Becklenberg, City Manager
Randy L. Ready, Asst. City Manager
Anne Best Johnson, Community Development Director

ITEM DESCRIPTION:

Land Use applications are one of the most frequently used planning processes in Evans. Land Use applications such as Site Plans, Minor Development Plans and Uses by Special Review are processes used to ensure reasonable compatibility with surrounding land uses. Public notification processes are usually involved, and every effort is made to ensure a rational application of the Development Standards to protect the investment of the applicant and the surrounding property owners. Having a Municipal Code that is clear in process, has rational criteria for approval, and includes defined application requirements is key to retaining and attracting business as well. In addition, a Code with established clear expectations enables applicants and staff to have common understandings going into the process

Land Use applications are currently found in three sections of the Municipal Code as detailed below:

- 18.07.110: Minor Development for Non-Residential / Redevelopment
- 18.06.090: Plot Plans for Residential building permits
- 18.06.090: Site Plan
- 18.06.060: Special Use Permits

The following list provides a high-level synopsis on the rationale for the proposed amendment:

- 18.06.090: Plot Plans for Non-Residential building permits (Site Plan process reference is needed)
- 18.07.110: A Minor Development process to better support re-development activity is needed. This will be a simplified administrative process modeled on the Minor Development, Non-Residential process.
- 18.06.090: Site Plan application materials need to be refined/more flexible and criteria for approval is needed.
- 18.06.060: Special Use application materials are needed.
- 18.04: The Zoning Tables associated with each land use in the zone districts will be better defined identifying which use requires a Minor Development, Site Plan or Special Use Permit.
- 18.10.010: Notification requirements for different application types needs to be refined.

Staff proposes to repeal and replace the entire Section 18.06.060 with land use processes used for development consolidated into one location. The processes will be grouped from simple Plot Plans to more detailed Special Use Permits. Supporting sections of the Municipal Code as described above will also be amended to ensure a wholistic approach to the amendment.

Planning Commission considered this topic of discussion at its work session on September 22, 2020 and agrees that a change to the Code is necessary.

FINANCIAL SUMMARY:

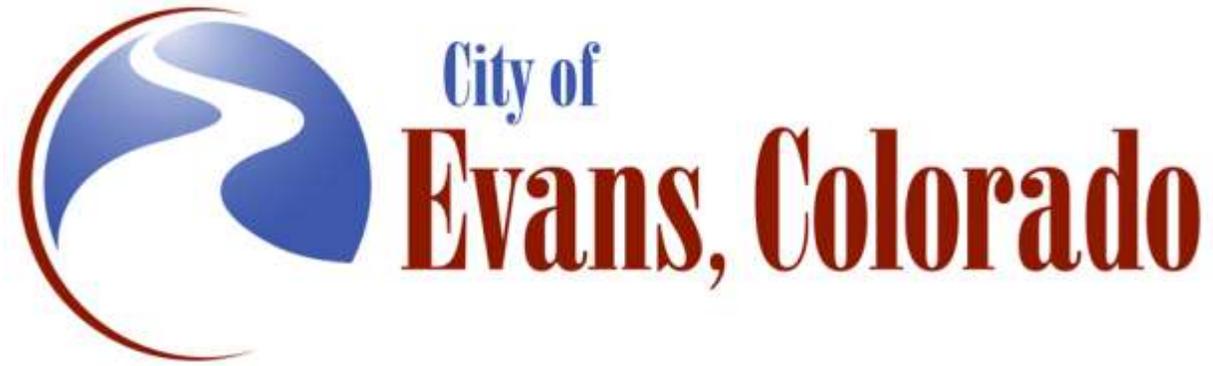
There are no financial implications to the proposed Code language change. There is a potential positive financial implication when the City has a Land Use Code that is clear and easy for both the applicant and staff to follow. Clear expectations, a transparent land use process, and Criteria for Approval are beneficial attributes in a Land Use Code.

REQUESTING FROM CITY COUNCIL:

Staff is seeking City Council comments and questions and direction about whether to return with a code amendment for consideration at a future city council meeting.

ATTACHMENTS:

- Power Point Presentation



City Council

Land Development Processes:
Plot Plans, Minor Development, Site Plans,
Special Use Permits
October 20, 2020

Repeal and Replace Section 18.06.060

Rationale:

- Streamline and Consolidate
 - Group all land use applications into 18.06.060
 - Plot Plans from 18.06.090
 - Adapt Non-Residential Minor Development found in 18.07.110
 - Site Plans from 18.06.090
 - Special Use Permits are already in 18.06.060
- Create a more transparent process
 - Application materials required
 - Criteria for Approval
 - Zoning Tables

Review: Processes to be consolidated into Section 18.06.060

Plot Plans from 18.06.090

- Required at time of Building Permit
- Add requirements for Non-Residential Plot Plans

Redevelopment (Minor Non-Residential from 18.07.110)

- Separate from Multi-Family component
- Create simple, administrative process for redevelopment of Commercial and Industrial properties

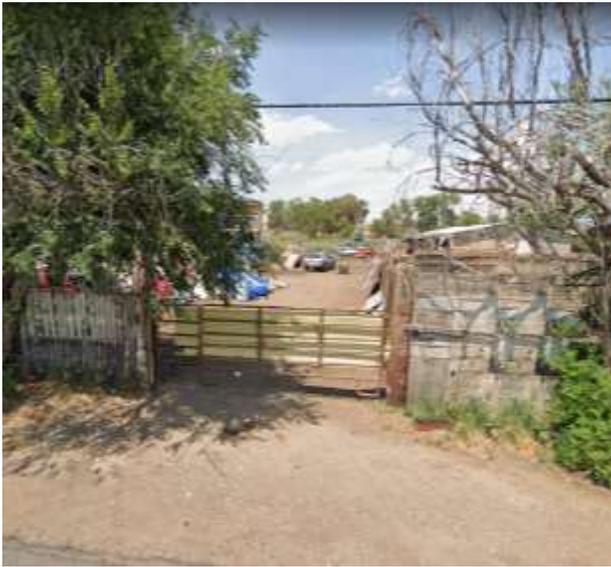
Review: Processes to be consolidated into Section 18.06.060

Site Plans from 18.06.090

- Refine Application materials and criteria for approval

Special Use Permits are already in 18.06.060

- Application requirements are needed



Rationale



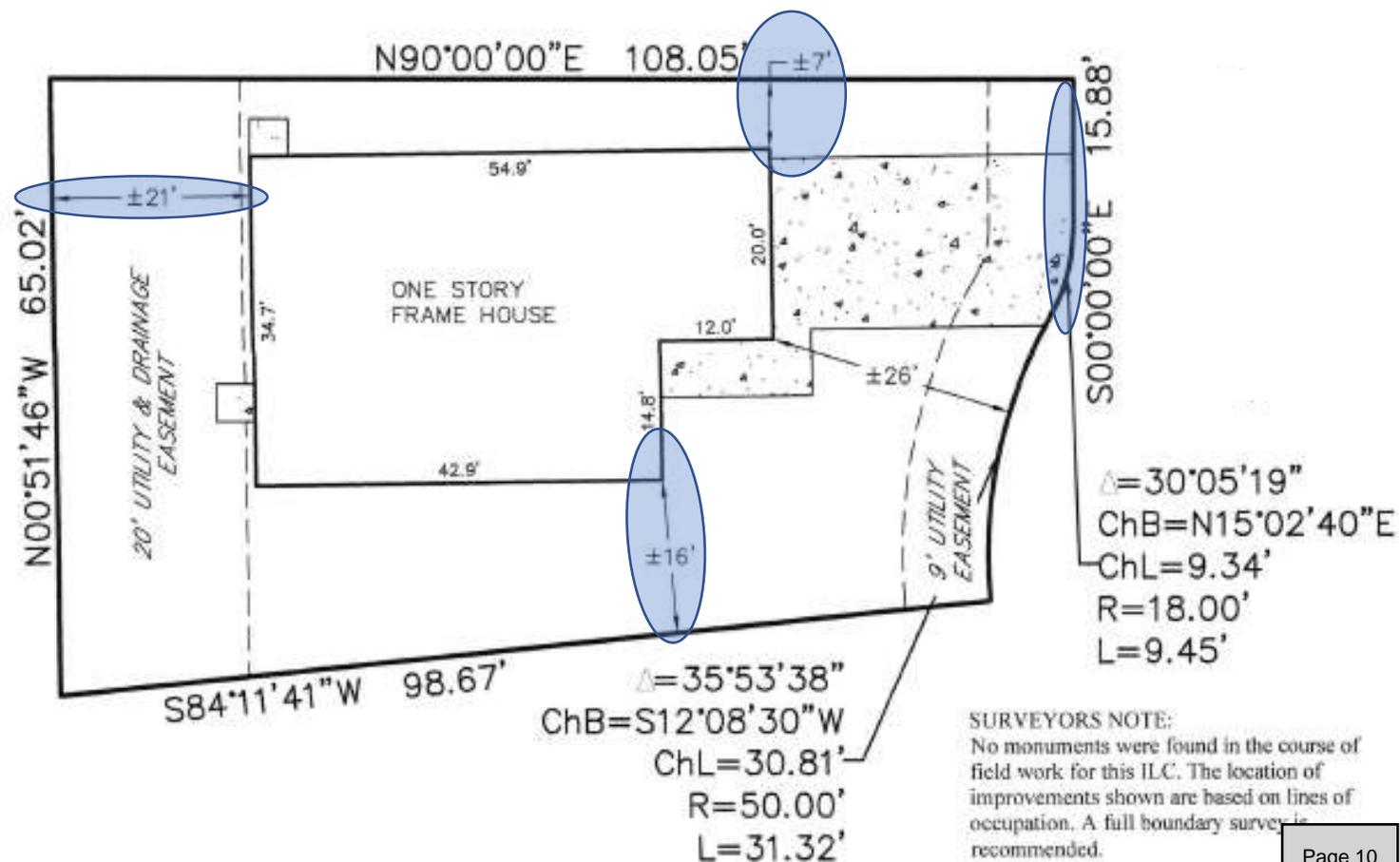
Building Permit

- Single Family
- Duplexes

Plot Plans

What we look for:

- Zoning Use
- PUD Plan variance
- Bulk/Density



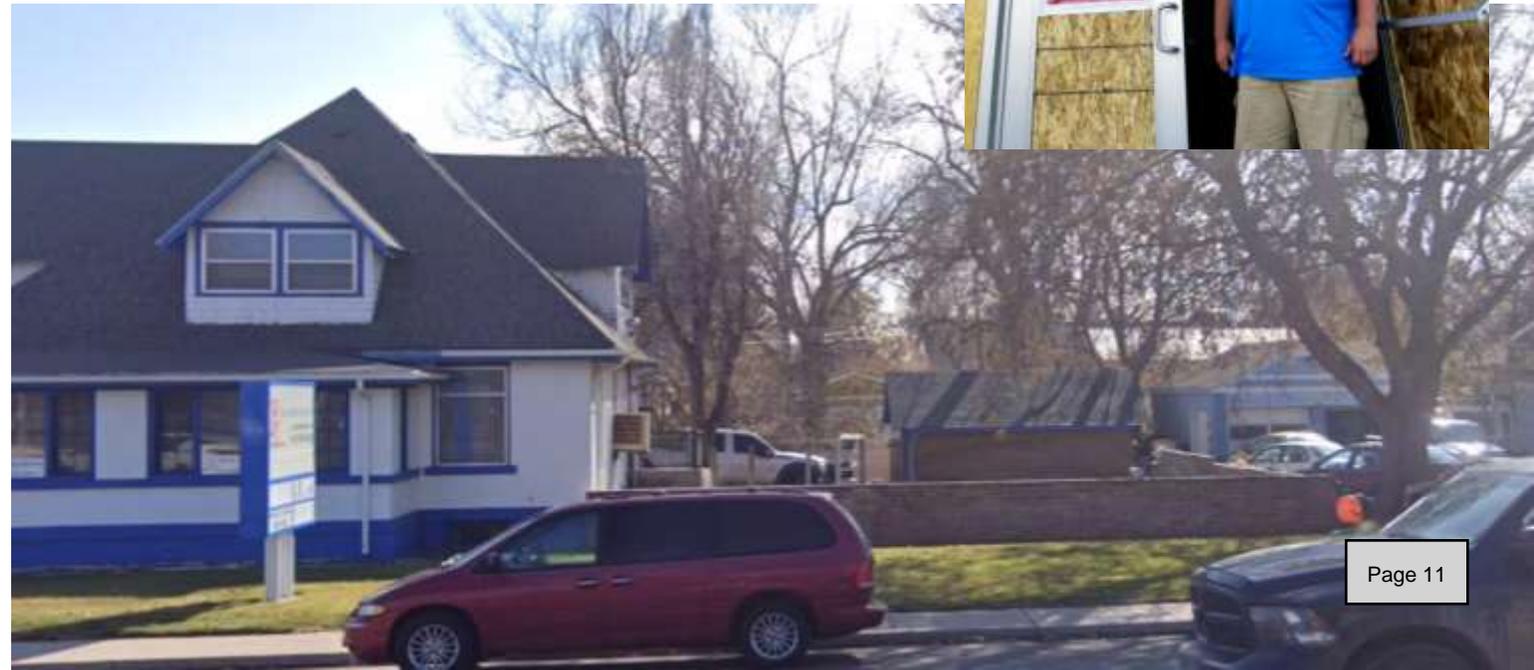
Compatibility/Conformance

- Access
- Noise, Light, Odors, etc.
- Landscaping
- Site and structure
- Public Notice Process

What we look for:

- Zoning and proposed use
- Compatibility
- Bulk/Density
- Flexibility and Phasing

Minor Development/Re-Development



Compatibility/Conformance

- Access, Drainage
- Noise, Light, Odors, etc.
- Landscaping
- Site and structure
- Public Notice Process

What we look for:

- Zoning and proposed use
- Compatibility
- Bulk/Density
- Utilities, Facilities, Drainage
- Flexibility and Phasing

Site Plans



Compatibility/Conformance

- Access, Drainage
- Noise, Light, Odors, etc.
- Landscaping
- Site and structure
- Public Notice & Hearing Process

What we look for:

- Zoning and proposed use
- Compatibility
- Bulk/Density
- Utilities, Facilities, Drainage
- Flexibility and Phasing

Special Use Permits



CITY COUNCIL WORK SESSION AGENDA REPORT

DATE: October 20, 2020

SUBJECT: Decriminalization of the Evans Municipal Code

NAME & TITLE: Scott Krob, City Attorney
Drew Lyman, Assistant City Attorney

ITEM DESCRIPTION:

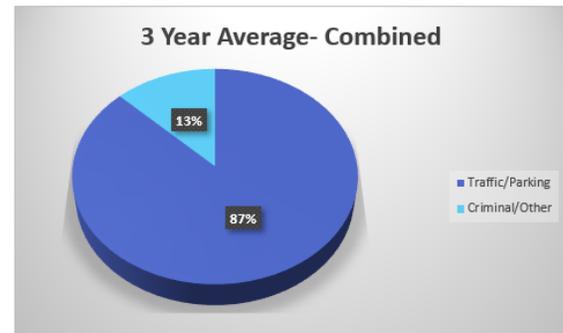
The purpose of this work session is to recommend changes to the Municipal Code that would greatly reduce the City costs in compliance to a 2020 change in state law that requires “each municipality” to “provide independent indigent defense for each indigent defendant charged with a municipal code violation for which there is a **possible sentence of incarceration.**” C.R.S. § 13-10-114.5 (emphasis added).

The vast majority summons issued for Code violations into the Municipal Court fall into the following two categories: **(1)** Misdemeanor criminal violations under Title 9 and **(2)** Traffic and parking violations under Title 10. For convictions of nearly any offense, whether it be a misdemeanor or traffic offense, a sentence of imprisonment not to exceed one year may be imposed. Specifically, Section 1.16.010 states that violations of the Evans Municipal Code may “be punished by ... imprisonment not exceeding one (1) year, or by both such fine and imprisonment.”

To comply with the state law requirement without compromising the City’s law enforcement priorities, staff recommends adopting ordinances to reduce the number of cases for which defense council would be required. Over the past 3 years, on average, 87 percent (or 2,705 cases) have been traffic or parking cases. By removing the penalty of incarceration for traffic and parking offenses, the City can reduce the number of cases potentially involving indigent defense counsel by 87 percent.

The remaining 13 percent of cases average 392 cases per year; however, among those 392 cases, an average of 61 cases involve juvenile defendants for which defense counsel is not required because incarceration cannot be imposed. There remains the question of how to address an average of 331 cases for which the defense counsel requirement likely applies. To further reduce the number of misdemeanor cases, should consider an ordinance amending Chapter 1.17 to clarify when administrative code enforcement rather than judicial code enforcement is available. In addition, City Council might consider removing the possibility of incarceration for animal-at-large cases, which would eliminate approximately 96 cases per year from the defense counsel requirement. (EMC §§ 6.04.020, 6.04.021).

Combined Categories	3 Year Average	2017	2018	2019
Traffic/Parking	2705	3749	2375	1991
Criminal/Other	392	341	325	510
Total Annual Citations:	3097	4090	2700	2501



FINANCIAL SUMMARY:

Currently, the City is required to provide indigent defense counsel in approximately 2,644 cases (2,705 total cases on average minus 61 juvenile cases). The proposed policies are intended to **substantially reduce** the number of cases for which indigent defense counsel applies to roughly 225 cases thereby reducing the City's current legal and financial liability.

From informal surveys, Staff estimates that the typical hourly defense attorney rate for court-appointed counsel is \$75. Upon the further assumption that each case would consume approximately 2 hours of defense attorney time, Staff estimates the annual costs of defense counsel costs could be approximately \$30,000. But certain factors will likely reduce the financial cost of defense counsel. For example, the estimate is based upon the total number of cases filed and does not include cases where a defendant elects to meet with the prosecutor at the first appearance without an attorney to resolve the case. In addition, the estimate does not include failures to appear. Moreover, certain cases are dismissed for lack of evidence or due to prosecutorial discretion, yet such cases are included in the cost estimate. Thus, it is likely that the number of cases requiring court-appointed counsel is significantly less than 225.

REQUESTING FROM CITY COUNCIL:

Staff requests direction regarding the following questions:

1. Should the City amend Title 10 of the Municipal Code to remove the possible penalty of incarceration for traffic and parking offenses.
2. Should the City amend Chapter 1.17 the Municipal Code to clarify and expand administrative code enforcement for land use cases, etc.
3. Should the City amend the Municipal Code to remove the possibility of incarceration for animal-at-large cases.
4. Should the City funding a panel of independent criminal defense attorneys, appointed by the Municipal Court, to defend indigent defendants charged with violations of Title 9 offenses (Public Peace, Morals and Welfare)? Such a policy would retain the City's ability to effectively enforce the criminal provisions of the Code while complying with the state law requirement to provide indigent defense counsel. The estimated cost would be \$30,000 per year, depending on the number of cases requiring court-appointed counsel

ATTACHMENTS:

- Proposed Draft Ordinances

CITY OF EVANS, COLORADO

ORDINANCE NO. XXX-XX

AN ORDINANCE AMENDING CHAPTER 10.04 OF THE EVANS MUNICIPAL CODE TO DEFINE CERTAIN TRAFFIC OFFENSES AS TRAFFIC INFRACTIONS AND TO REMOVE THE PENALTY OF IMPRISONMENT FOR GUILT OR LIABILITY BASED SOLELY UPON THE VIOLATION OF TRAFFIC INFRACTIONS

WHEREAS, the City of Evans is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter; and

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, safe and efficient city traffic control is essential to Evans' quality of life and the health and safety of residents and visitors; and

WHEREAS, the City Council seeks to provide for the orderly, expeditious, and fair disposition of traffic offenses by classifying certain traffic offenses as noncriminal traffic infractions in a manner consistent with state law; and

WHEREAS, City Council finds it necessary to amend Chapter 10.04 of the Evans Municipal Code in furtherance of a more fair, efficient and meaningful judicial process.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

Section 2. Title 10, Chapter 10.04 of the Evans Municipal Code is hereby amended by the addition of Section 10.04.070 to read in its entirety as follows:

**Title 10, Chapter 10.04, Section 10.04.070
Civil Traffic Infractions**

- Sec. 10.04.070(A) Civil Traffic Infractions.
- Sec. 10.04.070(B) Trial before Municipal Court.
- Sec. 10.04.070(C) First Hearing.
- Sec. 10.04.070(D) Final Hearing.
- Sec. 10.04.070(E) Final Judgment After Hearing.
- Sec. 10.04.070(F) Failure to Appear.
- Sec. 10.04.070(G) Appeal.

Sec. 10.04.070(A) Civil Traffic Infractions.

- (1) Traffic offenses under this Code, including the offenses adopted by reference under the Model Traffic Code for Colorado Municipalities, are hereby defined as noncriminal *traffic infractions* when such offenses constitute civil offenses under Section 42-4-1701(1), C.R.S. Class 1 or Class 2 misdemeanor traffic offenses, as defined by state law, are not traffic infractions under this Code.
- (2) A person found guilty or liable based solely upon violation of a *traffic infraction* shall not be subject to the penalty of imprisonment notwithstanding any contrary provision of this Code, including Section 1.16.010.
- (3) All *traffic infractions* under this Code are deemed and shall constitute civil matters and not criminal violations.

Sec. 10.04.070(B) Trial before Municipal Court.

Civil traffic infractions shall be tried exclusively in the Evans Municipal Court. Notwithstanding any provision contained to the contrary, including Section 2.28.320 of the Code, jury trials are not available to a defendant brought to trial solely upon a traffic infraction or infractions.

Sec. 10.04.070(C) First hearing.

- (1) If the defendant has not previously acknowledged guilt or liability and satisfied the judgment, he or she shall appear before the court at the time scheduled for first hearing.
- (2) The defendant may appear in person or by counsel, who shall enter appearance in the case; provided, however, that if an admission of guilt or liability is entered, the court may require the presence of the defendant for the assessment of the penalty.
- (3) If the defendant appears in person, the court shall advise him or her in open court of the following:
 - a. The nature of the infractions alleged in the charging document;
 - b. The penalty, any fees and costs that may be assessed, and the penalty points that may be assessed against the driving privilege;

- c. The consequences of the failure to appear at any subsequent hearing including entry of judgment against the defendant and reporting the judgment to the State Motor Vehicle Division, which may assess points against the driving privilege and may deny an application for a driver's license;
 - d. The right to be represented by an attorney at the defendant's expense;
 - e. The right to remain silent, because any statement made by the defendant may be used against him or her;
 - f. Guilt or liability must be proven beyond a reasonable doubt;
 - g. The right to testify, subpoena witnesses, present evidence and cross-examine any witnesses for the State;
 - h. Any answer must be voluntary and not the result of undue influence or coercion on the part of anyone; and
 - i. An admission of guilt or liability constitutes a waiver of the foregoing rights and any right to appeal.
- (4) The defendant personally or by counsel shall answer the allegations in the charging document either by admitting guilt or liability or by denying the allegations.
- (5) If the defendant admits guilt or liability, the court shall enter judgment and assess the appropriate penalty and the fees and costs after determining that the defendant understood the matters set forth in Section 10.04.070(C)(3) and has made a voluntary, knowing and intelligent waiver of rights.

Sec. 10.04.070(D) Hearings.

The Colorado Rules of Evidence shall not apply to hearings on traffic infractions. Subject to the discretion of the Court all probative evidence shall be admissible. The conduct of the hearing shall otherwise be in the form applicable to noncivil offenses tried to the court.

Sec. 10.04.070(E) Final Judgment After Hearing.

- (1) If all elements of a traffic infraction are proven beyond a reasonable doubt, the court shall find the defendant guilty or liable and enter appropriate judgment.

- (2) If any element of a traffic infraction is not proven beyond a reasonable doubt the court shall dismiss the charge and enter appropriate judgment; provided, however, that the court may find the defendant guilty of or liable for a lesser included traffic infraction, if based on the evidence offered, and enter appropriate judgment.
- (3) If the defendant is found guilty or liable, the court shall assess any applicable fees and additional costs otherwise generally imposed in noncivil municipal offenses.
- (4) The judgment shall be satisfied upon payment to the Clerk of the total amount assessed as set forth above.
- (5) If the defendant fails to satisfy the judgment upon the finding of guilt or liability, or within the time of a reasonable extension granted upon a showing of good cause by, and upon application of the defendant, then such nonpayment in the full amount of the penalty, fees and costs shall be treated as a default.
- (6) Upon entry of any judgment for a traffic infraction the City may take any action the City deems appropriate to collect the judgment, including but not limited to, contracting with, assigning or otherwise sending the judgment debt to a third party collection agency for the collection of the amount due under the judgment.

Sec. 10.04.070(F) Failure to Appear.

- (1) If the defendant fails to appear for any hearing, the court shall enter a default judgment against the defendant. The record of such judgment, including the points assessed, shall be forwarded to the Colorado Division of Motor Vehicles.
- (2) The amount of the judgment shall be the appropriate penalty assessed after a finding of guilt or liability, outstanding judgment fee and additional costs assessable to municipal violations generally upon conviction of noncivil municipal charges, except that such fees and additional costs shall not be added to parking assessment default judgments.
- (3) The court may set aside a judgment entered under this Section on a showing of good cause or excusable neglect by the defendant or the prosecution. A motion to set aside the judgment shall be made to the court not more than seven (7) calendar days after entry of judgment.
- (4) The defendant may satisfy a judgment entered under this rule by

paying the Clerk.

- (5) No warrant shall issue for the arrest of a defendant who fails to appear at a hearing or fails to satisfy a judgment.

Sec. 10.04.070(G) Appeal.

Appeal of any finding of guilty or liability of traffic infractions shall be subject to the same procedures as applicable to convictions of municipal offenses generally.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

Section 5. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and City Clerk, and by the Certificate of Publication. This Ordinance shall become effective upon final passage.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS _____ DAY OF _____, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Julie Kamka, City Clerk

BY: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS ___ DAY OF _____, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Julie Kamka, City Clerk

BY: _____
Brian Rudy, Mayor

CITY OF EVANS, COLORADO

ORDINANCE NO. XXX-XX

AN ORDINANCE AMENDING CHAPTER 1.17 OF THE EVANS MUNICIPAL CODE TO CLARIFY THAT THE CITY MAY ENFORCE CODE VIOLATIONS THROUGH THE ADMINISTRATIVE PROCESS EXCEPT FOR VIOLATIONS ARISING UNDER TITLE 9

WHEREAS, the City of Evans is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter; and

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, Evans Municipal Code Chapter 1.17 establishes a process for non-judicial, administrative enforcement of violations of the Evans Municipal Code; and

WHEREAS, City Council enacted Chapter 1.17 to provide a comprehensive code enforcement system that uses a combination of judicial and administrative remedies to gain compliance with the Evans Municipal Code;

WHEREAS, City Council believes that violations of Title 9 offenses, which require a culpable mental state, should continue to be enforced exclusively through judicial and not administrative means;

WHEREAS, City Council desires to expand administrative code enforcement to all Code violations of the Code except for violations arising under Title 9.

WHEREAS, administrative code enforcement shall be a cumulative enforcement remedy for Code violations meaning that judicial code enforcement shall remain an available enforcement remedy for intentional code violations; and

WHEREAS, City Council finds it necessary to amend Chapter 1.17 of the Evans Municipal Code to in furtherance of a more fair, efficient and meaningful code-enforcement process.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

Section 2. Title 1, Chapter 1.17 of the Evans Municipal Code is hereby amended to read in its entirety as follows:

Title 1, Chapter 1.17 Administrative Penalty Citations for Code Violations

1.17.010 - General intent.

- A. The City Council finds that the enforcement of this Code is an important public service, and that code enforcement is vital to the protection of the public's health, safety and quality of life. The City Council further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with these ordinances.
- B. Except for violations arising under Title 9 of the Evans Municipal Code, this Chapter provides for administrative penalties that may be imposed for any violation of certain the Evans Municipal Code. The Chapter specifically affected is Chapter 8.24 of this Code.
- C. The purpose of this Chapter is to encourage prompt compliance with the Code and prompt payment of any penalties.

1.17.020 - Definitions.

When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

City means the City of Evans.

City Manager means the City Manager or the City Manager's designee.

Code means ~~those any provisions of the Evans Municipal Code, enumerated in Subsection 1.17.010.B.~~

Enforcement Official means an employee or agent of the City authorized to enforce the ordinances of the City.

Hearing Officer means the officer appointed by the City Manager to hear appeals under this Chapter.

Responsible party means a person or entity who has violated the Code or, in the case of property violations, the responsible party may also be the property owner, the occupant, or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Chapter.

1.17.030 - Authority.

- A. Any responsible party violating provisions of the Code may be issued an administrative citation by an Enforcement Official as provided in this Chapter.
- B. Notwithstanding any other provision of the Code, responsible parties cited under the provisions of this Chapter shall have only the appeal rights granted herein.

- C. Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate administrative citation may be issued. However, once an administrative citation has been issued for a violation of the Code, no additional administrative citation shall be issued for the same violation for seven (7) days or, if the responsible party requests an appeal in accordance with this Chapter, until after the appeal has been heard and the responsible party has not complied with an administrative enforcement order of the Hearing Officer within seven (7) days of its issuance or such other time as the Hearing Officer has specified.
- D. A civil penalty assessed by means of an administrative citation may be collected by any means allowed by law.
- E. Enforcement actions are intended to be cumulative in nature. The City may pursue one (1) or more civil, criminal and administrative actions, fees, fines, sentences, penalties, judgments and remedies and may do so simultaneously or in succession. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute violations as criminal offenses.

1.17.040 - Procedures for issuance of an administrative citation.

- A. Whenever the Enforcement Official determines that a violation of the Code exists, the Enforcement Official shall issue a notice of violation and order to correct ("Notice of Violation") to the responsible party. The Notice of Violation shall be in writing and shall describe with reasonable detail the violation so that the responsible party may properly correct it. The Notice of Violation shall provide a reasonable time for correction not to exceed thirty (30) days ~~(typically seven [7] days) for correction given the circumstances of the violation, but in no case more than thirty (30) days.~~ The initial time period for correction of the violation may be extended, at the discretion of the Enforcement Official, if the responsible party demonstrates a good faith effort to the satisfaction of the City to correct the violation within the initial time given for correction of the violation. In no case shall the time to correct a violation extend beyond 180 days from the initial date of the issuance of the Notice of Violation.
- B. The Notice of Violation shall be served as follows:
 - 1. ~~The Enforcement Official shall attempt to issue the Notice of Violation to the responsible party. at the site of any violation. If the responsible party is not located, a copy of the Notice of Violation shall be left with any adult person residing or working at the site, or if no adult person is found at the site and the violation occurred on private property or on property for which the responsible party has responsibility, then a copy of The Notice of Violation shall be posted in a conspicuous place on the site and a copy mailed, first-class mail, postage prepaid, to the last known address of the responsible party. property owner's mailing address listed with the Weld County Assessor.~~ to the property owner's address recorded with the Weld County Assessor. If the address recorded with the Weld County Assessor

is a different address from the mailing address of the site of the violation, then an additional copy of the Notice of Violation shall also be mailed to the occupant at the site address.

2. ~~If the Enforcement Official is unable to issue the Notice of Violation to the responsible party personally, then the Notice of Violation shall be sent via first class mail to the responsible party. In the case of violations occurring on private property where the owner of such property is a responsible party, the Notice of Violation shall be sent to the address shown in the County Assessor records for the County. In the case of violations occurring on property for which the responsible party is not the owner, the Notice of Violation shall be sent to the most recent mailing address available to the City for that responsible party.~~
- 2.3. The Notice of Violation shall be deemed served upon the third day after the ~~on the~~ date of receipt mailing to the responsible party, or, if personally served, upon the date of such personal service. ~~or upon the fifth day after mailing of the Notice of Violation. Notices posted in a conspicuous place on the site, in accordance with Paragraph 1. above shall be deemed personally served.~~ Notices of violation for violations that pose an immediate threat to public health and safety or to the environment, but that cannot be personally served or posted in a conspicuous place upon the property, shall be sent to the address shown in the County Assessor records and shall be deemed served on the date of postmark.
- C. If, after service of the Notice of Violation, the Code violation is not timely corrected an Enforcement Official may issue an administrative citation to a responsible party.
- D. Service of an administrative citation on a responsible party shall be made in the same manner as the Notice of Violation as described in Subsection B. above. ; ~~The administrative citation shall be deemed served upon the fifth day after mailing of the administrative citation. Administrative citations for violations that pose an immediate threat to public health and safety or to the environment shall be sent to the address shown in the County Assessor records and shall be deemed served on the date of postmark.~~

~~1.17.050 – Voluntary compliance agreements.~~

- A. ~~A voluntary compliance agreement may be entered into at any time after issuance of a notice of violation or a citation pursuant to this Chapter.~~
- B. ~~The voluntary compliance agreement is a commitment by the person responsible for code compliance under which the person agrees to do any combination of abating the violation, remediating the site or mitigating the impacts of the violation. The voluntary compliance agreement shall include the following:~~
1. ~~Name and address of the party responsible for the violation;~~

- a. — ~~Responsible party association with the property/violation;~~
 2. — ~~Address or legal description of the location of the violation;~~
 3. — ~~Description of the violation with reference to the applicable section of Code;~~
 4. — ~~Description of necessary corrective action, includes:~~
 - a. — ~~Deadline of corrective action (the Enforcement Official may either require that compliance be achieved by a specific date or that compliance be achieved by a date to be determined based on the occurrence of some future event);~~
 5. — ~~The subsequent action the Enforcement Official shall enact should voluntary compliance not be satisfied as stipulated in the agreement, unless superseded by state or federal law;~~
 6. — ~~An acknowledgment that if the department determines that the terms of the voluntary compliance agreement are not met, the City may abate the violation in accordance with Section 1.16.050 of this Title;~~
 7. — ~~An acknowledgment that if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the property where the nuisance code violation occurred if owned by the person responsible for code compliance;~~
 8. — ~~An acknowledgment that by entering into the voluntary compliance agreement the person responsible for code compliance waives the right to administratively appeal, and thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and that if the department determines the terms of the voluntary compliance agreement are not met, the person is subject to and liable for any remedy authorized by this Section, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the City to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development or building permit; and~~
 9. — ~~An acknowledgment that the person responsible for code compliance understands that he or she has the right to be served with a citation, notice and order to correct or cease and desist order for any violation identified in the voluntary compliance agreement, has the right to administratively appeal any such citation, notice and order to correct or cease and desist order and that he or she is knowingly, voluntarily and intelligently waiving those rights.~~
- C. — ~~Upon entering into a voluntary compliance agreement, a person responsible for code compliance waives the right to administratively appeal, and thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and agrees that if the department determines the terms of the voluntary compliance agreement are not met, he or she is liable for the civil penalty identified in the voluntary compliance agreement, is liable for the costs incurred by the~~

~~City to pursue code compliance and to abate the violation, including legal and incidental expenses, and is subject to all other remedies provided for in this Section.~~

~~D.—Voluntary compliance agreements shall extend the deadline for corrective action for a reasonable amount of time, but never more than thirty (30) days from the date of agreement.~~

~~1.—Only one (1) extension of the time limit for compliance or a modification of the required corrective action may be granted by the department if the person responsible for code compliance has shown due diligence or substantial progress in correcting the violation but circumstances render full and timely compliance under the original conditions unattainable.~~

~~E.—The voluntary compliance agreement is not a settlement agreement.~~

1.17.060 - Contents of administrative citation.

A. The administrative citation shall state the date and location of the violations, and the approximate time the violations were observed. Where applicable, the administrative citation shall identify the property in violation by address or legal description.

B. The administrative citation shall state the Code sections violated and describe the violations.

C. The administrative citation shall describe the action required to correct the violations.

D. The administrative citation shall require the responsible party to correct the violations within a reasonable time given the circumstances, but in no case more than seven (7) days, and shall explain the consequences of failure to correct said violations.

E. The administrative citation shall state the amount of penalty imposed for the violations.

F. The administrative citation shall explain how the penalty shall be paid, the time period by which it shall be paid and the consequences of failure to pay the penalty.

G. The administrative citation shall identify the right and procedures for appealing the administrative citation.

H. The administrative citation shall contain the signature of the Enforcement Official..

1.17.070 - Appeal of administrative citation.

A. A person served with an administrative citation may file a notice of appeal in person or by mail postmarked no later than seven (7) calendar days from the service of the administrative citation. Compliance with this time limit shall be a jurisdictional prerequisite to any appeal brought under this Chapter. Failure to comply with such time limit shall be deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the administrative citation has been provided.

B. The notice of appeal shall be made in writing, filed with the City Clerk and contain the following information.

1. The reasons the appellant believes the administrative citation is objectionable, incorrect or illegal.
2. The amount and type of claim or dispute involved, and the time during which it accrued or occurred.
3. The name, address and telephone number of the appellant.
4. The signature of the appellant, legal representative and/or corporate agent.

C. A processing fee in the amount indicated on the administrative citation shall be paid by cash, check or certified funds simultaneously with the filing of the notice of appeal. The processing fee is not refundable except as provided in Subsection 1.17.080.L of this Chapter.

D. If, in the opinion of the City Clerk, the appeal meets all of the requirements of Sections A through C above, the City Clerk shall forward the notice of appeal to the designated Hearing Officer.

E. If, in the opinion of the City Clerk, the appeal does not meet all of the requirements of Subsections A through C above, the City Clerk shall promptly return the appeal and notify the appellant of what requirements the appeal fails to meet.

F. As soon as practicable after receiving the written notice of appeal, the designated Hearing Officer shall schedule a date, time and location for the hearing, unless, if requested by the appellant and in the sole discretion of the designated Hearing Officer it is submitted on written brief and supporting material.

G. Written notice of the date, time and location of the hearing shall be personally served upon or sent by first-class mail to the responsible party at least seven (7) calendar days prior to the date of the hearing.

1.17.080 - Procedures and standards at administrative citation appeal hearings.

A. The procedure and format of the administrative citation appeal hearing shall follow procedures as set forth herein. Procedure: In addition to any procedural hearing requirements the Hearing Officer may adopt by rule, the Hearing Officer shall conduct hearings and make decisions in accordance with the following requirements:

1. The Hearing Officer may keep a record of the proceedings, either stenographically or by sound recording, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any person upon request within sixty (60) days of the hearing and payment in advance of the estimated cost of production of the transcript.
2. The Hearing Officer shall render written decisions, accompanied by findings of fact and conclusions based thereon. Conclusions based on any provision of Chapter

8.24 of this Code shall contain a reference to such provision and shall also contain the reason the conclusion is deemed appropriate in light of the facts found.

3. All witnesses may be sworn or affirm their testimony.

B. Administrative citation appeal hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required by the Hearing Officer or requested by any party. The request must be in writing. Failure to request discovery shall not be a basis for a continuance.

C. The parties to an administrative citation appeal hearing shall be the responsible party and the City.

D. The City bears the burden of proof at an administrative citation appeal hearing to establish the existence of a violation of the Code.

E. The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative citation appeal hearing is by a preponderance of the evidence.

1.17.090 - Duties and powers of Hearing Officer.

A. The Hearing Officer shall determine whether appeals of administrative citations are valid. In doing so the Hearing Officer shall determine whether the administrative citation under appeal was issued in compliance with the requirements of the City ordinances. In each case the Hearing Officer shall be charged with performing all functions relating to the final factual determinations and procedural orders, and entertaining petitions or motions made in writing. The Hearing Officer may perform those duties and functions necessary and incidental to determining the matter, hearing all evidence and examining all documents.

B. In the discretion of the Hearing Officer, parties to the hearing may be required to file a pre-hearing statement before the case is set for hearing. The pre-hearing statement may include: the issues raised by the appeal; agreed and disputed facts; copies of exhibits not previously included in the record; names of witnesses with a brief statement summarizing their testimony; an estimate of the time necessary to present a party's evidence and other matters as requested by the Hearing Officer.

C. All hearings or, when an appeal is submitted for determination based on written argument and written facts and figures, all examination of such written petitions and papers shall be conducted by the Hearing Officer assigned to conduct the hearing or to examine the written material submitted.

D. The admissibility of evidence shall be encouraged and the Hearing Officer shall consider all evidence of probative value. The Hearing Officer may utilize his or her experience, technical competence and specialized knowledge in the evaluation of evidence presented.

E. Copies, photographs and photocopies may be admitted into evidence or substituted in evidence in place of original documents.

F. Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the Hearing Officer.

G. Whenever it appears that an appeal is not properly before the Hearing Officer, or that the appellant for some other reason lacks jurisdiction or standing, the case may be dismissed on the motion of any party or the Hearing Officer.

H. Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular law or ordinance involved.

I. The written decision of the Hearing Officer shall be known as an administrative enforcement order.

J. The parties may enter into a stipulated agreement which must be signed by both parties. Upon approval and acceptance by the Hearing Officer, this agreement shall be entered as the administrative enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

K. The Hearing Officer may uphold the administrative citation and all penalties, or dismiss the administrative citation and all penalties, or may conditionally reduce the penalties assessed by the administrative citation. The Hearing Officer may also impose conditions and deadlines to correct the violation or require payment of any outstanding penalties.

L. If the Hearing Officer dismisses the administrative citation and all penalties due to the City's failure to satisfy its obligations under this Chapter, the appellant's thirty-five-dollar processing fee shall be promptly refunded.

M. The Hearing Officer has continuing jurisdiction over the subject matter of an administrative citation appeal hearing for the purposes of granting a continuance, ordering compliance by issuing an administrative enforcement order, ensuring compliance of that order, modifying an administrative enforcement order, or, where extraordinary circumstances exist, granting a new hearing. The Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.

1.17.100 - False information or refusal prohibited.

It shall be unlawful for any person to willfully make a false statement or refuse to give his or her name or address with intent to deceive or interfere with the Enforcement Official when in the performance of official duties under the provisions of this Chapter. Any person who willfully makes a false statement or refuses to give his or her name or address with intent to deceive or interfere with the Enforcement Official shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Chapter 1.16 of this Title.

1.17.110 - Failure to attend administrative citation appeal hearing.

Any responsible party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided as required herein.

1.17.120 - Failure to comply with administrative enforcement order.

It is unlawful for a responsible party to an administrative enforcement hearing who has been served with a copy of the final administrative enforcement order to fail to comply with the order. Any person who fails to comply with a final administrative enforcement order shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Chapter 1.16 of this Title. Prosecution for failure to comply with a final administrative enforcement order shall not commence until the time to appeal such order has lapsed.

1.17.130 - Penalties assessed.

A. If the responsible party fails to correct the violation within the time required as indicated on the notice of violation, or if an additional violation of ~~Chapter 8.24 of this Code~~ the same Code section as the initial violation of this Code is observed within six (6) months of the notice of violation, an administrative citation may be issued to the responsible party indicating a fine of one hundred fifty dollars (\$150.00).

B. If the responsible party fails to correct the violation within the time required as indicated on the administrative citation, or if another violation of ~~Chapter 8.24 of this Code~~ the same Code section as the initial violation of this Code is observed within six (6) months of the date of the first administrative citation, a second administrative citation may be issued to the responsible party indicating a fine of five hundred dollars (\$500.00).

C. If the responsible party fails to correct the violation within the time required as indicated on the administrative citation, or if another violation of ~~Chapter 8.24 of this Code~~ the same Code section as the initial violation of this Code is observed within six (6) months of the date of the second or subsequent administrative citation, a third or subsequent administrative citation may be issued to the responsible party indicating a fine of nine hundred ninety-nine dollars (\$999.00).

D. Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.

1.17.140 - Failure to pay penalties.

A. All penalties assessed shall be payable to the City. Payment of the full amount of the penalty must be received in person or by mail postmarked no later than thirty (30) calendar days from the date of issuance of the administrative citation or administrative enforcement order, or within the time specified on the administrative enforcement order.

B. Any such penalty that is not paid within thirty (30) days shall cause such penalty to become a lien against such property, to have priority over all liens, except general taxes and prior special assessments, to be placed upon the tax list for the current year, and to be collected in the same manner as other taxes are collected, together with a fifteen-percent penalty to defray the cost of collection, as provided by the laws of the State.

C. The failure of any responsible party to pay the civil penalties assessed by an administrative citation or administrative enforcement order within the time specified on the

citation or order, respectively, may result in the imposition of a late fee of twenty-five dollars (\$25.00) and interest at a rate of ten percent (10%) per annum.

D. Any action or other process provided by law may be maintained by the City to recover or collect any amounts, including late fees, penalties, interest and administrative costs, owing under this Chapter, including but not limited to referral of this matter to the Municipal Court by service of a summons and complaint, in which case, notwithstanding the previously imposed penalties, the responsible party shall be subject to the penalties set forth in Chapter 1.16 of this Title. The City Manager may also refer the matter for collection by whatever means are available to the City.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

Section 5. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and City Clerk, and by the Certificate of Publication. This Ordinance shall become effective upon final passage.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS ____ DAY OF _____, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Julie Kamka, City Clerk

BY: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS ___ DAY OF _____, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Julie Kamka, City Clerk

BY: _____
Brian Rudy, Mayor

CITY COUNCIL WORK SESSION AGENDA REPORT

DATE: October 20, 2020
SUBJECT: Legislative Update for 2020
NAME & TITLE: Scott Krob, City Attorney

ITEM DESCRIPTION:

It's time for the annual update with City Council of new legislation adopted by the Colorado General Assembly during the past year. The legislature had enacted legislation addressing more well-known issues such as the COVID pandemic and police reform to somewhat less discussed issues. This session will provide a brief written summary of most of the 2020 legislation affecting municipalities along with a discussion of those items that have impacted or are likely to impact the City of Evans.

I look forward to our discussion.

FINANCIAL SUMMARY:

N/A

REQUESTING FROM CITY COUNCIL:

Discussion

ATTACHMENTS:

N/A
