



TOWN COUNCIL STUDY SESSION AGENDA
August 26, 2019
5:30 PM

I. Town Council Items

II. Study Session Items

1. Mandatory Homeowners Associations - Schledorn/Fussa/Matthews - 20 minutes
2. Kratom Update and Discussion - Schledorn - 15 minutes
3. Radio Encrypted Channels - King/Combs - 15 minutes
4. Economic Development Update - Carlson/McCampbel - 30 minutes



MEMORANDUM

TO: Mayor and Members of Town Council

FROM: Bryce Matthews, Planning Manager
Jason Rogers, Deputy Community Development Director
John Fussa, Community Development Director

DATE: August 26, 2019

SUBJECT: Mandatory Homeowners Associations

ISSUE:

The Town has a long-standing policy of seeking the formation of homeowners' associations (HOAs) with new residential subdivisions and condominiums. This policy also applies to certain commercial developments. The formation of HOAs benefits the Town by allowing them to perform covenant enforcement, common area maintenance and provide services such as trash collection.

Staff recently became aware that the builder of a residential development under construction in Cottonwood Highlands has failed to form a HOA. Currently, the primary mechanism for requiring the formation of a HOA with new residential development is through the Subdivision Improvement Agreement (SIA). Staff has researched the issue and believes that an amendment to the Land Development Ordinance requiring the formation of HOAs for certain types of development will supplement the SIA and improve the Town's land use process.

FISCAL/BUDGET IMPACT:

None

BACKGROUND:

The buyer of a home in a new residential subdivision in Cottonwood Highlands recently made the Town aware that the community would not have a HOA. Staff contacted the builder, Century Communities, about the issue and they confirmed that they did not intend to form a HOA. This is contrary to the approved SIA for the subdivision requiring the formation of a HOA to address typical responsibilities such as covenant enforcement, common area maintenance and services such as trash collection.

The builder has taken the position that the SIA as drafted only requires a reasonable effort to create an HOA and that they are permitted to utilize other mechanisms for the responsibilities listed above. They assert that the Metro District Service Plan references an

agreement between the HOA and the District for ownership and maintenance of certain common improvements. Thus, the builder intends to have the Metro District maintain the private streets, drainage, parks and open space within the residential subdivision. Staff has contacted the Metro District and confirmed that they will accept responsibility for the maintenance of these improvements.

To further complicate matters, the builder in refusing to form a HOA has assigned the important functions of community management, covenant enforcement and trash collection to the individual property owners. They are using a mechanism known as a party wall agreement that makes each property owner responsible for covenant enforcement including complaints about appearance and property maintenance against neighbors. This approach does not provide for coordinated community management and trash collection because the property owners are "on their own."

To address this issue going forward, the proposed ordinance requires:

1. Formation of a HOA or its commercial equivalent prior to first final plat
2. Maintenance of common and private improvements
3. Covenant enforcement
4. Provision of services such as trash and recycling collection
5. Recordation of HOA documents demonstrating compliance with the ordinance prior to or as a condition of project approval

The ordinance also provides that if a builder wishes to amend or terminate a HOA, it must first coordinate with the Town and demonstrate that responsibilities have been assigned to a special district or other appropriate mechanism acceptable to the Town.

Finally, the ordinance provides that the Town shall have the authority to withhold approvals, permits and certificates of occupancy in the event that an applicant fails to comply with the requirement to form a HOA.

RECOMMENDATION:

Staff recommends Town Council consider the proposed ordinance as described herein.

REQUESTED DIRECTION:

Staff seeks Town Council direction regarding the proposed Land Development Ordinance amendment.

ATTACHMENT:

1. HOA Ord 082219

ORDINANCE NO. _____, Series of 2019

TITLE: A BILL FOR AN ORDINANCE TO ADD A NEW SECTION 13.07.170, ENTITLED ASSOCIATIONS, TO THE PARKER MUNICIPAL CODE

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Parker Municipal Code is hereby amended by the adoption of a new Section 13.07.170, entitled “Associations”:

13.07.170. Associations.

(a) Definitions.

Association means any covenant-controlled community containing two or more property owners, which includes a lawfully constituted and operational board or other similar entity that is empowered to enforce the community's recorded covenants and which has the power to impose assessments for its services that, if unpaid, may be made a lien on the property.

(b) Creation of homeowners’ association. For all residential condominiums or residential subdivisions, the applicant shall create a homeowners’ association under the laws of the State of Colorado, or the property shall be included in an existing homeowners’ association. The homeowners’ association shall be lawfully established prior to, or as a part of, first final plat approval or first condominium map approval that creates residential lots or units. All documents related to the homeowners’ association, including the articles of organization or incorporation and declaration of covenants, conditions, and restrictions, shall be submitted in draft form at the time of application for final plat or condominium map review. Such documents shall be acceptable to the Town as a condition of final plat or map approval.

(c) Creation of property owners’ association. For all vertical mixed-use, commercial condominiums, and commercial minor development plats that include private roadways, detention ponds or other improvements that need to be maintained, the applicant shall create a property owners’ association under the laws of the State of Colorado, or the property shall be included in an existing property owners’ association. The property owners’ association shall be lawfully established prior to, or as a part of, minor development plat approval or condominium map approval. All documents related to the property owners’ association, including the articles of organization or incorporation and declaration of covenants, conditions, and restrictions, shall be submitted in draft form at the time of application for minor development plat or condominium map review. Such documents shall be acceptable to the Town as a condition of minor development plat or map approval.

(d) Recordation. Prior to, or as a condition of, approval of the final plat, minor development plat, or condominium map, the applicant shall record the association documents approved by the Town in the Office of the Clerk and Recorder for Douglas County.

(e) Association documents. The association documents shall require, at a minimum:

(1) Mandatory membership.

(A) All owners of lots, condominium units or of property within the subdivision shall be members of the association.

(B) The members of the association shall share equitably in the costs of operating the association, including the costs of maintaining all open space, common areas and facilities, recreation areas and facilities, private roadways stormwater management areas and facilities, landscaping, walkways and other facilities, which are not dedicated to or accepted by the Town or by a special district organized for such purposes. The association documents shall require, at minimum, that the costs of such maintenance shall be collectable from the owner of the lot, unit or property to which such costs are assessed; and that such costs shall be and constitute a lien upon such lot, unit or property.

(2) Maintenance of property.

(A) Associations shall have covenants regarding maintenance requirements for individual member's lots, units, or property that have standards that meet or exceed those contained in the Parker Property Maintenance Code. The covenants will provide the association the ability to enforce the rules and regulations set forth therein. The association documents shall give the Town the authority to require the association to perform routine maintenance and repairs necessary to keep the property within the subdivision or condominium in good condition, in accordance with the standards that meet or exceed those in the Parker Property Maintenance Code.

(B) If the association does not respond to a notice of violation from the Town regarding maintenance within thirty (30) calendar days of the date of such notice, the Town shall have the right to perform the work itself or hire a contractor to perform the work and assess each property owner of the association and/or each owner of property within the subdivision, or unit within a condominium, a fee to recover its costs. Such fee shall include an administrative charge equal to fifteen percent (15%) of the cost of the work performed. The costs may be recovered in a Municipal Court proceeding. The Town may also assess and file a lien against any property within the subdivision, or unit within the condominium, for the cost of the work that was performed by the Town. The lien shall be a first and prior lien to all other liens.

(3) Town approval to amend or terminate. The association documents shall include a provision requiring the Town's written consent to amend or terminate any of the covenants that are the subject of this Section.

(4) Additional association responsibilities.

(A) Trash and Recycling Collection: Associations shall have covenants requiring regular trash and recycling collection and the association

shall be responsible for regular trash and recycling collection for all lots or units, common amenities/facilities and parks and open space.

(B) Public Access: Associations shall provide cross-access easements providing public access to all parks, open space, trails and accessory uses/facilities including but not limited to public bathrooms, parking, play equipment and seating.

(C) Association documents: Associations shall make available within seven (7) days of request, at no charge to the Town, association records related to the requirements contained in this Section, including but not limited to, the association's governing documents, covenants, bylaws, meeting agendas and minutes, capital improvement plans, and budgets.

(f) Exemption. The Planning Director may exempt residential subdivisions containing less than ten (10) detached dwelling units from the requirements of this Section, where the applicant can demonstrate the following:

(1) The proposed subdivision has no maintenance responsibilities or can demonstrate that maintenance responsibilities have been assigned to a special district.

(2) The enforcement of covenants is made through a different entity [*such as a special district*] or the use of a party wall agreement.

(g) Failure to Comply. The Town, through the Planning Director, shall have the authority to withhold approvals, permits and certificates of occupancy in the event that an applicant fails to comply with the requirements of this Section.

Section 2. **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. **Severability.** If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____,
2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



MEMORANDUM

TO: Mayor and Town Council

FROM: Kristin Schledorn, Deputy Town Attorney
David King, Chief

DATE: August 26, 2019

SUBJECT: Kratom update and discussion

ISSUE:

Whether to regulate the sale of kratom in the Town of Parker.

FISCAL/BUDGET IMPACT:

None

BACKGROUND:

Kratom is an herbal substance found in the leaves of a plant that grows naturally in Thailand, Malaysia, Indonesia, and Papua, New Guinea. The leaves can be made into a tea, chewed or made into a capsule. The active ingredients in kratom have effects similar to an amphetamine or opioids, and have been used for various purposes such as pain relief. There are several businesses in Town that sell kratom.

There are no FDA-approved uses for kratom. It is currently imported into the United States marked "not for human consumption." The U.S. Food and Drug Administration is warning consumers not to use kratom, noting that it "affects the same opioid brain receptors as morphine, appears to have properties that expose users to the risks of addiction, abuse, and dependence."

Currently the Town of Castle Rock has banned the sale of kratom to those under the age of 18. Greenwood Village recently adopted an ordinance banning its sale entirely. Tri-County Health supported this ban (letters to Greenwood Village and Castle Rock attached).

Town Council discussed kratom in executive session on June 3, 2019, with the Town Attorney's office. We are returning in study session to receive direction. Options for Town Council to consider include:

(1) take no action at this time and continue to monitor kratom's impacts within the Town; (2) ban sales of kratom to those under the age of 18; or (3) ban all sales of kratom for human consumption.

RECOMMENDATION:

The Police Department would recommend banning its sale for human consumption.

REQUESTED DIRECTION:

Provide direction on whether to regulate the sale of kratom in the Town of Parker.

ATTACHMENT:

1. TriCounty Letter to Castle Rock
2. Tri-County Letter to Greenwood Village



Tri-County Health Department Testimony to Town of Castle Rock, Colorado

Re: Ordinance 2019-011 - Amending Title 9 of the Castle Rock Municipal Code by the Addition of a New Chapter 9.24 Entitled Sale of Kratom to Minors Prohibited (Second Reading)

June 4, 2019

Tri-County Health Department (TCHD) remains concerned with the Town of Castle Rock's proposed ordinance to regulate kratom absent critical health and safety information. If the Town of Castle Rock does take action to permit sales to persons 18 years of age and older, TCHD urges the Town to take action to ensure that consumers are sufficiently informed when purchasing these products. As a home rule municipal corporation, the Town Council is empowered to adopt ordinances as are necessary and convenient to protect the health, safety and welfare of the community. TCHD strongly recommends that the proposed ordinance also include a requirement for warning labels for all kratom products authorized for sale in Castle Rock. Such labeling should state "This product is not intended for human consumption. Consuming kratom products may pose a risk, including death, to consumers and has addictive potential. Increased risk of injury or death may be posed by consuming with alcohol and other drugs."

Unlike other products evaluated and regulated by the U.S. Food and Drug Administration (FDA), kratom has not been approved for human use as a drug, food ingredient, or dietary supplement. As such, these products are not subject to any of the FDA labeling requirements that consumers rely on to make informed choices. This is especially concerning given that kratom must be imported in the U.S. labeled as not for human consumption, with wholesalers then repackaging the product for retail sale intending for people to ingest it without such labeling.

The lack of health oversight over kratom production and human use remains problematic and poses risks to people who use it. Kratom is promoted by the industry as having a wide variety of pharmacologic effects on users. Kratom is marketed as a pain reliever, anti-inflammatory, cough suppressant, mood enhancer, stress reliever, blood sugar stabilizer, metabolism booster, immune system booster, energy booster, and, because of the similar physiological effects, as a method of curing opioid addiction. The scientific evidence is either lacking or incomplete to establish the health benefits of using kratom to treat these medical conditions.

While TCHD continues to recommend a ban on sales of kratom products pending better scientific evidence on health and safety, we understand that the Town Council has the authority to regulate this product in the absence of state law. We urge the Town Council to require warning labels on kratom products sold in your jurisdiction to provide, at a minimum, a basic safety message to consumers.

For questions, concerns, or any additional information, please contact Dr. Bernadette Albanese at balbanese@tchd.org or 720-200-1534.

This information is provided on behalf of the Tri-County Health Department as a public health agency and not on behalf of the Commissioners of Adams, Arapahoe or Douglas Counties.



June 18, 2019

TO: Honorable Mayor and City Councilmembers
Tonya Haas Davidson, City Attorney
City of Greenwood Village, Colorado

FROM: Bernadette Albanese, M.D., M.P.H.
Medical Epidemiologist

John M. Douglas Jr., M.D.
Executive Director
Tri-County Health Department
Greenwood Village, Colorado

Re: Proposed ordinance for the City of Greenwood Village to ban kratom sales

Tri-County Health Department (TCHD) is the district health department for Adams, Arapahoe, and Douglas Counties and the City of Greenwood Village. As physicians at TCHD, we are concerned about the potential of increasing sales of kratom in our jurisdiction; our stance on kratom use aligns with the U.S. Food and Drug Administration (FDA). **As a precautionary measure, TCHD strongly recommends that the City of Greenwood Village proactively ban any sale of kratom in its jurisdiction.**

For several years, the FDA has issued clear warnings about the use of kratom^{1,2,3,4} and has banned importation of kratom for human consumption as a drug or dietary ingredient. FDA does not consider kratom safe to consume because of the lack of oversight of kratom's production overseas and adverse health effects. Kratom contains psychoactive chemicals that interact in the brain like opioids. The FDA ban and warnings are based on a growing number of reports about significant adverse health effects in people, such as high heart rate, agitation,

¹ www.fda.gov/news-events/public-health-focus/fda-and-kratom

² www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-warning-letters-fda-issuing-companies-marketing

³ www.fda.gov/news-events/press-announcements/fda-warns-companies-selling-illegal-unapproved-kratom-products-marketed-opioid-cessation-pain

⁴ www.fda.gov/food/outbreaks-foodborne-illness/fda-investigated-multistate-outbreak-salmonella-infections-linked-products-reported-contain-kratom

irritability, drowsiness, hallucinations, nausea, and high blood pressure. There are reports of liver damage, seizures, and death⁵ (including deaths attributed to kratom in Colorado⁶). Additionally, kratom is produced outside the U.S. from the leaves of a tropical tree native to Southeast Asia. That means there are no U.S. standards for kratom production, no quality control, and no system-wide safeguards to ensure the product being sold in the U.S. is kratom and free from impurities or contamination.

FDA has federal authority over drugs or other products marketed as having a medical claim to treat a health condition. However, kratom has not been FDA-approved as a drug, dietary supplement, or food ingredient. Despite these federal restrictions and concerns about production quality, the U.S. kratom industry still imports this product even if labeled not for human consumption, then repackages the substance and sells via online or other retail outlets purposely for people to ingest.

When consumed, kratom exerts opioid-like effects in the body and is being actively marketed by the kratom industry to treat medical ailments — like body aches, muscle fatigue, or to regulate mood, reduce tension, or support healthy metabolism, and as a way to wean off prescription opioids — despite absent or inadequate scientific evidence to support these unproven medical claims. Repeatedly, the kratom industry has been unable to provide scientific evidence to meet FDA criteria for kratom to be approved for therapeutic use.

In public settings, kratom industry representatives have acknowledged these issues:

- That imported kratom can be adulterated or contaminated.
- That kratom can be addicting.
- That there are risks and unknown health effects of using kratom and other drugs, including opioids, despite the medical claim of using kratom to wean off opioids.
- That it is unknown whether kratom is contraindicated when using other prescription drugs.
- That the effects of using kratom while driving are unknown.
- That the effects of kratom on a pregnant woman or a fetus are unknown.

People are using kratom without being fully informed about risks, proper dosing, contraindications, or drug interactions. There is a lack of accurate information on whether kratom actually works to treat their medical condition. It is the responsibility of federal authorities, not local municipalities, to ensure a product being sold for human consumption either as a drug, dietary supplement, or food ingredient is legal, approved, and safe to use.

⁵ Unintentional drug overdose deaths with kratom detected. *Morb Mortal Wkly Rep* 2019;68:326-7

⁶ Deaths in Colorado attributed to kratom. *N Engl J Med* 2019;380:97–8. <https://doi.org/10.1056/NEJMc1811055>.

Nor is it the role of local municipalities to establish regulations and a testing regime to ensure the safety of kratom.

In summary, TCHD strongly recommends the City of Greenwood Village ban sales of kratom in its jurisdiction. FDA does not consider kratom safe to consume and there are significant warnings from the medical community about adverse outcomes, including death. There simply is not enough scientific data in the U.S. on how to use kratom safely and properly to justify sales to anyone of any age. Possibly over time, the kratom industry will compile the necessary scientific evidence about safety, dosing, and proven medical effects needed to complete the FDA approval process.

For questions, concerns, or any additional information, please contact Dr. Bernadette Albanese at balbanese@tchd.org or 303-220-9200.

Supplemental materials:

- Sample warning letter from the FDA to kratom wholesalers violating the Federal Food, Drug, and Cosmetic Act by introducing kratom into interstate commerce.
 - www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/chillin-mix-kratom-559280-09042018
 - www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/mitra-distributing-inc-562402-09042018

This information is provided on behalf of the Tri-County Health Department as the district public health agency and not on behalf of the Commissioners of Adams, Arapahoe or Douglas Counties.



MEMORANDUM

TO: Michelle Kivela

FROM: David King, Chief
Ron Combs, Commander

DATE: August 26, 2019

SUBJECT: Radio Encrypted Channels

ISSUE:

The Police Department is in the process of discussing the encryption of its radio channels in order to create a safer environment for officers to do their work. In addition to officer safety, information that could be considered sensitive in nature is routinely broadcast over the department's radio system. Encryption of police radio channels makes these broadcasts and their content unavailable to scanners and online scanning sites. Scanners and online scanning sites are available to anyone, including individuals who might have less than honorable intentions. The department is also working with the Lone Tree Police Department, as a dispatch partner, to discuss plans, details, and scope of this project.

FISCAL/BUDGET IMPACT:

The Police Department doesn't anticipate any additional cost associated with encrypting the remainder of its channels, but there could be some additional cost incurred if it is decided to provide media access to radio traffic. These costs would be dependent on the method used and equipment needed to provide access. All current department owned radio equipment has full encryption capability.

BACKGROUND:

Encryption is the process of encoding radio transmissions in a way that only authorized parties can access it. Access is granted to other approved agencies through an encryption key which is held and controlled by the department. This encryption key is software that can then be shared with other law enforcement and public safety agencies so that interoperable communications can be maintained while keeping sensitive and tactical information out of the hands of those who may misuse or exploit it.

Several other law enforcement agencies in the area have fully encrypted their radio channels or are moving in that direction. The Denver and Aurora police departments have both fully encrypted their radio channels. The Douglas and Arapahoe County Sheriff's Offices, and Castle Rock Police Department will initiate full encryption in December of 2019.

The department began the use of encryption in February 2019 on two of its five radio channels. These channels consist of a tactical channel and an investigations channel. The other Parker talk groups have remained unencrypted. Douglas County and Castle Rock took similar steps with encryption at the same time. These initial encryption efforts have gone very well which is prompting the move to full encryption by Parker, Douglas County and Castle Rock.

The media and some members of the public are not totally supportive of full encryption and feel it doesn't support openness transparency. The media, especially, feels encryption makes their jobs more difficult since they utilize police radio transmissions to respond to breaking news events. Due to concerns from the media, some agencies are providing access to or are discussing options for media access to radio traffic. Parker and Lone Tree are discussing their options regarding media access. Providing media access is not required by law, and the media has no greater right to information than a private citizen.

RECOMMENDATION:

Support the encryption of radio channels.

REQUESTED DIRECTION:

Staff is seeking direction/approval from Council on the encryption of radio channels.

ATTACHMENT:

None



MEMORANDUM

TO: Mayor and Town Council
FROM: Matt Carlson, Business Recruitment Manager
DATE: August 26, 2019
SUBJECT: Economic Development Update

ISSUE:

Economic Development staff will update Councilmembers on 2019 goals and activities year to date.

FISCAL/BUDGET IMPACT:

None

BACKGROUND:

Economic Development staff will update Councilmembers on 2019 goals and activities year to date:

- Business Attraction
- Regional/National Engagement
- Increased Business Retention Efforts
- Marketing Revamp
- Targeted Annexation
- Jobs/Non-Retail Incentive Tools
- Market Analysis Studies - Key Development Sites
- Economic Development Advisory Council

RECOMMENDATION:

None

REQUESTED DIRECTION:

None

ATTACHMENT:

1. Economic Development 2019 Mid-Year Update

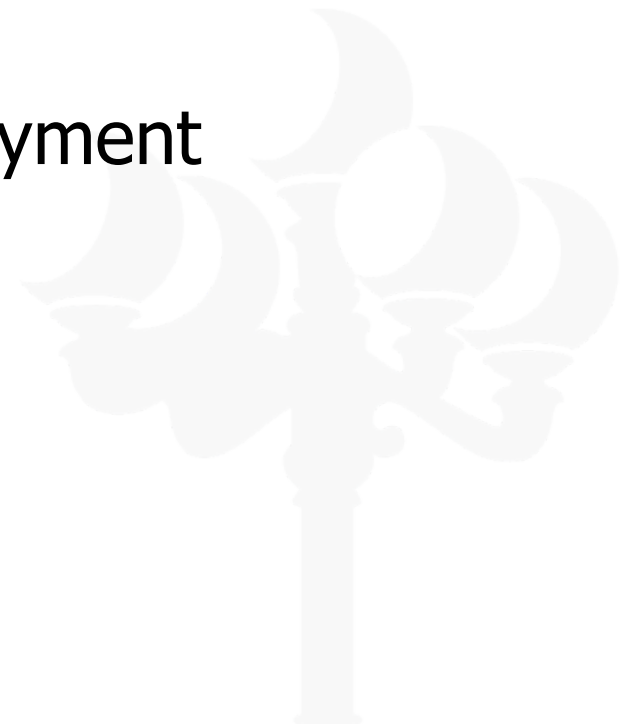


Town of
Parker COLORADO
ECONOMIC DEVELOPMENT DEPARTMENT

Economic Development
2019 Mid-Year Update

2019 Review

- Business Retention
- Marketing
- Tax Base Expansion / Employment



Business Retention Visits (2019 Goal - 70)

52 Visits YTD



Value of Business Retention Visits

- Gathering of Information
- Relationships / Partnerships
- Communication and Collaboration



Location Location Location

Insert 30 second video



Marketing

- Where we have come from
- 2019 Activities
- Looking forward

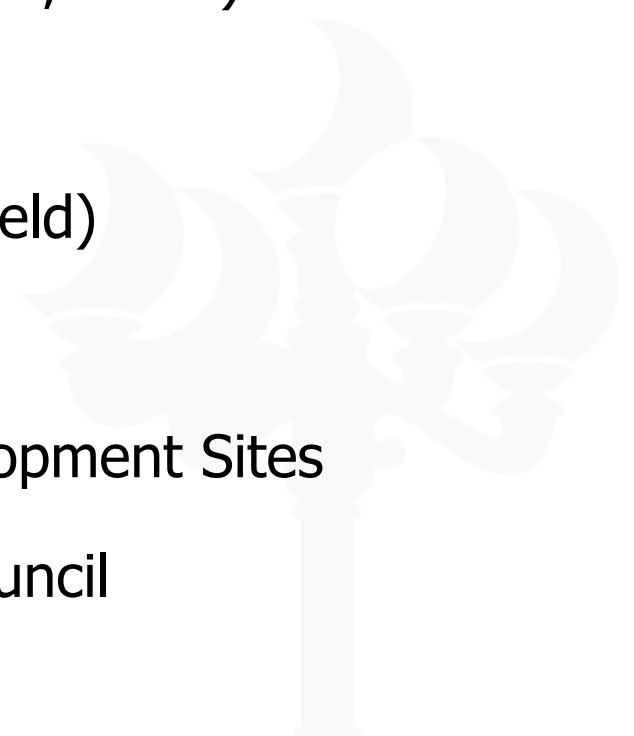


Expanding Tax Base / Employment

- Retail
- Commercial / Industrial
- Annexation



2019 Goals

- Regional/National Engagement
 - MDEDC
 - Site Selector Events
 - Increased Retention Efforts (Chamber, Elect.)
 - Marketing Revamp
 - Targeted Annexation (Bowey, Highfield)
 - Jobs/Non-Retail Incentive Tools
 - Market Analysis Studies - Key Development Sites
 - Economic Development Advisory Council
- 

Conferences and Engagement Events

- ICSC Western Conference September 15-17
- MDEDC National Site Selectors September 18-22
- EDCC Conference October 9-11
- IEDC Conference October 12-16
- OU Economic Development Institute October 20-24
- CBSA Bio Investor Forum October 22-23
- Economix Site Selection Conference December 4-6

Questions

