

**BOULDER CITY COUNCIL MEETING  
MUNICIPAL BUILDING, 1777 BROADWAY  
Tuesday, September 17, 2013  
6 p.m.**

**AGENDA – Updated**

**1. CALL TO ORDER AND ROLL CALL**

**Special Presentation: Flood Update**

2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE** (limited to 45 min.) Public may address any city business for which a public hearing is not scheduled later in the meeting (this includes the consent agenda and first readings). After all public hearings have taken place, any remaining speakers will be allowed to address council. All speakers are limited to three minutes.
3. **CONSENT AGENDA** (to include first reading of ordinances) Vote to be taken on the motion at this time. (Roll call vote required)
  - A. Consideration of a motion to **approve** the City Council Meeting **Minutes from August 6, 2013**
  - B. Consideration of a motion to **approve** the City Council Meeting **Minutes from August 20, 2013**
  - C. **Continuation of Second Reading** and consideration of a motion to adopt **Ordinance No. 7925** amending chapters 10-2, 10-5, 10-5.5, 10-6, 10-7, 10-7.5, 10-8, 10-9, 10-9.5 and 10-10, B.R.C. 1981, adding new chapter 10-8.5; **adopting by reference, with amendments, the 2012 International Property Maintenance, Building, Residential, Energy Conservation, Fire, Wildland-Urban Interface, Mechanical, Fuel Gas and Plumbing Codes, and the 2011 Electrical National Code, amending sections 4-20-47, “Zoning Adjustment Filing Fees,” and 2-3-4 “Board of Building Appeals,”** B.R.C. 1981; and setting forth related details
  - D. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance designating** the building and property at **2205 Broadway**, to be known as **the Boulder Masonic Lodge, as an individual landmark** under the city’s Historic Preservation Ordinance
  - E. **Consideration of the following ordinances related to the purchase of the ERTL property located at 8323 Valmont Road:**
    1. Introduction, **first reading** and consideration of a motion to order published by title only, an **ordinance** approving and **authorizing** the issuance of **Boulder Municipal Property Authority Lease Purchase Revenue Note, Series 2013A, in the aggregate**

**amount of \$5,000,000, and approving and authorizing a Lease Purchase Agreement for the purchase of 685 acres of land, oil and gas mineral estate interests and water rights for the ERTL property located at 8323 Valmont Road, Boulder, CO from Energy Resource Technology Land, Inc. for Open Space and Mountain Parks purposes**

2. Introduction, **first reading** and consideration of a motion to order published by title only, an **ordinance approving** the addition of **the ERTL property as part of the Lower Boulder Creek Habitat Conservation Area**

F. Introduction, **first reading** and consideration of a motion to order published by title only, an **ordinance adopting the Intergovernmental Agreement with Boulder County for Hazardous Materials Management**

G. Consideration of a motion to adopt an **emergency ordinance appointing the city manager as the entity designated to receive applications and imposing a temporary moratorium on recreational marijuana businesses between October 1, 2013 and January 2, 2013**

4. **POTENTIAL CALL- UP CHECK IN**

Opportunity for Council to indicate possible interest in the call- up of an item listed under agenda Item 8-A1.

**ORDER OF BUSINESS**

5. **PUBLIC HEARINGS**

A. **Second reading** and consideration of a motion to adopt **Ordinance No. 7926, amending floodplain regulations in order to clarify existing regulations and to protect critical facilities and lodging facilities in the 100- and 500-year floodplains**, including Chapter 9-3 "Overlay Districts," Subsection 9-6-1(d) "Use Table," and Section 9-16-1 "Definitions" B.R.C. 1981

6. **MATTERS FROM THE CITY MANAGER**

None

7. **MATTERS FROM THE CITY ATTORNEY**

None

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL**

A. Potential Call-Ups

1. **Deed of Vacation at 2085 Balsam Drive** Information Packet Date: September 17 Last

Opportunity: September 17

**2. Landmark Alteration Certificate (LAC) for demolition of 420 Spruce Street**

Information Packet Date: September 17 Last Opportunity: September 17

B. Consideration of a motion to adopt a **resolution in support of Colorado's 2013 Ballot Measure** Designated as **Amendment 66, Funding for Public Schools**

9. **PUBLIC COMMENT ON MATTERS** (15 min.) Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS** Action on motions made under Matters.

11. **DEBRIEF** (5 Min.) Opportunity for Council to discuss how the meeting was conducted

12. **ADJOURNMENT**

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**CITY OF BOULDER**  
**CITY COUNCIL PROCEEDINGS**  
**August 6, 2013**

**1. CALL TO ORDER AND ROLL CALL**

Mayor Appelbaum called the regular August 6, 2013 City Council meeting to order at 6:05 PM in Council Chambers.

Those present were: Mayor Appelbaum and Council Members Ageton, Becker, Cowles, Jones, Karakehian, Morzel, and Plass. Council Member Wilson was absent.

**2. OPEN COMMENT AND COUNCIL/STAFF RESPONSE – 6:08 PM**

1. Tim Thomas – Spoke about Council having dinner behind closed doors in the kitchen. He also noted that the civic use pad at the St. Julien Hotel was being used for non-civic purposes.
2. Judd Golden – Spoke against utilization of license plate recognition software. He wanted any data related to non-criminal activity to be purged immediately.
3. Dr. R. Paul Williamson – Spoke about a project called Colorado City Connector. The program would build a monorail system linking cities in Colorado using a new technology.
4. Jeff McWhirter – Spoke as the president of the Southeast Boulder Neighborhood Association and as a citizen against the annexation of the Hogan-Pancost property.
5. Steve Pomerance – Spoke against the annexation of the Hogan-Pancost property without a change in the zoning.
6. Lee Berg – Spoke on behalf of United Way thanking Boulder for its contributions to their many charities.
7. Stacey Balcom – Spoke about the bandshell and annual duck race.
8. Lynn Segal – Spoke against the annexation of the Hogan-Pancost property.

**3. CONSENT AGENDA – 6:25 PM**

**SPECIAL PRESENTATION BY DAVID FREDERICK REGARDING THE 2012 CAFR**

Mr. Frederick gave a brief presentation to Council on the 2012 CAFR highlights.

**A. CONSIDERATION OF A MOTION TO APPROVE THE CITY COUNCIL MEETING MINUTES FROM JUNE 10, 2013**

This item was amended to correct the final vote.

**B. CONSIDERATION OF A MOTION TO APPROVE THE CITY COUNCIL MEETING MINUTES FROM JUNE 18, 2013**

**C. CONSIDERATION OF A MOTION TO ACCEPT THE STUDY SESSION SUMMARY FROM JUNE 11, 2013 REGARDING THE 2013 WORK PLAN UPDATE**

**D. CONSIDERATION OF A MOTION TO ACCEPT THE STUDY SESSION SUMMARY FROM JULY 23, 2013 ON BOULDER'S ENERGY FUTURE MUNICIPALIZATION EXPLORATION PROJECT**

**E. CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION APPOINTING BKD, LLP FOR THE 2013 ANNUAL AUDIT**

**F. CONSIDERATION OF A MOTION ACCEPTING THE 2012 CAFR AND INDEPENDENT AUDITOR REPORTS**

**G. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN EMERGENCY ORDINANCE ADOPTING SUPPLEMENT NO. 117, WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7892, 7895, 7901, 7904, 7905, 7908 AND OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS, AS AN AMENDMENT TO THE BOULDER REVISED CODE, 1981**

Council agreed to adopt B.R.C. supplements by emergency without second readings.

**H. CONSIDERATION OF A MOTION TO APPROVE THE DISPOSAL TO THE STATE OF COLORADO, THE COLORADO DEPARTMENT OF TRANSPORTATION, OF OPEN SPACE AND MOUNTAIN PARKS LAND AND TEMPORARY EASEMENTS, INCLUDING A LAND EXCHANGE, TO ACCOMMODATE THE U.S. 36 MANAGED LANES PROJECT PHASE 2. THIS IS A DISPOSAL OF OPEN SPACE LAND UNDER CITY CHARTER SECTION 177**

**I. CONSIDERATION OF A MOTION TO APPROVE THE DISPOSAL OF OPEN SPACE AND MOUNTAIN PARKS LAND DESCRIBED AS TWO PERMANENT EASEMENTS ON 6,405 SQUARE FEET (.15 ACRES) AND FOUR TEMPORARY CONSTRUCTION EASEMENTS ON 18,500 SQUARE FEET (.42 ACRES) TO PUBLIC SERVICE COMPANY OF COLORADO FOR AN UNDERGROUND NATURAL GAS PIPELINE AND A VALVE SET ON THE JEWEL MOUNTAIN OPEN SPACE LAND AT THE IMMEDIATE NORTHWEST CORNER OF STATE HIGHWAY 72 AND 93. THIS IS A DISPOSAL OF OPEN SPACE LAND UNDER CITY CHARTER SECTION 177**

**J. CONSIDERATION OF A MOTION TO CHANGE STUDY SESSIONS SCHEDULED FOR OCTOBER 8, 22 AND OCTOBER 29 TO BUSINESS MEETINGS**

**K. CONSIDERATION OF A MOTION TO CALL A SPECIAL MEETING OF THE BOULDER CITY COUNCIL TO CONSIDER THE HOGAN-PANCOST ANNEXATION ON OCTOBER 3, 2013**

Council Member Plass moved, seconded by Council Member Ageton, to approve Consent Agenda items 3A through 3K as amended. The motion carried 8:0 with Council Member Wilson absent on a roll call vote at 6:40 PM.

**4. POTENTIAL CALL-UP CHECK IN – 6:45 PM**

No interest was expressed in any of the call-up items.

**ORDER OF BUSINESS**

**5. PUBLIC HEARINGS – 6:45 PM**

**A. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7917 FINDING THAT THE CONDITIONS PRECEDENT TO FORMATION OF AN ELECTRIC POWER AND LIGHT UTILITY OF CHARTER SECTION 178(A) HAVE BEEN SATISFIED, AND SETTING FORTH RELATED DETAILS AND ACCEPTANCE OF THE SUMMARY OF THE JULY 23, 2013 PRESENTATION BY POWERSERVICES, INC.**

City Manager Jane Brautigam introduced Sam Weaver and Pete Lorenzen, members of the Boulder and Xcel Energy, Inc. working group, who gave a brief presentation on the recommendations to Council.

Director of Energy Services Heather Bailey presented on this item.

Linda Kushner and R.L. Willoughby from PowerServices, Inc. answered questions on the third party report related to Charter requirements for formation of a municipal electric utility.

**B. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7918 AUTHORIZING THE ACQUISITION OF PROPERTY INTERESTS OWNED BY PUBLIC SERVICE COMPANY OF COLORADO D/B/A XCEL ENERGY BY NEGOTIATION AND PURCHASE OR THROUGH THE POWER OF EMINENT DOMAIN AND SETTING FORTH RELATED DETAILS**

Senior Assistant City Attorney Kathy Haddock presented on this item.

The combined public hearing on items 5A and 5B was opened at 8:58 PM.

1. John Tayer – Spoke on behalf of the Boulder Chamber in favor of municipalization.
2. Angelique Espinoza – Spoke on behalf of the Boulder Chamber in favor of municipalization.
3. Baird McKeivitt – Spoke as an employee of Xcel Energy, Inc. urging Council to work toward a partnership.

4. David Red Clark – Spoke as an employee of Xcel Energy, Inc. and a resident of Boulder in opposition to municipalization.
5. Jim Hartman – Spoke as a business owner in favor of municipalization.
6. Rick Tazelaar – Spoke as an electrical engineer in favor of municipalization.
7. Debra Biasca – Spoke as a resident in favor of municipalization.
8. Kathy Ramirez-Aguilar – Spoke as a resident of Gunbarrel and a member of Gunbarrel’s Energy Future, in favor of municipalization.
9. Susan Riederer – Spoke as a resident of unincorporated Boulder County and as a member of the Governance Working Group in favor of municipalization.
10. Annie Lappe – Spoke as a private citizen working in the solar industry in favor of green energy and municipalization.
11. Jason Wiener – Also spoke on behalf of Boulder Clean Energy Business Coalition and Namaste Solar in favor of municipalization.
12. Ruth Blackmore – Spoke on behalf of PLAN Boulder County in favor of municipalization.
13. Karey Christ-Janer – Spoke as an activist in favor of municipalization and urged Council to continue working toward a partnership with Xcel Energy Inc.
14. Leslie Glustrom – Spoke on behalf of Empower Our Future in favor of municipalization.
15. Bill Roettker – Spoke as a resident of Gunbarrell and a member of Gunbarrells Energy Future in favor of municipalization.
16. Denise Clark – Spoke as a Boulder resident, Gunbarrell business owner and member of Gunbarrells Energy Future in favor of municipalization.
17. John Russell – Spoke in favor of municipalization.
18. Leonard May – Spoke in favor of municipalization.
19. Zane Selvans – Spoke in favor of municipalization.

20. Tom Asprey – Spoke as a member of several working groups, he urged Council to move forward with municipalization. He urged Xcel Energy, Inc. to be honest in its dissemination of information and to stop attempting to confuse citizens. He commented that he would like to see the city continue to work toward a partnership if possible.
21. Tom Wilkie – Spoke out of concern for County residents that would be brought into the municipal electric utility.
22. Lynn Segal – Spoke about a friend that lost his business when Xcel Energy, Inc. stopped giving solar rebates and moved to North Dakota for a job in hydraulic fracturing. She asked the city to bring the right jobs to Boulder and move forward with municipalization.
23. Jim Morris – Spoke in favor of municipalization and condemnation of Xcel Energy, Inc.'s infrastructure.
24. Eric Van Orden – Spoke as a supporter of environmental stewardship and economic development in opposition to municipalization.
25. Steve Pomerance – Spoke in favor of municipalization.
26. Kate Clark – Spoke in favor of municipalization.
27. Steven Haymes – Spoke in favor of green energy and municipalization.
28. Ken Regelson – Spoke as a working group member in favor of municipalization.
29. John Doherty – Spoke on behalf of Jessica Kaminsky, who could not stay for the meeting, and was in favor of municipalization.

There being no further speakers, the public hearing was closed at 10:05 PM.

The mayor conducted an agenda check at 10:05 PM.

Mayor Appelbaum moved, seconded by Council Member Morzel, to suspend the rules and continue the meeting. The motion carried 8:0, Council Member Wilson absent.

**Discussion of Ordinance No. 7917:**

Council Members Ageton and Karakehian expressed concern that the Council did not receive a full report, but were only given a PowerPoint presentation.

Mayor Appelbaum moved, seconded by Council Member Plass, to approve Ordinance No. 7917 finding that the conditions precedent to formation of an electric power and light utility of Charter Section 178(a) have been satisfied, and setting forth related details and acceptance of the summary of the July 23, 2013 presentation by PowerServices, Inc., as amended by the City Attorney's Office with direction for third reading to occur on August 20 on the Consent Agenda. The motion carried 6:2, Council Members Ageton and Karakehian opposed. The vote was taken at 10:22p.m.

**Discussion of Ordinance No. 7918:**

Council Member Cowles moved, seconded by Council Member Morzel, to approve Ordinance No. 7918 authorizing the acquisition of property interests owned by Public Service Company of Colorado d/b/a Xcel Energy by negotiation and purchase or through the power of eminent domain as amended in the packet.

Council Member Becker cautioned her colleagues that there were still many unknowns in regard to cost and she urged them to be able to step back and make the right decision if that means stepping away from municipalization if that was where the information lead them.

Council Member Ageton commented that all of Council had the same goal in mind. The disagreement was about how to reach those goals. She noted that she would prefer to have more information before moving forward with condemnation.

Mayor Appelbaum agreed with Council Member Ageton's comments regarding the goals of Council. He reminded the public that the municipalization effort had been in progress for years and Council was not making decisions on the fly. He reminded the public that Boulder had not always taken the easy route to success, but had a history of doing the hard work to do the right thing.

Council Member Karakehian commented that he did not believe city government was meant to take risks such as municipalization. He did not want to spend tax payer dollars on lengthy litigation. He preferred to continue pursuing a partnership with Xcel Energy that would still allow Boulder to meet its climate action goals.

Vote was taken on the motion to approve Ordinance No. 7918 authorizing the acquisition of property interests owned by Public Service Company of Colorado d/b/a Xcel Energy by negotiation and purchase or through the power of eminent domain as amended in the packet. The motion carried 6:2 with Council Members Ageton and Karakehian opposed, at 10:49 p.m.

**C. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7919  
SETTING THE BALLOT TITLE FOR AN INITIATED AMENDMENT TO THE BOULDER  
CHARTER, AND SETTING FORTH RELATED DETAILS**

Deputy City Attorney David Gehr presented on this item.

**D. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7920 SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, AN ALTERNATIVE BALLOT QUESTION AMENDING THE CITY CHARTER TO ADDRESS ISSUES PRESENTED BY THE PROPOSED INITIATED CHARTER AMENDMENT THAT ADDS A NEW SECTION 188 ON LIMITATIONS ON ELECTRIC UTILITY DEBT AND SETTING FORTH RELATED DETAILS**

Deputy City Attorney David Gehr presented on this item.

The combined public hearing on items 5C and 5D was opened at 11:45 PM.

1. Steve Haymes – Spoke in favor of allowing voters in Boulder to decide if there needed to be a limit on debt in creation of an electric municipal utility.
2. Mark Grueskin – Spoke on behalf of Voter Approval of Debt Limits reminding Council that they must set a ballot title based on the language in the initiative petition. He warned Council against placing an alternative measure on the ballot.
3. Micah Parkin – Spoke on behalf of 350 Boulder against the Xcel Energy initiative petition.
4. Tom Wilke – Spoke in favor of allowing Boulder voters to approve limitations on acquisition of the electric utility.
5. Leslie Glustrom – Spoke in opposition to the citizen lead initiative petition that would put debt limits to a vote of the people.
6. Karey Christ-Janer – Urged Council to honor the opinions and feelings of everyone on both sides of municipalization and debt limits.
7. Angelique Espinoza – Spoke about the importance of differentiating the two counter ballot measures if Council chose to place both on the ballot.

There being no further speakers, the public hearing was closed at 12:06 AM.

**Discussion of Ordinance No. 7919:**

City Attorney Tom Carr pointed out that the petitioners had not proposed a ballot question, but had added a question mark to the end of the petition language. He suggested not creating a short title for the citizen lead initiative.

Council Member Cowles moved, seconded by Council Member Morzel, to approve Ordinance No. 7919 setting the ballot title for an initiated amendment to the Boulder Charter,

as amended to strike the short ballot title and changing the Ordinance title to be consistent with the ballot question.

Council Member Ageton expressed concern that voters would be confused that there was no short title attached to this one question put before them.

Vote was taken on the motion to approve Ordinance No. 7919 setting the ballot title for an initiated amendment to the Boulder Charter, as amended to strike the short ballot title and changing the Ordinance title to be consistent with the ballot question. The motion carried 8:0 with Council Member Wilson absent, at 12:15 a.m.

**Discussion of Ordinance No. 7920:**

Council Member Ageton reiterated her concern that two competing ballot measures would confuse voters.

Mayor Appelbaum moved, seconded by Council Member Morzel, to approve Ordinance No. 7920 submitting to the registered electors of the City of Boulder at the general municipal coordinated election to be held on Tuesday, November 5, 2013, an alternative ballot question amending the City Charter to address issues presented by the proposed initiated Charter amendment that adds a new section 188 on limitations on electric utility debt as presented in option four with the debt limit established at \$214,000,000.

Council Member Karakehian agreed with Council Member Ageton's comments. He noted that he would prefer to state what the debt limit would be rather than leave it open-ended.

Mayor Appelbaum commented that if there was a number on the debt limit it would only be linked to acquiring assets because there were so many unknowns.

After further discussion the following direction was provided to staff for inclusion in Ordinance No. 7920:

1. Out of city customer choice charter change to be added to ballot title
2. Direction regarding short title language to include :
  - Debt limit for acquisition of assets
  - measure will supersede any other measure;
  - included the light and power utility language

Council Member Cowles moved, seconded by Mayor Appelbaum, to take up agenda item 8B while staff worked on incorporating the amendments to Ordinance No. 7920. The motion carried 8:0, Council Member Wilson absent, at 12:53 a.m.

*(See action on item 8B under that section of the agenda)*

Council then returned to discussion on the motion to approve Ordinance No. 7920 with amendments.

Vote was then taken on the motion to approve Ordinance No. 7920 as amended. The motion carried 8:0 with Council Member Wilson absent. Vote was at 1:13 a.m.

**6. MATTERS FROM THE CITY MANAGER**

None

**7. MATTERS FROM THE CITY ATTORNEY**

None

**8. MATTERS FROM MAYOR AND MEMBERS OF COUNCIL – 12:55 AM**

**A. Potential Call-Ups**

- 1. LANDMARK ALTERATION CERTIFICATE TO DEMOLISH A NON-CONTRIBUTING BUILDING AT 1023 WALNUT ST. IN THE DOWNTOWN HISTORIC DISTRICT AND IN ITS PLACE CONSTRUCT A NEW FOUR STORY COMMERCIAL BUILDING TO BE CONNECTED VIA A BRIDGE TO THE PROPOSED BUILDING AT 1048 PEARL ST. INFORMATION PACKET DATE: JULY 30, 2013 LAST OPPORTUNITY FOR CALL-UP: AUGUST 6, 2013**

No action was taken on this item.

- 2. VACATION OF A UTILITY EASEMENT IN THE KALMIA ESTATES SUBDIVISION INFORMATION PACKET DATE: JULY 16, 2013 LAST OPPORTUNITY FOR CALL-UP: AUGUST 6, 2013**

No action was taken on this item.

**B. APPOINTMENTS TO BOARDS AND COMMISSIONS – 12:53 A.M.**

Environmental Advisory Board:

Nominations were opened:  
Council Member Morzel nominated Ann Livingston.

Council Member Cowles nominated Morgan Lommele.

Morgan Lommele was appointed to the Environmental Advisory Board to fill a vacancy expiring March 31, 2013; vote was 7:1, with Council Member Morzel voting for another nominee.

Board of Zoning Adjustment:

Nominations were opened:

Council Member Karakehian nominated Christopher Lane to the Board of Zoning Adjustment (BOZA).

There being no further nominations Christopher Lane was appointed to BOZA by acclamation to fill a vacancy expiring March 31, 2015.

Mayor Appelbaum moved, seconded by Council Member Ageton, to ratify the Board Appointments to the Board of Zoning Adjustment (BOZA) and the Environmental Advisory Board.

**9. PUBLIC COMMENT ON MATTERS**

There being no speakers present Public Comment was closed opened at 1:19 AM.

**10. FINAL DECISIONS ON MATTERS**

Vote was taken on the motion to ratify Appointments to the Board of Zoning Adjustment (BOZA) and the Environmental Advisory Board (EAB). The motion carried 8:0 with Council Member Wilson absent, at 1:20 a.m.

**11. DEBRIEF -None**

**12. ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED on August 7, 2013 at 1:20 AM.

Approved this \_\_\_ day of \_\_\_\_\_, 2013.

APPROVED BY:

ATTEST:

\_\_\_\_\_  
Alisa D. Lewis  
City Clerk

\_\_\_\_\_  
Matthew Appelbaum  
Mayor

**CITY OF BOULDER**  
**CITY COUNCIL PROCEEDINGS**  
**Tuesday, August 20, 2013**

**1. CALL TO ORDER AND ROLL CALL**

Mayor Appelbaum called the regular August 20, 2013 City Council meeting to order at 6:00 PM in Council Chambers.

Those present were: Mayor Appelbaum and Council Members Ageton, Becker, Cowles, Jones, Karakehian, Morzel, Plass and Wilson.

**2. OPEN COMMENT and COUNCIL/STAFF RESPONSE**

1. Ruth McHeyser and Susan Osborne – Spoke about a grant received for renovating and restoring the Hannah Barker House.
2. Anna Salim – Spoke as a member of the Arts Commission about the importance of arts in the community.
3. Angelique Espinoza – Spoke on behalf of the Chamber to support the proposed taxes that Council would be placing on the ballot.
4. Carla Selby – Spoke favorably about the Civic Area Plan effort.
5. Tim Thomas – Asked Council why they would move forward with municipalization while placing a moratorium on hydraulic fracturing. He also commented on Council having dinner behind closed doors.
6. Euvaldo Valdez – Spoke as Hispanic, a former resident of Boulder, and a current Niwot resident in favor of the rededication of Canyon Park as Emma Martinez Park.
7. Janet Heimer – Spoke as a long time Boulder resident in support of removing requirements for serving on boards and commissions.
8. Loren Weinberg – Spoke in favor of rededicating Canyon Park and naming it for Emma Martinez.
9. Jaime Shuey – Spoke about the installation of public art at the Boulder County Housing Partner's 1175 Lee Hill Road location.

City Attorney Tom Carr briefly explained how the Open Meetings Act specifically excludes social occasions and that the Supreme Court has made it clear that a group gathering convened for a purpose other than conducting public business was not a meeting under the Open Meetings Act. He went on to say that security concerns require that the door be kept closed.

Council Member Jones thanked the speakers and the Arts Commission for bringing so many exciting things forward.

Council Member Morzel thanked speakers for coming forward to inform Council about what was happening in the arts community. She also called attention to the fracking moratorium that will be on the ballot.

Council Member Wilson commented that he enjoyed the information on Emma Martinez Park. He noted that Fort Collins had a very large budget for art due to a surcharge on water utility construction projects.

City Manager Jane Brautigam explained that the additional funding for art in Fort Collins was related to the 1% of construction costs associated with CIP projects being set aside to fund art in public places and while Boulder did set funding aside for the arts, it was not 1%. She also recalled that Fort Collins owned a performing arts center they had to run and maintain. She noted that Boulder spent more on services for the homeless than many others. She commented that she would like to have a plan in place before funding the program at a higher level and changing the priorities of the city.

Council Member Ageton praised the installation of public art at 1175 Lee Hill Road.

### **3. CONSENT AGENDA**

**A. CONSIDERATION OF A MOTION TO APPROVE THE CITY COUNCIL MEETING MINUTES FROM JULY 16, 2013**

**B. CONSIDERATION OF A MOTION TO APPROVE THE CITY COUNCIL MEETING MINUTES FROM JULY 23, 2013**

**C. CONSIDERATION OF A MOTION TO APPROVE THE CITY COUNCIL MEETING MINUTES FROM JULY 24, 2013**

**D. THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT THE FOLLOWING ORDINANCES:**

**1. ORDINANCE NO. 7912 PLACING ON THE NOVEMBER 5, 2013 BALLOT A MEASURE EXTENDING AND DEDICATING TO OPEN SPACE, TRANSPORTATION AND THE GENERAL GOVERNMENT SERVICES A 0.33 CENT SALES TAX; AND**

**2. ORDINANCE NO. 7913 PLACING ON THE NOVEMBER 5, 2013 BALLOT A MEASURE IMPOSING A NEW 0.15 CENT SALES TAX TO BE DEDICATED TO TRANSPORTATION; AS ADOPTED AND AMENDED AT THE AUGUST 5, 2013 COUNCIL MEETING AND SETTING FORTH RELATED DETAILS**

**E. THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7916 SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT**

**THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE ISSUE OF WHETHER CITY OF BOULDER TAXES SHOULD BE INCREASED BY AN EXCISE TAX OF UP TO 10 PERCENT OF THE AVERAGE MARKET VALUE OF UNPROCESSED RECREATIONAL MARIJUANA FROM A RECREATIONAL MARIJUANA CULTIVATION FACILITY AND A SALES AND USE TAX OF UP TO 10 PERCENT ON RECREATIONAL MARIJUANA AND SETTING FORTH RELATED DETAILS**

Amended to change the sales tax range to begin at 3.5 percent in 2014, up to 15 percent thereafter and adopted as an emergency ordinance.

**F. THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT THE FOLLOWING ORDINANCES:**

**1. ORDINANCE NO. 7919 SETTING THE BALLOT TITLE AND SUBMITTING TO THE VOTERS AT THE NOVEMBER 5, 2013 ELECTION AN INITIATED AMENDMENT TO THE CITY CHARTER TO REQUIRE VOTER APPROVAL OF THE ELECTRIC UTILITY DEBT LIMIT AND TOTAL COST OF DEBT REPAYMENT PRIOR TO ISSUANCE OF ANY DEBT, PROHIBITING SERVICE OUTSIDE OF THE CITY ABSENT A VOTE BY OUT-OF-CITY RESIDENTS IN THE SERVICE AREA, LIMITING DEBT ELECTIONS TO NOVEMBER IN ODD-NUMBERED YEARS, AND LIMITING BROKERAGE FEES ON SUCH INDEBTEDNESS; AND**

Council Member Wilson indicated he would vote in opposition to this item.

**2. ORDINANCE NO. 7920 (THIS ORDINANCE HAS BEEN MOVED TO 5B AS A PUBLIC HEARING)**

**G. THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7917 FINDING THAT THE CONDITIONS PRECEDENT TO FORMATION OF AN ELECTRIC POWER AND LIGHT UTILITY OF CHARTER SECTION 178(A) HAVE BEEN SATISFIED, AND SETTING FORTH RELATED DETAILS AND ACCEPTANCE OF THE SUMMARY OF THE JULY 23, 2013 PRESENTATION BY POWERSERVICES, INC.**

**H. THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7918 AUTHORIZING THE ACQUISITION OF PROPERTY INTERESTS OWNED BY PUBLIC SERVICE COMPANY OF COLORADO D/B/A XCEL ENERGY BY NEGOTIATION AND PURCHASE OR THROUGH THE POWER OF EMINENT DOMAIN AND SETTING FORTH RELATED DETAILS**

Council Members Ageton, Karakehian and Wilson commented that they would be voting in opposition to this item.

**I. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT THE FOLLOWING ORDINANCES:**

**1. ORDINANCE NO. 7910 REGARDING AMENDING SECTION 98, TERM OF BONDS-DISPOSAL OF BONDS, OF THE CHARTER OF THE CITY OF BOULDER;**

This item was amended before adoption to reflect changes requested at the August 5, 2013 meeting.

**2. ORDINANCE NO. 7914 REGARDING AMENDMENTS TO CHARTER SECTION 130 AND OTHER RELATED CHARTER SECTIONS CHANGING THE REQUIREMENT FROM CITY ELECTORS TO CITY RESIDENTS TO SERVE ON CITY BOARDS; AND**

**3. ORDINANCE NO. 7915 REGARDING EXTENDING ORDINANCE NO. 7907, THE MORATORIUM ON FRACKING, ALL AS APPROVED FOR ADOPTION ON CONSENT AT THE AUGUST 5<sup>TH</sup> COUNCIL MEETING AND SETTING FORTH RELATED DETAILS**

**J. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE DESIGNATING THE BUILDING AND PROPERTY AT 3015 KALMIA AVE., TO BE KNOWN AS THE LUNDGREN-HARPER HOUSE, AS AN INDIVIDUAL LANDMARK UNDER THE CITY'S HISTORIC PRESERVATION ORDINANCE**

**K. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE VACATING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED OF VACATION TO VACATE A PORTION OF A TWENTY-FOOT EMERGENCY ACCESS AND UTILITY EASEMENT IN ASSOCIATION WITH AN APPROVED USE REVIEW REQUEST TO LOCATE 68 ATTACHED MULTI-FAMILY RESIDENTIAL UNITS IN AN INDUSTRIAL ZONING DISTRICT AT 6655 LOOKOUT ROAD**

**L. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE AMENDING CHAPTERS 10-2, 10-5, 10-5.5, 10-6, 10-7, 10-7.5, 10-8, 10-9, 10-9.5 AND 10-10, B.R.C. 1981, ADDING NEW CHAPTER 10-8.5; ADOPTING BY REFERENCE, WITH AMENDMENTS, THE 2012 INTERNATIONAL PROPERTY MAINTENANCE, BUILDING, RESIDENTIAL, ENERGY CONSERVATION, FIRE, WILDLAND-URBAN INTERFACE, MECHANICAL, FUEL GAS AND PLUMBING CODES, AND THE 2011 ELECTRICAL NATIONAL CODE, AMENDING SECTIONS 4-20-47, "ZONING ADJUSTMENT FILING FEES", AND 2-3-4 "BOARD OF BUILDING APPEALS," B.R.C. 1981; AND SETTING FORTH RELATED DETAILS**

**M. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE AMENDING FLOODPLAIN REGULATIONS IN ORDER TO CLARIFY EXISTING REGULATIONS AND TO PROTECT CRITICAL FACILITIES AND LODGING FACILITIES IN THE 100- AND 500-YEAR FLOODPLAINS, INCLUDING CHAPTER 9-3 "OVERLAY DISTRICTS," SUBSECTION 9-6-1(D) "USE TABLE," AND SECTION 9-16-1 "DEFINITIONS: B.R.C. 1981**

**N. CONSIDERATION OF A MOTION TO AUTHORIZE THE DISPOSAL OF APPROXIMATELY 0.798 ACRES OF OPEN SPACE AND MOUNTAIN PARKS LAND DESCRIBED AS A PERMANENT EASEMENT TO PUBLIC SERVICE COMPANY OF**

**COLORADO AND CENTURYLINK TO PLACE POWER POLES ON THE EAST RUDD PROPERTY FOR THE PURPOSE OF FACILITATING THE CONSTRUCTION OF THE PLANNED COMMUNITY DITCH TRAIL UNDERPASS AT STATE HIGHWAY 93. THIS IS A DISPOSAL OF OPEN SPACE LAND UNDER CITY CHARTER SECTION 177**

**O. CONSIDERATION OF A MOTION TO RESCHEDULE THE BUSINESS MEETING ON NOVEMBER 5, 2013 TO NOVEMBER 12, 2013**

City Attorney Carr reminded Council that the rules of procedure dictate specific dates for business required immediately following an election. He also noted that Council could choose to suspend their rules to allow for the change being requested.

Council Member Ageton expressed concern that not all of Council would be available for a Thursday meeting.

Council Member Cowles commented that he would not support the motion. His understanding was that Council's meeting day was Tuesday.

Council Member Plass agreed, he also noted that Council would be suspending rules they had yet to utilize.

Council Member Morzel moved, seconded by Council Member Cowles, to approve Consent Agenda Items 3A, B, C, 3D as amended on the errata sheet from the City Attorney's Office (buff), 3E, F-1, G, H, I, J, K,L, M, N, and O.

Council Member Morzel moved, seconded by Council Member Cowles, to amend 3E, Ordinance No. 7916 by emergency to amend the sales tax amount to 3.5% in 2014. The motion carried: 9:0 at 6:08PM.

Council Member Morzel moved, seconded by Council Member Becker to amend Item 3O to change the November 5 meeting to November 7. The motion failed 1:8 with Council Member Morzel in favor. The vote took place at 6:30 PM.

Vote was then taken on the main motion to approve the Consent Agenda Items 3A, B, C, 3D as amended on the errata sheet from the City Attorney's Office (buff), 3E as amended by motion, F-1 as amended by the errata sheet, G, H, I - corrected by the errata sheets, 3J, K, L, M, N, and O. The motion carried, 9:0 with Council Members Ageton, Karakehian and Wilson opposed to items 3G and 3H. Vote was taken at 6:32PM.

**4. POTENTIAL CALL- UP CHECK IN**

No interest was expressed in call-up items.

**ORDER OF BUSINESS**

**5. PUBLIC HEARINGS**

**A. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT EMERGENCY ORDINANCE NO. 7922 EXTENDING A 0.15 SALES AND USE TAX, WHICH IS CURRENTLY DEDICATED TO OPEN SPACE AND EXPIRES DECEMBER 31, 2019, TO REMOVE THE EXPIRATION DATE AND DEDICATE THE FUNDS TO TRANSPORTATION UNTIL DECEMBER 31, 2029 AND THEREAFTER DEDICATING THE FUNDS TO GENERAL IMPROVEMENT NEEDS AS INTRODUCED AND PASSED ON FIRST READING AT THE AUGUST 5, 2013 COUNCIL MEETING AND SETTING FORTH RELATED DETAILS**

City Attorney Tom Carr presented on this item.

The public hearing was opened at 6:37 PM:

1. Jessica Yates – Spoke as the chair for the Transportation Advisory Board (TAB) in support of placing the proposed tax on the ballot.
2. Zane Selvans – Spoke as a member of TAB in favor of the proposed tax being dedicated to transportation needs.
3. Sue Prant – Spoke on behalf of Community Cycles in favor of the proposed tax.

There being no further speakers, the public hearing was closed at 6:43 PM.

Council Member Becker moved, seconded by Council Member Ageton to adopt Emergency Ordinance No. 7922 as presnted on the green handout from the City Attorney's Office. The motion carried, 9:0 at 6:52 PM.

**B. THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7920, SETTING THE BALLOT TITLE AND SUBMITTING TO THE VOTERS AT THE NOVEMBER 5, 2013 ELECTION THE QUESTION OF SETTING A DEBT LIMIT FOR ACQUISITION OF ELECTRIC UTILITY ASSETS; AMENDING THE CITY CHARTER TO ALLOW UTILITY RELATED QUESTIONS TO BE CONSIDERED AT ANY ELECTION; ALLOWING OUT-OF-CITY SERVICE AND NON-RESIDENT CUSTOMERS TO BE REPRESENTED ON THE UTILITY ADVISORY BOARD; ADDING UTILITY SERVICES STANDARDS AND REQUIREMENTS FOR THE ELECTRIC UTILITY BOARD RELATED TO RATES AND RATE MAKING; SETTING STANDARDS AGAINST DISCRIMINATION AND THE GRANTING OF PRIVILEGES AND ADVANTAGES; ADDING NEW SECTIONS OF THE CITY CHARTER RELATED TO ACQUISITION DEBT LIMITS AND CUSTOMER CHOICE FOR OUT OF CITY UTILITY CUSTOMERS; AND SUPERSEDING ANY INITIATED BALLOT MEASURE TO THE CONTRARY, AND SETTING FORTH RELATED DETAILS**

City Attorney Tom Carr presented on this item and recommended that Council not offer an alternative ballot question to that proposed by the citizen initiative.

Senior Assistant City Attorney Kathy Haddock gave a brief explanation of the various options before Council on the multi-colored handouts.

The public hearing was opened at 7:12 PM:

1. Angelique Espinoza – Spoke on behalf of the Chamber in favor of giving voters the chance to answer whether or not the city should have a limitation on debt. She agreed with City Attorney Carr that the language had not been fully vetted and should not move forward.
2. Chris Hoffman – Spoke against any measure that would halt efforts related to municipalization. He commented that the people had previously voted to move forward.
3. Micah Parkin – Agreed with the previous speaker, the people had already approved efforts to move forward with municipalization.

There being no further speakers, the public hearing was closed at 7:16 PM.

Council Member Cowles commented that when he received the call from the city's attorneys to discuss the various proposals, it gave him pause. He noted that he would prefer not to attach a number to acquisition and stranded costs if a question were put on the ballot. He would support the version capping those costs at two hundred fourteen million as a complete payment.

Council Member Morzel stated that she would like to set an upper limit for spending on acquisition and stranded costs. She stated that she wanted a competing ballot question.

Council Member Plass expressed concern that by setting a limit on acquisition and stranded costs the city may be set up to pay more than they should have to for the infrastructure.

Council Member Jones agreed that a cap on the cost for acquisition and stranded costs was risky, she noted that voters deserved to have a say in the decision of whether or not to continue with municipalization in relation to cost.

Council Member Wilson agreed that people wanted to see a number, but he wasn't sure that it was the right time to give a solid number that may prevent municipalization from moving forward. He would rather not add a competing question on the ballot with the initiative. He also commented that the language in the ordinance that would allow out of city residents to choose their provider may drive the city into the competitive market and municipalities in Colorado were not able to do such a thing.

Council Member Becker agreed with Council Member Plass that the ballot question may cause unnecessary restrictions to be put in place.

Council Member Ageton reminded her colleagues that they would not be having a discussion if the initiative had not made it on the ballot and she was concerned that staff had not had time to put a number together in response to the initiative. She stated

that she was hearing from the community that they wanted to have a say in how much the city would spend to achieve municipalization and then vote on whether to continue. She did not want to move forward with any option that was not supported by the city's financial advisors.

City Attorney Carr pointed out that the city may have up to sixty days after a ruling in court to pay the amount due. Given those restrictions, there would not be time for a vote of the people on the amount of the judgment.

Council Member Ageton stated she would support a motion to not put a competing measure on the ballot.

Council Member Wilson suggested waiting until 2014 when more information was available before putting a number out to the public and asking them to vote on it.

Council member Karakehian noted that he was not comfortable with the risks listed in the memo. He also commented that there would likely be another vote in the future related to municipalization.

Mayor Appelbaum expressed a preference for not returning in 2014 with yet another ballot question.

Council Member Morzel stated that voter burnout should not be taken lightly when so much was at stake. She commented that she would rather not delay any vote on a competing measure.

Council Member Plass moved, seconded by Council Member Morzel, to adopt Ordinance No. 7920 by emergency with the changes provided on the buff handout version that included the acquisition price and stranded cost limits.

Council Member Becker expressed concern that courts rarely side with government in condemnation cases.

The motion passed 6:3, with Council Members Ageton, Karakehian and Wilson opposed. Vote taken at 8:45 PM.

## **6. MATTERS FROM THE CITY MANAGER**

### **A. CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION SETTING THE BALLOT ORDER FOR THE NOVEMBER 5, 2013 COORDINATED MUNICIPAL ELECTION**

City Attorney Tom Carr presented on this item.

Council Member Plass moved, seconded by Council Member Plass, to adopt Resolution No. 1125 setting the ballot order presented as option #2 in the packet for the November 5, 2013 coordinated municipal election.

### **B. UPDATE ON COUNCIL CHAMBERS AUDIOVISUAL UPGRADES**

City Manager Jane Brautigam presented on this item.

Mayor Appelbaum expressed a desire to have monitors at the dais that would provide Council with a larger display than the iPads allowed.

Council discussed the possibility of having monitors that could be set up and taken down based on the preferences of Council and Boards.

Council Member Karakehian noted that the City Clerk's screens were a constant problem for council members on her side of the dais. The screens blocked the ability of council members to see the audience.

Council Member Jones expressed concerns about City Clerk staff both being up at the dais and how it would work when speakers needed assistance with presentations or microphones.

Mayor Appelbaum inquired as to whether the City Attorney needed a printer in Council Chambers.

City Attorney Carr responded that he did not.

A majority of Council had a preference for using the library during construction of Council Chambers.

**7. MATTERS FROM THE CITY ATTORNEY**

None

**8. MATTERS FROM MAYOR AND MEMBERS OF COUNCIL – 9:38 PM**

**A. POTENTIAL CALL-UPS**

- 1. VACATION OF UTILITY EASEMENT IN THE HIGH MAR SENIOR HOUSING DEVELOPMENT INFORMATION PACKET DATE: AUGUST 20 LAST OPPORTUNITY: AUGUST 20**

No interest was expressed in calling up this item.

- 2. RECOMMENDATION TO RENAME CANYON PARK TO EMMA MARTINEZ PARK INFORMATION PACKET DATE: AUGUST 20 LAST OPPORTUNITY: AUGUST 20**

No interest was expressed in calling up this item.

- 3. SITE REVIEW ON NE CORNER OF KALMIA AVE. AND 28<sup>TH</sup> ST. INFORMATION PACKET DATE: AUGUST 8 LAST OPPORTUNITY: AUGUST 20**

No interest was expressed in calling up this item.

**B. CONSIDERATION OF A MOTION REGARDING 2013 PERFORMANCE EVALUATIONS, AND PERFORMANCE BASED SALARY ADJUSTMENTS FOR THE CITY MANAGER, CITY ATTORNEY, AND MUNICIPAL JUDGE**

Council Members Morzel and Plass presented on this item.

Council Members expressed appreciation for the work done by their employees and all City employees.

City Manager Jane Brautigam and City Attorney Tom Carr both expressed appreciation for the work of their employees and thanks for the opportunity to do the work they do.

Council Member Cowles moved, seconded by Council Member Plass, to approve the 2013 performance evaluations for the City Manager, City Attorney and Municipal Judge giving each a 3% increase in pay.

**9. PUBLIC COMMENT ON MATTERS**

Public comment was opened at 9:52 PM. There being no speakers, the public hearing was closed.

**10. FINAL DECISIONS ON MATTERS**

Council Member Plass moved, seconded by Council Member Plass, to adopt Resolution No. 1125 setting the ballot order presented as option #2 in the packet for the November 5, 2013 coordinated municipal election. The motion passed 9:0. Vote taken at 9:53 PM.

Council Member Cowles moved, seconded by Council Member Plass, to approve the 2013 performance evaluations for the City Manager, City Attorney and Municipal Judge giving each a 3% increase in pay. The motion passed 9:0. Vote taken at 9:58 PM.

**11. DEBRIEF**

Council Member Jones commented that the Council was more proactive regarding changes to items in the packet before the meeting.

Council Member Morzel expressed appreciation for the efficiency of the meeting.

Council Member Wilson stated that there were great people running for Council in the upcoming election that may not agree with the current Council and he did not want their skillsets to be ignored.

**12. ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION  
REGULARLY ADOPTED, THE MEETING WAS ADJOURNED on August 20,  
2013 at 10:05 PM.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED BY:

ATTEST:

\_\_\_\_\_  
Alisa D. Lewis  
City Clerk

\_\_\_\_\_  
Matthew Appelbaum  
Mayor

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**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: Sept 17, 2013**

**AGENDA TITLE:** Continuation of second reading and consideration of a motion to adopt Ordinance No. 7925 amending Chapters 10-2, 10-5, 10-5.5, 10-6, 10-7, 10-7.5, 10-8, 10-9, 10-9.5 and 10-10, B.R.C. 1981, adding a new Chapter 10-8.5; adopting by reference, with amendments, the 2012 International Property Maintenance, Building, Residential, Energy Conservation, Fire, Wildland-Urban Interface, Mechanical, Fuel Gas and Plumbing Codes, and the 2011 Electrical National Code, amending Sections 4-20-47, "Zoning Adjustment Filing Fees, and" 2-3-4 "Board of Building Appeals," B.R.C. 1981; and setting forth related details.

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Paul J. Fetherston, Deputy City Manager  
Hella Pannewig, Assistant City Attorney  
Maureen Rait, Executive Director of Public Works  
David Driskell, Executive Director of Community Planning and Sustainability  
Larry Donner, Fire Chief  
David Lowrey, Chief Fire Marshall  
David Thacker, Building Services Manager/Chief Building Official  
Kirk Moors, Senior Plans Examiner/Assistant Building Official

**EXECUTIVE SUMMARY**

During the second reading and consideration of the proposed 2012 code updates, ordinance language changes necessary to facilitate effective implementation of the updated codes were identified. In addition, further information was requested in regard to:

- Clarification of possible impact of single family fire sprinkler systems on utility fees;
- The cost impact of installing and maintaining sprinkler systems;
- The mapping of the wildland-urban interface zone; and
- Wildland-urban interface concepts such as defensible space, vegetation management and maintenance of defensible space.

A motion was passed to continue the meeting to ensure that council could review the ordinance changes and information requested prior to taking action on the proposed code update.

At the second reading on Sept. 3, the following clarifications were provided:

- The ordinance effective date would be Jan. 31, 2014;
- Home Energy Rating System (HERS) point value change (linear vs. exponential) were described;
- The proposed HERS values will not make renewable energy requirements unmanageable;
- The LEED green point option does not affect the city's energy efficiency requirements. However, deleting this option will be part of the code update project planned for next year;
- A path to net zero for both commercial and residential construction was identified;
- Recognition that the collaboration between city staff and solar industry representatives successfully achieved a recommendation to amend the fire code related to solar panel roof coverage; and
- The energy efficiency levels currently proposed were recognized as being aligned with the overall city goals.

### **STAFF RECOMMENDATION**

Staff requests City Council consideration of this matter and the following actions:

1. Continuation of the second reading of Ordinance No. 7925;
2. Consideration of a motion to amend the main motion to include the following additional amendments to Ordinance No. 7925, as recommended in staff agenda memorandum: a modification to the Residential Building Code definition of "new dwelling unit" and modifications to Tables 1A and 1B of Section 10-7.5-3, "Mandatory Green Building Requirements," B.R.C. 1981; and
3. Vote on a pending motion to adopt Ordinance No. 7925 amending Chapters 10-2, 10-5, 10-5.5, 10-6, 10-7, 10-7.5, 10-8, 10-9, 10-9.5, and 10-10, B.R.C. 1981; adding a new Chapter 10-8.5, B.R.C. 1981; adopting by reference, with amendments, the 2012 International Property Maintenance, Building, Residential, Energy Conservation, Fire, Wildland-Urban Interface, Mechanical, Fuel Gas and Plumbing Codes, and the 2011 Electrical National Code; amending Sections 4-20-47, "Zoning Adjustment Filing Fees," and 2-3-4 "Board of Building Appeals," B.R.C. 1981; and setting forth related details; amended as proposed in the errata

sheet minus the proposed amendments to the sprinkler system requirement, and amended to correct erroneous bold strikethrough language.<sup>1</sup>

## **BACKGROUND**

Background information including board and commission, and public feedback can be found in the [Aug. 20, 2013 first reading memo](#), and [Sept. 03, 2013 second reading memo](#).

## **FISCAL IMPACTS**

Staff and consultant costs for the update work have been included into the 2013 budget. The staff time needed to implement the updated codes is not expected to be higher than current code review requirements.

## **ANALYSIS**

Detailed analysis of the energy and building code adoption proposal can be found in the [Aug. 20, 2013 first reading memo](#). Analysis for questions addressed at second reading can be found in the [Sept. 03, 2013 second reading memo](#).

At the second reading on Sept. 3, 2013, council had several questions regarding the adoption of IWUIC and IRC, along with some clarification items from the IECC. The topic-specific discussion items are outlined below.

### IWUIC Wildland Code

Concern was raised about the International Wildland Urban Interface Code (IWUIC) and the potential impacts related to defensible space and mature landscaping related to new residential structures. A question was raised about existing trees on an undeveloped lot that is proposed to be developed. In this instance, tree crowns extending to within 10 feet of any proposed structure would be required to be pruned to maintain a minimum horizontal clearance of 10 feet. Trees that could not be pruned to meet this requirement would need to be removed.

Groundcover is also allowed to be grown within the defensible space as long as it does not form a means of transmitting fire from the native growth to any structure.

Detailed maps and a wildland area overview can be found in the [Community Protection Plan](#).

### IRC Residential Fire Sprinklers

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<sup>1</sup> Please note that staff slightly edited the language of the pending motion. The actual language of the motion was: "Motion to adopt Ordinance No. 7925 amending chapters 10-2, 10-5, 10-5.5, 10-6, 10-7, 10-7.5, 10-8, 10-9, 10-9.5 and 10-10, B.R.C. 1981, adding a new chapter 10-8.5; adopting by reference, with amendments, the 2012 International Property Maintenance, Building, Residential, Energy Conservation, Fire, Wildland-Urban Interface, Mechanical, Fuel Gas and Plumbing Codes, and the 2011 Electrical National Code, Amending Sections 4-20-47, "Zoning Adjustment Filing Fees, and" 2-3-4 "Board of Building Appeals," B.R.C. 1981; and setting forth related details, including the amendments to Ordinance No. 7925 proposed in the errata sheet minus what Council Member Cowles had suggested regarding a residential sprinkler system requirement, and including the corrections suggested by Hella with regard to the bold strikethrough language in the ordinance."

Discussion was held concerning the proposal of the fire sprinkler requirement for new residential construction. This proposal would only affect new dwellings, not additions or renovations to residential dwellings. Concerns included “tap fees” and “PIFs” and how they would affect the overall cost associated with adding the fire sprinkler system.

Residential fire sprinklers were developed in the early-to-mid 1970s as a life safety system for homes to suppress fires long enough to allow the occupants to escape and allow time for the local fire department to arrive. From the 1970s to present day, the number of home fires has dropped by almost 50 percent; however, the home death rate has only decreased by about 15 percent.

### *Cost*

At second reading, the price of \$1.61/square feet was provided as an estimate to equip residential homes with fire sprinklers. This information was based on the national average determined by the National Fire Protection Association (NFPA) document “*Home Fire Sprinkler Cost Assessment*.” After the second reading, council requested an estimate of the costs to equip residential homes that was more area-specific. Five local fire sprinkler contractors were contacted to inquire what the average cost is to install a residential fire sprinkler system in a single family residence in Boulder. The pricing was based on the following assumptions:

1. Installation in a new home;
2. System designed with CPVC piping (plastic pipe, most commonly used in residential);
3. Water supply coming off a city water main; and
4. No additives in system such as an antifreeze mix.

### Local Pricing:

- Freedom Fire\*: \$2/sq. ft.
- Fire Defense\*: \$2/sq. ft.
  - Specific example of actual pricing: Red Oak neighborhood located at Valmont and Folsom: \$1.75/sq.ft. to \$1.90/sq.ft.)
- H2O Fire Protection: \$1.50 to \$1.60/sq. ft. (specializes in residential installation)
- Western States Fire: \$2 to \$2.25/sq.ft.
- Kobobel Fire Protection: \$2 to \$2.25/sq.ft.

\* In the last year, Freedom Fire and Fire Defense installed 1/3 of the fire sprinklers installed in Boulder last.

Home builders and architects have quoted numbers in the \$3 to \$4 per square foot range. Often, this may be based on a difference between the “entire total square footage of a home” vs. “finished square footage.” The fire sprinkler cost is typically based on the “entire square footage” including some unfinished areas. An unfinished basement is probably the most typical “unfinished area” in a home that still requires sprinklers to be installed [Note: Attics and crawl spaces do not require sprinkler coverage if they’re not designed as storage or living space]. For example, a typical two story single-family home

with an unfinished basement – difference per “entire square footage” and “finished square footage” can be as much as a third.

Fire sprinklers do raise the cost for a new home. For a home between 2,000 and 3,000 square feet with sprinkler costs between \$4,000 and \$6,000, the monthly mortgage payments would increase by about \$5 per month (based on numerous variables i.e. interest rate, tax deductions and insurance discounts).

The costs associated with connecting a single family residential fire sprinkler system to the municipal water system will vary substantially depending on the specific scenario. In some cases, an existing domestic service line may be sufficient to meet both domestic and fire demands and result in no additional connection costs. At the other end of the spectrum, construction costs to install a new service line connection between a single family dwelling and a water main located in a major street could potentially be in the range of \$10,000 - \$20,000. The proposed regulations allow for several different configuration options that are expected to provide some flexibility in allowing the selection of the most cost effective system.

The “Water Plant Investment Fee”, commonly referred to as a PIF, is not applicable to fire service lines under existing or proposed regulations. The PIF for a single family residential dwelling is not based on service line or meter size and would not be impacted by an increase in size to meet fire sprinkler demands.

While the terms “Plant Investment Fee” and “Tap Fee” are often used interchangeably, the Boulder Revised Code, 1981, specifically uses the term ‘tap fee’ to describe the labor and materials costs for a city water distribution crew to physically connect a privately owned service line to an active public water main.

Estimated costs associated with the three proposed water service line configuration options are provided below:

#### *Dedicated Fire Service Line*

A dedicated fire service line is already permitted under existing codes and is the method used to connect multi-family and non-residential structures. City fees for this type of connection would include:

- Permit Fee (Review of Construction Plans) - \$127
- Inspection Fee - \$169
- Tap Fee (labor and materials for city crew to physically connect line) - \$124 to \$216 to install 1” tap.
- Right-of-Way Construction Permit Fee/Inspection Fee – based on specific infrastructure such as public streets, sidewalks, curbing, etc. to be removed and replaced. Fees typically range from \$400 - \$1,000, but could be larger for significant excavation/restoration in major streets.

### *Combination Fire/Domestic Service Line*

A combination fire/domestic service line is also already permitted under existing codes and is allowed only for single family residential structures. A single tap to the city main is used and then split into a metered domestic service and unmetered fire service outside of the public right-of-way. This approach allows for disconnection of domestic service for non-payment without impacting fire protection while minimizing the number of separate taps into city mains. City fees for this type of connection above and beyond a standard domestic connection would include:

- Tap Fee - \$124 to \$216 based on a new 1” tap if the existing tap cannot be reused.
- Combination System Part and Labor (Standard Materials and Labor Provided by City) - \$381.63
- Right-of-Way Construction Permit Fee/Inspection Fee – based on specific infrastructure such as public streets, sidewalks, curbing, etc. to be removed and replaced. Fees typically range from \$400 - \$1,000, but could be larger for significant excavation/restoration in major streets.

### *Fire Sprinkler Integrated into Domestic Plumbing*

The option of a *Fire Sprinkler integrated into Domestic Plumbing* will be allowed under the proposed code changes. This option is not allowed under the existing codes. No additional tap related fees would apply provided the system was designed to work with the existing domestic service line. For a property with no existing service line, there could be an incremental cost increase between fees for a new service line and meter intended for domestic use and a larger service line designed for combined use. For example, if a ¾” service line and meter was adequate for domestic use, but the fire sprinkler system required a 1” diameter, the incremental fee increase would be approximately \$220.

### *Adopted Fees*

All fees associated with water service are adopted by City Council and included in the Boulder Revised Code, 1981. Water Plant Investment Fees are adopted under Sec. 4-20-26. Water Permit Fees are adopted under Sec. 4-20-23. Additional information about applicability of specific fees is included in Chapter 11-1, “Water Utility,” BRC, 1981. The existing fee schedule is currently applied to both voluntary and required installations of fire sprinkler systems.

### *Fire Sprinkler Installation Fees*

Fire sprinkler installation pricing estimates were obtained from contacting licensed fire sprinkler companies that have installed residential fire sprinkler systems within the City of Boulder. Pricing was based on an average sized residential dwelling of approximately 3000 sq. ft. Fire sprinkler contractors were asked to provide an estimated cost per square foot for installation of a sprinkler system in a Boulder residence where the water was supplied from the a city water main. The cost findings ranged from a low of \$1.50 per square foot to a high of \$2.25 per square foot, with the average local installation price being \$1.87 per square foot for installation.

### *Maintenance of Residential Fire Sprinklers:*

Inspection, testing and maintenance play a critical role in assuring that a system will function and perform properly and residential fire sprinklers are no exception. As with all systems installed within a building, maintenance responsibility falls on the owners. Specifically, NFPA 13D 2013 ed., *Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies*, states, “the owner shall be responsible for the condition of a sprinkler system and shall keep the system in normal operating condition.” Although the standard does list some recommendations they do not provide any mandatory requirements.

### *Public Process*

The City of Boulder held five public meetings concerning the adoption of the 2012 International Codes. The dates and locations of the meetings were:

- Dec. 13, 2012 - Acorn School
- Jan. 9, 2013 - East Boulder Senior Center
- Jan. 23, 2013 - West Boulder Senior Center
- Feb. 5, 2013 - Acorn School
- Feb. 20, 2013 - East Boulder Senior Center

There were several questions asked about the sprinkler requirements, but the main concern seemed to be the effective date of the provision. In preparing the code updates, staff proposed that the effective date be Sept. 1, 2014, for this specific code provision, to allow for more time for the implementation of this requirement.

### *Status of residential sprinklers in Colorado*

Communities who have adopted residential sprinkler requirements:

- Boulder County (in addition to new construction, they require systems to be retrofitted in additions/remodels over 4,800 sq. ft.);
- Superior;
- Westminster;
- Golden;
- Federal heights;
- Cherry Hills Village; and
- Snowmass Village.

Communities who amended codes to only require multifamily to be sprinklered and not single family (Boulder already requires all new multifamily to be sprinklered):

- Morgan County;
- Greeley;
- Colorado Springs;
- Castle Pines; and
- Grand County.

Communities electing not to adopt residential fire sprinklers:

- City and County of Denver;

- Centennial;
- Thornton;
- Lone Tree;
- Rifle;
- Glenwood Springs; and
- Longmont.

*Incentives – Green/Environmental aspects of fire sprinklers*

The City of Boulder is evaluating granting “green building/green points” for the installation of home fire sprinklers as part of the updates planned for Green Points in 2014. Specific point values have not been determined, but will be proposed prior to the implementation date of Sept. 1, 2014.

Environmental Considerations include:

- Water used to extinguish a fire is reduced between 50 and 91 percent;
- Virtually no water runoff from fire sprinklers enters city storm water system when compared with manual firefighting water. Runoff from a house fire contains a large amount of pollutants from normal household materials destroyed in a fire.
- Sprinklers reduce the amount of burned material that enters a landfill; and
- Energy and materials necessary to rebuild or repair a structure after a fire are reduced.

*Myths vs. Facts Concerning Fire Sprinklers*

1. *Smoke alarms provide enough protection.* Although smoke alarms do and will continue to provide early notification to the occupants when a fire occurs, they do nothing to suppress fire. If the occupant is unable to leave the home (disability, elderly, youth, sick), the smoke alarm does not help. The chance of dying in fire with working smoke alarms decreases by 50 percent. The chance of dying in a fire decreases by 80 percent with a residential fire sprinkler system.
2. *New homes are built safer than older homes.* Studies conducted by Underwriters Laboratories (UL) and the National Research Council of Canada (NRC) have shown that new methods of construction negatively impact occupant and firefighter safety under fire conditions. The majority of these studies center on the performance of “lightweight construction” when exposed to fire. The UL has found that the synthetic materials in today’s home furnishings also increase fire risk by providing greater fuel loads. Larger homes, increased fuel loads and changing building materials contribute to faster fire propagation, shorter escape times and less time till structural collapse. Sprinklers offset these dangers. The fact is that once a fire starts, it is irrelevant whether a home is old or new; people inside the home are at risk.
3. *Home fire sprinklers are expensive and will make the home unaffordable.* The cost to install home fire sprinklers per square foot is actually less than most people realize. Home fire sprinklers are affordable. Please refer to cost

information provided earlier in this memo.

4. Expensive maintenance is required. Home fire sprinklers are simple systems. Homeowners should periodically check to ensure nothing blocks sprinkler heads, and the turn-off valve to the system remains open. No regularly scheduled maintenance is required by an outside company.
5. Home fire sprinklers leak and accidentally go off. Home fire sprinkler systems are much like home plumbing systems – when installed and maintained properly, there is a low risk of leaks. Most leaks result from physical damage or freezing due to improper installation or lack of heat in a home. Sprinklers are only activated by heat (not smoke) and only the sprinkler closest to the fire will activate, leaving the rest of the home dry.
6. Water damage caused by the sprinkler is more extensive than the fire damage. Since residential fire sprinklers are so effective, actual fire damage is small. Home fire sprinklers significantly reduce property loss and damage due to a fire when compared to manual firefighting operations. Once in the open flame stage, fires grow very rapidly increasing both fire and water damage as firefighters are required to advance hose lines to extinguish the fire.

#### IRC “New Dwelling” definition

Concern was raised about the proposed definition for “new dwelling.” As written, an addition to a home increasing the size by 200 percent or greater would require the entire structure to be brought up to current code standards. This would include the existing portion of the structure. As originally proposed this would also affect large and small scale homes differently. Staff has revised the definition as follows:

*“NEW DWELLING UNIT. A dwelling unit is considered to be a new dwelling unit when the entire structure is newly built and when the dwelling unit is built on top of an existing foundation, such as caissons, footings, and other foundations systems, that remains from a demolished structure”*

#### Energy Code Clarification

Table 1A and Table 1B of BRC 10-7.5-3 have been adjusted to better reflect the proposed energy code requirements. (See ATTACHMENT C)

The amendment language for IECC Section C401.1 Scope, was noted as only referencing the ASHRAE 90.1 standard and not the 2012 IECC. Staff was asked to review the language to verify if the 2012 IECC should be referenced in that charging language. Since adoption of the 2006 edition of the IECC, the ASHRAE/IESNA Standard 90.1 has been the referenced standard under Boulder’s Energy Conservation Code. Boulder’s standard gives options to choose from and ultimately provides greater flexibility by allowing for approval of other equivalent design criteria that may include the other alternative design criteria established in the IECC. The ASHRAE/IESNA Standard 90.1 is the most commonly and easily used by applicants and the standard that is most readily reviewed for compliance by staff. The current language is consistent with

the language previously adopted and staff recommends no changes to this section to allow flexibility in alternative designs.

The changes to Ordinance No. 7925 proposed in this memo as well as the corrections regarding erroneous bold strikethrough in the ordinance that were proposed by the City Attorney's Office during the Sept. 3, 2013 meeting and are included in Attachment C.

Since the Sept. 3, 2013 meeting, council members have asked additional questions regarding Ordinance No. 7925.

Council noted that the Colorado legislature recently raised the maximum fine amount a governing body of a municipality may set for enforcement of ordinances from \$1000 to \$2650. With regard to fines, Title 10, "Structures," B.R.C. 1981, refers to the general penalty provision of Section 5-2-4, "General Penalties," B.R.C. 1981, which currently lists \$1000 as the maximum fine. Section 5-2-4, "General Penalties," B.R.C. 1981, is not proposed to be amended as part of this ordinance. In light of the recent raising of the maximum fine amount a municipality is allowed to set, the city will comprehensively review all fine provisions of the Boulder Revised Code and, in the future, may bring forward code changes to update maximum fine amounts.

Council also noted that the Colorado legislature also recently raised the governmental immunity damage caps from \$150,000 to \$350,000 for injuries to one person in any single occurrence and from \$600,000 to \$990,000 for claims involving two or more person in a single occurrence. The Fire Code requires a certificate of insurance "...in an amount deemed adequate by the fire code official..." An existing local amendment adds that the city manager require a certificate of insurance, including coverage of any liability of the city, in an amount **of not less than** the former governmental immunity damage caps. The listed amounts will be updated as part of a comprehensive Boulder Revised Code updated relating to the raises of the governmental immunity damages caps. In the meantime, the new governmental immunity damage caps may be used under the authority of the code to establish an adequate amount of coverage.

## **NEXT STEPS**

Council support for the recommended changes will result in amendments at second reading, which will require a third reading. If codes are adopted, staff will move forward with additional public education by offering code update workshops during the third and fourth quarters of 2013. Updates to the Site Review criteria will be scheduled for Planning Board consideration during the fourth quarter of 2013. An update to the city's Green Building, Green Points program is scheduled for the fourth quarter of 2014.

## **ATTACHMENTS**

- ATTACHMENT A: Ordinance No. 7925.
- ATTACHMENT B: Errata Sheet from second reading
- ATTACHMENT C: Additional Proposed Amendments to Ordinance No. 7925.



1 (2) The profound public health and safety impacts of such emissions, including but not  
2 limited to:

- 3 (A) Increased risk of extreme weather events,
- 4 (B) Increased flood severity,
- 5 (C) Increased risk and intensity of catastrophic wildfire,
- 6 (D) Increased insect invasions causing forest die-offs, and
- 7 (E) Increased risk of drought.

8 (c) The purposes of this chapter are as follows:

9 (1) To protect the public health, safety and general welfare of the residents of the City by  
10 regulating existing residential rental and privately occupied residential structures and to  
11 promote conservation and the efficient use of energy;

12 (2) To establish minimum energy efficiency requirements for existing rental and privately  
13 occupied housing in the City of Boulder with the goal of reducing greenhouse gas  
14 emissions; and

15 (3) To address the unique needs and challenges associated with energy retrofits in existing  
16 rental and privately occupied housing.

17 (d) The City Council hereby adopts the ~~2009~~2012 edition of the International Property  
18 Maintenance Code as the Property Maintenance Code of the City of Boulder. This chapter  
19 establishes minimum code standards related to: administration; definitions; general requirements;  
20 light, ventilation and occupancy limitations; plumbing facilities and fixture requirements;  
21 mechanical and electrical systems; fire safety requirements; rental licensing and existing  
22 residential rental structure energy conservation.

### 19 **10-2-2 Adoption of the International Property Maintenance Code with Modifications.**

20 (a) The ~~2009~~2012 edition of the International Property Maintenance Code (IPMC) of the  
21 International Code Council is hereby adopted by reference as the City of Boulder Property  
22 Maintenance Code and has the same force and effect as though fully set forth in this chapter,  
23 except as specifically amended for local application by this chapter.

24 (b) IPMC Appendix chapters A, "Boarding Standard," and B, "Rental Housing Inspections," are  
25 adopted.

1 (c) For ease of reference, the following identifies all chapters, sections and appendices of the  
2 published and adopted IPMC and includes specific amendments for local application. Chapter,  
3 Section, Subsection or Appendix numbers of provisions not amended appear, followed by the  
4 words, "No changes." The amended text of specifically amended provisions appears below.  
Chapter, Section, Subsection or Appendix numbers of any provisions not adopted appear,  
5 followed by the word, "Deleted."

6 **CHAPTER 1**  
7 **SCOPE AND ADMINISTRATION**

8 **PART 1 — SCOPE AND ADMINISTRATION**

9 **SECTION 101**  
10 **GENERAL**

11 **101.1 Title.** These regulations shall be known as the Property Maintenance Code of  
12 the City of Boulder, hereinafter referred to as "this code."

13 **101.2 Scope.** This code shall apply to all existing ~~residential~~ structures and all existing  
14 ~~residential~~ premises and constitute minimum requirements and standards for premises,  
15 structures, equipment and facilities for light, ventilation, space, heating, sanitation,  
16 energy conservation, protection from the elements, life safety, safety from fire and  
17 other hazards, and for safe and sanitary maintenance; this code also specifies the  
18 responsibility of the owners, operators and occupants related to code compliance; the  
19 occupancy of existing structures and premises, and provides for administration,  
20 licensing, enforcement and penalties.

21 **101.2.1 Application of Rental Licenses Code.** Existing residential structures  
22 utilized as rental properties will also be subject to the requirements of Chapter 10-  
23 3, "Rental Licenses," B.R.C. 1981.

24 **101.3 Intent.** This code shall be construed to secure its expressed intent, which is to  
25 ensure public health, safety and welfare insofar as they are affected by the continued  
occupancy and maintenance of structures and premises. Except as provided below,  
existing structures and premises that do not comply with these provisions shall be  
altered or repaired to provide a minimum level of health and safety as required herein.  
Existing structures and premises that comply with all applicable codes in force at the  
time of construction will be deemed to comply with this code except where the code  
official determines that deviations from this code pose a danger to the health, safety or  
welfare of the public or occupants, and issues an order for the owner to correct those  
specific conditions or alterations.

**101.4 Severability.** No changes.



1 (4) The remedies for any violation of any provision of this code or of any permit,  
2 certificate, or other approval issued under this code or other City of Boulder code,  
3 or of any directive of the code official, may be pursued singly or in combination.

4 (5) If any person fails or refuses to pay when due any charge imposed under this  
5 section, the code official may, in addition to taking other collection remedies,  
6 certify due and unpaid charges to the Boulder County Treasurer for collection as  
7 provided by section 2-2-12, "City Manager May Certify Taxes, Charges, and  
8 Assessments to County Treasurer for Collection," B.R.C. 1981.

9 (6) If an order under section 107 is not complied with, the code official may  
10 institute any appropriate proceeding at law or in equity to restrain, correct or abate  
11 such violation, or to require the removal or termination of the unlawful occupancy  
12 of the structure in violation of the provisions of this code or the order or direction  
13 made pursuant thereto. The code official may charge the cost of any action taken  
14 to correct a violation, plus up to fifteen percent of such cost, for administration to  
15 the property owner. If any property owner fails or refuses to pay when due any  
16 charge imposed under this section, the code official may, in addition to taking  
17 other collection remedies, certify due any unpaid charges, including interest, to the  
18 Boulder County Treasurer, to be levied against the person's property for collection  
19 by the county in the same manner as delinquent general taxes upon such property  
20 are collected, under the procedures described by section 2-2-12, "City Manager  
21 May Certify Taxes, Charges, and Assessments to County Treasurer for  
22 Collection," B.R.C. 1981.

23 (b) Administrative Procedures and Remedies:

24 (1) If the code official finds that a violation of any provision of this code or of any  
25 approval granted under this code exists, the manager, after notice and an  
opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-  
Judicial Hearings," B.R.C. 1981, may take any one or more of the following  
actions to remedy the violation:

(A) Impose a civil penalty according to the following schedule:

(i) For the first violation of the provision or approval, \$100;

(ii) For the second violation of the same provision or approval, \$300; and

(iii) For the third violation of the same provision or approval, \$1,000;

(B) For a violation concerning the use of a residential building under a rental  
license, revoke such license;

(C) Require the filing of a declaration of use as provided in subsection (e); or

(D) Issue an order reasonably calculated to ensure compliance with the  
provisions of this code or any approval granted under this code.

(2) Prior to the hearing, the code official may issue an order that no person shall  
perform any work on any structure or land, except to correct any violation found  
by the code official to exist with respect to such structure or land.

1           (3) If notice is given to the code official at least forty-eight hours before the time  
2           and date set forth in the notice of hearing on any violation that the violation has  
3           been corrected, the code official will reinspect the structure or land. If the code  
4           official finds that the violation has been corrected, the manager may cancel the  
5           hearing.

6           (4) No person shall fail to comply with any action taken by the code official under  
7           this section.

8           (c) Criminal Penalties. Violations of this code are punishable as provided in Section 5-  
9           2-4, "General Penalties," B.R.C. 1981.

10           (d) Other Remedies. The city attorney may maintain an action for damages,  
11           declaratory relief, specific performance, injunction, or any other appropriate relief in  
12           the District Court in and for the County of Boulder for any violation of any provision  
13           of this code or any approval granted under this code.

14           (e) Declaration of Use. If the code official determines that a person is using a structure  
15           in a way that might mislead a reasonable person to believe that such use is a use by  
16           right or otherwise authorized by this title, the code official may require such person to  
17           sign under oath a declaration of use that defines the limited nature of the use and to  
18           record such declaration in the office of the Boulder County Clerk and Recorder against  
19           the title to the land. In addition to all other remedies and actions that the code official  
20           is authorized to use under the Boulder Revised Code or other applicable federal, state  
21           or local laws to enforce the provisions of this code, the code official is authorized to  
22           withhold any approval affecting such structure or land, including, without limitation, a  
23           building permit, use review, site review, subdivision, floodplain development permit,  
24           or wetland permit, until such time as the person submits a declaration of use that is in a  
25           form acceptable to the code official.

~~106.42 — 106.3 No changes Deleted.~~

~~106.4 Violation Penalties. Any person who shall violate a provision of this code, or  
fail to comply therewith, or with any of the requirements thereof, shall be prosecuted  
within the limits provided by state or local laws. Each day that a violation continues  
after due notice has been served shall be deemed a separate offense. Violations of this  
code are punishable as provided in sections 9-15-3 through 9-15-5, of chapter 9-15,  
"Enforcement," B.R.C. 1981. Deleted.~~

~~106.5 Abatement of Violation. No changes.~~

## SECTION 107 NOTICES AND ORDERS

~~107.1 Notice to Person Responsible. No changes.~~

~~107.2 Except in those instances where section 308, "RUBBISH AND GARBAGE," or  
section 309, "PEST ELIMINATION," applies or if a violation of chapter 10-3, "Rental~~

1 Licenses," B.R.C. 1981, is alleged, whenever the code official determines that there is  
2 or has been a violation of any provision of this code, notice shall be given of such  
determination to the person responsible to correct the violation. The notice shall:

- 3 1. Be in writing
- 4 2. Include a description of the real estate sufficient for identification.
- 5 3. Include a statement of the violation or violations and why the notice is being  
6 issued.
- 7 4. Include a correction order allowing a reasonable time to make the repairs and  
8 improvements required to bring the dwelling unit or structure into compliance with  
the provisions of this code.
- 9 5. Inform the property owner or other person responsible to correct the violation of  
10 the right to appeal.
- 11 6. Include a statement of the rights under section 106.1 (a)(6) to file a lien in  
12 accordance with section 106.3.

13 **107.3 Method of Service.** Such notice shall be deemed to be properly served if a copy  
thereof is:

- 14 1. Delivered personally upon the responsible person, or by leaving a copy thereof  
15 at the person's usual place of abode, with any person eighteen years of age or older  
16 and who is a member of the person's family; or at the person's usual workplace,  
17 with the person's supervisor, secretary, administrative assistant, bookkeeper,  
human resources representative or managing agent; or by delivering a copy to a  
person authorized by appointment or by law to receive service of process.
- 18 2. Sent by certified or registered mail addressed to the owner at the last known  
19 address with return receipt requested; or
- 20 3. Delivered in any other manner as prescribed by law. If the notice is returned  
21 showing that the letter was not delivered, a copy thereof shall be posted in a  
22 conspicuous place in or about the structure affected by such notice. Service of such  
notice in the foregoing manner upon the owner's agent or upon the person  
responsible for the structure shall constitute service of notice upon the owner.

23 **107.4 — ~~107.5~~** No changes.

24 **107.5 Penalties.** Penalties for noncompliance with orders and notices shall be as set  
25 forth in section 106.1.



1 (e) The city manager may apply to the Board of Building Appeals, without fee, for an  
2 advisory opinion concerning alternative methods, applicability of specific  
3 requirements, approval of equipment and materials, and granting of special permission  
4 as contemplated in Sections 105.1 or 105.2 of the Property Maintenance Code.

5 (f) The board or hearing officer has neither authority to interpret Chapter 1 (the  
6 administrative requirements) of this code, except as expressly provided in this section,  
7 nor, because this code sets minimum standards, to waive any requirement of this code.

8 ~~Any person directly affected by a decision of the code official or a notice and order~~  
9 ~~issued under this code shall have the right of appeal to the board of appeals, provided~~  
10 ~~under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C.~~  
11 ~~1981, if a written application for appeal is filed with the code official within ten days~~  
12 ~~after the day the decision, notice or order was served. An application for appeal shall~~  
13 ~~be based on a claim that the true intent of this code or the rules legally adopted~~  
14 ~~thereunder have been incorrectly interpreted, the provisions of this code do not fully~~  
15 ~~apply, or the requirements of this code are adequately satisfied by other means.~~

16 ~~**111.2 Membership of Board.** The board of appeals shall consist of the Board of~~  
17 ~~Building Appeals, established under section 2-3-4, "Board of Building Appeals,"~~  
18 ~~B.R.C. 1981, unless the city manager determines, due to the nature of the issues in a~~  
19 ~~particular appeal, to appoint a hearing officer under section 1-3-5, "Hearings and~~  
20 ~~Determinations," B.R.C. 1981.~~Deleted.

21 ~~**111.2.1 Alternate Members.** Deleted.~~

22 ~~**111.2.2 Chairman.** Deleted.~~

23 ~~**111.2.3 Disqualification of Member.** Deleted.~~

24 ~~**111.2.4 Secretary.** Deleted.~~

25 ~~**111.2.5 Compensation of Members.** Deleted.~~

~~**111.3 Notice of Meeting.** Deleted.~~

~~**111.4 Open Hearing.** Deleted.~~

~~**111.4.1 Procedure.** Deleted.~~

~~**111.5 Postponed Hearing.** Deleted.~~

~~**111.6 Board Decision.** Deleted.~~



1 from the GFCI-type receptacle to any outlet supplied from the GFCI-type  
2 receptacle.

3 3. A two-prong receptacle may be replaced with a three-prong, grounding-type  
4 receptacle where supplied through a GFCI device. Three-prong, grounding-type  
5 receptacles, supplied through the GFCI shall be marked "GFCI Protected" and "No  
Equipment Ground." An equipment grounding conductor shall not be connected  
6 between the grounding-type receptacles.

6 **605.3 Luminaires.** Deleted.

7 **605.4. Wiring.** No changes.

8 **~~605.4~~605.5 Branch Circuits in Buildings with More Than One Occupancy.** Each  
9 occupant shall have ready access to all circuit breakers protecting the conductors  
10 supplying that occupancy.

11 **~~605.5~~605.6 Flexible Cord Uses Not Permitted.** Flexible cords and cables shall not be  
12 used:

- 13 1. As a substitute for the fixed wiring of the structure.
- 14 2. Where run through holes in walls, structural ceilings, suspended ceilings,  
15 dropped ceilings or floors.
- 16 3. Where run through doorways, windows or similar openings.

16 ...

17 **CHAPTER 7**  
18 **FIRE SAFETY REQUIREMENTS**

19 **SECTIONS 701 — 703**  
20 No changes.

21 **SECTION 704**  
22 **FIRE PROTECTION SYSTEMS**

23 **704.1 — 704.4** No changes.

24 **704.5 Residential Rental Smoke Alarms.** In R-occupancies governed by chapter 10-  
25 3, "Rental Licenses," B.R.C. 1981, smoke alarms shall be installed and inspected as  
required in this section.

1 **704.6 Smoke Alarm Inspections.** Smoke alarm inspections shall be conducted by the  
2 property owner or agent as detailed below.

3 1. Smoke alarms that receive their primary power from the building wiring shall be  
4 checked for good operating condition once each year and if supplied with battery  
5 backup, the battery shall be replaced as necessary for proper function of the smoke  
6 alarm.

7 2. Battery-powered smoke alarms shall be tested for proper function on an annual  
8 basis. Batteries shall be replaced as necessary for proper function of the smoke  
9 alarm.

10 **704.7 Fire Alarms.** Fire alarms in existing residential structures shall be installed in  
11 accordance with chapter 10-8, section 907.3, "Fire ~~Prevention Code~~," B.R.C. 1981.

12 **SECTION 705**  
13 **PORTABLE FIRE EXTINGUISHERS**

14 **705.1 Where Required.** Portable fire extinguishers shall be installed as required by  
15 the City of Boulder Fire Code Section 906.

16 **705.1.1** In new and existing R-1, R-2 and R-4 occupancies, portable fire  
17 extinguishers need only be installed when interior corridors and common areas  
18 exist in accordance with section 906.1 and table 906.3(2) for light (low) hazard  
19 occupancies and sections 906.3 through 906.9.

20 **APPENDIX A**  
21 **BOARDING STANDARD**

22 **A101 — A103** No changes.

23 **APPENDIX B**  
24 **RENTAL HOUSING INSPECTION AND LICENSING**

25 **B101 Scope.** Appendix B sets standards for administering the rental housing  
maintenance, inspection and licensing process.

**B102 Rental Licenses.** Residential rental licenses are applied for and renewed in  
accordance with chapter 10-3, "Rental Licenses," B.R.C. 1981.

**B103 Inspections.** "Baseline" and "Renewal inspections" shall be performed and  
certified by licensed contractors as detailed in chapter 4-4, "Building Contractor  
License," B.R.C. 1981.



1 (c) Section 101.1, "Title," is repealed and reenacted to read:

2 101.1 Title. These regulations shall be known as the Building Code of the City of Boulder  
3 or building code, hereinafter referred to as "this code." Where other codes are referenced in  
4 this code those code provisions shall not apply unless otherwise adopted by the City of  
5 Boulder. Where reference is made anywhere in this code to the "Department" or  
6 "Department of Building Safety" it shall have the same meaning as the "Division of  
7 Building Safety."

8 (d) Section 101.4, "Referenced codes," is repealed and reenacted to read:

9 Chapter 1, "Administration," in this code shall also apply and serve as Chapter 1,  
10 "Administration," in the following codes adopted by reference in this title: Chapter  
11 10-5.5, International Residential Code; Chapter 10-9, International Mechanical Code;  
12 Chapter 10-9.5, International Fuel Gas Code; and Chapter 10-10, International Plumbing  
13 Code, B.R.C. 1981. Where administrative provisions are expressly adopted, or adopted in  
14 an altered form, for use in those chapters, they shall supersede any conflicting provisions of  
15 the administrative provisions of this chapter.

16 The other codes listed in Sections 101.4.1 through 101.4.7-6 and referenced elsewhere in  
17 this code shall be considered as part of the requirements of this code as applicable.

18 (e) ~~Section 101.4.5, "Property Maintenance," is repealed.~~ Section 102.6, "Existing structures," is  
19 amended by addition of the following:

20 Existing structures and their systems, equipment, devices, installations and safeguards shall  
21 be maintained in proper operating condition in accordance with the original design and in a  
22 safe and sanitary condition. Structures, their systems, equipment, devices, installations and  
23 safeguards required by this code shall be maintained in compliance with the code in effect  
24 when they were installed. The owner or the owner's designated agent shall be responsible  
25 for the maintenance of the structures, their systems, equipment, devices, installations and  
safeguards. To determine compliance with this provision, the city manager shall have  
authority to require a structure, equipment, system, device, installations or safeguards to be  
reinspected.

(f) Section 103, "Department of Building Safety," is repealed and reenacted to read:

Section 103

"Division of Building Safety" means the administrative unit established by the city  
manager or the manager's delegates, and the personnel assigned to the unit by the manager.

(g) 104.8, "Liability," is repealed and reenacted to read:

Liability

No employee of the city who enforces, attempts to enforce, or is authorized to enforce this  
code renders him or herself or the city liable to third parties for any damage or injury to the

1 person or property of such third parties as a result of the enforcement or non-enforcement  
2 of this code. The city assumes no duty of care by virtue of the adoption of this code. No  
3 person is justified in relying upon the approval of a plan, the results of an inspection, or the  
4 issuance of a certificate of inspection or occupancy, and such approvals, inspections, and  
5 certificates are not a guarantee that the plan or work so approved, inspected, or certificated  
6 in fact complies with all the requirements of this code. It is the duty of the person owning,  
7 controlling, or constructing any building or structure to insure that the work is done in  
8 accordance with the requirements of this code, and it is such persons and not the city who  
9 are responsible for damages caused by negligent breach of such duty.

10 (h) Subsection 104.10.1, "Flood hazard areas," is repealed.

11 (hi) Section 105.2, "Work exempt from permit," is repealed and reenacted to read:

12 105.2 Work Exempt from permit. Exemptions from the building permit requirements of this  
13 code do not grant authorization for any work to be done in violation of the requirements of  
14 this code or any other laws or ordinances of the city. Building permits shall not be required  
15 for the following:

16 General:

- 17 1. One story detached non-conditioned buildings accessory to a residential structure and  
18 not more than 80 square feet in area or ten feet in height and not being served by any  
19 electrical, mechanical or plumbing fixtures or systems.
- 20 2. Fences not over ~~three~~six feet high.
- 21 3. Retaining walls which are not over 3 feet in height measured from the bottom of the  
22 footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or  
23 III-A flammable liquids.
- 24 4. Sidewalks and driveways not more than thirty inches above grade and not over any  
25 basement or story below and which are not part of an accessible route.
5. Painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work.
6. Temporary motion picture, television, and theater stage sets and scenery.
7. Prefabricated swimming pools accessory to a Group R-3 occupancy which are less  
than 24 inches deep, do not exceed 5,000 gallons, and are installed entirely above ground.
8. Shade cloth structures constructed for nursery or agricultural purposes and not  
including service systems.
9. Swings and other playground equipment accessory to detached one-and two-family  
dwellings.

1 10. Window awnings in Group R and Group U occupancies supported entirely by an  
2 exterior wall and which do not project more than 54 inches from the exterior wall.

3 11. Moveable cases, counters and partitions not over 5 feet 9 inches in height.

4 12. Replacement of windows in low-rise residential buildings that are three-stories or less  
5 in height.

6 13. Replacement of exterior siding on low-rise residential buildings that are three-stories  
7 or less in height.

8 14. Building energy efficiency components that (a) are required as part of a City energy  
9 efficiency program; (b) do not include any electrical, heating, ventilation and air  
10 conditioning equipment, solar photo voltaic and solar hot water heating systems; and (c)  
11 are inspected by a HERS rater (a Home Energy Rating System rater certified through  
12 Residential Energy Services Network) or a city licensed energy inspector as defined in  
13 chapter 4-4, "Building Contractor License," B.R.C. 1981.

14 Electrical:

15 Minor repair and maintenance work, including the replacement of lamps or the  
16 connection of approved portable electrical equipment to approved permanently installed  
17 receptacles, radio and television transmitting stations, temporary testing systems for the  
18 testing or servicing of electrical systems or apparatus and those items in Article 90.2 (B)  
19 of the electrical code.

20 Gas:

21 1. Portable heating appliances.

22 2. Replacement of any minor part that does not alter approval of equipment or make such  
23 equipment unsafe.

24 Mechanical:

25 1. Portable heating appliance, portable cooling unit, portable evaporative cooler or  
portable ventilation equipment.

2. Steam, hot, or chilled water piping within any heating or cooling equipment regulated  
by this code.

3. Replacement of any part which does not alter an approval or listing or make any  
appliance or equipment unsafe.

1 4. Self contained refrigeration system containing ten pounds (4.54 kg) or less of  
2 refrigerant and actuated by motors of one horsepower (746 W) or less.

3 Plumbing:

4 1. The stopping of leaks in drains, water, soil, waste, or vent pipe provided, however, that  
5 if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it  
6 becomes necessary to remove and replace the same with new material, such work shall be  
7 considered as new work and a permit shall be obtained and inspection made as provided  
8 in this code.

9 2. The clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures, and the  
10 replacement of water closets, provided such repairs do not involve or require the  
11 replacement or rearrangement of valves or pipes.

12 (i) A paragraph is added to Section 105.3.1, "Action on application," to read:

13 No building permit shall be issued until approved by every department of the city or Boulder  
14 County that has applicable regulations, including, without limitation, the following  
15 departments: building, flood control, utilities, wastewater, health, fire, engineering, zoning,  
16 planning, parks, and city clerk.

17 (j) Section 105.3.2, "Time limitation of application," is repealed and reenacted to read:

18 105.3.2 Time limitation of application. An application for a permit for any proposed work  
19 shall be deemed to have been abandoned one hundred eighty days after the date of filing  
20 unless the permit has been issued; except that the building official is authorized to grant not  
21 more than two extensions of time for additional periods not exceeding ~~ninety~~ 180 days each.  
22 The extension shall be requested in writing before the expiration date and justifiable cause  
23 demonstrated.

24 (k) Section 105.5, "Expiration," is repealed and reenacted to read:

25 Section 105.5 Expiration. Every permit issued shall become invalid unless the work on the  
site authorized by such permit is commenced within one hundred eighty days after its  
issuance, or if the work authorized on the site by such permit is suspended or abandoned for a  
period of one hundred eighty days after the time the work is commenced. The building  
official is authorized to grant in writing one or more extensions of time for periods not more  
than one hundred eighty days each. The extension shall be requested in writing and  
justifiable cause demonstrated. Every permit issued by the building official under the  
provisions of this code shall expire by limitation and become null and void if the building or  
work authorized by such permit is not completed and approved for occupancy within three  
years from the date the permit was issued. The permit fee for renewals may be prorated based  
on the amount of work completed and approved under the previous permit.

1 (~~lm~~) Section ~~106.1107.1~~, “~~Submittal Documents~~General,” is repealed and reenacted to read:

2 ~~106.1107.1 Submittal Documents~~General. An applicant for a building permit shall submit a  
3 minimum of two sets of plans and specifications with each application when required by  
4 the building official for enforcement of any provisions of this code.

4 (1) ~~A~~ professional engineer or architect registered in the State of Colorado shall prepare  
5 the plans and specifications for and observe the construction of all buildings except for the  
6 following:

6 (a) Detached dwellings intended solely for private use, occupancy, or resale,  
7 including accessory buildings commonly associated with the same;

8 (b) Farm buildings and buildings for the marketing, storage, or processing of farm  
9 products;

9 (c) Minor additions, alterations, or repairs to the foregoing buildings that do not cause  
10 the completed buildings to exceed the applicable limitations herein set forth; or

11 (d) Non-structural alterations of any nature to any building, if such alterations do not  
12 affect the safety of the building.

12 (2) Drawings and specifications for footings and foundations shall bear the seal and  
13 signature of a professional engineer or architect registered in Colorado and be designed as  
14 specified in chapter 18 of the building code for all occupancies, ~~except those classified as~~  
~~R-3 and U, which shall be designed as specified in Chapter 4 of the residential code.~~

15 Exceptions:

16 (a) Detached structures not intended for human occupancy;

17 (b) Additions to existing detached dwellings not exceeding 150 square feet.

18 (~~mn~~) ~~106.3.2107.3.2~~, “~~Previous Approvals~~,” is amended to read:

19 ~~106.3.2107.3.2 Previous Approvals~~. This code shall not require changes in the construction  
20 documents, construction or designated occupancy of a structure for which a lawful permit  
21 has heretofore been issued or otherwise lawfully authorized, and the constraints of which  
22 have been pursued in good faith within one hundred eighty days after the effective date of  
23 this code and has not been abandoned. No person shall fail to comply with all of the  
24 conditions of such building permit and the provision of the building code under which such  
25 building permit has been issued.

23 (~~no~~) Section ~~108.3109.3~~, “~~Building Permit Valuations~~,” is repealed and reenacted to read:

24 ~~108.3109.3 Building permit valuation~~. The valuation for buildings shall be as set forth in  
25 subsections 4-20-4(d) and (e), B.R.C. 1981.

1 (~~op~~) Section ~~112~~113, “Board of Appeals,” is repealed and reenacted to read:

2 Section 113 Appeals and Advisory Opinions.

3 (a) Any appeal under this section shall be heard by the Board of Building Appeals  
4 established under section 2-3-4, “Board of Building Appeals,” B.R.C. 1981, unless the city  
5 manager determines, due to the nature of the issues in a particular appeal, to appoint a  
6 hearing officer under section 1-3-5, “Hearings and Determinations,” B.R.C. 1981.

7 ~~(b)(a)~~ A person refused a building permit or refused approval of work done under a permit  
8 on the grounds that the proposed or completed construction fails to comply with this code  
9 or any other city building code other than the fire code may appeal the decision ~~to the board~~  
10 ~~of zoning adjustment and building appeals~~ on the ground that:

11 ~~(1-)~~ The denial was based on an error in fact or an erroneous interpretation of such  
12 code by the city manager;

13 ~~(2-)~~ The city manager has erroneously failed to approve an alternate material or  
14 method pursuant to Section 104.11 prior to its installation or use. In determining such  
15 an appeal the board or hearing officer shall apply the standards of Section 104.11, but  
16 the board or hearing officer shall have no jurisdiction to consider if a material or  
17 method expressly prohibited by this code is an acceptable alternative; ~~or~~

18 ~~(3-)~~ The city manager has erroneously failed to grant a modification pursuant to  
19 Section 104.10 prior to its installation. In determining such an appeal the board or  
20 hearing officer shall apply the standards of Section 104.10; or;

21 ~~(4-)~~ The city manager has erroneously failed to approve an alternative design pursuant  
22 to Section K105 prior to its installation or use. In determining such an appeal, the  
23 board or hearing officer shall apply the standards of Section K105, but the board or  
24 hearing officer shall have no jurisdiction to consider if a design expressly prohibited  
25 by this code is an acceptable alternative.

The city manager has the burden of proof under paragraph 1. The appellant has the  
burden of proof on appeals brought pursuant to paragraphs ~~2, and 3 and 4~~. The board  
or hearing officer shall determine the appeal and decide whether the city manager’s  
interpretation or application of such code was correct or in error at a hearing under  
the procedures described by Chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981.

26 ~~(c)(b)~~ Any person whose building permit or certificate of occupancy or certificate of  
27 completion has been suspended or revoked may appeal such action by the city manager ~~to~~  
28 ~~the board of building appeals~~ on the ground that the suspension or revocation was based on  
29 an error in fact or an erroneous application of this code to the facts. The city manager has  
30 the burden of proving the facts upon which the manager relies at such a hearing.

31 (d) An application for appeal must be filed in writing with the city manager within fourteen  
32 days after the date of refusal of the building permit or approval of work performed under

1 the permit or revocation or suspension of the building permit or certificate of occupancy or  
2 certificate of completion stating the basis for appeal.

3 ~~(c)~~(e) An applicant for an appeal ~~to the board of appeals~~ shall pay the fee prescribed by  
4 Section 4-20-47, "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981.  
The fee for an appeal heard by a hearing officer shall be the same as the fee for an appeal  
heard by the Board of Building Appeals.

5 ~~(f)~~(d) The city manager may apply to the ~~board of appeals~~ Board of Building Appeals,  
6 without fee, for an advisory opinion concerning alternative methods, applicability of  
7 specific requirements, approval of equipment and materials, and granting of special  
permission as contemplated in Sections 104.10 or 104.11 of the Building Code.

8 ~~(g)~~(e) The board ~~of building appeals~~ or hearing officer has no authority to interpret Chapter  
9 1 (the administrative requirements) and Chapter 34 of this code except as expressly  
provided in this section, nor, because this code sets minimum standards, to waive any  
10 requirement of this code.

11 (pq) Section ~~4-3-114~~ 114, "Violations," is repealed and reenacted to read:

12 ~~Violations~~ Section 4-3-114 Violations.

13 (a) General Provisions

14 (1) No person shall violate a provision of this code, or fail to comply therewith, or with  
15 any of the requirements thereof. No person shall fail to comply with any order issued by  
16 the code official under this code. No person shall erect, construct, enlarge, alter, extend,  
17 repair, move, remove, improve, convert, demolish, equip, use, occupy, or maintain any  
18 building or structure in the City or cause or permit the same to be done except in  
19 conformity with all of the provisions of this code and in conformity with the terms and  
20 conditions of any permit, certificate, or other approval issued under this code, or of any  
21 directive of the building official.

22 (2) In accordance with the provisions of section 5-2-11, "Prosecution of Multiple Counts  
23 for Same Act," B.R.C. 1981, each day during which illegal construction, alteration,  
24 maintenance, occupancy, or use continues, constitutes a separate offense remediable  
25 through the enforcement provisions of this code.

(3) The owner, tenant, and occupant of a structure or land, and the agents of each of  
them, are jointly and severally liable for any violation of this code with respect to such  
structure or land.

(4) The remedies for any violation of any provision of this code or of any permit,  
certificate, or other approval issued under this code or other City of Boulder code, or of  
any directive of the code official, may be pursued singly or in combination.

(5) If any person fails or refuses to pay when due any charge imposed under this section,  
the city manager may, in addition to taking other collection remedies, certify due and  
unpaid charges to the Boulder County Treasurer for collection as provided by section 2-

1 2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer  
2 for Collection," B.R.C. 1981.

3 (b)(a) Administrative Procedures and Remedies

4 (1) If the city manager finds that a violation of any provision of this ~~title code~~ or any  
5 approval granted under this ~~title code~~ exists, the manager, after notice and an opportunity  
6 for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings,"  
7 B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

8 (A) Impose a civil penalty according to the following schedule:

9 (i) For the first violation of the provision or approval, \$100.00;

10 (ii) For the second violation of the same provision or approval, \$300.00; and

11 (iii) For the third violation of the same provision or approval, \$1,000.00;

12 (B) For a violation concerning the use of a residential building under a rental license,  
13 revoke such license;

14 (C) Require the filing of a declaration of use as provided in subsection (e) of this  
15 section. ~~If the city manager determines that a person is using a structure in a way that~~  
16 ~~might mislead a reasonable person to believe that such use is a use by right or~~  
17 ~~otherwise authorized by this title, the manager may require such person to sign under~~  
18 ~~oath a declaration of use that defines the limited nature of the use and to record such~~  
19 ~~declaration in the office of the Boulder County Clerk and Recorder against the title to~~  
20 ~~the land. In addition to all other remedies and actions that the city manager is~~  
21 ~~authorized to use under the Boulder Revised Code or other applicable federal, state or~~  
22 ~~local laws to enforce the provisions of this title, the city manager is authorized to~~  
23 ~~withhold any approval affecting such structure or land, including, without limitation,~~  
24 ~~a building permit, use review, site review, subdivision, floodplain development~~  
25 ~~permit, or wetland permit until such time as the person submits a declaration of use~~  
~~that is in a form acceptable to the city manager; or~~

(D) Issue an order reasonably calculated to ensure compliance with the provisions of  
this ~~title code~~ or any approval granted under this ~~title code~~.

(2) Prior to the hearing, the city manager may issue an order that no person shall perform  
any work on any structure or land, except to correct any violation found by the manager  
to exist with respect to such structure or land.

(3) If notice is given to the city manager at least forty-eight hours before the time and  
date set forth in the notice of hearing on any violation that the violation has been  
corrected, the manager will reinspect the structure or land. If the manager finds that the  
violation has been corrected, the manager may cancel the hearing.

(4) No person shall fail to comply with any action taken by the manager under this  
section.

1 (c)(b) Criminal Penalties. No person shall erect, construct, enlarge, alter, repair, move,  
2 improve, remove, convert or demolish, equip, use, occupy, or maintain any building or  
3 structure in the City or cause or permit the same to be done, contrary to or in violation of any  
4 of the provisions of the building code. Violations of the building this code are punishable as  
5 provided in Section 5-2-4, "General Penalties," B.R.C. 1981.

6 (d) Other Remedies. The city attorney may maintain an action for damages, declaratory  
7 relief, specific performance, injunction, or any other appropriate relief in the District Court in  
8 and for the County of Boulder for any violation of any provision of this code or any approval  
9 granted under this code.

10 (e) Declaration of Use. If the city manager determines that a person is using a structure in a  
11 way that might mislead a reasonable person to believe that such use is a use by right or  
12 otherwise authorized by this title, the manager may require such person to sign under oath a  
13 declaration of use that defines the limited nature of the use and to record such declaration in  
14 the office of the Boulder County Clerk and Recorder against the title to the land. In addition  
15 to all other remedies and actions that the city manager is authorized to use under the Boulder  
16 Revised Code or other applicable federal, state or local laws to enforce the provisions of this  
17 code, the city manager is authorized to withhold any approval affecting such structure or  
18 land, including, without limitation, a building permit, use review, site review, subdivision,  
19 floodplain development permit, or wetland permit until such time as the person submits a  
20 declaration of use that is in a form acceptable to the city manager.

21 (r) Section 116.1, "Conditions," is repealed and reenacted to read:

22 116.1 Conditions. Premises, structures or existing equipment that are or hereafter become  
23 unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate  
24 light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human  
25 life or the public welfare, or that involve illegal or improper occupancy or inadequate  
maintenance, shall be deemed an unsafe condition. Unsafe premises shall be made safe and  
unsafe structures shall be taken down and removed or made safe, as the building official  
deems necessary and as provided for in this section. A vacant structure that is not secured  
against entry shall be deemed unsafe.

(s) Section 116.3, "Notice," is repealed and reenacted to read:

116.3 Notice. If an unsafe condition is found, the building official shall serve on the owner,  
agent, or person in control of the structure or premises, a written notice that describes the  
condition deemed unsafe and specifies the required repairs, improvements, or modifications  
to be made to abate the unsafe condition, or that requires the unsafe structure to be  
demolished within a stipulated time. Such notice shall require the person thus notified to  
declare immediately to the building official acceptance or rejection of the terms of the order.

(t) The last two sentences of Section 116.4, "Method of service," are amended to read as  
follows:

If the certified or registered letter is returned showing that the letter was not delivered, a copy  
thereof shall be posted in a conspicuous place on the premises or in or about the structure  
affected by such notice. Service of such notice in the foregoing manner upon the owner's  
agent or upon the person responsible for the premises or structure shall constitute service of  
notice upon the owner.

1 (u) Section 116.5, "Restoration," is amended by adding the following sentence:

2 The abatement of an unsafe condition of premises shall comply with the requirements of this  
3 code.

4 ~~(qy)~~ The definition of "Building Official" in Section 202 is repealed and reenacted to read:

5 BUILDING OFFICIAL is the city manager.

6 ~~(fw)~~ Section 202, "Definitions," is amended by the addition of the following new definition:

7 PERMIT ISSUANCE is the date that the approved building permit is paid for and received  
8 back from the city manager by the applicant or a representative of the applicant.

9 ~~(x)~~ A new subsection 6. is added to section 708.1, "General." to read:

10 6. Walls separating marijuana growing, processing and dispensing occupancies from adjacent  
11 occupancies.

12 ~~(s)(y)~~ A paragraph is added to Section (F) 903.2, "Where required," to read:

13 The maximum fire area without an automatic sprinkler system shall be determined by  
14 Section ~~903.1~~903.2 of the fire code.

15 ~~(t) Section 1007.3, "Exit Stairways", is repealed and reenacted to read:~~

16 ~~1007.3 Exit Stairways. In order to be considered part of an accessible means of egress, an exit~~  
17 ~~stairway shall have a clear width of 48 inches (1219 mm) minimum between handrails and shall~~  
18 ~~either incorporate an area of refuge within an enlarged floor level landing or shall be accessed~~  
19 ~~from either an area of refuge complying with Section 1007.6 or a horizontal exit.~~

20 ~~Exceptions:~~

21 ~~The area of refuge is not required at unenclosed interior exit stairways as permitted by Section~~  
22 ~~1020.1 in buildings or facilities that are equipped throughout with an automatic sprinkler system~~  
23 ~~installed in accordance with Section 903.3.1.1 or 903.3.1.2.~~

24 ~~The clear width of 48 inches (1219 mm) between handrails is not required at exit stairways in~~  
25 ~~buildings of facilities equipped throughout with an automatic sprinkler system installed in~~  
accordance with Section 903.3.1.1 or 903.3.1.2.

~~Areas of refuge are not required at exit stairways in buildings or facilities equipped throughout~~  
~~by an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.~~

~~The clear width of 48 inches (1219 mm) between handrails is not required for exit stairways~~  
~~accessed from a horizontal exit.~~

~~Areas of refuge are not required at exit stairways serving open parking garages.~~

1 ~~Areas of refuge are not required for smoke protected seating areas complying with Section~~  
2 ~~1025.6.2.~~

3 ~~The areas of refuge are not required in Group R-2 occupancies.~~

4 (z) Section 907.2.11, “Single- and multiple-station smoke alarms,” is amended by the addition  
5 of the following subsections:

6 907.2.11.5 Alterations, repairs, and enlargements. (1) When buildings or structures, or  
7 portions of buildings or structures classified as Group R are altered, repaired or enlarged and  
8 the work requires a building permit or (2) when one or more sleeping rooms are added or  
9 created, smoke alarms shall be installed for each dwelling or sleeping unit affected by such  
10 work in accordance with Section 907.2.11, except as provided otherwise in this Section or its  
11 Subsections.

12 Exceptions:

- 13 1. Work involving solely the exterior surfaces of the building or structure, such as  
14 replacement of roofing or siding or the addition of a porch or deck.
- 15 2. Installation, alterations, and repairs of plumbing or mechanical systems.

16 907.2.11.5.1 Exception to interconnection. Section 907.2.11.3 applies except that  
17 interconnection of smoke alarms in existing areas shall not be required where alterations  
18 and repairs do not include removal of interior wall and ceiling finishes exposing the  
19 structure unless an attic, crawl space or basement is available to provide access for  
20 interconnection without removal of interior finishes.

21 907.2.11.5.2 Exception to power source. Section 907.2.11.4 applies except that (1)  
22 smoke alarms may be battery operated when installed in a building without commercial  
23 power and (2) hard wired smoke alarms shall not be required in existing areas where  
24 alterations or repairs do not result in the removal of interior wall and ceiling finishes  
25 exposing the structure unless an attic, crawlspace or basement is available to provide  
access for hard wiring without removal of interior finishes.

~~(u)~~(aa) Section 1405.3, “Vapor Retarders” is amended by adding two exceptions:

- 20 4. Commercial and multiple-residence buildings complying with the 2012 International  
21 Energy Conservation Code section C402.4, “Air leakage (mandatory).”
- 22 5. Residential buildings complying with the 2012 International Energy Conservation  
23 Code section R402.4, “Air leakage (mandatory).”

24 ~~(u)~~(bb) Section 1505.1, “General,” is repealed and reenacted to read:

25 1505.1 General. All roof assemblies and roof coverings required to be listed by this section  
shall be tested in accordance with ASTM Standard E 108 or UL Standard 790. Class A roofs  
and the exceptions noted in 1505.3 for class B roofs as described in this chapter 15 are the

1 only roof assemblies and roof coverings allowed to be installed on any new or existing  
2 building within the city of Boulder. Wood shakes, wood shingles and wood roof covering  
3 materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering  
4 Materials Prohibited," B.R.C. 1981, for certain minimal repairs.

5 ~~(v)~~(cc) Section 1608.1, "General," is repealed and reenacted to read:

6 1608.1 General. The minimum roof snow load shall be thirty pounds per square foot, but the  
7 design roof load shall not be less than that determined by Section 1607.

8 ~~(dd)~~ Section 1608.2, "Ground snow loads," is deleted.

9 ~~(w)~~(ee) Section 1609.3-4, "Basic Wind speed-~~conversion~~," is repealed and reenacted to read:

10 ~~1609.3.1 Wind velocities. In Table 1609.3.1, the three second gust wind speed for the city  
11 shall be 110 miles per hour.~~

12 1609.3 Basic wind speed. The ultimate design wind speed,  $V_{ult}$ , in mph, for the determination  
13 of wind loads, shall be in accordance with local jurisdiction requirements. The ultimate  
14 design winds speeds,  $V_{ult}$ , determined by the local jurisdiction shall be in accordance with  
15 Section 26.5.1 of ASCE 7. Per the Colorado Front Range Wind Table, the ultimate design  
16 wind speed shall be 130 mph for areas west of Broadway Street and 120 mph for areas east  
17 of Broadway Street.

18 ~~(x)~~(ff) Sections 1612.3, 1612.4, and 1612.5 are repealed.

19 (gg) Section 1705, "Required Verification and Inspection," is amended by the following  
20 Subsection:

21 1705.18. Special inspection for medical gas systems. Medical gas systems shall be tested as  
22 detailed in Chapter 12, "Special Piping and Storage Systems," of the City of Boulder  
23 Plumbing Code.

24 (hh) Section J103, "Permits Required," of Appendix J, "GRADING," is amended by adding the  
25 following subsections:

J103.3 Compliance with code and permit requirements. No person shall fail to perform and  
no property owner shall fail to perform or fail to cause the performance of all grading in  
compliance with this code, the Boulder Revised Code, and the conditions of the grading  
permit.

J103.4 No adverse affects. No person shall perform and no property owner shall perform or  
fail to prevent any grading that adversely affects the property of another without first  
obtaining the consent of the owner of such property.

J103.5 Unsafe premises. No person shall perform and no property owner shall perform or  
fail to prevent grading that results in any premises that are unsafe. For purposes of this

1 Appendix J, premises are considered unsafe if they are found to be dangerous to life, health,  
2 property, or the safety of the public.

3 J103.6 Abatement of unsafe premises. If the city manager determines that grading is not  
4 performed in accordance with the law and resulted in unsafe premises, the city may notify the  
5 owner of the unsafe premises, agent, or other person in control of the premises in accordance  
6 with Section 116.3 of this code. If the person so notified fails to abate the unsafe condition  
7 as required by the notice, the city manager may enter the property, pursuant to an  
8 administrative warrant issued by the municipal court, and abate the unsafe condition. The  
9 city manager may collect the full cost of the abatement and any expense to the city related to  
10 the abatement against the property owner, agent, or other person in control of the premises,  
11 and against the financial guarantee provided under Subsection J103.8. The permit holder,  
12 property owner and guarantor shall be jointly and severally liable for such costs and  
13 expenses. If the property owner fails or refuses to pay when due any charge imposed under  
14 this subsection, the city manager may certify due and unpaid charges, including interest, to  
15 the Boulder County Treasurer for collection, as provided in Section 2-2-12, “City Manager  
16 May Certify Taxes, Charges, and Assessments to County Treasurer for Collection,” B.R.C.  
17 1981.

18 J103.7 Financial guarantee. Prior to the issuance of a permit under this Appendix J,  
19 “Grading,” for any work on steep slope lots with a 15 percent or greater slope and on any  
20 projects with a cut, fill, or excavation of ten feet or more or cut, fill, or excavation less than  
21 two feet from the property line, the permittee or property owner shall provide a financial  
22 security in the form of a performance bond or other form of guarantee approved by the city  
23 manager that will satisfy the objectives of this subsection, for the benefit of the city to secure  
24 the abatement of an unsafe condition of any premises that may result from grading work.  
25 The performance bond or other financial guarantee shall be provided for a period of two  
years, following the expiration of the permit, and shall be for \$10,000 for construction costs  
less than \$10,000 and for the value of the project permit for construction costs greater than  
\$10,000. At the time of permit application, the permittee shall submit documentation of the  
project costs, subject to review and approval by the City Manager. A bond shall be issued by  
a company licensed to do business in Colorado and shall be in a form acceptable to the City  
Attorney. The city manager shall review the performance bond or other financial guarantee  
annually to assure that it meets the term requirements and the full current cost of the  
completion of the work that is guaranteed and may require the permittee to augment the  
performance bond or other financial guarantee amount to meet such costs.

(y)(ii)-A new Chapter 99 is added to the Building Code to read:

## CHAPTER 99. FENCES AND WALLS.

### Section 9901. Definitions.

(1) As used herein, the term “wall” means a free standing structure such as a fence or retaining wall.

1 (2) As used herein and in Section 9-3.3-6, "Fences, Hedges, and Walls," B.R.C. 1981, the  
2 term "finished grade" means the top surfaces of lawns, walks, drives, or other improved  
3 surfaces after completion of construction or grading operations, but not including  
4 vegetation growing on the surface.

5 (3) For purposes of determining the maximum height allowable for any fence or wall  
6 other than wind load height as specified in subsection (4) of this section, refer to Section  
7 9-3.3-6, "Fences, Hedges, and Walls," B.R.C. 1981, and the diagram below.

8 [SPACE FOR DIAGRAM HERE] B.R.C. 9-9-15 (c)

9 (4) For purposes of determining wind load design in the case of a fence erected above a  
10 retaining wall, the height of such fence means the distance from the top of the retaining  
11 wall to the top of the fence, as illustrated in the figure below:

12 [SPACE FOR DIAGRAM HERE] B.R.C. 9-9-15 (c)

13 (5) Nothing in this section is intended to prohibit the installation of a guardrail for safety  
14 purposes which otherwise conforms to the requirements of this code.

15 Section 9902. All fences and walls hereafter installed in the city shall comply with Section 9-  
16 3.3-6, "Fences, Hedges, and Walls," B.R.C. 1981, and the following provisions:

17 (1) All fences and walls thirty-six inches high and lower shall have a wind load design of  
18 ten pounds per square foot or shall conform to paragraph (3) of this section.

19 (2) All fences and walls thirty-seven through eighty-four inches high shall have a wind  
20 load design of twenty pounds per square foot or shall conform to paragraph (3) of this  
21 section.

22 (3) As an alternative to the requirements of paragraphs (1) or (2), a wood fence that does  
23 not exceed seven feet in height may be installed if the following requirements are met:

24 (a) All posts shall be at least four inch by four inch timber or two inch Schedule 40  
25 pipe and shall be set at least twenty-four inches in the ground in concrete;

(b) All wood below grade shall be cedar, redwood, or penta pressure treated fir;

(c) Post spacing shall be arranged so that the area of the fence between posts does not  
exceed 30 square feet;

(d) Wood fencing more than fifty percent open may exceed the 30 square foot post  
spacing requirements if designed for a ten pound wind load.

(4) Chain link fences. On all chain link fences, the fence posts shall be at least one and  
one-half inch diameter pipe, and shall be set at least twenty-four inches in the ground in  
concrete.

1 (5) For the purpose of minimizing traffic hazards at street intersections by improving  
2 visibility for converging vehicles, obstructions higher than thirty inches above the  
3 adjacent top or curb elevation are not permitted to be planted, placed, or erected on any  
4 corner lot within the triangular portion of land designated as "Restricted Area" in the  
5 figure below or on the adjacent right of way:

6 [SPACE FOR DIAGRAM HERE]

7 6) Where permitted, fences exceeding seven feet in height shall conform to the zoning  
8 requirements for accessory structures.

9 **10-5-3 Adoption of Uniform Code for Abatement of Dangerous Buildings with**  
10 **Modifications. \_\_\_\_\_ (Repealed)**

11 ~~The 1997 edition of the *Uniform Code for the Abatement of Dangerous Buildings* of the~~  
12 ~~International Conference of Building Officials is hereby adopted by reference as the City of~~  
13 ~~Boulder's Abatement Code and has the same force and effect as though fully set forth in this~~  
14 ~~chapter, except as specifically amended by the provisions of this section set forth below:~~

15 (a) Section 201.3, "Right of Entry," is repealed and reenacted to read:

16 Section 201.3 Right of Entry.

17 (1) ~~Whenever the city manager has probable cause to believe that there exists in any building or~~  
18 ~~upon any premises any condition or code violation which makes such building or premises~~  
19 ~~unsafe, dangerous, or hazardous, and the manager determines that an inspection of the property~~  
20 ~~is necessary to discover the extent of the hazard and to order the appropriate corrections, the~~  
21 ~~manager shall request entry from the occupants or, if the building is unoccupied, from the owner~~  
22 ~~or any other person having charge or control over the building or premises. If entry is refused, or~~  
23 ~~if the manager is unable, after making reasonable efforts, to locate a person responsible for an~~  
24 ~~unoccupied building, or such person does not respond to the manager's request, the manager~~  
25 ~~shall apply to a judge of the municipal court for an inspection warrant pursuant to Subsection 2-~~  
~~6-3(e), B.R.C. 1981.~~

(2) ~~In cases of emergency where there is imminent danger of injury to any person or of damage~~  
~~to property of another, the manager may enter any property to make any necessary inspections~~  
~~under this code or to take any other action authorized by this code without permission or warrant.~~

(b) Section 203, "Violations," is repealed and reenacted to read:

Violations

Section 203. (1) ~~No person shall erect, construct, enlarge, alter, repair, move, improve, remove,~~  
~~convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit~~  
~~the same to be done in violation of the Code for Abatement of Dangerous Buildings. (2) No~~  
~~owner and no person having charge or control over any building or premises shall fail to comply~~  
~~with any order issued to such person under the Code for Abatement of Dangerous Buildings.~~

1 ~~(c) Section 205.1, "Board of Appeals," is repealed and reenacted to read:~~

2 Appeals

3 Section 205.1.

4 ~~(a) The record owner of a building or the owner's authorized agent or any person with any other~~  
5 ~~legal interest in the building may appeal any order issued pursuant to Section 401.2 to the board~~  
6 ~~of building appeals on the ground that such order was based on an erroneous interpretation or~~  
7 ~~application of this or any other city code by the city manager. The city manager has the burden~~  
8 ~~of proof in such an appeal. The board shall determine whether the city manager's interpretation~~  
9 ~~or application of such code was correct or in error at a hearing under the procedures described by~~  
10 ~~Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.~~

11 ~~[SPACE FOR DIAGRAM HERE] (b) An applicant for an appeal to the board of building~~  
12 ~~appeals shall pay the fee prescribed by Section 4-20-47, "Zoning Adjustment and Building~~  
13 ~~Appeals Filing Fees," B.R.C. 1981.~~

14 ~~(c) The board of building appeals has no authority to interpret the administrative provisions of~~  
15 ~~this code nor may the board waive any requirement of this code.~~

16 ~~(d) The definition of "housing code" in Section 301, "General," is repealed and reenacted to~~  
17 ~~read:~~

18 ~~HOUSING CODE means Chapter 10-2, "Housing Code," B.R.C. 1981.~~

19 ~~(e) The introductory paragraph of Section 302, "Dangerous Building," is repealed and reenacted~~  
20 ~~to read:~~

21 ~~For the purposes of this code, any building or structure which has any or all of the conditions or~~  
22 ~~defects hereinafter described shall be deemed to be a dangerous building.~~

23 ~~(f) Paragraphs 4 and 5 of Section 401.2, "Notice and Order," and Sections 401.4 and 401.5 are~~  
24 ~~repealed and reenacted to read:~~

25 ~~4. Statements advising that if any required repair or demolition work (without vacation also~~  
being required) is not commenced within the time specified, the city manager:

(I) ~~will order the building vacated and posted to prevent further occupancy until the work is~~  
completed;

(II) ~~may proceed to cause the work to be done and charge the costs thereof against the property~~  
or its owner pursuant to Section 2-2-12, "City Manager May Certify Taxes, Charges, and  
Assessments to County Treasurer for Collection," B.R.C. 1981; and

(III) ~~may cause a summons and complaint to be served upon the property owner or any person~~  
having charge or control over the building or premises for failure to make required repairs or  
demolition within the time specified.

1 5. Statements advising:

2 ~~(I) that any person having any record title or legal interest in the building may appeal from the~~  
3 ~~notice and order or any action of the city manager to the board of building appeals, provided the~~  
4 ~~appeal is made in writing as provided in this code and filed with the city manager within ten days~~  
5 ~~from the date of service of such notice and order; and~~

6 ~~(II) that failure to appeal will constitute a waiver of all right to an administrative hearing and~~  
7 ~~determination of the matter.~~

8 401.4 ~~The method of service shall be as prescribed in Section 1-3-3, "Notice of Agency Action,"~~  
9 ~~B.R.C. 1981.~~

10 ~~(g) The final paragraph of Section 501.1 is repealed.~~

11 ~~(h) Chapter 6, "Procedure for Conduct of Hearing Appeals," is repealed and reenacted to read:~~

12 ~~Chapter 6.~~

13 ~~Appeal Procedure. Appeals shall be heard pursuant to Section 1-3-5, "Hearings and~~  
14 ~~Determinations," B.R.C. 1981.~~

15 ~~(I) Section 801.2, "Costs," is repealed and reenacted to read:~~

16 ~~The cost of such work plus twenty percent for administrative overhead shall be billed to the~~  
17 ~~record owner of the property, and if not paid within thirty days of billing may be collected~~  
18 ~~pursuant to Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to~~  
19 ~~County Treasurer for Collection," B.R.C. 1981.~~

20 ~~(i) Chapter 9, "Recovery of Cost of Repair or Demolition," is repealed.~~

### 21 **10-5-43 Building Permit Fees.**

22 Building permit fees are those prescribed by Subsection 4-20-4(c), B.R.C. 1981. Fees for other  
23 permits issued pursuant to this chapter and charges for services are those prescribed by  
24 Subsection 4-20-4(d), B.R.C. 1981.

### 25 **10-5-54 Wood Roof Covering Materials Prohibited.**

(a) No person shall install or cause to be installed any wood roof covering materials, including,  
without limitation, wood shakes or wood shingles. This prohibition includes wood roof covering  
materials with fire retardant treatments of any kind.

~~(b) It shall be a specific defense to a charge of violation of subsection (a) of this section that the~~  
~~wood roof covering materials were installed before January 1, 2014, to repair portions of an~~  
~~existing wood roof, that the repair wood roof covering materials were factory pressure treated so~~  
~~as to be fire retardant and are approved as meeting Class B standards in accordance with Section~~  
~~1501.1 of the building code, and that the wood roof covering materials were installed in a~~

1 quantity not exceeding fifty percent of the roof surface in any three hundred sixty five day  
2 period.

3 ~~(e)~~(b) No person owning a building with wood roof covering materials shall fail to remove or  
4 cause to be removed from the building all wood roof covering materials before January 1, 2014,  
5 and to replace the removed roofing with approved roof covering materials which conform to the  
6 International Building Code as adopted, and no person shall thereafter take possession or  
7 ownership of a building with wood roof covering materials.

8 ~~(d)~~(c) The following additional definition applies to this section and to Chapter 15 of the  
9 building code:

10 “Wood roof covering material” means an exterior surface material used as a top covering and  
11 made of wood. “Wood,” for the purposes of this definition, means any natural or composite  
12 material containing at least fifty percent wood by volume.

13 Section 3. Chapter 10-5.5, B.R.C. 1981, is amended to read:

#### 14 **CHAPTER 10-5.5 – RESIDENTIAL BUILDING CODE**

##### 15 **10-5.5-1 Legislative Intent.**

16 The purpose of this chapter is to protect the public health, safety, and general welfare by  
17 regulating the construction, alteration movement, enlargement, replacement, repair, equipment,  
18 use and occupancy, location, removal and demolition of detached one and two-family dwellings  
19 and townhouses, not more than three stories above grade in height with a separate means of  
20 egress, and their accessory structures. The city council hereby adopts the ~~2006~~2012 edition of  
21 the International Residential Code with certain amendments thereto found to be in the best  
22 interests of the city.

##### 23 **10-5.5-2 Adoption of the International Residential Code with Modifications.**

24 (a) The ~~2006~~2012 edition of the International Residential Code of the International Code  
25 Council is hereby adopted by reference as the City of Boulder Residential Building Code and has  
the same force and effect as though fully set forth in this chapter, except as specifically amended  
by the provisions of this chapter.

(b) The Appendix chapters D, E, G, H, J, K, and ~~OP~~ and sections contained therein are adopted.

(c) Section R101.1 “Title” is repealed and reenacted to read:

R101.1 Title. These provisions shall be known as the Residential Code of the City of Boulder or  
residential code and shall be cited as such and will be referred to herein as “this code.”;

(d) Sections R102 through R114 are repealed. This code shall be administered in accordance  
with Chapter 1, “Administration,” of the International Building Code as adopted, with  
amendments, by Section 10-5-2, “Adoption of International Building Code With Modifications,”  
B.R.C. 1981.

1 (e) The following definitions are added to Section R202, “Definitions”:

2 NEW DWELLING UNIT. A dwelling unit is considered to be a new dwelling unit when  
3 the entire structure is newly built and when the dwelling unit is built on top of an existing  
4 foundation, such as caissons, footings, and other foundation systems, that remains from a  
5 demolished structure. An addition to a dwelling unit is considered a new dwelling unit  
6 when the floor area of the addition equals or exceeds 200% percent of the floor area of  
7 the existing dwelling unit.

8 STORAGE ROOMS OR SPACES. Storage rooms or spaces are rooms or spaces with a  
9 level of finish sufficient only to make the room usable for the intended storage purposes.  
10 Rooms or areas that exceed these minimums will be considered habitable space and will  
11 have to meet the code requirements applicable to habitable space.

12 (f) A new sentence is added to the end of Section 301.1, “Application,” stating:

13 Structural calculations demonstrating how the proposed construction meets the applicable  
14 requirements for load supports must be provided to the building official.

15 (e)-(g) The climatic and geographic design criteria applicable to Table R301.2 (1) are:

16 Ground Snow Load = thirty pounds per square foot with a minimum Roof Snow Load of  
17 30 pounds per square foot.

18 Three second wind gust velocity = ~~110 MPH~~ 120 MPH east of Broadway, 130 MPH west  
19 of Broadway

20 Seismic Design Category = B

21 Weathering = severe

22 Frost line depth = 32 inches

23 Termite = slight

24 Decay = none to slight

25 Winter Design Temp = 2 degrees Fahrenheit

Ice barrier underlayment required = NO

Flood Hazards = See B.R.C. 1981 Sections 9-3-3 through 9-3-9

Air freezing index = 459

Mean annual temp = 52.1

1 ~~(f)~~(h) Section R301.2.4, “Floodplain construction”: A new sentence is added to the end of the  
2 section reading “All work on structures in the scope of this ~~C~~code shall also meet the  
requirements of ~~B.R.C. 1981~~ Sections 9-3-3 through 9-3-9, B.R.C. 1981.”

3 (i) The exception listed in R302.2, “Townhouses,” is repealed and reenacted to read:

4 Exception: A common 1-hour fire-resistance rated wall assembly tested in accordance  
5 with ASTM E 119 or UL 263 is permitted for townhouses equipped throughout with an  
6 automatic sprinkler system installed in accordance with the requirements of Section  
7 P2904 if such walls do not contain plumbing or mechanical equipment, ducts or vents in  
8 the cavity of the common wall. The wall shall be rated for fire exposure from both sides  
9 and shall extend to and be tight against exterior walls and the underside of the roof  
10 sheathing. Electrical installations shall be installed in accordance with Chapters 34  
11 through 41 and Chapter 43. Penetrations of electrical outlet boxes shall be in accordance  
12 with Section R302.4. For townhouses not equipped throughout with an automatic  
13 sprinkler system installed in accordance with the requirements of Section P2904, a  
14 common 2-hour fire-resistance-rated wall is permitted if such walls do not contain  
15 plumbing or mechanical equipment, ducts or vents in the cavity of the common wall.  
16 Electrical installations shall be installed in accordance with Chapters 34 through 41 and  
17 Chapter 43. Penetrations of electrical outlet boxes shall be in accordance with Section  
18 R302.4.

19 (j) The first sentence of the Exception to Item 2 in Section R302.2.2, “Parapets,” is amended by  
20 deleting “ a minimum class C roof covering” and replacing it with “a minimum class B roof  
21 covering.”

22 (k) Section R302.5.1, “Opening protection,” is repealed and reenacted to read:

23 R302.5.1 Opening protection. Openings from a garage directly into a room used for  
24 sleeping purposes shall not be permitted. Other openings between the garage and  
25 residence shall be equipped with weather stripped, solid wood doors not less than 1 and  
3/8 inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 1 and  
3/8 inches (35 mm) in thickness, or 20-minute fire-rated doors, equipped with a self-  
closing device.

(l) Section R309.5, “Fire sprinklers,” is deleted.

(m) Section R311.2, “Egress doors,” is repealed and reenacted to read:

R311.2 Egress doors. At least one egress door shall be provided for each *dwelling unit*.  
The egress door shall be side hinged, and shall provide a minimum clear width of 32  
inches (813 mm) when measured between the face of the door and the stop, with the door

1 open 90 degrees (1.57 rad). The minimum clear height of the door opening shall not be  
2 less than 78 inches (1981 mm) in height measured from the top of the threshold to the  
3 bottom of the stop.

4 (n) The following sentences are added to the end of R311.7.5.1, “Risers”:

5 Where the bottom or top riser adjoins a sloping public way, walkway or driveway having  
6 an established grade and serving as a landing, the bottom or top riser is permitted to be  
7 reduced along the slope, with the variation in height of the bottom or top riser not to  
8 exceed one unit vertical in 12 units horizontal (8-percent slope) of stairway width. The  
9 nosings or leading edges of treads at such non-uniform height risers shall have a  
10 distinctive marking stripe, different from any other nosing marking provided on the stair  
11 flight. The distinctive marking stripe shall be visible in descent of the stair and shall have  
12 a slip-resistant surface. Marking stripes shall have a width of at least 1 inch (25 mm) but  
13 not more than 2 inches (51 mm).

14 (o) A new Section R311.9, “Access to exterior balconies, porches, decks and other walking  
15 surfaces from the interior of the building,” is added, reading as follows:

16 R311.9 Access to exterior balconies, porches, decks, and other walking surfaces from the  
17 interior of the building. Access to exterior balconies, porches, decks, and other walking  
18 surfaces from the interior of the building shall be through a side hinged or sliding glass  
19 door and shall provide a minimum clear width of 24 inches (610 mm), when measured  
20 between the face of the door and the stop, when the door, other than the sliding glass  
21 door, is open 90 degrees (1.57 rad). The minimum clear height of the door opening shall  
22 not be less than 78 inches (1981 mm) in height, measured from the top of the threshold to  
23 the bottom of the stop. Access to exterior balconies, porches, decks, and other walking  
24 surfaces from the interior of the building for the required egress door shall meet the  
25 provisions of 311.2 for required height and width.

26 (p) Section R313.1, “Townhouse automatic fire sprinkler systems,” is repealed and reenacted to  
27 read as follows:

28 R313.1 Townhouse automatic fire sprinkler systems. Effective September 1, 2014, an  
29 automatic residential sprinkler system shall be installed in townhouses.

30 Exception: An automatic residential fire sprinkler system shall not be required  
31 when additions or alterations are made to existing townhouses that do not have an  
32 automatic residential fire sprinkler system installed. Additions which create a new  
33 dwelling unit are not exempt from the provisions or Section R313.1.

34 (q) Section R313.2, “One- and two-family dwelling automatic fire sprinkler systems,” is repealed  
35 and reenacted to read:

1 R313.2 One- and two-family dwelling automatic fire sprinkler systems. Effective  
2 September 1, 2014, an automatic residential sprinkler system shall be installed in one-  
3 and two-family dwellings.

4 Exception: An automatic residential fire sprinkler system shall not be required  
5 when additions or alterations are made to existing buildings that do not have an  
6 automatic residential fire sprinkler system installed. Additions which create a new  
7 dwelling unit are not exempt from the provisions of Section R313.2.

8 (r) Section R315.1, Carbon monoxide alarms,” is repealed and reenacted to read:

9 R315.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide  
10 alarm shall be installed outside each sleeping area in the immediate vicinity of bedrooms  
11 in dwelling units within which fuel-fired appliances are installed and in dwelling units  
12 and accessory structures containing habitable space that have attached garages. All  
13 carbon monoxide alarms shall be installed so as to meet the requirements of Section  
14 R315, Carbon Monoxide Alarms, and of the applicable provisions of C.R.S.§38-45-101  
15 through 106. Where the provisions of this code and the C.R.S. are in conflict, the most  
16 restrictive shall govern. Where there is a conflict between a general requirement and a  
17 specific requirement, the specific requirement shall be applicable.

18 (s) Section R322, “Flood resistant construction,” is repealed and reenacted to read:

19 R322 Flood resistant construction. Buildings and structures constructed in whole or in  
20 part in the floodplain must be designed and constructed in accordance with the floodplain  
21 regulations of Title 9, Land Use Regulation,, B.R.C. 1981.

22 (t) The first paragraph of Section R401.1, “Application,” is repealed and reenacted to read:

23 R401.1 Application. The provisions of this chapter shall control the design and  
24 construction of the foundation and foundation spaces for all buildings. In addition to the  
25 provisions of this chapter, the design and construction of foundations in a floodplain as  
26 established in Title 9, Land Use Regulation, B.R.C. 1981, shall meet ~~the provisions~~ all  
27 applicable provisions of Title 9, Land Use Regulation,, B.R.C. 1981. Where, in any  
28 specific case, the provisions of this code and the B.R.C. are in conflict, the most  
29 restrictive shall govern. Where there is a conflict between a general requirement and a  
30 specific requirement, the specific requirement shall be applicable. Wood foundations  
31 shall be designed and installed in accordance with AF&PA PWF.

32 (u) A new Section R401.5, “Placement of backfill,” is added to read:

33 R401.5 Placement of backfill. The provisions of Section 1804.2 of the Building Code of  
34 the City of Boulder shall apply to the placement of backfill.

35 (v) Section 408.7, “Flood resistance,” is repealed and reenacted to read:

1 408.7 Flood resistance. Buildings located in a floodplain as established in Title 9, Land  
2 Use Regulation, B.R.C. 1981, shall comply with the applicable provisions in Title 9,  
3 Land Use Regulation, B.R.C. 1981.

3 (w) Exception 1 in Section R703.2, “Water-resistive barrier,” is repealed and reenacted to read:

4 Exception 1: In detached accessory buildings which are not intended to be conditioned  
5 and where the interior wall cavities will remain exposed and unfilled.

6 (x) Exception 3 of Section 806.5, “Unvented attic and unvented enclosed rafter assemblies,” is  
7 deleted.

7 (g)(y) Section R902.1, “Roof covering materials,” is repealed and reenacted to read:

8 R902.1. Roof covering materials. All roof covering materials shall be listed as Class A as tested  
9 in accordance with UL Standard 790 or ASTM Standard E 108. Roof assemblies with covering  
10 of brick, masonry, slate, clay or concrete roof tile, exposed concrete roof deck, ferrous or copper  
11 shingles or sheets and metal sheets and shingles, shall be considered Class A roof coverings.  
12 Unless otherwise specified in this section, roof coverings shall be installed to resist the  
13 component and cladding loads specified in table R301.2(2), adjusted for height and exposure in  
14 accordance with table R301.2 (3).

12 (h)(z) Section R905.7, “Wood shingles,” is repealed and reenacted to read:

13 R905.7. Wood shingles. Wood shakes, wood shingles and wood roof covering materials are  
14 prohibited except as provided in Section 10-5-5, “Wood Roof Covering Materials Prohibited,”  
15 B.R.C. 1981, for certain minimal repairs.

15 (i)(aa) Section R905.8, “Wood shakes,” is repealed and reenacted to read:

16 R905.8. Wood shakes. Wood shakes, wood shingles and wood roof covering materials are  
17 prohibited except as provided in Section 10-5-5, “Wood Roof Covering Materials Prohibited,”  
18 B.R.C. 1981, for certain minimal repairs.

18 (j)(bb) Chapter 11, “Energy Efficiency”.

19 Sections N1101 through ~~N1103~~-N1105 are repealed. A new Section N1101 is added to read:

20 N1101- Scope. Regulations concerning the design and construction of buildings for the effective  
21 use of energy and requirements for green building practices shall be administered in accordance  
22 with the ~~2006-2012~~ International Energy Conservation Code as adopted, with amendments, by  
23 Chapter 10-7, “Energy Conservation ~~and Insulation Code~~”, B.R.C. 1981 and Chapter 10-7.5  
24 “Green Points”, B.R.C. 1981.

24 (cc) Section M1301.1.1, “Flood-resistant installation,” is repealed and reenacted to read:

25 M1301.11 Flood-resistant installation. In floodplains, as established in Title 9, Land Use  
Regulation, B.R.C. 1981, the mechanical appliances, equipment and systems shall be

1 located or installed in accordance with the applicable provisions of Title 9, Land Use  
2 Regulation, B.R.C. 1981.

3 (dd) A new Section M1308.3, "Rooftop equipment support and clearances," is added to read:

4 M1308.3 Rooftop equipment support and clearances.

5 (1) Mechanical equipment placed, replaced, or resting over roofing shall be  
6 supported by curbs or legs which shall be flashed to the roofing and made  
7 watertight. Mechanical equipment includes, but is not limited to, heating  
8 equipment, cooling and refrigeration equipment, ventilating fans, blowers, and  
9 other similar devices located on the roof.

10 (2) Flat roofs. On roofs having a pitch of less than 2 in 12, mechanical equipment  
11 shall be supported on a solid curb greater in size than the equipment which it  
12 serves. Curbs may be manufactured or built-in-place. If built-in-place, the curb  
13 shall be covered with metal of at least 26 gauge. The metal shall be weather tight.  
14 The curb shall be a minimum of 9 inches above the finished roof.

15 (A) Ducts less than ~~four~~4 feet in width shall have at least ~~twelve~~12 inches  
16 clearance from the finished roof surface to the bottom of the duct.

17 (B) Ducts between ~~four~~4 feet and ~~eight~~8 feet in width shall have at least  
18 ~~twenty four~~24 inches clearance from the finished roof surface to the  
19 bottom of the duct.

20 (C) Ducts over ~~eight~~8 feet in width shall have at least ~~thirty six~~36 inches  
21 clearance from the finished roof surface to the bottom of the duct.

22 (3) Pitched Roofs. On roofs having a roof pitch exceeding 2 in 12, mechanical  
23 equipment may be set on legs which provide a minimum of 11 inches clearance  
24 between the finished roof surface and the equipment frame.

25 (ee) Section M1401.5, "Flood hazard," is repealed and reenacted to read:

M1401.5 Flood hazard. In floodplains, as established in Title 9, Land Use Regulation,  
B.R.C. 1981, heating and cooling equipment and appliances shall be located or installed  
in accordance with the provisions of Title 9, Land Use Regulation, B.R.C. 1981.

(k) Section M1501.1 "Outdoor discharge" is amended by adding "at a point where it will not  
create a nuisance" to the first sentence to read:

1 ~~The air removed by every mechanical exhaust system shall be discharged to the outdoors at a~~  
2 ~~point where it will not create a nuisance.~~

3 (l) ~~A new sentence is added to item 2 of Section M1601.1.1, "Above ground duct systems," to~~  
4 ~~read:~~

5 ~~Flexible air duct shall not exceed 7 feet in length and flexible connectors are limited to toilet~~  
6 ~~rooms and bathroom exhaust systems only.~~

7 (ff) Section M1601.4.9, "Flood hazard areas," is repealed and reenacted to read:-

8 M1601.4.9 Flood hazard areas. In floodplains, as established in Title 9, Land Use  
9 Regulation, B.R.C. 1981, duct systems shall be located or installed in accordance with the  
10 provisions of Title 9, Land Use Regulation, B.R.C. 1981.

11 (m) ~~g~~ A new sentence is added to Section M1602.1, "Return air," to read:

12 Within individual dwelling units there shall be at least one return air opening on each floor.

13 (hh) Section M2001.4, "Flood-resistant installation," is repealed and reenacted to read:-

14 M2001.4 Flood-resistant installation. In floodplains, as established in Title 9, Land Use  
15 Regulation, B.R.C. 1981, boilers, water heaters and their control systems shall be located  
16 or installed in accordance with the provisions of Title 9, Land Use Regulation, B.R.C.  
17 1981.

18 (ii) Section M2201.6, "Flood-resistant installation," is repealed and reenacted to read:-

19 M2201.6 Flood-resistant installation. In floodplains, as established in Title 9, Land Use  
20 Regulation, B.R.C. 1981, tanks shall be located or installed in accordance with the  
21 provisions of Title 9, Land Use Regulation, B.R.C. 1981.

22 (jj) A new Section M2303, "Solar photovoltaic power systems," is added to read:

23 M2303 Solar photovoltaic power systems. Solar photovoltaic power systems shall also  
24 meet the provisions of Section E3804, as amended.

25 (kk) Section G2404.7, "Flood hazard," is repealed and reenacted to read:-

G2404.7 Flood hazard. In floodplains, as established in Title 9, Land Use Regulation,  
B.R.C. 1981, the appliance, equipment, and system installations regulated by this code,  
shall be located or installed in accordance with the provisions of Title 9, Land Use  
Regulation, B.R.C. 1981.

(n) ~~Exceptions 2, 3, and 4 to Section G2406.2, "Prohibited locations," are repealed, and~~  
~~exception 5 is amended by adding "thermally isolated" to the first sentence to read:~~

1 ~~The appliance is installed in a thermally isolated room or space that opens only onto a bedroom~~  
2 ~~or bathroom, and such room or space is used for no other purpose and is provided with a solid~~  
3 ~~weather-stripped door equipped with an approved self-closing device.~~

4 ~~(o) A new sentence is added to Section G2407.6, "Outdoor combustion air," to read:~~

5 ~~The room in which the appliances are receiving outdoor combustion air must be thermally~~  
6 ~~isolated from the conditioned space of the dwelling unit or such outdoor air must be conditioned~~  
7 ~~prior to entering the dwelling unit or room in which the appliance served, is located.~~

8 ~~(p) G2415.4 is repealed and reenacted to read:~~

9 ~~G2415.4 Piping through foundation wall. Gas piping shall enter the building above grade~~  
10 ~~through the foundation wall, building or structure.~~

11 ~~(q) Section G2415.9, "Minimum burial depth," is repealed and reenacted to read:~~

12 ~~G2415.9 Minimum burial depth. Underground piping systems shall be installed at a minimum~~  
13 ~~depth of 12 inches below grade for metallic piping and a minimum depth of 18 inches for non-~~  
14 ~~metallic piping. Where such depths cannot be obtained, equivalent protection must be provided~~  
15 ~~by other means approved by the building official.~~

16 ~~(r) Section G2415.9.1 is repealed.~~

17 ~~(s) Section G2417.4.1, "Test pressure," is repealed and reenacted to read:~~

18 ~~G2417.4.1. Test pressure. The test pressure to be used shall be no less than 1 ½ times the~~  
19 ~~proposed maximum working pressure, but not less than 10 psig.~~

20 ~~(ll) Items 2 and 3 of Section G2427.8, "Venting system termination location," are amended by~~  
21 ~~adding a new sentence to the end of each Items 2 and 3 reading:~~

22 ~~Vents shall terminate a minimum of 18 inches (46 mm) above finished grade in the~~  
23 ~~immediate vicinity of each vent.~~

24 ~~(t) Section G2432.1, "Decorative appliances for installation in fireplaces," is amended by adding~~  
25 ~~a new item 2432.1.2 to read:~~

26 ~~G2432.1.2. Within a vented fireplace the damper must be removed or welded open and glass~~  
27 ~~doors installed over the fireplace opening.~~

28 ~~(u) Section G2434.1, "Vented gas fireplaces," is amended by adding a new item G2434.1.1 to~~  
29 ~~read:~~

30 ~~G2434.1.1. Vented gas fireplaces shall be provided with outside combustion air and glass doors.~~

31 ~~(v) Section G2435.1, "Vented gas fireplace heaters," is amended by adding a new item~~  
32 ~~G2435.1.1 to read:~~

1 ~~G2435.1.1. Vented gas fireplace heaters shall be provided with outside combustion air.~~

2 ~~(w) Section G2445.4, "Prohibited locations," is repealed and reenacted to read:~~

3 ~~These appliances shall not be used in bedrooms or rooms readily used for sleeping purposes.~~

4 ~~(x) Section P2503.6 "Water supply system testing," is amended by deleting the words "for piping systems other than plastic" in the first paragraph.~~

5 (mm) Section P2503.7, "Water supply system testing," is repealed and reenacted to read:

6 P2503.7 Water--supply system testing. Upon completion of the water-supply system or a  
7 portion of it, the system or portion completed shall be tested and proved tight under a  
8 water pressure of not less than the working pressure of the system or by an air test of not  
9 less than 100 psi (689.5 kPa). This pressure shall be held for not less than 15 minutes.  
10 The water used for tests shall be obtained from a potable water source."

11 (nn) The Exception to P2601.2, Connections to drainage system," is deleted in its entirety.

12  
13 (oo) Section P2601.3, "Flood hazard areas," is repealed and reenacted to read:

14 P2601.3 Flood hazard areas. In floodplains, as established in Title 9, Land Use  
15 Regulation, B.R.C. 1981, plumbing fixtures, drains, and appliances shall be located or  
16 installed in accordance with the provisions of Title 9, Land Use Regulation, B.R.C. 1981.

17 (pp) The first sentence of Section P2602.2, "Flood resistant installation," is repealed and  
18 reenacted to state:

19 In floodplains, as established in Title 9, Land Use Regulation, B.R.C. 1981:

20 Items 1 and 2 remain unchanged.

21 ~~(y) Section P2603.6.1 is deleted in its entirety.~~

22 ~~(z) Section P2801.5.1 "Piping for safety pan drains shall be of those materials listed in Table~~  
23 ~~P204.5." is repealed.~~

24 ~~(aa) Section P2904.5 is amended by adding a new paragraph to read:~~

25 ~~Water service line pipe between the water meter and building shall be Type K copper if it is in~~  
~~the public right of way, a public utility easement, or on other public property.~~

(qq) Section P 3001.3, "Flood--resistant installation," is repealed and reenacted to state:

1 P3001.3 Flood-resistant installation. In floodplains, as established in Title 9, Land Use  
2 Regulation, B.R.C. 1981, drainage, wastes and vent systems shall be located and installed  
3 to prevent infiltration of floodwaters into the systems and discharges from the systems  
4 into floodwaters.

5 (rr) Section P3009, “Gray Water Recycling Systems,” is deleted in its entirety.

6 (ss) Section P3101.5, “Flood resistance,” is repealed and reenacted to read:

7 P3101.5 Flood resistance. In floodplains, as established in Title 9, Land Use Regulation,  
8 B.R.C. 1981, vents shall be located or installed in accordance with the provisions of Title  
9 9, Land Use Regulation, B.R.C. 1981.

10 (bb) Section P3103.1 “Roof extensions” is amended to read:

11 Open vent pipes that extend through a roof shall be terminated at least 12 inches (305 mm) above  
12 the roof on the high side of the vent, except that where a roof is to be used for any other purpose  
13 other than weather protection, the vent extension shall run at least 7 feet (2138 mm) above the  
14 roof.

15 (cc) Section E3501.6.2. “Service Disconnect Location”. A new sentence is added to the end to  
16 read: Service entrance conductors shall not exceed ten feet maximum developed length unspliced  
17 between the meter housing and the main disconnect. This allows the service entrance conductors  
18 to run within the building up to ten feet and to terminate at the disconnecting means.

19 (dd) The last sentence of section E3508.1.1.1, concerning metal underground water pipe as a  
20 grounding electrode system, is repealed and reenacted to read:

21 The supplemental electrode shall be permitted to be bonded to the grounding electrode  
22 conductor, the grounded service entrance conductor, the grounded service raceway, or any  
23 grounded service enclosure by means of a separate grounding electrode conductor.

24 (tt) A new Section E3804, “Solar photovoltaic power systems,” is added to read:

25 E3804 Solar photovoltaic power systems. Solar photovoltaic power systems shall meet  
the provisions of Sections 605.11 through 605.11.3.2.3 of the City of Boulder Fire Code.

(ee) Section E3808.14 is repealed and reenacted to read:

E3808.14 Connecting receptacle grounding terminal to box. An equipment bonding jumper shall  
be used to connect the grounding of a grounding type receptacle to a grounded box.

(ff) Section E3901.6 “Access”, the last sentence is repealed and reenacted to read:

They shall be so installed that the center of the grip of the operating handle of the switch or  
circuit breaker, when in its highest position, will not be more than six feet seven inches nor less  
than three feet above the floor or working platform if within a building, or exterior grade or a  
working platform if on the exterior of a building.

1 (uu) Section E4209.3, “Accessibility,” is amended by adding the following to the end of the  
2 Section:

3 Equipment shall be accessed by a panel with a minimum size of 12 inches (305 mm).

4 ~~(gg) Section AJ102.4 is amended to read:~~

5 ~~Replacement Windows. Regardless of the category of work, when an existing window, including~~  
6 ~~sash and glazed portion is replaced, the replacement window shall be in accordance with the~~  
7 ~~2006 International Energy Conservation Code as adopted, with amendments, by Chapter 10-7,~~  
8 ~~“Energy Conservation and Insulation Code”, B.R.C. 1981 and Chapter 10-7-5 “Green Points”,~~  
9 ~~B.R.C. 1981.~~

10 (vv) Section AJ102.5, “Flood hazard areas,” is repealed and reenacted to read:

11 AJ102.5 Flood hazard areas. Work performed in existing buildings located in a  
12 floodplain, as established by Title 9, Land Use Regulation, B.R.C. 1981, shall be done in  
13 accordance with the applicable provisions of Title 9, Land Use Regulation, B.R.C. 1981.

14 ~~(hh) Section AK102.1, “Airborne Sound,” is amended to read:~~

15 ~~Airborne sound insulations for wall and floor ceiling assemblies shall meet a Sound~~  
16 ~~Transmission Class rating 50 when tested in accordance with ASTM Standard E 90. Penetrations~~  
17 ~~or openings in construction assemblies for piping, electrical devices, recessed cabinets, bathtubs,~~  
18 ~~soffits; or heating, ventilating, or exhaust ducts shall be sealed, lined, or insulated, or otherwise~~  
19 ~~treated to maintain the required rating . Dwelling unit entrance doors which share a common~~  
20 ~~space shall be tight fitting to the frame and sill.~~

21 ~~(ii) Section AK103.1, “Structural Borne Sound,” is amended to read:~~

22 ~~Floor/ceiling assemblies between dwelling units or between a dwelling unit and a public or~~  
23 ~~service area within a structure shall have an impact insulation class (IC) rating of not less than~~  
24 ~~50 when tested in accordance with ASTM Standard E 492.~~

25 ~~(jj) Section AO101.1, The words “and for subsurface landscape irrigation” are repealed, and a~~  
new sentence is added to the end of the exception to read:

Such systems shall be designed as required by the Boulder County Health Department.

~~(kk) Figure AO101.1 (2) is repealed.~~

~~(ll) Section AO103 is repealed in its entirety.~~

(ww) A new footnote notation “b” is added to the heading and a new footnote “b” is added to AP  
Table AP103.3(2), “Load values assigned to fixtures,” reading:

b. For the purpose of determining the largest instantaneous demand required in order to  
size a water meter, or for determining the amount of the plant investment fee, this table is

1 repealed and replaced by the Fixture Unit/GPM Demand Chart and PIF Computation  
2 sheet found at Appendix A to Chapter 11-1, Water Utility, B.R.C. 1981.

3 Section 4. Chapter 10-6, B.R.C. 1981, is amended to read:

4 **CHAPTER 10-6 – ELECTRICAL CODE**

5 **10-6-1 Legislative Intent.**

6 The purpose of this chapter is to protect the public health and safety by regulating the  
7 installation, alteration, or repair of or addition to electrical conductors or equipment installed  
8 within or on any structure in the city. The city council hereby adopts the 20052011 edition of the  
9 *National Electrical Code* with certain amendments and deletions thereto found to be in the best  
10 interests of the residents of the city.

11 **10-6-2 Adoption of the National Electrical Code with Modifications.**

12 (a) The 20052011 edition of the *National Electrical Code* of the National Fire Protection  
13 Association is hereby adopted by reference as the City of Boulder Electrical Code or electrical  
14 code and has the same force and effect as though fully set forth in this chapter, except as  
15 specifically amended by the provisions of this chapter.

16 (b) ~~Article 90 is repealed.~~ This code shall be administered in accordance with Chapter 1,  
17 “Administration,” of the 2012 edition of the International Building Code and Appendix K,  
18 “Administrative Provisions,” of the 2012 edition of the International Building Code, as adopted,  
19 respectively, with amendments, by Section 10-5-2, “Adoption of the International Building Code  
20 with Modifications,” B.R.C. 1981 ~~the 2006 International Code Council Electrical Code (ICCEC)~~  
21 ~~with the deletion of ICCEC Section 1202.2 Nonmetallic sheathed Cable.~~

22 (c) The following definition is added to part “I. General” of Article 100, “Definitions:”

23 **Dried in.** The building or structure is protected from weather in that all openings can be  
24 closed, the roofing material is installed, and the exterior walls provide the building or  
25 structure with a weather-resistant exterior wall envelope.

(~~e~~)(d) Subsection 210-70(aA)3 is repealed and reenacted to read:

(3) Storage or Equipment Spaces. For attics, underfloor spaces, utility rooms and  
basements, at least one lighting outlet controlled by a wall switch shall be installed where  
these spaces are used for storage or contain equipment requiring servicing. The control  
wall switch shall be located at the usual point of entry to such space. The lighting outlet  
shall be provided at or near the equipment requiring servicing.

(~~d~~)(e) The first sentence of Section 230.2, “Number of Services,” is repealed and reenacted to  
read:

1 230.2. Number of Services. A building or other structure shall be supplied by only one  
2 service unless permitted in 230.2(A) through (D) and approved prior to permit issuance  
or prior to the start of any electrical work indicated on the permit.

3 ~~(e)~~(f) A new item 3 is added to Section 230.2(B), Special Occupancies, to read:

4 (3) Fire areas separated by a minimum two hour fire wall as defined by the building code  
5 may be considered as separate buildings for the purpose of calculating the number of  
services if approved by the building official.

6 ~~(f)~~(g) A new item 4 is added to Section 230.2(C), Capacity Requirements, to read:

7 (4) Where the existing service is being used to capacity and has been properly  
8 maintained.

9 ~~(g)~~(h) Subsection 230-40, concerning the number of service-entrance conductor sets, is amended  
by deleting exceptions 3 and 4.

10 ~~(h)~~(i) Subsection 230-70(A)(1)(a), concerning the location of service equipment disconnecting  
11 means, is repealed and reenacted to read:

12 (a) Readily Accessible Location. The service disconnecting means shall be installed at a  
13 readily accessible location either immediately adjacent to or attached to the outside of a  
building or structure, or inside nearest the point of entrance of the service conductors.

14 (1) Service entrance conductors shall not exceed ten feet maximum developed  
15 length unspliced between the meter housing and the main disconnect. This allows  
the service entrance conductors to run within the building up to ten feet and to  
16 terminate at the disconnecting means.

17 (2) Electrical rooms containing building main disconnects located within a  
18 structure shall be located near the point of service entrance and on the exterior  
wall with a door leading directly outside. The door shall be identified with three  
inch high lettering stating "Electrical Equipment Room."

19 ~~(i)~~(j) Section 250.146, concerning connecting receptacle grounding terminal to box, is amended  
20 by ~~the~~ deleting items (A), (B) and (C).

21 ~~(j) The last sentence of the first paragraph of Subsection 250.53(D)2, concerning metal  
underground water pipe as a grounding electrode system, is repealed and reenacted to read:~~

22 ~~The supplemental electrode shall be permitted to be bonded to the grounding electrode  
23 conductor, the grounded service entrance conductor, the grounded service raceway, or  
any grounded service enclosure by means of a separate grounding electrode conductor.~~

24 ~~(k) Section 310.12(C) is amended by specifying the colors of ungrounded conductors to be black,  
25 red, blue for 120/208 volt systems and brown, orange, yellow for 277/480 volt systems.~~

1 (k) A new section 310.12, "Conductor Identification," is added to read:

2 310.12 Conductor Identification. The colors of ungrounded conductors shall be black,  
3 red, and blue for 120/208 volt systems and brown, orange, and yellow for 277/480 volt  
4 systems.

4 (l) A new item (6) is added to section 334.10, "Uses Permitted," to read:

5 (6) Type NM, Type NMC, and Type NMS shall not be installed in any building or any  
6 structure until the building or structure is completely dried in.

7 (l) The first sentence of section 334.10(2) is amended to read:

8 (2) Multifamily dwellings permitted to be of types II, III, IV and V construction except as  
9 prohibited in 334.12.

9 (m) The first sentence of Section 334.10(3) is amended to read:

10 (3) Other structures permitted to be of Types IIB, IIB, IVB and VB construction of  
11 10,000 square feet or less.

12 (n)(m) The last ~~second~~ sentence of the introductory portion of Subsection 404.8(A), concerning  
13 the location of switches, is repealed and reenacted to read:

14 They shall be ~~so~~ installed such that the center of the grip of the operating handle of the  
15 switch or circuit breaker, when in its highest position, will not be more than six feet seven  
16 inches nor less than three feet above the floor or working platform if within a building, or  
17 exterior grade or a working platform if on the exterior of a building.

16 (o)(n) Subsection 517-13(A), concerning grounding of receptacles and fixed electric equipment  
17 in patient care areas, is amended by adding a sentence to read:

18 Receptacles and electrical outlets within examining rooms, treatment rooms, and similar  
19 areas where the patient may come in contact with electrical devices in these rooms shall  
20 be listed hospital grade and identified as such.

19 (p) Subsection 518-4(B), concerning Non-rated Construction, is repealed and reenacted to read:

20 (B) Non-rated Construction. Non-metallic sheathed cable, Type AC cable, electrical non-  
21 metallic tubing, and rigid non-metallic conduit shall be permitted to be installed in buildings or  
22 portions of buildings of non-rated types of construction in accordance with section 334.10(3).

23 (oq) Subsection 680.73, "Accessibility," is amended by adding the following: Equipment shall  
24 be accessed by a panel with a minimum size of twelve inches by twelve inches.

24 (p) A new subsection (I) is added to section 690.4, "Installation," to read:

1 (I) Compliance with Fire Code. Solar photovoltaic power systems shall be installed in  
2 accordance with the requirements of sections 605.11.1 through 605.11.4 of the City of  
3 Boulder Fire Code.

4 ~~(r)(q)~~ Subsection 690.916 (C) ~~Location~~ Photovoltaic Source Circuits. Concerning direct current  
5 solar photovoltaic source conductors entering into a building add the following text:;

6 (1) Rooftop mounted solar photovoltaic array systems whose source conductor circuits  
7 are entering the building ~~are to~~ shall be protected against overcurrent at their source on the  
8 roofs with a slope of 4 inches of rise in 12 inches of run or less slope before entering the  
9 building.

10 (2) ~~Rooftop mounted solar array systems whose source conductor circuits are entering the~~  
11 ~~building are to be protected against overcurrent at their source but no more than 900 mm~~  
12 ~~(3 feet) from the roof eave on roof with a slope of more than 4 inches of rise in 12 inches~~  
13 ~~of run.~~

### 14 **10-6-3 Electrical Permit Fees.**

15 Electrical permit fees are those prescribed by Subsection 4-20-8(a), B.R.C. 1981.

16 Section 5. Chapter 10-7, B.R.C. 1981, is amended to read:

## 17 **CHAPTER 10-7 – ENERGY CONSERVATION AND INSULATION CODE**

### 18 **10-7-1 Legislative Intent.**

19 The purpose of this chapter is to protect the public health, safety, and welfare by encouraging the  
20 conservation of scarce energy resources through the regulation of building construction standards  
21 to minimize energy consumption for heating, cooling, lighting, and ventilating structures in the  
22 city and to encourage building design utilizing green building techniques.

### 23 **10-7-2 Energy Conservation Code.**

24 (a) Council adopts by reference the ~~2006-2012~~ International Energy Conservation Code of the  
25 International Code Council with the amendments specified below. This chapter shall be  
administered, applied, and interpreted in accordance with and as part of Chapter 10-5, “Building  
Code,” B.R.C. 1981. This chapter is also intended to comply with and be interpreted and  
enforced so as to comply with 42 U.S.C. Section 6297(f)(3) and any other federal requirements  
to avoid preemption. For purposes of 42 U.S.C. Section 6297(f)(3), “new construction” shall be  
interpreted to include all work that triggers the requirements established in this chapter.

(b) ~~Section C-101.4.3 Additions, alterations, renovations and repairs. A new sub-section is added~~  
~~previous to the exceptions to read as follows:~~

1 ~~C101.4.3.1 All permit applications involving demolition, new construction and remodels and/or~~  
2 ~~additions of residential buildings greater than 500 square feet shall meet the requirements of this~~  
3 ~~code and Chapter 10-7-5 “Green Points”, B.R.C. 1981 as applicable.~~

3 ~~(e)(b)~~-Exception 3 of section C101.4.3 is repealed and reenacted as follows:

4 3.1. For an interior remodel of a residential structure, where the work authorized by a  
5 building permit under Chapter 10-5, “Building Code,” B.R.C. 1981, does not alter more  
6 than 500 square feet of the existing conditioned space, existing ceiling, wall, or floor  
7 cavities exposed during construction are exempt from meeting the provisions for new  
8 construction provided that exposed wall framing cavities are insulated to their fullest  
9 depth, but no less than R-13, and attics and exposed or accessible floor/ceiling assemblies  
10 separating conditioned spaces from unconditioned spaces are insulated to their fullest  
11 depth, but no less than R-38 wherever possible. All replacement fenestration shall meet  
12 the prescriptive requirements of Table R402.1.1 or R402.1.3. Portions of basements and  
13 crawlspaces separating conditioned spaces from unconditioned spaces shall meet the  
14 prescriptive requirements of Table R402.1.1 or R402.1.3 for climate zone 5 wherever  
15 possible. The provisions of section R402.2 shall apply.

11 3.2. For additions to residential structures where the work authorized by a building permit  
12 under Chapter 10-5, “Building Code,” B.R.C. 1981, does not add more than 500 square  
13 feet, building envelope components shall meet the provisions of Table R402.1.1 or  
14 R402.1.3, and applicable portions of Chapter 10-7-5 “Green Points”, B.R.C. 1981. The  
15 provisions of section R402.2 shall apply.

14 3.3 .Remodels of non-residential structures where the work authorized by a building  
15 permit under Chapter 10-5, “Building Code,” B.R.C. 1981, does not alter more than 500  
16 square feet.

16 ~~(d)(c)~~ Section C1023.1.1 is repealed and reenacted as follows:

17 Section C1032.1.1 Above Code Programs. Except for those residential structures and  
18 portions of structures exempt from this code, the requirements of Chapter 10-7-5 “Green  
19 Building and Green Points Program”, B.R.C. 1981 shall be used to demonstrate  
20 compliance with the energy efficiency components of this code.

20 ~~(e)(d)~~ Section ~~SECTION 104~~C103.1 is repealed and reenacted to read as follows:

21 ~~104~~C103.2-1 General. Construction documents and other supporting data shall be submitted in  
22 one or more sets with each application for a permit. The construction documents and designs  
23 submitted under the provisions of this chapter shall be prepared by and bear the stamp of a  
24 Colorado licensed professional engineer or architect. Documents submitted for the purposes of  
25 section ~~404 and C5076~~ shall be submitted by a Colorado licensed engineer, architect or a  
professional who demonstrates the knowledge and experience to perform such calculations.  
Where special conditions exist, the code official is authorized to require additional construction  
documents to be prepared by a licensed professional.

Exceptions:

1 1. The code official may waive the submission of construction documents and other  
2 supporting data if the official finds that the nature of the work does not require review of  
3 the documents or data to obtain compliance. This waiver authority does not apply to  
4 documents required to be prepared by a licensed architect or engineer.

5 ~~(e)~~ Sections C103.3 through C103.5 are deleted.

6 (f) Section C1045.3, “Final Inspection,” is amended by adding a new paragraph to read:

7 The applicant must provide at time of final inspection of a commercial building written  
8 verification which bears the stamp of a licensed architect or engineer or special inspector  
9 as described in section 1079.3.47 of the 2012 edition of the International Building Code  
10 that the structure conforms with the provisions of Chapter 54.

11 (g) Sections C104.5 through C104.8.1 are deleted.

12 (h) Section C107, “Fees,” is deleted.

13 (i) Section C108, “Stop Work Order,” is deleted.

14 (j) Section C109, “Board of Appeals,” is deleted.

15 ~~(k)~~ Section C202, the definition of “Code Official” is repealed and reenacted to read:

16 Code official is the city manager.

17 ~~(l)~~ Section C401501.1 is repealed and reenacted to read:

18 Section C501401.1 Scope.

19 The requirements contained in this chapter are applicable to new commercial buildings and  
20 additions to or remodels of commercial buildings. Commercial buildings shall exceed the energy  
21 efficiency requirements of ASHRAE/IESNA Standard 90.1 Energy Standard for Building Except  
22 for Low-Rise Residential Buildings by at least 30 percent or other approved equivalent design  
23 criteria.

24 501401.1.1 Alternative approaches for compliance.

25 The following methods of compliance may be used in place of the approach described in section  
501401.1 above:

1. Buildings of 20,000 square feet or less may be designed to a prescriptive standard as  
detailed in this chapter or through other measures that result in a building that is at least  
30 percent more energy efficient than the ~~2006-2012~~ IECC.

2. Commercial core and shell buildings that have 50 percent or less finished floor area  
may divide the 30 percent energy efficiency requirement between the core and shell  
building design and the future interior tenant finish design. The energy efficiency savings

1 percentages assigned to each element of the building shall be designated at the time of the  
2 submittal of the building permit for the core and shell permit.

3 3. The construction documents for remodeling an existing commercial envelope,  
4 mechanical and lighting systems shall demonstrate compliance with this section in one of  
5 the following ways described below. The construction documents shall include  
6 compliance documentation that demonstrates that:

7 A. The altered building area or systems will meet the requirements of section  
8 ~~506C407~~, "Total Building Performance" ~~2006-2012~~ IECC and the resulting  
9 compliance package shows an altered building area or system that is 30 percent  
10 more energy efficient than the ~~2006-2012~~ IECC;

11 B. The remodel area will meet an approved set of prescriptive requirements that  
12 are at least 30 percent more efficient than the ~~2006-2012~~ IECC. An applicant may  
13 use the ASHRAE Advanced Energy Design Guides for such prescriptive  
14 requirements, or equivalent method that is approved by the city manager; or

15 C. The remodel area meets the ~~2006-2012~~ IECC requirements and is submitted  
16 with an energy efficiency implementation plan prepared by a licensed architect or  
17 registered professional engineer which shows how the process will contribute to  
18 future energy efficiency improvements to bring the building up to 30 percent  
19 above the ~~2006-2012~~ IECC.

20 (m) Section C401.2, "Application," is repealed and reenacted to read:

21 C401.2 Application.

22 1. Buildings larger than 20,000 square feet must demonstrate compliance through third  
23 party performance modeling that is approved by the city manager.

24 2. Commercial buildings of 20,000 square feet or less, meeting the requirements of this  
25 Section C401 through the alternate approach of compliance found in C401.1,1  
Subparagraph 1. by demonstrating that a building or system is 30 percent more energy  
efficient than the 2012 IECC, shall also comply with:

a. The requirements of Sections C402, C403, C404, C405, and C406; or

b. The requirements of Sections C407, C402.4, C403.2, C404, C405.2, C405.3,  
C405.4, C405.6, and C405.7.

(n) Section C401.2.1 is deleted.

(o) Section R101.4.3 Additions, alterations, renovations and repairs. A new sub-section is added  
previous to the exceptions to read as follows:

R101.4.3.1 All permit applications involving demolition, new construction and remodels  
and/or additions of residential buildings greater than 500 square feet shall meet the

1 requirements of this code and Chapter 10-7-5 “Green Building and Green Points  
2 Program”, B.R.C. 1981 as applicable.

3 (p) Exception 3 of section R101.4.3 is repealed and reenacted as follows:

4 3.1. For an interior remodel of a residential structure, where the work authorized by a  
5 building permit under Chapter 10-5, “Building Code,” B.R.C. 1981, does not alter more  
6 than 500 square feet of the existing conditioned space, existing ceiling, wall, or floor  
7 cavities exposed during construction are exempt from meeting the provisions for new  
8 construction provided that exposed wall framing cavities are insulated to their fullest  
9 depth, but no less than R-13, and attics and exposed or accessible floor/ceiling assemblies  
10 separating conditioned spaces from unconditioned spaces are insulated to their fullest  
11 depth, but no less than R-38 wherever possible. All replacement fenestration shall meet  
12 the prescriptive requirements of Table R402.1.1 or R402.1.3. Portions of basements and  
13 crawlspaces separating conditioned spaces from unconditioned spaces shall meet the  
14 prescriptive requirements of Table R402.1.1 or R402.1.3 for climate zone 5 wherever  
15 possible. The provisions of section R402.2 shall apply.

16 3.2. For additions to residential structures where the work authorized by a building permit  
17 under Chapter 10-5, “Building Code,” B.R.C. 1981, does not add more than 500 square  
18 feet, building envelope components shall meet the provisions of Table 402.1.1 or  
19 402.1.3, and applicable portions of Chapter 10-7-5 “Green Building and Green Points  
20 Program”, B.R.C. 1981. The provisions of section 402.2 shall apply.

21 (q) Section R102.1.1 is repealed and reenacted as follows:

22 Section R102.1.1 Above Code Programs. Except for those residential structures and  
23 portions of structures exempt from this code, the requirements of Chapter 10-7-5 “Green  
24 Building and Green Points Program”, B.R.C. 1981 shall be used to demonstrate  
25 compliance with the energy efficiency components of this code.

26 (r) Section R103.1 is repealed and reenacted to read as follows:

27 R103.1 General. Construction documents and other supporting data shall be submitted in  
28 one or more sets with each application for a permit. The construction documents and  
29 designs submitted under the provisions of this chapter shall be prepared by and bear the  
30 stamp of a Colorado licensed professional engineer or architect. Documents submitted for  
31 the purposes of section R405 shall be submitted by a Colorado licensed engineer,  
32 architect or a professional who demonstrates the knowledge and experience to perform  
33 such calculations. Where special conditions exist, the code official is authorized to  
34 require additional construction documents to be prepared by a licensed professional.

35 Exceptions:

36 1. The code official may waive the submission of construction documents and  
37 other supporting data if the official finds that the nature of the work does not  
38 require review of the documents or data to obtain compliance. This waiver

1 authority does not apply to documents required to be prepared by a licensed  
2 architect or engineer.

3 (s) Sections R103.3 through R103.5 are deleted.

4 (t) Sections R104.5 through R104.8.1 are deleted.

5 (u) Section R107, "Fees," is deleted.

6 (v) Section R108, "Stop Work Order," is deleted.

7 (w) Section R109, "Board of Appeal," is deleted.

8 (x) Section R202, the definition of "Code Official" is repealed and reenacted to read:

9 Code official is the city manager.

10 Section 6. Chapter 10-7.5, B.R.C. 1981, is amended to read:

11 **CHAPTER 10-7.5 – GREEN BUILDING AND GREEN POINTS PROGRAM**

12 **10-7.5-1 Legislative Intent and Purpose.**

13 The purpose of this chapter is to protect the public health safety and welfare by regulating  
14 residential construction with the intent to conserve energy, water and other natural resources,  
15 preserve the health of our environment through optional and mandatory requirements related to  
16 design, construction, operations, recycling, and deconstruction This chapter has the following  
17 additional purposes:

18 (a) It provides criteria for rating the environmental performance of residential  
19 construction practices and provides guidelines for documentation that demonstrates  
20 conformance with the criteria;

21 (b) It encourages cost-effective and sustainable residential building methods, by  
22 encouraging conservation of fossil fuels, water and other natural resources, reduction of  
23 greenhouse gas emissions, recycling of construction materials, reducing solid waste and  
24 improving indoor air quality;

25 (c) It identifies the specific requirements for complying with the Green Points Program  
and how the program interfaces and exceeds the ~~2006-2012~~ International Energy  
Conservation Code adopted in Chapter 10-7, "Energy Conservation ~~and Insulation~~-Code,"  
B.R.C. 1981;

(d) It includes mandatory green building requirements to ensure that construction waste  
and deconstruction materials are recycled, reused, or otherwise diverted from land fills,  
and minimum requirements to ensure that dwellings are constructed in an efficient  
manner; ~~and~~

1 (e) It includes provisions intended to provide for joint administration with the processing  
2 of building permits for remodeling, adding on, and constructing dwelling units; and-

3 (f) It is intended to comply with, and be interpreted and enforced so as to comply with, 42  
4 U.S.C. Section 6297(f)(3) and any other federal requirements to avoid preemption. For  
5 purposes of 42 U.S.C. Section 6297(f)(3), "new construction" shall be interpreted to  
6 include all work that triggers the requirements established in this chapter.

### 7 **10-7.5-2 Scope and Administration.**

8 (a) Scope. The provisions of this chapter apply to the following:

9 (1) New construction, remodels, or additions to a dwelling, including without limitation  
10 single-unit dwellings, multi-unit dwellings, and dwellings within mixed use  
11 developments.

12 (2) Any two or more building permits for the same structure that are applied for in any 12  
13 month period shall be considered as one application for the purpose of meeting the  
14 requirements of Sections 10-7.5-3, "Mandatory Green Building Requirements" and 10-  
15 7.5-4, "Resource Conservation – Green Points," B.R.C. 1981.

16 (3) The requirements of this chapter shall apply to construction activities of all types of  
17 dwellings unless the context clearly indicates otherwise.

18 (4) The requirements of this chapter are in addition to and do not replace the  
19 requirements within the Boulder Revised Code, including without limitation all of the life  
20 safety codes, the historic preservation ordinance, the land use code and the City of  
21 Boulder Design and Construction Standards.

22 (b) Administration. The Green Points Program shall be administered, applied, and interpreted in  
23 accordance with Chapter 1, "Administration," Chapter 2, "Definitions," of the International  
24 Building Code (IBC) and the International Residential Code (IRC) as adopted with amendments  
25 by Sections 10-5-2, "Adoption of International Building Code with Modifications," and 10-5.5-2,  
"Adoption of International Residential Code with Modifications," B.R.C. 1981.

(c) Inspection and Compliance. No person shall fail to comply with the requirements of this  
chapter. No person shall construct in violation of a Green Points approval. All approvals and  
inspections of Green Point's applications and requirements shall be done in conjunction with a  
residential building permit application and field inspections. An application shall be made on a  
form that is approved by the city manager. The applicant shall demonstrate compliance with all  
of the provisions of this chapter prior to the issuance of a certificate of occupancy by the city  
manager.

(d) Exceptions. Any structure that includes dwellings that are pursuing a U.S. Green Building Council's LEEDT (Leadership in Energy and Environmental Design) Silver Certification or comparable green building rating certification or higher will be exempt from the Green Points requirements. No person that applies for this exception shall fail to complete the LEED™ certification process and receive such certification within six months after the final inspection on the building permit. The city manager may grant an extension to this time period if a request is made by the applicant and the applicant demonstrates a good cause as to why additional time is needed to complete the certification.

**10-7.5-3 Mandatory Green Building Requirements.**

(a) Energy Efficiency – New Dwelling Units. An applicant for a building permit for each new dwelling shall demonstrate that the building is more energy efficient than a building that meets the minimum requirements of Chapter 10-7, "International Energy Conservation and Insulation Code," B.R.C. 1981. Table 1 lists the minimum energy efficiency requirements.

TABLE 1A - Tiers for Energy Efficiency Thresholds

| Type of Project      | Square Footage | Energy Efficiency Thresholds Above Code                                       |
|----------------------|----------------|---|
| New Construction     | Up to 3,000    | <del>30-20</del> percent more energy efficient than <del>2006-2012</del> IECC |
|                      | 3,001-5,000    | <del>5040</del> percent more energy efficient than <del>2006-2012</del> IECC  |
|                      | 5,001 and up   | <del>7565</del> percent more energy efficient than <del>2006-2012</del> IECC  |
| Multi-Unit Dwellings | Applies to all | <del>3020</del> percent more energy efficient than <del>2006-2012</del> IECC  |

(b) Thresholds for Application of New Construction Standards to Entire Building as the Result of an Addition. Any addition which meets any of the thresholds described below will require that the conditioned floor area of the entire building be upgraded to meet new construction standards for energy efficiency in Subsection 10-7.5-3(a), B.R.C. 1981.

- (1) The addition is 100 percent or more than the conditioned floor area of the existing dwelling unit and the dwelling unit will have a total conditioned floor area after the addition to the dwelling unit that is up to 3,000 sq. ft in size.

1 (2) The addition is 50 percent or more than the conditioned floor area of the existing  
2 dwelling unit and the dwelling unit will have a total conditioned floor area after the  
addition to the dwelling unit that is from 3,001 to 5000 sq. ft in size.

3 (3) The addition is 25 percent or more than the conditioned floor area of the existing  
4 dwelling unit and the dwelling unit will have a total conditioned floor area after the  
addition to the dwelling unit that is over 5001 sq. ft in size.

5 (c) Energy Efficiency – Additions and Remodels. An applicant for a building permit for a  
6 remodel or an addition to a dwelling that does not exceed the thresholds in subsection (b) above  
7 shall demonstrate that it meets the energy efficiency requirements of this section. A building  
8 permit for an addition to or a remodel of a dwelling unit shall meet one of the following  
standards:

9 (1) Requirement if upgrading the energy efficiency of the entire structure. The applicant  
10 may demonstrate that the entire building meets the HERS requirements that are described  
in Table 1B below; or

11 (2) Requirement for the new addition or the area of the house that is subject to a remodel.  
12 The applicant may demonstrate that the addition or the area of the building subject to a  
13 remodel meets the requirement of the IECC for the remodel area or addition as described  
in Table 1B below. Building permits under this requirement shall also meet the  
following:

14 (A) Complete a blower door test before application for the building permit to  
15 determine whether the building has a fresh air infiltration rate of no more than 0.5  
16 natural air changes per hour (NACH) compliance rating. If this standard is  
exceeded, then the applicant shall meet the requirement of paragraph (B).

17 (B) Improve, repair and seal the dwelling unit, verified by a subsequent blower  
18 door test and prior to a certificate of occupancy or completion that demonstrates  
that:

19 (i) for buildings that had an air infiltration rate of 1.0 NACH or greater,  
20 then the building shall have a NACH 50 percent or less than the original  
blower door test,

21 (ii) for all other buildings, the building has an air infiltration rate of not  
22 greater than 0.5 NACH compliance rating.

23 TABLE 1B - Tiers for Energy Efficiency Thresholds

24

| Total Conditioned Area | HERS Rating | Increased efficiency above the <u>2012</u> IECC |
|------------------------|-------------|---|
|------------------------|-------------|---|

25

|               |     |            |
|---------------|-----|------------|
| Up to 3,000   | 100 | 15 percent |
| 3,001 – 5,000 | 85  | 30 percent |
| 5,001 and up  | 70  | 50 percent |

(3) Remodels – Limitations. A remodel that does not substantially remove the interior finish of the thermal envelope of the conditioned space is not required to meet the energy efficiency requirements of Table 1B.

(d) Compliance with Energy Efficiency Requirements. A dwelling that is required to meet the energy efficiency requirements for new construction shall demonstrate that it meets such standard by:

(1) Using the Home Energy Rating System (HERS). The HERS rating will be used for the verification of energy performance of new construction. A HERS rating shall be performed by a rater accredited by the Residential Energy Services Network (RESNET);

(2) For multidwelling projects, through a HERS rating sampling protocol authorized and approved by the city manager; or

(3) For multidwelling projects, by demonstrating that the energy efficiency has been achieved by using the methodology in section R405-404, "Simulated Performance Alternative" or section ~~506~~C407, "Total Building Performance" of the ~~2006-2012~~ International Energy Conservation Code.

(e) Energy Audit. An applicant for a building permit for an addition to a dwelling or a remodel of a dwelling shall be required to obtain an energy audit. The applicant shall provide proof of the completion of the energy audit with a building permit application. The energy audit of the house shall quantify the annual energy performance of the building according to generally accepted standards for energy audits approved by the city manager. An energy audit or an optional HERS rating report will indicate how efficiently the building is operating and where inefficiencies are occurring.

~~(f) Lighting Efficiency. Prior to final inspection for an addition to a dwelling or a remodel of a dwelling the applicant shall install energy efficient lamps (light bulbs) with a luminous efficacy of 40 lumens per watt or above in at least 50 percent of the existing home's light fixtures.~~

~~(g) Direct Vent Furnace. When the scope of the work of an addition to a dwelling or a remodel of a dwelling requires replacement of a furnace, the furnace shall be replaced with a direct vent unit that has a minimum 90 percent AFUE.~~

1 ~~(h) Direct Vent Boiler. When the scope of the work of an addition to a dwelling or a remodel of a~~  
2 ~~dwelling requires replacement of a boiler, the boiler shall be replaced with a direct vent unit that~~  
3 ~~has a minimum 85 percent AFUE.~~

4 (if) Construction Waste Recycling. An applicant for a building permit for a new dwelling or an  
5 addition to a dwelling shall demonstrate that a minimum of 50 percent of construction waste is  
6 recycled. Waste diversion calculations and tracking spreadsheet form must be provided at project  
7 completion which shows that the minimum recycling requirements have been met. No person  
8 shall fail to complete the diversion calculations and tracking spreadsheet or recycle construction  
9 waste as required by this section.

10 (jg) Demolition Management. An applicant proposing to demolish the dwelling, as that term is  
11 defined in Section 10-7.5-7, "Definitions," B.R.C. 1981, shall demonstrate through a  
12 deconstruction plan that at least 65 percent of material by weight from deconstruction of the  
13 existing structure, including concrete and asphalt, will be diverted from the landfill. Verification  
14 of deconstruction plan compliance must be provided prior to final inspection. No person shall  
15 fail to follow or otherwise implement an approved deconstruction plan.

#### 16 **10-7.5-4 Resource Conservation – Green Points.**

17 ...

18 Section 7. Chapter 10-8, B.R.C. 1981, is amended to read:

### 19 **CHAPTER 10-8 – Fire Prevention Code**

#### 20 **10-8-1 Legislative Intent.**

21 The purpose of this chapter is to protect public health and safety by regulating the use, condition,  
22 construction, alteration, and repair of property, structures, and occupancies in the city in order to  
23 prevent the ignition and spread of fire and risk of harm to persons or property from fire and other  
24 causes. The city council hereby adopts the ~~2006~~2012 edition of the International Fire Code with  
25 certain amendments, additions, and deletions thereto found to be in the best interests of the city.  
The standards provided in this chapter shall be used, insofar as they are applicable, in  
determining whether a condition is a hazardous one, whether any work that has been performed  
has been done in an approved manner, or whether any equipment is of an approved type or  
quality, and in any determination concerning fire hazards and fire safety in the city building code  
not specifically provided for therein.

#### 26 **10-8-2 Adoption of International Fire Code with Modifications.**

27 (a) The ~~2006~~2012 edition of the International Fire Code of the International Code Council are  
28 adopted by reference as the City of Boulder Fire Code and has the same force and effect as

1 though fully set forth in this chapter, except as specifically amended by the provisions of this  
2 chapter.

3 (b) The Fire Code adopted by subsection (a) of this section is amended in the following places:

4 (1) Section 102.3 is repealed and reenacted to read:

5 102.3 Change of use or occupancy. No change shall be made in the use or occupancy of  
6 any structure that would place the structure in a different division of the same group or  
7 occupancy or in a different group of occupancies, unless such structure is made to  
8 comply with the requirements of this code and the International Building Code.

9 (2) Section 103.1 is repealed and reenacted to read:

10 103.1 Division of Fire Safety

11 A Division of Fire Safety is established within the fire department under the direction of  
12 the manager, which shall consist of such fire department personnel as may be assigned  
13 thereto by the manager. The function of this division shall be to assist the manager in the  
14 administration and enforcement of the provisions of this code.

15 (3) Section 103.4, is repealed and reenacted to read:

16 103.4 Liability

17 The fire code shall not be construed to hold the City of Boulder or any of its employees  
18 or agents responsible for any damage to persons or property by reason of inspection or  
19 reinspection or failure to inspect or reinspect as herein provided or by reason of the  
20 approval or disapproval of any equipment as herein provided.

21 No employee of the city who enforces, attempts to enforce, or is authorized to enforce the  
22 fire code renders him or herself or the city liable to third parties for any damage or injury  
23 to the person or property of such third parties as a result of the enforcement or non-  
24 enforcement of the fire code. The city assumes no duty of care by virtue of the adoption  
25 of the fire code. No person is justified in relying upon the approval of a plan, the results  
of an inspection, or the issuance of a certificate of inspection or occupancy, and such  
approvals, inspections, and certificates are not a guarantee that the plan or work so  
approved, inspected, or certificated in fact complies with all requirements of the fire  
code. It is the duty of the person owning, controlling, or constructing any building or  
structure to insure that the work is done in accordance with the requirements of the fire  
code, and it is such persons and not the city who are responsible for damages caused by  
negligent breach of such duty.

(4) 104.4 Identification, is repealed and reenacted to read:

104.4 Identification.

1 For the purposes of this section, the term “fire code official” includes all firefighters  
2 appointed pursuant to Section 2-5-4, “Identification Card for Firefighters,” B.R.C. 1981.

3 (5) Section 105.6 is repealed and reenacted to read:

4 105.6 Required operational permits. The fire code official may issue an operational  
5 permit for the following operations:

- 6 (a) 105.6.14, Explosives
- 7 (b) 105.6.30, Open Burning
- 8 (c) 105.6.32, Open Flames and Candles
- 9 (d) 105.6.36 Pyrotechnic special effects material
- 10 (e) 105.6.43~~4~~ is amended by the addition of the following:

11 105.6.43 Temporary Membrane Structures, tents and canopies. An operational  
12 permit may be issued with the construction permit that will be issued by the  
13 building official.

14 (6) Section 105.7 is repealed and reenacted to read:

15 105.7 Required construction permits. All construction permits will be issued by the  
16 building official. The Division of Fire Safety will be the approving authority for  
17 following:

- 18 (a) 105.7.1 Automatic fire-extinguishing systems
- 19 (b) 105.7.6~~4~~ Fire alarm and detection systems and related equipment
- 20 (c) 105.7.7~~5~~ Fire pumps and related equipment
- 21 (d) 105.7.15~~2~~ Standpipe systems

22 (7) Sections 108, “Board of Appeals,” is repealed and reenacted to read:

23 108 ~~Board of Appeals~~

24 (a) Any appeal under this section shall be heard by the Board of Building Appeals  
25 established under section 2-3-4, “Board of Building Appeals,” B.R.C. 1981, unless  
the city manager determines, due to the nature of the issues in a particular appeal, to  
appoint a hearing officer under section 1-3-5, “Hearings and Determinations,” B.R.C.  
1981.

(~~a~~)(b) Appeal of refusal to approve work or building permit. A person refused a building  
permit or refused approval of work done under a permit on the grounds that the  
proposed or completed construction fails to comply with this code or any other city

1 building code may appeal the decision to the board of zoning adjustment and building  
2 appeals on the grounds that:

- 3 1. The denial was based on an erroneous interpretation of such code by the city  
4 manager; or
- 5 2. The city manager has erroneously failed to approve an alternate material or  
6 method pursuant to Section 104.9 of the fire code prior to its installation or use. In  
7 determining such an appeal the board or hearing officer shall apply the standards  
8 of Section 104.9 of the fire code.

9 The city manager has the burden of proof under paragraph 1 above. The appellant has  
10 the burden of proof on appeals brought pursuant to paragraph 2. The board or hearing  
11 officer shall determine the appeal and decide whether the city manager's  
12 interpretation or application of such code was correct or in error at a hearing under  
13 the procedures described by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

14 ~~(b)~~(c) Appeal of suspension or revocation of building permit or certificates. Any person  
15 whose building permit or certificate of occupancy or certificate of completion has  
16 been suspended or revoked may appeal such action by the city manager ~~to the board~~  
17 ~~of appeals~~ on the ground that the suspension or revocation was based on an error in  
18 fact or an erroneous application of this code to the facts. The city manager has the  
19 burden of proving the facts upon which the manager relies at such a hearing.

20 (d) An application for appeal must be filed in writing with the city manager within  
21 fourteen days after the date of refusal of the building permit or approval of work  
22 performed under the permit or revocation or suspension of the building permit or  
23 certificate of occupancy or certificate of completion stating the basis for appeal.

24 (e) Appeals Concerning Existing Conditions

25 i. Any aggrieved person who has been issued an order or other notice of  
violation under this fire code, other than a summons and complaint, under Section  
102.1 and 102.2 concerning legally existing conditions in a structure based upon the  
city manager's determination that such conditions constitute a distinct hazard to life  
or property, and who believes the alleged violation to be factually or legally  
contrary to the requirements of this fire code or rules and regulations issued  
pursuant to this fire code may appeal the order or notice. An appellant shall file the  
appeal with the board within thirty days from the date of service of the notice of  
alleged violation. The appellant may request enlargement of time to file if such  
request is made before the end of the time period. The city manager may extend for  
a reasonable period the time to file with the board if the applicant shows good cause  
therefor.

ii. Any person aggrieved by a decision of the city manager upon a reinspection  
that any or all of the violations alleged in the notice of violation have not been  
adequately corrected may appeal such determination by filing a notice of appeal  
within fourteen days of the date of the reinspection.

1 iii. The appeal will be conducted under the procedures of Chapter 1-3, “Quasi-  
2 Judicial Hearings,” B.R.C. 1981. The burden of proof is on the city manager to  
3 establish an alleged violation.

4 iv. If the board of appeals or hearing officer affirms the determination by the city  
5 manager, it shall grant the person a reasonable period of time to correct the  
6 violation appealed. Any subsequent determination by the manager as to whether the  
7 violations alleged in the notice of violation have been adequately corrected is final.

8 v. If no person appeals a notice of violation under this section, the provisions of  
9 the notice becomes final when the time for filing an appeal with the board has  
10 expired. An order appealed to court is final unless a stay is in effect.

11 vi. If a person to whom the city manager has issued a notice of violation does not  
12 appeal under this section, such person may not raise as a defense to any subsequent  
13 prosecution in municipal court for a violation of an order that the conditions alleged  
14 to be violations in the notice of violation were not in fact or law violations.

15 ~~(e)(f)~~ An applicant for an appeal to the board of appeals shall pay the fee prescribed by  
16 Section 4-20-52, “Fire Code Permit and Inspection Fees,” B.R.C. 1981. The fee for  
17 an appeal heard by a hearing officer shall be the same as the fee for an appeal heard  
18 by the Board of Building Appeals.

19 ~~(d)(g)~~ The city manager may apply to the ~~board of appeals~~ Board of Building Appeals,  
20 without fee, for an advisory opinion concerning alternative methods, applicability of  
21 specific requirements, approval of equipment and materials, and granting of special  
22 permission as contemplated in Sections 104.8 or 104.9 of the fire code.

23 ~~(e)(h)~~ The ~~b~~Board of ~~a~~Building ~~a~~Appeals ~~or hearing officer~~ has no authority to interpret  
24 Chapter 1 (the administrative requirements) of this code except as expressly provided  
25 in this section, nor, because this code sets minimum standards, to waive any  
requirement of this code.

#### ~~(8) Appeals Concerning Existing Conditions~~

26 ~~(i) Any aggrieved person who has been issued an order or other notice of violation under~~  
27 ~~this fire code, other than a summons and complaint, under Section 102.1 and 102.2~~  
28 ~~concerning legally existing conditions in a structure based upon the city manager’s~~  
29 ~~determination that such conditions constitute a distinct hazard to life or property, and~~  
30 ~~who believes the alleged violation to be factually or legally contrary to the~~  
31 ~~requirements of this fire code or rules and regulations issued pursuant to this fire code~~  
32 ~~may appeal the order or notice to the board of building appeals in a manner provided~~  
33 ~~by the board under the procedures prescribed by Chapter 1-3, “Quasi Judicial~~  
34 ~~Hearings,” B.R.C. 1981. An appellant shall file the appeal with the board within thirty~~  
35 ~~days from the date of service of the notice of alleged violation. The appellant may~~  
36 ~~request enlargement of time to file if such request is made before the end of the time~~  
37 ~~period. The city manager may extend for a reasonable period the time to file with the~~  
38 ~~board if the applicant shows good cause therefor.~~

1 (ii) ~~Any person aggrieved by a decision of the city manager upon a reinspection that any~~  
2 ~~or all of the violations alleged in the notice of violation have not been adequately~~  
3 ~~corrected may appeal such determination by filing a notice of appeal with the board~~  
4 ~~of appeals within ten days of the date of the reinspection.~~

5 (iii) ~~The appeal will be conducted under the procedures of Chapter 1-3, "Quasi-Judicial~~  
6 ~~Hearings," B.R.C. 1981. The burden of proof is on the city manager to establish an~~  
7 ~~alleged violation.~~

8 (iv) ~~If the board of appeals affirms the determination by the city manager, it shall grant~~  
9 ~~the person a reasonable period of time to correct the violation appealed. Any~~  
10 ~~subsequent determination by the manager as to whether the violations alleged in the~~  
11 ~~notice of violation have been adequately corrected is final.~~

12 (v) ~~The fee for filing an appeal is that prescribed by Section 4-20-52, "Fire Code Permit~~  
13 ~~and Inspection Fees," B.R.C. 1981.~~

14 ~~(f)(i) An aggrieved person seeking judicial review of a decision of the b~~  
15 ~~Board of~~  
16 ~~Building Appeals or hearing officer made under this section shall file a~~  
17 ~~complaint for such review within thirty days after the date of the decision~~  
18 ~~under Colorado Rule of Civil Procedure 106(a)(4).~~

19 (g) ~~If no person appeals a notice of violation to the board of appeals, the provisions of~~  
20 ~~the notice becomes final when the time for filing an appeal with the board has~~  
21 ~~expired. An order appealed to court is final unless a stay is in effect.~~

22 (h) ~~If a person to whom the city manager has issued a notice of violation does not~~  
23 ~~appeal to the board, such person may not raise as a defense to any subsequent~~  
24 ~~prosecution in municipal court for a violation of an order that the conditions alleged~~  
25 ~~to be violations in the notice of violation were not in fact or law violations.~~

(i)(j) ~~If the city manager determines that the subject of an order or notice issued under~~  
~~this fire code constitutes an immediate hazard to the public health, safety, or~~  
~~welfare, the manager may order immediate compliance. Persons subject to such~~  
~~orders shall comply forthwith, but shall be entitled to a prompt post-compliance~~  
~~appeal hearing before the board of building appeals or a hearing officer under the~~  
~~procedures specified in this section.~~

(8) Section 109.1, "Unlawful acts," is repealed and reenacted to read:

109.1 Violations.

(a) General Provisions:

(1) No person shall violate a provision of this code, or fail to comply therewith,  
or with any of the requirements thereof. No person shall fail to comply with any  
order issued by the city manager under this code. No person shall erect, construct,  
enlarge, alter, extend, repair, move, remove, improve, convert, demolish, equip,

1 use, occupy, maintain, or utilize any building, structure, occupancy, premises, or  
2 system in the City or cause or permit the same to be done except in conformity  
3 with all of the provisions of this code and in conformity with the terms and  
4 conditions of approval issued under this code, or of any directive of the code  
5 official.

6 (2) In accordance with the provisions of section 5-2-11, "Prosecution of  
7 Multiple Counts for Same Act," B.R.C. 1981, each day during which illegal  
8 construction, alteration, maintenance, occupancy, or use continues, constitutes a  
9 separate offense remediable through the enforcement provisions of this code.

10 (3) The owner, tenant, and occupant of a structure or land, and the agents of  
11 each of them, are jointly and severally liable for any violation of this code with  
12 respect to such structure or land.

13 (4) The remedies for any violation of any provision of this code or of any  
14 permit, certificate, or other approval issued under this code or other City of  
15 Boulder code or of any directive of the fire code official may be pursued singly or  
16 in combination.

17 (5) If any person fails or refuses to pay when due any charge imposed under this  
18 section, the fire code official may, in addition to taking other collection remedies,  
19 certify due and unpaid charges to the Boulder County Treasurer for collection as  
20 provided by section 2-2-12, "City Manager May Certify Taxes, Charges, and  
21 Assessments to County Treasurer for Collection," B.R.C. 1981.

22 (6) The fire code official may charge the cost of any action taken to correct or  
23 abate a violation, as authorized by this code, plus up to fifteen percent of such  
24 cost for administration to the property owner. If any property owner fails or  
25 refuses to pay when due any charge imposed under this section, the fire code  
official may, in addition to taking other collection remedies, certify due any  
unpaid charges, including interest, to the Boulder County Treasurer, to be levied  
against the person's property for collection by the county in the same manner as  
delinquent general taxes upon such property are collected, under the procedures  
described by section 2-2-12, "City Manager May Certify Taxes, Charges, and  
Assessments to County Treasurer for Collection," B.R.C. 1981.

26 (b) Administrative Procedures and Remedies:

27 (1) If the fire code official finds that a violation of any provision of this code or  
28 any approval granted under this code exists, the manager, after notice and an  
29 opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-  
30 Judicial Hearings," B.R.C. 1981, may take any one or more of the following  
31 actions to remedy the violation:

32 (A) Impose a civil penalty according to the following schedule:

33 (i) For the first violation of the provision or approval, \$100;

1 (ii) For the second violation of the same provision or approval,  
2 \$300; and

3 (iii) For the third violation of the same provision or approval,  
4 \$1,000.

5 (B) For a violation concerning the use of a residential building under a  
6 rental license, revoke such license;

7 (C) Require the filing of a declaration of use as provided in subsection (e);  
8 or

9 (D) Issue an order reasonably calculated to ensure compliance with the  
10 provisions of this code or any approval granted under this code.

11 (2) Prior to the hearing, the fire code official may issue an order that no person  
12 shall perform any work on any structure or land, except to correct any violation  
13 found by the fire code official to exist with respect to such structure or land.

14 (3) If notice is given to the fire code official at least forty-eight hours before the  
15 time and date set forth in the notice of hearing on any violation that the violation  
16 has been corrected, the fire code official will reinspect the structure or land. If the  
17 fire code official finds that the violation has been corrected, the manager may  
18 cancel the hearing.

19 (4) No person shall fail to comply with any action taken by the fire code official  
20 under this section.

21 (c) Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-  
22 4, "General Penalties," B.R.C. 1981.

23 (d) Other Remedies. The city attorney may maintain an action for damages, declaratory  
24 relief, specific performance, injunction, or any other appropriate relief in the District  
25 Court in and for the County of Boulder for any violation of any provision of this code or  
any approval granted under this code.

(e) Declaration of Use. If the fire code official determines that a person is using a  
structure in a way that might mislead a reasonable person to believe that such use is a use  
by right or otherwise authorized by this title, the fire code official may require such  
person to sign under oath a declaration of use that defines the limited nature of the use  
and to record such declaration in the office of the Boulder County Clerk and Recorder  
against the title to the land. In addition to all other remedies and actions that the code  
official is authorized to use under the Boulder Revised Code or other applicable federal,  
state or local laws to enforce the provisions of this code, the city manager is authorized to  
withhold any approval affecting such structure or land, including, without limitation, a  
building permit, use review, site review, subdivision, floodplain development permit, or  
wetland permit until such time as the person submits a declaration of use that is in a form  
acceptable to the fire code official.

(9) Section 109.3.3, "Prosecution of violations," is repealed.

(10) Section 109.4, "Violation penalties," is repealed and reenacted to read:

1 109.4 Abatement of violation.

2 In addition to the imposition of the penalties described in Section 109.1 Violations, the fire  
3 code official is authorized to institute appropriate action to prevent unlawful construction or  
4 to restrain, correct or abate a violation; or to prevent illegal occupancy of a structure or  
5 premises; or to stop an illegal act, conduct of business or occupancy of a structure on or  
6 about any premises.

7 (9)(11) Chapter 2, "Definitions," is amended by the addition of the following additional  
8 definitions:

9 "Accessible Private Drive" means a twenty foot unobstructed clear width with a twelve  
10 foot hard-all weather drivable surface which can support forty tons on ten wheels and has  
11 a SU-30 turning radius for the fire department's fire apparatus.

12 ~~"Attached Dwelling Unit" means a structure which contains more than one dwelling~~  
13 ~~unit regardless of any fire separation features.~~

14 "Fire code official" means the city manager or the manager's delegate.

15 ~~"Detached Dwelling Unit" means a structure which contains only one dwelling unit~~  
16 ~~together with any building accessory to the dwelling unit, and is structurally~~  
17 ~~independent of other structures or occupancies, and has a fire separation distance of~~  
18 ~~not less than six feet from other structures.~~

19 "Emergency Vehicle Access Street" means a street meeting the requirements of this code  
20 and the City of Boulder Design and Construction Standard.

21 ~~"Fire Access Distance" means the distance between two hydrants, or the distance~~  
22 ~~from a hydrant to any external portion of any building or buildings or the distance~~  
23 ~~from the center line of a non-dead-end emergency vehicle access street to the point~~  
24 ~~on the curb on such street from which access to such building is gained, measured~~  
25 ~~along public or private (but accessible to fire equipment) roadways or fire lanes, as~~  
~~would be traveled by motorized firefighting equipment.~~

"Fire Department" or "Municipal Fire Department" means the Fire Department of the  
City of Boulder, Colorado.

1 “House Behind a House” exists if the dwelling unit is on a lot which does not front on an  
2 emergency vehicle access street meeting the requirements of Sections 503.1 and 503.2, or  
3 the dwelling unit is not served by a fire lane meeting the requirements of Section 502.1  
4 from an emergency vehicle access street to an entrance to the dwelling unit, and access  
5 from the emergency vehicle access street to the unit is obstructed by any structure.

6 “Portable Appliance” Means any appliance that is designed to be moved or relocated on a  
7 daily basis without any special knowledge. This includes, but not limited to, box or  
8 oscillating fans, power tools, vacuums cleaners and floor polishers.

9 “Tank Truck” means any single rear axle, self-propelled motor vehicle, equipped with a  
10 cargo tank mounted thereon, and used for the transportation of flammable and  
11 combustible liquids, but this term excludes any combination of units, such as a semi-  
12 trailer. Said tank truck shall not exceed 35,000 GVW, and its total capacity shall not  
13 exceed 3,000 gallons.

14 “Transport route” means:

15 (1) Denver-Boulder Turnpike (U.S. 36) from the south city limits to Baseline  
16 Road.

17 (2) Foothills Parkway (Colorado 157) from U.S. 36 to the north city limits.

18 (3) 28th Street from Baseline Road to the north city limits.

19 (4) Arapahoe Avenue from Folsom28th Street to the east city limits.

20 (5) Canyon Boulevard from 28th Street to the west city limits.

21 (6) Pearl Street/Pearl Parkway from Folsom28th Street to the east city limits.

22 (7) Longmont Diagonal Highway (Colorado 119) as it passes through the city  
23 limits.

24 (8) Valmont Road from Folsom Streetthe Foothills Parkway (Colorado 157) to  
25 55<sup>th</sup> Street.

(9) Airport Road and Airport BoulevardRoad.

(10)(9) Baseline Road from the east side of 28th Street (U.S. 36)27<sup>th</sup> Way to  
Foothills Parkway (Colorado 157).

(11) 55<sup>th</sup> Street from Valmont Road to Arapahoe Avenue.

(12) 30<sup>th</sup> Street from Arapahoe to Diagonal Highway (Colorado 119).

(13) Longmont Diagonal Highway (Colorado 119) from 28<sup>th</sup> Street to and  
connecting with Foothills Parkway (Colorado 157).

1 (14) South Foothills Highway/Broadway (Colorado 93) from the south city limits  
2 to 27<sup>th</sup> Way and connecting to Baseline Road.

3 “Unobstructed By Any Structure Above Grade” means that no structure blocks the view  
4 so that there is not at least one entire face of the building substantially visible in a direct  
5 line over the lot upon which the building sits from the nearest emergency vehicle access  
6 street, and no structure would significantly interfere with a stream of water being sprayed  
7 on the building by a nozzle mounted on a fire truck parked on the nearest emergency  
8 vehicle access street. For the purposes of this definition, a legal fence shall not be  
9 considered an obstruction if it has a gate which opens at least three feet wide, which is  
10 not locked, and through which firefighters on foot have ready access to the building  
11 within the distance limitations.

12 ~~(10)(12)~~ Section 307, “Open Burning, Recreational Fires and Portable Outdoor Fireplaces.”  
13 is repealed and reenacted to read:

14 307 Open Burning and Recreational Fires.

15 (1) No person shall kindle or maintain outside of a habitable building or outside of an  
16 exterior fireplace built in accordance with the City of Boulder Building Code any  
17 bonfire or burn or permit to be burned any trash, paper, rubbish, wastepaper, wood,  
18 weeds, brush, plants, or other combustible or flammable material anywhere within the  
19 city limits or anywhere on city property outside of the city limits, except when:

20 (a) The burning is in the course of an agricultural operation in the growing of  
21 crops as a gainful occupation and presents no fire hazard to other property in the  
22 vicinity;

23 (b) The burning is a smokeless flare or a safety flare used to indicate some  
24 danger to the public;

25 (c) The burning is a training fire conducted by the fire department, or is a  
training fire conducted by another fire department, or privately for industrial or  
commercial fire training purposes; or

(d) The burning is solely for the purpose of fuels mitigation to alleviate wildland  
fire potential, or weed abatement to assist restoration of native plants, ~~and~~.

(2) Mobile or portable type outdoor fire places are prohibited within the city limits or  
anywhere on city property outside of the city limits.

~~(11)~~ Section 308 is repealed and reenacted to read:

308 Open Flames. ~~Open flames are prohibited within the city limits.~~

~~Exception: Where a permit is obtained through the Boulder Fire Department, Division of  
Fire Safety.~~

1 ~~(12)~~(13) Exceptions 1 and 2 to Section 311.2.2., “Fire protection,” are repealed.

2 ~~(13)~~(14) A new Section ~~401.3.1.1~~ 401.9, “Fire Alarm Fees,” is added to read:

3 (a) After the fire department has responded to two alarms of fire from any property or  
4 address in any calendar year, the city manager may impose a charge for each  
5 additional response to an alarm which originates from the property during the same  
6 calendar year, in accordance with the schedule prescribed by Section 4-20-52, “Fire  
7 Code Permit and Inspection Fees,” B.R.C. 1981.

8 (b) The city manager may waive a charge imposed for a fire alarm response if the  
9 property owner of record demonstrates that such alarm was caused by a fire or the  
10 threat of a fire, or that such alarm was not under the property owners control. It shall  
11 not be a defense that the alarm system is malfunctioning, unless the owner or  
12 manager is able to demonstrate that said alarm system is currently being serviced to  
13 remedy the problems being encountered.

~~(c) If any fee is not paid within thirty days after demand therefor has been mailed to  
the record owner of the building, the city manager may certify the amount due  
to the County Treasurer pursuant to Section 2-2-12, “City Manager May Certify  
Taxes, Charges, and Assessments to County Treasurer for Collection,” B.R.C.  
1981.~~

13 ~~(14)~~(15) Section 503.2.1, “Dimensions,” is repealed and reenacted to read:

14 503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less  
15 than 20 feet (6,096 mm), except for approved security gates in accordance with Section  
16 503.6, and an unobstructed vertical clearance of not less than 15 feet (4,572 mm).

16 ~~(15)~~(16) Section 5078.5.1, “Where required,” is repealed and reenacted to read:

17 5078.5.1 Where required. Location and spacing of fire hydrants will be in accordance with  
18 the City of Boulder Design and Construction Standards.

19 ~~(16)~~(17) Section 603.4, “Portable unvented heaters,” is repealed and reenacted to read:

20 603.4 Portable unvented heaters. Portable unvented fueled-fired heating equipment are  
21 prohibited.

21 (18) Subsection 605.11.3.2.1, “Residential buildings with hip roof layouts”, is repealed and  
22 reenacted to read:

23 605.11.3.2.1 Residential buildings with hip roof layouts. Panels/modules installed on  
24 residential buildings with hip roof layouts shall be located in a manner that provides a 3-  
25 foot-wide (914 mm) clear access pathway from the eave to the ridge on each roof slope  
where panels/modules are located.

Exceptions:

1 1. These requirements shall not apply to roofs with slopes of 2 units  
2 vertical in 12 units horizontal (2:12) or less.

3  
4 2. These requirements shall not apply to roofs where each panel/module  
5 array area on the roof is 1,000 square feet (92.90 m<sup>2</sup>) or less in size, no  
6 continuous section of panels/modules is larger than 150 feet in length or  
7 width, a clear access pathway of not less than 12-inch-width is provided  
8 along each side of all horizontal ridges, and a clear access pathway of not  
9 less than 30-inch-width is provided from the eave to the ridge of one roof  
10 slope where panels/modules are located.

11 3. These requirements shall not apply to roofs where each panel/module  
12 array area on the roof is 1,000 square feet (92.90 m<sup>2</sup>) or less in size, no  
13 continuous section of panels/modules is larger than 150 feet in length or  
14 width, a clear access pathway of not less than 12-inch-width is provided  
15 along each side of all horizontal ridges, and, where panels/modules are to  
16 be placed on both sides of a hip, a clear access pathway of not less than  
17 18-inch-width is provided along each side of such hip.

18 4. These requirements shall not apply to roofs -where the total combined  
19 area of solar array does not exceed 33 percent as measured in plan view of  
20 the total roof area of the structure.

21 (19) Subsection 605.11.3.2.2, “Residential buildings with a single ridge,” is repealed and  
22 reenacted to read:

23 605.11.3.2.2 Residential buildings with a single ridge. Panels/modules installed on  
24 residential buildings with a single ridge shall be located in a manner that provides two,  
25 3-foot-wide (914 mm) clear access pathways from the eave to the ridge on each roof  
26 slope where panels/modules are located.

27 Exceptions:

28 1. -This requirement shall not apply to roofs with slopes of 2 units vertical  
29 in 12 units horizontal (2:12) or less.

30 2. This requirement shall not apply to roofs where each panel/module  
31 array area on the roof is 1,000 square feet (92.90 m<sup>2</sup>) or less in size, no  
32 continuous section of panels/modules is larger than 150 feet in length or  
33 width, and a clear access pathway of not less than 12-inch-width is  
34 provided along each side of the horizontal ridge provided that:

35 a. The total combined area of solar array does not exceed 33 percent  
36 as measured in plan view of the total roof area of the structure; or



1 ~~minimum period of time necessary to perform such work, and that maintenance~~  
2 ~~personnel were on the premises performing such work during the entire time the~~  
3 ~~system was shut off. The minimum penalty for violation of this section, no portion~~  
4 ~~of which may be suspended, is a fine of \$1,000.00.~~

5 ~~(18)~~(23) Section 903 is amended by the addition of the following:

6 Any new building or change of occupancy of an existing building that does not have  
7 approved fire department access as required by the fire code may be required by the fire  
8 code official to have an automatic fire sprinkler system installed regardless of the  
9 building size.

10 ~~(19)~~(24) Section 903.1, is repealed and reenacted to read:

11 Section 903.1 General. An automatic sprinkler system shall be installed in the  
12 occupancies and locations as set forth in this section. ~~Changes in use, as defined in~~  
13 ~~Section 10-5-2, "Adoption of International Building Code with Modifications," B.R.C.~~  
14 ~~1981, shall comply with the provisions listed below.~~

15 (25) The first sentence of Section 903.2 is repealed and reenacted to read:

16 Approved automatic sprinkler systems in new buildings and structures shall be provide  
17 in the locations described in Section 903.2.1 through 903.2.15.

18 ~~(20)~~(26) Section 903.2.1 is amended by the addition of the following:

19 903.2.1 Group A. All basements classified as, or a part of, a Group A occupancy shall  
20 be provided with an automatic sprinkler system regardless of the gross square footage.

21 (a) Section 903.2.1.1 Group A-1, # 1 is repealed and reenacted to read.

22 1. The fire area exceeds 2,000 square feet (185.8m<sup>2</sup>)

23 (b) Section 903.2.1.2 Group A-2, # 1 is repealed and reenacted to read.

24 1. The fire area exceeds 2,000 square feet (185.8m<sup>2</sup>)

25 (c) Section 903.2.1.3 Group A-3, # 1 is repealed and reenacted to read.

1. The fire area exceeds 2,000 square feet (185.8m<sup>2</sup>)

(d) Section 903.2.1.4 Group A-4, # 1 is repealed and reenacted to read.

1. The fire area exceeds 2,000 square feet (185.8m<sup>2</sup>)

~~(21)~~(27) A new subsection is added to Section 903.2.1 is added to read:

1 903.2.1.6, Group B occupancies, ~~is enacted to read:~~ An automatic sprinkler system  
2 shall be provided throughout all new Group B occupancies greater than 2,000 gross  
square feet (185.8m<sup>2</sup>).

3 ~~(22)(28)~~ Section 903.2.32, Group E. #1 is repealed and reenacted to read:

- 4 (a) Throughout all Group E fire areas greater than 2000 (185.8m<sup>2</sup>) in area.  
5 (b) Exception is repealed.  
6 (c) All basements classified as, or a part of, a Group E occupancy shall be provided  
7 with an automatic sprinkler system regardless of the gross square footage

8 ~~(23)(29)~~ Section 903.2.43, Group F-1 is repealed and reenacted to read:

9 An automatic sprinkler system shall be provided throughout all new Group F occupancies  
greater than 2000 square feet (185.8m<sup>2</sup>).

10 ~~(30)~~ Exceptions 3 and 4 to Section 903.2.6, Group I, are repealed.

11 ~~(24)(31)~~ Section 903.2.76, Group M is repealed and reenacted to read:

12 An automatic sprinkler system shall be provided throughout all ~~new~~ Group M  
13 occupancies greater than 2000 square feet (185.8m<sup>2</sup>).

14 ~~(25)(32)~~ The first sentence of Section 903.2.87, but not Subsections 903.2.8.1 and 903.2.8.2,  
is repealed and reenacted to read ~~amended by the addition of the following:~~

15 Effective September 1, 2014, an automatic sprinkler system in accordance with Section  
16 903.3 shall be provided throughout all buildings with a Group R fire area; detached one-  
17 and two- family dwellings and multiple single-family dwellings (townhouses) not more  
18 than three stories above grade plane in height with a separate means of egress and their  
19 accessory structures shall comply with the fire sprinkler system requirements of the City  
20 of Boulder Residential Building Code.

21 Prior to September 1, 2014, the following standards apply:

22 An automatic sprinkler system installed in accordance with Section 903.3 shall be  
23 provided throughout all buildings with a Group R fire area.

- 24 (a) Exception 1: Detached and two unit attached dwelling units are not required to  
25 have an automatic fire sprinkler system if they are not used as residential board  
and care occupancies, and the distance, unobstructed by any structure above  
grade, landscaping or topographical obstructions, from the curb face of the  
emergency vehicle access street on which the structure is addressed, to a face of  
the unit containing an entrance, is not greater than one hundred feet.

1 (b) Exception 2. A detached dwelling unit is not required to have an automatic  
2 fire sprinkler system if it is not used as a residential board and care occupancy,  
3 and is located on a lot larger than 14,500 square feet, in which the driveway meets  
4 the requirements of a fire department accessible private drive, and extends  
5 without interruption from the nearest emergency vehicle access street on which  
6 the structure is addressed, to the side of the building which contains the main  
7 entrance.

8 (c) If more than one principal building is constructed on a lot pursuant to the  
9 exceptions listed in Section 9-3.2-16, "Two Detached Dwelling Units on a Single  
10 Lot," B.R.C. 1981, then each building other than the building closest to an  
11 emergency vehicle access street on which the structure is addressed, shall be  
12 protected by an approved and supervised automatic sprinkler system in  
13 accordance with Section 903.3.

14 Exception: If a lot has frontage on two streets and each street is an emergency  
15 vehicle access street, then two buildings, each closest to their respective streets,  
16 shall not be required to be so protected by this subsection.

17 (d) Houses behind houses shall be protected throughout by an approved automatic  
18 sprinkler system in accordance with Section 903.3.

19 ~~(26)~~(33) Section 903.2.98 Group S-1, is repealed and reenacted to read:

20 An automatic sprinkler system shall be provided throughout all new Group S-1  
21 occupancies greater than 2000 square feet (185.8m<sup>2</sup>), including, but not limited to,  
22 repair garages.

23 ~~(27)~~(34) Section 903.2.109 Group S-2, is repealed and reenacted to read:

24 An automatic sprinkler system shall be provided throughout all new Group S-2  
25 occupancies greater than 2000 square feet (185.8m<sup>2</sup>).

26 ~~(28)~~(35) A new ~~section~~Section, 903.2.13 "Group U occupancies," is added to read:

27 Section 903.2.12-3 Group U ~~Occupancies.~~ An automatic sprinkler system shall be  
28 provided throughout all new Group U occupancies greater than 2,000 gross square feet  
29 (185.8m<sup>2</sup>).

30 ~~(29)~~(36) A new Section 903.2.12-4 is added to read:

31 Section 903.2.14 Any occupancy, structure or unit required to be protected by a  
32 sprinkler system by one provision of the fire code or the building code, and falling  
33 within an exception to a requirement of such protection to any other provision of the  
34 fire code or building code, shall be so protected.

35 ~~(30)~~(37) A new Section 903.2.12-5 is added to read:

1 Section 903.2.15 If the floor area of an addition to any existing occupancy as  
2 described in 903.1 through 903.2.12.3 above is greater than either fifty percent of the  
3 existing gross floor area or 2,000 square feet, and the total altered structure would be  
4 required to be protected by a sprinkler system by this section if it were new  
5 construction, then the entire addition shall be protected throughout by an approved and  
supervised automatic sprinkler system, installed in accordance with Section 903.3.1.  
Said sprinkler system shall be continuous throughout the addition up to a fire barrier  
built in accordance with the building code for that occupancy.

6 ~~(31)(38)~~ Section 903.3.1.1.1 Exception 4 is repealed

7 ~~(32)~~ **Section 903.3.5.1 is repealed**

8 ~~(33)(39)~~ Section 903.3.5.1.2 is repealed and reenacted to read:

9 903.3.5.1.2 Residential combination services. Combination of domestic and fire  
10 service lines shall be in accordance with the City of Boulder Design and Construction  
Standard.

11 ~~(34)(40)~~ Section 903.4.1, "Monitoring," is repealed and reenacted to read:

12 903.4.1 ~~Signal~~Monitoring. Alarm, supervisory and trouble signals shall be distinctly  
13 different and shall be automatically transmitted to an Underwriters Laboratory listed  
~~central~~supervising station.

14 Exceptions:

15 1. Underground key or hub valves in roadway boxes provided by the  
16 municipality or public utility need not be supervised.

17 2. Systems installed in accordance with NFPA 13D.

18 ~~(35)(41)~~ Section 903.4.2, "Alarms," is repealed and reenacted to read:

19 903.4.2 Alarms. Approved audible and visual devices shall be connected to every new  
20 automatic sprinkler system. Such sprinkler water-flow alarm devices shall be  
21 activated by water flow equivalent to the flow of a single sprinkler of the smallest  
22 orifice size installed in the system. Alarm devices shall be provided in the interior of  
the building in accordance with NFPA 72 and on the exterior of the building in an  
approved location. Where a fire alarm system is installed, actuation of the automatic  
sprinkler shall actuate the building fire alarm system.

23 ~~(36)(42)~~ A new Section 903.7, "Response time sprinkler requirement," is adopted to read:

24 903.7 Response time sprinkler requirement.

25 (a) It is the city's goal, as reflected in the Boulder Valley Comprehensive Plan's  
urban-fire service criteria, that land not be annexed unless the response time for

1 service is normally six minutes or less. Nonetheless, there may be occasions when  
2 annexation outside the existing six minute limit but within eight minutes or less is,  
3 due to special circumstances, in the city's best interest. Before such land is  
4 annexed, consideration must be given to the need for and provision of additional  
5 fire stations and equipment to serve properly the area being annexed and to bring  
6 it within the six minute limit eventually. Protection by a sprinkler system as  
7 required by subsection (c) below is a temporary substitute, and is not intended to  
8 eliminate the requirement for additional fire stations and equipment.

9 (b) Land used or to be used for residential purposes will not normally be annexed  
10 if it is outside the six minute limit unless excepted from this policy by subsection  
11 (d) below. All new dwelling unit on land annexed outside the six minute limit  
12 shall be protected by an automatic fire sprinkler system.

13 (c) On land annexed after the effective date of this chapter and not excepted  
14 under subsection (d) below, all new non-residential construction and any existing  
15 non-residential structures shall be provided throughout with an approved and  
16 supervised fire sprinkler system installed in accordance with Section 903.3.1  
17 adopted in Chapter 10-8, "Fire ~~Prevention~~ Code," B.R.C. 1981, if such land is  
18 outside of the six minute City of Boulder fire response time from city fire stations  
19 housing at least one pumper which is rated at one thousand gallons per minute  
20 pumping capacity or greater, and which requires a crew of three or more for  
21 proper operation.

22 (d) The requirements of this Section may be waived by the city council by a  
23 provision doing so in an annexation agreement incorporated into an annexation  
24 ordinance if, in the opinion of the city council it is in the city's best interest to do  
25 so because:

- 26 (1) Of changed or special conditions;
- 27 (2) The land to be annexed is located on Arapahoe Avenue west of the  
28 city; or
- 29 (3) The land to be annexed is below the blue line, west of Broadway, south  
30 of Norwood Avenue, and north of Table Mesa Drive.

31 Exceptions (2) and (3) above reflect the fact that it is not anticipated that  
32 new fire stations will be constructed to bring these areas within the six  
33 minute limit. In other areas it is anticipated that new fire stations will  
34 eventually be constructed or upgraded to bring the service area within this  
35 limit.

36 ~~(37)~~(43) A new Section 903.8, "Fire suppression systems," is added to read:

37 903.8 Fire Suppression Systems

1 All existing structures in the following categories shall be protected throughout by an  
2 approved and supervised automatic sprinkler system installed in accordance with the  
3 provisions of Section 903.3.1 Except that any structure or portion thereof required by  
4 this section to be so protected prior to the effective date of this ordinance shall be  
5 immediately so protected:

6 (a) R-1 and R-2 occupancies greater than fifty five feet high.

7 (b) Hotels and motels. Exceptions: One- and two-story structures, and three  
8 story structures with an exterior exit balcony for all rooms above grade.

9 (c) Congregate residences classified as Group R-4.

10 (d) Group I-1 and I-2 occupancies as defined in the fire code.

11 (e) Basements greater than 2,000 gross square feet.

12 Exception 1. Basements below R occupancies.

13 Exception 2. Basements used exclusively for “services to the building,”  
14 such as electric meters, compressors, and so forth. But “services to the  
15 building” shall not include any storage (either combustible or non-  
16 combustible), nor routine human occupancy.

17 Exception 3. Basements where there is provided at least 20 square feet of  
18 opening entirely above the adjoining ground level in each fifty lineal feet  
19 or fraction thereof of exterior wall in the basement on at least one side of  
20 the building. Openings shall have a minimum dimension of not less than  
21 30 inches, and shall be accessible to the fire department from the exterior  
22 and shall not be obstructed in a manner that firefighting or rescue cannot  
23 be accomplished from the exterior.

24 When openings are provided on only one side and the opposite wall of  
25 said basement is more than seventy-five feet from such openings, said  
basement shall be provided with an approved automatic sprinkler system,  
or openings as specified above shall be provided on at least two sides of an  
exterior wall of the basement.

(f) All Group A occupancies used primarily for dining, drinking or motion  
picture viewing, shall be protected throughout by an approved and supervised  
automatic sprinkler system installed in accordance with the provisions of  
Section 903.3.1 when said Group A occupancy is greater than 2,000 gross  
square feet in size.

For Group A occupancies described in this part (f) not currently provided with  
complete automatic sprinkler protection, this paragraph shall take effect  
during a remodel or renovation which 1) requires one or more building  
permits with a combined valuation (labor and materials) of \$30.00 per square

1 foot or more within any calendar year, and 2) necessitates business closure for  
2 a combined period of five calendar days or more, in the aforementioned  
calendar year.

3 ~~(38)~~(44) Section 907.6.515, is repealed and reenacted to read:

4 Section 907.6.515 Monitoring. Fire alarm systems shall be supervised by an  
5 Underwriters Laboratory listed ~~central~~supervising station.

6 (45) Section 1103.5, "Sprinkler systems," is repealed and reenacted to read:

7 1103.5. Sprinkler systems. The automatic sprinkler system requirements set forth in  
8 Sections 903.1 and 903.2 of this code shall be complied with in existing buildings where  
9 the occupancy or use, as defined in Chapter 3 of the Building Code of the City of Boulder,  
10 changes in a fire area exceeding 2,000 square feet.

11 ~~(39)~~(46) Section 335601.2.4.2, "Fireworks," is amended by the addition of the following:

12 ~~**The city manager shall require a certificate of insurance to protect persons and**~~  
13 ~~**property from death or injury as a result of the fireworks display, in an amount not**~~  
14 ~~**less than \$150,000.00 per person injured and \$600,000.00 per incident. The insurance**~~  
15 ~~**shall cover any liability of the city or any employee or agent thereof arising out of or**~~  
16 ~~**connected with the permit and the fireworks display permitted thereunder. Before**~~  
17 ~~**any permit for a fireworks display is issued, the applicant shall comply with the**~~  
18 ~~**provisions of this Section.**~~

19 (40)~~(47)~~ Section 345701.4, "Permits," is amended by the addition of the following:

20 (1) A regular permit allows a permittee on a transport route to take delivery of flammable  
21 and combustible liquids from any delivery vehicle or from a tank truck where the premises  
22 are ~~not~~ located on a transport route. Upon payment of the fee provided in Section 4-20-52,  
23 "Fire Code Permit and Inspection Fees," B.R.C. 1981, the city manager shall issue to an  
24 applicant therefor a permit to receive deliveries of flammable and combustible liquids at a  
25 particular location or outlet if the manager finds that:

(a) The outlet or location contains sufficient room to accommodate the delivery  
vehicle, so that the delivery vehicle is capable of being parked entirely within the  
property boundary lines of the outlet or location and in such a manner that no part of  
the vehicle extends into any street, sidewalk, or alley while the vehicle is off-loading  
and no backing of the vehicle either into or out of station property is necessary;

1 (b) The entrance and exit access-ways for the delivery vehicle are so arranged that no  
2 obstruction of traffic will result from the vehicle entering or leaving the outlet or  
location; and

3 (c) The storage tanks for flammable and combustible liquids are located underground  
4 and constructed in accordance with the applicable provisions of this code, unless  
specifically allowed to be installed above ground by other sections of this code.

5 (2) A special permit allows a permittee to take delivery of flammable and combustible  
6 liquids on premises outside of transport routes from specified delivery vehicles other than a  
7 tank truck. The owner or person in control of any outlet or location holding a regular permit  
8 may, upon payment of the fee provided in Section 4-20-52, "Fire Code Permit and  
9 Inspection Fees," B.R.C. 1981, apply to the city manager for a special permit allowing  
10 delivery with a vehicle other than a tank truck as defined in Section 221. The city manager  
shall schedule with the applicant a simulated demonstration with an empty vehicle of the  
size and design that the applicant will use under the permit. The applicant shall furnish the  
vehicle and driver at its cost. The simulated test shall be observed by the city manager who  
shall issue the special permit if the manager finds that:

11 (a) The outlet or location contains sufficient room to accommodate the delivery  
12 vehicle, so that the delivery vehicle is capable of being parked entirely within the  
13 property boundary lines of the outlet or location in such a manner that no part of the  
vehicle shall extend into any street, sidewalk or alley while the vehicle is off-loading,  
and no backing of the vehicle either into or out of the station property is necessary;

14 (b) The entrance and exit access-ways for the delivery vehicles are so arranged that  
15 no obstruction of traffic will result from the vehicle entering or leaving the outlet or  
location;

16 (c) The roads and streets are accessible to fire-fighting equipment and vehicles;

17 (d) The topography or configuration of the roads and streets does not involve  
18 potential difficulties in containing, fighting, or suppressing a fire or spill and does not  
impair the ability of a transport vehicle to maneuver safely; and

19 (e) The traffic congestion and flow of vehicles using the roads and streets will not  
20 create potential hazards to transport vehicles. Upon issuance, the permit will  
21 designate a specific route to be followed from the nearest transport route to the permit  
22 location and to return to the transport route. The permit will specify a vehicle  
23 capacity. Special permits are valid only between 3:00 a.m. and 6:00 a.m. But, for the  
24 delivery of gasoline or diesel fuel only, if the permit location is in an industrial zone,  
25 and is connected to a transport route by a former transport route established by  
ordinance 4636 (1982), and the applicant demonstrates that there were no incidents  
involving the discharge of gasoline or diesel fuel from delivery vehicles using the  
relevant portion of such former route, then the city manager may issue the special  
permit for such other hours as the applicant is able to demonstrate present no more  
hazard than delivery during the hours of 3:00 a.m. through 6:00 a.m.

1 (3) Revocation or Suspension of Permits.

2 (a) Each of the following is a ground for revocation of a special permit:

- 3 1. Failure of a transport vehicle to park entirely on the site while unloading;
- 4 2. Obstructing of sidewalks while unloading;
- 5 3. Backing the vehicle onto or off of the site;
- 6 4. Obstruction of traffic while entering or leaving;
- 7 5. Failure of a transport driver to follow the prescribed route to or from the permit location; or
- 8 6. Failure to maintain a copy of the special permit on the premises.
- 9 7. Failure of a transport driver to be present while off loading.

10 (b) Each of the following is a ground for suspension of a regular permit for up to  
11 fourteen days:

- 12 1. Failure of a transport vehicle to park entirely on the site while unloading;
- 13 2. Obstructing of sidewalks while unloading;
- 14 3. Backing the vehicle onto or off of the site;
- 15 4. Obstruction of traffic while entering or leaving; or
- 16 5. Failure of a transport driver to follow the prescribed route to or from the permit location.
- 17 6. Failure of a transport driver to be present while off loading.

18 (c) When matters are brought to the attention of the city manager, which if  
19 substantiated would be grounds for revocation of a special permit or suspension of a  
20 regular permit, the manager shall issue a written notice thereof to the permittee  
21 containing a concise written statement of the violation constituting grounds for  
22 revocation or suspension and indicating that the revocation or suspension shall take  
effect fourteen days after the issuance of said notice unless the permittee appeals in  
accordance with the terms of Section 1083.1.4.

23 (d) All special permit revocations shall be for a period of six months, after which  
24 time the permittee may reapply for a special permit. During the period of revocation,  
the outlet may continue to operate with and according to the terms of a regular permit.

25 (4) If, due to changed conditions, including without limitation changes in the transport routes, the manager has probable cause to believe that an existing regular or special permit

1 no longer meets the criteria for issuance, the manager may require a new simulated  
2 demonstration. For purposes of notice and appeal, such proceedings shall be deemed a new  
application, but no additional fee shall be charged.

3 ~~(41)~~(48) A new Section ~~345701.6~~, “Prohibited acts,” is adopted to read:

4 (a) No owner and no person in control of any outlet or location shall accept deliveries of  
5 flammable or combustible liquids, unless such person has applied for and has been issued a  
permit therefor by the city manager.

6 (b) No owner and no person in control of any outlet or location for which a permit to  
7 accept deliveries of flammable or combustible liquids has been issued shall accept  
8 deliveries of such liquids unless delivery is in compliance with all the provisions of this  
code and any conditions on the permit.

9 (c) No person shall spill more than thirty-two fluid ounces of flammable or combustible  
liquid upon the ground.

10 (d) No person shall fail to notify the fire department of any spill of flammable or  
11 combustible liquid of more than thirty-two fluid ounces at the earliest practicable moment  
after said spill has occurred.

12 (e) Except to replace existing tanks, no person shall install any tanks used for the storage  
13 of any type of flammable or combustible liquid, or other hazardous material or waste in the  
floodplain as defined in Section 9-9-2, “Definitions,” B.R.C. 1981. This prohibition is not  
14 retroactive, but no person shall use or maintain any tank installed in violation of this  
prohibition.

15 (f) No person shall weld or cut by torch on the premises of a service station or allow or  
16 cause crankcase drainings to be spilled or poured onto the ground. No person shall dispose  
of hazardous materials by dumping or pouring on the ground or into a storm drain or  
17 sanitary sewer or any connection thereto.

18 ~~(42)~~(49) Section ~~345704.2~~, “Tank Storage,” is amended by the addition of the following.

19 (a) Except for fuel carried on tank trucks, above-ground storage of all Class I, II, and III  
20 flammable and combustible liquids in aggregate amounts of more than 500 gallons of such  
liquids on a single lot is allowed only in those areas of the city zoned “industrial.” All  
21 installations shall comply in all respects with Chapter ~~5734~~. Any tank intended for the bulk  
storage of any Class I, II or III flammable or combustible liquid may be stored above  
22 ground only in those areas of the City zoned industrial.

23 ~~All service stations, as defined in Chapter 22, regardless of zoning, shall install all~~  
~~bulk fuel storage tanks, oil storage tanks, and waste oil storage tanks underground and meet~~  
24 ~~all requirements of Chapter 22 and Chapter 34. All bulk fuel storage tanks, oil storage~~  
~~tanks, and waste oil storage tanks in a residential zone shall be installed underground and~~  
25 ~~meet all requirements of Chapter 34.~~ Liquefied natural gas (LNG) or liquefied petroleum  
gas (LP-Gas) may be stored above ground in areas of the city zoned “industrial” and

1 dispensed at such sites by a service station, if the city manager finds that such installation  
2 meets all the requirements of applicable fire codes before any dispensing of such fuel and  
3 proper and necessary on-site fire control devices are provided. ~~The fee for review and  
inspection of such a specialized installation shall be as provided in Section 4-20-52, "Fire  
Code Permit and Inspection Fees," B.R.C. 1981.~~

4 (c) All underground tanks used for dispensing or bulk storage of any flammable or  
5 combustible liquid shall comply with the requirements of Chapter ~~5734~~, "Flammable and  
6 Combustible Liquids," any other pertinent city codes, including without limitation those  
7 concerning fire and flood, the Colorado State Oil Division, and the manufacturer's  
8 specifications for installation. Plans for installation shall be approved by the Colorado State  
9 Oil Division and the city flood control office, before the city may issue permits for  
10 construction, installation, and use of the tanks. No person shall install a used tank.

11 (d) No person shall install a tank or tanks for the dispensing or bulk storage of any  
12 flammable or combustible liquid, including temporary installations on construction sites,  
13 until such person has first submitted plans for the installation to the city manager and has  
14 received approval of such plans and of the installation.

15 ~~(43)~~(50) A new Section ~~345706.2.8.2~~, "Safety devices required for outlets or locations accepting  
16 deliveries of flammable or combustible liquids, is adopted to read:

17 No owner and no person in control of any outlet or location shall accept deliveries of  
18 flammable and combustible liquids, and no person shall make deliveries of such liquids  
19 to any outlet or location, unless the following conditions are met during such delivery:

20 (a) The hose connection employed in making a delivery of flammable or combustible  
21 liquids contains the safety device known as a "glass elbow" to allow inspection of the  
22 contents of the delivery hose; and

23 (b) Any hose used in making deliveries of flammable or combustible liquids contains  
24 the apparatus commonly known as a tight-fill connection device to secure the off-  
25 loading device of the delivery vehicle to the intake structure of the storage tank.

(c) Exceptions to (1) and (2) above may be granted by the city manager for industrial  
installations if conditions warrant.

~~(44)~~(51) A new Section ~~345706.2.8.3~~, "Full compartment dumps required," is adopted to read:

Any person delivering flammable and combustible liquids in a vehicle that contains  
compartments larger than six hundred gallons shall empty each such compartment at a  
single stop, if any delivery of liquids is made at any outlet or location from any such  
compartment.

(52) In Chapter 80, "Referenced Standards," the NFPA standard reference numbers for 13, 13D,  
13R, and 72 are repealed and reenacted to read:

13-13



1 (c) Section 102.4.1, “Conflicts,” is amended to read:

2 102.4.1 Conflicts. Where conflicts exist between provisions of this code and the  
3 referenced standards or the building, residential, or fire code, the most restrictive  
4 provisions shall govern.

4 (d) Section 103.1, “Creation of an enforcement agency,” is repealed and reenacted to read:

5 103.1 Division of Building Safety. “Division of Building Safety” means the  
6 administrative unit established by the city manager or the manager’s delegates, and the  
7 personnel assigned to the unit by the manger. The Division of Building Safety  
8 administers the City of Boulder Wildland Code assisted by a Division of Fire Safety,  
9 established within the fire department, under the direction of the city manager.

8 (e) Section 104.3, “Liability of the code official,” is repealed and reenacted to read:

9 104.3. Liability. The Wildland Code shall not be construed to hold the City of Boulder  
10 or any of its employees or agents responsible for any damage to persons or property by  
11 reason of inspection or reinspection or failure to inspect or reinspect as herein provided or  
12 by reason of the approval or disapproval of any equipment as herein provided.

12 No employee of the city who enforces, attempts to enforce, or is authorized to enforce the  
13 Wildland Code renders him or herself or the city liable to third parties for any damage or  
14 injury to the person or property of such third parties as a result of the enforcement or non-  
15 enforcement of the fire code. The city assumes no duty of care by virtue of the adoption  
16 of the Wildland Code. No person is justified in relying upon the approval of a plan, the  
17 results of an inspection, or the issuance of a certificate of inspection or occupancy, and  
18 such approvals, inspections, and certificates are not a guarantee that the plan or work so  
19 approved, inspected, or certificated in fact complies with all requirements of the Wildland  
20 Code. It is the duty of the person owning, controlling, or constructing any building or  
21 structure to ensure that the work is done in accordance with the requirements of the fire  
22 code, and it is such persons and not the city who are responsible for damages caused by  
23 negligent breach of such duty.

19 (f) Section 106, “Appeals,” is repealed and reenacted to read:

20 SECTION 106 APPEALS

21 106.1 Appeals.

22 (a) Any appeal under this section shall be heard by the Board of Building  
23 Appeals established under section 2-3-4, “Board of Building Appeals,” B.R.C.  
24 1981, unless the city manager determines, due to the nature of the issues in a  
25 particular appeal, to appoint a hearing office under section 1-3-5, “Hearings and  
Determinations,” B.R.C. 1981.

(b) Any person directly affected by a decision of the code official or an order  
issued under this code may appeal the decision or order on the ground that:

1 1. The decision or order was based on an error of fact or an erroneous  
2 interpretation of this code or the rules legally adopted thereunder; or

3 2. The code official erroneously failed to approve an alternative material  
4 or method pursuant to Section 105.3 prior to its installation or use. In  
5 determining such an appeal the board shall apply the standards of Section  
6 105.3, but the board shall have no jurisdiction to consider if a material or  
7 method expressly prohibited by this code is an acceptable alternative; or

8 3. The code official has erroneously failed to grant a modification  
9 pursuant to Section 105.1. In determining such an appeal the board or  
10 hearing officer shall apply the standards of Section 105.1.

11 The code official has the burden of proof under paragraph 1. The  
12 appellant has the burden of proof on appeals brought pursuant to  
13 paragraphs 2- and 3. The board or hearing officer shall determine the  
14 appeal and decide whether the code official's interpretation or application  
15 of such code was correct or in error at a hearing under the procedures  
16 described in Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

17 (c) An application for appeal must be filed in writing with the city manager within  
18 fourteen days after the date the decision or order was served.

19 (d) An applicant for an appeal shall pay the fee prescribed by Section 4-20-47,  
20 "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981. The fee  
21 for an appeal heard by a hearing officer shall be the same as the fee for an appeal  
22 heard by the Board of Building Appeals.

23 (e) The city manager may apply to the Board of Building Appeals, without fee,  
24 for an advisory opinion concerning alternative methods, applicability of specific  
25 requirements, approval of equipment and materials, and granting of special  
26 permission as contemplated in Sections 105.1, "Practical difficulties," or Section  
27 105.3, "Alternative materials or methods," of the Wildland Code.

28 (f) The board or hearing officer has no authority to interpret Chapter 1 (the  
29 administrative requirements) of this code except as expressly provided in this  
30 section, nor, because this code sets minimum standards, to waive any requirement  
31 of this code.

32 (g) Section 107, "Permits," is repealed and reenacted to read:

33 107 Permits. The provisions of Section 105, "Permits," of the City of Boulder Building  
34 Code, Section 105, "Permits," of the City of Boulder Fire Code, and Section 105,  
35 "Permits," of the City of Boulder Residential Code, apply, as otherwise applicable to the  
36 work requiring the permit.

1 (h) Section 108.1, “General,” is repealed and reenacted to read:

2 108.1 General. The requirements of Section 106.1, “Submittal Documents,” of the City of  
3 Boulder Building Code apply.

4 (i) Section 109.4.6, “Prosecution of violation,” is repealed and reenacted to read:

5 **109.4.6 Violations**

6 **(a) General Provisions**

7 (1) No person shall erect, construct, enlarge, alter, extend, repair, move, remove,  
8 improve, convert, demolish, equip, use, occupy, or maintain any building or  
9 structure in the City or cause or permit the same to be done except in conformity  
10 with all of the provisions of this code and in conformity with the terms and  
11 conditions of approval issued under this code, or of any directive of the code  
12 official. No person shall violate the provisions of this code, fail to comply with  
13 any requirements thereof, or fail to comply with any order issued by the code  
14 official under this code.

15 (2) In accordance with the provisions of section 5-2-11, “Prosecution of Multiple  
16 Counts for Same Act,” B.R.C. 1981, each day during which illegal construction,  
17 alteration, maintenance, occupancy, use, or violation continues, constitutes a  
18 separate offense remediable through the enforcement provisions of this code.

19 (3) The owner, tenant, and occupant of a structure or land and the agents of each  
20 of them are jointly and severally liable for any violation of this code with respect  
21 to such structure or land.

22 (4) The remedies for any violation of any provision of this code or of any permit,  
23 certificate, or other approval issued under this code or other City of Boulder code  
24 or of any directive of the code official may be pursued singly or in combination.

25 (5) If any person fails or refuses to pay when due any charge imposed under this  
section, the code official may, in addition to taking other collection remedies,  
certify due and unpaid charges to the Boulder County Treasurer for collection as  
provided by section 2-2-12, “City Manager May Certify Taxes, Charges, and  
Assessments to County Treasurer for Collection,” B.R.C. 1981.

(6) The code official may charge the cost of any action taken to correct or abate  
a violation, as authorized by this code, plus up to fifteen percent of such cost for  
administration to the property owner. If any property owner fails or refuses to  
pay when due any charge imposed under this section, the code official may, in  
addition to taking other collection remedies, certify due any unpaid charges,  
including interest, to the Boulder County Treasurer, to be levied against the  
person’s property for collection by the county in the same manner as delinquent  
general taxes upon such property are collected, under the procedures described by

1 section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to  
2 County Treasurer for Collection," B.R.C. 1981.

3 (b) Administrative Procedures and Remedies

4 (1) If the code official finds that a violation of any provision of this code or any  
5 approval granted under this code exists, the manager, after notice and an  
6 opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-  
7 Judicial Hearings," B.R.C. 1981, may take any one or more of the following  
8 actions to remedy the violation:

9 (A) Impose a civil penalty according to the following schedule:

10 (i) For the first violation of the provision or approval, \$100;

11 (ii) For the second violation of the same provision or approval,  
12 \$300; and

13 (iii) For the third violation of the same provision or approval,  
14 \$1,000;

15 (B) For a violation concerning the use of a residential building under a  
16 rental license, revoke such license;

17 (C) Require the filing of a declaration of use as provided in subsection (e);  
18 or

19 (D) Issue an order reasonably calculated to ensure compliance with the  
20 provisions of this code or any approval granted under this code.

21 (2) Prior to the hearing, the code official may issue an order that no person shall  
22 perform any work on any structure or land, except to correct any violation found  
23 by the code official to exist with respect to such structure or land.

24 (3) If notice is given to the code official at least forty-eight hours before the time  
25 and date set forth in the notice of hearing on any violation that the violation has  
been corrected, the code official will reinspect the structure or land. If the code  
official finds that the violation has been corrected, the manager may cancel the  
hearing.

(4) No person shall fail to comply with any action taken by the code official under  
this section.

(c) Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-  
4, "General Penalties," B.R.C. 1981.

(d) Other Remedies. The city attorney may maintain an action for damages, declaratory  
relief, specific performance, injunction, or any other appropriate relief in the District  
Court in and for the County of Boulder for any violation of any provision of this code or  
any approval granted under this code.

(e) Declaration of Use. If the code official determines that a person is using a structure in  
a way that might mislead a reasonable person to believe that such use is a use by right or

1 otherwise authorized by this title, the code official may require such person to sign under  
2 oath a declaration of use that defines the limited nature of the use and to record such  
3 declaration in the office of the Boulder County Clerk and Recorder against the title to the  
4 land. In addition to all other remedies and actions that the code official is authorized to  
5 use under the Boulder Revised Code or other applicable federal, state or local laws to  
6 enforce the provisions of this code, the code official is authorized to withhold any  
7 approval affecting such structure or land, including, without limitation, a building permit,  
8 use review, site review, subdivision, floodplain development permit, or wetland permit  
9 until such time as the person submits a declaration of use that is in a form acceptable to  
10 the code official.

11 (j) Section 109.4.7, “Violation penalties,” is repealed.

12 (k) The definition of “Code Official” in Section 202, “Definitions,” is repealed and reenacted to  
13 read:

14 CODE OFFICIAL. Code official means the city manager or the city manager’s delegate.

15 (l) Section 403.2, “Driveways,” is repealed and reenacted to read:

16 403.2 Driveways. Driveways shall be provided when any portion of an exterior wall of  
17 the first story of a building is located more than 100 feet (30 480 mm) from a fire  
18 apparatus access road.

19 (m) Section 403.2.1, “Dimensions,” is repealed and reenacted to read:

20 403.2.1 Dimensions. Driveways shall be provided as defined in Section 503.2.1,  
21 “Dimensions,” of the City of Boulder Fire Code, as locally amended in Section 10-8-1(15),  
22 B.R.C. 1981, for an “accessible private drive” and with a minimum unobstructed height of  
23 15 feet (4572 mm).

24 (n) Section 403.2.4, “Turnarounds,” is repealed and reenacted to read:

25 403.2.4 Turnarounds. Driveway turnarounds shall have a turning radius to accommodate an  
26 SU-30 vehicle. Driveways that connect with a road or roads at more than one point shall be  
27 considered as having a turnaround if all changes in direction meet the radii requirements for  
28 driveway turnaround.

29 (o) Section 403.3, “Fire apparatus access road,” is repealed and reenacted to read:

30 403.3 Fire apparatus access road. When required, fire apparatus access roads shall meet the  
31 requirements of the City of Boulder Design and Construction Standard.

32 (p) Section 404.2, “Water sources,” is repealed and reenacted to read:

33 404.2 Water sources. Water sources shall be designed and installed in accordance with the  
34 City of Boulder Design and Construction Standard.

35 (q) Section 505.2, “Roof covering,” is repealed and reenacted to read:

1 505.2 Roof covering. Roofs shall be installed in accordance with the requirements of the  
2 City of Boulder Building Code and the City of Boulder Residential Building Code., as  
3 applicable.

3 (r) Section 506.2, “Roof covering,” is repealed and reenacted to read:

4 506.2 Roof covering. Roofs shall be installed in accordance with the requirements of the  
5 City of Boulder Building Code and the City of Boulder Residential Building Code., as  
6 applicable.

6 (s) Section 507, “Replacement or repair of roof coverings,” is repealed and reenacted to read:

7 507 Replacement or repair of roof coverings. Replacement or repair of any wood roof shall  
8 meet the requirements of section 10-5-5, Wood Roof Covering Materials Prohibited, B.R.C.  
9 1981.

9 (t) Section 601.1 “Scope” is repealed and reenacted to read:

10 601.1 Scope. The provisions of this chapter establish general requirements for new  
11 buildings, structures, and premises located within wildland-urban interface areas. Only the  
12 requirements of Sections 607.1, “General,” and 607.2, “Storage for off-site use,” shall apply  
13 to new and existing buildings, structures and premises located within wildland-urban  
14 interface areas.

13 (u) The first sentence of Appendix C, “Fire Hazard Severity Form,” is repealed and reenacted to  
14 read:

15 This appendix may be used in place of Table 502.1 to determine the fire hazard severity.

17 **Section 9. Chapter 10-9, B.R.C. 1981, is amended to read:**

18 **Chapter 10-9 Mechanical Code**

19 **10-9-1 Legislative Intent.**

20 The purpose of this chapter is to protect the public health and safety by regulating the  
21 installation, alteration, and repair of heating, ventilating, cooling, and refrigeration devices in  
22 structures in the city. The city council hereby adopts the ~~2006~~2012 edition of the *International*  
23 *Mechanical Code* with certain amendments and deletions thereto found to be in the best interests  
24 of the residents of the city.

24 **10-9-2 Adoption of the International Mechanical Code with Modifications.**

25 (a) The ~~2006~~2012 edition of the *International Mechanical Code*, including Appendices A thereto  
of the International Code Council, is hereby adopted by reference as the Mechanical Code of the

1 City of Boulder or mechanical code and has the same force and effect as though fully set forth in  
2 this chapter, except as specifically amended by the provisions of this chapter.

3 (b) Except as specified below, Chapter 1 is repealed. This code shall be administered in  
4 accordance with Chapter 1, "Administration," of the International Building Code as adopted,  
5 with amendments, by Section 10-5-2, "Adoption of International Building Code with  
6 Modifications," B.R.C. 1981.

7 (1) Section 101.2, "Scope," is adopted as an administrative provision.

8 (2) Section 101.2.1, "Appendices," is adopted as an administrative provision. Appendix  
9 A is adopted as a part of this code.

10 (3) Section 101.3, "Intent," is adopted as an administrative provision.

11 (c) Section 301.107 "Electrical" is repealed and reenacted to read:

12 301.107 Electrical. Electrical wiring, controls and connections to equipment and appliances  
13 regulated by this code shall be in accordance with Chapter 10-6, "Electrical Code," B.R.C.  
14 1981.

15 (d) Section 306.5 "Equipment and appliances on roofs or elevated structures" is repealed and  
16 reenacted to read:

17 ~~306.5 Equipment and appliances on roofs or elevated structures. Where equipment and  
18 appliances requiring access are installed on roofs or elevated structures at a height exceeding 16  
19 feet (4877mm), such access shall be provided by a permanent approved means of access. The  
20 means of access shall start at no more than 8 feet (2438 mm) above finished grade or floor level  
21 and continue unobstructed to the equipment and appliances level service space.~~

22 (e)(d) A new Section 306.6, Rooftop equipment support and clearances, is added:

23 306.6 Rooftop equipment support and clearances.

24 (1) Mechanical equipment placed, replaced, or resting over roofing shall be supported by  
25 curbs or legs which shall be flashed to the roofing and made watertight. Mechanical  
equipment shall include, but not be limited to, heating equipment, cooling and  
refrigeration equipment, ventilating fans, blowers, and other similar devices located on  
the roof.

(2) Flat roofs. On roofs having a pitch of less than 2 in 12, mechanical equipment shall be  
supported on a solid curb greater in size than the equipment which it serves. Curbs can be  
manufactured or built-in-place. If built-in-place, the curb shall be covered with metal of  
at least 26 gauge. All seams and miter corners of the metal shall be riveted and soldered  
so as to be weathertight. The curb shall be a minimum of 9 inches above the finished  
roof.

1 (A) Ducts less than four feet in width shall have at least twelve inches clearance  
2 from the finished roof surface to the bottom of the duct.

3 (B) Ducts between four feet and eight feet in width shall have at least twenty-four  
4 inches clearance from the finished roof surface to the bottom of the duct.

5 (C) Ducts over eight feet in width shall have at least thirty-six inches clearance  
6 from the finished roof surface to the bottom of the duct.

7 (3) Pitched Roofs. On roofs having a slope over a 2 and 12, mechanical equipment may  
8 be set on legs which provide a minimum of 11 inches clearance between the finished roof  
9 surface and the equipment frame.

10 ~~(f)~~(e) Section 603.6.1.1 “Duct length” is repealed and reenacted to read:

11 603.6.1.1 Duct length. Approved Class 0 and Class 1 flexible air duct shall not exceed  
12 ~~seven~~fourteen feet in length.

13 ~~(g)~~ Section 603.6.2.1 “Connector length” is modified to read limited in length to 7 feet (2134  
14 ~~mm~~).

15 ~~(h)~~(f) Section 606.3, “Installation” is amended by the addition of a new sentence to read:

16 Smoke detectors must be capable of being tested from a remote and readily accessible  
17 location.

### 18 **10-9-3 Mechanical Permit Fees.**

19 Mechanical permit fees are those prescribed by Subsection 4-20-13(c), B.R.C. 1981.

20 **Section 10. Chapter 10-9.5, B.R.C. 1981, is amended to read:**

## 21 **Chapter 10-9.5 Fuel Gas Code**

### 22 **10-9.5-1 Legislative Intent.**

23 The purpose of this chapter is to protect the public health and safety by regulating fuel gas  
24 systems and gas-fired appliances in the city. The city council hereby adopts the ~~2006~~2012 edition  
25 of the International Fuel Gas Code as a new chapter 10-9.5 with certain amendments thereto  
found to be in the best interest of the city.

### 26 **10-9.5-2 Adoption of the International Fuel Gas Code With Modifications.**

(a) The ~~2006~~2012 edition of the International Fuel Gas Code of the International Code Council is  
hereby adopted by reference as the City of Boulder Fuel Gas Code or fuel gas code and has the

1 same force and effect as though fully set forth in this chapter, except as specifically amended by  
2 the provisions of this chapter.

3 (b) Except as specified below, Chapter 1 is repealed. This code shall be administered in  
4 accordance with Chapter 1, "Administration," of the International Building Code as adopted,  
5 with amendments, by Section 10-5-2, "Adoption of International Building Code with  
6 Modifications," B.R.C. 1981.

7 (c) SECTION 101, "GENERAL," is adopted as an administrative provision with the following  
8 amendments:

9 (1) 101.1, "Title," is amended to read:

10 101.1 Title. These regulations shall be known as the Fuel Gas Code of the City of  
11 Boulder or fuel gas code.

12 (2) SECTION 107, "INSPECTIONS AND TESTING," is adopted as an administrative  
13 provision.

14 (3) Exceptions 2, 3 and 4 in Section 303.3, "Prohibited locations," are repealed.

15 (4) Section 404.4 Piping through foundation wall is repealed and reenacted to read:

16 404.4 Piping through foundation wall. Gas piping shall enter the building above grade  
17 through the foundation wall, building or structure.

18 ~~(5) Section 404.9 "Minimum burial depth" is repealed and reenacted to read:~~

19 ~~404.9 Minimum burial depth. Underground piping systems shall be installed at a  
20 minimum depth of 12 inches below grade for metallic piping and a minimum depth  
21 of 18 inches for non-metallic piping or where such depths cannot be obtained, other  
22 equivalent protection must be provided.~~

23 ~~(56) Section 404.9.1 is repealed.~~

24 ~~(67) Section 406.4.1 "Test pressure" is repealed and reenacted to read:~~

25 The test pressure to be used shall be no less than 1-1/2 times the proposed  
maximum working pressure, but not less than 10 psig.

~~(8) Section 406.4.2 "Test duration" is repealed and reenacted to read:~~

~~Test duration shall not be less than 15 minutes.~~

~~(89) Section 602.1 "General" is amended by adding a new sentence to read:~~

Within a vented fireplace the damper must be removed or welded open and glass  
doors installed over the fireplace opening.

~~(10) Section 604 "VENTED GAS FIREPLACES" is amended by adding a new section to  
read:~~

1 ~~604.3 Combustion air. Vented gas fireplaces shall be provided with outside combustion air~~  
2 ~~and glass doors.~~

3 (11) ~~Section 605 "VENTED GAS FIREPLACE HEATERS" is amended by adding a new~~  
4 ~~section to read:~~

5 ~~605.2 Vented gas fireplace heaters shall be provided with outside combustion air.~~

6 (12) ~~Section 621.4 "Prohibited locations" is amended by adding a new sentence to read:~~

7 ~~These appliances shall not be used in bedrooms or rooms readily used for sleeping~~  
8 ~~purposes.~~

9 **Section 11. Chapter 10-10, B.R.C. 1981, is amended to read:**

10 **Chapter 10-10 Plumbing Code**

11 **10-10-1 Legislative Intent.**

12 The purpose of this chapter is to protect the public health and safety by regulating the  
13 installation, alteration, and repair of plumbing devices in structures in the city. The city council  
14 hereby adopts the ~~2006~~2012 edition of the *International Plumbing Code* with certain  
15 amendments and deletions thereto found to be in the best interests of the residents of the city.

16 **10-10-2 Adoption of the International Plumbing Code with Modifications.**

17 (a) The ~~2006~~2012 edition of the *International Plumbing Code*, published by the International  
18 Code Council, including ~~appendices C Gray Water Recycling Systems, and Appendix E, "Sizing~~  
19 ~~of Water Piping System,"~~ is hereby adopted by reference as the City of Boulder Plumbing Code  
20 or plumbing code, and has the same force and effect as though fully set forth in this chapter,  
21 except as specifically amended by the provisions of this chapter.

22 (b) Except for Sections 101, 102, and 107, Chapter 1 is repealed. This code shall be administered  
23 in accordance with Chapter 1, "Administration," of the International Building Code as adopted,  
24 with amendments, by Section 10-5-2, "Adoption of International Building Code with  
25 Modifications," B.R.C. 1981.

(c) Section 101.1 is repealed and reenacted to read:

101.1 Title. These regulations shall be known as the Plumbing Code for the City of Boulder or  
plumbing code and will be referenced herein as "this code."

(d) The Exception to Section 301.3, "Connections to drainage system," is deleted in its entirety.

1 ~~(e)~~Section 312.5, “Water supply system test,” is amended by deleting the words “for piping  
2 systems other than plastic” and by modifying the test pressure required from 50 psi (344 kPa) to  
3 100 psi (688 kPa).

3 ~~(e)(f)~~ Section 504.7.1 “Piping for safety pan drains shall be of those materials listed in Table  
4 605.4.” is repealed.

4 ~~(f)(g)~~ Section 610, “Disinfection of potable water system,” is repealed.

5 ~~(g)(h)~~ Section 605.34 is amended by adding a new paragraph to read:

6 Water service line pipe between the water meter and building shall be Type K copper if it is in  
7 the public right-of-way, a public utility easement, or on other public property.

8 ~~(h)(i)~~ Section 712.4.2, “Capacity,” is amended by the addition of a new sentence to read:

9 Sewage pumps and sewage ejectors serving public fixtures shall be provided with dual pumps  
10 and ejectors arranged to operate independently in case of overload or failure.

11 (j) Section 903.1, “Roof extension,” is repealed and reenacted to read:

12 Open vent pipes that extend through a roof shall be terminated not less than 6 inches  
13 above the roof, except that where a roof is to be used for any purpose other than weather  
14 protection, the vent extensions shall terminate not less than 7 feet above the roof.

14 (k)Section 1003.1, “Where required,” is amendment by adding the following:

15 Grease, oil, and sand interceptors shall hold a minimum capacity of 750 gallons  
16 and shall be remotely located.

16 (l) Section 1003.3, “Grease interceptors,” is amended by adding the following:

17 Grease interceptors shall not receive the drainage and retain grease from more than four  
18 fixtures. A grease interceptor shall not be connected to heated water fixtures, including,  
19 without limitation, dishwashers, and shall not be connected before waste disposal units,  
20 including without limitation, garbage disposals and grinders.

20 (m) Section 1003.4, “Oil separators required,” is repealed.

21 ~~(n)~~ Section 1101.3, “Prohibited drainage,” is repealed and reenacted to read:

22 No rain, surface, or subsurface water shall be connected to or discharged into any drainage  
23 system, unless first approved by the ~~Administrative Authority~~code official.

23 ~~(o)~~ Section 1106.1, “General,” is repealed and reenacted to read:

24 1106.1 General. The size of the vertical conductors and leaders, building storm drains, building  
25 storm sewers, and any horizontal branches of such drains or sewers shall be based on the 100-  
year hourly rainfall rate of 2.5 inches per hour or other approved local weather data.

1 ~~(k)(p)~~ Chapter 13, “Gray Water Recycling Systems,” is deleted in its entirety.

2 Appendix C, Section C101, last sentence of exception is repealed and reenacted to read:

3 Such systems that may impact public health in commercial and multiple residence projects shall  
4 be designed as required by the Boulder County Health Department.

5 ~~(h)(q)~~ Table E103.3(2), “Load Values Assigned to Fixtures,” is amended by the addition of a new  
6 sentence to read:

7 For the purpose of determining the largest instantaneous demand required in order to size a water  
8 meter, or for determining the amount of the plant investment fee, this table is repealed and  
9 replaced by the Fixture Unit/GPM Demand Chart and PIF Computation Sheet found at Appendix  
10 A to Chapter 11-1, “Water Utility,” B.R.C. 1981.

11 ~~(m)(r)~~ Table E103.3(3), “Table for Estimating Demand,” is amended by the addition of a new  
12 sentence to read:

13 For the purpose of determining the largest instantaneous demand required in order to size a water  
14 meter, or for determining the amount of the plant investment fee, this table is repealed and  
15 replaced by the Fixture Unit/GPM Demand Equations and PIF Computation Sheets found at  
16 Appendix A to Chapter 11-1, “Water Utility,” B.R.C. 1981.

17 **Section 12. Section 4-20-47, “Zoning Adjustment Filing Fees,” B.R.C. 1981, is**  
18 **amended to read:**

19 **4-20-47. Zoning Adjustment and Building Appeals Filing Fees.**

20 (a) The fee for filing an appeal to or requesting a variance from the board of zoning adjustment  
21 under subsection 9-9-21(s) or section 10-3-9, "Temporary License Appeals," 10-2-2, “Adoption  
22 of the International Property Maintenance Code with Modifications,” 10-5-2, "Adoption of  
23 International Building Code With Modifications," 10-6-2, "Adoption of the National Electrical  
24 Code With Modifications," 10-8.5-2, “Adoption of the International Wildland-Urban Interface  
25 Code with Modifications,” 10-9-2, "Adoption of the International Mechanical Code With  
26 Modifications," 10-9.5-2, “Adoption of the International Fuel Gas Code with Modifications,” 10-  
27 10-2, "Adoption of the International Plumbing Code With Modifications," or 10-12-24, "Appeals  
28 and Variances," B.R.C. 1981, is \$106.00, except that the fee for an emergency appeal is \$210.00.

29 (b) The fee for requesting a variance from the board of zoning adjustment under subsection 9-9-  
30 21(s), B.R.C. 1981, is \$550.00.

31 (c) The fee for requesting a setback variance or for a variance for parking spaces in front yard  
32 setbacks from the board of zoning adjustment under section 9-2-3, "Variances and  
33 Interpretations," B.R.C. 1981, is \$550.00.

1 (d) The fee for filing an appeal to the board of zoning adjustment under section 10-12-24,  
2 "Appeals and Variances," B.R.C. 1981, is \$550.00.

3 Section 13. Section 2-3-4, Board of Building Appeals, B.R.C. 1981, is amended to read:

4 **2-3-4. Board of Building Appeals.**

5 (a) The City of Boulder Board of Building Appeals consists of the five members of the Board of  
6 Zoning Adjustment, who shall sit as the Board of Building Appeals.

7 (b) The chief city building official and the city fire chief shall be advisory members of the board  
8 without vote. The city manager shall be secretary of the board.

9 (c) In addition to any other duties the council may prescribe, the responsibility of the board is to  
10 hear appeals by any person as provided in section 9-9-21, "Signs," chapters 10-2, "Property  
11 Maintenance Code," 10-5, "Building Code," 10-6, "Electrical Code," 10-7, "Energy Conservation  
12 and Insulation Code," 10-8, "Fire Prevention Code," 10-8.5, "Wildland Code," 10-9,  
13 "Mechanical Code," 10-10, "Plumbing Code," and 10-12, "Mobile Homes," B.R.C. 1981.

14 Section 14. The City Council orders and directs the city manager to make any additional  
15 citation and reference changes not included in this ordinance that are necessary to properly  
16 implement the adoption of 2012 editions of the International Codes and the adoption of the 2011  
17 edition of the National Electrical Code and all related local amendments.

18 Section 15. This ordinance shall become effective thirty days after its final passage by  
19 City Council. It shall be applied to building permit applications submitted after the effective  
20 date. Building permits applied for before the effective date shall be considered under the  
21 program in effect at the time of application.

22 Section 16. This ordinance is necessary to protect the public health, safety, and welfare  
23 of the residents of the city, and covers matters of local concern.  
24  
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| 309 | <p>Change to Subsection 3 of the local amendment to Section 401.1.1 to read as follows with the newly proposed amendments shown in bold strikethrough and bold underline:</p> <p>3. The construction documents for remodeling an existing commercial envelope, mechanical and lighting systems shall demonstrate compliance with this section in one of the following ways described below. The construction documents shall include compliance documentation that demonstrates that:</p> <p style="padding-left: 40px;">A. The altered building area or systems will meet the requirements of section <del>506C407</del>, "Total Building Performance" <del>2006-2012</del> IECC and the resulting compliance package shows an altered building area or system that is 30 percent more energy efficient than the <del>2006-2012</del> IECC;</p> <p style="padding-left: 40px;">B. The remodel area will meet <del>a an approved</del> set of prescriptive requirements <b><u>approved by the city manager</u></b> that are at least 30 percent more efficient than the <del>2006-2012</del> IECC. <b><u>An applicant may use the ASHRAE Advanced Energy Design Guides for such prescriptive requirements, or equivalent method that is;</u></b> or</p> <p style="padding-left: 40px;">C. The remodel area meets the <del>2006-2012</del> IECC requirements and is submitted with an energy efficiency implementation plan prepared by a licensed architect or registered professional engineer which shows how the process will contribute to future energy efficiency improvements to bring the building up to 30 percent above the <del>2006-2012</del> IECC.</p> <p><b><u>Exception: If the work is limited to mechanical equipment replacement, the replacement equipment shall meet the requirements of Sections C403 and C404.</u></b></p> |
| 309 | <p>Change subsection (o) of Section 10-7-2, "Energy Conservation Code," B.R.C. 1981, to add the following local amendment to Section C407.3:</p> <p style="padding-left: 40px;"><b><u>(o) The first sentence of Section C407.3 is repealed and reenacted to read as follows:</u></b></p> <p style="padding-left: 40px;"><b><u>Compliance based on total building performance requires that a proposed building (proposed design) be shown to have an annual energy cost that is at least 85 percent less than the annual energy cost of the standard reference design.</u></b></p> <p>The addition of this local amendment to Section C407.3 will also change the local amendments proposed in subsections (o) through (x) of Section 10-7-2, "Energy Conservation Code," B.R.C. 1981, to subsections (p) through (y):</p> <p style="padding-left: 40px;"><b><u>(p) Section R101.4.3 Additions, alterations, renovations and repairs. A new sub-section is added previous to the exceptions to read as follows:</u></b></p> <p style="padding-left: 80px;"><b><u>R101.4.3.1 All permit applications involving demolition, new construction and remodels and/or additions of residential buildings greater than 500 square feet shall meet the requirements of this code and Chapter 10-7-5 "Green Building and Green Points Program", B.R.C. 1981 as applicable.</u></b></p> <p style="padding-left: 40px;"><b><u>(q) Exception 3 of section R101.4.3 is repealed and reenacted as follows:</u></b></p> <p style="padding-left: 80px;"><b><u>3.1. For an interior remodel of a residential structure, where the work authorized by a building permit under Chapter 10-5, "Building Code," B.R.C. 1981, does not alter more</u></b></p>  |

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than 500 square feet of the existing conditioned space, existing ceiling, wall, or floor cavities exposed during construction are exempt from meeting the provisions for new construction provided that exposed wall framing cavities are insulated to their fullest depth, but no less than R-13, and attics and exposed or accessible floor/ceiling assemblies separating conditioned spaces from unconditioned spaces are insulated to their fullest depth, but no less than R-38 wherever possible. All replacement fenestration shall meet the prescriptive requirements of Table R402.1.1 or R402.1.3. Portions of basements and crawlspaces separating conditioned spaces from unconditioned spaces shall meet the prescriptive requirements of Table R402.1.1 or R402.1.3 for climate zone 5 wherever possible. The provisions of Section R402.2 shall apply.

3.2. For additions to residential structures where the work authorized by a building permit under Chapter 10-5, "Building Code," B.R.C. 1981, does not add more than 500 square feet, building envelope components shall meet the provisions of Table 402.1.1 or 402.1.3, and applicable portions of Chapter 10-7-5 "Green Building and Green Points Program", B.R.C. 1981. The provisions of Section 402.2 shall apply.

(r) Section R102.1.1 is repealed and reenacted as follows:

Section R102.1.1 Above Code Programs. Except for those residential structures and portions of structures exempt from this code, the requirements of Chapter 10-7-5 "Green Building and Green Points Program", B.R.C. 1981 shall be used to demonstrate compliance with the energy efficiency components of this code.

(s) Section R103.1 is repealed and reenacted to read as follows:

R103.1 General. Construction documents and other supporting data shall be submitted in one or more sets with each application for a permit. The construction documents and designs submitted under the provisions of this chapter shall be prepared by and bear the stamp of a Colorado licensed professional engineer or architect. Documents submitted for the purposes of Section R405 shall be submitted by a Colorado licensed engineer, architect or a professional who demonstrates the knowledge and experience to perform such calculations. Where special conditions exist, the code official is authorized to require additional construction documents to be prepared by a licensed professional.

Exceptions:

1. The code official may waive the submission of construction documents and other supporting data if the official finds that the nature of the work does not require review of the documents or data to obtain compliance. This waiver authority does not apply to documents required to be prepared by a licensed architect or engineer.

(t) Sections R103.3 through R103.5 are deleted.

(u) Sections R104.5 through R104.8.1 are deleted.

(v) Section R107, "Fees," is deleted.

(w) Section R108, "Stop Work Order," is deleted.

(x) Section R109, "Board of Appeal," is deleted.

(y) Section R202, the definition of "Code Official" is repealed and reenacted to read:

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|     | <u>Code official is the city manager.</u>  |
| 311 | <p>Add a new Section 10-7-3, "Regulations," B.R.C. 1981, to read as follows:</p> <p><b>10-7-3 Regulations.</b></p> <p><b><u>The city manager may make reasonable interpretive and administrative regulations to aid in applying this chapter under the procedures of Chapter 1-4, "Rulemaking," B.R.C. 1981, including rules establishing methods for showing compliance with the requirements of this chapter.</u></b></p>  |
| 354 | Change the effective date of the ordinance in the first sentence of Section 15 to be <b>January 31, 2014.</b>  |
| 294 | <p>Change the local amendment in Subsection (p) to Section 10-5.5-2, "Adoption of the International Residential Code with Modifications," B.R.C. 1981, to read as follows, showing the new changes in bold underline:</p> <p><u>(p) Section R313.1, "Townhouse automatic fire sprinkler systems," is repealed and reenacted to read as follows:</u></p> <p><u>R313.1 Townhouse automatic fire sprinkler systems. <b>Automatic sprinkler systems shall be installed in townhouses in accordance with the requirements of Section 903.2.8 of the City of Boulder Fire Code.</b></u></p>  |
| 294 | <p>Change the local amendment in Subsection (q) to Section 10-5.5-2, "Adoption of the International Residential Code with Modifications," B.;R.C. 1981, to read as follows, showing the new changes in bold underline:</p> <p><u>(q) Section R313.2, "One- and two-family dwelling automatic fire sprinkler systems," is repealed and reenacted to read:</u></p> <p><u>R313.2 One- and two-family dwelling automatic fire sprinkler systems. <b>Automatic sprinkler systems shall be installed in one- and two-family dwellings in accordance with the requirements of Section 903.2.8 of the City of Boulder Fire Code.</b></u></p> |
| 331 | <p>The proposed amendments to the local amendment in new Subsection (32) (former Subsection (25)) of Section 10-8-2, "Adoption of the Fire Code," B.R.C. 1981, shall not be adopted and the text of the local amendment shall remain unchanged with the exception of the correction of the Section number, and read as follows:</p> <p>Section 903.2.7<del>8</del> is amended by the addition of the following:</p> <p>(a) Exception 1: Detached and two unit attached dwelling units are not required to have</p>   |

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|  | <p>an automatic fire sprinkler system if they are not used as residential board and care occupancies, and the distance, unobstructed by any structure above grade, landscaping or topographical obstructions, from the curb face of the emergency vehicle access street on which the structure is addressed, to a face of the unit containing an entrance, is not greater than one hundred feet.</p> <p>(b) Exception 2. A detached dwelling unit is not required to have an automatic fire sprinkler system if it is not used as a residential board and care occupancy, and is located on a lot larger than 14,500 square feet, in which the driveway meets the requirements of a fire department accessible private drive, and extends without interruption from the nearest emergency vehicle access street on which the structure is addressed, to the side of the building which contains the main entrance.</p> <p>(c) If more than one principal building is constructed on a lot pursuant to the exceptions listed in Section 9-3.2-16, "Two Detached Dwelling Units on a Single Lot," B.R.C. 1981, then each building other than the building closest to an emergency vehicle access street on which the structure is addressed, shall be protected by an approved and supervised automatic sprinkler system in accordance with Section 903.3.<br/>                 Exception: If a lot has frontage on two streets and each street is an emergency vehicle access street, then two buildings, each closest to their respective streets, shall not be required to be so protected by this subsection.</p> <p>(d) Houses behind houses shall be protected throughout by an approved automatic sprinkler system in accordance with Section 903.3.</p> |
|  |   |

**September 17, 2013 City Council Meeting  
2012 ICC Code Adoption  
Additional Proposed Amendments to Ordinance No. 7925**

| <b>ICC Code and B.R.C. Section</b>                   | <b>Change/Addition</b>   |   |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
|--|--|---|-----------------------|--|------------------|--------------------------|---|---------------|---|---------------------------------|---|-------------------------|---------------------------------|---|
| IRC, in Subsection 10-5.5-2(e)                       | <p>Modify the proposed definition for NEW DWELLING UNIT by deleting the last sentence stating: “An addition to a dwelling unit is considered a new dwelling unit when the floor area of the addition equals or exceeds 200 percent of the floor area of the existing dwelling unit.” The ordinance is instead to read as follows:</p> <p align="center"><u><b>NEW DWELLING UNIT. A dwelling unit is considered to be a new dwelling unit when the entire structure is newly built and when the dwelling unit is built on top of an existing foundation, such as caissons, footings, and other foundation systems, that remains from a demolished structure.</b></u></p>  |   |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| IECC, in TABLE 1A of Subsection 10-7.5-3 (a), B.R.C. | <p>Modify TABLE 1A – Tiers for Energy Efficiency Threshold to read as follows with the newly proposed modifications being shown in bold underline:</p> <p align="center">TABLE 1A - Tiers for Energy Efficiency Thresholds</p> <table border="1" data-bbox="378 869 1581 1373"> <thead> <tr> <th data-bbox="378 869 651 968"><b>Type of Project</b></th> <th data-bbox="651 869 857 968"><b>Square Footage</b></th> <th data-bbox="857 869 1581 968"><b>Energy Efficiency Thresholds Above Code</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="378 968 651 1272" rowspan="3">New Construction</td> <td data-bbox="651 968 857 1073">Up to 3,000</td> <td data-bbox="857 968 1581 1073"><del>30</del><b>14</b> percent more energy efficient than <del>2006-2012</del> IECC (<del>HERS 60</del>)</td> </tr> <tr> <td data-bbox="651 1073 857 1178">3,001-5,000</td> <td data-bbox="857 1073 1581 1178"><del>50</del><b>43</b> percent more energy efficient than <del>2006-2012</del> IECC (<del>HERS 50</del>)</td> </tr> <tr> <td data-bbox="651 1178 857 1272">5,001 and up</td> <td data-bbox="857 1178 1581 1272"><del>75</del><b>64</b> percent more energy efficient than <del>2006-2012</del> IECC (<del>HERS 25</del>)</td> </tr> <tr> <td data-bbox="378 1272 651 1373">Multi-Unit Dwellings</td> <td data-bbox="651 1272 857 1373">Applies to all</td> <td data-bbox="857 1272 1581 1373"><del>30</del><b>14</b> percent more energy efficient than <del>2006-2012</del> IECC (<del>HERS 60</del>)</td> </tr> </tbody> </table> | <b>Type of Project</b>  | <b>Square Footage</b> | <b>Energy Efficiency Thresholds Above Code</b>             | New Construction | Up to 3,000              | <del>30</del> <b>14</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 60</del> ) | 3,001-5,000   | <del>50</del> <b>43</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 50</del> ) | 5,001 and up                    | <del>75</del> <b>64</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 25</del> ) | Multi-Unit Dwellings    | Applies to all                  | <del>30</del> <b>14</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 60</del> ) |
| <b>Type of Project</b>                               | <b>Square Footage</b>  | <b>Energy Efficiency Thresholds Above Code</b>  |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| New Construction                                     | Up to 3,000  | <del>30</del> <b>14</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 60</del> ) |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
|  | 3,001-5,000  | <del>50</del> <b>43</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 50</del> ) |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
|  | 5,001 and up   | <del>75</del> <b>64</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 25</del> ) |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| Multi-Unit Dwellings                                 | Applies to all   | <del>30</del> <b>14</b> percent more energy efficient than <del>2006-2012</del> IECC ( <del>HERS 60</del> ) |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| IECC, in TABLE 1B of Subsection 10-7.5-3(c), B.R.C.  | <p>Modify TABLE 1B – Tiers for Energy Efficiency Thresholds to read as follows with the newly proposed modifications being shown in bold underline and bold strikethrough:</p> <p align="center">TABLE 1B - Tiers for Energy Efficiency Thresholds</p> <table border="1" data-bbox="407 1577 1549 1822"> <thead> <tr> <th data-bbox="407 1577 756 1640"><b>Total Conditioned Area</b></th> <th data-bbox="756 1577 963 1640"><b>HERS Rating</b></th> <th data-bbox="963 1577 1549 1640"><b>Increased efficiency above the <del>2012</del> IECC</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="407 1640 756 1703">Up to 3,000</td> <td data-bbox="756 1640 963 1703"><del>100</del><b>70</b></td> <td data-bbox="963 1640 1549 1703"><del>15</del> percent</td> </tr> <tr> <td data-bbox="407 1703 756 1766">3,001 – 5,000</td> <td data-bbox="756 1703 963 1766"><del>85</del><b>60</b></td> <td data-bbox="963 1703 1549 1766"><del>30</del><b>15</b> percent</td> </tr> <tr> <td data-bbox="407 1766 756 1822">5,001 and up</td> <td data-bbox="756 1766 963 1822"><del>70</del><b>50</b></td> <td data-bbox="963 1766 1549 1822"><del>50</del><b>30</b> percent</td> </tr> </tbody> </table>   | <b>Total Conditioned Area</b>   | <b>HERS Rating</b>    | <b>Increased efficiency above the <del>2012</del> IECC</b> | Up to 3,000      | <del>100</del> <b>70</b> | <del>15</del> percent   | 3,001 – 5,000 | <del>85</del> <b>60</b>   | <del>30</del> <b>15</b> percent | 5,001 and up  | <del>70</del> <b>50</b> | <del>50</del> <b>30</b> percent |   |
| <b>Total Conditioned Area</b>                        | <b>HERS Rating</b>   | <b>Increased efficiency above the <del>2012</del> IECC</b>  |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| Up to 3,000  | <del>100</del> <b>70</b>   | <del>15</del> percent   |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| 3,001 – 5,000  | <del>85</del> <b>60</b>  | <del>30</del> <b>15</b> percent   |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |
| 5,001 and up   | <del>70</del> <b>50</b>  | <del>50</del> <b>30</b> percent   |                       |  |                  |                          |   |               |   |                                 |   |                         |                                 |   |

**September 17, 2013 City Council Meeting**  
**2012 ICC Code Adoption**  
**Additional Proposed Amendments to Ordinance No. 7925**

| <b>ICC Code and B.R.C. Section</b>  | <b>Change/Addition</b>   |
|---|--|
| IFC, in Paragraph 10-8-2(b)(7), B.R.C., Subsection (i) of Section 108, "Appeals," (i)   | <p>Remove bold strikethrough so as to read as follows:</p> <p style="text-align: center;"><u>(i)</u> An aggrieved person seeking judicial review of a decision of the <del>b</del>Board of <u>Building Appeals or hearing officer</u> made under this section shall file a complaint for such review within thirty days after the date of the decision under Colorado Rule of Civil Procedure 106(a)(4).</p>   |
| IFC, in Paragraph 10-8-2(b)(11), B.R.C., Chapter 2, "Definitions"                       | <p>Remove bold strikethrough so that the definitions for "Attached Dwelling Unit," "Detached Dwelling Unit," and "Fire Access Distance" read as follows:</p> <p style="text-align: center;">"Attached Dwelling Unit" means a structure which contains more than one dwelling unit regardless of any fire separation features.</p> <p style="text-align: center;">"Detached Dwelling Unit" means a structure which contains only one dwelling unit together with any building accessory to the dwelling unit, and is structurally independent of other structures or occupancies, and has a fire separation distance of not less than six feet from other structures.</p> <p style="text-align: center;">"Fire Access Distance" means the distance between two hydrants, or the distance from a hydrant to any external portion of any building or buildings or the distance from the center line of a non-dead-end emergency vehicle access street to the point on the curb on such street from which access to such building is gained, measured along public or private (but accessible to fire equipment) roadways or fire lanes, as would be traveled by motorized firefighting equipment.</p> |
| IFC, in Paragraph 10-8-2(b)(14), B.R.C., locally added Section 401.9, "Fire Alarm Fees" | <p>Remove bold strikethrough from Subsection (c) of locally added Section 401.9, "Fire Alarm Fees," so as to read as follows:</p> <p style="text-align: center;">(c) If any fee is not paid within thirty days after demand therefor has been mailed to the record owner of the building, the city manager may certify the amount due to the County Treasurer pursuant to Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.</p>  |
| IFC, in Paragraph 10-8-2(b)(22), B.R.C.   | <p>Remove bold strikethrough from Paragraph (22) of Subsection 10-8-2(b), B.R.C. to read as follows:</p> <p style="text-align: center;"><del>(39)</del><u>(22)</u> Section 901.6, <u>"Inspection, testing and maintenance,"</u> is amended by the addition of the following:</p> <p style="text-align: center;">If any building, structure, or portion of the same is protected by a fire detection, alarm and extinguishing system or the owner has agreed with the city manager so to protect the building or structure or portion thereof, then no person shall shut off or disable such system <u>except as</u></p>  |

**September 17, 2013 City Council Meeting  
2012 ICC Code Adoption  
Additional Proposed Amendments to Ordinance No. 7925**

| ICC Code and B.R.C. Section                    | Change/Addition   |
|--|---|
|  | <p><u>authorized under Section 11-1-45, Water to Be Shut Off for Failure to Pay, B.R.C. 1981</u>, and no owner, manager, or tenant of such space shall fail to prevent the shutting off or disabling of such system. It is a specific defense to a charge of violation of this section that the system was shut off in order to perform maintenance work on the system, that it was shut off for the minimum period of time necessary to perform such work, and that maintenance personnel were on the premises performing such work during the entire time the system was shut off. The minimum penalty for violation of this section, no portion of which may be suspended, is a fine of \$1,000.<del>00</del>.</p>   |
| <p>IFC, in Paragraph 10-8-2(b)(46), B.R.C.</p> | <p>Remove bold strikethrough from Paragraph (46) of Subsection 10-8-2(b), B.R.C. to read as follows:</p> <p>(39)<del>(46)</del> Section <del>3356</del>01.2.4.2, <u>“Fireworks,”</u> is amended by the addition of the following:</p> <p>The city manager shall require a certificate of insurance to protect persons and property from death or injury as a result of the fireworks display, in an amount not less than \$150,000.<del>00</del> per person injured and \$600,000.<del>00</del> per incident. The insurance shall cover any liability of the city or any employee or agent thereof arising out of or connected with the permit and the fireworks display permitted thereunder. Before any permit for a fireworks display is issued, the applicant shall comply with the provisions of this Section.</p> |

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**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 17, 2012**

**AGENDA TITLE:**

Introduction, first reading and consideration of a motion to order published by title only an ordinance designating the building and property at 2205 Broadway, to be known as the Boulder Masonic Lodge, as an individual landmark under the city's Historic Preservation Ordinance.

Owner/Applicant: Boulder Historical Society and Boulder History Museum

**PRESENTERS:**

Jane S. Brautigam, City Manager

Paul Fetherston, Deputy City Manager

David Driskell, Executive Director of Community Planning & Sustainability

Lesli Ellis, Comprehensive Planning Manager

James Hewat, Senior Historic Preservation Planner

Marcy Cameron, Historic Preservation Planner

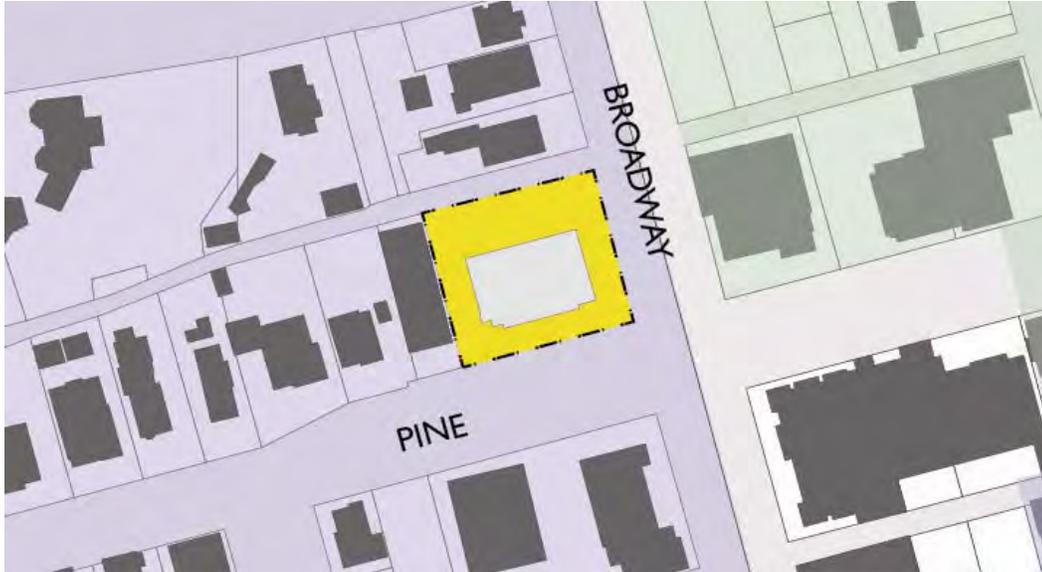
**EXECUTIVE SUMMARY:**

The purpose of this item is for City Council to determine whether the proposed individual landmark designation of the building at 2205 Broadway meets the purposes and standards of the Historic Preservation Ordinance (*Sections 9-11-1 and 9-11-2, B.R.C. 1981*). The property owner submitted the landmark application and is in support of the designation.

If approved, this ordinance (see **Attachment A**) would designate the property as an individual landmark. The findings are included in the ordinance. The landmark designation application was submitted by the property owner on June 3, 2013 and was heard by the Landmarks Board on Aug. 7, 2013. The board voted 5-0 to recommend the designation to City Council. The second reading for this designation will be a quasi-judicial public hearing.

**BACKGROUND:**

On June 3, 2013 the city received an application from the Boulder Historical Society and Boulder History Museum, for individual landmark designation of the property at 2205 Broadway. The property is located within the Mapleton Hill Historic District.



*Figure 1: Location Map, 2205 Broadway*



*Figure 2: Masonic Lodge, 2205 Broadway, c.1950.  
Photograph Courtesy the Carnegie Branch Library for Local History*

The property is located on the northwest corner of Pine Street and Broadway. The building encompasses the majority of the lot, with lawn covering on the south and east sides, and pavement on the north and west sides. A flagpole and time capsule are located on the southeast corner of the lot.

Designed by prominent Boulder architect James M. Hunter for the Boulder Chapter of the Royal Arch Masons, the two-story, flat-roofed building was completed in 1950 and remains largely unchanged from its original construction. The monolithic massing of the building is interrupted by the use of deeply grooved concrete at the foundation, cantilevered concrete overhangs and banding between the first and second levels, and a concrete cap at the roofline of the building. The upper portion of the building is clad in local stone while the east (Broadway facing) elevation is asymmetrical, with a large, unadorned volume at the north portion and a recessed volume on the south portion.



*Figure 3: Masonic Lodge, 2205 Broadway, 2013.*

**RECOMMENDATION:**

**Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only an ordinance designating the building at 2205 Broadway, to be known as the Boulder Masonic Lodge, as an individual landmark under the City of Boulder’s Historic Preservation Ordinance.

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

**Economic:** Owners of locally designated landmarked properties are eligible for state and local tax credits for approved rehabilitations and repairs, and studies have found that historic

preservation adds to economic vitality and tourism. Exterior changes to individually landmarked buildings require a Landmark Alteration Certificate, issued by the Community Planning and Sustainability Department at no charge. The additional review process for landmarked buildings may, however, add time and design expense to a project.

**Environmental:** The preservation of historic buildings is inherently sustainable. Owners of individually landmarked buildings are encouraged to reuse and repair as much of the original building as possible when making exterior alterations, thereby reducing the amount of building material waste deposited in landfills. City staff can assist architects, contractors and homeowners with design and material selections and sources that are environmentally friendly. Also, the Historic Preservation website provides information on improving the energy efficiency of older buildings.

**Social:** The Historic Preservation Ordinance was adopted to "...enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage." Section 9-11-1 (a), B.R.C., 1981. The primary beneficiaries of historic designation are the property owners of a historic landmark and adjacent neighbors, who are ensured that the character of the immediate area will be protected through the design review process. The greater community also benefits from the preservation of the community's character and history.

**OTHER IMPACTS:**

**Fiscal:** The designation of individual historic landmarks is an anticipated and ongoing function of the Historic Preservation program.

**Staff Time:** This designation application is within the staff work plan.

**LANDMARKS BOARD ACTION:**

On Aug. 7, 2013, the Landmarks Board voted 5-0 to recommend to City Council that the building at 2205 Broadway be designated as a local historic landmark, finding that it meets the standards for individual landmark designations in sections 9-11-1 and 9-11-2, B.R.C. 1981 and is consistent with the criteria specified in section 9-11-5(c), B.R.C. 1981.

**PUBLIC FEEDBACK:**

**Abby Daniels**, Historic Boulder, 1123 Spruce St., spoke in support of the landmark designation.

**ANALYSIS:**

**Criteria for Review**

Section 9-11-6(b), B.R.C. 1981, specifies that during the review for an application for local landmark designation, the council must consider "whether the designation meets the purposes and standards in subsection 9-11-1(a) and section 9-11-2, "*City Council May Designate or Amend Landmarks and Historic Districts*," B.R.C. 1981, in balance with the goals and policies of the Boulder Valley Comprehensive Plan" and provides that the City Council "shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation."

### Historic, Architectural, and Environmental Significance

Staff and the Landmarks Board find that the proposed designation of the building at 2205 Broadway maintain an appropriate setting and environment for the building, to enhance property value, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage" (Section 9-11-1, B.R.C. 1981) (**Attachment B**). Staff considers that the application meets the historic, architectural, and environmental criteria for individual landmarks (**Attachment C**) as outlined below:

#### **HISTORIC SIGNIFICANCE:**

**Summary:** The building located at 2205 Broadway has historic significance under criteria 1, 2, 3 and 4.

**1. Date of Construction:** 1950

**2. Association with Persons or Events:** Boulder Masonic Association, Inc.

**Elaboration:** On May 16, 1875, 22 Royal Arch Masons living in the vicinity of Boulder, Colorado Territory, petitioned the Most Excellent Grand High Priest of the Grand Royal Arch Chapter of Colorado to organize the Boulder Chapter of the Royal Arch Masons. The Grand High Priest, William N. Byers, granted a dispensation on May 21, 1875 and four months later a Charter was granted Sept. 23, 1875.

The original meeting location of the fraternal lodge was located on the upper floor of the building at 1206 Pearl Street. In 1895, the Boulder Chapter of the Royal Arch Masons moved to their newly erected temple at 1344 Pearl Street. At this time records indicate that in addition to the 22 original petitioners, 519 members had been admitted to this chapter since its' Charter. This grand Masonic Temple at 1344 Pearl Street remained the meeting location for the chapter until a fire destroyed much of the original building in 1945.

In 1948, the Masons commissioned Boulder architect James M. Hunter to design plans for a new building to be located at 2205 Broadway. The majority of the construction labor for this building was donated by members of the lodge, as was the electrical work, initial clearing of the site and much of the actual construction materials. When the building was completed in 1950, the estimated cost for the building and furnishing was \$160,000 and it was described by many members as being one of the finest temples in the Rocky Mountain region.

**3. Development of the Community:**

**Elaboration:** This building demonstrates the development of the Modern Architectural Movement in the Post-World War II era and promotes community awareness of our cultural, economic and social heritage.

**4. Recognition by Authorities:** Survey of Modern Architecture, 2000.

#### **ARCHITECTURAL SIGNIFICANCE:**

**Summary:** Staff and the Landmarks Board consider that the building at 2205 Broadway has architectural significance under criteria 1, 2, 3 and 5.

1. **Recognized Period or Style: Modern Architecture**  
**Elaboration:** The Masonic Lodge was built in 1950 using the design of locally prominent architect, James M. Hunter, in a Modern Architectural style. Its horizontal and concrete construction is characteristic of a number of notable buildings built during the post-World War II period in Boulder.
  
2. **Architect or Builder of Prominence: James M. Hunter**  
**Elaboration:** Some of Hunter's key architectural designs in Boulder include the Boulder Municipal Building, the Nelson House, the original Boulder Public Library, and Boulder Medical Center. During his illustrious career, Hunter served as planner and architect for Colorado State University and Fort Lewis College in Durango. He also held similar posts with Regis College in Denver and Tarkio College in Missouri.
  
3. **Artistic Merit: Embodies the characteristics of the International style.**  
**Elaboration:** This building is an excellent example of the International Style influenced regional design, as reflected in its asymmetrical façade, flat roof, horizontal orientation, vertical windows and use of concrete throughout. Lacking in ornamentation, Hunter felt that the structural qualities of the building's form and materials were key artistic elements.
  
4. **Example of the Uncommon: None observed**
  
5. **Indigenous Qualities: Yes**  
**Elaboration:** This building is significant for the high quality of stone work which reflects masonry found throughout Boulder. Although buildings of the Modern Architecture period often utilized simple, smooth surface materials, architects in Boulder successfully adapted the native stone into these modern applications.

**ENVIRONMENTAL SIGNIFICANCE:**

**Summary:** Staff and the Landmarks Board consider the building at 2205 Broadway has environmental significance under criterion 3 and 5.

1. **Site Characteristics: None observed**
  
2. **Compatibility with Site: None observed**
  
3. **Geographic Importance: Downtown Boulder**  
**Elaboration:** The building is significant for its location on a prominent corner in Boulder. It is situated on the northwest corner of Pine and Broadway, forming a readily recognizable landmark in the surrounding landscape.
  
4. **Environmental Appropriateness: None observed**
  
5. **Area Integrity:** The property is located on the eastern edge of the Mapleton Hill Historic District. The intersection of Broadway and Pine Street features many large,

historically significant buildings including First Congregational Church, Trinity Lutheran Church, and Hotel Boulderado. The Carnegie Branch for Local History is located directly west of the Masonic Lodge.

**OPTIONS:**

City Council may approve, modify or not approve the first reading ordinance.

**ATTACHMENTS:**

- A: Ordinance No. \_\_\_\_\_
- B: Sections 9-11-1 and 9-11-2, "*Purposes and Intent*," B.R.C., 1981
- C: Significance Criteria for Individual Landmarks

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ORDINANCE NO. \_\_\_\_

AN ORDINANCE DESIGNATING THE BUILDING AND THE  
A PORTION OF THE PROPERTY AT 2205 BROADWAY,  
CITY OF BOULDER, COLORADO, ALSO KNOWN AS THE  
BOULDER MASONIC LODGE, A LANDMARK UNDER  
CHAPTER 9-11, "HISTORIC PRESERVATION" B.R.C. 1981,  
AND SETTING FORTH DETAILS IN RELATION THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,  
COLORADO:

Section 1. The council enacts this ordinance pursuant to its authority under Chapter 9-11, "Historic Preservation," B.R.C. 1981, to designate as a landmark a property having a special character or special historic, architectural, or aesthetic interest or value.

Section 2. The council finds that: 1) on or about June 3, 2013, property owner Boulder History Museum and Boulder Historical Society, applied to the City of Boulder to designate the building and property at said property as a landmark; 2) the Landmarks Board held a public hearing on the proposed designation on August 7, 2013; and 3) on August 7, 2013, the board recommended that the council approve the proposed designation.

Section 3. The council also finds that upon public notice required by law, the council held a public hearing on the proposed designation on September 17, 2013 and upon the basis of the presentations at that hearing finds that the building and a portion of the property at 2205 Broadway does possess a special character and special historic, architectural, or aesthetic interest or value warranting its designation as a landmark.

Section 4. The characteristics of the subject property that justify its designation as a landmark are: 1) its historic significance is relevant to its construction in 1950 by local architect James M. Hunter, its association with the Boulder Chapter of the Royal Arch

1 Masons, and its connection with the development of the Modern Architectural Movement in  
2 the Post-World War II era that was significant to the Development of Boulder; and 2) its  
3 architectural significance indicative of the International Style, and is significant for its cubic  
4 massing, flat roof, lack of ornamentation, horizontal concrete banding, articulated windows,  
5 high quality stone work and its association with prominent architect James M. Hunter and 3)  
6 its environmental significance for its geographic importance as an existing visual landmark at  
7 the corner of Pine Street and Broadway, and for its location within the Mapleton Hill Historic  
8 District, which maintains a high level of historic integrity.

9  
10 Section 5. The council further finds that the foregoing landmark designation is necessary  
11 to promote the public health, safety, and welfare of the residents of the city.

12 Section 6. There is hereby created as a landmark the building and property located at  
13 2205 Broadway, also known as the Boulder Masonic Lodge, whose legal landmark boundary is  
14 identical to the boundary of the legal lots upon which it sits:

15 LOTS 10-11-12 BLK 150 BOULDER O T, BOULDER COUNTY, COLORADO  
16 as depicted in the proposed landmark boundary map, attached hereto as Exhibit A.

17 Section 7. The council directs that the department of Community Planning and  
18 Sustainability give prompt notice of this designation to the property owner and cause a copy of  
19 this ordinance to be recorded as described in Subsection 9-11-6(d), B.R.C. 1981.

20 Section 8. The council deems it appropriate that this ordinance be published by title only  
21 and orders that copies of this ordinance be made available in the office of the city clerk for public  
22 inspection and acquisition.

1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE  
2 ONLY THIS 17TH DAY OF SEPTEMBER, 2013.

3  
4 \_\_\_\_\_  
5 Mayor

6 Attest:

7  
8 \_\_\_\_\_  
9 City Clerk

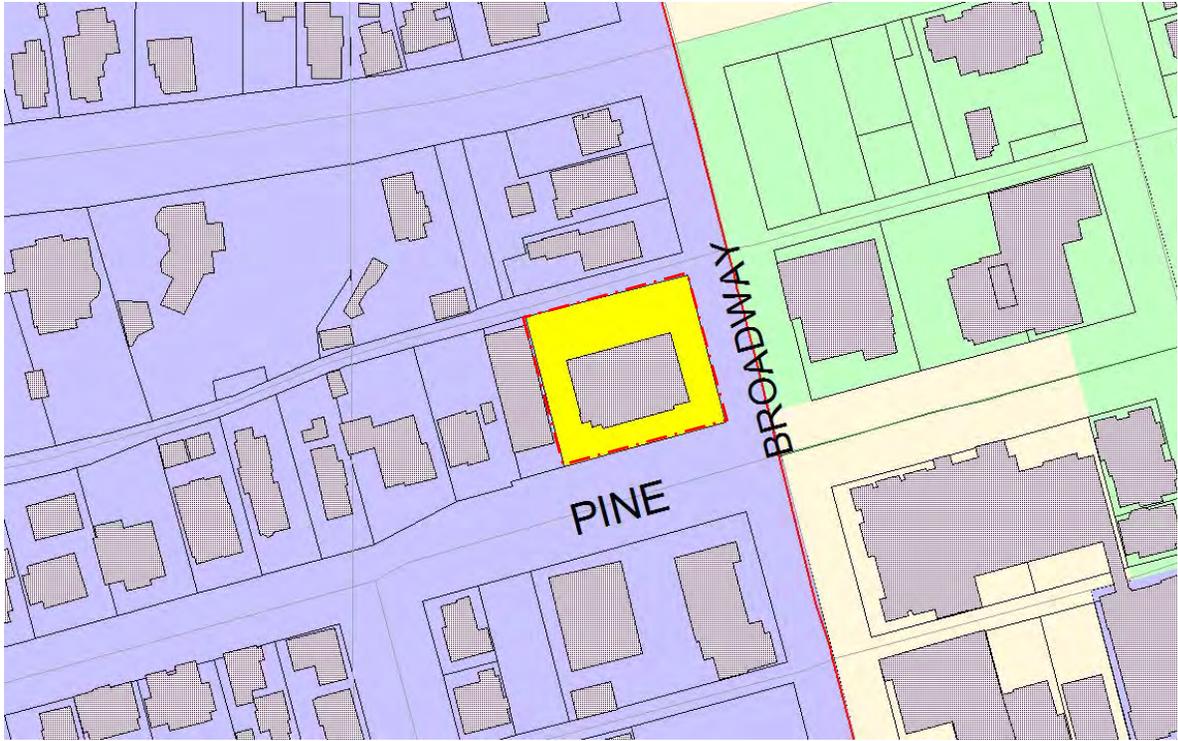
10  
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12 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY  
13 TITLE ONLY this \_\_\_\_ day of \_\_\_\_\_, 2013.

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16 \_\_\_\_\_  
17 Mayor

18 Attest:

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20 City Clerk

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**Exhibit A – Landmark Boundary Map for 2205 Broadway**

LOTS 10-11-12 BLK 150 BOULDER O T

**9-11-1 & 9-11-2 Purposes and Intent  
Boulder Revised Code, 1981**

**9-11-1:** *Purpose and Legislative Intent* states:

- (a) The purpose of this chapter is to promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past. It is also the purpose of this chapter to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.
- (b) The City Council does not intend by this chapter to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.
- (c) The City Council intends that in reviewing applications for alterations to and new construction on landmarks or structures in a historic district, the Landmarks Board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled and creative approaches to renovation.

**9-11-2:** *City Council may Designate or Amend Landmarks and Historic Districts* states:

- (a) Pursuant to the procedures in this chapter the City Council may by ordinance:
  - (1) Designate as a landmark an individual building or other feature or an integrated group of structures or features on a single lot or site having a special character and historical, architectural, or aesthetic interest or value and designate a landmark site for each landmark;
  - (2) Designate as a historic district a contiguous area containing a number of sites, buildings, structures or features having a special character and historical, architectural, or aesthetic interest or value and constituting a distinct section of the city;
  - (3) Designate as a discontinuous historic district a collection of sites, buildings, structures, or features which are contained in two or more geographically separate areas, having a special character and historical, architectural, or aesthetic interest or value that are united together by historical, architectural, or aesthetic characteristics; and
  - (4) Amend designations to add features or property to or from the site or district.
- (b) Upon designation, the property included in any such designation is subject to all the requirements of this code and other ordinances of the city.

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**SIGNIFICANCE CRITERIA**  
**Individual Landmark**  
**September 1975**

On September 6, 1975, the City Council adopted Ordinance #4000 providing procedures for the designation of Landmarks and Historic Districts in the City of Boulder. The purpose of the ordinance is the preservation of the City's permitted cultural, historic, and architectural heritage. The Landmarks Board is permitted by the ordinance to adopt rules and regulations as it deems necessary for its own organization and procedures. The following Significance Criteria have been adopted by the board to help evaluate each potential designation in a consistent and equitable manner.

**Historic Significance**

The place (building, site, area) should show character, interest or value as part of the development, heritage, or cultural characteristics of the community, state or nation; be the site of a historic, or prehistoric event that had an effect upon society; or exemplify the cultural, political, economic, or social heritage of the community.

Date of Construction: This area of consideration places particular importance on the age of the structure.

Association with Historical Persons or Events: This association could be national, state, or local.

Distinction in the Development of the Community of Boulder: This is most applicable to an institution (religious, educational, civic, etc) or business structure, though in some cases residences might qualify. It stresses the importance of preserving those places which demonstrate the growth during different time spans in the history of Boulder, in order to maintain an awareness of our cultural, economic, social or political heritage.

Recognition by Authorities: If it is recognized by Historic Boulder, Inc. the Boulder Historical Society, local historians (Barker, Crossen, Frink, Gladden, Paddock, Schooland, etc), State Historical Society, The Improvement of Boulder, Colorado by F.L. Olmsted, or others in published form as having historic interest and value.

Other, if applicable.

**Architectural Significance**

The place should embody those distinguishing characteristics of an architectural type specimen, a good example of the common; be the work of an architect or master builder, known nationally, state-wide, or locally, and perhaps whose work has influenced later development; contain elements of architectural design, detail, materials or craftsmanship which represent a significant innovation; or be a fine example of the uncommon.

Recognized Period/Style: It should exemplify specific elements of an architectural period/style, i.e.: Victorian, Revival styles, such as described by *Historic American Building Survey Criteria*, Gingerbread Age (Maass), 76 Boulder Homes (Barkar), The History of Architectural Style (Marcus/Wiffin), Architecture in San Francisco (Gebhard et al), History of Architecture (Fletcher), Architecture/Colorado, and any other published source of universal or local analysis of a style.

Architect or Builder of Prominence: A good example of the work of an architect or builder who is recognized for expertise in his field nationally, state-wide, or locally.

Artistic Merit: A skillful integration of design, material, and color which is of excellent visual quality and/or demonstrates superior craftsmanship.

Example of the Uncommon: Elements of architectural design, details, or craftsmanship that are representative of a significant innovation.

Indigenous Qualities: A style or material that is particularly associated with the Boulder area.

Other, if applicable.

### **Environmental Significance**

The place should enhance the variety, interest, and sense of identity of the community by the protection of the unique natural and man-made environment.

Site Characteristics: It should be of high quality in terms of planned or natural vegetation.

Compatibility with Site: Consideration will be given to scale, massing placement, or other qualities of design with respect to its site.

Geographic Importance: Due to its unique location or singular physical characteristics, it represents an established and familiar visual feature of the community.

Environmental Appropriateness: The surroundings are complementary and/or it is situated in a manner particularly suited to its function.

Area Integrity: Places which provide historical, architectural, or environmental importance and continuity of an existing condition, although taken singularly or out of context might not qualify under other criteria.



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 17, 2013**

**AGENDA TITLE:** Consideration of the following ordinances related to the purchase of the ERTL property located at 8323 Valmont Road:

- 1) Introduction, first reading and consideration of a motion to order published by title only, an ordinance approving and authorizing the issuance of Boulder Municipal Property Authority Lease Purchase Revenue Note, Series 2013A, in the aggregate amount of \$5,000,000, and approving and authorizing a Lease Purchase Agreement for the purchase of 685 acres of land, oil and gas mineral estate interests and water rights for the ERTL property located at 8323 Valmont Road, Boulder, CO from Energy Resource Technology Land, Inc. for Open Space and Mountain Parks purposes.
- 2) Introduction, first reading and consideration of a motion to order published by title only, an ordinance approving the addition of the ERTL property as part of the Lower Boulder Creek Habitat Conservation Area.

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Paul Fetherston, Deputy City Manager  
Michael D. Patton, Director, Open Space and Mountain Parks  
Jim Schmidt, Property Agent  
Heather Swanson, Wildlife Ecologist

**EXECUTIVE SUMMARY**

Acquisition considerations: The Energy Resource Technology Land, Inc. (ERTL) property is a large holding in eastern Boulder County on which the city acquired conservation easements/developments rights in 1982 and 1984. These agreements essentially stripped the land of its former development potential and sought to preserve and protect the natural resources found on the property, but did not prohibit the drilling of new oil and gas wells. The ERTL property borders four other Open Space lands and its acquisition would give the

city fee ownership of the entire two and a half mile reach of Boulder Creek between 75<sup>th</sup> Street and 95<sup>th</sup> Street, forming a land assemblage of over 2,700 contiguous acres. Staff had the ERTL holdings (land, water rights and oil and gas mineral estate) appraised to assist both parties in negotiations for a possible acquisition by Open Space. The subsequent appraisal indicated that the land value, exclusive of the water rights, is \$1,113,000; the water rights are valued at \$4,693,500; and the oil and gas mineral estate (seller's royalty interest) at \$2,164,000, for a total valuation of \$7,970,500. The negotiated purchase price, based upon this appraisal information, became \$7,575,000. A down payment of \$2,575,000 dollars will be made at the closing by the City Open Space Fund; for this down payment the city will be deeded 464 acres of land north of the old railroad tracks (the most environmentally sensitive and important habitat on the property); the oil and gas mineral estate on the entire property and a minor portion of the water rights being acquired. The \$5,000,000 balance of the purchase price will be paid by a Boulder Municipal Property Authority (BMPA) note with BMPA receiving title to the remaining 221 acres lying south of the railroad tracks and the majority portion of the water rights. The land and water being conveyed to BMPA will be encumbered by the BMPA deed of trust as security for the note.

If this purchase is approved by council, the city will thus be:

- 1) Acquiring approximately 685 acres on which it currently holds either a conservation easement or a development rights agreement;
- 2) Extinguishing ERTL's leasehold interest on the city's 325 acres acquired back in 1984;
- 3) Acquiring all water rights used to irrigate the land being acquired in this transaction; and
- 4) Acquiring all the oil and gas mineral estate owned by ERTL (on both the land acquired in 1984 and the new 685 acres being proposed for purchase herein) except for the royalty interest in the five currently producing wells which ERTL will continue to own.

HCA designation considerations: With the purchase of the ERTL parcel, located east of the Weiser property and west of Hartnagle and Culver Open Space properties along Boulder Creek (Attachment B), Open Space and Mountain Parks (OSMP) has a contiguous ownership and the opportunity for consistent management of the Boulder Creek Floodplain and White Rocks ecosystems. The property has never been open for public access and will remain closed until a management plan is developed. This memo describes the rationale for designating ERTL as a Habitat Conservation Area (HCA) to provide guidance for future management of the property.

The location, topography and geology of the ERTL property create a variety of different habitats that support an exceptionally diverse suite of wildlife and plant communities including rare and protected species. Many of these features are shared with the adjoining Windhover Ranch property immediately to the west. Restoration potential and ecological value is very high in this area.

Two of the rarest species OSMP manages breed on or near the ERTL property. A pair of bald eagles has nested just west of ERTL since 2002 and northern leopard frogs have bred on the property for at least the last several years. Bald eagles are very sensitive to disturbance during the nesting season and will rarely initiate nesting in an area where they experience disturbance. The extensive riparian and wetland complexes on ERTL provide

ideal breeding, foraging and over-wintering habitat for northern leopard frogs, a species in decline in Colorado and throughout the western U.S. Crevices on the cliff face of the White Rocks harbor the black spleenwort fern which is one of the rarest ferns in North America, and wet meadows provide habitat for the federally-listed Ute ladies'-tresses orchid. In recognition of these and other significant resource values, staff is proposing the ERTL property be managed similar to the Windhover Ranch property.

### **STAFF RECOMMENDATION**

Staff requests council consideration of this matter and action in the form of the following motions:

1. Motion to approve the purchase of 685 acres of land, the oil and gas mineral estate and water rights for the ERTL property located at 8323 Valmont Road, Boulder, CO from ERTL, Inc. for \$7,575,000 for Open Space and Mountain Parks purposes.
2. Motion to introduce and order published by title only, the attached BMPA Ordinance No. 7933.
3. Motion to introduce and order published by title only, the attached Habitat Conservation Area Ordinance No. 7934.

### **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Environmental: Open Space and Mountain Parks is a significant community-supported program that is recognized worldwide as a leader in preservation of open space lands contributing to the environmental sustainability goal of the City Council. The department's land acquisition, land and resource management and visitor service programs help preserve and protect the Open Space values of the surrounding publicly-owned lands.
- Economic: Open Space and Mountain Parks contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees.
- Social: Because Open Space and Mountain Parks lands, facilities and programs are equally accessible to all members of the community, they help to support the city's community sustainability goal because all residents "who live in Boulder can feel a part of and thrive in" this aspect of their community.

### **OTHER IMPACTS**

- Fiscal: the purchase price for the ERTL property interests being acquired is \$7,575,000 payable as follows: \$2,575,000 down payment at the time of closing (scheduled for Oct. 31, 2013). The balance of the purchase price shall be paid by BMPA executing a note and deed of trust in the principal amount of \$5,000,000, with a 3.25 percent interest rate, payable over 10 years with yearly payments of

\$593,655.37. There are sufficient monies in the Open Space Fund for this acquisition; a Cash Flow Projection is included as Attachment C.

- Staff time – This acquisition is part of the normal work plan for the OSMP real estate property agents.

### **BOARD AND COMMISSION FEEDBACK**

At its July 10 and Sept. 11, 2013 meetings, the Open Space Board of Trustees unanimously recommended that City Council approve this purchase. At its Aug. 14, 2013 meeting, the Open Space Board of Trustees unanimously approved the HCA boundary adjustment to incorporate the ERTL property and further recommended that City Council pass an ordinance designating the ERTL property as an addition to the Lower Boulder Creek HCA.

### **PUBLIC COMMENT AND PROCESS**

This item is being heard as part of this public meeting advertised in the *Daily Camera* on Sept. 15, 2013. This item was also heard at the Open Space Board of Trustees meetings held on July 10, Aug. 14 and Sept. 11, 2013.

### **ANALYSIS**

The ERTL property is a large holding in eastern Boulder County along Boulder Creek bordered roughly by Valmont Road on the south, the Boulder Valley Farm Open Space on the east, Heatherwood subdivision on the north and the Weiser (Windhover Ranch) Open Space property on the west. In the early 1980s, the OSMP Department acquired interests in this property to preserve its unique ecological habitats and the rare species of flora and fauna found thereon. A series of acquisitions resulted in Open Space acquiring a conservation easement on the northerly 195.5 acres (which included the White Rocks area) in 1982 along with a fee purchase of 325 acres (which fee land was leased back to the Ertls for the life of Mrs. Ertl plus 20 years); another conservation easement was acquired in 1984 on the 230 acres in the lakes area; and also in 1984 a “Development Rights Agreement” was placed on the 221 acres lying south of the railroad right-of-way. The total purchase price for the three acquisitions came to \$1,488,000 (in today’s dollars that would equate to \$3,378,000).

These agreements reserved for ERTL the right to explore, drill and produce oil and gas on the property; there are 16 more potential and yet undeveloped well sites on the property. These agreements were drafted at the dawn of the conservation easement era and the language employed in these documents leave much to be desired when viewed from a 2013 perspective, e.g. the agreements do not acknowledge or enumerate the existence of water rights being appurtenant to the property. During the years immediately succeeding this series of acquisitions, a number of informal “side-agreements” (for lack of a better phrase) were entered into between the City Open Space Department and the ERTL representatives which modified, interpreted and/ or elaborated on how different issues that had arisen concerning usage of the property would be handled. Some of these side agreements were reduced to written correspondence – usually unilaterally by only one of the parties – but many of these were simply verbal “understandings.” As the years went by and the people who actually made and knew of all these “side agreements” were no longer present or involved in the day to day operations of their respective organizations, the context of the agreements began to take on an “oral history” flavor.

The Open Space Real Estate group approached the ERTL management team in 2010 to attempt to consolidate all of the old agreements – the conservation easements, the development rights agreement, and the written and verbal “side agreements” into one all-encompassing conservation easement using a modern-era format that would be readily understandable by future staff for both organizations. This consolidation attempt proved ultimately futile as the two sides could not reach agreement on the current status on a number of very substantive issues, each believing that the other was seeking to change the agreements to benefit their organization and to the detriment of the other side. The ERTL organization ultimately proposed that the city buy its interests out but for a price which the city found to be out of line with the property’s actual market value. When the city rejected the price demanded, the ERTL organization listed the property for sale with a local realtor and sold off some of its extensive water rights on the land (entering into a dry-up covenant on some 29 acres of its irrigated fields along Valmont Road). Open Space staff realized that the existing agreements and arrangements vis-à-vis the city and the ERTL organization (or a new purchaser) were not sustainable into the future and had ERTL holdings (land, water rights and oil and gas mineral estate) appraised to assist both parties in negotiations for acquisition by Open Space.

The appraisal of the property being acquired indicated that the land value, exclusive of the water rights, is \$1,113,000; the water rights are appraised at \$4,693,500; and the oil and gas mineral estate (royalty interest only) is \$2,164,000, for a total valuation of \$7,970,500. The negotiated purchase price, based upon this appraisal information, is \$7,575,000.

In this transaction, the city will be acquiring: 1) approximately 685 acres on which it already holds either a conservation easement or a development rights agreement; 2) all water rights used to irrigate the land being acquired in this transaction; 3) all the oil and gas mineral estate owned by ERTL except for the royalty interest in the five currently producing wells on the property (which ERTL will continue to own); and extinguishing ERTL’s leasehold interest on the city’s 325 acres acquired back in 1984.

There is a farmstead on the property consisting of a two-story home, a smaller auxiliary home, a mobile home, an equipment shed, corrals, loafing sheds and workshop which are occupied by the extended family of Drake and Brene Sullivan pursuant to a life estate which ERTL had given to the Sullivans (their predecessor in title). This life estate runs for the life of Brene Sullivan, who is in her mid-eighties.

### **Ecological Significance**

Staff has carefully reviewed the unique characteristics of the ERTL property and believes it fulfills the characteristics, goals and criteria for HCA designation established in the Visitor Master Plan. In recognition of the significant resource values, staff is proposing the ERTL property be managed similar to adjoining properties and be included as part of the Lower Boulder Creek HCA.

The ERTL property contains an unusual outcropping of Fox Hills Sandstone, a unique geologic formation known locally as the White Rocks. It is a continuation of the formation

found on the Windhover Ranch property to the west. In addition, one of the largest relatively undeveloped remnants of the Boulder Creek floodplain sets the stage for the extremely rich diversity of plant and animal life found there. This property is one of the last remaining private parcels in the Boulder Creek floodplain and its acquisition will create nearly seven miles of publicly-owned and protected riparian habitat from 75<sup>th</sup> Street to the confluence of Boulder and Coal Creeks.

#### Rare Plants and Plant Communities

Sandstone cliffs: At the top of the White Rocks cliffs where soil has collected between rocks, habitat for the forktip three-awn grass (listed by the Colorado Natural Heritage Program as critically imperiled in Colorado) occurs along with an unusual mix of tallgrass prairie and sand prairie plant species. Crevices on the cliff face harbor the black spleenwort fern which is one of the rarest ferns in North America. Seeps in the White Rocks cliff face provide habitat for moisture-loving Great Plains species including great blue lobelia and American groundnut, as well as an uncommon liverwort (*Phaeoceros laevis*). Sandy soils at the base of the cliffs support some of the farthest western occurrences in Colorado of sand prairie species like sand sage, narrowleaf four o'clock, silky sophora, lemon scurfpea and the plains black nightshade. Native shrub stands and a large grove of western hackberry add to the plant diversity and provide important structure and food for birds and other wildlife species.

Floodplain wet meadows and agricultural vegetation: The Boulder Creek floodplain portion of the property is a mosaic of riparian forest, native wet meadow vegetation in old stream channels, artificial lakes and fields dominated by European pasture grasses. The plains cottonwood was historically the dominant canopy species along plains streams in the Boulder Valley and still occurs in remnant stands along Boulder Creek. Nonnative Russian olive and crack willow trees now occupy much of the floodplain. The Ute ladies'-tresses orchid, a federally protected wetland species, occurs on the ERTL property in an area that has not been gravel mined. Additional habitat for the rare orchid and other native wetland species could be restored on the ERTL property through prescriptive cattle grazing, irrigation water management and nonnative tree removal. Gravel mining has created artificial aquatic habitat in two large lakes and approximately seven smaller ponds in the floodplain. While these are not natural features in the landscape, they provide open water habitat with aquatic vegetation and marsh-like wetland habitat along their shorelines.

Wetland communities dominated by native species support the prairie gentian, an uncommon species in Colorado with declining habitat across the Great Plains. The prairie gentian habitat is concentrated in wet meadows south of the railroad tracks. The Weiser and ERTL prairie gentian population represents the farthest western occurrence of this species in Colorado.

#### Wildlife Resources

Bald eagles have nested on the adjacent Weiser property since 2002. Because the currently-occupied eastern nest is very close to the ERTL/Windhover Ranch property line, a large portion of the area directly surrounding the nest lies on ERTL. The eagles have experienced

nest failures twice during the last nine years, making it important to manage the property in a way most likely to support successful nesting.

The cliffs of the White Rocks support multiple uncommon species including four rare ants, one of which (*Aphaenogaster huachucana*) is considered globally imperiled; a species of solitary bee that burrows into the soft sandstone of the rocks and feeds on prickly pear pollen; tiny fairy shrimp and crawling water beetles both of which live in ephemeral pools in depressions on top of the cliffs; and six-lined racerunner lizards, found locally only on the White Rocks, that live in the saltbush at the base of the cliffs. The White Rocks cliffs on ERTL have also provided one of the county's only natural nesting sites for barn owls and have been the center of recent prairie falcon activity during the nesting season. The extensive wetland and aquatic habitat on ERTL provide ideal breeding, foraging and overwintering habitat for northern leopard frogs, a species in decline in Colorado and throughout the western U.S. Boulder Creek provides habitat for uncommon species like the American dipper and wood duck and may support extremely rare species like the northern river otter. The artificial lakes and ponds on the property provide open water habitat for waterfowl and shorebirds and shoreline emergent marshes for wading birds such as little blue and great blue herons and great egrets.

The diversity of habitats on the property supports a wide variety of bird communities during summer and winter. According to the annual Boulder Christmas Bird Count, one of the highest species richness and total bird counts is consistently recorded on the survey route that includes ERTL. In the summer, American bitterns, Virginia rails, marsh wrens and yellow-headed blackbirds are some of the rare/uncommon species that have been seen on the property. Because of this, the Colorado Office of the National Audubon Society is in the process of officially designating the lower Boulder Creek area, including ERTL, as an "Important Bird Area."

The exact location and extent of prairie dogs on the property, although known to be limited, is not certain. If acquired, prairie dog colonies will be mapped and assigned a management designation according to the criteria in the OSMP Grassland Ecosystem Management Plan.

#### Threats and Sensitivity of Resources

Previous intensive grazing on the property has likely had a negative impact on grassland- and shrub-nesting birds. Habitat for these species can be improved through initiating prescriptive grazing techniques and removing nonnative species. Improving habitat conditions, along with minimizing human disturbance, can increase bird community diversity and lead to higher nesting success. Organisms such as the boring bees, fairy shrimp and six-lined racerunner occupy small, restricted and fragile habitats that could be impacted by extensive use of the area. In addition, the presence of New Zealand mudsnails in Boulder Creek requires restricted access to the creek in an effort to avoid further spread of the snails to other waterways.

Bald eagles can be very sensitive to disturbance during nesting. The pair nesting at Weiser has been accustomed to an area with minimal human presence, making them more likely to respond negatively to even low levels of disturbance. Protection under the Federal Eagle

Protection Act prohibits disturbance to birds that could result in nest abandonment or negative impact to their reproductive success. U.S. Fish and Wildlife Service recommendations to protect nesting eagles in open landscapes such as those on the ERTL property are based on Colorado Parks and Wildlife buffers for protecting nesting raptors. These recommendations include no surface occupation within ¼ mile of nest sites at any time and no human presence within ½ mile of the nest seasonally during the nesting season (November - July).

#### White Rocks in the Grassland Ecosystem Management Plan

In recognition of the unique ecological importance of the White Rocks cliffs, staff included the White Rocks (on both the ERTL conservation easement and the Windhover Ranch property to the west) as one of eight conservation targets in the Grassland Ecosystem Management Plan approved by OSBT and City Council. Within the Grassland Plan framework, issues, threats, management considerations and strategies were identified for each conservation target.

#### **Agricultural Values**

There is a long history of agricultural activity on the ERTL property. The Sullivan family farmed and ranched the property for more than 60 years before the current agricultural tenants began farming the property. The Sullivans generally operated a traditional family farming and ranching operation. They grew various grain crops, hay and forage crops and had a small cow herd to utilize the grazing land. The Schwartz family has been leasing the irrigated agricultural land on the ERTL property for approximately 10 years and have recently taken over the grazing land as well. The Schwartz family also leases the OSMP Manchester and King Hodgson properties located in the same vicinity as the ERTL property. Their agricultural operation primarily focuses on grass and alfalfa hay production, although they have recently added cattle to their operation.

The soils underlying the irrigated land of the ERTL property are primarily sandy loam in texture with gentle slopes and are well suited for agricultural production. The irrigated lands are considered to be of high quality when evaluating the soil texture and the water rights associated with the property. OSMP will be acquiring water rights from the Green, Jones and Donnelly, Cottonwood No. 2 and the Andrews-Farwell ditches. The Jones and Donnelly Ditch has the longest average operational season of 174 days. The Andrews-Farwell Ditch has the shortest operational season of 52 days. OSMP will be acquiring 199 acres of irrigated land, much of which will be most suited to livestock grazing because of previous mining activities. There are about 65 acres of productive cropland suitable for a wide variety of agricultural activities including the production of organic vegetables for local sale.

#### **Restoration and Weed Management**

Historic land management, including disturbance related to mining, site hydrology and presence of invasive species on adjacent lands, lead to known and likely populations of various invasive species on the ERTL property. Russian olive currently occupies over 60 acres of the property. Purple loosestrife, a Colorado List – A noxious weed, occupies 15 acres of the property, but was managed by the landowner in 2010 and 2011. Eurasian

watermilfoil is common in Boulder Creek, the Green Ditch and likely some of the ponds that receive water from the Green Ditch. Other species likely present on the property include common teasel, perennial pepperweed, perennial sowthistle, whitetop, crack willow, Canada thistle, musk thistle, yellow toadflax (mandatory eradication), garlic mustard, diffuse knapweed, houndstongue, reed canarygrass, yellow iris and tamarisk. Additional mapping and monitoring of the property to obtain estimates of cover and occupied area for the above and other invasive species is required. Given past mining operations, it is likely that planting and seeding of native plants species is needed in areas following invasive species management.

### **Cultural Resources**

While no professional cultural resource inventories have been conducted on this property, it is adjacent to the White Rocks/Weiser property where numerous Native American and historical archaeological sites are located. It is expected that similar resources would be located on the ERTL property.

### **Visitor Use**

As with all OSMP property acquisitions not previously open to the public, the ERTL property will be closed until a property inventory and site management plan are developed. This plan will recommend how to provide appropriate visitor infrastructure and services while protecting the natural and cultural resources on the site. OSMP intends to complete this plan over the next 12 months, and the acquisition budget will fund the development of this plan. Given what staff knows about the property, actions to protect resources will be especially important. Staff is recommending that the property be designated as an HCA. This designation recognizes the known resource values of the property and is consistent with the HCA designation of the surrounding and nearby lands in the Boulder Creek floodplain. Given the seasonality of nesting bald eagles, the property has been, and will be recommended to be closed to the public and most staff from November 1 to July 31. However, with OSMP's purchase of this property, a new opportunity for the public would exist in the seasonal window of August to October, when staff would lead scheduled, guided hikes on subjects ranging from wildflowers to geology. These visits would be carefully arranged to protect vulnerable biological and cultural resources on the property. The East Boulder-White Rocks Trail is located on the eastern edge of the property. There are no plans for further trail development.

### **Open Space Charter Purposes**

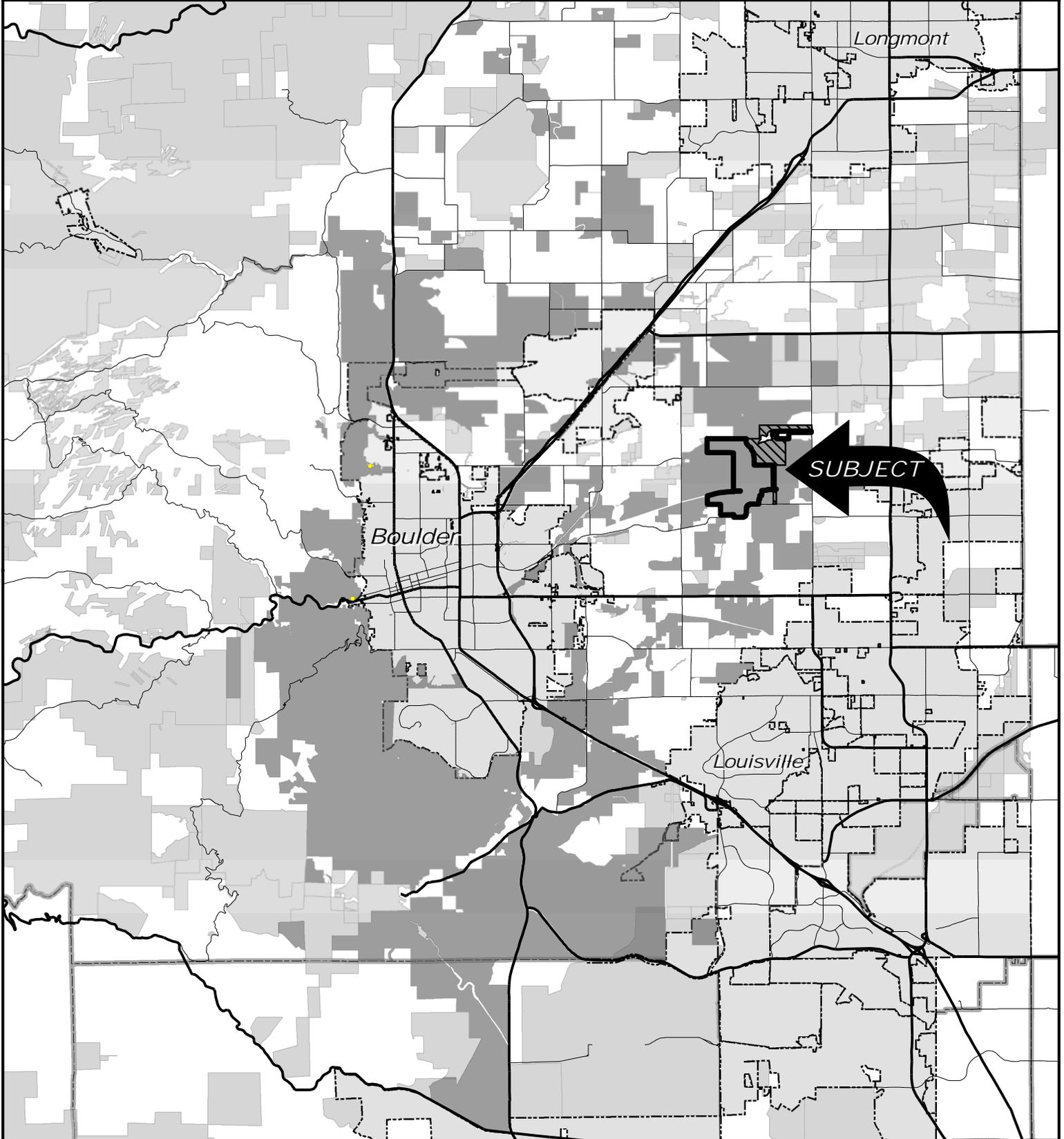
This acquisition meets all of the following Charter purposes:

- Preservation of natural areas characterized by or including terrain, geologic formations, flora, and fauna that are unusual, spectacular, historically important, scientifically valuable, or unique.
- Preservation of agricultural uses and land suitable for agricultural production.
- Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, and fragile ecosystems.
- Preservation of land for its aesthetic and passive recreational value and its contribution to the quality of life of the community.

**ATTACHMENTS:**

- A. Vicinity Map**
- B. Location Map**
- C. Cash Flow Projection**
- D. Map of Proposed Habitat Conservation Area**
- E. Ordinance No. 7934 (HCA)**
- F. Ordinance No. 7933 (BMPA Note)**
- G. Lease Purchase Agreement**
- H. Lease Purchase Revenue Note, Series 2013A**
- I. Visitor Master Plan HCA Designation**
- J. Location Map – ERTL Mineral Estate (oil & gas ownership interests)**

# ATTACHMENT A - City of Boulder Open Space & Mountain Parks VICINITY MAP - ERTL Property



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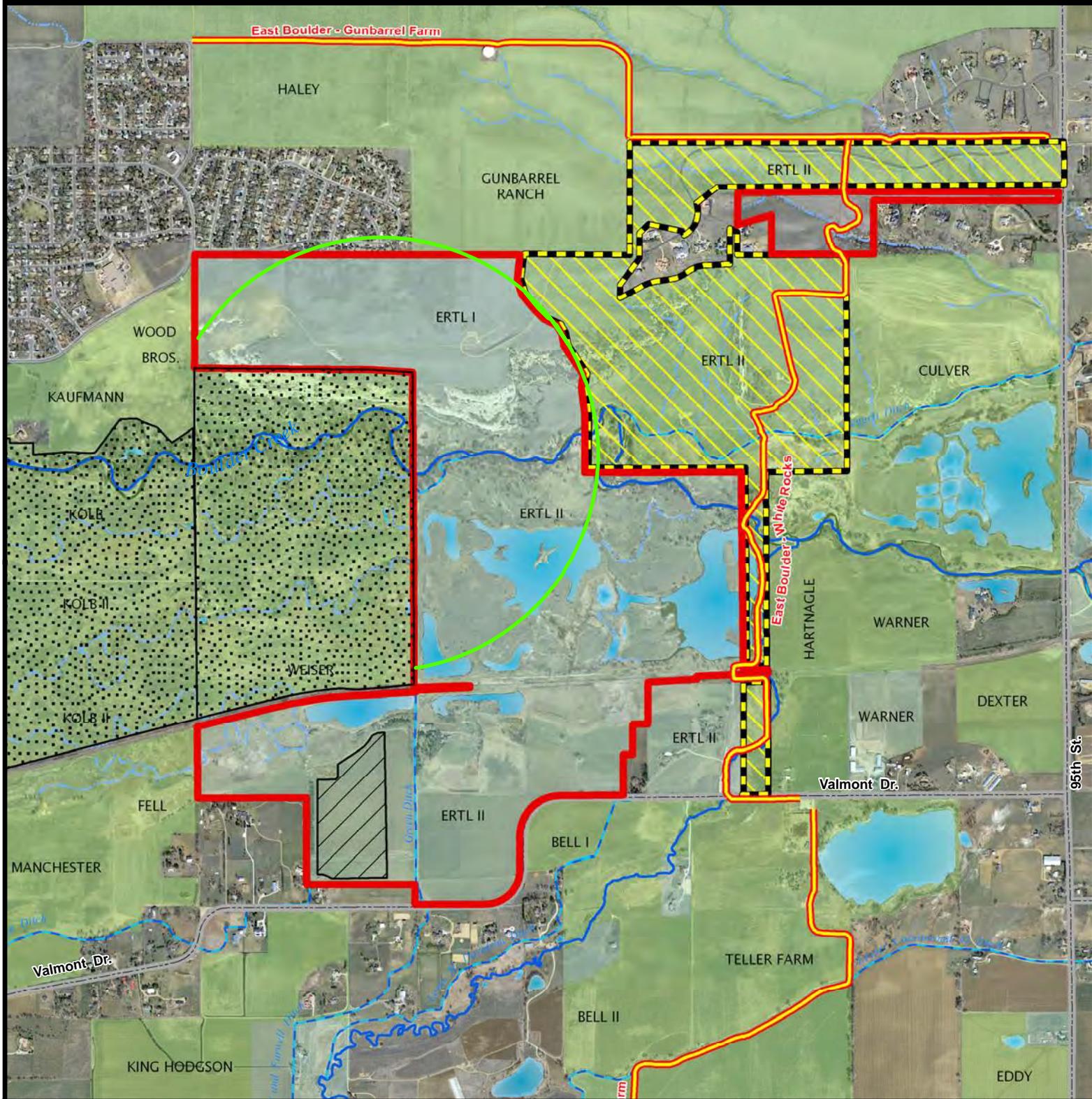
-  Proposed Purchase
-  Leasehold Termination Area
-  City of Boulder OSMP



Approximate property boundaries from Boulder County Assessor's data.

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# ATTACHMENT B - City of Boulder Open Space & Mountain Parks LOCATION MAP - ERTL Property



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-  ERTL Purposed Purchase
-  ERTL Leasehold Termination Area
-  ERTL Irrigation Dry-Up Area
-  Seasonal Bald Eagle Closure - Nov 1 - July 31
-  Bald Eagle Nest 1/2 Mile Buffer

-  OSMP Managed Multi-Use Trail
-  OSMP Fee Property
-  OSMP Conservation Easement

0 0.125 0.25 0.5 Miles

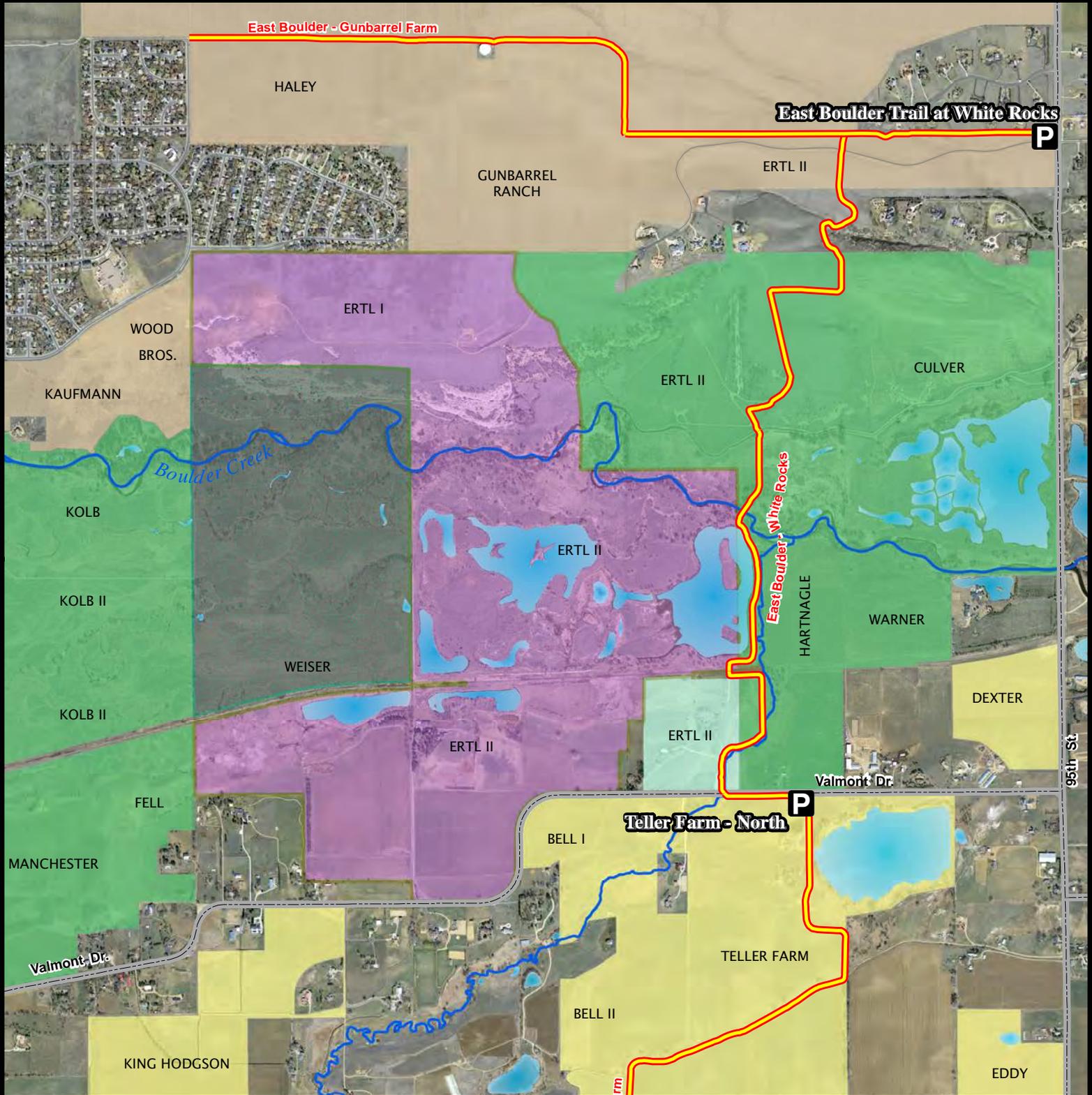


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|                                   | 2013  | 2014         | 2015         | 2016         | 2017         | 2018         | 2019         |
|-----------------------------------|---|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>PROJECTED SALES TAX GROWTH</b> |   |              |              |              |              |              |              |
| 1                                 | 2010-2017 Sales Tax forecast 06/06/2011                                 | 4.22%        | 3.42%        | 3.30%        | 3.30%        | 3.14%        |              |
| 2                                 | 2011-2018 Sales Tax forecast 05/08/2012                                 | 3.90%        | 3.48%        | 3.28%        | 3.29%        | 3.20%        | 3.15%        |
| 3                                 | 2013-2019 Sales Tax forecast 04/05/2013                                 | 2.27%        | 3.50%        | 3.35%        | 3.35%        | 3.25%        | 3.20%        |
| 4                                 | <b>BEGINNING CASH BALANCE</b>   | \$18,917,725 | \$13,034,089 | \$13,244,713 | \$15,971,741 | \$17,565,600 | \$22,061,257 |
| <b>SOURCES OF FUNDS</b>           |   |              |              |              |              |              |              |
| 5                                 | OS Sales Tax Revenue  | \$25,406,420 | \$26,295,672 | \$27,176,894 | \$28,088,010 | \$29,000,132 | \$29,928,588 |
| 6                                 | OS Fund - Investments/Leases/Misc.                                      | \$810,909    | \$810,909    | \$810,909    | \$810,909    | \$650,000    | \$650,000    |
| 7                                 | Proceeds from RE sale   |              |              |              |              |              |              |
| 8                                 | Funds from CDOT for Granite acquisition                                 | \$1,300,000  |              |              |              |              |              |
| 9                                 | General Fund Transfer for Mountain Parks:                               | \$1,072,174  | \$1,103,480  | \$1,114,515  | \$1,125,660  | \$1,136,917  | \$1,148,286  |
| 10                                | General Fund Appropriation for Real Estate Services:                    | \$152,346    | \$156,062    | \$157,623    | \$159,199    | \$160,791    | \$162,399    |
| 11                                | Lottery Fund Appropriation for CIP Purposes:                            | \$343,000    | \$343,000    | \$355,300    | \$355,300    | \$355,300    | \$355,300    |
| 12                                | Unexpended Lottery Funds Carried Over from Previous Year                | \$144,094    |              |              |              |              |              |
| 13                                | Grants  | \$25,500     |              |              |              |              |              |
| 14                                | Total Annual Sources of Funds:  | \$29,254,443 | \$28,709,123 | \$29,615,241 | \$30,539,078 | \$31,303,139 | \$32,244,573 |
| 15                                | Total Sources of Funds Available:                                       | \$48,172,168 | \$41,743,212 | \$42,859,953 | \$46,510,819 | \$48,868,739 | \$54,305,829 |
| <b>USES OF FUNDS</b>              |   |              |              |              |              |              |              |
| 16                                | Total Debt Service for Bonds & Notes:                                   | \$8,667,232  | \$6,722,082  | \$4,907,955  | \$4,786,103  | \$4,188,804  | \$3,975,045  |
| 17                                | <b>BMPA Payment ERTL (2014-2023)</b>                                    |              | \$593,655    | \$593,655    | \$593,655    | \$593,655    | \$593,655    |
| 18                                | Capital Available for Land Acquisitions & Preservation                  | \$3,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  |
| 19                                | Unexpended Acquisition Funds Carried Over from Previous Year            | \$5,571,422  | \$0          | \$0          | \$0          | \$0          | \$0          |
| 20                                | Capital Available for Land Acquisitions & Preservation:                 | \$8,971,422  | \$5,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  |
| 21                                | RE Acquisition 2013   | \$6,825,000  |              |              |              |              |              |
| 22                                | <b>ERTL</b>   | \$2,500,000  |              |              |              |              |              |
| 23                                | Dagle property and water acquisition by 8/14/2014                       | \$525,000    |              |              |              |              |              |
| 24                                | Remaining Land Acquisition Capital Available:                           | (\$878,578)  | \$5,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  | \$5,400,000  |
| 25                                | Capital for Visitor Infrastructure:                                     | \$850,000    | \$1,210,000  | \$900,000    | \$900,000    | \$900,000    | \$950,000    |
| 26                                | Unexpended Visitor Infrastructure Funds Carried Over from Previous Year | \$803,712    |              |              |              |              |              |
| 27                                | Highway 93 Underpass  | \$1,100,000  |              |              |              |              |              |
| 28                                | Capital for Water Rights Acquisition:                                   | \$200,000    | \$200,000    | \$200,000    | \$200,000    | \$200,000    | \$200,000    |
| 29                                | Unexpended Water Rights Funds Carried Over from Previous Year           | \$187,817    |              |              |              |              |              |
| 30                                | South Boulder Creek Flow In Stream Flow:                                | \$100,000    | \$100,000    | \$150,000    | \$2,000,000  |              |              |
| 31                                | Capital for Mineral Rights Acquisition:                                 | \$100,000    | \$100,000    | \$100,000    | \$100,000    | \$100,000    | \$100,000    |
| 32                                | Unexpended Mineral Rights Funds Carried Over from Previous Year         | \$261,184    |              |              |              |              |              |
| 33                                | Lottery Capital for MP Restoration:                                     | \$343,000    | \$343,000    | \$355,300    | \$355,300    | \$355,300    | \$355,300    |
| 34                                | Unexpended Lottery Funds Carried Over from Previous Year                | \$144,094    |              |              |              |              |              |
| 35                                | Total CIP Expenditures:   | \$13,061,229 | \$7,353,000  | \$7,105,300  | \$8,955,300  | \$6,955,300  | \$7,005,300  |
| 36                                | Management Operating Expenditures - OSMP Program:                       | \$11,930,231 | \$12,565,300 | \$12,959,859 | \$13,228,951 | \$13,625,820 | \$14,034,594 |
| 37                                | Operating Supplemental and Carryover                                    | \$260,087    |              |              |              |              |              |
| 38                                | Management Operating Expenditures - RE Services:                        | \$152,346    | \$156,062    | \$157,623    | \$159,199    | \$160,791    | \$162,399    |
| 39                                | Sub Total Management Operating Expenditures:                            | \$12,342,664 | \$12,721,362 | \$13,117,482 | \$13,388,150 | \$13,786,611 | \$14,196,993 |
| 40                                | Administrative Budget Transfer - Cost Allocation:                       | \$1,066,954  | \$1,108,400  | \$1,163,820  | \$1,222,011  | \$1,283,112  | \$1,347,267  |
| 41                                | Total Management Operating Expenditures:                                | \$13,409,618 | \$13,829,762 | \$14,281,302 | \$14,610,161 | \$15,069,723 | \$15,544,260 |
| 42                                | Total Uses of Funds:  | \$35,138,079 | \$28,498,499 | \$26,888,212 | \$28,945,219 | \$26,807,482 | \$27,118,260 |
| 43                                | <b>ENDING CASH BALANCE:</b>   | \$13,034,089 | \$13,244,713 | \$15,971,741 | \$17,565,600 | \$22,061,257 | \$27,187,569 |
| 44                                | Less Reserves:  | \$5,475,000  | \$3,500,000  | \$2,500,000  | \$2,400,000  | \$2,000,000  | \$2,000,000  |
| 45                                | Less Reserve for 27th Pay Period  | \$0          | \$45,000     | \$95,000     | \$145,000    | \$195,000    | \$0          |
| 46                                | Sick/Vacation/Bonus Reserve   | \$490,000    | \$490,000    | \$490,000    | \$490,000    | \$490,000    | \$490,000    |
| 47                                | Property and Casualty Reserve   | \$400,000    | \$400,000    | \$400,000    | \$400,000    | \$400,000    | \$400,000    |
| 48                                | South Boulder Creek Flow Reserve  | \$1,450,000  | \$1,750,000  | \$2,000,000  | \$0          | \$0          | \$0          |
| 49                                | <b>ERTL BMPA Post Sales Taxes Sunsetting Reserve</b>                    |              |              |              | \$593,655    | \$1,187,310  | \$1,780,965  |
| 50                                | Vehicle Acquisition Reserve   |              | \$150,000    | \$300,000    | \$300,000    | \$300,000    | \$300,000    |
| 51                                | Facility Maintenance Reserve  |              | \$100,000    | \$200,000    | \$300,000    | \$400,000    | \$500,000    |
| 52                                | <b>UNRESTRICTED CASH BALANCE AFTER RESERVES:</b>                        | \$5,219,089  | \$6,809,713  | \$9,986,741  | \$12,936,945 | \$17,088,947 | \$21,716,604 |

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# ATTACHMENT D - City of Boulder Open Space & Mountain Parks Proposed Habitat Conservation Area - ERTL



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- Proposed HCA
- P OSMP Trailhead with Designated Parking
- OSMP Managed Multi-Use Trail
- OSMP Conservation Easement
- Habitat Conservation Area
- Habitat Conservation Area - Conditional
- Passive Recreation Area
- Agricultural Area



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Agenda Item 3E Page 17

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ORDINANCE NO. 7934

AN ORDINANCE ORDERING THE DESIGNATION AND ADDITION OF APPROXIMATELY 655 ACRES TO THE LOWER BOULDER CREEK HABITAT CONSERVATION AREA UNDER SECTION 8-8-2, "HABITAT CONSERVATION AREA DESIGNATION," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Purpose and Findings.

(A) The purpose of this ordinance is to implement the policies and recommendations approved by the City Council on April 12, 2005 in the Open Space and Mountain Parks Visitor Master Plan. This ordinance is subject to referendum as provided in the City Charter.

(B) Pursuant to Section 8-8-2, "Habitat Conservation Area Designation," B.R.C. 1981, the city manager has identified and proposed the areas described in this ordinance for restricted public use because those areas would appropriately constitute habitat conservation areas within the city's open space and mountain parks system based upon the criteria set forth in the Open Space and Mountain Parks Visitor Master Plan.

(C) The city manager has sought and received advice and comments from the Open Space Board of Trustees /on the areas included in this ordinance.

Section 2. Under section 8-8-2, B.R.C. 1981, the property described as ERTL -- Proposed HCA on Exhibit "A" to this ordinance is designated as an addition to the Lower Boulder Creek HCA, as described on Exhibit "B" to this ordinance.

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 17th day of September, 2013.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

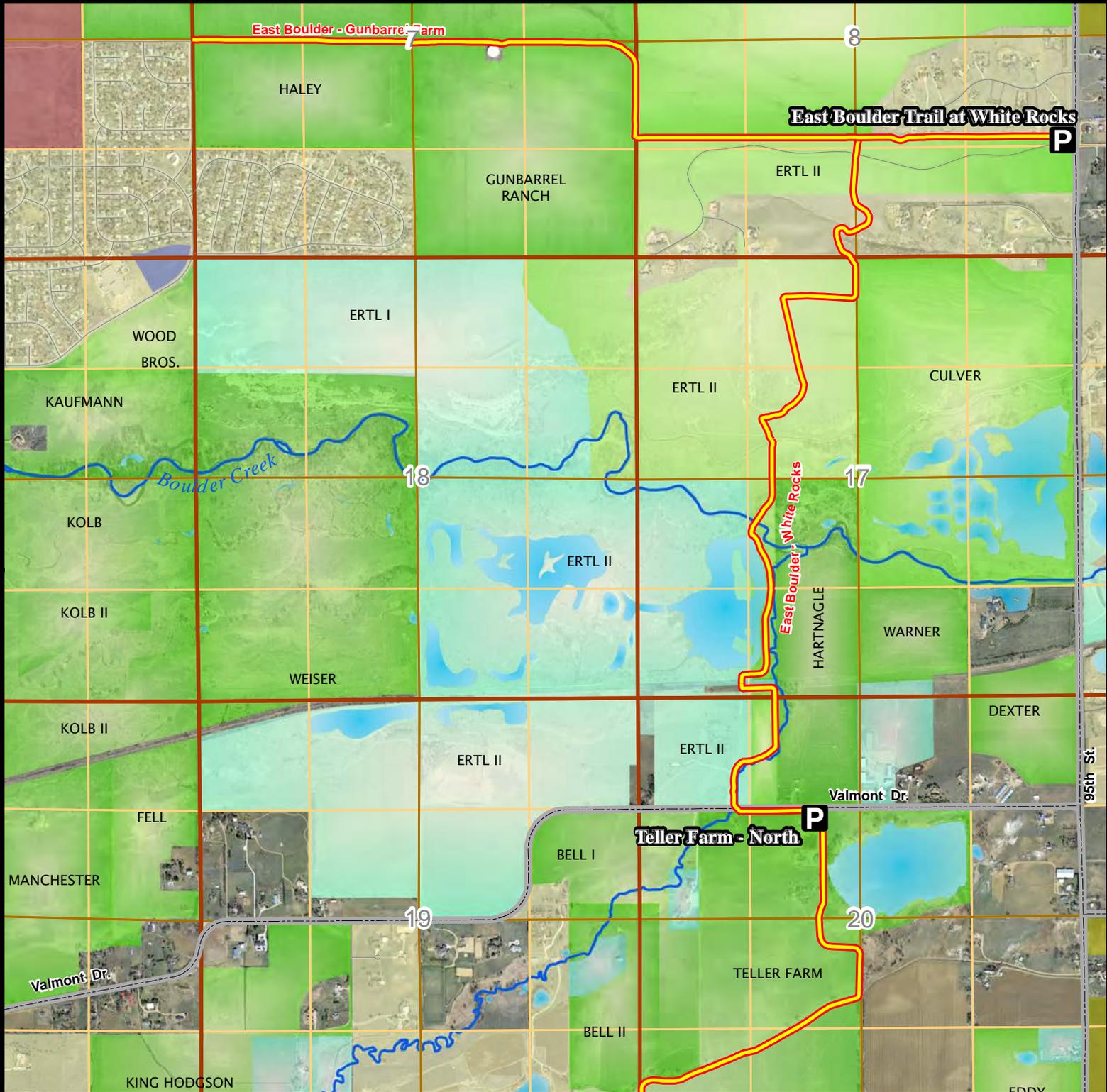
READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this 1<sup>st</sup> day of October, 2013.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

# EXHIBIT A - City of Boulder Open Space & Mountain Parks Proposed Habitat Conservation Area - ERTL



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Miles  
0 0.125 0.25 0.5 1  
Scale Bar  
Page 176

- P** OSMP Trailhead with Designated Parking
- OSMP Managed Multi-Use Trail
- OSMP Ownership
- OSMP Conservation Easement
- City of Boulder Parks/Recreation

- Gunbarrel Open Space
- Boulder County Open Space
- County Zoning
- PLSS Quarter Quarter Sections (~40 acres)
- PLSS Quarter Sections (~160 acres)
- PLSS Sections (~640 acres)



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Exhibit B  
Lower Boulder Creek  
Habitat Conservation Area

East Boulder Trail at White Rocks Trailhead

P

Jay Rd.

Wash Ponds

75th St.

East Boulder - White Rocks

95th St.

Valmont Dr.

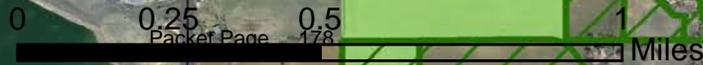
Teller Farm North

P

Valmont - Teller Farm

Legend

-  Habitat Conservation Area - Active
-  No Public Access
-  OSMP Ownership
-  Multi-Use Trail
-  Hiking Trail



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ORDINANCE NO. 7933

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, APPROVING AND AUTHORIZING THE ISSUANCE OF A \$5,000,000.00 BOULDER MUNICIPAL PROPERTY AUTHORITY'S LEASE PURCHASE REVENUE NOTE, SERIES 2013A, AND APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT IN CONNECTION THEREWITH, AND SETTING FORTH RELATED DETAILS.

WHEREAS, the City of Boulder, Colorado (the "City"), has been duly organized and is validly existing as a home rule city under the Colorado Constitution and the home rule charter of the City (the "Charter"); and

WHEREAS, the City has previously authorized the creation of a nonprofit corporation as an instrumentality of the City for certain purposes, which corporation is known as "The Boulder Municipal Property Authority" (the "Authority"); and

WHEREAS, the Authority is established for the purpose of facilitating the acquisition of real property, and the construction, installation, and acquisition of public improvements thereon, if any, or maintaining such property as Open Space, and the acquisition of personal property, as may from time to time be determined by the City to be in the best interests of the residents of the City; and

WHEREAS, contingent on the passage of this Ordinance, the Authority intends to issue its \$5,000,000.00 Lease Purchase Revenue Note, Series 2013A (the "Note") for the purpose of acquiring certain property described in Exhibit A hereto to be maintained as Open Space (the "Property"); and

WHEREAS, that portion of the Property described in Exhibit A to the Agreement is to be leased by the Authority to the City pursuant to a Lease Purchase Agreement (the "Agreement"), the form of which has been presented to the City Council; and

WHEREAS, it is in the best interest of the City that the Note be issued and that the City enter into the Agreement; and

WHEREAS, the rental payments required to be made by the City under the Agreement are subject to appropriation each year by the City Council, and neither the Note, the Agreement, nor any deed of trust of the Authority in connection with the Note constitute an indebtedness of the City within the meaning of any constitutional, statutory, or home rule charter provision or limitation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, AS FOLLOWS:

Section 1. It is hereby found and determined by the City Council of the City that the issuance of the Note by the Authority and the execution and delivery of the Agreement by the City, for the purpose of acquiring the Property, is necessary and appropriate for the furtherance of the general welfare, order, and security of the City and its residents and property owners.

Section 2. The issuance of the Note by the Authority to acquire the Property is hereby authorized and approved.

Section 3. The Agreement, in substantially the form presented to the City Council, is in all respects hereby authorized and approved by the City Council of the City, and the findings and determinations made therein are hereby incorporated in this Ordinance as findings and determinations of the City Council.

Section 4. The mayor of the City is hereby authorized and directed to execute and deliver the Agreement in substantially the form approved, and the city clerk is hereby authorized to attest and affix the seal of the City on the same.

Section 5. The Note, the Agreement, and any deed of trust of the Authority shall never constitute the debt or indebtedness of the City within the meaning of any constitutional, statutory, or Charter provision or limitation, and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers, nor may the City ever be called upon to pay any of the principal of or interest on the Note.

Section 6. The approval of the Note and the Agreement and the execution and delivery of the Agreement are hereby found to be a matter exclusively of local concern, and the adoption of this Ordinance and the provisions hereof are in furtherance of the City's powers as a home rule city under Colorado law.

Section 7. All actions not inconsistent with the provisions of this Ordinance heretofore taken by the City Council or officers of the City in furtherance of the undertakings herein described are hereby ratified, approved, and confirmed.

Section 8. All prior acts, orders, or resolutions, or parts thereof, by the City in conflict with this Ordinance are hereby repealed, except that this repealer shall not be construed to revive any act, order, or resolution, or part thereof, heretofore repealed.

Section 9. If any section, paragraph, clause, or provision of this Ordinance shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions of this Ordinance, it being the intention that the various parts hereof are severable.

Section 10. The council finds that this ordinance is necessary to protect the public health, safety, and welfare of the residents of the City and covers matters of local concern.

Section 11. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 17<sup>th</sup> day of September, 2013.

---

Mayor

Attest:

---

City Clerk

READ ON SECOND READING, PASSED, AND ORDERED PUBLISHED BY TITLE ONLY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

---

Mayor

Attest:

---

City Clerk

EXHIBIT A TO ORDINANCE NO. 7933

LEGAL DESCRIPTION

Outlots: N, ERTL Farm N.U.P.U.D., and Revised Outlot Q1, Replat A ERTL Farm N.U.P.U.D. and the following water rights: 13.0 shares of Jones & Donnelly, 8.0 shares of Green Ditch, .22 shares of Cottonwood No. 2, 6.75 shares of Butte Mill, and 19.5 shares of Andrews-Farwell.

[Attach proofs of publication regarding public hearing prior to Ordinance and adoption of Ordinance afterwards.]

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THE BOULDER MUNICIPAL PROPERTY AUTHORITY,  
AS LESSOR

A Colorado Nonprofit Corporation

and

CITY OF BOULDER, COLORADO,  
AS LESSEE

A Political Subdivision Duly Organized and Existing  
Under the Constitution and Laws  
of the State of Colorado  
and Its Home Rule Charter

---

LEASE PURCHASE AGREEMENT

---

October 31, 2013

LEASE PURCHASE AGREEMENT

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(This Table of Contents is not a part of this Lease Purchase Agreement and is only for convenience of reference.)

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LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT, dated October 31, 2013, together with any amendments hereto made in accordance herewith (this "Lease"), entered into by and between THE BOULDER MUNICIPAL PROPERTY AUTHORITY (the "Lessor"), as the lessor hereunder, a non-profit corporation duly organized, existing, and in good standing under the laws of the State of Colorado, and the CITY OF BOULDER, COLORADO (the "City"), as lessee hereunder, a political subdivision duly organized and existing under the Constitution and laws of the State of Colorado and the home rule charter of the City;

WITNESSETH:

WHEREAS, the City is a duly and regularly created, organized, and existing political subdivision of the State of Colorado, existing as such under and by virtue of the Constitution and laws of the State of Colorado and the home rule charter of the City; and

WHEREAS, the City has determined, and hereby determines, that it is necessary and in the best interests of the City that certain property be acquired by the City and used for open space purposes (the "Leased Property"); and

WHEREAS, for purposes of financing the acquisition of the Leased Property, the City has determined and hereby determines that it is in the best interests of the City that the City and the Lessor enter into this Lease to provide for the acquisition of the Leased Property; and

WHEREAS, the Lessor is a non-profit corporation, duly organized, existing, and in good standing under the laws of the State of Colorado, and is duly qualified to do business in the State of Colorado; and under its articles and bylaws, the Lessor is authorized to own and hold real and personal property and to lease the same as lessor and to act in the manner contemplated herein; and

WHEREAS, the Lessor will issue a note in the principal amount of \$5,000,000.00 (the "Note"), payable from payments made under this Lease; and

WHEREAS, the obligation of the City to pay Base Rentals hereunder (as hereinafter defined) shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness of the City within the meaning of any constitutional, statutory, or home rule limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which this Lease shall be in effect; and

WHEREAS, neither this Lease nor the issuance of the Note shall directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which this Lease shall be in effect; and

WHEREAS, the Lessor desires to lease the Leased Property to the City, and the City desires to lease the Leased Property from the Lessor, pursuant to the terms and conditions and for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

The following terms will have the meanings specified below unless the context clearly requires otherwise:

"Base Rentals" means the payments payable by the City pursuant to Section 6.2 of this Lease and Exhibit B hereto, during the Original Term and any Renewal Term, which constitute the payments payable by the City for and in consideration of the right to use the Leased Property during such Original Term or Renewal Term.

"City" means the City of Boulder, Colorado, or any successor to its functions.

"City Representative" means the City Manager or any other person at the time designated to act on behalf of the City for the purpose of performing any act under this Lease by a written certificate furnished to the Lessor containing the specimen signature of such person or persons and signed on behalf of the City by the Mayor.

"Event of Default" means one or more events of default as defined in Section 14.1 of this Lease.

"Event of Nonappropriation" means a nonrenewal of this Lease by the City, determined by the failure of the City, for any reason, to budget and appropriate, specifically with respect to this Lease, monies sufficient to pay all Base Rentals, as provided in Section 6.6 of this Lease.

"Force Majeure" means, without limitation, the following: Acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of restraints of any kind of the government of the United States of America, or of the State, or any of their departments, agencies, or officials, or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes, or canals; or any other cause or event not within the control of the Lessor or the City.

"Independent Counsel" means an attorney duly admitted to the practice of law before the highest court in the State and who is not an employee of the Lessor, the Public Trustee or the City.

"Lease" means this Lease Purchase Agreement and any amendments or supplements hereto, including the Exhibits attached hereto.

"Lease Term" means the Original Term and any Renewal Terms as to which the City may exercise its option to renew this Lease, as further provided under Section 4.1 of this Lease; subject to the terms and provisions of Sections 4.2, 6.1, and 6.6 of this Lease. "Lease Term" refers to the time during which the City is the Lessee under this Lease; provided, however, certain provisions of this Lease survive the termination of the Lease Term, as further provided in Section 4.2 of this Lease.

"Leased Property" means the land to be acquired for open space described in Exhibit A hereto.

"Lessor" means The Boulder Municipal Property Authority, a Colorado nonprofit corporation, acting as Lessor under this Lease or any successor thereto.

"Lessor Representative" means any of the following: (i) the President of the Lessor; (ii) any Vice-President of the Lessor; (iii) the Secretary-Treasurer of the Lessor; or (iv) any other person or persons at the time designated to act on behalf of the Lessor for purposes of performing any act on behalf of the Lessor under this Lease by a written certificate furnished to the City containing the specimen signature of such person or persons and signed on behalf of the Lessor by the President of the Lessor.

"Note Resolution" means the resolution of the Board of Directors of the Lessor authorizing the issuance of the Note.

"Note Holder" means the registered owner of the Note.

"Note" means the \$5,000,000.00 Lease Purchase Revenue Note, Series 2013A, issued by the Lessor.

"Original Term" means the portion of the Lease Term which terminates on December 31, 2013.

"Permitted Encumbrances" means, as of any particular time: (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of Article VIII and Article IX of this Lease; (ii) this Lease and the Deed of Trust; (iii) utility, access, and other easements and rights of way, restrictions and exceptions other than those set forth in (vi) below which do not, in the opinion of the City Representative, interfere with or impair the Leased Property; (iv) any financing statements filed to perfect security interests pursuant to this Lease or the Deed of Trust; (v) such minor defects, irregularities, encumbrances, and clouds on title as normally exist with respect to property of the general character of the Leased Property and as do not, in the opinion of the City Representative, materially impair title to the Leased Property; and (vi) those encumbrances and exceptions to title set forth in Exhibit C to this Lease.

"Purchase Option Price" means the amount payable, at the option of the City, for the purpose of terminating this Lease and purchasing the Leased Property, which amount shall be equal to such amount as shall be necessary to discharge the Note in the manner provided in the Note Resolution.

"Renewal Term" means any optional Renewal Term of the Lease Term as provided in Article IV of this Lease.

"Revenues" means (i) the Base Rentals and (ii) all other revenues derived from this Lease, if any.

"State" means the State of Colorado.

## ARTICLE II

### REPRESENTATIONS, COVENANTS, AND WARRANTIES

Section 2.1. Representations, Covenants, and Warranties of the City. The City represents, covenants, and warrants for the benefit of the Lessor as follows:

- (a) The City is a political subdivision duly organized and existing within the State under the Constitution of the State and the home rule charter of the City. The City is authorized by law to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. The City has duly authorized and approved the execution and delivery of this Lease and other documents related to this transaction.
- (b) During the Lease Term, the Leased Property will at all times be used by the City for the purpose of performing its lawful governmental functions (except to the extent that subleasing the Leased Property by the City is permitted by Section 13.2 of this Lease).
- (c) Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions, or provisions of any restriction, or any agreement, or instruments to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien or encumbrance whatsoever upon any of the property or assets of the City.

Section 2.2. Representations, Covenants, and Warranties of Lessor. The Lessor represents, covenants, and warrants for the benefit of the City as follows:

- (a) The Lessor is a corporation duly organized, existing, and in good standing under the laws of the State, is duly qualified to do business in the State, has all necessary power and authority to purchase the Leased Property and to enter into and perform and observe the covenants and agreements on its part contained in this Lease, is possessed of full power and authority to own and hold real and personal property, and to lease the same as Lessor,

and by proper action has duly authorized the execution and delivery of this Lease.

- (b) The Lessor will not pledge or assign the Revenues or any of its other rights under this Lease except to secure the Note, and the Lessor will not mortgage or encumber the Leased Property except for Permitted Encumbrances.
- (c) Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions, and provisions of any restriction, or any agreement, or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government, or governmental authority having jurisdiction over the Lessor or its property, and which conflict or violation will have a material adverse effect on the Lessor, the Leased Property, or its operation.
- (d) The Lessor acknowledges and recognizes that this Lease will be terminated at the end of the Original Term or any Renewal Term in the event that sufficient funds are not budgeted and appropriated by the City, specifically with respect to this Lease, to continue paying all Base Rentals during the next occurring Renewal Term, and that the acts of budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the City.
- (e) The Lessor agrees that so long as the Note is outstanding, it will maintain its existence, will continue in good standing in the State, will maintain its principal place of business in the State, will not dissolve, and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it, provided that Lessor may, without violating the agreement contained in this subparagraph, consolidate with or merge into another legal entity, or permit one or more legal entities to consolidate with or merge into it, provided that: (i) the surviving, resulting, or transferee legal entity, as the case may be, shall be a legal entity organized and existing under the laws of one of the states of the United States of America, shall be qualified to do business in the State, shall be a non-profit or proprietary entity then permitted to own and hold real and personal property such as the Leased Property and to lease the same as Lessor, and shall assume in writing all of the obligations of the Lessor under this Lease, in which event the City shall release the Lessor in writing, concurrently with and contingent upon such assumption, from all obligations hereunder; (ii) prior to such consolidation, merger, or transfer, the City will be furnished with the

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opinion of nationally recognized municipal bond counsel acceptable to the City to the effect that such transaction will not affect the tax-exempt status of the Note; and (iii) prior to such consolidation, merger, or transfer, the City shall be furnished certificates from the chief executive officer of the Lessor and of the surviving, resulting, or transferee legal entity stating that in the opinion of such officers none of the covenants contained in this Lease or the Note will be violated as a result of such consolidation, merger, or transfer.

- (f) There is no litigation or proceeding pending or, to the knowledge of the Lessor, threatened against the Lessor or any other person affecting the right of the Lessor to execute or deliver this Lease, or the Note, or to comply with its obligations under this Lease or the Note. Neither the execution and delivery of this Lease and the Note by the Lessor, nor compliance by the Lessor with its obligations under this Lease and the Note require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.
- (g) This Lease constitutes a legal, valid, and binding obligation of the Lessor enforceable in accordance with its terms.

### ARTICLE III

#### DEMISING CLAUSE

The Lessor demises and leases the Leased Property to the City, and the City leases the Leased Property from the Lessor, in accordance with the provisions of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Original Term and the Renewal Terms, if any.

### ARTICLE IV

#### LEASE TERM

Section 4.1. Commencement of Lease Term; Renewals. The Lease Term shall commence as of October 31, 2013. The Original Term shall terminate on December 31, 2013. The Lease Term may be continued, solely at the option of the City, to the first Renewal Term for an additional year and for each of the additional Renewal Terms thereafter, each of one year in duration, except that the final Renewal Term, if any, shall commence on January 1, 2023, and shall terminate on October 31, 2023.

In the event that the City shall determine, for any reason, not to renew this Lease, the City shall give written notice to such effect to the Lessor not less than 30 days

prior to the end of the then current Original or Renewal Term; provided, however, that a failure to give such notice shall not constitute an Event of Default, nor prevent the City from declining to renew this Lease, nor result in any liability on the part of the City.

The option of the City to renew or not to renew this Lease shall be conclusively determined by whether or not the City Council has, on or before the December 31, immediately preceding the commencement of any Renewal Term, budgeted and appropriated, specifically with respect to this Lease, monies sufficient to pay all the Base Rentals for such ensuing Renewal Term, all as further provided in Section 6.6 of this Lease.

It is the intention of the parties hereto that the decision to renew or not to renew this Lease shall be made solely by the City Council and not by any other City officer, and the City Manager of the City (or any other officer at any time charged with the responsibility of formulating budget proposals) is hereby directed to include in the budget proposals submitted to the City Council, in any year in which this Lease shall be in effect, items for all payments required for the ensuing Renewal Term under this Lease. The City shall in any event, whether or not this Lease is to be renewed, furnish the Lessor with copies of its annual budget promptly after the budget is adopted.

The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Base Rentals shall be as provided in Exhibit B to this Lease.

Section 4.2. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

- (a) The expiration of the Original Term or any Renewal Term during which there occurs an Event of Nonappropriation (which is not thereafter waived) pursuant to Article VI of this Lease;
- (b) The purchase by the City of the Leased Property as provided in Article XII of this Lease;
- (c) Payment in full of the Note;
- (d) An Event of Default and termination of the Lease Term under Article XIV of this Lease; or
- (e) October 31, 2023, which date constitutes the last day of the final Renewal Term of this Lease, or such later date as all Base Rentals required hereunder shall be paid.

Termination of the Lease Term shall terminate all obligations of the City under this Lease and shall terminate the rights of the City to possession of the Leased Property under this Lease (except to the extent of any conveyance pursuant to Article XII of this Lease).

## ARTICLE V

### ENJOYMENT OF LEASED PROPERTY

The Lessor hereby covenants that the City shall during the Lease Term peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble, or hindrance from the Lessor, except as expressly required or permitted by this Lease or the Indenture. The Lessor shall not interfere with the quiet use and enjoyment of the Leased Property by the City during the Lease Term, so long as the Lease Term shall be in effect. The Lessor shall, at the request of the City and at the cost of the City, join and cooperate fully in any legal action in which the City asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the City may, at its own expense, join in any legal action affecting its possession and enjoyment of the Leased Property and shall be joined (to the extent legally possible and at the expense of the City) in any action affecting its liabilities hereunder.

Equitable title to the Leased Property shall be deemed to vest in the City, subject to the rights of the Lessor under this Lease and the Note Holder under the Deed of Trust, and the City's interest created hereby in the Leased Property shall be prior to any other interest granted or deemed granted by law by the Lessor.

## ARTICLE VI

### PAYMENTS BY THE CITY

Section 6.1. Payments to Constitute Currently Budgeted Expenditures of the City. The City and the Lessor acknowledge and agree that the Base Rentals hereunder shall constitute currently budgeted expenditures of the City. The obligations of the City under this Lease shall be from year to year only (as further provided in Sections 4.1, 4.2, 6.2, and 6.6 hereof) and shall not constitute a mandatory payment obligation of the City in any fiscal year beyond a fiscal year during which this Lease shall be in effect.

No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of the City within the meaning of any constitutional, statutory, or home rule debt limitation. No provision of this Lease shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Section 1 or 2 of Article XI of the Constitution of the State. Neither this Lease

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nor the issuance of the Note shall directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year in which this Lease shall be in effect. The City shall be under no obligation to exercise its option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City monies, nor shall any provision of this Lease restrict the future issuance of any City bonds or obligations payable from any class or source of City monies.

Section 6.2. Base Rentals. The City shall pay Base Rentals directly to the Lessor during the Original Term and any Renewal Terms, on the due dates set forth in Exhibit B to this Lease. The Base Rentals during the Original Term and any Renewal Terms shall be in the amounts in the "Total Base Rentals" columns, as set forth in Exhibit B to this Lease. The initial Base Rentals, if any, plus other good and valuable consideration to be paid by the City on the date hereof, shall be in consideration for the use of the Leased Property by the City from the time of delivery of this Lease until December 31, 2013. Thereafter, Base Rentals due on any October 31 shall be in consideration for the use of the Leased Property by the City from the immediately preceding January 1 to the immediately following December 31.

Section 6.3. Disposition of Base Rentals. Upon receipt by the Lessor of each payment of Base Rentals, the Lessor shall apply the amount of such Base Rentals to payment of the Note.

Section 6.4. Manner of Payment. The Base Rentals and, if paid, the Purchase Option Price, shall be paid in lawful monies of the United States of America to the Lessor at its principal office. The obligation of the City to pay the Base Rentals required under this Article and other sections hereof, during the Lease Term, shall be absolute and unconditional, and payment of the Base Rentals shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the City and the Lessor, the City shall, during the Lease Term, make all payments of Base Rentals when due and shall not withhold any Base Rentals pending final resolution of such dispute, nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Lessor shall affect the City's obligation to pay all Base Rentals during the Lease Term.

Section 6.5. Expression of the City's Need for the Leased Property: Determinations as to Fair Market Value and Fair Purchase Price. The City hereby declares its current need for the Leased Property. It is hereby declared to be the present intention and expectation of the City that this Lease will be renewed annually until title to the Leased Property is acquired by the City pursuant to this Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City. The City and the Lessor hereby agree and determine that based upon recent appraisals of the Leased Property, the price to be paid for the Leased Property represents the fair market value of the Leased Property; that the Base

Rentals hereunder during the Original Term and any Renewal Term represent the fair value of the use of the Leased Property; and that the Purchase Option Price represents the fair purchase price of the Leased Property. The City hereby determines that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew this Lease or to exercise its option to purchase the Leased Property hereunder. In making such determinations, the City and the Lessor have given consideration to the current appraised value of the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefit to the City by reason of the acquisition of the Leased Property, and the use and occupancy of the Leased Property pursuant to the terms and provisions of this Lease, the option of the City to purchase the Leased Property, and the expected eventual vesting of title to the Leased Property in the City. The City hereby determines and declares that the acquisition of the Leased Property and the leasing of the Leased Property pursuant to this Lease will result in a Leased Property of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed by the City other than pursuant to this Lease. The City hereby determines and declares that the period during which the City has an option to purchase the Leased Property (i.e., the maximum term of this Lease, including all Renewal Terms) does not exceed the useful life of the Leased Property.

Section 6.6. Nonappropriation. In the event that the City Council shall not budget and appropriate, specifically with respect to this Lease, on or before December 31 of each year, monies sufficient to pay all Base Rentals coming due for the next ensuing Renewal Term, an Event of Nonappropriation shall be deemed to have occurred.

If an Event of Nonappropriation occurs, the City shall not be obligated to make payment of the Base Rentals or any other payments provided for herein which accrue after the last day of the Original or Renewal Term during which such Event of Nonappropriation occurs; provided, however, that, subject to the limitations of Section 14.3 hereof, the City shall continue to be liable for Base Rentals allocable to any period during which the City shall continue to occupy the Leased Property.

The City shall in all events vacate the Leased Property by the expiration of the Original or Renewal Term during which an Event of Nonappropriation occurs.

## ARTICLE VII

### ACQUISITION OF THE LEASED PROPERTY

The Lessor shall acquire the Leased Property as of the date of this Lease. Title to the Leased Property shall be held by the Lessor, subject only to Permitted Encumbrances and as otherwise provided in Article V hereof.

## ARTICLE VIII

### TITLE TO THE LEASED PROPERTY LIMITATIONS ON ENCUMBRANCES

Section 8.1. Title to the Leased Property. Title to the Leased Property and any and all permanent additions and modifications to or replacements of any portion of the Leased Property shall be held in the name of the Lessor, subject only to Permitted Encumbrances and as otherwise provided in Article V hereof, until foreclosed on or conveyed as provided in Article XII of this Lease, notwithstanding: (i) the occurrence of an Event of Nonappropriation as provided in Section 6.6 of this Lease or one or more Events of Default as defined in Section 14.1 of this Lease; (ii) the occurrence of any event of condemnation as provided in Article X of this Lease; or (iii) the violation by the Lessor of any provision of this Lease.

The City shall have no right, title, or interest in the Leased Property or any additions and modifications to or replacements of any portion of the Leased Property, except as expressly set forth in this Lease.

Section 8.2. No Encumbrance, Mortgage, or Pledge of Leased Property. The City shall not permit any lien to be perfected or remain against the Leased Property. Neither the Lessor nor the City shall directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Leased Property, except Permitted Encumbrances. The City shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or claim not excepted above which it shall have created, incurred, or suffered to exist. The Lessor shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or claim not excepted above which it shall have created or incurred.

ARTICLE IX

MAINTENANCE, TAXES, INSURANCE, AND OTHER CHARGES

Section 9.1. Maintenance of the Leased Property by the City. The City agrees that, at all times during the Lease Term, the City will maintain, preserve, and keep the Leased Property or cause the Leased Property to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair, working order, and condition. The Lessor shall have no responsibility in any of these matters.

Section 9.2. Taxes, Other Governmental Charges, and Utility Charges. In the event that the Leased Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments, or charges lawfully made by any governmental body, the City shall, during the Lease Term, pay the amount of all such taxes, assessments, and governmental charges. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide only for such installments as are required to be paid during the Original or any Renewal Term. The City shall not allow any liens for taxes, assessments, or governmental charges to exist with respect to the Leased Property or any portion thereof (including, without limitation, any taxes levied upon the Leased Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Leased Property or any portion thereof or any interest therein, including the interest of the Lessor), or the rentals and revenues derived therefrom or hereunder.

The City may, at the expense and in the name of the City, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Lessor shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the security afforded pursuant to the Deed of Trust of the Lessor will be materially endangered or the Leased Property or any portion thereof will be subject to loss or forfeiture, or the Lessor will be subject to liability, in which event such taxes, assessments, utility or other charges shall be paid forthwith (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such taxes, assessments, utility or other charges).

Section 9.3. Provisions Regarding Casualty, Public Liability, and Property Damage Insurance. The City shall cause casualty and property damage insurance to be carried and maintained with respect to the Leased Property in an amount deemed necessary and reasonable by the City.

## ARTICLE X

### CONDEMNATION

If the Leased Property shall be taken by the exercise of the power of eminent domain, the City shall be obligated to continue to pay Base Rentals hereunder for the then current term of this Lease (i.e., the Original Term or Renewal Term, as the case may be). Any condemnation award shall be applied first to Base Rentals when due, and any balance shall be paid to the Lessor to the extent that this Lease has been terminated.

## ARTICLE XI

### DISCLAIMER OF WARRANTIES; OTHER COVENANTS

- Section 11.1. Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY. The City hereby acknowledges and declares that the City is solely responsible for the Leased Property and for the operation and maintenance of the Leased Property during the Lease Term, and that the Lessor has no responsibility therefor. In no event shall the Lessor be liable for any direct or indirect, incidental, special, or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning, or use by the City of any item, product or service provided for herein.
- Section 11.2. Further Assurances and Corrective Instruments. The Lessor and the City agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.
- Section 11.3. Lessor and City Representatives. Whenever under the provisions hereof the approval of the Lessor or the City is required to take some action at the request of the other, unless otherwise provided, such approval or such request shall be given for the Lessor by the Lessor Representative, and for the City by the City Representative, and the Lessor and the City shall be authorized to act on any such approval or request.
- Section 11.4. Compliance with Requirements. During the Lease Term, the City and the Lessor shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, and all

current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

Section 11.5. City Acknowledgment of Note. The City approves, acknowledges, directs, and agrees to the issuance and sale of the Note.

Section 11.6. Tax Covenants. The City covenants that it shall at all times do and perform all acts and things permitted by law and which are necessary or desirable in order to assure that interest paid by the Authority on the Note shall, for purposes of federal income taxation, not be includable in gross income under the Internal Revenue Code of 1986, as amended (the "Code"), or any other valid provision of law. In particular, but without limitation, the City further represents, warrants, and covenants that the Leased Property will not be used in a manner which will cause the Note to be considered a "private activity bond" within the meaning of the Code.

## ARTICLE XII

### CONVEYANCE OF THE LEASED PROPERTY

Section 12.1. Conveyance of the Leased Property. The Lessor shall transfer and convey to the City the Leased Property in the manner provided for in Section 12.2 of this Lease; provided, however, that prior to such transfer and conveyance, either:

- (a) The City shall have paid the then applicable Purchase Option Price; or
- (b) The City shall have paid all Base Rentals set forth in Exhibit B hereto, for the Original Term and all Renewal Terms; or
- (c) The Note shall have been paid in full.

The City is hereby granted the option to terminate the Lease Term and to purchase the Leased Property upon payment by the City of the then applicable Purchase Option Price.

Section 12.2. Manner of Conveyance. At the closing of any purchase or other conveyance of the Leased Property pursuant to Section 12.1 of this Lease, the Lessor shall execute and deliver to the City all necessary documents assigning, transferring, and conveying good and marketable title to the Leased Property, as the Leased Property then exists, subject to the following: (i) Permitted Encumbrances, other than this Lease and the Deed of Trust and any Financing Statements, indicating the City or the Lessor as the debtor and the Lessor or the Public Trustee as secured party, filed to perfect any security interests granted under the Lease or the Deed of Trust; (ii) all liens, encumbrances, and restrictions created or suffered to exist by the Lessor as required or permitted by this Lease, or the Deed of Trust, or

arising as a result of any action taken, or omitted to be taken, by the Lessor as required or permitted by this Lease or the Deed of Trust; (iii) any lien or encumbrance created by action of the City; and  
(iv) those liens and encumbrances (if any) to which title to the Leased Property was subject when conveyed to the Lessor.

### ARTICLE XIII

#### PLEDGE, SUBLEASING, INDEMNIFICATION, MORTGAGING, AND SELLING

Section 13.1. Pledge. The parties hereto agree that the Lessor shall be entitled to pledge the Base Rentals and its remedies hereunder as security for the Note.

Section 13.2. Assignment and Subleasing by the City. This Lease may not be assigned by the City for any reason. However, the Leased Property may be subleased, as a whole or in part, by the City without the necessity of obtaining the consent of the Lessor, subject, however, to each of the following conditions:

- (a) The Leased Property may be subleased, (i) in whole or in part, only to an agency, or department, or political subdivision of the State, or (ii) to another entity or entities, if, in the opinion of nationally recognized bond counsel acceptable to the Lessor, such sublease will not impair the exemption from federal income taxation of the interest on the Note;
- (b) This Lease and the obligations of the City hereunder shall, at all times during the Original and any Renewal Terms, remain obligations of the City, and the City shall maintain its direct relationships with the Lessor, notwithstanding any sublease;
- (c) The City shall furnish or cause to be furnished to the Lessor a copy of any sublease agreement; and
- (d) No sublease by the City shall cause the Leased Property to be used for any purpose which would adversely affect the exemption from federal income taxation of any interest on the Note, or which would violate the Constitution, statutes, or laws of the State, or the home rule charter of the City.

Section 13.3. No Negligence. The City hereby covenants not to act negligently in connection with the Leased Property.

Section 13.4. Restriction on Mortgage or Sale of Leased Property. The City and the Lessor agree that, except for: (i) the pledge by the Lessor of this Lease as security for the Note and mortgaging of the Leased Property pursuant to the Deed of Trust, which

are hereby authorized and acknowledged; (ii) any exercise by the Public Trustee or the Lessor of the remedies afforded by this Lease; (iii) the right of the City to sublease all or a portion of the Leased Property pursuant to Section 13.2 of this Lease; and  
(iv) any conveyance to the City pursuant to Article XII of this Lease; neither the Lessor nor the City will mortgage, sell, assign, transfer, or convey the Leased Property or any portion thereof during the Lease Term.

## ARTICLE XIV

### EVENTS OF DEFAULT AND REMEDIES

Section 14.1. Events of Default Defined. Any one of the following shall be "Events of Default" under this Lease:

- (a) Failure by the City to pay any Base Rentals during the Lease Term for a period of 25 days after written notice specifying such failure and requesting that it be remedied, shall be received by the City from the Lessor; or
- (b) Failure by the City to vacate the Leased Property by the expiration of the Original or Renewal Term during which an Event of Nonappropriation occurs; or
- (c) Failure by the City to observe and perform any covenant, condition, or agreement on its part to be observed or performed, other than as referred to in (a) or (b), for a period of 45 days after written notice, specifying such failure and requesting that it be remedied, shall be given to the City by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Lessor shall not withhold its consent to an extension of such time, if corrective action shall be instituted by the City within the applicable period and diligently pursued until the default is corrected.

The foregoing provisions of this Section are subject to the following limitations: (i) the City shall be obligated to pay the Base Rentals only during the Lease Term, except as otherwise expressly provided in this Lease; and (ii) if, by reason of Force Majeure, the City shall be unable, in whole or in part, to carry out any agreement on its part herein contained, other than the obligations on the part of the City contained in Article VI of this Lease, the City shall not be deemed in default during the continuance of such inability. The City agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City from carrying out its agreement; provided that the settlement

of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the City.

Section 14.2. Remedies on Default. Whenever any Event of Default referred to in Section 14.1 of this Lease shall have happened and be continuing, the Lessor may terminate the Lease Term and may give notice to the City to vacate the Leased Property within 15 days from the date of such notice. After the occurrence of an Event of Default, the Lessor shall be entitled to take one or any combination of the following additional remedial steps:

- (a) Temporarily lease the Leased Property or any portion thereof, pending sale of the Leased Property.
- (b) Recover from the City:
  - (i) the portion of Base Rentals which would otherwise have been payable hereunder, allocable to any period in which the City continues to occupy the Leased Property; and
  - (ii) Base Rentals which would otherwise have been payable by the City hereunder during the remainder, after the City vacates the Leased Property, of the Original or Renewal Term in which such Event of Default occurs; provided, however, that the Lessor shall be obligated to the City to use its best efforts to lease or sublease the Leased Property for the remainder of such Original or Renewal Term, as provided in paragraph (a) of this Section and the Net Proceeds of such leasing shall be offset against the amount recoverable from the City under this paragraph (ii).
- (c) Take whatever action at law or in equity may appear necessary or desirable to enforce its right in and to the Leased Property under this Lease.

Section 14.3. Limitations on Remedies. A judgment requiring a payment of money may be entered against the City by reason of an Event of Default only as to the City's liabilities described in paragraph (b) of Section 14.2 of this Lease. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent that the City fails to vacate the Leased Property as required by Section 6.6 of this Lease, and only as to the liabilities described in paragraph (b) (i) of Section 14.2 of this Lease. Notwithstanding paragraph (b)(ii) of Section 14.2 of this Lease, any Event of Default consisting of failure by the City to vacate the Leased Property by the expiration of the Original or Renewal Term during which an Event of Nonappropriation occurs shall not result in any liability for Base Rentals allocable to any period other than the period in which the City continues to occupy the Leased Property.

- Section 14.4. No Remedy Exclusive. Subject to Section 14.3 hereof, no remedy herein conferred upon or reserved to the Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, and the same may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.
- Section 14.5. Waivers. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- Section 14.6. Agreement to Pay Attorneys' Fees and Expenses. In the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Base Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall pay on demand therefor to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.
- Section 14.7. Waiver of Appraisal, Valuation, Stay, Extension, and Redemption Laws. The Lessor and the City agree, to the extent permitted by law, that in the case of a termination of the Lease Term by reason of an Event of Nonappropriation or an Event of Default, neither the Lessor, nor the City, nor any one claiming through or under either of them shall or will set up claim or seek to take advantage of any appraisal, valuation, stay, extension, or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of this Lease, the Note or the Deed of Trust; and the Lessor and the City, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws.

## ARTICLE XV

### MISCELLANEOUS

- Section 15.1. Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, as follows: If to the City: Municipal Building, 1777 Broadway, Boulder, CO 80302, Attention: City Attorney; and if to the Lessor: Municipal Building, 1777 Broadway, Boulder, CO 80302,

Attention: City Attorney. The City and the Lessor may, by written notice, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

- Section 15.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the City and their respective successors and assigns, subject, however, to the limitations contained in Article XIII of this Lease.
- Section 15.3. Amendments, Changes, and Modifications. Except as otherwise provided in this Lease, subsequent to the delivery of the Note and prior to their payment in full, this Lease may not be effectively amended, changed, modified, or altered without the written consent of the Note Holder.
- Section 15.4. Net Lease. This Lease shall be deemed and construed to be a "net lease", and the City shall pay absolutely net during the Lease Term, the Base Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction, or setoff (other than credits against Base Rentals expressly provided for in this Lease).
- Section 15.5. Payments Due on Holidays. If the date for making any payment, or the last day for performance of any act, or the exercising of any right, as provided in this Lease, shall be a legal holiday or a day on which banking institutions in the city in which the principal office of the Lessor is located are authorized by law to remain closed, such payment may be made, or act performed, or right exercised on the next succeeding day that is not a legal holiday or a day on which such banking institutions are not authorized by law to remain closed with the same force and effect as if done on the nominal date provided in this Lease.
- Section 15.6. Severability. In the event that any provision of this Lease, other than the requirement of the City to pay Base Rentals and the requirement of the Lessor to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City under the conditions set forth in Article XII of this Lease, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- Section 15.7. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- Section 15.8. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.
- Section 15.9. Captions. The captions of headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of the Lease.

IN WITNESS WHEREOF, the Lessor has executed this Lease in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers; and the City has caused this Lease to be executed in its name and the seal of the City affixed and attested by duly authorized officers thereof. All of the above are effective as of the date first above written.

[SEAL]

THE BOULDER MUNICIPAL PROPERTY  
AUTHORITY, a Colorado non-profit corporation,  
as the Lessor

By: \_\_\_\_\_  
Matt Appelbaum, President

ATTEST:

By: \_\_\_\_\_  
Bob Eichen, Secretary-Treasurer

[SEAL]

CITY OF BOULDER, COLORADO, a political  
subdivision, as Lessee

By: \_\_\_\_\_  
Matt Appelbaum, Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk on behalf of  
Director of Finance and Record

**EXHIBIT A to Lease Purchase Agreement**

**LEGAL DESCRIPTION**

Outlots: N, ERTL Farm N.U.P.U.D., and Revised Outlot Q1, Replat A ERTL Farm N.U.P.U.D. and the following water rights: 13.0 shares of Jones & Donnelly, 8.0 shares of Green Ditch, .22 shares of Cottonwood No. 2, 6.75 shares of Butte Mill, and 19.5 shares of Andrews-Farwell.

**EXHIBIT B to Lease Purchase Agreement**

**SCHEDULE OF BASE RENTALS**

| October 31st<br>Year | Total Base Rental |
|----------------------|-------------------|
| 2014                 | 593,655.37        |
| 2015                 | 593,655.37        |
| 2016                 | 593,655.37        |
| 2017                 | 593,655.37        |
| 2018                 | 593,655.37        |
| 2019                 | 593,655.37        |
| 2020                 | 593,655.37        |
| 2021                 | 593,655.37        |
| 2022                 | 593,655.37        |
| 2023                 | 593,655.37        |

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EXHIBIT C to Lease Purchase Agreement

1. Rights and claims of parties in possession not shown in the public records.
2. Easements or claims of easements not shown by the public records.
3. Discrepancies, conflicts and boundary lines, shortage in area, encroachments, and any facts in which a correct survey and inspection of the premises would disclose and which are not shown by public records.
4. Any lien or right to a lien, for services, labor or material hereto or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

Note: If Guardian Title Agency, LLC conducts the closing, this item will be deleted from the final policy

6. Water rights, claims or title to water, together with all rights, privileges, and immunities relating thereto, whether or not they are shown by the Public Records.
7. TAXES FOR THE 2013, AND SUBSEQUENT YEARS, A LIEN NOT YET DUE AND PAYABLE
8. RESERVATION BY THE UNION PACIFIC RAILROAD COMPANY, AND ITS ASSIGNS, ALL COAL THAT MAY BE UNDERNEATH THE SURFACE OF THE LAND HEREIN DESCRIBED; ALSO SUCH RIGHT OF WAY AND OTHER GROUNDS AS MAY BE NECESSARY FOR THE PROPER WORKING OF ANY COAL MINES THAT MAY BE DEVELOPED UPON SAID PREMISES AND FOR THE TRANSPIRATION OF THE COAL FROM THE SAME AS DESCRIBED IN DEED RECORDED AUGUST 10, 1903 IN BOOK 251 AT PAGE 397 AND ANY INTERESTS THEREIN, OR ASSIGNMENTS THEREOF.
9. UNDIVIDED 100% INTEREST IN ALL SAND AND GRAVEL AS RESERVED IN THE DEED RECORDED APRIL 24, 1974 AT RECEPTION NO. 100684 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTERESTS THEREIN.
10. AN OIL AND GAS LEASE, DATED APRIL 21, 1975 AND RECORDED APRIL 29, 1975 AT RECEPTION NO. 136084, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
11. UNDIVIDED ONE HALF% INTEREST IN ALL SAND AND GRAVEL AS RESERVED IN THE DEED RECORDED JANUARY 11, 1977 AT RECEPTION NO. 205358 AND 205359 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTERESTS THEREIN.
12. AN OIL AND GAS LEASE, DATED MARCH 23, 1977 AND RECORDED APRIL 22, 1977 AT RECEPTION NO. 1717142, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
13. UNDIVIDED 100% INTEREST IN ALL SAND AND GRAVEL AS RESERVED IN THE DEED RECORDED JANUARY 3, 1978 AT RECEPTION NO. 258892 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTERESTS THEREIN.
14. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRAVEL MINING LEASE RECORDED SEPTEMBER 28, 1984 AT RECEPTION NO. 649329.
15. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE CONSERVATION EASEMENT RECORDED OCTOBER 29, 1984 AT RECEPTION NO. 654331 AND AMENDMENT RECORDED MARCH 9, 1999 AT RECEPTION NO. 1914607.

CONTINUED

16. COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, RESERVATIONS AND LIEN RIGHTS (IF ANY) WHICH DO NOT INCLUDE A FORFEITURE OR REVERTER CLAUSE, DELETING RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILY STATUS OR NATIONAL ORIGIN SET FORTH IN THE DECLARATION RECORDED OCTOBER 29, 1984 AT RECEPTION NO. 654336; AMENDMENTS RECORDED MAY 13, 1985 AT RECEPTION NO. 8787 AND OCTOBER 9, 1986 AT RECEPTION NO. 795899; SUPPLEMENT RECORDED MARCH 9, 1999 AT RECEPTION NO. 1914611 AND ANY AND ALL AMENDMENTS, SUPPLEMENTS AND ANNEXATIONS THERETO.
17. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE CONSERVATION EASEMENT RECORDED NOVEMBER 7, 1984 AT RECEPTION NO. 656284.
18. EASEMENTS, NOTES, TERMS, CONDITIONS, PROVISIONS, RESTRICTIONS, COVENANTS, AGREEMENTS AND OBLIGATIONS AS SHOWN ON THE PLAT OF ERTL FARM N.U.P.U.D. RECORDED OCTOBER 29, 1984 AT RECEPTION NO. 00654328 AND ON THE PLAT OF REPLAT A, ERTL FARM N.U.P.U.D. RECORDED MARCH 9, 1999 AT RECEPTION NO. 1914604.
19. RIGHT OF WAY FOR RAILROAD OVER AND ACROSS SUBJECT PROPERTY AS EVIDENCED IN INSTRUMENT RECORDED MAY 31, 1985 AT RECEPTION NO. 691445.
20. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE INSTRUMENT RECORDED MAY 31, 1985 AT RECEPTION NO. 691445.
21. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRANT OF DEVELOPMENT RIGHTS RECORDED NOVEMBER 7, 1984 AT RECEPTION NO. 00656285 AND AMENDMENT RECORDED APRIL 23, 1986 AT RECEPTION NO. 754591.
22. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE EASEMENT RECORDED OCTOBER 29, 1984 AT RECEPTION NO. 00654332 AND 00654333.
23. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE AGREEMENT RECORDED NOVEMBER 7, 1984 AT RECEPTION NO. 00656289.
24. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE EASEMENT AGREEMENT RECORDED NOVEMBER 7, 1984 AT RECEPTION NO. 656290.
25. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE CONSERVATION EASEMENT RECORDED OCTOBER 29, 1982 AT RECEPTION NO. 517818 AND AMENDMENT RECORDED NOVEMBER 7, 1984 AT RECEPTION NO. 656291.
26. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRANT OF EASEMENT RECORDED AUGUST 14, 1985 AT RECEPTION NO. 706331.
27. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE SUBDIVISION AGREEMENT RECORDED MARCH 9, 1999 AT RECEPTION NO. 1914605.
28. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE EASEMENT AGREEMENT RECORDED MARCH 9, 1999 AT RECEPTION NO. 1914613.
29. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE ADDENDUM TO FARM LEASE RECORDED NOVEMBER 3, 1999 AT RECEPTION NO. 1996613.
30. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRANT OF EASEMENT RECORDED OCTOBER 15, 2002 AT RECEPTION NO. 2343804.
31. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRANT OF EASEMENT RECORDED DECEMBER 30, 2002 AT RECEPTION NO. 2378109.
32. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRANT OF EASEMENT RECORDED DECEMBER 30, 2002 AT RECEPTION NO. 2378115.
33. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE GRANT OF EASEMENT RECORDED MARCH 3, 2003 AT RECEPTION NO. 2405058.

CONTINUED

34. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE ROAD MAINTENANCE AGREEMENT RECORDED JULY 30, 2009 AT RECEPTION NO. 3020063.
35. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE DRAINAGE EASEMENT RECORDED NOVEMBER 15, 2010 AT RECEPTION NO. 3112867.
36. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, EASEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE OPTION AGREEMENT RECORDED NOVEMBER 13, 1981 AT RECEPTION NO. 472531.
37. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AS CONTAINED IN THE RIGHT-OF-WAY GRANTED TO PANHANDLE EASTERN PIPELINE RECORDED APRIL 28, 1980 ON FILM 1114 AT RECEPTION NO. 393443 AS SHOWN ON THE RECORDED PLAT OF ERTL FARM N.U.P.U.D.
38. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AS CONTAINED IN THE RIGHT-OF-WAY GRANTED TO PANHANDLE EASTERN PIPELINE RECORDED APRIL 28, 1980 ON FILM 1114 AT RECEPTION NO. 393446 AS SHOWN ON THE RECORDED PLAT OF ERTL FARM N.U.P.U.D.
39. EASEMENTS, RIGHTS-OF-WAY, OBLIGATIONS, CONDITIONS, AND PROVISIONS CREATED BY QUIT CLAIM DEED FROM ERTL FARM HOMEOWNERS ASSOCIATION, INC. TO LEFT HAND WATER SUPPLY COMPANY, RECORDED SEPTEMBER 9, 1986 AT RECEPTION NO. 787666.
40. EASEMENTS, RIGHTS-OF-WAY, OBLIGATIONS, CONDITIONS, AND PROVISIONS CREATED BY WARRANTY DEED FROM ERTL FARM HOMEOWNERS ASSOCIATION, INC. TO LEFT HAND WATER SUPPLY COMPANY, RECORDED SEPTEMBER 9, 1986 AT RECEPTION NO. 787667.
41. EASEMENTS, RIGHTS-OF-WAY, OBLIGATIONS, CONDITIONS, AND PROVISIONS CREATED BY BILL OF SALE DEED FROM ERTL FARM HOMEOWNERS ASSOCIATION, INC. TO LEFT HAND WATER SUPPLY COMPANY, RECORDED SEPTEMBER 9, 1986 AT RECEPTION NO. 787668.
42. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS AS CONTAINED IN THE DEED OF RIGHT-OF-WAY BY AND BETWEEN ENERGY RESOURCES LAND, INC. AS GRANTOR AND ERTL FARM HOMEOWNERS ASSOCIATION, INC. DATED APRIL 13, 1985, RECORDED MAY 13, 1985 ON FILM NO. 1353 AT RECEPTION NO. 687898 AND 687900.
43. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE CORRECTIVE DRY-UP COVENANT RECORDED FEBRUARY 5, 2013 AT RECEPTION NO. 03287120.
44. TERMS, CONDITIONS, PROVISIONS, AGREEMENTS, AND OBLIGATIONS SPECIFIED UNDER THE CORRECTIVE DRY-UP COVENANT RECORDED FEBRUARY 5, 2013 AT RECEPTION NO. 03287121.
45. EASEMENTS, NOTES, TERMS, CONDITIONS, PROVISIONS, RESTRICTIONS, COVENANTS, AGREEMENTS AND OBLIGATIONS AS SHOWN ON THE PLAT OF ERTL FARM, SECOND FILING RECORDED MAY 13, 1985 AT RECEPTION NO. 687894.
46. TERMS CONDITIONS AND PROVISIONS OF LEASE PURCHASE AGREEMENT (TO BE RECORDED)
47. DEED OF TRUST FROM BOULDER MUNICIPAL PROPERTY AUTHORITY TO THE PUBLIC TRUSTEE OF BOULDER COUNTY FOR THE USE OF ENERGY RESOURCES TECHNOLOGY LAND INC TO SECURE A PRINCIPAL SUM OF \$5,000,000.00, DATED TBD AND RECORDED TO BE RECORDED, AND ANY ASSIGNMENTS THEREOF.

THIS NOTE HAS BEEN PRIVATELY PLACED BY THE BOULDER MUNICIPAL PROPERTY AUTHORITY; ANY REGISTERED OWNER HEREOF, INCLUDING ANY TRANSFEREE, IS RESPONSIBLE FOR MAKING ITS OWN INVESTMENT DECISION, AND ANY SUCH REGISTERED OWNER IS NOT ENTITLED TO RELY ON THE AUTHORITY OR THE CITY OF BOULDER, COLORADO, FOR PURPOSES OF DISCLOSURE WITH RESPECT TO SAID REGISTERED OWNER'S DECISION IN PURCHASING THIS NOTE. BY ITS OWNERSHIP OF THIS NOTE, THE REGISTERED OWNER HEREOF ACCEPTS THE FOREGOING PROVISIONS.

Lease Purchase Revenue Note, Series 2013A

For value received, The Boulder Municipal Property Authority (the "Authority") promises to pay to Energy Resources Technology Land, Inc., a Colorado Corporation, in the manner and only from the sources hereinafter provided, the principal sum of \$5,000,000, together with interest on unpaid principal from the date hereof until paid, at the rate of 3.25% per annum, said principal and interest to be payable pursuant to the following schedule (said schedule to be conclusive with respect to the interest payments hereon notwithstanding the foregoing provisions of this Note), provided however, that should any payment date set forth below not be a business day on which the Authority's Paying Agent, which shall initially be U.S. Bank National Association (the "Paying Agent"), shall be open for business, then such payment shall be made on the succeeding business day that the Paying Agent is open for business. Such monthly payments shall first be applied to interest payable on this Note with the remainder applied to the payment of the outstanding principal.

PAYMENT SCHEDULE

| October 31<br><u>Year</u> | Principal<br><u>Payment</u> | Interest<br><u>Payment</u> | Total<br><u>Payment</u> |
|---------------------------|-----------------------------|----------------------------|-------------------------|
| 2014                      | 431,155.37                  | 162,500.00                 | 593,655.37              |
| 2015                      | 445,167.91                  | 148,487.46                 | 593,655.37              |
| 2016                      | 459,635.87                  | 134,019.50                 | 593,655.37              |
| 2017                      | 474,574.04                  | 119,081.33                 | 593,655.37              |
| 2018                      | 489,997.69                  | 103,657.68                 | 593,655.37              |
| 2019                      | 505,922.62                  | 87,732.75                  | 593,655.37              |
| 2020                      | 522,365.10                  | 71,290.27                  | 593,655.37              |
| 2021                      | 539,341.97                  | 54,313.40                  | 593,655.37              |
| 2022                      | 556,870.58                  | 36,784.79                  | 593,655.37              |
| 2023                      | 574,968.88                  | 18,686.49                  | 593,655.37              |

The principal of and interest on this Note are payable in lawful monies of the United States of America without deduction for collection charges. The principal of and interest on this Note are payable to the registered owner hereof by wire transfer according to the instructions provided by the person in whose name the Note is registered, or, if requested by the Authority, by wire transfer according to the instructions provided by the person in whose name this Note is registered, on the registration books of the Authority at the close of business on the day preceding such principal and interest payment date, whether or not a business day (the "Record Date"); provided, however, that the final payment of the principal of and interest hereon shall be made solely upon presentation and surrender of this Note at the office of the Authority, 1777 Broadway, Boulder, Colorado 80302.

If the wiring instructions for the registered owner change during the course of the payment of this Note, it is the responsibility of the registered owner hereof to notify the Paying Agent and provide the Paying Agent with new wiring instructions. If such wire transfer is rejected, the Paying Agent shall hold such payment (without accruing additional interest) until it has been provided with new wire instructions from the registered owner hereof. If, due to the registered owner's failure to provide the Paying Agent with proper wiring instructions, payment is received by a party other than the registered owner hereof, neither the Authority nor the Paying Agent shall be held responsible for such payment(s) to the registered owner hereof.

This Note is a note of the Authority denominated as "Lease Purchase Revenue Note, Series 2013A " issued in the aggregate principal amount of \$5,000,000 (the "Note"). As provided in the resolution of the Authority authorizing this Note (the "Resolution"), this Note is issuable solely in the form of one fully registered note without coupons and in the denomination of \$5,000,000. The Note is issued to acquire certain open space property (the "Property"), to be leased to the City of Boulder, Colorado (the "City"). The Property so leased (the "Leased Property") shall be leased pursuant to a Lease Purchase Agreement (the "Agreement") dated October 31, 2013.

This Note may be prepaid by the Authority at any time without penalty.

The Authority may deem and treat the registered owner of this Note as the absolute owner hereof for all purposes (whether or not this Note shall be overdue), and any notice to the contrary shall not be binding upon the Authority.

This Note is transferable by the registered owner hereof in person or by his attorney, duly authorized in writing, at the principal office of the Paying Agent designated above, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Resolution. This Note may be transferred upon the registration books by delivery of this Note to the Paying Agent together with a written instrument or instruments of transfer in form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the registered owner of this Note or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of the Note, along with the social security number or federal employer identification number of such transferee and wire instructions, if applicable, for principal and interest payments on the Note to such transferee executed by the transferee. In the event of the transfer of this Note, the Paying Agent shall enter the transfer of ownership in the registration books. The Authority and the Paying Agent shall charge the registered owner of this

Note for every such transfer an amount sufficient to reimburse the Authority and the Paying Agent for their reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer. The Authority may replace a lost, stolen or destroyed Note upon receiving indemnity satisfactory to the Authority from the registered owner thereof.

EXCEPT TO THE EXTENT PAYABLE FROM NET PROCEEDS OF FORECLOSURE AND SALE OF THE LEASED PROPERTY PURSUANT TO A DEED OF TRUST DATED OCTOBER 31, 2013 (THE "DEED OF TRUST") FROM THE AUTHORITY TO THE PUBLIC TRUSTEE OF BOULDER COUNTY, COLORADO, FOR THE BENEFIT OF THE REGISTERED OWNER HEREOF, THIS NOTE SHALL BE PAYABLE SOLELY FROM RENTALS TO BE PAID BY THE CITY UNDER THE AGREEMENT. ALL PAYMENT OBLIGATIONS OF THE CITY UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION OF THE CITY TO PAY RENTALS, SHALL ONLY BE MADE FROM THE CITY'S OPEN SPACE AND STREET FUND MAINTAINED UNDER SECTION 3-2-39, BOULDER REVISED CODE 1981, ARE FROM YEAR TO YEAR ONLY, AND DO NOT CONSTITUTE A MANDATORY PAYMENT OBLIGATION OF THE CITY IN ANY FISCAL YEAR BEYOND A FISCAL YEAR IN WHICH THE AGREEMENT SHALL THEN BE IN EFFECT. THE AGREEMENT IS SUBJECT TO ANNUAL RENEWAL AT THE OPTION OF THE CITY AND SHALL BE TERMINATED UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION. IN SUCH EVENT, ALL PAYMENTS FROM THE CITY UNDER THE AGREEMENT SHALL TERMINATE, AND THIS NOTE, AND THE INTEREST THEREON SHALL BE PAYABLE SOLELY FROM MONIES AVAILABLE, IF ANY, FROM FORECLOSURE ON THE LEASED PROPERTY PURSUANT TO THE DEED OF TRUST.

None of the Agreement, this Note, or the Deed of Trust constitute a general obligation or other indebtedness of the City within the meaning of any constitutional, statutory, or home rule charter debt provision or limitation. None of the Agreement, this Note, or the Deed of Trust of the Authority have directly or indirectly obligated the City to make any payments beyond those appropriated for any fiscal year in which the Agreement shall then be in effect.

The obligations of the Authority under the Resolution and the Deed of Trust shall be discharged as and to the extent provided in the Resolution upon deposit of cash and/or United States government securities with an escrow agent, in which case the registered owners of this Note, shall promptly release the lien of the Deed of Trust and shall be secured solely as provided in the Resolution.

Upon receiving written notice of a default from the registered owner hereof, the Authority shall have 30 days to cure such default, whereupon if such default is not cured, then the entire principal amount hereof, together with interest hereon, shall, at the election of the registered owner hereof, become due and payable, but only from the sources hereinabove described. Failure to exercise this election or any other remedies upon a default shall not constitute a waiver of that right in the event of a subsequent or continuing default.

The rights or remedies of the registered owner hereof as provided in this Note and the Deed of Trust shall be cumulative and concurrent and may be pursued singly, successively, or together

against the Leased Property at the sole discretion of the registered owners hereof. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of said rights or remedies, or of the rights to exercise them at any later time.

This Note may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

It is hereby certified and recited that all the requirements of law have been fully complied with by the proper Authority officers in the issuance of this Note, and that this Note was duly and lawfully authorized by the Resolution duly adopted and approved by the Board of Directors of the Authority prior to the issuance hereof.

The registered owner of this Note, by acceptance hereof, acknowledges and agrees to be bound by all provisions of the Resolution relating hereto.

This Note shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose until the Paying Agent, as registrar, shall have signed the certificate of authentication hereon.

IN WITNESS WHEREOF, the Board of Directors of the Authority has caused this Note to be executed with the signature of the President of the Authority and attested by the signature of its Secretary-Treasurer and has caused the seal of the Authority to be impressed or imprinted hereon.

Date: October 31, 2013

[SEAL]

THE BOULDER MUNICIPAL PROPERTY  
AUTHORITY, a Colorado non-profit corporation

By: \_\_\_\_\_  
Matt Appelbaum, President

ATTEST:

By: \_\_\_\_\_  
Bob Eichen, Secretary-Treasurer

CERTIFICATE OF AUTHENTICATION

This Note is one of the Notes described in the within mentioned Resolution of the Authority.

Date of Authentication: \_\_\_\_\_

US BANK NATIONAL ASSOCIATION, as Registrar

By: \_\_\_\_\_  
Authorized Officer

FORM OF ASSIGNMENT OF NOTE

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers  
unto \_\_\_\_\_  
(please print or type name and address of transferee) (Tax Identification or Social Security No.  
\_\_\_\_\_) the within Note and all rights and title hereunder,  
and hereby irrevocably constitutes and appoints  
\_\_\_\_\_  
attorney to transfer the within Note on the books kept for registration thereof, with full power of  
substitution in the premises.

Dated: \_\_\_\_\_  
Signature

Assignor must attach notarized acknowledgment.

\_\_\_\_\_  
Signature must be guaranteed by a  
member of a Medallion Signature Program.

**NOTE: PLEASE RETURN ORIGINAL NOTE WITH THIS ASSIGNMENT.  
The signature on this assignment must correspond with the name as it  
appears on the face of this original note.**

## **Visitor Master Plan: Habitat Conservation Area Designation**

### ***Characteristics***

Tend to be located in more remote areas.

Typically represent the largest blocks of an ecosystem type with few, if any, trails or roads.

Lower level of visitor use; no or few trails and trailheads.

Naturally functioning ecosystems (but may contain areas with evidence of human use and impacts).

### ***Goals***

Maintain, enhance and/or restore naturally functioning ecological systems.

Maintain, enhance and restore habitat for species of concern identified in the Boulder County and Boulder Valley Comprehensive Plans.

Provide public access and passive recreational opportunities that foster appreciation and understanding of ecological systems and have minimal impacts on native plant communities and wildlife habitats or other resources.

Eliminate all undesignated trails, unless they are made part of the designated trails system or provide specialized access to appropriate low-use destinations.

Where sustainable infrastructure exists, continue to allow public access to appropriate destinations.

### ***Criteria for Inclusion of Management Areas in the Habitat Conservation Area Designation***

Large habitat blocks with a low density of trails, roads or development.

High potential for restoration of natural ecosystems (including areas with restoration underway).

Plant communities that are rare or unique on Open space and Mountain Parks lands.

Habitat for species of concern such as threatened, endangered, rare and other species.

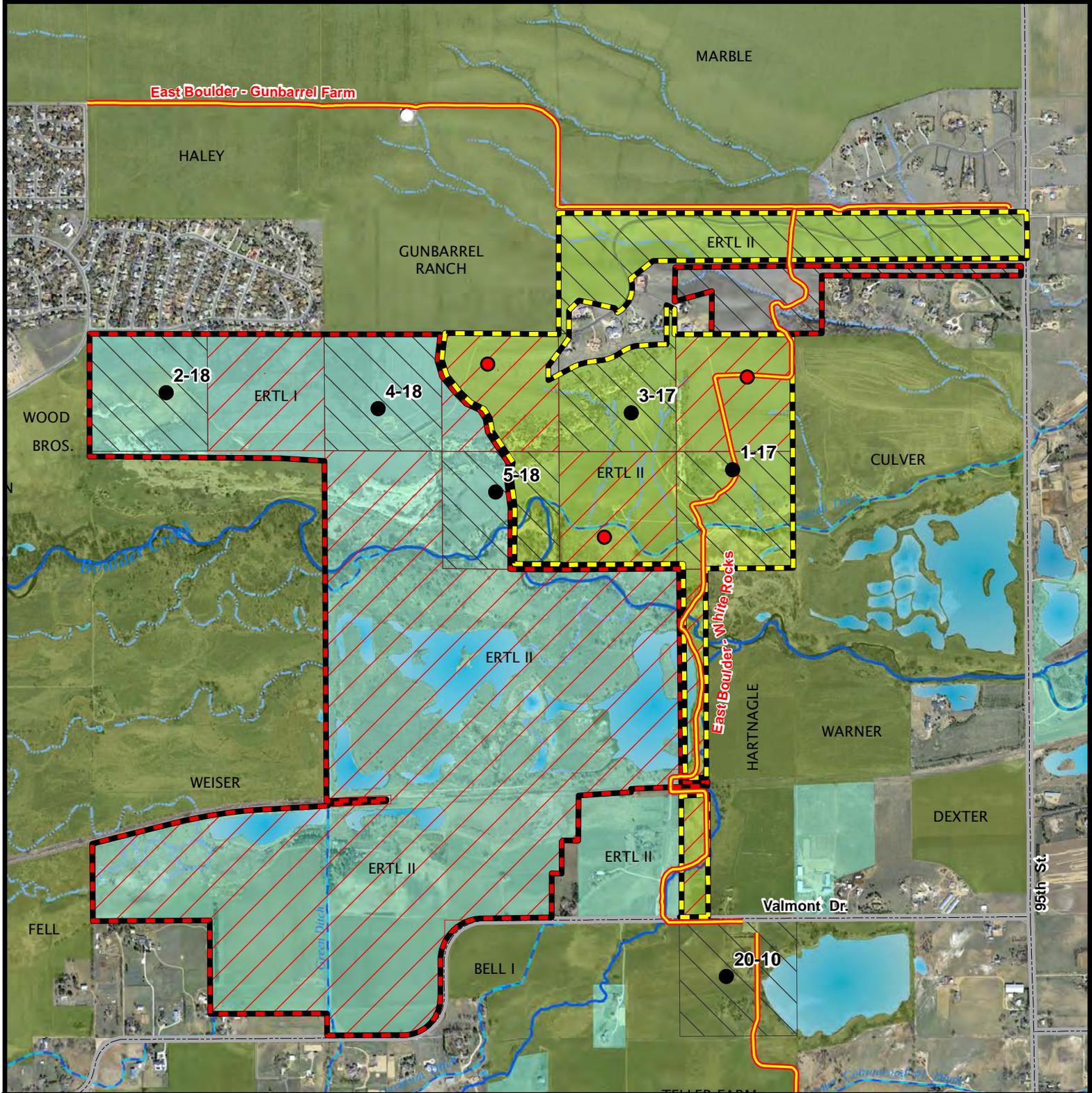
Areas with high biodiversity such as wetlands and riparian areas (especially un-trailed riparian reaches).

Comparatively lower visitation levels.

Compatibility with adjacent land (i.e., opportunities for coordinating habitat protection and connections and recreational activities/trail linkages).

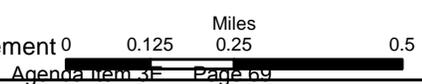
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# ATTACHMENT J - City of Boulder Open Space & Mountain Parks LOCATION MAP - ERTL MINERAL ESTATE



© 2019 City of Boulder, Colorado  
 All rights reserved. The map information contained herein is intended for the sole use of the purchaser and may not be copied, duplicated or redistributed in any way, in whole or in part, without the separate written consent of the City of Boulder.  
 The information depicted is provided as a general representation only. While source documents were developed in compliance with national map accuracy standards, the City of Boulder provides no warranty, express or implied, as to the accuracy and/or completeness of the information contained herein.

-  ERTL New Purchase
-  ERTL Leasehold Termination Area
-  Minerals Being Acquired
-  Minerals Not Being Acquired
-  1984 Fee Purchase Area
-  Producing Oil Well
-  Additional 120 Acres of Mineral Rights
-  OSMP Managed Multi-Use Trail
-  OSMP Fee Property
-  OSMP Conservation Easement



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**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 17, 2013**

**AGENDA TITLE**

Introduction, first reading and consideration of a motion to order published, by title only, an ordinance adopting the *Intergovernmental Agreement with Boulder County for Hazardous Materials Management*.

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Paul J. Fetherston, Deputy City Manager  
Maureen Rait, Executive Director of Public Works  
Jeff Arthur, Director of Public Works for Utilities  
Bret Linenfelser, Water Quality and Environmental Services Manager

**EXECUTIVE SUMMARY**

The purpose of this agenda item is for City Council to consider approving Ordinance **XXXX** (**Attachment A**), an update to the Intergovernmental Agreement (IGA) between the City of Boulder and Boulder County for Hazardous Materials Management (**Attachment B**).

In March 2005, City Council met with Boulder County Commissioners and agreed to contribute \$400,000 to the construction of the new Hazardous Materials Management (HMM) facility, in addition to the city's annual operating expense contribution. The new HMM facility was proposed to provide disposal and recycling services focusing on appropriate management and disposal of household hazardous wastes and hazardous wastes generated by businesses that are defined by the State of Colorado as "conditionally-exempt small quantity generators" (CESQG).

Boulder County completed construction of a new HMM facility in 2011, located at 1901 63<sup>rd</sup> St., in Boulder, replacing the old facility formally located at the Western Disposal

transfer station in Boulder. The proposed IGA between the City of Boulder (city) and Boulder County effective Jan. 1, 2014 through Dec. 31, 2018, replaces the existing IGA for hazardous materials collection and management, which expires Dec. 31, 2013. The new IGA includes a \$20,000 per year payment towards the city's \$400,000 portion of the new HMM facility construction cost, plus annual operating fees, which are based on facility usage by city residents and businesses. The IGA assures city residents and businesses have a long-term option for the proper disposal of hazardous materials.

The Boulder County HMM IGA also includes the following entities: City and County of Broomfield; cities of Lafayette, Longmont and Louisville; and, the towns of Erie and Superior. A cost breakdown by each entity is provided in the IGA (**Attachment B**).

## STAFF RECOMMENDATION

### **Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to order published, by title only, an ordinance adopting the *Intergovernmental Agreement with Boulder County for Hazardous Materials Management*, dated XX, 2013 (**Attachment A**).

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - The HMM facility provides residents a free disposal option to properly dispose of hazardous materials and provides a low-cost alternative for CESQG businesses that would otherwise be required to contract with a special waste hauler at a higher cost.
- Environmental – The HMM facility provides an opportunity for, and encourages, proper disposal of hazardous wastes by residents and local businesses. Proper management of hazardous wastes reduces or eliminates the potential for environmental contamination from improper hazardous materials disposal and minimizes risks to the public, wildlife and aquatic systems. Participation in funding the HMM facility also supports regulatory compliance requirements within the city's State of Colorado issued Municipal Separate Storm Sewer System (MS4) stormwater permit.
- Social – The new HMM facility has improved customer service through additional hours and days of operation and a more efficient hazardous materials drop-off process. Additional focus on education, such as waste reduction methods and alternative, less toxic, products, provides the public and businesses with free educational materials and resources.

## **OTHER IMPACTS**

- Fiscal – The city contributes \$20,000 annually towards the city’s \$400,000 portion of new HMM facility construction cost. This payment began in December 2009 and will terminate after 20 years. The city also pays an annual fee for the operation and maintenance of the HMM facility. For 2013, the city’s portion of the annual HMM facility operation and maintenance cost is \$258,830. This cost is covered by \$1,800 from the General Fund (through LEAD) with the remainder split between the Wastewater Utility and Stormwater Utility.
- Staff time – No additional staff resources are required.

## **BOARD AND COMMISSION FEEDBACK**

The HMM IGA has not been presented to any city boards.

## **PUBLIC FEEDBACK**

There is not public feedback to date.

## **BACKGROUND**

In 1994, Boulder County started operating the Household Hazardous Waste Facility (HHWF), which was located at the Western Disposal transfer station in Boulder. The facility was originally built by Boulder County and operating costs were funded through an IGA with multiple cities and towns in Boulder County, as well as Broomfield. Under the IGA, each city and town, and Broomfield, paid for operational costs based on use.

Since 1994, HHWF use increased substantially and the facility became too small to operate effectively. In 2002, Boulder County initiated conversations about the concept of building a new, expanded facility that would serve the county into the future. In March 2005, City Council and Boulder County Commissioners held a joint study session to discuss the \$1.7 million estimated construction cost for the new facility and options for paying for the facility. From this study session, council agreed to contribute \$400,000 towards the cost of the new facility, with payments to be equally spread out over 20 years (\$20,000/year), with no interest. The city also agreed to pay for operation and maintenance costs for the new facility, based on use by city residents and businesses. The current IGA, which was initiated in January 2009, expires Dec. 31, 2013.

## **ANALYSIS**

The current HMM facility is a state of the art facility for disposal and recycling of a broad range of hazardous materials from residents and businesses. Boulder County considers the HMM facility a “safe, convenient place where county residents and businesses can dispose of hazardous wastes and, further, to provide for the safe and environmentally sound recycling and disposal of these wastes.”

By jointly funding the construction and operation of the HMM facility, through an IGA, communities in Boulder County, and Broomfield City and County, can more cost effectively provide options to both residential households and local businesses for hazardous materials disposal. This joint agreement assists in achieving the following goals, which are outlined in the IGA (**Attachment B**):

- Protect public health and the environment from the consequences of improper storage and disposal of hazardous wastes;
- Promote an environmentally knowledgeable and concerned public and business community;
- Promote a multi-jurisdictional hazardous materials management collection program;
- Solicit community support; and
- Encourage the purchase and use of less toxic or harmful products, encourage waste minimization and promote reuse and recycling.

The HMM facility continues to expand the type and quality of wastes it accepts and now accepts business waste from CESQG businesses for a fee. City residents, with valid identification, can drop off household hazardous wastes at the facility at no charge.

If adopted, the new IGA would become effective Jan. 1, 2014 and expire Dec. 31, 2018. As with the current IGA, the city funds the operation and maintenance of the HMM facility based the level of participation from city residents, which can vary each year, and revenue generated from CESQG businesses. In a joint effort between Boulder County and each IGA entity, the HMM annual operation and maintenance budget is developed annually. The annual HMM facility budget is approved each year by City Council as part of the Utilities and LEAD budget process. Funding for 2014 is included in the draft 2014 budget.

## **ATTACHMENTS**

**Attachment A: ORDINANCE XXXX**

**Attachment B: INTERGOVERNMENTAL AGREEMENT FOR HAZARDOUS MATERIALS MANAGEMENT**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADOPTING AN INTERGOVERNMENTAL AGREEMENT BETWEEN BOULDER COUNTY; THE CITY AND COUNTY OF BROOMFIELD; THE CITIES OF BOULDER, LAFAYETTE, LONGMONT AND LOUISVILLE; AND THE TOWNS OF ERIE AND SUPERIOR, RELATING TO THE MANAGEMENT OF HAZARDOUS MATERIALS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The City Council adopts and approves the intergovernmental agreement, entitled, “Multi-year HMM IGA Intergovernmental Agreement for Hazardous Materials Management,” effective January 1, 2014 through December 31, 2018, attached as **Exhibit A** and incorporated by this reference.

Section 2. This ordinance is necessary to protect the public health, safety and welfare of the residents of the city, and covers matters of local concern.

Section 3. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 17<sup>th</sup> day of September, 2013.

Attest: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

INTERGOVERNMENTAL AGREEMENT FOR  
HAZARDOUS MATERIALS MANAGEMENT

This Intergovernmental Agreement for Hazardous Materials Management (this “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between BOULDER COUNTY, a body politic and corporate (referred to hereinafter as the “County”), the CITY AND COUNTY OF BROOMFIELD and the cities of BOULDER, LAFAYETTE, LONGMONT and LOUISVILLE, and the towns of ERIE and SUPERIOR; each a municipal corporation (each of the above may be referred to hereinafter as a “Party” or collectively as the “Parties.”) The City and County of Broomfield and the cities and towns may also be referred to hereinafter individually as a “Municipality” or jointly as the “Municipalities”.

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to C.R.S. §29-1-201 *et seq.*; and

WHEREAS, the Parties wish to encourage proper disposal of household hazardous wastes and hazardous wastes generated by businesses that are defined by the State of Colorado as “conditionally-exempt small quantity generators” (hereinafter “CESQGs”), and increase public awareness of the importance of waste avoidance, waste reduction, and sound waste management practices in protecting public health and the environment, particularly water quality; and

WHEREAS, the County has initiated a hazardous materials management program (hereinafter the “HMM Program”) to provide a safe, convenient place where residents and businesses of the County can dispose of Hazardous Wastes and, further, to provide for the safe and environmentally sound recycling and disposal of these wastes; and

WHEREAS, significant cost, organizational and promotional efficiencies can be realized if the HMM Program is implemented jointly by the Parties; and

WHEREAS, the Parties have determined it is in the best interest of their residents and businesses, and a recognized common goal, to provide for the conduct of a coordinated HMM Program; and

WHEREAS, the goals of this Agreement are:

1. To protect public health and the environment from the consequences of improper storage and disposal of Hazardous Wastes as defined below;
2. To promote an environmentally knowledgeable and concerned public and business community;
3. To promote a multi-jurisdictional hazardous materials management collection program;
4. To solicit community support; and
5. To encourage the purchase and use of less toxic or harmful products, encourage waste minimization and promote reuse and recycling; and

WHEREAS, the Parties wish to enter into a multi-year intergovernmental agreement for the operation of the hazardous materials management facility (the “HMM Facility”) located at [1901 63<sup>rd</sup> Street, Building C, Boulder, CO 80301](#), and the HMM Program.

NOW, THEREFORE, in consideration of the mutual covenants and commitments made herein, the Parties agree as follows:

### I. DEFINITIONS

A. For the purposes of this IGA, the “Town of Erie” refers to the entire Town of Erie, and is not limited to the portions of the Town of Erie that are located in Boulder County.

B. CESQG BUSINESS WASTES are hazardous wastes generated by businesses that meet the definition of “Conditionally-Exempt Small Quantity Generators” as defined by State of Colorado Hazardous Waste Regulations, 6CCR-1007-3. Colorado regulations are congruent with Federal Regulations with respect to CESQG status. CESQG businesses generate hazardous waste in amounts below state and federal regulatory thresholds. As of the date of this Agreement, these thresholds are:

1. A monthly hazardous waste generation rate of less than 1 kilogram (approximately 1 quart) of acutely hazardous waste
2. A monthly hazardous waste generation rate of less than 100 kilograms or 220 lbs of hazardous wastes (approximately ½ of a 55 gallon drum or about 27 gallons)
3. A maximum accumulation of less than 1 kilogram hazardous waste (approximately 1 quart) of acutely hazardous waste
4. A maximum accumulation of less than 1000 kilograms or 2,200 pounds of hazardous waste (approximately 5, 55 gallon drums)

C. HAZARDOUS WASTE CONTRACTOR shall mean the entity(s) selected and employed by the County to categorize, package, transport, recycle, treat or dispose of selected Household Hazardous Wastes collected by the HMM Program.

D. HOUSEHOLD HAZARDOUS WASTES are solid and liquid wastes, discarded from homes or similar sources (including single and multiple residences) that are best described by lists of hazardous wastes in federal or state regulations. Household hazardous wastes may also exhibit the characteristics of toxicity, ignitability, corrosivity or reactivity as described in those rules. Household hazardous wastes are not currently regulated by either the federal or state government. Products that may be considered household hazardous wastes include many pesticides and herbicides; drain openers; oven cleaners; paint thinners, strippers and removers; adhesives; wood preservatives; automotive and fuel additives; grease and rust solvents; refrigerants; carburetor cleaners; and other products. Although waste paint and motor oil are not usually considered hazardous wastes under current federal or state regulations, they are included as household hazardous wastes for purposes of the HMM Program because of their ubiquity in the waste stream and the toxicity of some of their constituents.

E. HAZARDOUS WASTES, as used in this Agreement refers collectively to Household Hazardous Wastes and CESQG Business Wastes, and includes Universal Wastes (excluding electronic wastes as these are not accepted by the HMM Facility), Used Oil, Recyclable Wastes, and Non-Hazardous Liquid Wastes.

F. NON-HAZARDOUS LIQUID WASTES as used in this Agreement refers to latex paints, water-based paint products, non-hazardous cleaners, and cooking oil.

G. NON-HAZARDOUS LIQUID WASTE CONTRACTOR shall mean an entity selected and employed by the County to receive and dispose of Non-Hazardous Liquid Wastes collected by the HMM Program.

H. PROGRAM SERVICE AREA, as used in this Agreement refers to the geographic area encompassing Boulder County, Broomfield City and County, and the Town of Erie.

I. RECYCLABLE WASTES as used in this Agreement refers to wastes that may or may not be Universal Wastes that can be recycled, including antifreeze, lead-acid batteries, and used oil.

J. RECYCLING CONTRACTOR shall mean an entity selected and employed by the County to receive and recycle Recyclable Wastes collected by the HMM Program.

K. WASTE CONTRACTOR shall mean an entity selected and employed by the County to receive non-hazardous, solid wastes collected by the HMM Program and transport to a landfill for disposal.

L. UNIVERSAL WASTE is as defined in 6 CCR 1007-3, Part 273 and shall mean waste batteries (except lead acid batteries), certain pesticides, mercury-containing devices, aerosol cans that contain hazardous waste when discarded, lamps or the bulb or tube portion of an electric lighting device, electronic devices and components derived from the disassembly of electronic devices.

M. USED OIL is as defined in 6 CCR 1007-3, section 279.1. and shall mean any oil that has been refined from crude oil, or any synthetic oil that has been used, and as a result of such use, is contaminated by physical or chemical impurities.

## **II. HAZARDOUS MATERIALS MANAGEMENT COMMITTEE**

A. The membership of the Hazardous Materials Management Committee (the HMM Committee) shall be comprised of one or more designated staff members from each of the Parties.

B. The HMM Committee shall act by consensus to provide guidance to County staff concerning decisions that affect the operations of the HMM Facility, the development and use of educational outreach materials and the operating budget of the HMM Program, including decisions regarding the expenditure of funds for outreach and education, future expansion and replacement of the HMM Facility, hours of operation, the acceptance of new materials, and the assessing of future business surcharges.

## **III. PROGRAM DESCRIPTION**

A. The Parties enter into this Agreement for the primary purpose of funding the HMM program to collect and recycle and/or appropriately dispose of Hazardous Wastes generated by residents and businesses in the Program Service Area. The County shall employ trained personnel to manage and operate the HMM Facility. Such operation shall include, at a minimum, providing residential drop-off four days per week and business drop-off by appointment.

B. A Hazardous Waste Contractor(s) shall be employed to assist the County HMM Facility staff to categorize and package hazardous wastes and to transport and properly dispose of the Hazardous Wastes collected at the HMM Facility. A Non-Hazardous Liquid Waste Contractor(s) shall be employed by the County to receive and dispose of Non-Hazardous Liquid Wastes collected by the HMM Program. A Recycling Contractor(s) shall be employed by the County to receive and recycle Recyclable Wastes collected by the HMM Program. A Waste Contractor(s) shall be employed by the County to receive and dispose of non-hazardous, solid wastes collected by the HMM Program.

C. Waste from CESQG businesses may be processed at the HMM Facility subject to the business paying for the cost of waste handling, including any additional handling or labor changes if applicable, plus surcharges set by the County for operating costs (30% of waste management costs) and construction

costs (40% of waste management costs), and future equipment and facility replacement or expansion (10% of waste management costs) (collectively “Surcharges”).

D. The HMM Program can also assist CESQG Businesses by arranging for the HMM Program’s Hazardous Waste Contractor(s), Non-Hazardous Liquid Waste Contractor(s) or Recycling Contractor(s) to pack and ship Hazardous Waste directly from the business location, subject to the business paying for the cost of waste handling, including any additional handling or labor changes if applicable, plus a surcharge for operating costs (30% of waste management costs). Surcharges for construction, and for future equipment and facility replacement or expansion are not applied to direct ship loads.

E. CESQG Business Waste generated by the County or one of the Municipalities may be received at the HMM Facility, or directly shipped from the County or a Municipality to the processing facility if the the County or Municipality pays the cost of processing, including any additional handling or labor changes if applicable. No Surcharges shall be applied to Hazardous Waste generated by the Parties.

F. Future changes to the Surcharges will be determined by written agreement of the Parties.

G. Any Municipality may request that the HMM Program assist with the planning and implementation of special one-day collection events. The HMM Program will provide assistance with events, subject to the Municipality agreeing to reimburse the HMM Program for all costs incurred with the event, including staff time, temporary labor, supplies, Hazardous Waste disposal, etc.

H. Any Municipality wishing to implement a more frequent satellite collection program (periodic or regular events during the year) in its community may contract for satellite collection program services separately with a contractor of its choice, or work with the HMM Program subject to approval by Boulder County. The HMM Program will provide assistance with community satellite collection programs, subject to the Municipality agreeing to reimburse the HMM Program for all costs incurred with the satellite collection, including staff time, temporary labor, supplies, Hazardous Waste disposal, etc.

I. In the event of a man-made or natural disaster occurring within the geographic limits of one or more of the Municipalities, the HMM Program will assist the Municipality(s), as practicable, with the collection and disposal of Hazardous Wastes resulting from the disaster. Such assistance may include setting up temporary collection areas for Hazardous Wastes. The HMM Program will provide disaster-related assistance subject to the Municipality agreeing to reimburse the HMM Program for all costs incurred for such assistance to the Municipality, including staff time, temporary labor, supplies, waste disposal, etc.

#### **IV. DISPOSAL AND RECYCLING SERVICES**

A. The County shall contract with one or more companies for Hazardous Waste collection, recycling or disposal services. Specific responsibilities and performance requirements of these Contractors shall be included in separate contracts with the County. These agreements shall include indemnification of the Municipalities, and are available to the HMM Committee upon request. The County shall provide its Hazardous Waste Contractor(s) with a copy of this Agreement.

B. The Parties understand and agree that the Boulder County Administrative Services Department, Resource Conservation Division, will administer Hazardous Waste disposal and recycling contracts for the HMM Program on behalf of all Parties. The County assumes responsibility for the negligent actions and/or omissions of its agents and its employees in the performance or failure to perform with respect to management and operations affecting the HMM Program and the HMM Facility. Except as set forth in Section II, above, the Parties disclaim the right to be involved in management or operational decisions

affecting the HMM Facility, and rely on the expertise of the County and the County's Hazardous Waste, Waste and Recycling Contractor(s) for such purposes, however, the zoning and land use decisions by a Municipality with jurisdiction over the HMM Facility are not disclaimed.

C. By entering into this Agreement, neither the County nor the Municipalities waive or intend to waive, as to any person not a Party to this Agreement, the monetary limitations or any other rights, immunities, and protections which are provided to the County and the Municipalities under the Colorado Governmental Immunity Act, Section 24-10-101 *et.seq.*, C.R.S.

D. Any information or materials developed by the HMM Program, Hazardous Waste, Waste or Recycling Contractors shall be made available to all Parties through the HMM Committee.

## V. RESIDENTIAL OPERATING COSTS

A. The cost of providing residential Household Hazardous Waste collection services at the HMM Facility is estimated each year based upon historic use and growth rates in residential participation and on unit costs per household. Residential costs include labor, operating supplies and packing materials, transportation, recycling and/or disposal and education materials, minus revenues for the sale of recyclable materials (lead-acid batteries, motor oil), CESQG Business Waste handling fees or operational surcharges, collection event reimbursements, donations, and any other deductions. It is the intention of the Parties that each Municipality will fund a pro-rated share of quarterly residential program costs based on the number of residents from each Municipality that use the HMM Facility each quarter.

B. During the term of this Agreement, the County Administrative Services Department, Resource Conservation Division, will provide HMM Committee members with a budget projection for the following year substantially in the form attached hereto as Attachment A. The projection will estimate the amount of each Party's contribution for the following year. Budget projections for the following year will be provided to each Party on or before May 1 of the preceding year for each year this Agreement is in effect. This budget shall become final unless any Party objects by June 30th of the preceding year.

C. During each year this Agreement is in effect, the County Administrative Services Department, Resource Conservation Division, will supply regular information on participation levels in each community and actual operating costs, and will make best efforts to ensure that operating costs are not incurred above the agreed-upon estimate without prior approval from the affected Municipality.

D. After all program expenses through each quarter of the current year have accrued (or have been estimated for the month of December only), the County shall calculate the share of costs for each Party as follows:

Each Party's contribution for the quarter = actual program costs for the quarter, plus estimated program costs for December only if applicable, minus any deductions as described in VI A. above., for the quarter, multiplied by the actual residential percentage participation for the County or Municipality for the quarter based on the HMM Program's customer database.

The share of costs for the first quarter of the following year will include an adjustment to reconcile estimated versus actual expenses for the previous December.

E. Each Party pledges to appropriate funds for its pro-rated share of operating expenses as specified in this Section V and annual budget projections, but no Party shall be liable for any such amounts unless and until the governing body of such Party has appropriated funds pursuant to this Agreement. However, each Party shall be liable for payment of monies so appropriated, and any of the remaining Parties may

take any action appropriate to compel payment of appropriated funds. When subsequent year budgets are available for years 2015-2018, each Municipality shall consider the appropriation of funds.

F. If, during any year this Agreement is in effect, either the community participation level in a community is expected to exceed projections, thereby raising the Party's percentage of contribution, or operating costs for the HMM Facility will exceed the original estimates such that a Party's obligation for operating expenses during the calendar year will exceed the amount appropriated for such year, the Party affected by such increase may take either of the following actions or some combination thereof:

1. The Party may appropriate additional funds to support such additional participation by its residents.
2. The Party may choose not to appropriate additional funds and request that the County restrict use by its residents so as not to exceed the funding appropriated.

G. In the event that HMM Program operating costs are expected to be higher than anticipated, the HMM Committee may recommend appropriate action to help reduce the costs of operating of the HMM Facility, such as recommending that Boulder County staff reduce the hours of operation.

H. In the event that one or more of the Parties fails to contribute its share of costs, and in a manner consistent with this Agreement, the Party in default will refrain from further participation in the HMM Program, its residents will not be permitted to bring Hazardous Wastes to the HMM Facility and its rights pursuant to this Agreement shall be suspended, but the terms and obligations of this Agreement will continue for the remaining Parties, and any of the remaining Parties may take appropriate action to enforce this Agreement.

I. In the event that one or more Municipalities fail to ratify this Agreement or initially ratify this Agreement and thereafter default, the remaining Parties reserve the right, following suspension of the Party or Parties in default, to re-estimate the cost of the HMM Program in consultation with the Hazardous Waste, Waste and Recycling Contractors and to adjust each Party's funding allocation on a pro-rated basis to total 100% of the revised cost.

J. If this Agreement is extended beyond 2018, the HMM Committee shall consider past usage of each participating community to evaluate methods of pro-rating costs, and make recommendations to the Parties.

## **VI. PAYMENT OF ANNUAL OPERATING EXPENSES**

A. The County will be the paying agent for the HMM Program and Facility.

B. The County will request payment of each Party's contribution to HMM Program costs based on the participation by households of each Party, on a quarterly basis. Contributions will be based on the previous quarter's operation. Each Municipality will pay its contribution within 30 days of billing.

C. Each Municipality's payment obligations hereunder are subject to and limited by the appropriation of sufficient funds for each year this Agreement is in effect.

## **VII. FUNDING FOR CONSTRUCTION OF THE HAZARDOUS MATERIALS MANAGEMENT FACILITY**

A. Boulder County finished construction of the HMM Facility in 2011 on County-owned property located at 1901 63<sup>rd</sup> Street, Boulder, the same site occupied by the Boulder County Recycling Center. The

original Parties to this Agreement contributed to the construction costs. In addition, funds for construction were allocated from the Boulder County Sales and Use Tax Fund, and the Parties estimated that future business surcharges would help to fund the project. The Parties also agreed to fund equipment and start-up costs over ten years beginning in 2011. The breakdown of contributions was as follows:

| Contributor                             | Contribution to construction expense | Estimated Contribution to equipment and start-up expense **** | TOTAL     |
|---|--------------------------------------|---|-----------|
| Boulder County                          | \$864,020*                           | \$42,734  | \$906,754 |
| City of Boulder                         | \$400,000**                          | \$68,888  | \$468,888 |
| City and County of Broomfield           | \$22,800*                            | \$6,319   | \$29,119  |
| Town of Erie                            | \$10,720***                          | \$3,501   | \$14,221  |
| City of Lafayette                       | \$33,200*                            | \$10,494  | \$43,694  |
| City of Longmont                        | \$58,880*                            | \$11,780  | 70,660    |
| City of Louisville                      | \$43,920* *                          | \$8,992   | \$52,912  |
| Town of Superior                        | \$14,880*                            | \$2,292   | \$17,172  |
| County Recycling Sales and Use Tax Fund | \$762,500                            | NA  | \$762,500 |
| Future businesses surcharges            | \$189,080                            | NA  | \$189,080 |
| Total                                   | \$2,400,000                          | 155,000   | 2,555,000 |

\*One-time contribution

\*\* Paid over 20 years, interest free

\*\*\* Paid over 5 years, interest free

\*\*\*\* Paid over 10 years, interest free, based on previous year's percentage participation

B. The City of Boulder will pay the County Recycling Sales and Use Tax Fund equal payments of Twenty Thousand Dollars (\$20,000) per year for twenty (20) years, beginning by December 31, 2009, and thereafter by December 31<sup>st</sup> each year through and including 2028. The City of Boulder's payment obligations hereunder are subject to and limited by the appropriation of sufficient funds by the Boulder City Council for each year including but not limited to those years that this Agreement is in effect.

C. The City of Louisville will pay the County Recycling Sales and Use Tax Fund equal payments of Two Thousand One Hundred Ninety-Six Dollars (\$2,196) per year for twenty (20) years, beginning December 31, 2009, and thereafter by December 31<sup>st</sup> each year through and including December 31, 2028. The City of Louisville's payment obligations hereunder are subject to and limited by the appropriation of sufficient funds by the Louisville City Council for each year including but not limited to those years that this Agreement is in effect.

D. In the event that a Party to this Agreement fails to contribute its share of costs, and in a manner consistent with this Agreement, the Party in default will refrain from further participation in the HMM Program, its residents will not be permitted to bring Household Hazardous Wastes to the HMM Facility,

and its rights pursuant to this Agreement shall be suspended, but the terms and obligations of this Agreement will continue as to the remaining Parties, and any of the remaining Parties may take appropriate action to enforce this Agreement.

### **VIII. FUTURE FACILITY REPLACEMENT OR EXPANSION**

A. The HMM Facility is expected to serve the needs of Boulder County for the next twenty years and beyond. In anticipation of future equipment needs, or facility expansion or replacement needs, the Parties each agree, subject to appropriation of sufficient funds therefor, to pay an additional 5% above actual quarterly operational expenditures for each quarter of each year for the term of this Agreement, which shall be placed by the County into a restricted fund and used only for future equipment needs or facility expansion or replacement. This is expected to generate approximately One Hundred Forty-Four Thousand and Five Hundred Dollars (\$144,500) over 5 years. Any expenditures from the restricted fund shall be approved by the Parties in writing.

B. The surcharge for future equipment and facility replacement or expansion, noted in Section III C. above, will ensure that business customers also contribute to future capital expenditures.

C. The Parties also agree that during the term of this Agreement all donations received by the HMM Program, whether the donation is designated for a particular community or not, will be added to the restricted funds as set aside for future equipment needs or facility expansion or replacement.

D. With regard to future facility replacement or expansion, the Parties further agree that:

1. The County will remain the sole owner of the building and property asset represented by the HMM Facility. The Parties anticipate that they will share proportionally in any future replacement or expansion of the HMM Facility. To the extent that such costs are shared proportionally by the Parties, such additional capital contributions by the Municipalities should be recoverable in the event the County is in default of this Agreement.
2. Producers and retailers of hazardous products benefit from the sale of such products, bear significant responsibility for the recycling or proper disposal of unwanted hazardous products or associated wastes, and will be asked to contribute to the capital costs of any expansion or replacement of the facility.
3. Generators of CESQ Business Waste will benefit from any expansion or replacement of the HMM Facility and should also share in the capital cost of any expansion or replacement of this facility.

### **IX. DEFAULT**

A. The County shall be in default of this Agreement if it uses the HMM Facility for a purpose other than Hazardous Waste management, as specified in this Agreement, or for any other waste reduction purposes not previously approved by the Parties. The 20-year restrictive covenant herein attached as Attachment B (the "Restrictive Covenant") is hereby incorporated into this Agreement.

B. In the event of the County's default pursuant to Paragraph A of this Section IX, any Party may give the County written notice of default. If the County has not remedied the complained of default within sixty days of receiving such notice of default, then the complaining Party may demand repayment of its "Adjusted Financial Interest," defined in Paragraph D, below, as well as its contribution to the

restricted fund as referenced in Section VIII A., excluding its proportionate share of the restricted fund that has been spent or encumbered.

C. The County agrees that upon receipt of such written notice pursuant to Paragraph B above, it will promptly repay the Party requesting such repayment.

D. "Adjusted Financial Interest" shall mean a value determined as follows:

1. An "Initial Party Investment" shall be the amount specified in Section VII A. of this Agreement.
2. Upon the issuance of the certificate of occupancy for the HMM Facility, the County shall provide evidence of the total cost of constructing the HMM Facility. The Parties shall review such evidence and agree on the percentage of the total costs of construction contributed by each Party (the "Investment Percentage").
3. A Party's Adjusted Financial Interest shall equal the then-existing fair market value of the HMM Facility multiplied by the Party's Investment Percentage.

E. If the Parties cannot agree on the fair market value of the HMM Facility, its fair market value will be determined by an appraisal. The appraiser shall be selected jointly by the Parties and shall be a Member of the Appraisal Institute (M.A.I.) or a person with equivalent professional expertise. The cost of the appraisal shall be borne equally by the County and those Parties seeking the return of their Adjusted Financial Interest.

To the greatest extent practicable, the fair market value of the HMM Facility shall not include any sums attributable to Significant Improvements to the HMM Facility made solely by the County after its initial construction. A "Significant Improvement" shall mean a permanent alteration, addition, or enhancement to the HMM Facility that increased its fair market value by ten percent or more as of the time of the valuation required by the Agreement.

Maintenance expenses and expenditures to preserve or strengthen the structural integrity of the HMM Facility, such as, for example, new roofing, siding or windows, or to bring the HMM Facility into compliance with County building, electrical, plumbing, fire and similar codes shall not be considered to be Significant Improvements.

Appraisal of the HMM Facility shall only be of the capital improvements funded by the Parties and shall not include any appreciation or depreciation of the land upon which the HMM Facility is constructed.

The County shall be responsible for maintaining sufficient records to enable an appraiser to determine whether a particular expenditure for the HMM Facility constituted a Significant Improvement. If sufficient contemporaneous records are unavailable to clearly establish that a particular expenditure constituted a Significant Improvement and to establish the amount by which the fair market value of the HMM Facility should be reduced because of that expenditure, then it may not be considered to be a Significant Improvement.

F. If the County defaults before the City of Boulder or the City of Louisville has paid its full Initial Party Investment, its Adjusted Financial Interest shall be recalculated to reflect only its actual payments to the County Recycling Sales and Use Tax Fund and its liability for any future payments pursuant to Section VII A. shall be extinguished.

## **X. DURATION AND WITHDRAWAL**

- A. This Agreement shall automatically renew on January 1<sup>st</sup> of each year until December 31, 2018; provided, however, that each Party's obligation to pay its required financial contributions hereunder and each other Party's right to take action to compel payment hereunder shall continue until such obligation has been discharged. Any Municipality may withdraw from this Agreement, which withdrawal shall be effective ten (10) days after the Municipality mails by certified mail, return receipt requested, a written notice to Boulder County of the Municipality's intent to withdraw. The withdrawing Municipality will be discharged from its obligations hereunder, provided that it has paid all outstanding financial obligations for which it is liable under this Agreement. The terms and obligations of this Agreement shall continue as to the remaining Parties.
- B. In the event that any Municipality withdraws from this Agreement, such Municipality may again become a Party only with the majority consent of the remaining Parties, after satisfying all obligations for which it was liable upon date for withdrawal, and subject to such further conditions as may be required by the Parties.
- C. This Agreement may be renewed for future years beyond 2018, subject to written approval by all Parties, and provided the Parties appropriate estimated costs for the future years.

## **XI. MISCELLANEOUS PROVISIONS**

- A. This Agreement shall be effective as to each Party upon ratification by that Party.
- B. The waiver by any Party of any breach of any term, covenant or condition of this Agreement by another Party shall not be deemed a waiver of such term, covenant, or condition for any subsequent breach of the same or of any other term, covenant, or condition of this Agreement.
- C. Any Party hereto shall have the right to enjoin any substantial breach or threatened breach of this Agreement by any other Party, and, to the extent permitted by law, shall have the right to specific performance of this Agreement.
- D. This Agreement is solely for the benefit of the Parties hereto and no third party shall be entitled to claim or enforce any rights hereunder except as specifically provided herein.
- E. If any provision of this Agreement or application thereof to any Party or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.
- F. This Agreement contains the entire agreement between the Parties, and shall not be amended or modified in any manner without such amendment or modification being agreed to and executed in writing by all the Parties.
- G. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, the financial obligations of each Party under this Agreement are subject to annual appropriation by the governing body of such Party.
- H. This Agreement may be signed in multiple parts by the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BOULDER COUNTY BOARD OF  
COMMISSIONERS

\_\_\_\_\_  
Cindy Domenico, Chair

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CLERK TO THE BOARD

CITY AND COUNTY OF BROOMFIELD

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Jane S. Brautigam, City Manager  
1777 Broadway  
Boulder, CO 80302

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

CITY OF LAFAYETTE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY OF LONGMONT

By: \_\_\_\_\_  
Dennis J. Coombs, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF LOUISVILLE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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TOWN OF ERIE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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TOWN OF SUPERIOR

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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# ATTACHMENT A

## Boulder County Hazardous Materials Management (HMM) Program

### Projected Budget for the 2014 Calendar Year

\*Estimated based on actual households served in 2012 (12,523) plus 5% growth.

\*\* Total projected cost per community is based on number of households to be served multiplied by \$44.00.

#### In accordance with Section V of the 2014 to 2018 Intergovernmental Agreement for Hazardous

| Community                         | Percentage Participation | Number of Households Served | Estimated Contribution Toward 2014 Program Costs |
|-----------------------------------|--------------------------|-----------------------------|--|
| <b>Boulder County</b>             | 19.73%                   | 2,594                       | \$114,149  |
| <b>Boulder</b>                    | 49.35%                   | 6,489                       | \$285,517  |
| <b>Broomfield City and County</b> | 4.13%                    | 543                         | \$23,894   |
| <b>Erie</b>                       | 2.43%                    | 320                         | \$14,059   |
| <b>Lafayette</b>                  | 7.20%                    | 947                         | \$41,656   |
| <b>Longmont</b>                   | 8.84%                    | 1162                        | \$51,144   |
| <b>Louisville</b>                 | 6.44%                    | 847                         | \$37,259   |
| <b>Superior</b>                   | 1.88%                    | 247                         | \$10,877   |
|                                   | <b>100.00%</b>           | <b>13,149</b>               | <b>\$578,556</b>                                 |

Materials Management (the "IGA"), member communities, through their representative on the HMM Committee, will be provided with a projected budget for the following year, each year by May 1 of the preceding year. As noted in Section V. D. of the IGA, actual contributions to HMM Program costs will be calculated quarterly, based on actual participation by each community's residents, and actual costs incurred by the County. The projected budget shall become final unless any community objects by June 30<sup>th</sup> of year of the preceding year.

**ATTACHMENT B replace with signed covenant (PDF)**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 17, 2013**

**AGENDA TITLE:**

Consideration of a motion to adopt an emergency ordinance appointing the city manager as the entity designated to receive applications and imposing a temporary moratorium on recreational marijuana businesses between October 1, 2013 and January 2, 2014.

**PRESENTERS:**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Kathy Haddock, Senior Assistant City Attorney  
Mishawn Cook, Tax and License Manager  
Beverley Bookout, Police Officer  
Dale Goetz, Building Code Compliance Specialist  
Jeff Kessler, Police Sergeant  
Mike Whitney, Assistant City Attorney

**EXECUTIVE SUMMARY:**

This agenda item is intended to address the regulation of recreational marijuana in Boulder under the authority of Amendment 64 to the Colorado State Constitution. On September 3, 2013, council considered ordinances 7929, 7930 and 7931 regulating recreational marijuana. As a result of extensive flooding and the need for council to address response and recovery, consideration of ordinances 7929, 7930 and 7931 has been postponed until October 8, 2013. Staff requests that council consider an emergency ordinance appointing the city manager as the entity within the city that is responsible for processing applications submitted for a license to operate a marijuana establishment within the city as required by Amendment 64 and imposing a moratorium on recreational marijuana businesses until January 2, 2014.

**STAFF RECOMMENDATION:**

Motion to adopt an emergency ordinance appointing the city manager as the entity designated to receive applications and imposing a temporary moratorium on recreational marijuana businesses between October 1, 2013 and January 2, 2014.

Amendment 64 allows cities to prohibit recreational marijuana businesses. Regardless of whether a city prohibits such businesses, it requires each city to designate by October 1, 2013, the entity responsible for accepting applications for recreational marijuana businesses. Amendment 64 and the state law and regulations adopted regarding recreational marijuana specify that the state can start accepting applications beginning October 1, 2013, and allow businesses to open January 1, 2014 under certain conditions. One of those conditions is that a local license has been issued. However, there may be confusion if the city has neither adopted regulations nor made a decision about prohibiting recreational marijuana businesses on October 1, 2013. This ordinance addresses both issues by designating the city manager as the entity to accept applications for the city, and banning recreational marijuana businesses in the city until January 2, 2014.

The attached ordinance prohibits the businesses until January 2, 2014. Under the staff recommendation, the prohibition would be until June 1, 2014. It is anticipated that council will consider the actual length of the moratorium on October 8, 2013. The ordinance is drafted as an emergency so it is in effect on October 1, 2013.

**ATTACHMENTS:**

A. Emergency Ordinance appointing the city manager and imposing a moratorium

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ORDINANCE NO. \_\_\_\_\_

AN EMERGENCY ORDINANCE SPECIFYING THE CITY MANAGER AS THE ENTITY THAT IS RESPONSIBLE FOR ACCEPTING AND PROCESSING APPLICATIONS TO THE CITY AND IMPOSING A MORATORIUM PROHIBITING RECREATIONAL MARIJUANA BUSINESSES IN THE CITY UNTIL JANUARY 2, 2014 UNDER ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Findings:

- A. Article XVIII, Section 16 of the Colorado Constitution regarding Recreational Marijuana, also known as Amendment 64, (the “Recreational Marijuana Amendment”) requires that local governments specify the entity that is to process applications for licenses for marijuana businesses by October 1, 2013.
- B. The Recreational Marijuana Amendment allows cities to accept applications for businesses starting on October 1, 2013, or January 1, 2014 if the state has not started issuing licenses by that time.
- C. The Recreational Marijuana Amendment allows local governments to regulate recreational marijuana businesses within the city, particularly with respect to time, place and manner of operating such businesses.
- D. Subsection (5)(f) of the Recreational Marijuana Amendment allows the city to prohibit the operation of recreational marijuana businesses within the city.
- E. The legislature acknowledged the constitutional authority of the city to prohibit recreational marijuana businesses in C.R.S. 12-43.4-104(3).
- F. The state legislature has adopted laws regarding recreational marijuana businesses codified as C.R.S. 12-43.4-101, *et seq.* which specifically provide for such businesses having a license from the city prior to operating in the city.
- G. C.R.S. 12-43.4-304(1) provides that a license issued by the state for a recreational marijuana business is conditioned upon approval of the local jurisdiction and the

1 license applicant is prohibited from operating a business without both state and  
2 local approval.

3 H. The council is considering Ordinance No. 7930 that adopts laws regarding  
4 recreational marijuana businesses in the city, including when the city will accept  
5 applications for such businesses, but the ordinance will not be effective until well  
6 after October 1, 2013.

7 I. Confusion may result as to what law is applicable if the city received or accepted  
8 applications for recreational marijuana businesses prior to the effective date of the  
9 ordinance adopting the requirements for such applications and businesses.

10 J. Litigation may ensue against the city by claims that the city must accept  
11 applications for recreational marijuana businesses between October 1, 2013 and  
12 January 1, 2014.

13 K. It is necessary for the public health and safety of the residents and businesses in  
14 the City of Boulder, that regulations be in place, followed and enforced, prior to  
15 the opening of any recreational marijuana business.

16 L. The city has the legal authority under Article XX of the Colorado Constitution as  
17 a home rule city, to protect the health and safety of its environment and citizens  
18 from dangers associated with establishment of unregulated recreational marijuana  
19 businesses using its land use and police powers.

20 M. The city has the legal authority under the Recreational Marijuana Amendment to  
21 prohibit the operation of recreational marijuana businesses in the city.

22 Section 2. The city manager is designated as the Recreational Marijuana Licensing  
23 Authority of the city at such time as the city adopts an ordinance allowing recreational marijuana  
24 businesses.

25 Section 3. Commencing immediately and continuing until 8 a.m. on Thursday, January  
26 2, 2014, all persons are prohibited from cultivating marijuana or manufacturing marijuana  
27 infused products, or distributing, or selling marijuana, other than those persons licensed pursuant  
28

1 to Chapter 6-14 of the Boulder Revised Code pursuant to section 5(f) of the Recreational  
2 Marijuana Amendment.

3  
4 Section 4. This ordinance is necessary to protect the public health, safety, and welfare of  
5 the residents of the city, and covers matters of local concern.

6 Section 5. The City Council deems it appropriate that this ordinance be published by  
7 title only and orders that copies of this ordinance be made available in the office of the city clerk  
8 for public inspection and acquisition.

9  
10 Section 6. The City Council finds that the passage of this ordinance is necessary for the  
11 preservation of the public peace, health, or property. The dates in Article XVIII, Section 16 for  
12 applications for recreational marijuana businesses necessitate the adoption of this ordinance as an  
13 emergency measure. The nature of the urgency for the adoption as an emergency measure is  
14 described, in part, by the findings set forth in this ordinance. The City Council further finds that  
15 additional time is required to consider and develop appropriate laws regarding recreational  
16 marijuana businesses. Therefore, the City Council orders that this ordinance shall be effective  
17 immediately upon its passage.  
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INTRODUCED, READ, PASSED AND ADOPTED AS AN EMERGENCY  
MEASURE BY TWO-THIRDS OF COUNCIL MEMBERS PRESENT, AND ORDERED  
PUBLISHED BY TITLE ONLY THIS 17<sup>th</sup> DAY OF SEPTEMBER, 2013.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: Sept. 17, 2013**

**AGENDA TITLE:** Second reading and consideration of a motion to adopt Ordinance No. 7926, amending floodplain regulations in order to clarify existing regulations and to protect critical facilities and lodging facilities in the 100- and 500-year floodplains, including Chapter 9-3 “Overlay Districts,” Subsection 9-6-1(d) “Use Table,” and Section 9-16-1 “Definitions” B.R.C. 1981.

**PRESENTERS:**

Jane S. Brautigam, City Manager  
Paul Fetherston, Deputy City Manager  
Maureen Rait, Executive Director of Public Works  
Jeff Arthur, Director of Public Works for Utilities  
Bob Harberg, Principal Engineer–Utilities  
Heidi Schum, Public Works Development Review Manager  
Annie Noble, Flood and Greenways Engineering Coordinator  
Katie Knapp, Utilities Project Manager

**EXECUTIVE SUMMARY**

As a component of the city’s comprehensive floodplain management program, a Critical Facilities and Lodging Facilities Ordinance (Attachment A) is being proposed to help protect critical infrastructure and the people most vulnerable to flood hazards, including the elderly, children, and visitors who may not be aware of local flood risks.

The proposed ordinance would regulate two categories of facilities within the 500-year floodplain: critical facilities and lodging facilities.

*Critical facilities* provide essential services, serve at-risk populations or contain hazardous materials. Critical facilities would be required to develop emergency plans and implement flood protection measures when constructing new facilities or undergoing significant renovations. Emergency plans include either an evacuation plan or a shelter-

in-place plan. Flood protection measures include elevating a structure above the flood protection elevation or floodproofing the structure.

**Lodging facilities** provide temporary accommodations and include hotels, motels, dormitories, bed and breakfasts, and overnight shelters. These facilities would be required to develop emergency plans.

The proposed regulations would apply to only the specific uses outlined above. As these uses would be required to meet the proposed regulations, the requirements were included in Table 6-1: Use Table, located in Chapter 9-6, B.R.C., for all applicable critical facilities and lodging facilities uses. The Use Table indicates which uses are allowed in the different zoning districts and includes additional regulations that are applicable to specific uses.

The proposed ordinance also provides clarification of the flood protection requirements for mixed-use structures and lodging facilities within the 100-year floodplain. Under the proposed revisions, mixed-use structures and lodging facilities must be elevated or floodproofed to the flood protection elevation, with all lodging units and residential units elevated above the flood protection elevation.

Additional background information and details about the proposed ordinance can be found in the first reading memo, available online at:

<https://documents.bouldercolorado.gov/weblink8/0/doc/123452/Electronic.aspx>

### **FIRST READING QUESTIONS**

On August 20, 2013 the proposed ordinance was introduced to City Council for first reading. There was a question raised about why there are so many floodplain studies and why the floodplain maps continue to change.

The proposed critical facilities and lodging facilities ordinance does not include updates to existing floodplain mapping. It does propose new regulations for a limited number of uses in the 500-year floodplain, but the mapping already exists as part of previously adopted studies.

Separate from this effort, floodplain maps are updated based upon new floodplain studies. One of the key reasons for updating floodplain mapping is to take advantage of improved technologies that more accurately predict where water will go when it overtops the banks of a creek. Updates to floodplain mapping allow for removal of restrictions on areas that have benefited from mitigation work, allow for better prioritization of mitigation work, and provide the ability to better understand the cumulative impact of changes in a drainage area over time. They also help ensure that property owners are aware of risks, receive outreach materials, and have appropriate insurance since standard policies generally do not cover flood damage. The proposed critical facilities and lodging facilities ordinance will not impact flood insurance rates or requirements. Additional flood protection measures would help reduce losses from a flood event and help the city recover more quickly.

## **STAFF RECOMMENDATION**

Staff recommends that City Council pass the proposed ordinance in the form of the following motion:

Motion to adopt Ordinance No. 7926, amending floodplain regulations under Chapter 9-3 "Overlay Districts," Subsection 9-6-1(d) "Use Table," and Section 9-16-1 "Definitions" B.R.C. 1981 as proposed in Attachment A with an effective date of Jan. 1, 2014.

## **ATTACHMENTS**

Attachment A: Critical Facilities and Lodging Facilities Ordinance

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ORDINANCE NO. 7926

AN ORDINANCE AMENDING FLOODPLAIN REGULATIONS IN ORDER TO CLARIFY EXISTING REGULATIONS AND TO PROTECT CRITICAL FACILITIES AND LODGING FACILITIES IN THE ONE HUNDRED-YEAR AND FIVE HUNDRED-YEAR FLOODPLAINS, INCLUDING CHAPTER 9-3, "OVERLAY DISTRICTS," SUBSECTION 9-6-1(d), "USE TABLE," AND SECTION 9-16-1, "GENERAL DEFINITIONS," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 9-3-2, B.R.C. 1981, is amended as follows:

**9-3-2 Floodplains.**

- (a) Legislative Intent: The purpose of this ~~section~~chapter is to regulate certain areas of the city subject to flooding in order to protect the public health, safety, and welfare by:
- (1) Restricting or prohibiting certain uses that are hazardous to life or property in time of flood;
  - (2) Restricting the location of structures intended for human occupancy and regulating the manner in which such structures may be built in order to minimize danger to human life within and around such structures;
  - (3) Requiring that those structures allowed in the floodplain be expanded or enlarged, and equipment and fixtures be installed or replaced, in a manner designed to prevent their being washed away and to assure their protection from severe damage;
  - (4) Regulating the method of construction and replacement of water supply and sanitation systems in order to prevent disease, contamination, and unsanitary conditions;
  - (5) Maintaining for public inspection available maps delineating areas subject to such provisions in order to protect individuals from purchasing or using lands for purposes that are not suitable;
  - (6) Protecting and preserving the water-carrying and water-retention characteristics and capacities of watercourses used for conveying and retaining floodwaters; and

1 (7) Obtaining and maintaining the benefits to the community of participating in the  
2 National Flood Insurance Program.

3 (b) Flooding May Occur: The degree of flood protection provided by the terms of this ~~section~~  
4 chapter has been determined to be reasonable for regulatory purposes. Floods of greater  
5 magnitude will occur, and flood heights may be increased as a result of natural or human-  
6 made causes. The provisions of this ~~section~~chapter do not imply that areas outside of the  
7 floodplain or land uses permitted within the floodplain are free from flooding, flood hazard,  
8 or flood damages. A grant or approval by the city under the requirements of this ~~section~~  
9 chapter does not constitute a representation, guarantee, or warranty of any kind or nature by  
10 the city or any city official or employee of the practicability or safety of any structure or  
11 proposed use, and it creates no liability to or cause of action against the city or any city  
12 official or employee for any damages from flood or otherwise that may result from such  
13 structure or use.

14 (c) Scope and Application:

15 (1) The requirements of this ~~section~~chapter supplement those imposed on the same lands  
16 by any underlying zoning provisions of this code or other ordinance of the city. If  
17 there is a conflict between such requirements, the more restrictive controls.

18 (2) If a lot or parcel of land lies partly within the high hazard zone, ~~or~~ the conveyance  
19 zone, the one hundred-year floodplain, or the five hundred-year floodplain~~flood~~  
20 fringe area, the part(s) of such lot or parcel lying within such area or areas shall meet  
21 all the standards and requirements of such respective area as prescribed by this  
22 ~~section~~chapter. ~~For the purposes of new construction, if~~ any portion of a structure  
23 lies partly within the high hazard zone, ~~or~~ the conveyance zone, the one hundred-year  
24 floodplain, or the five hundred-year floodplain~~flood fringe area~~, all the standards and  
25 requirements of ~~this section~~ such respective area(s) as prescribed by this chapter shall  
26 apply to the entire structure unless stated otherwise.

27 (3) If lands located outside the city limits are included within the five hundred-year  
28 floodplain, the one hundred-year floodplain~~flood fringe~~, the conveyance zone, ~~or~~ the  
29 high hazard zone, the requirements of this ~~section~~chapter shall apply to such lands  
30 upon annexation.

31 (d) Administration: The city manager shall administer the requirements of this ~~section~~chapter  
32 and shall:

33 (1) Determine that the requirements of this ~~section~~chapter have been met before issuing  
34 any permit for development in the floodplain;

35 (2) Obtain and maintain for public inspection any certificates of floodproofing required  
36 by this ~~section~~chapter, and any information on the elevation (in relation to mean sea  
37 level) of the ~~level of the~~ lowest floor (including basement) of all new or substantially  
38 improved structures, and information specifying whether ~~or not~~ such structures  
39 contain a basement, and if the structure has been floodproofed, the elevation (in  
40 relation to mean sea level) to which the structure was floodproofed;

- 1 (3) Notify Boulder County and the Colorado Water Conservation Board before  
2 permitting any change in a watercourse and submit evidence of such notice to FEMA;
  - 3 (4) Adopt rules interpreting and implementing the requirements of this ~~section~~chapter,  
4 including, without limitation, application procedures for floodplain development  
5 permits, ~~and~~ specifications for the floodproofing of structures, substantial  
6 improvements, and utilities; and specifications for the content of and application  
7 procedures for emergency management plans;
  - 8 (5) Assure that the Boulder Valley Comprehensive Plan is consistent with the floodplain  
9 management objectives of this ~~section~~chapter and the regulations of FEMA;
  - 10 (6) Make necessary interpretations of the exact location of the boundaries of the  
11 floodplain, the five hundred-year floodplain, the one hundred-year floodplain~~flood~~  
12 ~~fringe~~, the conveyance zone, and the high hazard zone;
  - 13 (7) Amend the boundaries of the high hazard zone and the conveyance zone pursuant to  
14 subsection (f) of this section;
  - 15 (8) Determine that all necessary permits have been obtained from state, federal, or local  
16 agencies the approval of which is required before issuing any permit for development  
17 in the floodplain;
  - 18 (9) Require that persons changing a watercourse maintain the watercourse so that its  
19 flood carrying capacity is not diminished;
  - 20 (10) Require that new and replacement water supply systems in the floodplain be designed  
21 to minimize or eliminate infiltration of floodwaters into the systems;
  - 22 (11) Require that new and replacement sanitary sewage systems within the floodplain be  
23 designed to minimize or eliminate infiltration of floodwaters into the systems and  
24 discharges from the systems into floodwaters;
  - 25 (12) Require that on-site waste disposal systems be located to avoid impairment to them or  
contamination from them during flooding; and
  - (13) Obtain, review, and reasonably utilize any ~~base~~ flood elevation and floodway data  
available from federal, state, and other sources, including data developed pursuant to  
~~e~~Chapter 9-12, "Subdivision," B.R.C. 1981, as criteria for requiring that all new  
development meet the requirements of this ~~section~~chapter.
- (e) Appeals: Any person contesting the city manager's interpretation of a boundary location  
under paragraph (d)(6) of this section, or any person aggrieved by the granting or denial of  
a floodplain development permit, may appeal such determination to the planning board  
through the process described in Ssection 9-4-4, "Appeals, Call-Ups and Public Hearings,"  
B.R.C. 1981. The request shall set forth the reason and basis for the appeal and such other  
information as the manager may prescribe by rule.
- (f) Map Amendments: As watercourse or flood channel improvements or mapping corrections  
are made, the city manager may amend the flood regulatory area maps to recognize the  
changed conditions produced by such improvements or corrections, provided that no such  
amendments or corrections may change a FEMA "area of special flood hazard" or

1 "regulatory floodway" unless the City is in receipt of a letter of map amendment or a letter  
2 of map revision issued by FEMA.

3 (g) Flood Regulatory Areas:

- 4 (1) The provisions of this ~~section~~ chapter apply to the area shown as floodplain on the  
5 most recent maps adopted by the city council, as amended from time to time by the  
6 city manager pursuant to subsections (d), (e), and (f) of this section. The regulatory  
7 floodplain encompasses the five hundred-year floodplain, the one hundred-year  
8 floodplain, ~~the flood fringe~~, the conveyance zone, and the high hazard zone. The  
9 following regulations governing each portion of the floodplain are cumulative and not  
10 exclusive.  
11 (2) In addition to the regulatory areas identified in paragraph (g)(1) of this section, the  
12 City has adopted the areas of special flood hazard identified in the Flood Insurance  
13 Study for Boulder County, effective December 18, 2012, and delineated on the Flood  
14 Insurance Rate Map for Boulder County and the City of Boulder as adopted by the  
15 City in compliance with 44 C.F.R. chapter 1. In no event will the regulations  
16 contained in this ~~section~~ chapter be interpreted to permit any action not permitted  
17 under those regulations promulgated by FEMA for the regulation of areas of special  
18 flood hazard and regulatory floodways.

19 (h) Floodproofing: Whenever this chapter requires floodproofing a building or structure or a  
20 portion thereof, the following standards shall be met:

- 21 (1) Such building or structure or portion thereof shall be floodproofed in accordance  
22 with any rules adopted by the city manager for floodproofing and with current state  
23 and federal laws and regulations governing floodproofing;  
24 (2) Such building or structure or portion thereof shall be floodproofed to the flood  
25 protection elevation in such a manner that the building or structure is watertight with  
walls substantially impermeable to the passage of water and in a manner requiring no  
human intervention;  
26 (3) Such building or structure or portion thereof shall have structural components capable  
of resisting projected hydrostatic and hydrodynamic loads and the effects of  
buoyancy; and  
27 (4) Such floodproofing shall be certified by a Colorado registered professional engineer  
or registered architect to comply with this paragraph. Such certifications shall be  
provided to the city manager as set forth in Paragraph 9-3-2(d)(2), B.R.C. 1981.

28 (i) Standards for Critical Facilities and Lodging Facilities in the Five Hundred-Year  
29 Floodplain:

- 30 (1) Floodplain Development Permit: In the five hundred-year floodplain, no person shall  
31 construct or establish a new critical facility or make any development to a structure  
32 housing an existing critical facility prior to issuance of a floodplain development  
33 permit pursuant to Section 9-3-6, "Floodplain Development Permits," B.R.C. 1981,

1 unless the activity is exempt under Subsection 9-3-6(a), “Activities Exempt from  
2 Floodplain Development Permit Requirement,” B.R.C. 1981.

3 (2) Requirements Apply to Entire Building: If any portion of a structure housing a  
4 critical facility or lodging facility lies partially within the five hundred-year  
5 floodplain, the requirements of this section shall apply to that entire structure.

6 (3) Emergency Management Plans:

7 (A) Emergency Management Plan Required: No owner or operator of a critical  
8 facility or lodging facility in the five hundred-year floodplain shall fail to  
9 develop and have approved an emergency management plan meeting the  
10 requirements of this subsection prior to issuance of any floodplain  
11 development permit for any development requiring a floodplain development  
12 permit but no later than January 1, 2019, or five years after the effective date  
13 of a map change that placed the facility into the five hundred-year floodplain,  
14 if that date is later than January 1, 2019,

15 (B) Floodplain Development Permit: To obtain the required approval of an  
16 emergency management plan, an owner or operator of a critical facility or  
17 lodging facility in the five hundred-year floodplain shall file an application for  
18 floodplain development permit pursuant to Section 9-3-6, Floodplain  
19 Development Permits, B.R.C. 1981.

20 (C) Purpose: The purpose of the emergency management plan requirements set  
21 forth in this section is:

22 (i) To protect the health, safety, and welfare of the public and of  
23 employees, visitors, residents, guests, contractors, and others at risk  
24 from hazards at the facility;

25 (ii) To minimize interruptions or disruptions of operations of critical  
facilities;

(iii) To protect buildings, physical assets, and electronic information; and

(iv) To prevent environmental contamination.

(D) Emergency Management Plan Requirements: With the exception of  
requirements the city manager finds inapplicable to a particular facility, all  
emergency management plans shall contain, without limitation:

(i) An assessment by a Colorado registered professional engineer or an  
International Facility Management Association Certified Facilities  
Manager of the risks to persons at the facility and others at risk from  
hazards at the facility, to the facility itself, its physical assets, and its  
operation, and to the environment during flood events;

- 1           (ii) An assessment of the resources needed for responding to the risk of  
2           flood events and for continuing business operations and for  
3           communicating during and after an incident;
- 4           (iii) A plan for obtaining and maintaining the resources identified as  
5           needed in subsection (i)(3)(C)(ii) above;
- 6           (iv) A plan to protect employees, visitors, residents, guests, contractors,  
7           and others at risk from hazards at the facility during flood events.  
8           Such plan shall include an evacuation plan or a shelter-in-place plan,  
9           unless both are necessary to protect the health, safety and welfare of  
10           the persons at risk at the facility.
  - 11           a. Evacuation plans shall be certified by a Colorado registered  
12           professional engineer or an International Facility Management  
13           Association Certified Facilities Manager and shall provide a means  
14           for safely evacuating occupants to a location outside of the five  
15           hundred-year floodplain or to an approved shelter-in-place  
16           location.
  - 17           b. Shelter-in-place plans shall be certified by a Colorado registered  
18           professional engineer, shall demonstrate that the structure will be  
19           safe to occupy during a five hundred-year flood event, and shall  
20           designate a safe shelter-in-place location within the building and  
21           safe routes to such location.
- 22           (v) A system and strategies to communicate with employees, customers,  
23           residents, guests, contractors, and others at risk at the facility during a  
24           flood event;
- 25           (vi) Strategies to minimize and quickly overcome any disruption or  
              interruption of operations of the facility during a flood event;
- (vii) An incident management system that defines responsibilities and  
              coordinates activities before, during, and after a flood event;
- (viii) A program to train persons with defined roles in the management plan  
              to do their assigned tasks and to train all employees and other regular  
              occupants of the facility so they can take appropriate protective actions  
              during a flood event; and
- (ix) Any other strategies, techniques, systems, programs, or plans the city  
              manager determines are necessary to serve the health, safety, and  
              welfare of the public and any persons at or near the facility.

(E) —Posting of Evaluation Routes and Routes to Shelter-In-Place Locations: The  
approved evacuation routes and routes to shelter-in-place locations shall be  
posted on the inside of each doorway leading to a separate unit in a lodging  
facility and be displayed in a prominent location or a location designed to

1 provide information to persons within the critical facility that is approved by  
2 the city manager.

3 (F) Implementation of Emergency Management Plans: No owner or operator of a  
4 critical facility or lodging facility in the five hundred-year floodplain shall fail  
5 to implement and to annually review and update, if necessary, an approved  
6 emergency management plan and shall make the plan available to the city  
7 manager for review upon request.

8 (4) Construction Requirements for Critical Facilities in the Five Hundred-Year  
9 Floodplain. The following standards apply to critical facilities located in the five  
10 hundred-year floodplain:

11 (A) No owner or operator of a critical facility shall construct, modify, or establish,  
12 or cause to be constructed, modified, or established a critical facility within  
13 the five hundred-year floodplain except in compliance with the requirements  
14 of this subsection.

15 (B) Any person making an expansion or an enlargement to a structure housing an  
16 existing at-risk population facility or essential service facility shall floodproof  
17 or elevate the lowest floor, including the basement, of the expanded or  
18 enlarged portion to or above the flood protection elevation.

19 (C) Any person making a substantial modification or a substantial improvement to  
20 a structure housing an existing at-risk population facility or essential service  
21 facility shall floodproof or elevate the lowest floor, including the basement, of  
22 the substantially modified or improved portion to or above the flood  
23 protection elevation and shall floodproof or elevate the remainder of the  
24 existing structure to or above the flood protection elevation.

25 (D) Any person constructing or establishing a new at-risk population facility or  
essential service facility shall floodproof or elevate the lowest floor, including  
the basement, to or above the flood protection elevation.

(E) Any person constructing or establishing a new hazardous material facility  
shall secure all hazardous materials from flooding and from being released  
during a five hundred-year flood event or shall floodproof the facility. Any  
person making a substantial modification or a substantial improvement to a  
structure housing an existing hazardous material shall secure the hazardous  
materials from flooding or otherwise being released during a five hundred-  
year flood event. The owner or operator shall demonstrate compliance with  
this standard by providing a certification from a Colorado registered  
professional engineer that documents that hazardous material will not be  
released at or from the facility during a five hundred-year flood event.

(F) No person owning, operating, or otherwise using a hazardous material facility  
shall fail to, or fail to, cause to secure all hazardous materials from flooding  
and from being released during five hundred-year flood events or to

1 floodproof the facility before January 2024 or five years after the effective  
2 date of a map change that placed the facility into the five hundred-year  
3 floodplain, whichever date is later.

4 (G) Whenever any construction, modification, improvement or other activity  
5 related to a critical facility triggers any floodproofing or elevation  
6 requirements of this subsection (4), the construction standards described in  
7 Subsections (a)(3), "Construction Materials and Methods," (a)(4), "Utilities,"  
8 (a)(18), "Enclosures," and (a)(19), "Below Grade Crawl Space Construction,"  
9 of Section 9-3-3, "Regulations Governing the One Hundred-Year Floodplain,"  
10 B.R.C. 1981, shall also be complied with.

11 (H) Existing Uses: The use of any land or structure that was lawful before the  
12 application of this subsection (i)(4), Construction Requirements for Critical  
13 Facilities in the Five Hundred-Year Floodplain, or any amendment thereto but  
14 that does not conform to the requirements of this subsection may be continued  
15 subject to the requirements of this subsection. If such a use not conforming to  
16 the requirements of this subsection is discontinued for twelve consecutive  
17 months, no person shall use the land or structure thereafter unless such use  
18 conforms to the requirements of this subsection.

19 (5) Exemption for Critical Facilities Protected by Levee System: Critical facilities  
20 protected by a levee system within the five hundred-year floodplain are exempt from  
21 the requirements of subsection (i)(4) of this section 9-3-2, provided that the following  
22 requirements are satisfied:

23 (A) The owner or operator of a new or existing critical facility located landward of  
24 a levee system; outside of the one hundred-year floodplain, but within the five  
25 hundred-year floodplain, demonstrates that the levee system provides  
26 protection against a five hundred-year flood event by:

27 (i) meeting the riverine levee design criteria of 44 C.F.R. § 65.10, as  
28 amended from time to time, except that the minimum riverine levee  
29 freeboard shall be one foot above the water surface elevation of a five  
30 hundred-year flood, rather than three; and

31 (ii) providing an operating and maintenance manual for the levee that  
32 incorporates all operating and maintenance requirements of 44 C.F.R.  
33 § 65.10 and Rule 10 of the Colorado Rules and Regulations for  
34 Regulatory Floodplains in Colorado (2 C.C.R. 408-1:10, Criteria for  
35 Determining Effects of Levees on Regulatory Floodplains), as  
36 amended from time to time, to ensure continuing proper function of  
37 the structure.

38 (B) The owner or operator of a new or existing critical facility located landward of  
39 an accredited levee or a provisionally accredited levee within areas mapped  
40 Zone X (shaded) shall demonstrate that the levee system meets the riverine

1 levee design, operation, and maintenance criteria of 44 C.F.R. § 65.10 and  
2 Rule 10 of the Colorado Rules and Regulations for Regulatory Floodplains in  
3 Colorado (2 C.C.R. 408-1:10, Criteria for Determining Effects of Levees on  
4 Regulatory Floodplains).

5 (C) If the levee is owned by a person other than the owner or operator of the  
6 critical facility, the owner or operator, respectively, must demonstrate that a  
7 fully executed agreement exists between the levee owner and the owner or  
8 operator of the critical facility ensuring that the requirements of subsections 9-  
9 3-2(i)(5)(A) or (B) and (F) for continued operation and maintenance of the  
10 levee system will be met.

11 (D) The exemptions under this subsection (i)(5) for critical facilities located  
12 landward of an levee system were approved by the city manager through the  
13 issuance of a floodplain development permit pursuant to Subsection 9-3-6,  
14 “Floodplain Development Permits,” B.R.C. 1981, after finding that all  
15 requirements of this subsection (i)(5) have been met.

16 (E) If a levee system protecting an existing critical facility in the five hundred-  
17 year floodplain fails to meet the freeboard requirement of subsection (i)(5)(A)  
18 of this section solely because FEMA revises a FIRM, maintenance and use of  
19 that critical facility may occur for two years after the revision before having to  
20 meet the requirements of subsections (i)(3) and (i)(4) of this section.

21 (F) No person shall fail to construct, operate, or maintain or fail to cause the  
22 construction, operation, or maintenance of a levee system protecting a critical  
23 facility and approved by the city manager in a floodplain development permit  
24 as an exemption to the requirements of subsections (i)(3) and (i)(4) of this  
25 section in accordance with a design and an operating and maintenance manual  
meeting the requirements of this subsection (i)(5).

(6) As the one hundred-year floodplain, conveyance zone, and high hazard zone are all  
located within of the five hundred-year floodplain, the requirements of this subsection  
9-3-2(i), “Standards for Critical Facilities and Lodging Facilities in the Five Hundred-  
Year Floodplain,” also apply to critical facilities and lodging facilities in the one  
hundred-year floodplain, conveyance zone, and high hazard zone unless stricter  
requirements apply in the one hundred-year floodplain, conveyance zone, or high  
hazard zone, as applicable.

Section 2. Section 9-3-3, B.R.C. 1981, is amended as follows:

### 9-3-3 Regulations Governing the One Hundred-Year Floodplain.

(a) General Provisions: In the ~~entire~~ one hundred-year floodplain, the following standards apply:

1 (1) Floodplain Development Permit: Except as specified in paragraph  
2 ~~(a)(1)(A)~~ Subsection 9-3-6(a), "Activities Exempt from Floodplain Development  
3 Permit Requirement," B.R.C. 1981, no development in the one hundred-year  
4 floodplain may occur prior to the issuance of a floodplain development permit  
5 pursuant to section 9-3-6, "Floodplain Development Permits," B.R.C. 1981.

6 ~~(A) Activities exempt from a floodplain development permit: The following~~  
7 ~~activities are allowed within the flood regulatory area and do not require a floodplain~~  
8 ~~development permit:~~

9 (i) ~~"Maintenance" as defined in chapter 9-16 "Definitions" that does not~~  
10 ~~constitute a substantial improvement and does not affect the efficiency or~~  
11 ~~capacity of the conveyance zone or high hazard zone.~~

12 (ii) ~~Sidewalks, concrete, asphalt or stone flatwork that does not result in the~~  
13 ~~establishment or expansion of parking area and does not modify existing~~  
14 ~~grade by more than six inches.~~

15 (iii) ~~Underground utilities that do not modify existing grade.~~

16 (iv) ~~Poles, lines, cables, sign posts, landscaping and artwork that do not affect~~  
17 ~~the efficiency or capacity of the conveyance zone or high hazard zone.~~

18 (v) ~~Temporary facilities that are not permanently attached to the ground such~~  
19 ~~as tents, traffic control devices and lawn furniture provided that they will~~  
20 ~~not affect the efficiency or capacity of the conveyance zone or high hazard~~  
21 ~~zone, or they will remain in place for no more than thirty days.~~

22 (2) Anchoring:

23 (A) All new construction and substantial improvements or substantial modifications  
24 shall be anchored to prevent flotation, collapse, or lateral movement of the  
25 structure and be capable of resisting the hydrostatic and hydrodynamic loads.

(B) All manufactured homes must be elevated and anchored to resist flotation,  
collapse, or lateral movement and capable of resisting the hydrostatic and  
hydrodynamic loads. Methods of anchoring may include, but are not limited to,  
use of over-the-top or frame ties connecting to permanent ground anchors, in  
addition to any anchoring requirements for resisting wind forces and any tie-  
down requirements of chapter 10-12, "Mobile Homes," B.R.C. 1981.

Requirements shall include, without limitation, the following:

(i) Over-the-top ties shall be provided at each of the four corners of the  
manufactured homes. For manufactured homes fifty feet or longer, two  
additional ties per side are required at intermediate locations. For  
manufactured homes less than fifty feet long, one additional tie per side is  
required;

(ii) Frame ties shall be provided at each of the four corners of the  
manufactured homes. For manufactured homes fifty feet or longer, five

1 additional ties per side are required at intermediate points. For  
2 manufactured homes less than fifty feet long, four additional ties per side  
are required;

3 (iii) All components of the anchoring system shall be capable of carrying a  
4 force of four thousand eight hundred pounds; and

(iv) Any additions to manufactured homes shall be similarly anchored.

5 (3) Construction Materials and Methods:

6 (A) All new construction, substantial improvements, and substantial modifications  
7 shall be constructed with materials and utility equipment resistant to flood  
8 damage as outlined in the most current FEMA Technical Document on2-93,  
9 Flood-Resistant Materials Requirements.

10 (B) All new construction, substantial improvements, and substantial modifications  
11 shall be constructed using methods and practices that minimize flood damage.

12 (C) All new construction, substantial improvements and substantial modifications  
13 shall be constructed with electrical, heating, ventilation, plumbing, and air  
14 conditioning equipment and other service facilities that are designed and located  
15 (by elevating or floodproofing the components) so as to prevent water from  
16 entering or accumulating within the components during flooding conditions.

17 (4) Utilities:

18 (A) All new and replacement water supply systems shall be designed to minimize or  
19 eliminate infiltration of floodwaters into the systems.

20 (B) All new and replacement sanitary sewage systems shall be designed to minimize  
21 or eliminate infiltration of floodwaters into the systems and discharge from the  
22 systems into floodwaters.

23 (C) On-site waste disposal systems shall be located to avoid impairment or  
24 contamination during flooding.

25 (5) Subdivision Proposals:

(A) All subdivision proposals shall demonstrate efforts to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer,  
gas, electrical, and water systems located and constructed to minimize flood  
damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce  
exposure to flood damage.

(D) Base flood elevation data shall be provided for subdivision proposals and other  
proposed development.

(E) No subdivision proposal shall create a lot which is unbuildable pursuant to this  
section.

- 1 (6) Floodproofing: Whenever this section requires a building or structure to be  
2 floodproofed, the following standards in Subsection 9-3-2(h), "Floodproofing,"  
3 B.R.C. 1981, shall be met:
- 3 (A) ~~Such building or structure shall be floodproofed in accordance with any rules for  
4 floodproofing promulgated by the city manager pursuant to chapter 1-4,  
5 "Rulemaking," B.R.C. 1981, and with current FEMA National Flood Insurance  
6 Program (NFIP) Technical Bulletins;~~
- 5 (B) ~~Such building or structure shall be floodproofed to the flood protection elevation in  
6 such a manner that the building or structure is watertight with walls substantially  
7 impermeable to the passage of water and in a manner requiring no human  
8 intervention;~~
- 7 (C) ~~Such building or structure shall have structural components capable of resisting  
8 projected hydrostatic and hydrodynamic loads and the effects of buoyancy; and~~
- 8 (D) ~~Such floodproofing shall be certified by a Colorado registered professional engineer  
9 or registered architect to comply with this paragraph. Such certifications shall be  
10 provided to the city manager as set forth in paragraph 9-3-2(d)(2), B.R.C. 1981.~~
- 10 (7) Hazardous ~~Materials~~Substances: No person shall store a hazardous substance at or  
11 below the flood protection elevation for the area of the floodplain in which it is  
12 located, except for the storage of gasoline-fuel in existing and replacement  
13 underground tanks in existing gasoline-fueling service stations and service garages,  
14 which tanks are designed to prevent infiltration and discharge into floodwaters and  
15 which are adequately anchored and shielded against rupture. For purposes of this  
16 paragraph, "existing" means in place and in use on January 1, 1989.
- 15 (8) Automobile Parking: Notwithstanding other provisions of this title, no person shall  
16 establish an area for automobile parking in any portion of the floodplain where flood  
17 depths exceed eighteen inches.
- 16 (9) Flood Warning System: No owner of a hotel, a motel, a dormitory, a rooming house,  
17 a hostel, a school, a bed and breakfast, a daycare center, a group home, or a  
18 residential or congregate care facility located in the Boulder Creek one hundred-year  
19 floodplain shall fail to provide a flood warning system approved by the city manager  
20 that is connected to a point of central communication in the building with twenty-  
21 four-hour monitoring. No such person shall fail to maintain such a flood warning  
22 system.
- 20 (10) Rental Property: No owner of property that is located in a one hundred-year floodplain  
21 and subject to a city rental license under chapter 10-3, "Rental Licenses," B.R.C.  
22 1981, shall fail to post on the exterior of the premises at the entrance a sign approved  
23 by the city manager stating that the property is subject to flood hazard and containing  
24 such further information and posted at such other locations inside the building as the  
25 city manager may require.
- 24 (11) Manufactured Housing: All manufactured homes placed in the City after July 1, 1989,  
25 and all manufactured homes which are substantially improved or substantially  
modified shall be elevated on a permanent foundation so that the lowest floor of the  
manufactured home is at or above the flood protection elevation and is securely

1 anchored to an adequately anchored foundation system, and shall meet the anchorage  
2 and tie-down requirements of paragraph (a)(2) of this section.

3 (12) Recreational Vehicles: In order to reduce debris and hazard potential, recreational  
4 vehicles shall either: a) be in the one hundred-year floodplain for fewer than one  
5 hundred eighty consecutive days, b) be fully licensed and ready for highway use, or c)  
6 meet the permit requirements and elevation and anchoring requirements for  
7 manufactured homes.

8 (13) Structure Orientation: In order to minimize the obstruction to flow caused by  
9 buildings, to the extent consistent with other city policies regarding solar access, new  
10 structures shall be placed with their longitudinal axes parallel to the predicted  
11 direction of flow of floodwaters or be placed so that their longitudinal axes are on  
12 lines parallel to those of adjoining structures.

13 (14) Existing Uses: The use of any land or structure that was lawful before the application  
14 of this section or any amendment thereto but that does not conform to the  
15 requirements of this section may be continued subject to the requirements of this  
16 section. If such a use not conforming to the requirements of this section is  
17 discontinued for twelve consecutive months, no person shall use the land or structure  
18 thereafter unless such use conforms to the requirements of this section.

19 (15) New Uses: All uses allowed by the underlying zoning district may be established,  
20 subject to the requirements of this section, except for the outdoor or uncontained  
21 storage of moveable objects below the flood protection elevation.

22 (16) Existing Structures: Any structure in existence before the enactment of this section or  
23 any amendment thereto that does not conform to the requirements of this section may  
24 remain or may undergo rehabilitation subject to the requirements of this section.  
25 Further, any such structure may be otherwise improved as follows:

(A) Any person making an expansion or an enlargement to an existing residential  
structure shall elevate the lowest floor, including the basement, of the expanded  
or enlarged portion to or above the flood protection elevation.

(B) Any person making an expansion or an enlargement to an existing  
nonresidential structure shall floodproof or elevate the lowest floor, including  
the basement, of the expanded or enlarged portion to or above the flood  
protection elevation except that any lodging units within the expanded or  
enlarged portion of such structure shall be elevated to or above the flood  
protection elevation.

(C) Any person making an expansion or an enlargement to an existing mixed-use  
structure shall floodproof or elevate the lowest floor, including the basement, of  
the expanded or enlarged portion to or above the flood protection elevation and  
shall elevate the residential lodging units within the expanded or enlarged  
portion to or above the flood protection elevation.

(D) Any person making a substantial modification or a substantial improvement to  
any existing nonresidential structure shall floodproof or elevate the lowest floor,  
including the basement, of the ~~substantially modified or improved portion~~entire

1 structure to or above the flood protection elevation and shall floodproof the  
2 remainder of the existing structure except that any lodging units within the  
3 expanded or enlarged portion of such structure shall be elevated to or above the  
4 flood protection elevation.

5 (DE) Any person making a substantial modification or a substantial improvement to  
6 any existing residential structure shall elevate the lowest floor, including the  
7 basement, of the entire residential structure to or above the flood protection  
8 elevation.

9 (F) Any person making a substantial modification or a substantial improvement to  
10 an existing mixed-use structure shall floodproof or elevate the lowest floor,  
11 including the basement, of the entire structure and shall elevate all residential  
12 and lodging units within the structure to or above the flood protection elevation.

13 (17) New Structures: Construction of new structures shall meet the following  
14 requirements:

15 (A) Any person constructing a new residential structure shall elevate the lowest  
16 floor, including the basement, to or above the flood protection elevation;

17 (B) Any person constructing a new mixed-use structure shall floodproof or elevate  
18 the lowest floor, including the basement, of the entire structure and shall elevate  
19 all residential and lodging units within the structure to or above the flood  
20 protection elevation;

21 (C) Any person constructing a new nonresidential structure shall elevate all lodging  
22 units within the structure to or above the flood protection elevation and shall  
23 floodproof in a manner requiring no human intervention or elevate the lowest  
24 floor, including the basement, to or above the flood protection elevation with  
25 the following exceptions:

(i) Open air carwashes;

(ii) Unheated pavilions;

(iii) Unfinished or flood resistant building entryways or access areas;

(iv) Garden storage sheds;

(v) Sidewalks, paving, or asphalt, concrete, or stone flatwork;

(vi) Fences; and

(vii) Poles, lines, cables, or other transmission or distribution facilities of public  
utilities.

(ED) Any person constructing a new structure on a property removed from the one  
hundred-year floodplain through a FEMA Letter of Map Revision Based on Fill  
(LOMR-F) shall protect the lowest floor, including the basement, to or above  
the flood protection elevation that existed before placement of fill, as follows:

(i) Residential structures: by elevating the structure; or

1 (ii) Nonresidential structures: by elevating or floodproofing the structure.

2 Solely for the purposes of this subparagraph (a)(17)(C), previously designated  
3 floodplain areas that have been removed from the one hundred-year floodplain  
4 through a LOMR-F shall be considered to be within the floodplain. No person shall  
5 construct a new structure subject to this subparagraph (a)(17)(C) prior to the issuance  
6 of a floodplain development permit pursuant to Section 9-3-6, "Floodplain  
7 Development Permits," B.R.C. 1981.

8 (18) Enclosures: Enclosures below the lowest floor that are unfinished or flood resistant,  
9 usable solely for parking of vehicles, crawl spaces, building access or storage, in an  
10 area that is not a basement, and that are not floodproofed as set forth in this section  
11 shall meet the following requirements:

12 (A) Compliance with the provisions of paragraphs (a)(2), (a)(3), and (a)(4) of this  
13 section; and

14 (B) Design and construction that automatically equalizes hydrostatic flood forces on  
15 exterior walls by allowing for the entry and exit of floodwaters.

16 (i) Designs for meeting this requirement shall meet or exceed the following  
17 minimum criteria: a minimum of two openings having a total net area of  
18 not less than one square inch for every square foot of enclosed area subject  
19 to flooding shall be provided. The bottom of all openings shall be no  
20 higher than one foot above grade. Openings may be equipped with  
21 screens, louvers, valves, or other coverings or devices provided that they  
22 permit the automatic entry and exit of floodwaters.

23 (ii) Any designs not in conformance with subparagraph (a)(18)(B)(i) above,  
24 shall be certified by a registered professional engineer or licensed architect  
25 and shall conform with the most current FEMA Technical Bulletin on~~1-~~  
~~93~~, Openings in Foundation Walls.

(C) Fully enclosed areas below the lowest floor subject to this provision include the  
following:

(i) Residential garages placed at or above grade;

(ii) Enclosures or vestibules that are attached to structures and that are utilized  
for storage or entryways;

(iii) Crawl spaces; and

(iv) Outdoor pavilions and patio enclosures with removable walls not located  
in the high hazard zone.

(19) Below Grade Crawl Space Construction: New construction, expansion or  
enlargement, substantial improvement and substantial modification of any below  
grade crawl space shall meet the following requirements:

(A) Interior grade elevation that is below the base flood elevation shall be no lower  
than two feet below the lowest adjacent grade;

- 1 (B) The height of the below grade crawl space measured from the interior grade of  
2 the crawl space to the top of the foundation wall shall not exceed four feet at  
3 any point;
- 3 (C) Adequate drainage systems shall allow floodwaters to drain from the interior  
4 area of the crawl space following a flood; and
- 5 (D) The provisions of paragraphs (a)(2), (a)(3), (a)(4) and (a)(18) of this section  
6 shall be complied with.

6 (20) Critical Facilities and Lodging Facilities: The requirements of Subsection 9-3-2(i),  
7 “Standards for Critical Facilities and Lodging Facilities in the Five Hundred-Year  
8 Floodplain,” B.R.C. 1981, apply to critical facilities and lodging facilities in the one  
9 hundred-year floodplain. Where a conflict exist between the requirements of this  
10 section and the provision of Subsection 9-3-2(i), B.R.C. 1981, the most restrictive  
11 requirements apply.

10 Section 3. Section 9-3-4, B.R.C. 1981, is amended as follows:

11 **9-3-4 Regulations Governing the Conveyance Zone.**

12 In the conveyance zone, the following standards apply:

- 13 (a) The provisions of section 9-3-3, "Regulations Governing the One Hundred-Year  
14 Floodplain," B.R.C. 1981.
- 15 (b) The provisions of section 9-3-5, "Regulations Governing the High Hazard Zone," B.R.C.  
16 1981, if the land is also located in the high hazard zone.
- 17 (c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing the  
18 Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or  
19 any ordinance of this City, may be established except that no person shall establish or  
20 change any use that results in any rise in the elevation of the one hundred-year flood.
- 21 (d) All structures allowed under section 9-3-3, "Regulations Governing the One Hundred-Year  
22 Floodplain," B.R.C. 1981, may be established except that no person shall:
- 23 (1) Place any structure in the conveyance zone that will result in any rise in the elevation  
24 of the one hundred-year flood; or
- 25 (2) Place any obstruction in the conveyance zone, except a device reasonably necessary  
for flood management if the device is designed and constructed to minimize the  
potential hazards to life and property.
- (e) No person shall carry out any other development that results in any rise in the elevation of  
the one hundred-year flood.

- 1 (f) Localized rises within flood channels or on a specific parcel that is being developed are  
2 permissible if there is no adverse impact on nearby properties and there is no increase in  
the average water surface elevations along the cross sections of the floodplain.
- 3 (g) Localized rises on land owned or controlled by a government or government subdivision or  
4 agency, or within public drainage or flood control easements, are permissible if the  
following requirements have been satisfied:
- 5 (1) The applicant has necessary property interests or permission to use land to allow the  
6 increase in any water sur-face elevation or there is no adverse impact to such land;  
7 (2) There are no insurable structures under the FEMA National Flood Insurance Program  
affected by the localized rise;  
8 (3) The applicant minimizes the amount of the localized rise in a flood elevation; and  
9 (4) The applicant complies with all necessary FEMA requirements, including, without  
10 limitation, obtaining a Condi-tional Letter of Map Revision (CLOMR) prior to  
development and a Letter of Map Revision (LOMR) upon completion of a project  
causing a localized rise in flood elevation.

11 Section 4. Section 9-3-5, B.R.C. 1981, is amended as follows:

12 **9-3-5 Regulations Governing the High Hazard Zone.**

13 In the high hazard zone of the floodplain, the following standards apply:

- 14 (a) The provisions of section 9-3-3, "Regulations Governing the One Hundred-Year  
15 Floodplain," B.R.C. 1981.
- 16 (b) The provisions of section 9-3-4, "Regulations Governing the Conveyance Zone," B.R.C.  
17 1981, if the land is also located in the conveyance zone.
- 18 (c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing the One  
19 Hundred-Year Floodplain," B.R.C. 1981, if they are not prohibited by the underlying  
zoning district or any other ordinance of the City, may be established, except that no person  
20 shall:
- 21 (1) Change the use of an existing structure intended for human occupancy from a  
nonresidential use to a residential use or use as a school, daycare center, group home,  
22 residential care facility, or congregate care facility.
- 23 (2) Establish any new parking lot for motor vehicles.
- 24 (3) Establish any campground.
- 25 (d) All structures allowed under the provisions of Ssection 9-3-3, "Regulations Governing the  
One Hundred-Year Floodplain," B.R.C. 1981, may be established, except that no person  
shall:

- 1 (1) Construct or place any new structure intended for human occupancy.
- 2 (2) Expand, enlarge, or make a substantial modification or substantial improvement to
- 3 any existing structure intended for human occupancy. Notwithstanding this provision,
- 4 a person may reconstruct a non-flood-damaged structure or portion thereof, which
- 5 otherwise does constitute a substantial improvement, under the provisions of
- 6 Ssubparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981.
- 7
- 8 (e) Unconditioned, unenclosed building elements such as balconies, awnings and roof
- 9 overhangs may extend up to four feet into the high hazard zone if completely located above
- 10 the flood protection elevation and the remainder of the structure complies with this chapter.

11 Section 5. Section 9-3-6, B.R.C. 1981, is amended as follows:

12 **9-3-6 Floodplain Development Permits.**

- 13 (a) Activities Exempt from Floodplain Development Permit Requirement: The following
- 14 activities are allowed within the one hundred-year floodplain and in the five hundred-year
- 15 floodplain and do not require a floodplain development permit:
- 16 (i) "Maintenance" as defined in Section 9-16-1, "General Definitions," B.R.C.
- 17 1981, that does not affect the efficiency or capacity of the conveyance
- 18 zone or high hazard zone.
- 19 (ii) Sidewalks, concrete, asphalt or stone flatwork that does not result in the
- 20 establishment or expansion of parking area and does not modify existing
- 21 grade by more than six inches.
- 22 (iii) Underground utilities that do not modify existing grade.
- 23 (iv) Poles, lines, cables, sign posts, landscaping and artwork that do not affect
- 24 the efficiency or capacity of the conveyance zone or high hazard zone.
- 25 (v) Temporary facilities that are not permanently attached to the ground such
- as tents, traffic control devices and lawn furniture provided that they will
- not affect the efficiency or capacity of the conveyance zone or high hazard
- zone, or they will remain in place for no more than thirty days.
- (b) An applicant for a floodplain development permit shall pay the fee prescribed by Ssection
- 4-20-44, "Floodplain Development Permits and Flood Control Variance Fees," B.R.C.
- 1981, and shall complete an application form provided by the city manager that shall
- include, without limitation, the following:
- (1) The written consent of the owners of all property subject to the development request;
- (2) A written statement addressing the criteria for approval;
- (3) Information on the location of hazardous material and how it will be secured to
- prevent its release during a five hundred-year flood event, if the floodplain
- development permit application is for a critical facility which will contain hazardous

1 material A surface view plan showing elevations and contours of the ground; pertinent  
2 structures, fill, and storage elevations; sizes, locations, and spatial arrangements of all  
3 proposed, anticipated, and existing structures on the site; location and elevations of  
4 streets, water supplies and sanitary facilities; and soil types; and

5 (4) A copy of the emergency management plan, if the floodplain development permit  
6 application is for a critical facility or lodging facility; and Specifications for building  
7 construction and materials, filling, dredging, grading, channel improvements and  
8 changes, storage of materials, water supply, and sanitary facilities.

9 (5) A written statement by a Colorado registered professional engineer certifying that the  
10 proposed levee design and operating and maintenance manual meet the requirements  
11 of Subsection 9-3-2(i)(5), "Exemption for Critical Facilities Protected by Levee  
12 System," B.R.C. 1981, if the flood development permit application is for a critical  
13 facility or lodging facility for which an exemption is sought under Subsection 9-3-  
14 2(i)(5).

15 (b)(c) The manager may require the applicant to furnish additional information and details  
16 deemed necessary to evaluate the effects of the proposed construction upon the floodplain  
17 or to determine whether the requirements of this chapter have been met, including, without  
18 limitation:

19 (1) A surface view plan showing elevations and contours of the ground; pertinent  
20 structures, fill, and storage elevations; sizes, locations, and spatial arrangements of all  
21 proposed, anticipated, and existing structures on the site; location and elevations of  
22 streets, water supplies, and sanitary facilities; and soil types;

23 (2) Specifications for building construction and materials, filling, dredging, grading,  
24 channel improvements and changes, storage of materials, water supply, and sanitary  
25 facilities;

(3) Valley cross sections showing the floodplain surrounding the watercourse, cross  
sections of the area to be occupied by the proposed development, and one hundred-  
year flood maximum water surface elevation information, and, for critical facilities  
and lodging facilities, five hundred-year flood maximum water surface elevation  
information;

(24) A profile showing the slope of the bottom of the channel or thalweg of the  
watercourse;

(35) A floodplain analysis by a Colorado registered professional engineer of the flood  
profile, elevation, and velocity, using methodology acceptable to FEMA, including  
existing and anticipated uses and making a determination that the proposed  
construction or development will not cause a rise in the elevation of the water surface  
of a one hundred-year flood; and

(46) A structural analysis by a Colorado registered professional engineer showing that any  
proposed structures will be adequately designed and constructed to prevent flotation,  
collapse, or lateral movement of the structure resulting from hydrodynamic and  
hydrostatic loads, including the effects of buoyancy and scouring.

1 (ed) When reviewing an application for a permit, the city manager shall determine which  
2 portion or portions of the floodplain are affected by the particular development request and  
3 shall then apply the provisions of Sections 9-3-2, "Floodplains," 9-3-3, "Regulations  
4 Governing the One Hundred-Year Floodplain," 9-3-4, "Regulations Governing the  
5 Conveyance Zone," and 9-3-5, "Regulations Governing the High Hazard Zone," B.R.C.  
6 1981, as applicable. The manager also shall determine whether the application meets the  
7 intent of this chapter prescribed by subsection 9-3-2(a), B.R.C. 1981, after considering the  
8 following factors:

- 9 (1) The effects upon the efficiency or capacity of the conveyance zone and high hazard  
10 zone;
- 11 (2) The effects upon lands upstream, downstream, and in the immediate vicinity;
- 12 (3) The effects upon the one hundred-year flood profile;
- 13 (4) The effects upon any tributaries to the main stream, drainage ditches, and any other  
14 drainage facilities or systems;
- 15 (5) Whether additional public expenditures for flood protection or prevention will be  
16 required;
- 17 (6) Whether the proposed use is for human occupancy;
- 18 (7) The potential danger to persons upstream, downstream, and in the immediate vicinity;
- 19 (8) Whether any proposed changes in a watercourse will have an adverse environmental  
20 effect on the watercourse, including, without limitation, stream banks and streamside  
21 trees and vegetation;
- 22 (9) Whether any proposed water supply and sanitation systems and other utility systems  
23 can prevent disease, contamination, and unsanitary or hazardous conditions during a  
24 flood;
- 25 (10) Whether any proposed facility and its contents will be susceptible to flood damage  
and the effect of such damage;
- (11) The relationship of the proposed development to the Boulder Valley Comprehensive  
Plan and any applicable floodplain management programs;
- (12) Whether safe access is available to the property in times of flood for ordinary and  
emergency vehicles;
- (13) Whether the applicant will provide flood warning systems to notify floodplain  
occupants of impending floods;
- (14) Whether the cumulative effect of the proposed development with other existing and  
anticipated uses will increase flood heights; and
- (15) Whether the expected heights, velocities, duration, rate of rise, and sediment transport  
of the floodwaters expected at the site will adversely affect the development or  
surrounding property.

1 (de) If the city manager determines that the applicant meets the purposes and requirements of  
2 this chapter, the manager shall issue the permit and may attach such conditions as deemed  
3 necessary to further the purposes of this chapter.

4 (ef) ~~A~~ Every permit issued on or after April 7, 1985, shall become invalid ~~expires three years~~  
5 ~~after its date of issuance, if the permittee has not commenced construction under the~~  
6 ~~permit. if the work authorized by such permit is not completed and approved by the city~~  
7 ~~manager within three years from the date such permit was issued. Upon receipt of a~~  
8 ~~request in writing that demonstrates justifiable cause and is received prior to expiration of~~  
9 ~~the permit, the city manager may grant in writing one or more extensions of time for~~  
10 ~~periods not more than 180 days each. As part of an approval of extension of a permit, the~~  
11 ~~city manager may impose additional conditions on the applicant in order to ensure~~  
12 ~~compliance with any amendments to this chapter or the floodplain mapping effective after~~  
13 ~~the date of the original permit approval. The term "commenced construction" shall mean~~  
14 ~~the first placement of permanent construction of a structure on a site, such as the pouring of~~  
15 ~~slabs or footings, the installation of piles, the construction of columns, or any work beyond~~  
16 ~~the stage of excavation; or the placement of a manufactured home on a foundation; but~~  
17 ~~does not include land preparation, grading and filling, or installation of streets or sidewalks.~~

18 (fg) No person who has obtained a permit shall fail to construct in accordance with their  
19 approved application and design.

20 (gh) Floodplain development permits that allow for development in the conveyance zone or the  
21 high hazard zone, or which will involve a change of watercourse, shall be decided by the  
22 city manager. The decision of the city manager shall be subject to call-up by the planning  
23 board, or appeal by any aggrieved party to the planning board, subject to the call-up and  
24 appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C.  
25 1981.

(ih) A floodplain development permit for any of the following items is effective upon the date  
of its issuance:

- 1 (1) Sidewalks, parking lots, or other concrete, asphalt, or stone flatwork that do not  
2 modify existing grade;
- 3 (2) Uninhabited overhead structural projections, no portion of which extends below the  
4 flood protection elevation; or
- 5 (3) Rehabilitation of an existing structure in accordance with the definitions in Chapter  
6 9-16, "Definitions," B.R.C. 1981. In addition, for properties in the high hazard zone,  
7 the rehabilitation shall not result in a prohibited change in use as set forth in  
8 Subsection 9-3-5(c), B.R.C. 1981.

9 (it) No person shall initiate any use after obtaining a permit under this section without first  
10 submitting to the city manager a certification by a Colorado registered professional  
11 engineer that the development has been completed in compliance with the approved permit  
12 application and that all conditions have been fulfilled.

1 (jk) At least once every three years, the owner or operator of a critical facility protected by a  
2 levee for which the city manager approved an exemption under Paragraph 9-3-2(i)(5),  
3 “Exemption for Critical Facilities Protected by Levee System,” B.R.C. 1981, in a  
4 floodplain development permit, shall file with the city manager a written certification from  
5 a Colorado registered professional engineer that the levee meets the minimum freeboard  
6 requirements set forth in Subsection 9-3-2(i)(5) and that the levee appears, on visual  
7 inspection, to be structurally sound and adequately maintained. The city manager may  
8 require the owner or operator to submit such certification more frequently than once every  
9 three years if warranted by recent flood conditions or circumstances that may lead to  
10 changes in the levee system at the critical facility. The permit expires if the certification  
11 required pursuant to this subsection is not filed with the city manager. Once a floodplain  
12 development permit has been issued granting an exemption under Paragraph 9-3-2(i)(5),  
13 “Exemption for Critical Facilities Protected by Levee System,” B.R.C. 1981, for a critical  
14 facility protected by a levee system, future development on the land protected by the levee  
15 system that does not in any way affect the levee system or its operation and maintenance  
16 shall not require a floodplain development permit so long as the requirements of this  
17 subsection (k) and Paragraph 9-3-2(i)(5), B.R.C. 1981, are met.

18 Section 6. Section 9-3-7, B.R.C. 1981, is amended as follows:

19 **9-3-7 Variances.**

- 20 (a) ~~A person wishing to expand or enlarge an existing structure that does not conform to the~~  
21 ~~requirements of this chapter and cannot be made to conform without unreasonable expense~~  
22 ~~or unreasonable impact on the existing structure may apply to the city manager for a~~  
23 ~~variance from the requirements of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D). The city~~  
24 ~~manager may grant a variance from the requirements of Subsection 9-3-2(i) and Sections,~~  
25 ~~9-3-3, 9-3-4, and 9-3-5, B.R.C. 1981, except that no variance shall be granted for expansion~~  
or enlargement of any structure constructed after July 12, 1978, unless such expansion or  
enlargement conforms to the flood protection elevation requirement in effect at the time of  
the original construction.
- (b) The city manager shall not grant a variance under this section unless the manager  
determines that:
- (1) Considering the flood hazard, the variance is the minimum necessary to afford relief;
  - (2) To do so would not result in additional threats to public safety, extraordinary public  
expense, nuisance, fraud, victimization of the public, or for variances in the  
conveyance zone a rise in the elevation of the water surface of a one hundred-year  
flood, or be in conflict with existing provisions of this code, ~~or~~ any ordinance of the  
City, or any other applicable laws; and

1 (3) Failure to grant the variance would result in exceptional hardship to the applicant,  
2 except that a hardship need not be shown for a variance sought to the requirements of  
3 Paragraph (i)(4) of 9-3-2, B.R.C. 1981, for a public essential services facility in the  
4 five hundred-year floodplain if the applicant demonstrates to the satisfaction of the  
5 city manager that the facility is an element of a redundant system for which services  
6 will not be interrupted during a flood. At a minimum, the applicant shall  
7 demonstrate that one or more redundant facilities are available, either owned by the  
8 same public entity or available through an intergovernmental agreement or other  
9 contract, and are connected; that the alternative facilities are either located outside of  
10 the five hundred-year floodplain or are compliant with the requirements of this  
11 chapter; and that an operations plan is in effect that states how redundant systems  
12 will provide service to the affected area in the event of a flood. Evidence of ongoing  
13 redundancy shall be provided to the city manager by the owner or operator of the  
14 facility upon request by the city manager.

9 (c) The manager shall examine the following factors in determining whether or not to grant a  
10 variance under this section:

- 11 (1) The danger to life and property due to flooding or erosion damage;
- 12 (2) The likelihood that the proposed development, in conjunction with existing and  
13 anticipated development, may increase flood hazards;
- 14 (3) The relationship of the proposed development to the Boulder Valley Comprehensive  
15 Plan and any applicable floodplain management programs; and
- 16 (4) The cost and ability of providing essential services such as maintaining and protecting  
17 public utility systems, roads, and bridges and of restoring normal operations for the  
18 community during and after floods.

16 (d) The city manager shall not grant a cumulative total of variances that increases a structure's  
17 floor area by more than ten percent of the structure throughout the life of the structure.

17 (e) An applicant for a variance shall apply on forms provided by the city manager and pay the  
18 fee prescribed by Section 4-20-44, "Floodplain Development Permits and Flood Control  
19 Variance Fees," B.R.C. 1981, unless a floodplain development permit is required as well,  
20 in which case no fee is required for the variance.

20 (f) Any decision by the city manager to approve a variance is subject to call-up by the  
21 planning board or appeal by any aggrieved party to the planning board as described by  
22 Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

22 (g) When granting any variance that allows for construction below FEMA's one hundred-year  
23 flood protection elevation, the city manager shall provide to the recipient of the variance  
24 written notice that the proposed construction does not conform with FEMA guidelines and  
25 that the proposed construction and the original structure may be subject to increased flood  
insurance premiums.

Section 7. Table 6-1: USE TABLE of Subsection 9-6-1(d), B.R.C. is amended as

follows:

9-6-1 Schedule of Permitted Land Uses

...

(d) Use Table:

TABLE 6-1: USE TABLE

| Use Modules                              | R1 | R2 | R3        | R4        | R5        | R6        | R7        | R8        | MH | M1        | M2        | M3        | M4 | B1        | B2 | B3        | B4 | B5        | D1 | D2 | D3 | I1 | I2 | I3 | I4 | P | A | Specific Use Standard |
|--|----|----|-----------|-----------|-----------|-----------|-----------|-----------|----|-----------|-----------|-----------|----|-----------|----|-----------|----|-----------|----|----|----|----|----|----|----|---|---|-----------------------|
| <b>Residential Uses</b>                  |    |    |           |           |           |           |           |           |    |           |           |           |    |           |    |           |    |           |    |    |    |    |    |    |    |   |   |                       |
| Detached dwelling units                  | A  | A  | A         | A         | C         | A         | A         | *         | *  | A         | U         | U         | A  | A         | A  | A         | *  | A         | A  | A  | A  | *  | U  | U  | *  | U | U | 9-8-4                 |
| Detached dwelling unit with two kitchens | C  | C  | *         | *         | *         | *         | *         | *         | *  | *         | *         | *         | *  | *         | *  | *         | *  | *         | *  | *  | *  | *  | *  | *  | *  | C | C | 9-6-3(c)              |
| Duplexes                                 | *  | A  | A         | A         | C         | A         | A         | *         | *  | A         | A         | A         | A  | A         | A  | A         | *  | A         | A  | A  | A  | G  | U  | U  | N  | U | * | 9-8-4                 |
| Attached dwellings                       | *  | A  | A         | A         | C         | A         | A         | C         | *  | A         | A         | A         | A  | A         | A  | A         | *  | A         | A  | A  | A  | G  | U  | U  | N  | U | * | 9-8-4                 |
| Mobile home parks                        | *  | U  | U         | *         | U         | U         | *         | *         | A  | *         | *         | *         | *  | *         | *  | *         | *  | *         | *  | *  | *  | *  | *  | *  | *  | * | * |                       |
| Townhouses                               | *  | A  | A         | A         | C         | A         | A         | A         | *  | A         | A         | A         | A  | A         | A  | A         | *  | A         | A  | A  | A  | G  | U  | U  | N  | U | * | 9-8-4                 |
| Live-work                                | *  | *  | *         | *         | *         | *         | *         | *         | *  | *         | *         | *         | A  | *         | *  | *         | *  | *         | *  | *  | *  | U  | U  | U  | A  | * | * |                       |
| Cooperative housing units                | C  | C  | C         | C         | C         | C         | C         | *         | *  | C         | C         | C         | *  | *         | *  | *         | *  | *         | *  | *  | *  | *  | U  | U  | *  | * | * | 9-6-3(b)              |
| <b>Efficiency living units:</b>          |    |    |           |           |           |           |           |           |    |           |           |           |    |           |    |           |    |           |    |    |    |    |    |    |    |   |   |                       |
| A. If <20% of total units                | *  | *  | *         | *         | U         | A         | A         | *         | *  | M         | A         | A         | A  | A         | G  | A         | *  | A         | A  | A  | A  | G  | U  | U  | N  | U | * |                       |
| B. If ≥20% of total units                | *  | *  | *         | *         | U         | A         | *         | *         | U  | A         | A         | U         | U  | U         | U  | U         | *  | U         | U  | U  | U  | U  | U  | U  | U  | U | * |                       |
| <b>Accessory units:</b>                  |    |    |           |           |           |           |           |           |    |           |           |           |    |           |    |           |    |           |    |    |    |    |    |    |    |   |   |                       |
| A. Accessory dwelling unit               | C  | C  | *         | *         | *         | *         | *         | *         | *  | *         | *         | *         | *  | *         | *  | *         | *  | *         | *  | *  | *  | *  | *  | *  | *  | C | C | 9-6-3(a)              |
| B. Owner's accessory unit                | C  | *  | *         | C         | *         | *         | *         | *         | *  | *         | *         | *         | *  | *         | *  | *         | *  | *         | *  | *  | *  | *  | *  | *  | *  | * | * | 9-6-3(a)              |
| C. Limited accessory unit                | C  | *  | *         | *         | *         | *         | *         | *         | *  | *         | *         | *         | *  | *         | *  | *         | *  | *         | *  | *  | *  | *  | *  | *  | *  | * | * | 9-6-3(a)              |
| Caretaker dwelling unit                  | *  | *  | *         | *         | *         | *         | *         | *         | *  | **        | *         | *         | *  | *         | *  | *         | *  | *         | *  | *  | *  | A  | A  | A  | A  | A |   |                       |
| <b>Group quarters:</b>                   |    |    |           |           |           |           |           |           |    |           |           |           |    |           |    |           |    |           |    |    |    |    |    |    |    |   |   |                       |
| A. Congregate care facilities            | *  | *  | <u>AC</u> | <u>CA</u> | <u>CA</u> | <u>AC</u> | <u>AC</u> | <u>AC</u> | *  | <u>AC</u> | <u>AC</u> | <u>AC</u> | C  | <u>AC</u> | C  | <u>AC</u> | *  | <u>AC</u> | C  | C  | C  | *  | U  | U  | *  | U | * | 9-6-3(f)<br>9-3-2(i)  |

|    |  |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |   |   |   |   |                      |               |               |          |
|----|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---|---|---|---|----------------------|---------------|---------------|----------|
| 1  | B. Custodial care  | *   | *   | U   | U   | U   | U   | U   | U   | *   | U   | U   | U   | *   | U   | *   | U   | *   | U   | U   | *   | U   | U   | * | * | * |   |                      |               |               |          |
| 2  | C. Group homes   | C   | C   | C   | C   | C   | C   | C   | C   | *   | C   | C   | C   | C   | C   | C   | *   | C   | C   | C   | C   | *   | *   | * | * | * | * | 9-6-3(d)<br>9-3-2(i) |               |               |          |
| 3  | D. Residential care facilities   | *   | *   | C   | C   | C   | C   | C   | C   | *   | C   | C   | C   | C   | C   | C   | *   | C   | C   | C   | C   | *   | U   | U | * | * | * | 9-6-3(f)<br>9-3-2(i) |               |               |          |
| 4  | E. Fraternities, sororities, and dormitories   | *   | *   | *   | *   | *   | AC  | AC  | *   | *   | U   | *   | *   | *   | AC  | G   | AC  | *   | AC  | *   | *   | AC  | *   | U | U | * | * | *                    | 9-3-2(i)      |               |          |
| 5  | F. Boarding houses   | *   | *   | U   | U   | A   | A   | A   | *   | *   | U   | A   | A   | G   | A   | G   | A   | *   | A   | *   | *   | A   | *   | U | U | * | * | *                    |               |               |          |
| 6  | Home occupation  | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | *   | C   | C   | C   | C   | C   | C   | C | C | C | C | 9-6-3(e)             |               |               |          |
| 6  | Transitional housing   | C   | C   | C   | C   | C   | C   | C   | C   | *   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C | C | C | C | 9-6-3(h)             |               |               |          |
| 7  | <b>Dining and Entertainment</b>  |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |   |   |   |   |                      |               |               |          |
| 8  | Art or craft studio space ≤2,000 square feet   | *   | U   | U   | U   | U   | U   | U   | U   | *   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A | A | A | * | A                    | U             | *             |          |
| 9  | Art or craft studio space >2,001 square feet   | *   | U   | U   | U   | U   | U   | U   | *   | *   | M   | U   | U   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A   | A | A | A | * | A                    | *             | *             |          |
| 11 | Breweries, distilleries or wineries <15,000 square feet and with a restaurant        | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | * | * | * | * | *                    | *             | 9-6-5(b)(3.5) |          |
| 13 | Breweries, distilleries or wineries <15,000 square feet and without a restaurant     | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | * | * | * | * | *                    | *             | 9-6-5(b)(3.5) |          |
| 15 | Breweries, distilleries or wineries with or without a restaurant >15,000 square feet | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | * | * | * | * | *                    | 9-6-5(b)(3.5) |               |          |
| 17 | Commercial kitchens and catering   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | A   | *   | *   | *   | U   | U   | U   | U   | U   | U   | A | A | A | A | *                    | *             |               |          |
| 19 | Indoor amusement establishment   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | U   | *   | U   | U   | U   | U   | A   | U   | U   | U   | *   | * | * | * | * | *                    | *             |               |          |
| 20 | Mobile Food Vehicle on Private Property  | *   | *   | *   | *   | *   | *   | *   | *   | *   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C   | C | C | C | C | C                    | *             | 9-6-5(d)      |          |
| 21 | Mobile Food Vehicle on Public Right of Way   | C   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | * | C | C | C | C                    | C             | *             | 9-6-5(d) |
| 22 | Museums  | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | *   | A   | U   | A   | A   | A   | A   | A   | A   | A   | A   | U   | U | U | U | * | *                    |               |               |          |
| 23 | Restaurants (general)  | n/a | C | C | C | C | n/a                  | n/a           | 9-6-5(b)      |          |





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|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|---|
| Nonprofit membership clubs  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | A  | U  | G  | A  | A  | A  | A  | A  | A  | A  | *  | *  | *  | *  | U  | * |
| Overnight shelter   | *  | *  | U  | *  | U  | C  | C  | *  | *  | U  | C  | U  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | U  | * |
| Private elementary, junior, and senior high schools                         | U  | U  | U  | U  | U  | AC | U  | *  | *  | U  | U  | U  | AC | AC | G  | AC | AC | AC | U  | AC | U  | *  | *  | *  | *  | *  | *  |   |
| Public elementary, junior, and senior high schools                          | AC | * |
| Public colleges and universities  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | A  | * |
| Private colleges and universities   | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | U  | *  | A  | *  | A  | *  | U  | U  | *  | U  | U  | *  | A  | *  |   |
| Public and private office uses providing social services                    | *  | *  | *  | *  | *  | *  | *  | *  | *  | U  | U  | U  | C  | A  | G  | A  | A  | A  | G  | A  | A  | *  | U  | *  | U  | U  | *  |   |
| Religious assemblies  | A  | A  | A  | A  | U  | A  | A  | *  | *  | A  | U  | U  | A  | A  | A  | A  | A  | A  | A  | A  | A  | *  | *  | *  | *  | *  | *  |   |
| Adult educational facility with <20,000 square feet of floor area           | U  | U  | U  | U  | U  | U  | U  | *  | *  | U  | U  | U  | A  | A  | G  | A  | A  | A  | U  | A  | U  | A  | A  | A  | A  | A  | *  |   |
| Adult educational facilities with ≥20,000 square feet or more of floor area | U  | U  | U  | U  | U  | U  | U  | *  | *  | U  | U  | U  | *  | A  | G  | A  | A  | A  | U  | A  | U  | U  | U  | U  | U  | A  | *  |   |
| Vocational and trade schools  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | A  | U  | G  | A  | U  | A  | U  | U  | U  | U  | A  | A  | A  | A  | A  | U |
| <b>Office, Medical and Financial Uses</b>                                   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |   |
| Data processing facilities  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | C  | A  | G  | A  | C  | A  | G  | A  | A  | *  | A  | A  | A  | *  | *  |   |
| Financial institutions  | *  | *  | *  | *  | *  | *  | M  | *  | *  | M  | M  | M  | C  | U  | A  | A  | A  | A  | A  | A  | A  | *  | *  | *  | *  | *  | *  |   |
| Hospitals   | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | AC | *  |   |
| Medical or dental clinics or offices or addiction recovery facilities       | *  | U  | U  | U  | *  | U  | U  | *  | *  | M  | U  | U  | C  | AC | AC | AC | C  | AC | G  | AC | AC | *  | *  | *  | *  | U  | *  |   |
| Medical and dental laboratories   | *  | *  | *  | *  | *  | *  | M  | *  | *  | M  | M  | M  | C  | A  | A  | A  | A  | A  | *  | *  | *  | U  | A  | *  | U  | *  | *  |   |
| Offices, administrative   | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | *  | C  | A  | A  | A  | C  | A  | G  | A  | A  | *  | A  | A  | *  | *  | *  |   |
| Offices, professional   | *  | U  | U  | U  | U  | U  | M  | *  | *  | M  | M  | M  | C  | A  | A  | A  | C  | A  | G  | A  | A  | *  | *  | *  | *  | *  |    |   |
| Offices, technical; with <5,000 square feet of floor area                   | *  | U  | U  | U  | U  | U  | M  | *  | *  | M  | M  | M  | A  | A  | A  | A  | C  | A  | G  | A  | A  | A  | A  | A  | A  | *  | *  |   |
| Offices, technical; with >5,000 square feet of floor area                   | *  | U  | U  | U  | U  | U  | M  | *  | *  | M  | M  | M  | U  | A  | U  | A  | C  | A  | G  | A  | A  | *  | A  | A  | A  | *  | *  |   |
| Offices - other   | *  | U  | U  | U  | U  | U  | M  | *  | *  | M  | M  | M  | C  | A  | A  | A  | C  | A  | G  | A  | A  | *  | *  | *  | *  | *  | *  |   |

9-6-6(b)  
9-3-2(i)

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|----|--|---|---|---|---|---|---|---|---|---|---|---|-----------|-----------|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|---|----------|-----------------|
| 1  | <b>Parks and Recreation Uses</b>                                 |   |   |   |   |   |   |   |   |   |   |   |           |           |   |           |           |           |           |           |           |           |           |           |           |           |   |          |                 |
| 2  | Campgrounds  | * | * | * | * | * | * | * | * | * | * | * | *         | *         | * | *         | *         | *         | *         | *         | *         | U         | U         | U         | *         | *         | U |          |                 |
| 3  | Outdoor entertainment  | * | * | * | * | * | * | * | * | * | * | * | *         | U         | * | U         | U         | U         | U         | U         | U         | *         | *         | *         | *         | U         | * |          |                 |
| 4  | Park and recreation uses   | A | A | A | A | A | A | * | A | A | A | A | *         | A         | A | A         | A         | A         | A         | A         | A         | A         | A         | A         | A         | A         |   |          |                 |
| 5  | Indoor recreational or athletic facilities                       | * | * | * | * | * | U | U | * | * | U | U | A         | A         | A | A         | A         | A         | A         | A         | A         | A         | U         | U         | A         | *         | * |          |                 |
| 6  | <b>Commercial, Retail and Industrial Uses</b>                    |   |   |   |   |   |   |   |   |   |   |   |           |           |   |           |           |           |           |           |           |           |           |           |           |           |   |          |                 |
| 7  | Service Uses:  |   |   |   |   |   |   |   |   |   |   |   |           |           |   |           |           |           |           |           |           |           |           |           |           |           |   |          |                 |
| 8  | Animal hospital or veterinary clinic                             | * | * | * | * | * | * | * | * | * | * | * | U         | U         | U | A         | U         | A         | *         | *         | U         | A         | A         | A         | U         | *         | * |          |                 |
| 9  | Animal kennel  | * | * | * | * | * | * | * | * | * | * | C | *         | U         | U | A         | U         | *         | *         | *         | A         | A         | U         | A         | *         | *         |   |          |                 |
| 10 | Antennas for wireless telecommunications services                | * | * | * | C | C | C | C | * | * | C | C | C         | A         | C | C         | C         | C         | C         | C         | C         | C         | C         | C         | C         | C         | C | 9-6-9(a) |                 |
| 11 | Broadcasting and recording facilities                            | * | U | U | U | U | U | * | * | M | M | M | <u>AC</u> | <u>AC</u> | G | <u>AC</u> | * | *        | <u>9-3-2(i)</u> |
| 12 | Business support services <10,000 square feet                    | * | * | * | * | * | * | * | * | * | * | * | A         | *         | A | A         | A         | A         | A         | A         | A         | A         | U         | U         | A         | *         | * |          |                 |
| 13 | Business support services ≥10,000 square feet                    | * | * | * | * | * | * | * | * | * | * | * | U         | *         | U | A         | A         | A         | A         | A         | A         | U         | U         | U         | U         | *         | * |          |                 |
| 14 | Industrial service center  | * | * | * | * | * | * | * | * | * | * | * | *         | *         | * | *         | C         | C         | *         | *         | *         | *         | *         | *         | *         | *         | * |          |                 |
| 15 | Non-vehicular repair and rental services without outdoor storage | * | * | * | * | * | * | * | * | * | * | * | *         | *         | * | U         | A         | U         | U         | U         | U         | A         | U         | *         | A         | *         | * |          |                 |
| 16 | Neighborhood business center                                     | * | U | U | * | * | U | U | * | * | * | * | *         | *         | * | *         | *         | *         | *         | *         | *         | *         | *         | *         | *         | *         | * | 9-6-9(f) |                 |
| 17 | Personal service uses  | * | U | U | U | * | U | A | U | U | A | A | A         | A         | A | A         | A         | A         | A         | A         | A         | *         | *         | *         | *         | *         | * |          |                 |
| 18 | Retail Sales Uses:   |   |   |   |   |   |   |   |   |   |   |   |           |           |   |           |           |           |           |           |           |           |           |           |           |           |   |          |                 |
| 19 | Accessory sales  | * | * | * | * | * | A | A | * | * | C | C | C         | C         | C | C         | C         | C         | C         | C         | C         | C         | C         | C         | C         | C         | * | 9-16     |                 |
| 20 | Convenience retail sales ≤2,000 square feet                      | * | U | U | U | * | U | A | * | * | A | * | A         | A         | U | A         | A         | U         | U         | *         | A         | A         | C         | C         | *         | C         | * | *        |                 |
| 21 | Convenience retail sales >2,000 square feet                      | * | * | * | * | * | U | U | * | * | M | M | *         | A         | U | A         | A         | A         | U         | A         | A         | A         | *         | C         | *         | C         | * | *        |                 |
| 22 | Retail fuel sales (not including service stations)               | * | U | U | U | * | U | U | * | * | U | U | U         | C         | U | C         | C         | U         | C         | *         | U         | U         | C         | C         | *         | U         | * | *        | 9-6-9(d)        |
| 23 | Retail sales ≤5,000 square feet                                  | * | * | * | * | * | * | * | * | * | U | * | U         | A         | * | A         | A         | A         | A         | A         | A         | A         | *         | *         | *         | *         | * | *        |                 |

|    |  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
|----|--|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----------|---|----------|
| 1  | Retail sales >5,000 square feet but ≤20,000 square feet                  | * | * | * | * | * | * | * | * | * | * | * | * | A | * | A | A | A | A | A | A | A | A | A | * | * | * | * | * | * | *        |   |          |
| 2  |  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
| 3  | Retail sales >20,000 square feet   | * | * | * | * | * | * | * | * | * | * | * | * | U | * | U | U | A | A | A | A | U | * | * | * | * | * | * | * | * | *        |   |          |
| 4  | Building material sales ≤15,000 square feet of floor area                | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | * | * | * | A | A | A | A | * | * | * | * |   |          |   |          |
| 5  |  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
| 6  | Building material sales >15,000 square feet of floor area                | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | * | U | * | * | * | U | U | U | U | * | * | * | * |          |   |          |
| 7  | Temporary sales  | * | * | * | * | * | * | * | * | * | * | * | * | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | *        | * | 9-6-5(c) |
| 8  | Vehicle-Related Uses:  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
| 9  | Automobile parking lots, garages, or car pool lots as a principal use    | U | U | U | U | U | U | U | U | U | U | U | U | U | U | U | A | U | U | * | U | U | A | A | A | U | U | * |   |   |          |   |          |
| 10 | Car washes   | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | A | U | U | U | * | * | * | * | * | * | * | * | * | *        |   |          |
| 11 | Drive-thru uses  | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | * | U | U | * | * | * | * | * | * | * | * | *        |   |          |
| 12 | Fuel service stations or retail fuel sales                               | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | C | C | C | * | U | C | C | C | * | U | * | * | * | * |          |   |          |
| 13 | Sales and rental of vehicles   | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | A | U | * | * | * | A | A | * | * | * | * | * | * |          |   |          |
| 14 | Sales and rental of vehicles within 500 feet of a residential use module | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | C | C | * | * | * | C | C | * | * | * | * | * | * |          |   |          |
| 15 |  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
| 16 | Service of vehicles with no outdoor storage                              | * | * | * | * | * | * | * | * | * | * | * | * | U | * | U | U | A | U | * | * | * | A | A | A | A | * | * | * | * |          |   |          |
| 17 | Service of vehicles with limited outdoor storage                         | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | * | * | * | A | A | * | A | * | * | * | * |          |   |          |
| 18 | Industrial Uses:   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
| 19 | Building and landscaping contractors                                     | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | * | * | * | * | A | A | A | A | * | * | * | * |          |   |          |
| 20 | Cleaning and laundry plants  | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | A | A | A | * | * | * | * |          |   |          |
| 21 | Cold storage lockers   | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | U | U | A | A | A | A | * | * | * | * |   |          |   |          |
| 22 | Computer design and development facilities                               | * | * | * | * | * | * | * | * | * | * | * | * | A | A | G | A | C | A | G | A | A | * | A | A | A | * | * | * | * | 9-6-7(a) |   |          |
| 23 |  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |   |          |
| 24 | Equipment repair and rental with outdoor storage                         | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | A | U | U | U | U | A | A | A | A | * | * | * | * |          |   |          |
| 25 | Lumber yards   | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | A | * | * | * | * | * | * |          |   |          |

|    |  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |          |          |
|----|--|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----------|----------|----------|
| 1  | Manufacturing uses ≤15,000 square feet             | * | * | * | * | * | * | * | * | * | * | * | * | A | * | * | * | * | A | * | * | * | * | A | A | A | A | *        | *        |          |
| 2  | Manufacturing uses >15,000 square feet             | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | A | A | A | *        | *        |          |
| 3  | Manufacturing uses with potential off-site impacts | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | * | * | *        | 9-6-9(e) |          |
| 4  | Outdoor storage                                    | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | U | A | * | * | *        |          |          |
| 5  | Outdoor storage of merchandise                     | * | * | * | * | * | * | * | * | * | * | * | * | * | C | * | C | * | * | * | * | * | C | C | C | C | * | *        | 9-6-9(g) |          |
| 6  | Printers and binders                               | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | A | A | A | * | *        |          |          |
| 7  | Recycling centers                                  | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | U | * | *        |          |          |
| 8  | Recycling collection facilities - large            | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | * | * | * | * | U | U | U | U | U | * | 9-6-9(h) |          |          |
| 9  | Recycling collection facilities - small            | * | * | * | * | * | * | * | * | * | * | * | * | C | * | C | C | C | U | U | U | U | C | C | C | C | C | *        | 9-6-9(h) |          |
| 10 | Recycling processing facilities                    | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | U | U | * | U | *        | 9-6-9(h) |          |
| 11 | Self-service storage facilities                    | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | U | * | * | * | *        |          |          |
| 12 | Telecommunications use                             | * | * | * | * | * | * | * | * | * | * | * | G | A | G | A | U | A | G | A | A | * | A | A | A | * | * |          |          |          |
| 13 | Warehouse or distributions facilities              | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | A | A | A | * | *        |          |          |
| 13 | Wholesale business                                 | * | * | * | * | * | * | * | * | * | * | * | A | * | * | * | * | * | * | * | * | * | A | A | A | A | * | *        |          |          |
| 14 | <b>Agriculture and Natural Resource Uses</b>       |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |          |          |
| 15 | Open space, grazing and pastures                   | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | *        | A        | A        |
| 16 | Community gardens                                  | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C        | C        | 9-6-4(a) |
| 17 | Crop production                                    | A | A | A | A | A | A | A | A | A | A | A | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | *        | A        | A        |
| 18 | Mining industries                                  | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | U | * | * | U        |          |          |
| 18 | Firewood operations                                | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | A | A | * | * | *        |          |          |
| 19 | Greenhouse and plant nurseries                     | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | A | A | A | A | A | A        |          |          |
| 20 | <b>Accessory</b>                                   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |          |          |          |
| 21 | Accessory buildings and uses                       | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A        | A        | 9-16     |

- 22 **A:** Allowed use.
- 22 **C:** Conditional use. See Section 9-2-2 for administrative review procedures.
- 23 **\***: Use prohibited.
- 23 **U:** Use review. See Section 9-2-15 for use review procedures.
- 24 **G:** Allowed use provided that it is located above or below the ground floor.
- 24 **M:** Allowed use provided at least 50% of the floor area is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise use review.
- 25

1 **N:** Allowed use provided at least 50% of the floor area is for nonresidential use, otherwise by use review.  
2 **n/a:** Not applicable; more specific use applications apply.

3 Section 8. Section 9-16-1, B.R.C. 1981, is amended as follows:

4 **9-16-1 General Definitions.**

5 (a) The definitions contained in chapter 1-2, "Definitions," B.R.C. 1981, apply to this title unless a term is defined differently in this chapter.

6 (b) Terms identified with the references shown below after the definition are limited to those specific sections or chapters of this title:

- 7 (1) Airport influence zone (AIZ).
- 8 (2) Floodplain regulations (Floodplain).
- 9 (3) Historic preservation (Historic).
- 10 (4) Inclusionary housing (Inclusionary Housing).
- 11 (5) Residential growth management system (RGMS).
- 12 (6) Solar access (Solar).
- 13 (7) Wetlands Protection (Wetlands).
- 14 (8) Signs (Signs).

15 (c) The following terms as used in this title have the following meanings unless the context clearly indicates otherwise:

16 ...

17 “Accredited levee or provisionally accredited levee” means a system of artificial embankment(s) or flood control structure(s) used for property protection, flood control, and flood hazard mitigation that is accredited or provisionally accredited and mapped Zone X (shaded) by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program (NFIP). (Floodplain)

19 ...

20 "Area of special flood hazard" means the land in the floodplain subject to a one percent or greater chance of flooding in any given year. Such areas may be designated as Zones A, AO, AH, AE and A1-30 on the FIRM for the City of Boulder. (Floodplain)

22 ...

23 “At-risk population facility” means a pre-school, public or private primary or secondary school, before and after school care center with twelve or more students, daycare center with twelve or more children the parents or guardians of which do not remain in the same building of the facility, group home, or residential or congregate care facility with twelve or more residents. (Floodplain)

1 ...

2 “Base flood elevation” means the computed elevation to which floodwater is anticipated to rise  
3 during the one hundred-year flood. (Floodplain)

4 "Basement" means any enclosed area of a building having its lowest floor a minimum of two feet  
5 below grade level on all sides. (Floodplain)

6 ...

7 "Change in a watercourse" means any change in an existing thalweg, bed, or bank of a  
8 watercourse. (Floodplain)

9 ...

10 "Conveyance zone" means those portions of the floodplain required for the passage or  
11 conveyance of the one-hundred-year flood. The conveyance zone is delineated based on an equal  
12 encroachment methodology (measured in volume of water), which is applied to the floodplain  
13 from the edges of the flood channel to a point where the one-hundred-year flood profile will be  
14 raised no more than six inches, after considering a reasonable expectation of blockage at bridges  
15 and other obstructions by flood-borne debris. The City may, in its discretion, delineate the  
16 conveyance zone on city owned land or right of way based on unequal encroachment to  
17 minimize delineation on other properties. The conveyance zone is equivalent to a floodway  
18 delineation based on a six-inch rise. (Floodplain)

19 ...

20 "Crawl space" means the enclosed area contained inside the foundation walls and below the  
21 habitable floor of a structure. Crawl spaces having the lowest floor a minimum of two feet below  
22 grade level on all sides shall be considered a basement, and not a crawl space. (Floodplain)

23 “Critical facility” means any structure or related infrastructure, the loss of which may result in  
24 severe hazards to public health and safety or may interrupt essential services and operations for  
25 the community at any time before, during, and after a flood. Critical facilities are classified as  
26 follows: (1) essential services facility, (2) hazardous material facility, and (3) at-risk population  
27 facility. (Floodplain)

28 ...

29 "Daycare center" means a facility:

- 30 (1) Licensed by the state, if applicable;
- 31 (2) Providing care for children or adults who do not reside in the facility, are present  
32 primarily during daytime hours, and do not regularly stay overnight; and
- 33 (3) Which may include some instruction.
- 34 (4) Which is not located within a dwelling unit.

1 "Daycare home" means a facility:

- 2 (1) Licensed by the state, if applicable;
- 3 (2) Which is located within a dwelling unit;
- 4 (3) Providing care for twelve or fewer children or adults who (except for family  
5 members) do not reside in the facility, are present primarily during daytime hours,  
6 and do not regularly stay overnight. Family members who receive care in the facility  
7 are included in the total.

6 ...

7 "Development" means any change to improved or unimproved real estate, including, without  
8 limitation, constructing, relocating, rehabilitating, reconstructing or expanding or enlarging (but  
9 not maintaining) a building or other structure or portion thereof, or establishing or changing a  
10 use, or mining, dredging, filling, grading, paving, or excavation. (Floodplain)

11 "Essential service facility" means any facility providing an essential service that, if flooded, may  
12 result in severe hazards to public health and safety or interrupt essential services and operations  
13 for the community at any time before, during, or after a flood. Examples of essential service  
14 facilities include without limitation the following:

- 12 (1) Public safety facilities such as police stations, fire and rescue stations, and  
13 emergency operation centers;
- 14 (2) Emergency response facilities, such as emergency vehicle and equipment storage,  
15 and essential governmental work centers for continuity of government operations;
- 16 (3) Emergency medical facilities, such as hospitals, emergency care, urgent care, and  
17 ambulance services, but excluding clinics, doctors offices, and non-urgent care  
18 medical facilities;
- 19 (4) Shelters designated by the city manager that will be used during or after a flood  
20 for displaced persons;
- 21 (5) Communication facilities, such as main hubs for telephone systems, main  
22 broadcasting equipment for television systems, radio and other emergency  
23 warning systems, but excluding towers, poles, lines, cables, and conduits;
- 24 (6) Public utility plant facilities and essential equipment for treatment, generation,  
25 storage, pumping, and distribution, such as hubs for water, wastewater, power,  
and gas, but excluding hydro electric facilities, towers, poles, power lines, buried  
pipelines, transmission lines, distribution lines, and service lines;
- (7) Essential governmental facilities, including, without limitation, facilities where  
permanent records, as defined by an agency's data retention policy, are stored;;  
courts; and jails;; building permitting and inspection services;; departments that  
manage utilities and transportation systems;; information technology departments,

1 finance departments, and health departments; the county commissioner's office,  
2 the city manager's office, and maintenance and equipment centers; and

3 (8) Air transportation lifelines, such as an airport or heliport, and structures serving  
4 emergency functions, and associated infrastructure, such as aviation control  
5 towers, air traffic control centers, and emergency equipment aircraft hangars.

6 (Floodplain)

7 ...

8 "Exceptional hardship" means a substantially disproportionate burden in relationship to the  
9 benefit to be derived from conformance with the requirements of this title. (Floodplain)

10 ...

11 "Expansion or enlargement of a structure" means any addition of an exterior wall to the structure  
12 or any addition to the floor area of the structure, whether under, at, or above grade, and whether  
13 or not the external dimensions of the structure are changed, or the reconstruction of a flood-  
14 damaged portion of a structure, so long as such expansion, enlargement or reconstruction does  
15 not constitute a "substantial modification" or a "substantial improvement." (Floodplain)

16 ...

17 "FEMA" means the Federal Emergency Management Agency. (Floodplain)

18 ...

19 "Five hundred-year flood" means a flood having a 0.2 percent chance of occurring in any year.

20 (Floodplain)

21 "Flood" or "flooding" means a general or temporary condition of partial or complete inundation  
22 of normally dry land areas from a watercourse that temporarily overflows the boundaries within  
23 which it is ordinarily confined or from the rapid accumulation of runoff of surface water caused  
24 by rain, snow melt, flow blockage, or any other source. (Floodplain)

25 "Flood channel" means a natural or artificial watercourse with a definite bed and banks which  
periodically or continuously conducts flowing water and is shown on the Flood Channel  
Inventory Map prepared by the City's Utility Division of the Public Works Department.  
(Floodplain)

~~"Flood fringe" means those portions of the floodplain that are not in the conveyance zone or in  
the high hazard zone. (Floodplain)~~

1 "Flood Insurance Rate Map (FIRM)" means the official map on which FEMA has delineated  
2 both the areas of special flood hazard and the risk premium zones applicable to the community.  
(Floodplain)

3 "Flood insurance study (FIS)" means the official report provided by the Federal Emergency  
4 Management Agency that included flood profiles, the Flood Boundary-Floodway Map, and the  
water surface elevations of the base flood. (Floodplain)

5 "Flood profile" means a graph showing the elevations of the floodwater surface and the  
6 elevations of the underlying land as a function of distance along a path of flow. (Floodplain)

7 "Flood protection elevation" means ~~an elevation of:~~

8 (1) In the one hundred-year floodplain, an elevation of:

9 (A) ~~Two~~ two feet above the elevation of the water surface of a one-hundred-year  
10 flood as determined pursuant to ~~s~~Sections 9-3-2 through 9-3-8, B.R.C. 1981, or, if  
no such elevation is determined, two feet above the highest grade adjacent to a  
11 structure; ~~or~~

12 (B) ~~Two~~ two feet above the base flood elevation in AE zones or two feet above the  
13 flood depth number indicated for AO zones on the FIRM for the City of Boulder;  
whichever is higher.

14 (2) In the five hundred-year floodplain, the lower of the following elevations:

15 (A) One foot above the water surface of a five hundred-year flood under the  
standards in Sections 9-3-2 through 9-3-8, B.R.C. 1981; or

16 (B) The one hundred-year flood protection elevation.

17 (Floodplain)

18 "Floodplain" means the area that is susceptible to being inundated by a flood. (Floodplain)

19 "Floodplain development permit" means any permit granted under the terms and conditions of  
20 Ssections 9-3-2 through 9-3-8, B.R.C. 1981, for development on land in a floodplain.  
(Floodplain)

21 "Floodplain, five hundred-year" means the area of the floodplain ~~inundated by a flood~~ having a  
22 0.2 percent or greater chance of ~~occurring flooding~~ in any given year. (Floodplain)

23 "Floodplain, one hundred-year" means the area of the floodplain ~~inundated by a flood~~ having a  
24 one percent or greater chance of ~~occurring flooding~~ in any given year. (Floodplain)

25 "Floodproofing" means any combination of structural and nonstructural changes, modifications,  
or adjustments to structures or real property which reduce or eliminate flood damage to improved

1 or unimproved real property, water and sanitary facilities, structures and their contents.  
(Floodplain)

2  
3 "Floodway, FEMA regulatory" means the channels of watercourses and the adjacent land areas  
4 that must be reserved in order to discharge the base flood without cumulatively increasing the  
water surface elevation more than one foot. (Floodplain)

5 ...

6 "Hazardous material" means any material used, generated, or stored at a facility of a type and in  
a quantity that would classify the facility as a hazardous materials facility. (Floodplain)

7 "Hazardous material facility" means a structure (or group of structures) that is:

8 (1) Subject to Section 303 of the Emergency Planning and Community Right-to-  
9 Know Act, 42 U.S.C. §11003, as amended from time to time, because it has an  
10 "Extremely Hazardous Substance" on site in quantities that meet or exceed the  
11 "Threshold Planning Quantities" established by the United States Environmental  
Protection Agency and listed at 40 C.F.R. Part 355, Appendix A and Appendix B,  
as may be amended from time to time;

12 (2) Unless covered by subpart (1) above, storing hazardous material as defined by  
13 Department of Transportation regulations at 49 C.F.R. Parts 171-180, as may be  
14 amended from time to time, but only to the extent that the facility is storing the  
hazardous material in the "Bulk Packaging" container in which it was delivered as  
that term is defined at 49 C.F.R. 171.8, as may be amended from time to time;

15 (3) Storing a hazardous substance of the type and quantity listed by §29-22-107,  
C.R.S., as may be amended from time to time; or

16 (4) Regulated as a transfer facility under Colorado hazardous waste regulations at 6  
C.C.R. 1007-3, Part 263, as may be amended from time to time.

17 (Floodplain)

18 "Hazardous substance" means any substance, as determined from time to time by the city  
19 manager pursuant to the rule making authority granted by Ssubsection 9-3-2(c), B.R.C. 1981,  
20 that is flammable, radioactive, toxic, or explosive, and that in times of flooding could be released  
in sufficient quantities to be harmful to humans, animals, or plant life. (Floodplain)

21 ...

22 "High hazard zone" means those portions of the floodplain where an unacceptably high hazard to  
23 human safety exists defined as those areas where the product number of flow velocity (measured  
24 in ft./sec.) times flow depth (measured in feet) equals or exceeds four, or where flow depths  
equal or exceed four feet. (Floodplain)

25 ...

1 "Hostel" means a facility for residence of under one month that provides simple dormitory or  
2 sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that  
3 is chartered or approved by the International Hostel Federation or its national or regional  
4 affiliates, or similar organizations; and that is supervised by resident house-parents or managers  
5 who direct the guests' participation in the domestic duties and activities of the hostel.

6 "Hotel/motel" means an establishment that offers temporary lodging in rooms, for less than one  
7 month, and may include a restaurant, meeting rooms, and accessory uses and services, including,  
8 without limitation, newsstands, gift shops, and similar incidental uses conducted entirely within  
9 the principal building but excludes a "bed and breakfast," as defined in this section.

10 ...

11 "Intended for human occupancy" means, as applied to structures, capable of and likely to be used  
12 for residential habitation, or for commercial, industrial or governmental occupation by persons  
13 on a regular basis. Examples of structures normally not intended for human occupancy include,  
14 without limitation, garages useable solely for the parking of vehicles or storage, open air  
15 carwashes, unheated pavilions, porches or patio covers, crawl spaces, flood resistant enclosures  
16 useable solely for building access, barns and other agricultural buildings, garden storage sheds,  
17 ATMs, and mausoleums. (Floodplain)

18 ...

19 "Lodging facility" means a hotel, motel, dormitory, bed and breakfast, hostel, emergency shelter,  
20 and overnight shelter as defined in the Boulder Revised Code. (Floodplain)

21 ...

22 "Lowest floor" means the lowest floor of the lowest enclosed area (including basement or crawl  
23 space). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building  
24 access or storage, in an area other than a basement area, is not considered a building's lowest  
25 floor, provided that such enclosure is not built so as to render the structure in violation of the  
applicable design requirements of Ssections 9-3-2 through 9-3-8, B.R.C. 1981. (Floodplain)

...

"Maintenance" means any activity undertaken to repair or prevent the deterioration, impairment  
or failure of any stream, previously constructed improvement or structure, including, without  
limitation the removal of sediment and debris, installation of erosion and sediment control  
devices and the replacement of structural components. Maintenance does not include expansion  
or enlargement of a structure, substantial modifications, substantial improvements, total  
replacement of existing facilities or total reconstruction of a facility. (Floodplain)

...

1 "Manufactured home" means a structure, transportable in one or more sections, which is built on  
2 a permanent chassis and is designed for use with or without a permanent foundation when  
3 connected to the required utilities. The term "manufactured home" does not include a  
"recreational vehicle." (Floodplain)

4 "Manufactured home park or manufactured home subdivision" means any lot or tract of land  
5 designed, used, or intended to provide a location or accommodation for one or more  
6 manufactured homes and upon which any manufactured home or homes are parked or located,  
whether or not the lot or tract or any part thereof is held or operated for profit, on which  
construction was completed on or after July 12, 1978. (Floodplain)

7 ...

8 "Mixed-use structure" means any structure with both residential uses and nonresidential uses  
9 where no less than twenty-five percent of the finished floor area contains nonresidential uses.  
(Floodplain)

10 ...

11 "Moveable object" means an item or material not anchored to the ground that is subject to being  
12 transported by water, including, without limitation, a manufactured home not anchored to a  
13 permanent foundation, a tank, a trash dumpster, lumber, and other materials, but not a motor  
vehicle. (Floodplain)

14 ...

15 "New construction" means structures for which the "start of construction" commenced on or after  
16 July 12, 1978, and includes any subsequent improvements to such structures. (Floodplain)

17 "New manufactured home park or subdivision" means a manufactured home park or subdivision  
18 for which the construction of facilities for servicing the lots on which the manufactured homes  
19 are to be affixed (including, at a minimum, the installation of utilities, the construction of streets,  
final site grading, or pouring of concrete pads) is completed on or after July 12, 1978.  
(Floodplain)

20 ...

21 "Nonresidential structure" means any structure ~~or any portion of a structure~~ used exclusively for,  
22 or designed as and capable of being used for, office, commercial, industrial, or governmental  
23 occupation, or the temporary lodging of persons for periods of less than six months including  
hotels, motels, emergency shelters, and overnight shelters but excluding dormitories, fraternities,  
and bed and breakfasts. (Floodplain)

24 ...

25 "Obstruction" means any item or material not constituting a moveable object in, along, across, or  
projecting into the floodplain that might impede, retard, or change the direction of a flow of

1 water, either by itself or by catching or collecting debris carried by such water, in a way that the  
2 city manager determines would increase the flood hazard to adjacent properties. (Floodplain)

3 ...

4 "One hundred-year flood" means a flood having a one percent chance of occurring in any year.  
(Floodplain)

5 ...

6 "Residential structure" means any structure ~~or any portion of a structure~~ that is used for, or  
7 designed as and capable of being used for, the temporary or permanent domicile of persons for  
8 periods of six months or more, including, without limitation, a dwelling, a boarding house, a  
9 dormitory, a fraternity, a bed and breakfast~~hotel, a motel~~, and similarly used structures.  
(Floodplain)

10 ...

11 "Reconstruction" means exact replacement of an existing structure or portion thereof or exact  
12 structural repair of a damaged structure. (Floodplain)

13 "Recreational vehicle" means a vehicle which is: 1) built on a single chassis; 2) four hundred  
14 square feet or less when measured at the largest horizontal projections; 3) designed to be self-  
15 propelled or permanently towable by a light duty truck; and 4) designed primarily not for use as  
16 a permanent dwelling but as temporary living quarters for recreational, camping, travel, or  
17 seasonal use. (Floodplain)

18 ...

19 ...

20 "Start of construction" means the date the building permit was issued, provided the actual start of  
21 construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement  
22 was within one hundred eighty days of the permit date. The actual start means either the first  
23 placement of permanent construction of a structure on a site such as the pouring of slab or  
24 footings, the installation of piles, the construction of columns, or any work beyond the stage of  
25 excavation; or the placement of a manufactured home on a foundation. (Floodplain)

26 ...

27 "Structure" means a building or other roofed construction, a basement, a wall, a fence, a  
28 manufactured home, or a storage tank. (Floodplain)

29 ...

30 "Substantial damage" means damage of any origin sustained by a structure whereby the cost of  
31 restoring the structure to its before-damaged condition would equal or exceed fifty percent of the  
32 market value of the structure before the damage occurred. (Floodplain)

1 "Substantial improvement" means any repair, reconstruction, rehabilitation, addition, or  
2 improvement of a structure, the cost of which equals or exceeds fifty percent of the market value  
3 of the structure before the "start of construction" of the improvement. This term includes  
4 structures which have incurred "substantial damage," regardless of the actual repair work  
5 performed. For the purposes of this definition, "substantial improvement" is considered to occur  
6 when the first alteration of any wall, ceiling, floor, or other structural part of the building  
7 commences, whether or not that alteration affects the external dimensions of the structure. The  
8 term does not, however, include either: 1) any project for improvement of a structure to comply  
9 with existing state or local health, sanitary, or safety code specifications which are solely  
10 necessary to assure safe living conditions or 2) any alteration of a structure listed on the National  
11 Register of Historic Places or the Colorado Inventory of Historic Places or designated as an  
12 individual landmark under Section 9-11-2, "City Council May Designate Or Amend Landmarks  
13 And Historic Districts," B.R.C. 1981. (Floodplain)

9 "Substantial modification" means any expansion or enlargement of a structure which equals or  
10 exceeds fifty percent of the floor area of the structure intended for human occupancy, considered  
11 cumulatively, commencing July 12, 1978. (Floodplain)

11 ...

12  
13 Section 9. This ordinance shall become effective on the later of January 1, 2014, or 30  
14 days after its final passage by the City Council. This ordinance shall apply to all permits and  
15 development applications submitted to the city after the effective date of its passage.

16  
17 Section. 10. This ordinance is necessary to protect the public health, safety, and welfare  
18 of the residents of the city, and covers matters of local concern.

19 Section 11. The city council deems it appropriate that this ordinance be published by title  
20 only and orders that copies of this ordinance be made available in the office of the city clerk for  
21 public inspection and acquisition  
22  
23  
24  
25

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 20<sup>th</sup> day of August, 2013.

3  
4  
5 Attest: Mayor

6  
7 City Clerk

8  
9 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
10 PUBLISHED BY TITLE ONLY this 17<sup>th</sup> day of September, 2013.

11  
12  
13 Attest: Mayor

14  
15  
16 City Clerk



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 17, 2013**

**AGENDA TITLE: Consideration of a motion to adopt a resolution in support of Colorado's 2013 Ballot Measure Designated as Amendment 66, Funding for Public Schools**

**PRESENTER:**

Council Member KC Becker

**EXECUTIVE SUMMARY**

On September 3, 2013, at the request of Council Member Becker, council agreed to consider a resolution (**Attachment A**) in support of Colorado's 2013 ballot measure designated as Amendment 66 (**Attachment B**) which relates to funding for public schools. That resolution and the Secretary of State's final draft "Blue Book" description of the measure (**Attachment C**) are included with this memo for council's consideration.

**Suggested Motion Language:**

Motion to adopt Resolution Number 1127 in support of Colorado's 2013 ballot measure designated as Amendment 66, related to funding for public schools

**Attachment:**

- A. Proposed Resolution #1127
- B. Amendment 66
- C. Final Draft "Blue Book" write-up on Amendment 66

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**Boulder City Council**

**RESOLUTION NO. 1127**

**A RESOLUTION SUPPORTING THE COLORADO'S 2013 BALLOT MEASURE  
DESIGNATED AS AMENDMENT 66, FUNDING FOR PUBLIC SCHOOLS**

**FINDINGS**

The City of Boulder City Council finds as follows:

1. The State of Colorado has faced multiple years of budget shortfalls resulting in more than \$1 billion in cuts and lost funding to K-12 over the past four years.
2. Despite slight increases in K-12 spending for 2013-2014, Colorado school districts continue to experience financial difficulties due to persistent economic constraints, declines in revenues and increases in fixed costs such as insurance, fuel and utilities.
3. These cuts and lost funding have been implemented despite the state legislature's passage of significant reform, including but not limited to the *Preschool to Postsecondary Education Alignment Act (CAP4K)* (Senate Bill 08-212), the *Education Accountability Act of 2009* (Senate Bill 09-163), the *Educator Effectiveness Law* (Senate Bill 10- 191), and the *Colorado READ Act* (House Bill 12-1238).
4. Reduced funding is directly impacting Boulder Valley School District's ability to provide meaningful educational opportunities for all students and to implement existing and proposed education reforms.
5. A proposed ballot initiative to amend the Colorado Constitution and Colorado Revised Statutes will appear as Amendment 66 in the November 5, 2013 election and, if passed by the voters of the State of Colorado, will result in an income tax rate increase for Colorado citizens from the current 4.63 to 5 percent for the first \$75,000 of their federal taxable income and 5.9 percent for any federal taxable income received above that amount.
6. The ballot initiative would require 43% of state general fund revenues in any given year be specifically allocated to provide increased funding for Colorado's public education system.
7. The initiative would add funding for programs such as expanded full-day kindergarten as well as half-day preschool funding for at-risk students and English-language learners.

8. The increase in state tax revenues will liberate state funds for spending in other significant areas of need in Colorado
9. The increase in public education funding will significantly benefit the children of Colorado and, specifically, the children of the City of Boulder, by enabling public K-12 school districts to better provide educational services to children.

**RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED that the City of Boulder hereby supports and urges a YES vote on Amendment 66, which will appear on the November 5, 2013, election ballot.

Resolved this 17<sup>th</sup> day of September, 2013

\_\_\_\_\_  
Mayor

Attest

\_\_\_\_\_  
City Clerk on behalf of the  
Director of Finance and Record

# Attachment B

## Amendment 66 Funding for Public Schools

1 **Ballot Title:** SHALL STATE TAXES BE INCREASED BY \$950,100,000 ANNUALLY IN THE  
2 FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED THEREAFTER BY  
3 AMENDMENTS TO THE COLORADO CONSTITUTION AND THE COLORADO REVISED  
4 STATUTES CONCERNING FUNDING FOR PRESCHOOL THROUGH TWELFTH-GRADE PUBLIC  
5 EDUCATION, AND, IN CONNECTION THEREWITH, INCREASING THE CURRENT STATE INCOME  
6 TAX RATE ON INDIVIDUALS, ESTATES, AND TRUSTS AND IMPOSING AN ADDITIONAL RATE  
7 SO HIGHER AMOUNTS OF INCOME ARE TAXED AT HIGHER RATES; REQUIRING THE  
8 RESULTING INCREASES IN TAX REVENUES BE SPENT ONLY FOR IMPROVEMENTS TO  
9 PRESCHOOL THROUGH TWELFTH-GRADE PUBLIC EDUCATION; ALLOWING ALL TAX  
10 REVENUES ATTRIBUTABLE TO THIS MEASURE TO BE COLLECTED AND SPENT WITHOUT  
11 FUTURE VOTER APPROVAL; REQUIRING AT LEAST 43% OF STATE SALES, EXCISE, AND  
12 INCOME TAX REVENUES BE DEPOSITED IN THE STATE EDUCATION FUND; AND REPEALING  
13 CERTAIN EXISTING PUBLIC EDUCATION FUNDING REQUIREMENTS?

14 **Text of Measure:**

15 *Be it Enacted by the People of the State of Colorado:*

16 **SECTION 1.** In the constitution of the state of Colorado, section 17 of  
17 article IX, **amend** (1), (2), and (4) and **add** (6), (7), and (8) as follows:

18 **Section 17. Education – funding.**

19 **(1) Purpose.** In state fiscal year 2001-2002 through state fiscal year  
20 2010-2011, the statewide base per pupil funding, as defined by the Public School  
21 Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes, on the  
22 effective date of this section, for public education from preschool through the  
23 twelfth grade and total state funding for all categorical programs shall grow  
24 annually at least by the rate of inflation plus an additional one percentage point.  
25 ~~In state fiscal year 2011-2012, and each fiscal year thereafter,~~ FOR STATE FISCAL  
26 YEARS 2011-2012 THROUGH 2013-2014, the statewide base per pupil funding for  
27 public education from preschool through the twelfth grade and total state funding  
28 for all categorical programs shall grow annually at a rate set by the general  
29 assembly that is at least equal to the rate of inflation.

30 **(2) Definitions.** (c) "INCOME TAX INCREMENT FOR PUBLIC SCHOOL  
31 FUNDING" MEANS THE INCOME TAX CHANGES APPROVED BY THE VOTERS AT THE

## Attachment B

1 2013 GENERAL ELECTION FOR PRESCHOOL AND PUBLIC SCHOOL KINDERGARTEN  
2 THROUGH TWELFTH GRADE FUNDING.

3 **(4) State education fund created.** (a) There is hereby created in the  
4 department of the treasury the state education fund. Beginning on the effective  
5 date of this measure, AND THROUGH JUNE 30, 2014, all state revenues collected  
6 from a tax of one third of one percent on federal taxable income, as modified by  
7 law, of every individual, estate, trust and corporation, as defined in law, shall be  
8 deposited in the state education fund. Revenues generated from a tax of one  
9 third of one percent on federal taxable income, as modified by law, of every  
10 individual, estate, trust and corporation, as defined in law, shall not be subject to  
11 the limitation on fiscal year spending set forth in article X, section 20 of the  
12 Colorado constitution. BEGINNING IN STATE FISCAL YEAR 2014-2015, THE STATE  
13 EDUCATION FUND SHALL, AT A MINIMUM, RECEIVE FORTY-THREE PERCENT OF  
14 SALES, EXCISE, AND INCOME TAX REVENUE COLLECTED IN THE GENERAL FUND IN  
15 A MANNER AS TO EQUAL SUCH PERCENTAGE IN RELATION TO THE REVENUE  
16 GENERATED BY THE TAX RATES IN EFFECT ON DECEMBER 31, 2012 NET OF ANY  
17 REFUNDS REQUIRED BY SECTION 20, SUBSECTIONS (3)(c) AND (7) OF ARTICLE X  
18 OF THIS CONSTITUTION. All interest earned on monies in the state education fund  
19 shall be deposited in the state education fund and shall be used before any  
20 principal is depleted. Monies remaining in the state education fund at the end of  
21 any fiscal year shall remain in the fund and not revert to the general fund.

22 **(6) STATE EDUCATIONAL ACHIEVEMENT FUND.**

23 (a) THE STATE EDUCATIONAL ACHIEVEMENT FUND IS CREATED IN THE  
24 STATE TREASURY.

25 (b) THE DEPARTMENT OF REVENUE OR ITS SUCCESSOR AGENCY SHALL  
26 ANNUALLY DETERMINE THE AMOUNT OF THE INCOME TAX INCREMENT FOR PUBLIC  
27 SCHOOL FUNDING. SUCH AMOUNTS SHALL BE DEPOSITED IN THE STATE  
28 EDUCATIONAL ACHIEVEMENT FUND.

29 (c) THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE  
30 APPROPRIATED TO BENEFIT THE EDUCATION OF PARTICIPANTS IN PRESCHOOL  
31 PROGRAMS AND PUBLIC SCHOOL KINDERGARTEN THROUGH TWELFTH GRADE  
32 STUDENTS BY IMPLEMENTING EDUCATIONAL REFORMS AND PROGRAMMATIC  
33 ENHANCEMENTS, ENACTED BY THE COLORADO GENERAL ASSEMBLY.

34 (d) THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE AUDITED  
35 ANNUALLY BY THE STATE AUDITOR TO ENSURE COMPLIANCE WITH THIS ARTICLE.  
36 THE RESULTS OF SUCH AUDIT SHALL BE A PUBLIC DOCUMENT THAT IS  
37 TRANSMITTED TO THE GOVERNOR, THE PRESIDENT AND MINORITY LEADER OF THE  
38 SENATE, AND THE SPEAKER AND THE MINORITY LEADER OF THE HOUSE OF

## Attachment B

1 REPRESENTATIVES. SUCH AUDIT SHALL BE CONSPICUOUSLY PLACED ON THE  
2 WEBSITES OF THE STATE AUDITOR AND THE COLORADO DEPARTMENT OF  
3 EDUCATION OR THEIR SUCCESSOR AGENCIES.

4 (e) ALL INTEREST EARNED ON MONIES IN THE STATE EDUCATIONAL  
5 ACHIEVEMENT FUND SHALL BE DEPOSITED IN THE STATE EDUCATIONAL  
6 ACHIEVEMENT FUND AND SHALL BE USED BEFORE ANY PRINCIPAL IS DEPLETED.  
7 MONIES REMAINING IN THE STATE EDUCATIONAL ACHIEVEMENT FUND AT THE END  
8 OF ANY FISCAL YEAR SHALL REMAIN IN THE FUND AND NOT REVERT OR BE  
9 TRANSFERRED TO THE GENERAL OR ANY OTHER FUND.

10 (7) **NEW REVENUE TO SUPPLEMENT PREVIOUS YEAR EDUCATION**  
11 **FUNDING.** REVENUES COLLECTED FROM THE INCOME TAX INCREMENT FOR PUBLIC  
12 SCHOOL FUNDING SHALL BE USED TO SUPPLEMENT REVENUES THAT WERE  
13 APPROPRIATED BY THE GENERAL ASSEMBLY IN THE PREVIOUS FISCAL YEAR FOR  
14 KINDERGARTEN THROUGH TWELFTH GRADE AND PRESCHOOL EDUCATION AND  
15 SHALL NOT BE USED TO SUPPLANT ANY PORTION OF THOSE PREVIOUSLY  
16 APPROPRIATED REVENUES.

17 (8) **REVENUE AND SPENDING LIMITATIONS.** ALL REVENUES  
18 ATTRIBUTABLE TO THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING OR  
19 OTHERWISE ADDRESSED BY SUBSECTION (6) SHALL BE COLLECTED AND SPENT AS  
20 VOTER-APPROVED REVENUE CHANGES WITHOUT REGARD TO ANY LIMITATION ON  
21 REVENUE, SPENDING, OR APPROPRIATIONS, CONTAINED IN SECTION 20 OF ARTICLE  
22 X OF THIS CONSTITUTION OR ANY OTHER LAW. SPENDING OF SUCH REVENUE,  
23 CONSISTENT WITH THE EXPRESSED INTENTION OF THE VOTERS AT THE 2013  
24 ELECTION, SHALL REQUIRE NO ADDITIONAL VOTER APPROVAL AT ANY STATE OR  
25 LOCAL ELECTION.

26 **SECTION 2.** In the constitution of the state of Colorado, section 20 of  
27 article X, **amend (8):**

28 (8) **Revenue limits.** (a) New or increased transfer tax rates on real  
29 property are prohibited. No new state real property tax or local district income  
30 tax shall be imposed. Neither an income tax rate increase nor a new state  
31 definition of taxable income shall apply before the next tax year. Any income tax  
32 law change after July 1, 1992 shall also require all taxable net income to be taxed  
33 at one rate, excluding refund tax credits or voter-approved tax credits, with no  
34 added tax or surcharge; EXCEPT THAT MULTIPLE RATES SHALL APPLY TO TAXABLE  
35 NET INCOME OF INDIVIDUALS, TRUSTS, AND ESTATES, IF SPECIFIC RATE INCREASES  
36 IN EXCESS OF THE TAX RATE IN EFFECT ON THE DAY OF AN ELECTION ARE

## Attachment B

1 APPROVED BY VOTERS FOR THE PURPOSE OF PROVIDING AN INCOME TAX  
2 INCREMENT FOR PUBLIC SCHOOL FUNDING.

3 **SECTION 3.** In Colorado Revised Statutes, 39-22-104, **amend** (1.7) as  
4 follows:

5 **39-22-104. Income tax imposed on individuals, estates, and trusts –**  
6 **single rate – definitions – repeal.** (1.7) Except as otherwise provided in section  
7 39-22-627, subject to subsection (2) of this section, with respect to taxable years  
8 commencing on or after January 1, 2000, a tax of four and sixty-three one  
9 hundredths percent is imposed on the federal taxable income, as determined  
10 pursuant to section 63 of the internal revenue code, of every individual, estate,  
11 and trust. IN ADDITION TO THE TAX RATE AUTHORIZED IN THIS SUBSECTION ON  
12 FEDERAL TAXABLE INCOME OF INDIVIDUALS, ESTATES, AND TRUSTS, AN INCOME  
13 TAX INCREMENT FOR PUBLIC SCHOOL FUNDING SHALL BE IMPOSED ON THE  
14 FEDERAL TAXABLE INCOME OF SUCH TAXPAYERS:

15 (a) UP TO AND INCLUDING \$75,000, AT THE RATE OF THIRTY-SEVEN ONE  
16 HUNDREDTHS PERCENT; AND

17 (b) OVER \$75,000, AT THE RATE OF ONE AND TWENTY-SEVEN ONE  
18 HUNDREDTHS PERCENT.

19 THE GENERAL ASSEMBLY MAY ANNUALLY ADJUST THE INCOME THRESHOLDS FOR  
20 THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING FOR INFLATION FROM  
21 THE PREVIOUS YEAR.

22 **SECTION 4. EFFECTIVE DATE.** THESE VOTER-ENACTED PROVISIONS  
23 SHALL TAKE EFFECT ON JANUARY 1, 2014.

**Initiative #22  
Funding for Public Schools**

1 Amendment ? proposes amending the Colorado Constitution and the Colorado  
2 Statutes to change how the state funds public preschool through twelfth grade (P-12)  
3 education by raising taxes to increase the amount of money available, changing how  
4 the state distributes funding to school districts, and requiring that a fixed percentage of  
5 revenue from certain state taxes be annually set aside for schools. Specifically, the  
6 measure:

- 7 ♦ raises the state individual income tax rate from 4.63 percent to  
8 5.0 percent on the first \$75,000 of taxable income and to  
9 5.9 percent on any taxable income over \$75,000 and deposits the  
10 additional tax revenue in a separate fund to pay for public education;
- 11 ♦ implements legislation passed by the state legislature creating a  
12 new formula for allocating state and local funding to school districts;
- 13 ♦ repeals the constitutional requirement that base per pupil funding for  
14 public education increase by at least the rate of inflation annually;  
15 and
- 16 ♦ requires that at least 43 percent of state income, sales, and excise  
17 tax revenue, collected at existing tax rates, be set aside annually to  
18 pay for public education.

19 **Summary and Analysis**

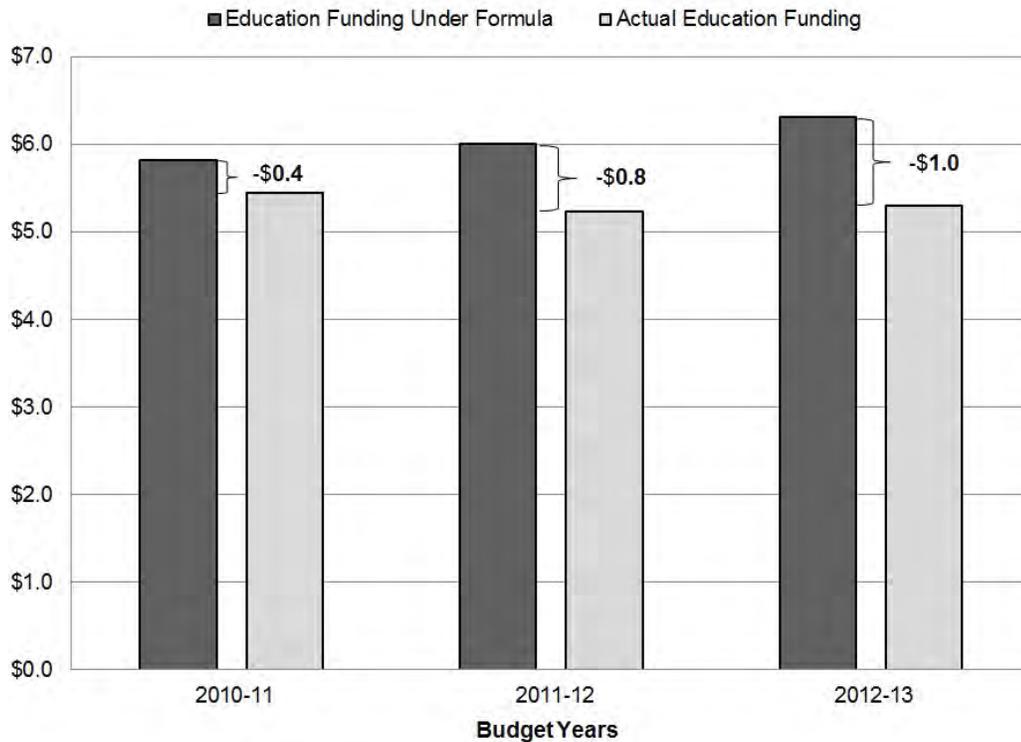
20 ***Who pays for P-12 public education?*** In budget year 2012-13, about  
21 \$5.5 billion of P-12 public education funding was paid from state and local taxes on  
22 individuals and businesses, including state income and sales tax and local property  
23 and vehicle ownership tax. Almost all of this revenue is allocated to school districts  
24 through a formula in state law. The rest provides state assistance for other programs,  
25 such as transportation and special education. Additionally, districts received about  
26 \$2.6 billion in operating revenue outside the funding formula. This includes federal  
27 funding for all districts and fees assessed by all districts. It also includes local revenue  
28 that was approved by voters in 114 of 178 districts.

29 Formula funding for each school district begins with the same amount of  
30 funding per student, known as base per pupil funding. The base funding amount is  
31 then adjusted upward for each school district, depending on particular district  
32 characteristics, to determine a final per pupil funding amount. These characteristics  
33 include the total number of students, the local community's cost of living, and the  
34 percentage of students from lower-income households.

1 Currently, the state constitution requires that the base funding amount increase  
2 every year by at least inflation. The constitution also specifies that the State  
3 Education Fund receive about 7.2 percent of all income tax revenue to support the  
4 annual increase in base per pupil funding.

5 The recent recession reduced the amount of state and local tax revenue  
6 available for P-12 public education funding. In each of the past three budget years,  
7 the decline in state revenue caused the legislature to reduce the amount of state  
8 money going to school districts below what would have been required by the funding  
9 formula. Figure 1 compares formula funding before this legislative change with actual  
10 funding for each of the last three budget years. For example, in budget year 2012-13,  
11 actual funding was \$1.0 billion below what the funding formula would have required.

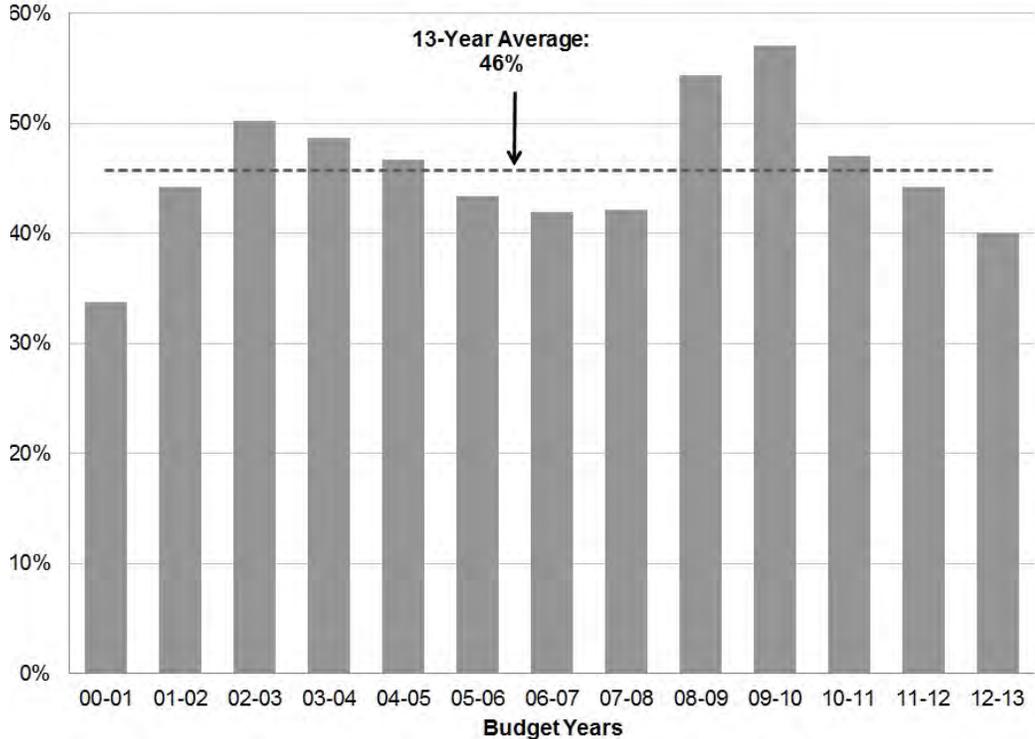
12 **Figure 1. Formula Funding Compared to Actual Funding**  
13 **Budget Years 2010-11 through 2012-13**  
14 **(in Billions)**



35 **Education in the state budget.** P-12 public education funding is the largest  
36 piece of the state's operating budget. Since budget year 2000-01, the share of state  
37 income, sales, and excise tax revenue spent on P-12 public education has ranged  
38 from 34 to 57 percent, and averaged 46 percent. In the last budget year, this share  
39 was 40 percent. Figure 2 displays P-12 public education funding as a percent of total  
40 state income, sales, and excise tax revenue for budget years 2000-01 through  
41 2012-13, and the overall average during this period.

Figure 2. Share of State Income, Sales, and Excise Tax Revenue Dedicated to Total P-12 Public Education Budget Years 2000-01 to 2012-13

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26 **Amendment ? establishes a minimum level of education funding.** The  
27 measure requires that at least 43 percent of state income, sales, and excise tax  
28 revenue, collected at existing tax rates, be annually deposited in the State Education  
29 Fund to be used on education-related spending. This effectively establishes a  
30 constitutional minimum funding level for education that is slightly less than the average  
31 share that has been spent on P-12 public education over the last 13 years  
32 (see Figure 2), but is an increase from the portion allocated in the 2012-13 budget  
33 year. The measure also removes the existing constitutional requirement that the base  
34 per pupil amount increase annually by at least inflation, and eliminates the transfer of  
35 about 7.2 percent of income tax revenue to the State Education Fund.

36 **Amendment ? increases taxes to provide additional revenue for public**  
37 **education.** The measure increases the state individual income tax rate to create new  
38 revenue for P-12 public education. Currently, Colorado taxpayers pay a flat individual  
39 income tax rate of 4.63 percent on Colorado taxable income. In 1987, the state  
40 moved from a graduated income tax structure to a single tax rate of 5.0 percent. The  
41 rate was reduced to 4.63 percent in 2000. While the measure does not affect the  
42 state corporate income tax rate, small businesses that choose to report their business  
43 income on individual income tax returns will also see their state income taxes  
44 increase.

Beginning in tax year 2014, Amendment ? establishes a two-tiered income tax rate. Individual income tax rates will increase from 4.63 percent to 5.0 percent on the first \$75,000 of state taxable income, and to 5.9 percent on any taxable income above the \$75,000 threshold. The state legislature may adjust this income threshold annually by inflation.

Imposition of this two-tiered tax rate is estimated to increase individual income tax revenue to the state by \$950 million in budget year 2014-15, the first full year of implementation. This new revenue must be placed in the State Educational Achievement Fund created by this measure, and may only be used to fund P-12 public education. The new revenue is exempt from state and school district spending limitations contained in the state constitution.

The two-tiered tax rate structure will have different impacts on taxpayers, depending on their household income. Table 1 shows the estimated change in the yearly state income tax liability for four representative households with different income levels. Under the new structure, an estimated 68 percent of households in Colorado will see their individual income taxes increase by 8 percent, while the remaining 32 percent will see greater increases.

**Table 1. State Individual Income Tax Increases for Representative Households under Amendment ?**

|             | Gross Income* | Colorado Taxable Income** | Current Law State Income Tax Liability | Amendment ? State Income Tax Liability | Amount of Annual Increase | Percent Annual Increase |
|-------------|---------------|---------------------------|--|--|---------------------------|-------------------------|
| Household A | \$50,000      | \$26,300                  | \$1,218                                | \$1,315                                | \$97                      | 8%                      |
| Household B | \$100,000     | \$65,600                  | \$3,037                                | \$3,280                                | \$243                     | 8%                      |
| Household C | \$150,000     | \$109,900                 | \$5,088                                | \$5,809                                | \$721                     | 14%                     |
| Household D | \$200,000     | \$154,000                 | \$7,130                                | \$8,411                                | \$1,281                   | 18%                     |

\* In 2011, Colorado's median gross household income was \$55,000.

\*\* Taxable income totals for individual households may vary from the averages displayed in Table 1.

**Amendment ? triggers a new funding formula in Senate Bill 13-213.**

Amendment ? replaces the current statutory formula used to allocate state and local funding to school districts. Amendment ? triggers implementation of Senate Bill 13-213, enacted during the 2013 legislative session and signed by the Governor. The bill's new allocation formula also begins with a base per pupil amount, but it changes how the base is adjusted. It places more emphasis on students who are at risk of academic failure, defined as students eligible for free- or reduced-price lunch through the federal School Lunch Program, or who are English language learners.

1 The bill also increases funding for kindergarten and preschool students, and  
2 allocates a portion of state P-12 education funding to help implement recent  
3 educational reforms passed by the state legislature. It also changes the way that  
4 school districts calculate student enrollment. Under current law, student enrollment is  
5 based on a count that occurs once during a specified period in October. Under  
6 Senate Bill 13-213, starting in the 2017-18 school year, student funding will be based  
7 on average daily enrollment throughout the school year.

8 The bill provides school principals with more control over how money will be  
9 spent in their schools. This is intended to help students who are deemed to be at risk  
10 of academic failure achieve academic targets. The bill also requires a periodic study  
11 of the increases in academic achievement resulting from the additional funding and a  
12 public, school-specific accounting of administrative and teacher expenses.

*For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2013, election, go to the Colorado Secretary of State's elections center website hyperlink for ballot and initiative information:*

*[www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html](http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html)*

13 **Arguments For**

14 1) One of government's most important functions is to provide children with a  
15 high-quality education. To improve schools, the state needs a long-term solution that  
16 is innovative, accountable for results, and transparent to taxpayers. The additional  
17 money provided in this measure allows local boards of education to target areas  
18 where research suggests that investments are likely to produce improved student  
19 outcomes, such as ensuring effective teachers are in the classroom, reducing class  
20 sizes, investing in preschool and full-day kindergarten, upgrading classroom  
21 technology, and giving principals and teachers more control over budgeting decisions  
22 in their schools.

23 2) Investing in public education is the best way to ensure a strong Colorado  
24 economy capable of competing in today's global market. One of the top priorities of  
25 businesses seeking a new location is identifying a well-educated workforce. Since  
26 budget year 2008-09, the state legislature has severely cut P-12 funding, with funding  
27 for the 2012-13 school year \$1.0 billion below what the funding formula would have  
28 required. Restoring this funding shortfall not only benefits the state's schools and  
29 communities, but also provides a positive signal to companies looking to relocate or to  
30 expand in Colorado.

31 3) The measure simultaneously restores funding to public schools that have  
32 suffered severe budget cuts and provides taxpayers with needed accountability by  
33 measuring how the increased investment will affect student achievement. The state  
34 will be required to prepare a return on investment study and a cost study to identify

1 funding deficits that affect the performance of school districts and the academic  
 2 achievement of students. The state will also make detailed expenditure data for each  
 3 school and district available to the general public, allowing for comparisons between  
 4 schools.

## 5 **Arguments Against**

6 1) Amendment ? is a \$950 million tax increase that may impede economic  
 7 expansion at a time when the state's economy is still recovering. Increasing state  
 8 income taxes reduces the money that households have to spend or save. As a result,  
 9 consumer spending and overall economic activity may also decline, negatively  
 10 impacting the competitiveness of Colorado businesses. The state currently has  
 11 adequate financial resources to implement Senate Bill 13-213 for the next year without  
 12 a tax increase. The legislature set aside \$1.1 billion in budget year 2012-13 and an  
 13 estimated \$290 million in budget year 2013-14 for P-12 public education. These  
 14 recent set-asides are indicative of an expanding economy that may permit adequate  
 15 investment in P-12 public education without additional tax revenue.

16 2) This measure imposes an additional tax burden on state taxpayers without  
 17 any guarantee of increased academic achievement. Senate Bill 13-213 makes  
 18 incremental changes to the school funding allocation formula without providing  
 19 significant educational reform. This approach lacks real accountability as the new  
 20 funding formula does not reward schools or districts that show gains in student  
 21 achievement. Amendment ? leaves in place an outmoded system of delivering  
 22 education that has not shown significant measurable improvements for students on  
 23 state assessments.

24 3) Under the measure, taxpayers in some school districts will pay more in new  
 25 taxes than these districts will receive in new revenue. All individuals will see a state  
 26 income tax increase of at least 8.0 percent to implement the new P-12 education  
 27 formula, and some will see substantially higher percentage increases. At the same  
 28 time, under Senate Bill 13-213, 37 of 178 school districts will see increases in funding  
 29 of less than 8.0 percent. Thus, the measure maintains a funding structure that uses  
 30 tax revenue from some districts in order to subsidize P-12 education in other districts.

## 31 **Estimate of Fiscal Impact**

32 **State revenue and spending.** Amendment ? is expected to increase state tax  
 33 revenue by \$452 million in budget year 2013-14, \$950 million in budget year 2014-15  
 34 (the first full year with increased tax revenue), and \$1.0 billion in budget year 2015-16.  
 35 The amendment requires that all new revenue from the tax increase be used to fund  
 36 P-12 public education.

1           **Impact on taxpayers.** The amendment increases individual income tax rates.  
 2 Income tax rates for individual taxpayers will increase from 4.63 percent to 5.0 percent  
 3 on the first \$75,000 of state taxable income, and to 5.9 percent on state taxable  
 4 income above the \$75,000 threshold. The state legislature may adjust this income  
 5 threshold annually by inflation.

6           This two-tiered tax rate structure will have different impacts on individual  
 7 taxpayers, depending on their taxable income levels, as shown in Table 1. For  
 8 instructions on estimating your household's anticipated tax changes under  
 9 Amendment ?, please visit the online tax calculator at:  
 10 [www.colorado.gov/lcs/taxestimator](http://www.colorado.gov/lcs/taxestimator).

11           **State Spending and Tax Increases**

12           The state constitution requires that the following fiscal information be provided  
 13 when a tax increase question is on the ballot:

- 14           1) the estimated or actual state spending under the constitutional
- 15           spending limit for the current year and each of the past four years
- 16           with the overall percentage and dollar change; and
- 17           2) for the first full year of the proposed tax increase, an estimate of the
- 18           maximum dollar amount of the tax increase and of state fiscal year
- 19           spending without the increase.

20           Table 2 shows the dollar amount of state spending under the constitutional  
 21 spending limit.

22           **Table 2. State Spending**

|   | Actual<br>FY 2009-10* | Actual<br>FY 2010-11 | Actual<br>FY 2011-12 | Estimated<br>FY 2012-13 | Estimated<br>FY 2013-14 |
|---|-----------------------|----------------------|----------------------|-------------------------|-------------------------|
| State<br>Spending   | \$8.57<br>billion     | \$9.43<br>billion    | \$10.27<br>billion   | \$11.12<br>billion      | \$11.50<br>billion      |
| Four-Year Dollar Change in State Spending: \$2.93 billion |                       |                      |                      |                         |                         |
| Four-Year Percent Change in State Spending: 34.2 percent  |                       |                      |                      |                         |                         |

29           \*FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

30           The numbers in Table 2 show state spending from 2010 through 2014 for  
 31 programs that were subject to the constitutional spending limit during those years.  
 32 However, the constitution allows a program that operates similarly to a private  
 33 business to be exempt from the limit if it meets certain conditions. Because the  
 34 exempt status of some programs has changed during the last five years, the numbers  
 35 in Table 2 are not directly comparable to each other.

1            Table 3 shows the revenue expected from the increased income tax rate; state  
2 fiscal year spending without these taxes for FY 2014-15, the first full fiscal year for  
3 which the increase would be in place; and the sum of the two.

4                            **Table 3. Estimated State Fiscal Year Spending**  
5                            **and the Proposed Tax Rate Increase**

|                                      | FY 2014-15<br>Estimate |
|--------------------------------------|------------------------|
| State Spending Without the New Taxes | \$12.08 billion        |
| Revenue from the New Income Taxes    | \$0.95 billion         |
| State Spending Plus the New Taxes    | \$13.03 billion        |

## Last Draft as Mailed to Interested Parties

### Initiative #22 Funding for Public Schools

1 Amendment ? proposes amending the Colorado Constitution and the Colorado  
2 Statutes to change how the state funds public preschool through twelfth grade (P-12)  
3 education by raising taxes to increase the amount of money available, changing how  
4 the state distributes funding to school districts, and requiring that a fixed percentage of  
5 revenue from certain state taxes be annually set aside for schools. Specifically, the  
6 measure:

- 7 ♦ raises the state individual income tax rate from 4.63 percent to  
8 5.0 percent on the first \$75,000 of taxable income and to  
9 5.9 percent on any taxable income over \$75,000 and deposits the  
10 additional tax revenue in a separate fund to pay for public education;
- 11 ♦ implements legislation passed by the state legislature creating a  
12 new formula for allocating state and local funding to school districts;
- 13 ♦ repeals the constitutional requirement that base per pupil funding for  
14 public education increase by at least the rate of inflation annually;  
15 and
- 16 ♦ requires that at least 43 percent of state income, sales, and excise  
17 tax revenue, collected at existing tax rates, be set aside annually to  
18 pay for public education.

#### 19 **Summary and Analysis**

20 ***Who pays for P-12 public education?*** In budget year 2012-13, about  
21 \$5.5 billion of P-12 public education funding was paid from state and local taxes on  
22 individuals and businesses, including state income and sales tax and local property  
23 tax and vehicle ownership tax. Almost all of this revenue is allocated to school  
24 districts through a formula in state law. The rest provides state assistance for other  
25 programs, such as transportation and special education. Additionally, districts receive  
26 about \$3.4 billion in revenue outside the funding formula, including local revenue  
27 raised by districts, federal moneys, private grants, and bond proceeds.

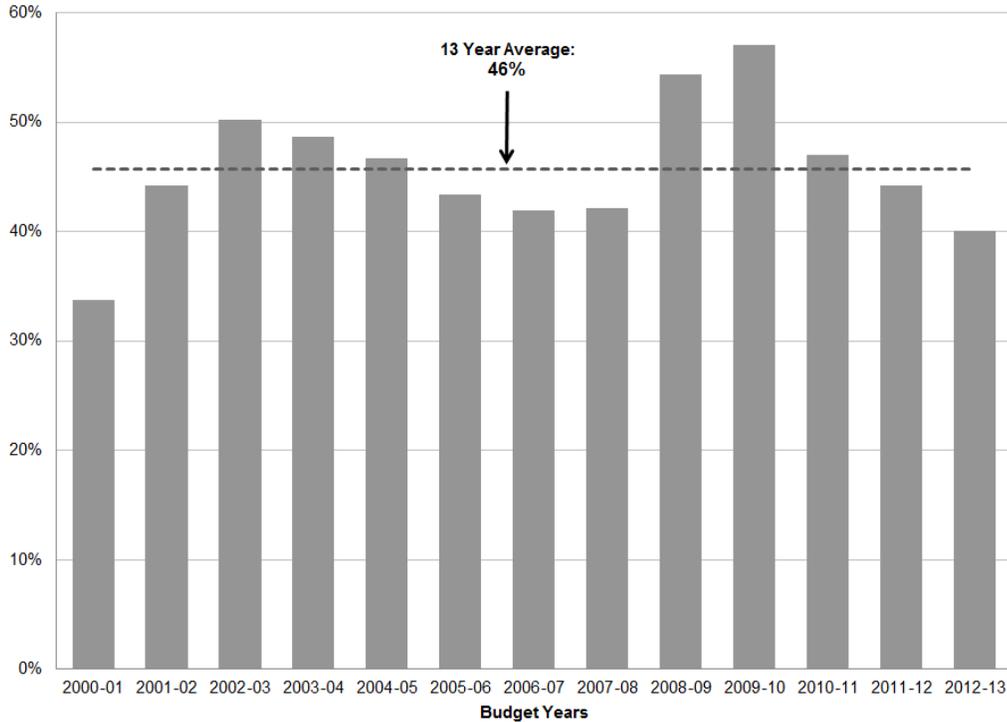
28 Formula funding for each school district begins with the same amount of  
29 funding per student, known as base per pupil funding. The base funding amount is  
30 then adjusted upward for each school district, depending on particular district  
31 characteristics, to determine a final per pupil funding amount. These characteristics  
32 include the total number of students, the local community's cost of living, and the  
33 percentage of students from lower-income households.



## Last Draft as Mailed to Interested Parties

1 was 40 percent. Figure 2 displays P-12 public education funding as a percent of total  
2 state income, sales, and excise tax revenue for budget years 2000-01 through  
3 2012-13, and the overall average during this period.

4 **Figure 2. Share of State Income, Sales, and Excise Tax Revenue**  
5 **Dedicated to Total P-12 Public Education**  
6 **Budget Years 2000-01 to 2012-13**



28 **Amendment ? establishes a minimum level of education funding.** The  
29 measure requires that at least 43 percent of state income, sales, and excise tax  
30 revenue, collected at existing tax rates, be annually dedicated to education-related  
31 spending. This effectively establishes a constitutional minimum funding level for  
32 education that is slightly less than the average share that has been spent on P-12  
33 public education over the last 13 years (see Figure 2); but is an increase from the  
34 portion allocated in the 2012-13 budget year. The measure also removes the existing  
35 constitutional requirement that the base per pupil amount increase annually by at least  
36 inflation, and eliminates the transfer of about 7.2 percent of income tax revenue to the  
37 State Education Fund.

38 **Amendment ? increases taxes to provide additional revenue for public**  
39 **education.** The measure increases the state individual income tax rate to create new  
40 revenue for P-12 public education. The measure does not affect the state corporate  
41 income tax rate. Currently, Colorado taxpayers pay a flat individual income tax rate of

## Last Draft as Mailed to Interested Parties

1 4.63 percent. In 1987, the state moved from a graduated income tax structure to a  
2 single tax rate of 5.0 percent. This rate was reduced to 4.63 percent in 2000.

3 Beginning in tax year 2014, Amendment ? establishes a two-tiered income tax  
4 rate. Income tax rates will increase from 4.63 percent to 5.0 percent on the first  
5 \$75,000 of state taxable income, and to 5.9 percent on any taxable income above the  
6 \$75,000 threshold. The state legislature may adjust this income threshold annually by  
7 inflation.

8 Imposition of this two-tiered tax rate is estimated to increase individual income  
9 tax revenue to the state by \$950 million in budget year 2014-15, the first full year of  
10 implementation. This new revenue must be placed in the State Educational  
11 Achievement Fund created by this measure, and may only be used to fund P-12 public  
12 education. The new revenue is exempt from state and school district spending  
13 limitations contained in the state constitution.

14 The two-tiered tax rate structure will have different impacts on taxpayers,  
15 depending on their household income. Table 1 shows the estimated change in the yearly  
16 state income tax liability for four representative households with different income levels.  
17 Under the new structure, an estimated 68 percent of households in Colorado will see their  
18 individual income taxes increase by 8 percent, while the remaining 32 percent will see  
19 increases at higher levels.

20 **Table 1. State Individual Income Tax Increases for**  
21 **Representative Households under Amendment ?**

|             | Gross<br>Income | Colorado<br>Taxable<br>Income* | Current<br>Law State<br>Income Tax<br>Liability | Amendment ?<br>State Income<br>Tax Liability | Amount of<br>Annual<br>Increase | Percent<br>Annual<br>Increase |
|-------------|-----------------|--------------------------------|---|--|---------------------------------|-------------------------------|
| Household A | \$50,000        | \$26,300                       | \$1,218   | \$1,315                                      | \$97                            | 8 %                           |
| Household B | \$100,000       | \$65,600                       | \$3,037   | \$3,280                                      | \$243                           | 8 %                           |
| Household C | \$150,000       | \$109,900                      | \$5,088   | \$5,809                                      | \$721                           | 14 %                          |
| Household D | \$200,000       | \$154,000                      | \$7,130   | \$8,411                                      | \$1,281                         | 18 %                          |

22  
23  
24  
25  
26  
27  
28  
29  
30 \* Taxable income totals for individual households may vary from the averages displayed in Table 1.

31 **Amendment ? triggers a new funding formula in Senate Bill 13-213.**

32 Amendment ? replaces the current statutory formula used to allocate state and local  
33 funding to school districts. Amendment ? triggers implementation of  
34 Senate Bill 13-213, enacted during the 2013 legislative session and signed by the  
35 Governor. The bill's new allocation formula also begins with a base per pupil amount,  
36 but it changes how the base is adjusted. It places more emphasis on students who

## Last Draft as Mailed to Interested Parties

1 are at risk of academic failure, defined as students eligible for free- or reduced-price  
2 lunch through the federal School Lunch Program, or who are English language  
3 learners.

4 The bill also increases funding for kindergarten and preschool students, and  
5 allocates a portion of state P-12 education funding to help implement recent  
6 educational reforms passed by the state legislature. It also changes the way that  
7 school districts calculate student enrollment. Under current law, student enrollment is  
8 based on a count that occurs once during a specified period in October. Under  
9 Senate Bill 13-213, starting in the 2017-18 school year, student funding will be based  
10 on average daily enrollment throughout the school year.

11 The bill provides school principals with more control over how money will be  
12 spent in their schools. This is intended to help students who are deemed to be at risk  
13 of academic failure achieve academic targets. The bill also requires a periodic study  
14 of the increases in academic achievement resulting from the additional funding and a  
15 public, school-specific accounting of administrative and teacher expenses.

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### 16 **Arguments For**

17 1) Investing in public education is the best way to ensure a strong Colorado  
18 economy capable of competing in today's global market. One of the top priorities of  
19 businesses seeking a new location is identifying a well-educated workforce. Since  
20 budget year 2008-09, the state legislature has severely cut P-12 funding, with funding  
21 for the 2013-14 school year \$1.0 billion below what it would have been without  
22 legislative changes to the formula. Restoring this funding shortfall not only benefits  
23 the state's schools and communities, but also provides a positive signal to companies  
24 looking to relocate or to expand in Colorado.

25 2) One of the most important functions of government is to provide a  
26 high-quality education for children. To improve schools, the state needs a long-term  
27 solution that is innovative in approach, accountable for outcomes, and that provides  
28 transparency to taxpayers. This measure targets areas where research suggests that  
29 investments are likely to produce improved student outcomes: putting the best  
30 teachers in the classroom, reducing class sizes, investing in preschool and full-day  
31 kindergarten, upgrading classroom technology, and giving principals and teachers  
32 more control over budgeting decisions in their schools.

## Last Draft as Mailed to Interested Parties

1           3) The measure simultaneously restores funding to public schools that have  
2 suffered severe budget cuts and provides taxpayers with needed accountability by  
3 measuring how the increased investment will affect student achievement. The state will  
4 be required to prepare a return on investment study and a cost study to identify funding  
5 deficits that affect the performance of school districts and the academic achievement of  
6 students. The state will also make detailed expenditure data for each school and district  
7 available to the general public, allowing for budgetary comparisons between schools.

### 8           **Arguments Against**

10           1) Amendment ? is a \$950 million tax increase that may impede economic  
11 expansion at a time when the state's economy is still recovering. Increasing state  
12 income taxes reduces the money that households have to spend or save. As a result,  
13 consumer spending and overall economic activity may also decline, negatively  
14 impacting the competitiveness of Colorado businesses. The state currently has  
15 adequate financial resources to implement Senate Bill 13-213 without a tax increase.  
16 The legislature set aside \$1.1 billion and an estimated \$290 million for P-12 public  
17 education in budget years 2012-13 and 2013-14, respectively. These recent  
18 set-asides are indicative of an expanding economy that may permit adequate  
19 investment in P-12 public education without additional tax revenue.

20           2) This measure imposes an additional tax burden on state taxpayers without  
21 any guarantee of increased academic achievement. Senate Bill 13-213 makes  
22 incremental changes to the school funding allocation formula without providing  
23 significant educational reform. Instead, the state could allocate money to school  
24 districts based on school choice and student achievement. Amendment ? leaves in  
25 place an outmoded system of delivering education that has proven increasingly costly  
26 without significant measurable improvements for students on state assessments.

27           3) This measure creates inequity in the funding of P-12 public education as  
28 taxpayers in some districts will pay more in new taxes than the district will receive in  
29 new revenue. All individuals will see a state income tax increase of at least  
30 8.0 percent to implement the new P-12 education formula, and some will see  
31 substantially higher percentage increases. At the same time, under  
32 Senate Bill 13-213, 37 of 178 school districts will see increases in funding of less than  
33 8.0 percent. Thus, the measure maintains a funding structure that uses tax revenue  
34 from some districts in order to subsidize P-12 education in other districts.

### 35           **Estimate of Fiscal Impact**

36           **State revenue and spending.** Amendment ? is expected to increase state tax  
37 revenue by \$452 million in budget year 2013-14, \$950 million in budget year 2014-15  
38 (the first full year of implementation), and \$1,013 million in budget year 2015-16. The  
39 amendment requires that all new revenue from the tax increase be used to fund P-12  
40 public education.

## Last Draft as Mailed to Interested Parties

1            **Impact on taxpayers.** The amendment increases individual income tax rates.  
 2            Income tax rates for individual taxpayers will increase from 4.63 percent to 5.0 percent  
 3            on the first \$75,000 of state taxable income, and to 5.9 percent on state taxable  
 4            income above the \$75,000 threshold. The state legislature may adjust this income  
 5            threshold annually by inflation.

6            This two-tiered tax rate structure will have different impacts on individual  
 7            taxpayers, depending on their taxable income levels, as shown in Table 1. For  
 8            instructions on estimating your household's anticipated tax changes under  
 9            Amendment ?, please visit the online tax calculator at (web address to be provided).

### 10            State Spending and Tax Increases

11            The state constitution requires that the following fiscal information be provided  
 12            when a tax increase question is on the ballot:

- 13            1) the estimated or actual state spending under the constitutional
- 14                spending limit for the current year and each of the past four years
- 15                with the overall percentage and dollar change; and
- 16            2) for the first full year of the proposed tax increase, an estimate of the
- 17                maximum dollar amount of the tax increase and of state fiscal year
- 18                spending without the increase.

19            Table 2 shows the dollar amount of state spending under the constitutional  
 20            spending limit.

21            **Table 2. State Spending**

|  | Actual<br>FY 2009-10* | Actual<br>FY 2010-11 | Actual<br>FY 2011-12 | Estimated<br>FY 2012-13 | Estimated<br>FY 2013-14 |
|--|-----------------------|----------------------|----------------------|-------------------------|-------------------------|
| State<br>Spending  | \$8,568<br>million    | \$9,425<br>million   | \$10,273<br>million  | \$11,117<br>million     | \$11,501<br>million     |
| Four-Year Dollar Change in State Spending: \$2,934 million |                       |                      |                      |                         |                         |
| Four-Year Percent Change in State Spending: 34.2 percent   |                       |                      |                      |                         |                         |

28            \*FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

29            The numbers in Table 2 show state spending from 2010 through 2014 for  
 30            programs that were subject to the constitutional spending limit during those years.  
 31            However, the constitution allows a program that operates similar to a private business  
 32            to be exempt from the limit if it meets certain conditions. Because the exempt status  
 33            of some programs has changed during the last five years, the numbers in Table 2 are  
 34            not directly comparable to each other.

## Last Draft as Mailed to Interested Parties

1            Table 3 shows the revenue expected from the increased income tax rate; state  
2 fiscal year spending without these taxes for FY 2014-15, the first full fiscal year for  
3 which the increase would be in place; and the sum of the two.

4                            **Table 3. Estimated State Fiscal Year Spending**  
5                            **and the Proposed Tax Rate Increase**

|                                   | FY 2014-15<br>Estimate |
|-----------------------------------|------------------------|
| State Spending Without New Taxes  | \$12,084 million       |
| Revenue from New Income Taxes     | \$950 million          |
| State Spending Plus the New Taxes | \$13,034 million       |

# Last Draft Comments from Interested Parties

## Initiative #22 Funding for Public Schools

### Athena Dalton, representing the Senate Minority Office:

Thank you for the opportunity to weigh in on the latest draft.

In the second paragraph of Arguments For on page 5, the text states that the measure targets specific areas likely to improve student outcomes. While SB 213 does specifically direct revenues to preschool and full-day kindergarten, new technology projects, and building-level control over budgets, it does not specifically target class size reduction. Reductions in class sizes are not guaranteed to receive funding under this reform measure, but the wording of this paragraph implies that money will be specifically targeted to this purpose. Class size reduction should be deleted from the list of targeted reforms.

In the first paragraph of Arguments Against on page 6, the discussion of “set-asides” for P-12 education may not convey to a voter unfamiliar with the state’s budget process that this money was set aside, unspent, in a reserve fund specifically for education *in addition to* the billions in regular annual spending on education. Additional clarification around the term “set aside” could improve voters’ understanding of the state’s ability to fund P-12 education.

Thanks for all your hard work on this,

### Ben DeGrow, representing the Independence Institute:

Thank you for the opportunity to provide feedback. My comments are as follows:

1. **Pg 2, Lines 10-11:** Replace “reduced by about \$1.0 billion” with the wording used in Argument For #1 (pg 5): “about \$1.0 billion below what it would have been without legislative changes to the formula.” I still think this clarifies the issue well.

2. **Pg 5, after Line 3:** Add sentence “School districts with a higher percentage of these students will receive more money per student.” This key language was included in the 2<sup>nd</sup> Draft before being removed. This is an accurate representation of the At-Risk Factor and ELL Factor on pgs 29 & 30 of the enrolled version of SB 213.

3. **Pg 6, Argument Against #1, Lines 11 & 12:** Enhance the second sentence as follows: “Amendment ? unwisely increases state income taxes, reducing the money that households have to spend or save.”

4. **Pg 6, Argument Against #2, Lines 23 & 24:** Remove the third sentence and replace with: “This approach lacks real accountability. No dollars in the new funding formula will be used to reward schools or districts that show gains in student achievement.”

5. **Pg 6, Argument Against #3:**

a) Add word “substantially” to sentence 1. “...as taxpayers in some districts will pay **substantially** more in new taxes than the district will receive in new revenue.” (In a

## Last Draft Comments from Interested Parties

### Ben DeGrow, representing the Independence Institute (Cont.):

few districts, I have estimated they will pay close to twice as much. Even if the estimates haven't been tested for validity, there can't be any factual dispute with characterizing the disparity as substantial in some cases.)

b) Please add at the end of the penultimate sentence: "...and 13 [smaller? Rural?] districts are estimated to lose dollars under the new proposal." Table 3B, Column L\*\*

\*\* [http://www.colorado.gov/cs/Satellite?c=Document\\_C&childpagename=CGA-LegislativeCouncil%2FDocument\\_C%2FCLCAddLink&cid=1251642510060&pagename=CLCWrapper](http://www.colorado.gov/cs/Satellite?c=Document_C&childpagename=CGA-LegislativeCouncil%2FDocument_C%2FCLCAddLink&cid=1251642510060&pagename=CLCWrapper)

### Ken DeLay, representing the Colorado Association of School Boards:

Please see Attachment A.

### Leanne Emm, representing the Colorado Department of Education:

My comments on the initiative blue book are as follows:

Page 3 - line 30 & 31 - "be annually dedicated to education-related spending".  
Comment: This makes it sound like the funds that are transferred to the State Education Fund each year from the 43% must also be spent each year. I do not believe this is the case - I think the intent is to "transfer" or deposit 43% of the revenue from taxes, etc., each year into the SEF, but there is no requirement that it actually be spent each year.

Suggested verbiage: ". . . be annually deposited into the State Education Fund to be used on education-related spending".

Page 5 - line 10 - change "enrollment" to "membership". We would be implementing an Average Daily Membership count system. The State Board will determine what constitutes enrollment.

Page 6 - line 7 - change "budgetary" to "expenditure". In SB213, there is a requirement to report expenditures at the school level - not budgets.

Page 6 - line 38 " (the first full year of implementation ) " - this sounds like the SB213 will also be implemented in 2014-15. Suggested verbiage: " (the first full year of increased tax revenue ) "

Thank you for the opportunity to review.

## Last Draft Comments from Interested Parties

**Curtis Hubbard, representing Colorado Commits to Kids:**

### COMMENTS ON BLUE BOOK 3<sup>rd</sup> DRAFT

Page 1, lines 7-10: the description for the new tax increments is much improved. We are suggesting a simpler and clearer way to describe. Section should be amended with NEW LANGUAGE as follows:

raises the state individual income tax rate from 4.63 percent to 5.0 percent **NEW LANGUAGE BEGIN for individuals with taxable income under \$75,000. Individuals with taxable income of more than \$75,000 would pay 5.0% on their first \$75,000, and then 5.9% on any taxable income above that amount. END NEW LANGUAGE**

Page 1, lines 13-15: AMEND LANGUAGE

The proposed language clarifies that the initiative repeals the inflationary driver that is currently mandated under Amendment 23. The language as drafted could mislead voters that there no longer would be a set per pupil funding level going forward.

repeals the constitutional requirement that **NEW LANGUAGE BEGIN the rate of inflation determines the minimum annual increase in END NEW LANGUAGE** base per pupil funding for public education ~~increase by at least the rate of inflation annually;~~

Page 1, at the end of line 18: ADD NEW LANGUAGE

The current list does not clearly identify the new revenue raised from the income tax increase. The “existing” qualifier on income tax rates in lines 16-18 is not sufficient to achieve this aim and without further information might mislead voters into thinking we are defunding public education. The new language seeks to clarify this.

pay for public education. **NEW LANGUAGE BEGIN Accordingly, this 43% does not include the additional \$950 million in income tax revenue that would be collected for public education. NEW LANGUAGE END.**

Page 1, line 27: We question the inclusion of the additional revenue sources as written. There are limitations on many of these revenues sources in how they can be used and their availability to districts. As drafted, it implies that district revenue from private grants is widespread, when in fact only a few districts have sizeable grants, and that the lawful use of bond proceeds are wide, when they are very limited for only capital needs. These revenue sources should either be removed from the list or include qualifiers explaining their use and limitations.

Page 2, line 11: The reference to federal stimulus money should include reference to it being one-time in nature as in the graphic. Simply including the budget year does not clearly state that this funding was limited.

In budget year 2010-11, **NEW LANGUAGE BEGIN one-time END NEW LANGUAGE** federal stimulus money replaced \$216 million of state formula funding. Page 3, lines 36: It is not clear from the language that the transfer of the 7.2 percent is replaced by

## Last Draft Comments from Interested Parties

### Curtis Hubbard, representing Colorado Commits to Kids (Cont.):

the transfer of the 43% of the income, sales, and excise tax revenue. This could mislead voters that there is a loss of education funding.

And **eliminates replaces** the transfer of about 7.2 percent of income tax revenue to the State Education Fund **NEW LANGUAGE BEGIN with 43% of the income, sales, and excise tax revenue from the General Fund.**

Page 3, lines 40-41: the language singles out only one type of tax that is unchanged by the measure when there are several tax types that are unchanged such as property tax and sales tax. The other unchanged tax types should be added, or this sentence should be deleted.

Page 4, line 1: While the text and information in Table 1 are much improved around the issue of explain taxable income in comparison to gross income, there remains a need to directly state this fact. We suggest the addition as follows:

4.63 percent **BEGIN NEW LANGAUGE on taxable income, which is lower than a taxpayer's gross income as shown in Table 1. END NEW LANGUAGE**

Page 4, lines 3-7: as suggested earlier, we recommend the following language to more simply and clearly explain the two-step tax:

Beginning in tax year 2014, Amendment ? establishes a two-tiered income tax rate. **BEGIN NEW LANGUAGE Individuals with taxable income under \$75,000 will pay 5.0%. Individuals with taxable income of more than \$75,000 would pay 5.0% on their first \$75,000, and then 5.9% on any taxable income above that amount.**

Page 4, at end of line 19 and Table 1: **ADD NEW LANGUAGE**  
This section seeks to inform voters about the expected costs of the ballot initiative. However, we think it would give voters a better understanding of the impact of the tax increase if the text and table referenced the median taxable income in Colorado is \$57,000 and results in approximately \$133 annually. This is an important addition to the values currently listed in the table, and would be of significant help to voters in understanding the position of the median Coloradan.

Page 5, lines 12-13: revise reference to helping at-risk students to better clarify the purpose of providing principals greater control over budgets.

This is intended to **NEW LANGUAGE BEGIN help schools provide the individualized attention and resources needed to serve their students.**

Page 5, lines 13-15: while the description of the bill is greatly improved, there still needs to be a reference to the past reform laws funded by the bill. We recommend the following language:

## Last Draft Comments from Interested Parties

**Curtis Hubbard, representing Colorado Commits to Kids (Cont.):**

**It also supports recent education legislation that have redesigned Colorado's education system including, Senate Bill 08-212: Colorado's Achievement Plan for Kids; Senate Bill 09-163: The Education Accountability Act; Senate Bill 10-191: The Great Teachers and Great Leaders Act; and House Bill 12-1238: Colorado Reading to Ensure Academic Development Act (Colorado READ Act).**

Page 5, lines 17-34: Reorder arguments 1 and 2.

We think this section reads better and more naturally if arguments 1 and 2 are swapped in position, so that the argument reading "One of the most important functions of government..." comes first. This argument is more education-related, and therefore more to the heart of the initiative. The other argument relates more to the economy and the state budget cuts, and therefore should be listed second.

Page 6, lines 14-19: To be factually accurate, this statement should say that the state has adequate resources to implement SB 213 for one year. There is no evidence to suggest the state will have an additional \$1 billion annually for the foreseeable future.

Page 6, lines 24-26: Remove the language that says our education system is increasingly costly. Education expenditures in Colorado have not even kept pace with inflation, much less outpaced it as demonstrated by Figure 1 on page 2 of the blue book. Although K-12 expenditures on a national scale have increased in real terms, that is not the case in Colorado.

Page 6, line 27-34: this argument is inaccurate in that it implies that the initiative is establishing a new system of using state revenues to support local schools. In fact, it has been a long-standing policy of the state to provide equalization dollars so that all local districts can pay for what is expected of them by state law and is not created new by this initiative. We recommend changing the word "subsidize", as used in line 34, to "support" to more appropriately describe the system as it exists. The measure is not changing the structure simply reprioritizing how funding flows.

Page 7, lines 2-5: as suggested earlier, we recommend the following language to more simply and clearly explain the two-step tax:

**Individuals with taxable income under \$75,000 will pay 5.0%. Individuals with taxable income of more than \$75,000 would pay 5.0% on their first \$75,000, and then 5.9% on any taxable income above that amount. The state legislature may adjust this income threshold annually by inflation.**

**Dan Pilcher, representing the Colorado Association of Commerce and Industry:**

Good morning.

I wanted to bring to your attention some concerns that we here at the Colorado Association of Commerce and Industry (CACI) have about how Initiative 22 is being

## Last Draft Comments from Interested Parties

### Dan Pilcher, representing the Colorado Association of Commerce and Industry (Cont.):

presented not only publicly by its proponents but also how it is described in the three *Bluebook* drafts to date, specifically as it pertains to the impact on businesses.

Proponents of Initiative 22 have touted the fact that the measure will not increase the corporate income tax, which is correct.

Initiative 22 says that the tax increase will apply to “individuals, estates and trusts.”

But the measure, nonetheless, will have a discriminatory effect on the business community, especially small businesses, which should not be ignored in the debate about Initiative 22.

The reason is that a business owner who operates as a “sole proprietorship” or two or more business owners who operate as a “general partnership,” “limited partnership,” “limited liability company (LLC)” and “S Corporation” file their tax returns as individuals.

In addition, “limited liability partnerships” and “limited liability limited partnerships” will be taxed as partnerships unless they elect to be taxed as corporations. For more information on these types of businesses, read [The Colorado Business Resource Guide](#).

Consequently, these businesses will not be excluded from the increase in the individual income tax rate that Initiative 22 will impose.

The projected impact of the proposal on these small businesses is not clear yet.

### Patrick Pratt, representing the South Metro Denver Chamber:

Hello,

In Section 1 of the “Arguments Against” section, the Blue Book should mention that businesses registered as S-Corps (Colorado has more than 30,000 of them), LLCs, partnerships, and sole proprietors pay taxes at the same rate as individuals which will increase the burden on small business and hurt Colorado’s economic competitiveness.

I’ve copied our President & CEO -- John Brackney, Vice-Chair of Public Policy -- Jeff Wasden, Chair-Elect of the Board -- Herm Brocksmith, and Chair of the Board -- Lisa D’Ambrosia as an FYI.

Thank you for your consideration



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August 13, 2013

*Via Email: [schoolfunding@state.co.us](mailto:schoolfunding@state.co.us)*

Colorado General Assembly  
 Legislative Council  
 Room 029 State Capitol  
 Denver, CO 80203-1784

Re: Initiative 22

Dear Council Members:

Thanks again for the opportunity to comment on the proposed *Blue Book* language. We comment on behalf of Colorado's school boards. School boards are accountable to their local voters for school district budgets and student achievement.

- I. We support many of the changes made in the third draft. However, we cannot support one change. In the first paragraph under "Summary and Analysis," this draft represents that, in addition to state and local revenues districts receive under the school finance funding formula, school districts "receive about \$3.4 billion . . . including local revenue raised by districts, federal moneys, private grants, and bond proceeds." This statement may be technically correct as far as it goes. However, as it is now written, it is largely irrelevant to the issue to be decided by the voters this November. More importantly, without a great deal more explanation, this statement is so misleading it will unfairly prejudice some voters against this initiative. Some supporters may even claim this statement is a disguised and unacknowledged argument against Initiative 22.
  - A. Bond revenues are revenues borrowed from investors for the sole purpose of capital construction. Bond revenues may never, under any circumstances, be used for operations, teacher salaries, or any other instructional purpose. On the other hand, Initiative 22 and SB 13-213, which will be funded if Initiative 22 passes, will fund only operations, teacher salaries, and other instructional purposes. These revenues will not fund capital construction.

The need for new schools or other capital investments varies widely between districts. Some rapidly growing Front Range districts must ask district voters every few years for permission to sell more bonds to build more schools for their expanding student population. Other districts with stable student populations may go decades without selling a single bond. In a typical year, only 10 to 15 percent of Colorado school districts will hold bond elections, and some of those elections will fail.

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Finally, to the extent education funding in Colorado is compared with funding in other states, we again mislead if we include bond revenues. States with stable or shrinking populations do not need to build many new schools. And most states, like Colorado, do not include bond revenues when they report school finance funding levels.

In summary, including revenues from bond sales in a number that purports to represent the operational funding received by school districts under the state's School Finance Act is at least misleading. It will also give opponents to this measure the credibility of a *Blue Book* cite when they use this inflated number to claim Colorado's per pupil funding under the School Finance Act is higher than it really is. Bond revenues must not be included in this "about \$3.4 billion" of additional revenues.

- B. Slightly more than half of Colorado's 178 school districts receive some local revenues to supplement what they receive under the funding formula. Most of the districts which do not receive such supplemental funding have little or no prospect of ever receiving approval from local voters for additional revenues.

Moreover, the amount of local revenues received by individual districts varies widely among the districts that have held successful elections. Some districts are at or near the maximum they may legally receive locally. Other districts, often because of low assessed property values in the district, have no prospect of raising amounts close to the statutory limit.

We have no objection to identifying locally approved revenues as a supplement to the formula amounts that districts receive. Unlike bond revenues, the purpose of these revenues is to supplement general fund budgets. However, it is misleading and wrong to include these revenues without explaining that many districts do not receive additional local revenues, and that the amount of money a district may raise locally varies widely as a result of variations in assessed property values between districts. This last point is particularly pertinent because one of the provisions in SB 13-213 would "equalize" a locally approved mill levy in districts with low assessed property values. It is likely that this provision in SB13-213 would permit districts which cannot now pass a local mill levy to have successful elections.

- C. The inclusion of "private grants" here is confusing. Some districts have them; many do not. Most large school districts, especially districts with significant private wealth, have active private education foundations. Most small districts have neither the wealth nor the numbers to support such a foundation. Most small school districts also lack the staff resources to be active in the private grant universe. Finally, grants are almost always project-specific and carry the expectation that a school district will assume full responsibility for funding a project initiated with grant funds.

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In summary, private grants are unavailable to many districts, are usually project- or program-specific, and are not an ongoing or reliable funding stream. There are a handful of exceptions to one or two of these observations--Denver Public Schools, for example, has done well in the private grant market in recent years--but in the vast majority of school districts, private grants do not significantly affect school district funding needs.

For all of the foregoing reasons, we recommend the private grant reference be dropped. However, if it remains, an explanation should be added to the effect that most districts receive little or no grant funding, that it is not an ongoing or reliable funding stream, and that grant funding can rarely be used to pay general and ongoing obligations of a district's general operating budget.

- II. The First Argument Against is factually inaccurate. The State has adequate resources on hand to implement SB 13-213 for only one year, and doing so would almost completely deplete the State Education Fund. Furthermore, even if state revenues continue to grow robustly, if the legislature fully funds the implementation of SB 13-213 beyond one year, higher education and other state programs would necessarily continue to be grossly underfunded.

To argue, as this First Argument does, that SB 13-213 could be implemented beyond one year without harming other state programs is false. Moreover, without the mandate contained in Initiative 22 that new revenues may be spent only on education, it is also misleading to argue that the legislature would set as its first priority funding the implementation of SB 13-213, even if funding SB 13-213 implementation is at the expense of restoring funding to other state programs that have been sharply cut over the last several years.

This First Argument, if it is to be included, should specify the State can spend education's rainy day fund to implement one year of SB 13-213, and thereafter implementation would require the State to cut or limit the growth of other state programs. We recommend it be eliminated.

- III. The Third Argument Against remains inaccurate for the reasons set forth in our previous comments. For at least the last 25 years, Colorado's school finance system, as is the case with most state programs, has required local taxpayers in some communities to pay more than their local community will receive in aid from the state program. That is true under the current School Finance Act and it will be true if SB 13-213 is funded. This measure does not "create" a new inequity. It continues the long-standing state policy to use state revenues to backfill funding needs in local districts that do not have the local resources to fund the education programs required by state law for every student.

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Once more, our position is that if this “argument” says more than that the taxpayers of a few school districts may pay more in taxes than the district will receive in new funding, it says too much. It should also clarify that this “inequity” is not a newly created policy, but one long followed in school finance to ensure a student’s zip code does not determine the quality of the education received by Colorado’s young men and women.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken DeLay", with a long diagonal stroke extending from the bottom right of the signature.

Kenneth A. DeLay  
Executive Director

## Attachment C

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# Attachment C

## Initiative #22 Funding for Public Schools

1 **Ballot Title:** SHALL STATE TAXES BE INCREASED BY \$950,100,000 ANNUALLY IN THE  
2 FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED THEREAFTER BY  
3 AMENDMENTS TO THE COLORADO CONSTITUTION AND THE COLORADO REVISED  
4 STATUTES CONCERNING FUNDING FOR PRESCHOOL THROUGH TWELFTH-GRADE PUBLIC  
5 EDUCATION, AND, IN CONNECTION THEREWITH, INCREASING THE CURRENT STATE INCOME  
6 TAX RATE ON INDIVIDUALS, ESTATES, AND TRUSTS AND IMPOSING AN ADDITIONAL RATE  
7 SO HIGHER AMOUNTS OF INCOME ARE TAXED AT HIGHER RATES; REQUIRING THE  
8 RESULTING INCREASES IN TAX REVENUES BE SPENT ONLY FOR IMPROVEMENTS TO  
9 PRESCHOOL THROUGH TWELFTH-GRADE PUBLIC EDUCATION; ALLOWING ALL TAX  
10 REVENUES ATTRIBUTABLE TO THIS MEASURE TO BE COLLECTED AND SPENT WITHOUT  
11 FUTURE VOTER APPROVAL; REQUIRING AT LEAST 43% OF STATE SALES, EXCISE, AND  
12 INCOME TAX REVENUES BE DEPOSITED IN THE STATE EDUCATION FUND; AND REPEALING  
13 CERTAIN EXISTING PUBLIC EDUCATION FUNDING REQUIREMENTS?

14 **Text of Measure:**

15 *Be it Enacted by the People of the State of Colorado:*

16 **SECTION 1.** In the constitution of the state of Colorado, section 17 of  
17 article IX, **amend** (1), (2), and (4) and **add** (6), (7), and (8) as follows:

18 **Section 17. Education – funding.**

19 **(1) Purpose.** In state fiscal year 2001-2002 through state fiscal year  
20 2010-2011, the statewide base per pupil funding, as defined by the Public School  
21 Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes, on the  
22 effective date of this section, for public education from preschool through the  
23 twelfth grade and total state funding for all categorical programs shall grow  
24 annually at least by the rate of inflation plus an additional one percentage point.  
25 ~~In state fiscal year 2011-2012, and each fiscal year thereafter,~~ FOR STATE FISCAL  
26 YEARS 2011-2012 THROUGH 2013-2014, the statewide base per pupil funding for  
27 public education from preschool through the twelfth grade and total state funding  
28 for all categorical programs shall grow annually at a rate set by the general  
29 assembly that is at least equal to the rate of inflation.

30 **(2) Definitions.** (c) "INCOME TAX INCREMENT FOR PUBLIC SCHOOL  
31 FUNDING" MEANS THE INCOME TAX CHANGES APPROVED BY THE VOTERS AT THE

## Attachment C

1 2013 GENERAL ELECTION FOR PRESCHOOL AND PUBLIC SCHOOL KINDERGARTEN  
2 THROUGH TWELFTH GRADE FUNDING.

3       **(4) State education fund created.** (a) There is hereby created in the  
4 department of the treasury the state education fund. Beginning on the effective  
5 date of this measure, AND THROUGH JUNE 30, 2014, all state revenues collected  
6 from a tax of one third of one percent on federal taxable income, as modified by  
7 law, of every individual, estate, trust and corporation, as defined in law, shall be  
8 deposited in the state education fund. Revenues generated from a tax of one  
9 third of one percent on federal taxable income, as modified by law, of every  
10 individual, estate, trust and corporation, as defined in law, shall not be subject to  
11 the limitation on fiscal year spending set forth in article X, section 20 of the  
12 Colorado constitution. BEGINNING IN STATE FISCAL YEAR 2014-2015, THE STATE  
13 EDUCATION FUND SHALL, AT A MINIMUM, RECEIVE FORTY-THREE PERCENT OF  
14 SALES, EXCISE, AND INCOME TAX REVENUE COLLECTED IN THE GENERAL FUND IN  
15 A MANNER AS TO EQUAL SUCH PERCENTAGE IN RELATION TO THE REVENUE  
16 GENERATED BY THE TAX RATES IN EFFECT ON DECEMBER 31, 2012 NET OF ANY  
17 REFUNDS REQUIRED BY SECTION 20, SUBSECTIONS (3)(c) AND (7) OF ARTICLE X  
18 OF THIS CONSTITUTION. All interest earned on monies in the state education fund  
19 shall be deposited in the state education fund and shall be used before any  
20 principal is depleted. Monies remaining in the state education fund at the end of  
21 any fiscal year shall remain in the fund and not revert to the general fund.

22       **(6) STATE EDUCATIONAL ACHIEVEMENT FUND.**

23       (a) THE STATE EDUCATIONAL ACHIEVEMENT FUND IS CREATED IN THE  
24 STATE TREASURY.

25       (b) THE DEPARTMENT OF REVENUE OR ITS SUCCESSOR AGENCY SHALL  
26 ANNUALLY DETERMINE THE AMOUNT OF THE INCOME TAX INCREMENT FOR PUBLIC  
27 SCHOOL FUNDING. SUCH AMOUNTS SHALL BE DEPOSITED IN THE STATE  
28 EDUCATIONAL ACHIEVEMENT FUND.

29       (c) THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE  
30 APPROPRIATED TO BENEFIT THE EDUCATION OF PARTICIPANTS IN PRESCHOOL  
31 PROGRAMS AND PUBLIC SCHOOL KINDERGARTEN THROUGH TWELFTH GRADE  
32 STUDENTS BY IMPLEMENTING EDUCATIONAL REFORMS AND PROGRAMMATIC  
33 ENHANCEMENTS, ENACTED BY THE COLORADO GENERAL ASSEMBLY.

34       (d) THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE AUDITED  
35 ANNUALLY BY THE STATE AUDITOR TO ENSURE COMPLIANCE WITH THIS ARTICLE.  
36 THE RESULTS OF SUCH AUDIT SHALL BE A PUBLIC DOCUMENT THAT IS  
37 TRANSMITTED TO THE GOVERNOR, THE PRESIDENT AND MINORITY LEADER OF THE  
38 SENATE, AND THE SPEAKER AND THE MINORITY LEADER OF THE HOUSE OF

## Attachment C

1 REPRESENTATIVES. SUCH AUDIT SHALL BE CONSPICUOUSLY PLACED ON THE  
2 WEBSITES OF THE STATE AUDITOR AND THE COLORADO DEPARTMENT OF  
3 EDUCATION OR THEIR SUCCESSOR AGENCIES.

4 (e) ALL INTEREST EARNED ON MONIES IN THE STATE EDUCATIONAL  
5 ACHIEVEMENT FUND SHALL BE DEPOSITED IN THE STATE EDUCATIONAL  
6 ACHIEVEMENT FUND AND SHALL BE USED BEFORE ANY PRINCIPAL IS DEPLETED.  
7 MONIES REMAINING IN THE STATE EDUCATIONAL ACHIEVEMENT FUND AT THE END  
8 OF ANY FISCAL YEAR SHALL REMAIN IN THE FUND AND NOT REVERT OR BE  
9 TRANSFERRED TO THE GENERAL OR ANY OTHER FUND.

10 (7) **NEW REVENUE TO SUPPLEMENT PREVIOUS YEAR EDUCATION**  
11 **FUNDING.** REVENUES COLLECTED FROM THE INCOME TAX INCREMENT FOR PUBLIC  
12 SCHOOL FUNDING SHALL BE USED TO SUPPLEMENT REVENUES THAT WERE  
13 APPROPRIATED BY THE GENERAL ASSEMBLY IN THE PREVIOUS FISCAL YEAR FOR  
14 KINDERGARTEN THROUGH TWELFTH GRADE AND PRESCHOOL EDUCATION AND  
15 SHALL NOT BE USED TO SUPPLANT ANY PORTION OF THOSE PREVIOUSLY  
16 APPROPRIATED REVENUES.

17 (8) **REVENUE AND SPENDING LIMITATIONS.** ALL REVENUES  
18 ATTRIBUTABLE TO THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING OR  
19 OTHERWISE ADDRESSED BY SUBSECTION (6) SHALL BE COLLECTED AND SPENT AS  
20 VOTER-APPROVED REVENUE CHANGES WITHOUT REGARD TO ANY LIMITATION ON  
21 REVENUE, SPENDING, OR APPROPRIATIONS, CONTAINED IN SECTION 20 OF ARTICLE  
22 X OF THIS CONSTITUTION OR ANY OTHER LAW. SPENDING OF SUCH REVENUE,  
23 CONSISTENT WITH THE EXPRESSED INTENTION OF THE VOTERS AT THE 2013  
24 ELECTION, SHALL REQUIRE NO ADDITIONAL VOTER APPROVAL AT ANY STATE OR  
25 LOCAL ELECTION.

26 **SECTION 2.** In the constitution of the state of Colorado, section 20 of  
27 article X, **amend** (8):

28 (8) **Revenue limits.** (a) New or increased transfer tax rates on real  
29 property are prohibited. No new state real property tax or local district income  
30 tax shall be imposed. Neither an income tax rate increase nor a new state  
31 definition of taxable income shall apply before the next tax year. Any income tax  
32 law change after July 1, 1992 shall also require all taxable net income to be taxed  
33 at one rate, excluding refund tax credits or voter-approved tax credits, with no  
34 added tax or surcharge; EXCEPT THAT MULTIPLE RATES SHALL APPLY TO TAXABLE  
35 NET INCOME OF INDIVIDUALS, TRUSTS, AND ESTATES, IF SPECIFIC RATE INCREASES  
36 IN EXCESS OF THE TAX RATE IN EFFECT ON THE DAY OF AN ELECTION ARE

## Attachment C

1 APPROVED BY VOTERS FOR THE PURPOSE OF PROVIDING AN INCOME TAX  
2 INCREMENT FOR PUBLIC SCHOOL FUNDING.

3 **SECTION 3.** In Colorado Revised Statutes, 39-22-104, **amend** (1.7) as  
4 follows:

5 **39-22-104. Income tax imposed on individuals, estates, and trusts –**  
6 **single rate – definitions – repeal.** (1.7) Except as otherwise provided in section  
7 39-22-627, subject to subsection (2) of this section, with respect to taxable years  
8 commencing on or after January 1, 2000, a tax of four and sixty-three one  
9 hundredths percent is imposed on the federal taxable income, as determined  
10 pursuant to section 63 of the internal revenue code, of every individual, estate,  
11 and trust. IN ADDITION TO THE TAX RATE AUTHORIZED IN THIS SUBSECTION ON  
12 FEDERAL TAXABLE INCOME OF INDIVIDUALS, ESTATES, AND TRUSTS, AN INCOME  
13 TAX INCREMENT FOR PUBLIC SCHOOL FUNDING SHALL BE IMPOSED ON THE  
14 FEDERAL TAXABLE INCOME OF SUCH TAXPAYERS:

15 (a) UP TO AND INCLUDING \$75,000, AT THE RATE OF THIRTY-SEVEN ONE  
16 HUNDREDTHS PERCENT; AND

17 (b) OVER \$75,000, AT THE RATE OF ONE AND TWENTY-SEVEN ONE  
18 HUNDREDTHS PERCENT.

19 THE GENERAL ASSEMBLY MAY ANNUALLY ADJUST THE INCOME THRESHOLDS FOR  
20 THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING FOR INFLATION FROM  
21 THE PREVIOUS YEAR.

22 **SECTION 4. EFFECTIVE DATE.** THESE VOTER-ENACTED PROVISIONS  
23 SHALL TAKE EFFECT ON JANUARY 1, 2014.



**TO:** Members of Council  
**FROM:** Dianne Marshall, City Clerk's Office  
**DATE:** September 17, 2013  
**SUBJECT:** Information Packet

**1. Call Ups**

- A. Vacation of a 1,420 square foot portion of an existing utility easement bisecting the property at 2085 Balsam Drive (ADR2013-00150).
- B. Landmark Alteration Certificate to demolish an existing house and in its place construct a two-story, 3,300 sq. ft. house at 420 Spruce Street in the Mapleton Hill Historic District, per section 9-11-18 of the Boulder Revised Code (HIS2013-00184). This Landmark Alteration Certificate is subject to City Council call-up no later than **September 17, 2013**.

**2. Information Item**

- A. North Boulder Subcommunity Plan Update
- B. Snow and Ice Control Program and Sidewalk Snow Removal Enforcement

**3. Boards and Commissions**

- A. Landmarks Board – July 18, 2013
- B. Landmarks Board – August 7, 2013
- C. Library Commission – September 4, 2013

**4. Declarations**

None.





**INFORMATION PACKET  
MEMORANDUM**

To: Members of City Council

From: Jane S. Brautigam, City Manager  
Paul J. Fetherston, Deputy City Manager  
David Driskell, Executive Director of Community Planning & Sustainability  
Charles Ferro, Development Review Manager  
Sloane Walbert, Associate Planner

Date: September 17, 2013

**Subject: Call-Up Item:** Vacation of a 1,420 square foot portion of an existing utility easement bisecting the property at 2085 Balsam Drive (ADR2013-00150).

---

**EXECUTIVE SUMMARY:**

The applicant requests vacation of a 1,420 square foot portion of an existing twenty-foot utility easement at 2085 Balsam Drive (refer to **Attachment D** for exact location). The easement was originally dedicated on the Hillcrest Subdivision plat, recorded February 21, 1951. There is no public need for this portion of the utility easement because all utilities previously located in the easement have been relocated to the north side of Balsam Drive. A 6-foot private utility easement has been granted for the relocated power lines on the subject property. The proposed vacation was approved by staff on August 27, 2013. There is one scheduled City Council meeting on September 17, 2013 within the 30 day call-up period.

**CODE REQUIREMENTS:**

Pursuant to the procedures for easement vacations set forth in subsection 8-6-10(b), B.R.C. 1981, the city manager has approved the vacation of a 1,420 square foot portion of the existing twenty-foot utility easement. The date of final staff approval of the easement vacation was August 27, 2013 (refer to **Attachment E, Notice of Disposition**). This vacation does not require approval through ordinance based on the following criteria:

- It has never been open to the public; and
- It has never carried regular vehicular or pedestrian traffic.

The vacation will be effective 30 days later on September 26, 2013 unless the approval is called up by City Council.

**FISCAL IMPACTS:**

None identified.

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

- Economic: None identified.
- Environmental: None identified.
- Social: None identified.

**BACKGROUND:**

The subject property is located north of and adjacent to Balsam Drive, west of 22<sup>nd</sup> Street, in a Residential - Low 1 (RL-1) zone district (refer to **Attachment A**, *Vicinity Map*). The property is encumbered by a 20-foot utility easement that crosses the property in an east-west direction approximately 70 feet back from the front property line (please refer to **Attachment B**, *Site Plan*). The easement significantly limits any additions which may be made to the existing single family home on the property. The applicant is interested in building a two story addition on north side of existing residence in the current easement area.

The portion of easement to be vacated was originally dedicated for electric and telephone services in 1951. These services have since been moved to the north side of Balsam Drive. The power lines have recently been placed underground along the front property line and a 6-foot private utility easement has been granted to Public Service Company of Colorado (Xcel) for the relocated power lines. There are no public or private utilities located in the easement. Several neighboring parcels on the north side of Balsam Drive have also vacated the subject easement (reception no. 02108187, 2909934, and 03326353).

A concrete walk, concrete steps, and a retaining wall currently encroach into the subject easement. Given that there is no public need for the easement for which it was intended, failure to vacate the requested portion of easement would cause hardship to the property owner by limiting the development potential of the property.

**ANALYSIS:**

Staff finds the proposed vacation of a 1,420 square foot portion of an existing twenty-foot utility easement consistent with the standard set forth in subsection (b) of section 8-6-10, “*Vacation of Public Easements*”, B.R.C. 1981. All agencies having an interest in the easement have indicated that no need exists, at present or in the future, for that portion of the easement to be vacated. Staff has determined that no public need exists for the portion of easement to be vacated due to the fact that all public utilities have been relocated to the north side of Balsam Drive.

No vacation of a public easement shall be approved unless the approving agency finds that:

- ✓ 1. Change is not contrary to the public interest.
- ✓ 2. All agencies having a conceivable interest have indicated that no need exists, either in the present or conceivable future, for its original purpose or other public purpose.
- ✓ 3. Consistent with the Comprehensive Plan and Land Use Regulations.

- ✓ a. Failure to vacate the easement would cause a substantial hardship to the use of the property consistent with the Comprehensive Plan and Land Use Regulations; or  
*The easement is no longer necessary because all utilities have been relocated to the north side of Balsam Drive. The building site on this lot is currently limited by the utility easement. The applicant would like to build a two-story addition in the subject easement area.*
- N/A b. Would provide a greater public benefit than retaining the property in its present status.

**PUBLIC COMMENT AND PROCESS:**

Notice of the vacation will be advertised in the Daily Camera within the 30 day call up period. Staff has received no written or verbal comments adverse to the vacation.

**NEXT STEPS:**

If the requested vacation is not called up by City Council then the Deed of Vacation (**Attachment C**) will be recorded. If the requested vacation is called up, and subsequently denied, the applicant will be limited to development on the property outside of the easement area.

**ATTACHMENTS:**

- Attachment A: Vicinity Map  
Attachment B: Site Plan  
Attachment C: Deed of Vacation  
Attachment D: Exhibit A  
Attachment E: Notice of Disposition

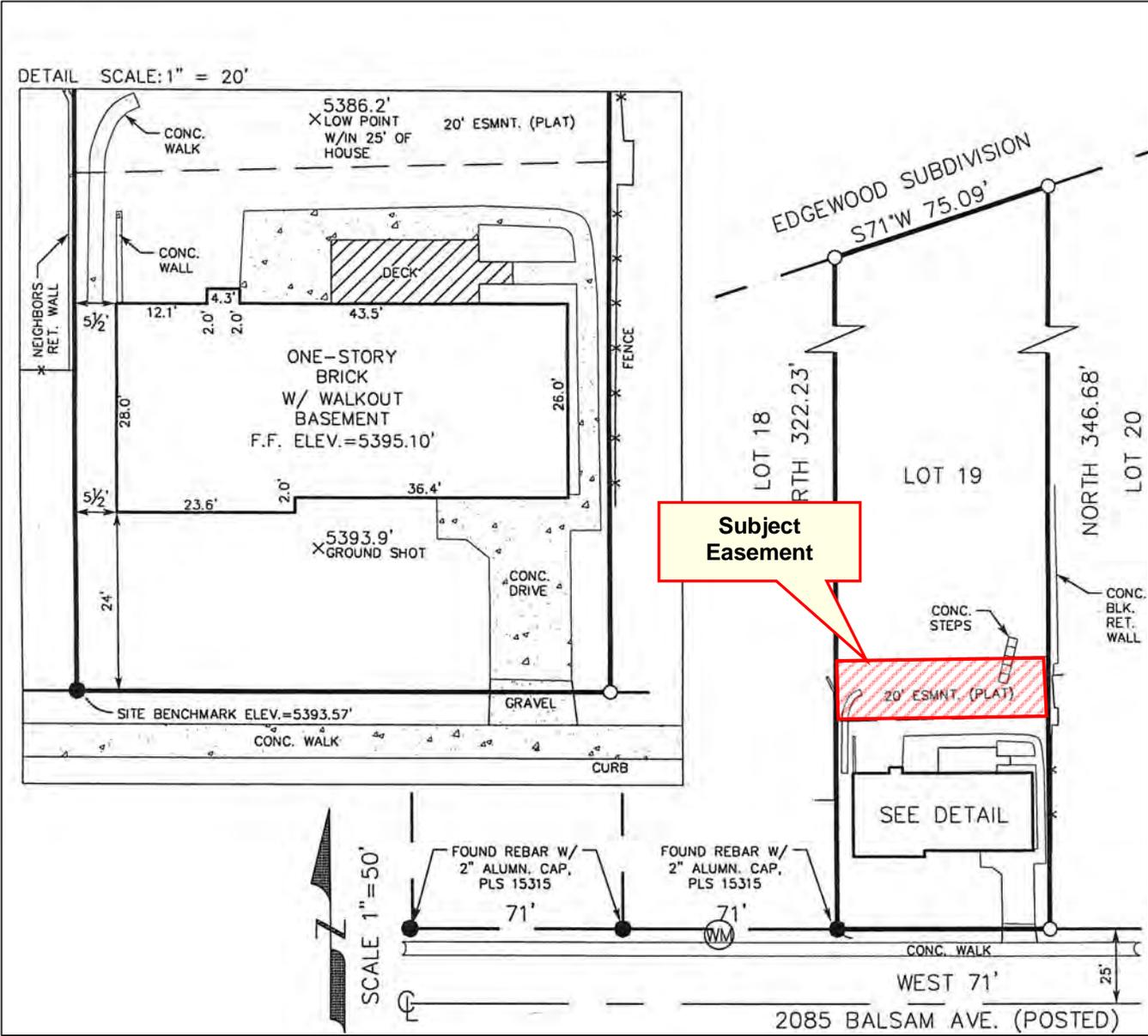
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**ATTACHMENT A  
VICINITY MAP**



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**ATTACHMENT B  
SITE PLAN**



**ATTACHMENT C  
DEED OF VACATION**

For Administrative Purposes Only  
Address: 2085 Balsam Dr.  
Case No. ADR2013-00150

**DEED OF VACATION**

The City of Boulder, Colorado does hereby vacate and release to the present owners of the subservient land, in a manner prescribed by Subsection 8-6-10(b), B.R.C. 1981, the following portion of utility easement previously dedicated to the City of Boulder as part of the final Hillcrest subdivision plat recorded in Plat Book 5, Page 51 in the records of the Boulder County Clerk and Recorder on the 21 day of February, 1951, located at 2085 Balsam Drive and as more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The within easement vacation and release of said easement shall extend only to the portion and the type of easement specifically vacated. The within vacation is not to be construed as vacating any rights-of-way or easements or cross-easements lying within the description of the vacated portion of the easement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the City Manager after having received authorization from the City Council of the City of Boulder, Colorado.

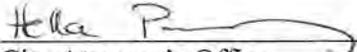
CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Jane S. Brautigam,  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney's Office

9-4-2013  
Date

# EXHIBIT "A"

LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 1 NORTH,  
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
COUNTY OF BOULDER, STATE OF COLORADO

SHEET 1 OF 2

VACATION OF A UTILITY EASEMENT IN LOT 19, BLOCK 2, HILLCREST, LOCATED IN THE  
NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH  
P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS:

CONSIDERING THE SOUTH LINE OF LOT 17, SAID BLOCK 2, HILLCREST, TO BEAR NORTH  
90°00'00" WEST, A DISTANCE OF 71.00 FEET BETWEEN TWO FOUND #5 REBAR WITH 2"  
ALUMINUM CAPS "PLS 15315" ONE LOCATED AT THE SOUTHWEST CORNER OF SAID LOT 17,  
AND THE OTHER LOCATED AT THE SOUTHEAST CORNER OF SAID LOT 17, WITH ALL BEARINGS  
CONTAINED HEREIN BEING RELATIVE THERETO.

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 17; THENCE ALONG THE SOUTH LINE  
OF LOTS 17 AND 18, SAID BLOCK 2, HILLCREST, SOUTH 90°00'00" EAST, A DISTANCE OF  
142.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 19; THENCE DEPARTING SAID SOUTH  
LINE AND ALONG THE WEST LINE OF SAID LOT 19 NORTH 00°00'00" EAST, A DISTANCE OF  
69.54 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE  
NORTH 00°00'00" EAST, A DISTANCE OF 20.01 FEET; THENCE DEPARTING SAID WEST LINE  
NORTH 88°31'36" EAST, A DISTANCE OF 71.02 FEET TO A POINT ON THE EAST LINE OF SAID  
LOT 19; THENCE ALONG THE EAST LINE OF SAID LOT 19 SOUTH 00°00'00" EAST, A DISTANCE  
OF 20.01 FEET; THENCE DEPARTING SAID EAST LINE SOUTH 88°31'36" WEST, A DISTANCE OF  
71.02 FEET TO THE POINT OF BEGINNING.

SAID VACATION AREA CONTAINING 1,420 SQ.FT. OR 0.03 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY  
STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND  
ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY  
RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO  
REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE  
STATUTE.

JOHN B. GUYTON  
COLORADO P.L.S. #16406  
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 13-61,386



JOB NUMBER: 13-61,386  
DRAWN BY: B.SWIFT  
DATE: AUGUST 14, 2013

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS  
NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD  
INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

**Flatirons, Inc.**  
*Surveying, Engineering & Geomatics*



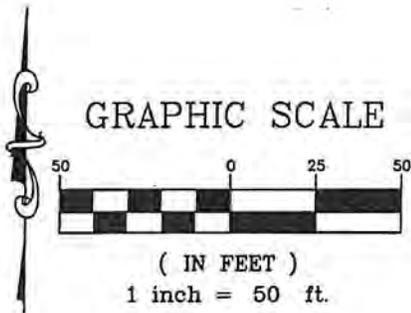
3825 IRIS AVE, STE 395  
BOULDER, CO 80301  
PH: (303) 443-7001  
FAX: (303) 443-9830  
[www.FlatironsInc.com](http://www.FlatironsInc.com)

BY: BSWIFT FILE: 61386\_EXHIBIT.DWG DATE: 8/14/2013 12:51 PM

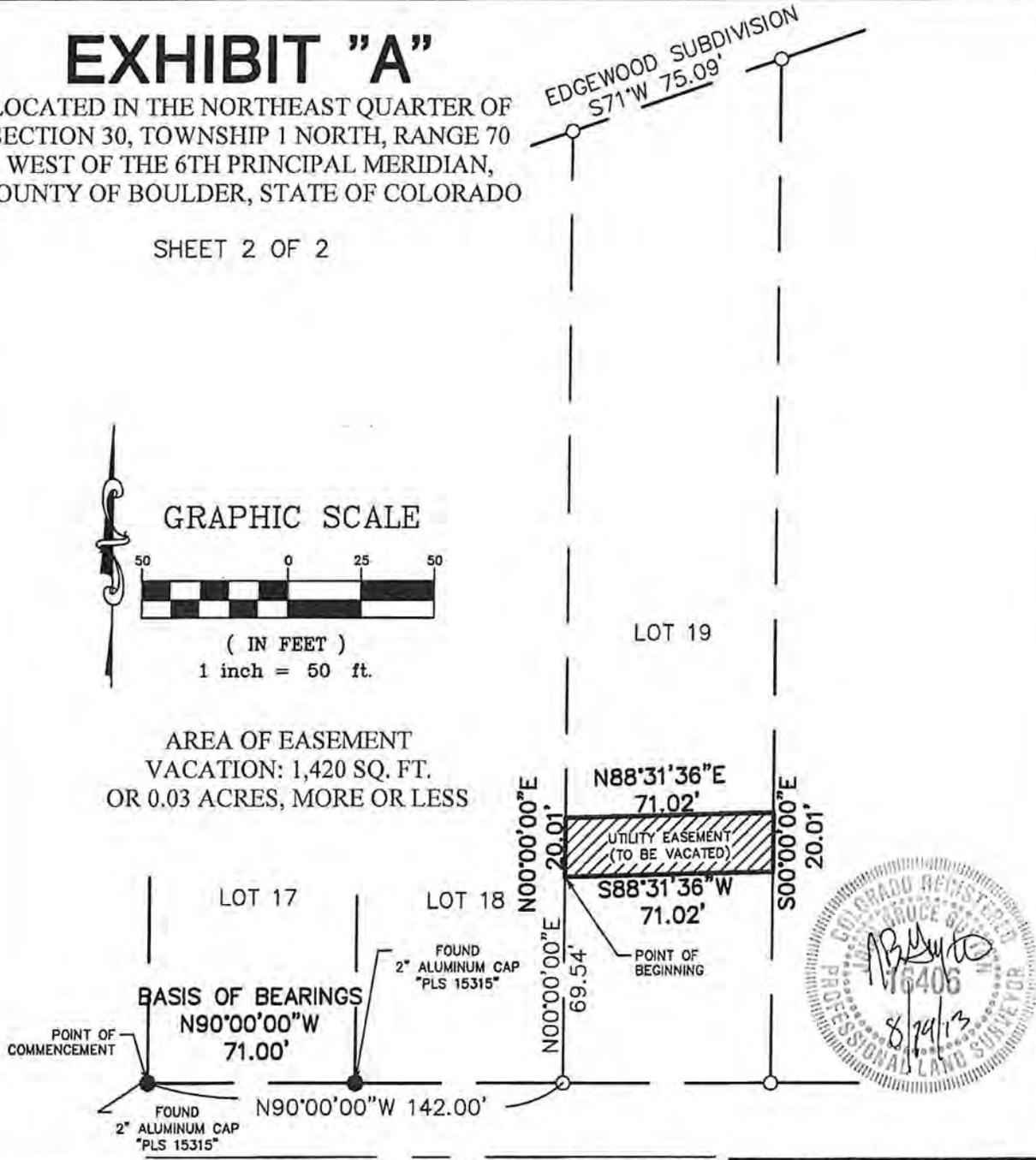
# EXHIBIT "A"

LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



AREA OF EASEMENT  
VACATION: 1,420 SQ. FT.  
OR 0.03 ACRES, MORE OR LESS



JOB NUMBER: 13-61,386  
DRAWN BY: B.SWIFT  
DATE: AUGUST 14, 2013

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

**Flatirons, Inc.**  
Surveying, Engineering & Geomatics  
3825 IRIS AVE, STE 395  
BOULDER, CO 80301  
PH: (303) 443-7001  
FAX: (303) 443-9830  
www.FlatironsInc.com

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**ATTACHMENT E  
NOTICE OF DISPOSITION**



**CITY OF BOULDER  
Planning and Development Services**

---

1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791  
phone 303-441-1880 • fax 303-441-3241 • web boulderplandevop.net

**ADMINISTRATIVE REVIEW  
NOTICE OF DISPOSITION**

You are hereby advised that the following action was taken by the Planning Department:

**DECISION:** Approved  
**DATE:** August 27, 2013  
**REQUEST TYPE:** Vacation/Easement  
**ADDRESS:** 2085 Balsam Drive  
**APPLICANT:** Jason Pugh  
**CASE #:** ADR2013-00150  
**LEGAL DESCRIPTION:** Lot 19, Block 2, Hillcrest Subdivision, City of Boulder, County of Boulder, Colorado  
**DESCRIPTION:** UTILITY EASEMENT VACATION to vacate a portion of an existing 20-foot utility easement bisecting the property at 2085 Balsam Drive.

**FINAL DECISION STANDARDS:**

Approved as submitted. This application is approved per the criteria for Vacation of Public Easements as set forth in section 8-6-10, B.R.C. 1981. This approval does not constitute building permit approval.

This approval is limited to the vacation of a 1,420 square-foot portion of an existing twenty-foot utility easement, previously dedicated to the City of Boulder and recorded in the records of the Boulder County Clerk and Recorder on the final plat of Hillcrest Subdivision in Plat Book 5, Page 51 on February 21, 1951.

**INFORMATIONAL COMMENTS:**

Pursuant to section 8-6-10(b), B.R.C. 1981, approval of an easement vacation "is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the City within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation."

This decision is final and may not be appealed. A new request may be considered only as a new application.

Approved By: S Walbert  
Sloane Walbert, Planning Department





## INFORMATION PACKET MEMORANDUM

To: City Council

From: Jane S. Brautigam, City Manager  
Paul J. Fetherston, Deputy City Manager  
David Driskell, Executive Director of Community Planning and Sustainability  
Susan Richstone, Deputy Director of Community Planning and Sustainability  
Lesli Ellis, Comprehensive Planning Manager  
James Hewat, Senior Historic Preservation Planner  
Marcy Cameron, Historic Preservation Planner

Date: September 17, 2013

**Call-up Item:** Landmark Alteration Certificate to demolish an existing house and in its place construct a two-story, 3,300 sq. ft. house at 420 Spruce Street in the Mapleton Hill Historic District, per section 9-11-18 of the Boulder Revised Code (HIS2013-00184). This Landmark Alteration Certificate is subject to City Council call-up no later than **September 17, 2013**.

---

### **Executive Summary**

The proposal to demolish the non-contributing house and construct a 3,300 sq. ft. house at 420 Spruce St. as shown on plans dated 08/01/2013 was approved with conditions by the Landmarks Board (4-0) at the September 4, 2013 meeting. The decision was based upon the board's consideration that the proposed construction meets the requirements in Section 9-11-18, B.R.C. 1981.

The board's approval is subject to a 14-day call-up period by City Council. The approval of this Landmark Alteration Certificate is subject to City Council call-up no later than **September 17, 2013**.

### **ATTACHMENTS:**

- A. Notice of Disposition dated September 4, 2013
- B. Photographs and Drawings of 420 Spruce St.

**Notice of Disposition**

You are hereby advised that on September 4, 2013 the following action was taken:

- ACTION:** Approved by a vote of 4-0 (**N. Fiore** absent)
- APPLICATION:** Public hearing and consideration of a Landmark Alteration Certificate to demolish an existing house and in its place construct a two-story, 3,300 sq. ft. house at 420 Spruce Street in the Mapleton Hill Historic District, per section 9-11-18 of the Boulder Revised Code (HIS2013-00184).
- LOCATION:** 420 Spruce St.
- ZONING:** Residential Low – (RL-1)
- APPLICANT/OWNER:** Juana Gomez/Julia and Luis Garza

This decision was arrived at based on the purposes and intent of the Historic Preservation Code as set forth in 9-11-18, B.R.C., 1981, as applied to the Landmark Alteration Certificate application.

**Public Hearing**

**Nichole Ward**, 2029 5<sup>th</sup> Street, Boulder, CO, neighbor of 420 Spruce Street, inquired if garage plans were submitted with the application.

**Motion:**

On a motion by **M. Gerwing**, seconded by **K. Snobeck**, the Landmarks Board adopted (4-0, **N. Fiore** absent) a resolution to approve the demolition of the non-contributing house and the construction of the proposed 3,300 sq. ft. house at 420 Spruce St. as shown on plans dated 08/01/2013, finding that they generally meet the standards for issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981, subject to the conditions below and adopts the staff memorandum dated September 4, 2013 in matter 5A (HIS2013-00184) as findings of the board.

This recommendation is based upon staff's opinion that if the applicant complies with the conditions listed below, the proposed demolition and new construction will be generally consistent with the conditions specified in Section 9-11-18, B.R.C. 1981, the *General Design Guidelines*, and the *Mapleton Hill Historic District Design Guidelines*.

1. The applicant shall be responsible for constructing the house in compliance with the approved plans dated 08/01/2013, except as modified by these conditions of approval.

2. Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall submit the following, which shall be subject to the final review and approval of the Landmarks design review committee: final architectural plans that include revisions to simplify the roof forms in a manner consistent with neo-traditional interpretations of the Edwardian Vernacular, including revisions to the inset dormer on the east elevation and cantilevered rear porch canopy.
  
3. The Landmarks design review committee shall review dormers, wall materials, exterior stair, fenestration on the front gable, west elevation, rear elevation, doors and window types and details including moldings, and proposed insets, paint colors, and hardscaping on the property to ensure that the approval is consistent with the *General Design Guidelines* and the *Mapleton Hill Historic District Guidelines* and the intent of this approval.

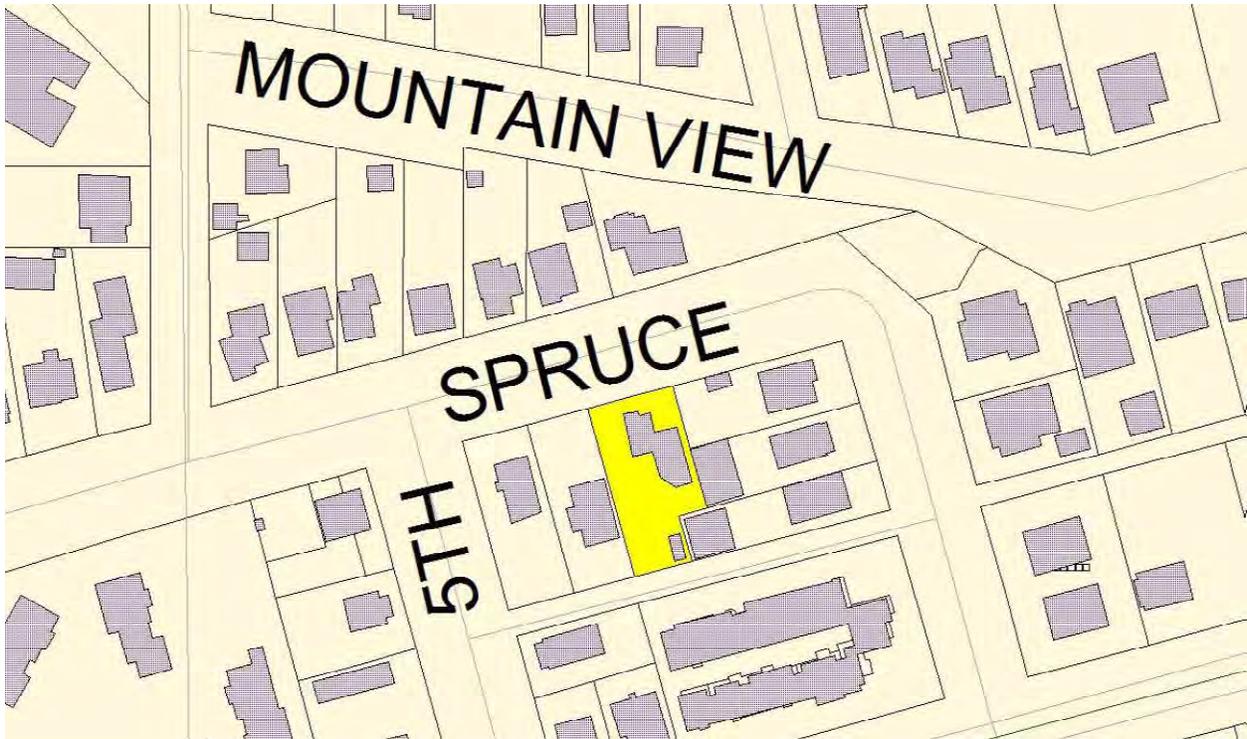


Figure 1. Location Map, 420 Spruce St.



Figure 2. 420 Spruce St from the northwest (Tax Assessor photo), 1944.

Attachment B  
Photographs and Drawings of 420 Spruce St.



Figure 3. 420 Spruce St. from the northwest, 1988



Figure 4. 420 Spruce St. from northwest, 2013

Attachment B  
Photographs and Drawings of 420 Spruce St.



Figure 5. West face of house



Figure 6. South elevation of 420 Spruce St.

Attachment B  
Photographs and Drawings of 420 Spruce St.

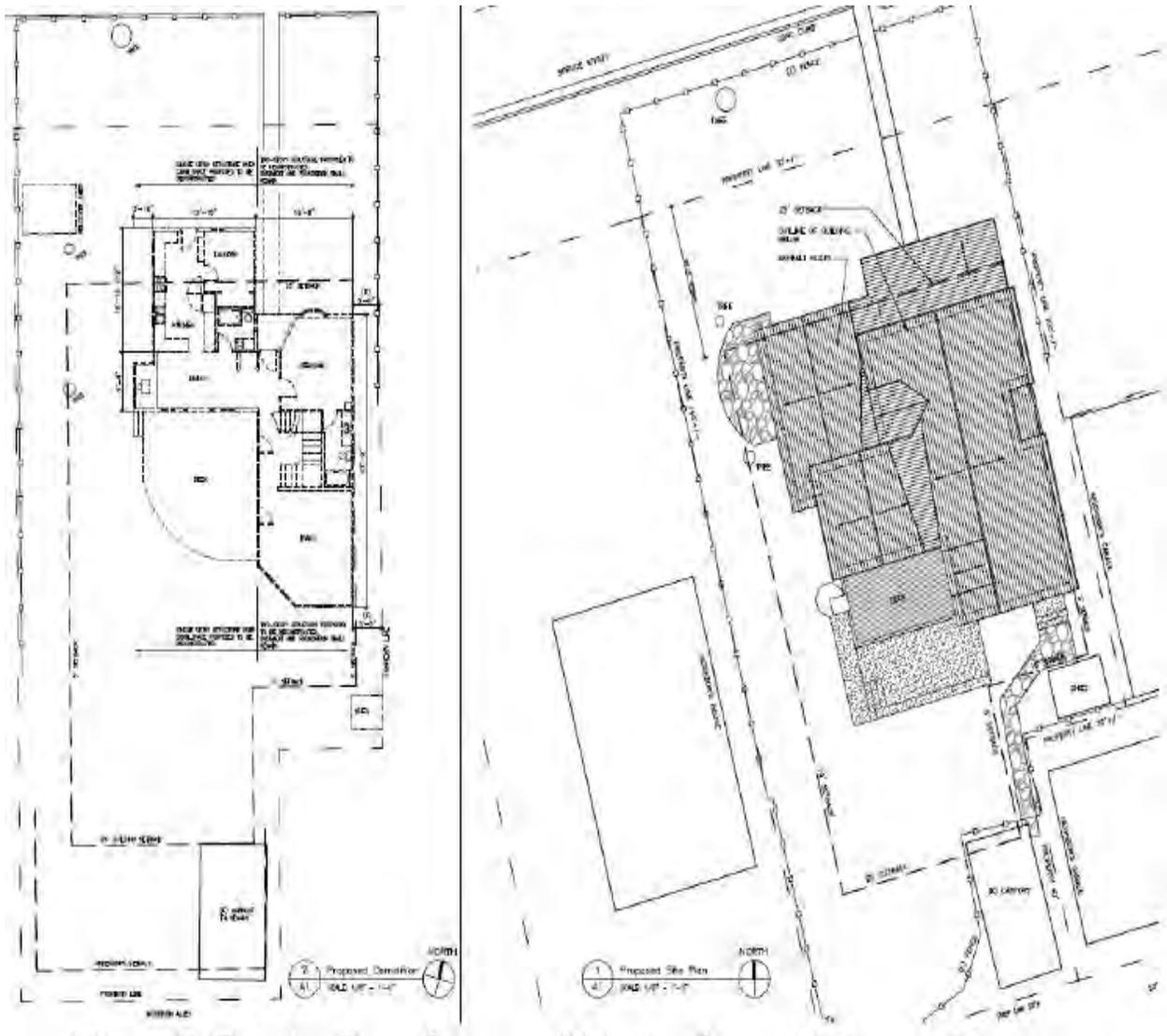


Figure 7. Existing (l) and proposed (r) site plans, 420 Spruce St.



Figure 8. Proposed north elevation (façade)



Figure 9. Rendering from the northeast



Figure 10. Rendering from the northwest



Figure 11. Proposed south (rear) elevation





## INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: David Driskell, Executive Director of Community Planning & Sustainability (CP&S)  
Susan Richstone, Deputy Director, CP&S  
Lesli Ellis, Comprehensive Planning Manager  
Marcy Cameron, Historic Preservation Planner, Planner I  
Jeff Hirt, Planner II

Date: September 17, 2013

**Subject: Information Item: North Boulder Subcommunity Plan Update**

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### EXECUTIVE SUMMARY

The purpose of this memo is to provide council with information on the North Boulder Subcommunity Plan (1995 Plan) update. The plan update will focus on the North Broadway area, specifically the “Village Center” concept and Yarmouth North areas from the North Boulder Subcommunity Plan.

The 1995 Plan sets forth a vision for a North Boulder with “complete, discernible neighborhoods”. The plan’s overall goal is to strike a balance between preserving existing assets and to establish a vision for areas that had yet to develop at that time. Since adoption, the 1995 Plan has provided guidance for the transformation of much of North Boulder into a vibrant place with a variety of land uses.

### North Broadway 1992 and 2013



*The images above of the intersection of Broadway and Yarmouth (looking south) illustrate how the North Boulder Subcommunity Plan has shaped redevelopment along North Broadway.*

Staff anticipates the first public kickoff meetings in October 2013. Over the course of 2013, staff has conducted focused interviews with community members, held a study session with Planning Board, and has begun a market study that will inform the plan update. This information has served as the foundation to begin the project. This memo includes the following:

- Project Background
- Recommended Project Scope and Process
- Community Input to Date (including Planning Board feedback from its August 15, 2013 study session), and
- A 1995 Plan Implementation Summary (including development activity)

*Please contact Jeff Hirt for comments or questions about this project (hirtj@bouldercolorado.gov, 303-441-4497)*

## **ISSUE STATEMENT**

While the North Boulder Subcommunity Plan (1995 Plan) has shaped significant residential, mixed use, and retail redevelopment, some key elements from the plan have not been fully realized. Notably, the “Village Center” concept in and around Yarmouth Avenue and Broadway has been implemented on the east side of Broadway but not the west side. The North Armory site also has short term redevelopment potential.

In 2013, City Council requested a targeted plan update focusing on the Village Center and Yarmouth North area along Broadway (referred to as the North Broadway area in this memo) to address these issues.<sup>1</sup> Both market and land use policy factors warrant consideration, as do floodplain issues.

Staff anticipates the overall outcome for this project to be a plan amendment to address a focused set of topics and action items that advance the North Boulder Subcommunity Plan’s vision for the North Broadway area, further described in this memo.

## **Proposed Study Area (approximate)**

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<sup>1</sup> See 2013 Council Reference Notebook (Work Plan Items), page 139.



## **FISCAL IMPACT**

This project is just beginning and options have not been formulated yet, so no fiscal impacts have been identified. However, future implementation items may result in fiscal impacts (e.g., recommendations for future capital improvements in the North Broadway study area).

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic:** The North Boulder Subcommunity Plan update will focus on strategies to enhance the economic vitality of the North Broadway area. A market study will ensure policy options are grounded in the economic realities of North Broadway and contribute towards a more vibrant and sustainable area.
- **Environmental:** The North Boulder Subcommunity Plan update is just getting started, so no potential environmental impacts have been identified.
- **Social:** The North Boulder Subcommunity Plan update will include meaningful, interactive, and inclusive community engagement. A key goal will be a set of focused recommendations that reflect a balance between community priorities identified during the public engagement.

## **PLANNING BOARD AND CITY COUNCIL ROLES**

The North Boulder Subcommunity Plan amendments will require both Planning Board and City Council approval. Staff anticipates periodic updates and discussion items with both groups throughout the project. Specifically, per Chapter 4 of the Boulder Valley Comprehensive Plan, “subcommunity and area plans are adopted by Planning Board and City Council and amended as needed with the same legislative process as originally adopted.”

## **ATTACHMENTS AND LINKS**

- Attachment A: 1995 Plan Background and Plan Implementation Summary
- Attachment B: North Boulder Subcommunity Development Activity (1995-2013)
- Attachment C: North Broadway Market Study Summary
- 2013 Community Feedback Summary can be found at: [bouldercolorado.gov>A to Z>North Boulder Subcommunity Plan>North Boulder Subcommunity Plan Background](http://bouldercolorado.gov/A%20to%20Z/North%20Boulder%20Subcommunity%20Plan/North%20Boulder%20Subcommunity%20Plan%20Background)
- June 6, 2013 Planning Board Memo can be found at: [bouldercolorado.gov>A to Z>North Boulder Subcommunity Plan>North Boulder Subcommunity Plan Background](http://bouldercolorado.gov/A%20to%20Z/North%20Boulder%20Subcommunity%20Plan/North%20Boulder%20Subcommunity%20Plan%20Background)

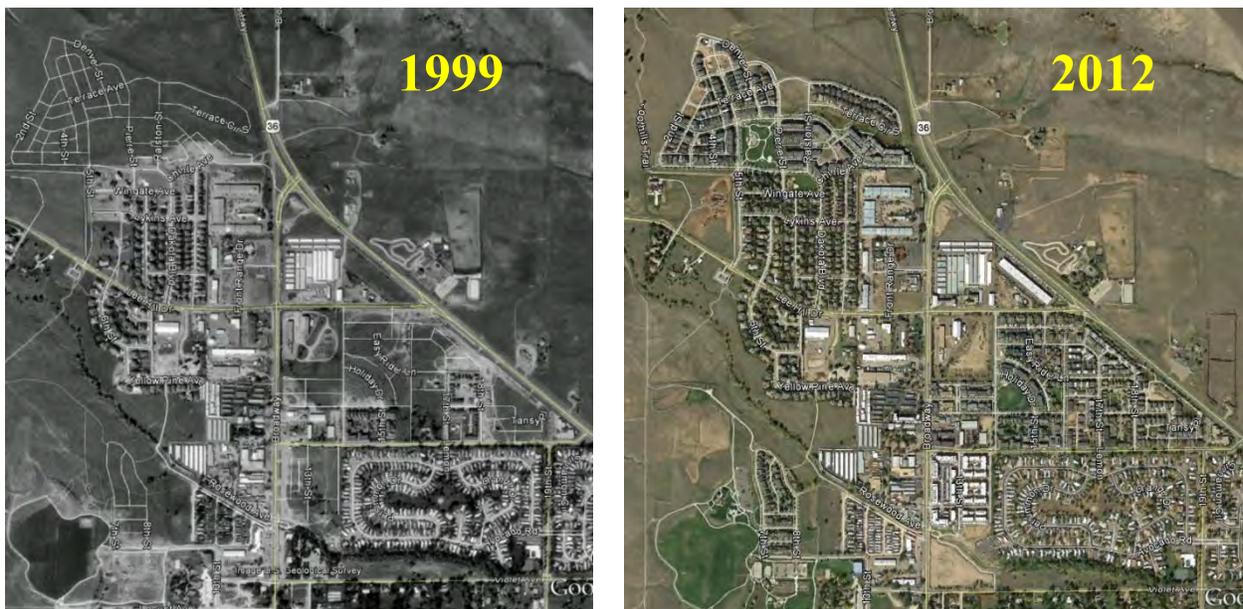
## PROJECT BACKGROUND

The North Boulder Subcommunity Plan is the first and only subcommunity plan in the city.<sup>2</sup> The Planning Board and City Council adopted the original plan in 1995 after a three year process. **Attachment A: 1995 Plan Background and Implementation Summary** provides more information on the 1995 Plan process and content.

The city has held a number of informal community member discussions and assessed the plan's implementation to date. The results from these conversations and analysis have served as a foundation to understand the issues, opportunities, and current sentiment towards the 1995 Plan's vision.<sup>3</sup> Based on this assessment, staff concludes that the plan's overall vision is still largely consistent with community values. However, some of the 1995 Plan's key recommendations need additional action to ensure implementation.

The 1995 Plan identifies the Village Center as the "symbolic heart" of the subcommunity and the future neighborhood center. The Yarmouth North area is also an area of anticipated change that may impact the 1995 Plan's vision for the Village Center area.

The scope is based on City Council's direction for a plan update with a focus on the Village Center and Yarmouth North areas (North Broadway).



***1999 AND 2012 NORTH BOULDER AERIAL IMAGES***

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<sup>2</sup> The Boulder Valley Comprehensive Plan identifies nine subcommunities. North Boulder is the only one with a plan that encompasses the entire subcommunity.

<sup>3</sup> Attachment 1: 1995 Plan Background further discusses the 1995 Plan's vision.

## RECOMMENDED PROJECT SCOPE AND PROCESS

The following project scope is based on all of the input to date, including the discussion with the Planning Board on August 15, 2013. The project is intended to be geographically focused, and mostly aimed at realizing the vision for North Broadway from the North Boulder Subcommunity Plan. This is also consistent with previous City Council discussions regarding a focused, implementation-oriented plan update.

Staff anticipates the update will take approximately one year from the public kickoff in October 2013. The process will be guided by the following goals. It will:

- Be focused and efficient.
- Engage the North Boulder community in meaningfully, open, conveniently-located, and interactive ways.
- Coordinate with stakeholders at pivotal times.
- Coordinate parallel initiatives within the city to make the process clear and easy for the public.
- Involve the Planning Board and other boards and commissions and seek their guidance.
- Create an actionable final product that reflects an understanding of issues and opportunities and the community's vision for the North Broadway area and includes action steps.

### Timing and Phases

The update will occur through three-phases. Each will include public engagement:

**Phase 1: Inventory and Kick off** (currently underway), includes compiling background information and analysis, launching the project, and preparation of a North Broadway market study, all of which will inform Phase 2.

**Phase 2: Options and Analysis**, will explore different options and result in a preliminary draft plan update.

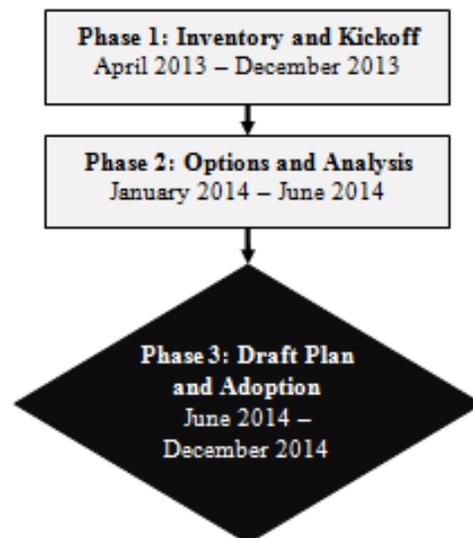
**Phase 3: Draft Plan and Adoption**, will conclude with the final plan adoption and include implementation items.

### Scope

The list below provides the preliminary scope of items that will inform the plan amendments. The update will focus on the North Broadway area.

- **North Broadway Market Study:** A market study will inform the land use mix on North Broadway and address the viability of commercial space along the corridor, with a focus on the Village Center and Yarmouth North areas. This study will address the feasibility of an “anchor” (such as a grocery store or other) land use and other barriers and opportunities. **Attachment C** provides more detail and a status update.

### Recommended Project Schedule



- **Analysis of Changes Since the 1995 Plan:** An analysis of North Broadway’s land use mix, current zoning, and future land use categories in the plan will inform the plan update. A significant amount of work has already been done including an analysis of development activity and plan implementation (See **Attachments A and B.**) Preliminary findings show that development activity has been largely consistent with the 1995 Plan’s estimates for future housing units and nonresidential square footage. The city has also implemented a significant number of the 1995 Plan’s key recommendations including new zoning districts and rezonings that have led to redevelopment. The market study will provide additional analysis.
- **Plan Amendments** – The analysis and community feedback will inform the amendments. The overall outcome will be a plan amendment to address a focused set of topics and subsequent or parallel action items that advance the North Boulder Subcommunity Plan’s (1995 Plan) vision for the North Broadway area. The exact form of these amendments is yet to be determined, but will likely be some type of addendum to the 1995 Plan or a new chapter or section.

### Community Engagement

To allow for meaningful engagement, the city will use a combination of traditional events and meetings and digital methods. The first phase will “kick off” in the fall, although numerous conversations and feedback portals have already helped to shaped this preliminary scope. Public engagement strategies include:

- **Events** – this will include city-hosted events at various key project stages and “piggybacking” on other scheduled community events. For example, staff plans to coordinate outreach activities with the Transportation Master Plan and Comprehensive Housing Strategy to foster a more streamlined feedback portal for a variety of issues identified.
- **Web-based** – The city will use digital engagement tools, including a project website and is investigating the best approaches through social media.

#### *Late Summer/Early Fall 2013 Events in North Boulder*

*Community engagement will occur throughout the project. Specific fall opportunities will include: (1) a “storefront” workshop in North Boulder, focused around the Transportation Master Plan, and (2) a project “kickoff” event in North Boulder with city representatives from housing, transportation, and the library.*

### Phase 1: Inventory and Assessment - Status

Phase 1: Inventory and Assessment is underway. To date, staff has focused on identifying issues and the project approach and is gearing up for the official project “kickoff” anticipated in late summer/early fall 2013. This will include broader public outreach opportunities noted above in the Project Scope and Process section.

The list below summarizes some key tasks completed through August 2013.

- **Conversations** – Staff held focused conversations with over 20 North Boulder community members ranging from the North Boulder Alliance, property owners, developers, and other community members in March and April of 2013. (See link to 2013 Community Feedback Summary on page 3)

- **June 6, 2013, Planning Board Memo** – The June memo summarized issues and a preliminary scope and schedule and sought feedback from the Planning Board and community members. Feedback then informed this memo. (See link to memo on page 3)
- **July 13, 2013, Holiday Neighborhood Party** – Staff hosted a booth and provided information about the plan update.
- **North Broadway Market Study** – Staff put the project out to bid, selected a consultant, and scoped a market study for the North Broadway area. (See **Attachment C.**)

## **PLANNING BOARD COMMENTS – AUGUST 15, 2013 STUDY SESSION**

The Planning Board held a study session on the North Boulder Subcommunity Plan update on August 15, 2013. The following summarizes Planning Board comments from this meeting.

### **Planning Board Comments**

- Integration with Parallel Initiatives: The city has numerous related but parallel initiatives underway including the Transportation Master Plan and Comprehensive Housing Strategy. The North Boulder Subcommunity Plan update should integrate with efforts like these as it relates to the study area. In particular, the city should keep North Boulder community members informed of those projects.
- Transportation Issues: Transportation is important to consider within the study area. The city needs to assess how new street connections (including connections already identified in the 1995 Plan that have not been built) can contribute to the goal of a vibrant and sustainable North Broadway area.
- Land Use and Zoning: The plan update should evaluate land use and zoning barriers towards realization of the 1995 Plan’s vision for North Broadway. In particular, land use restrictions on desirable uses (e.g., new types of artist’s studios) and parking regulations may present barriers.
- Study Area Boundaries: The Planning Board supports extension of the plan update study area south to Sumac. The purpose of this extension is to include some areas along Broadway that have redevelopment potential that are south of Violet Avenue (see project map on page 4).
- Community Engagement: Community Engagement should be meaningful and interactive. The city should host events in North Boulder when possible. This process should try and engage people who typically have not been engaged in projects like this.
- Arts Community: The Planning Board supports partnering with the North Boulder arts community on the plan update where possible. For example, the artist’s community could help the city assess how the plan update could foster arts related “placemaking” on North Broadway and assist with community engagement.
- Market Study – The Planning Board supports the North Broadway Market Study as a foundation to kick the project off and inform policy options.

A more detailed summary of the August 15, 2013 Planning Board meeting can be found at the link to the 2013 Community Feedback Summary on page 3 of this memo.

## **COMMUNITY INPUT TO DATE**

Over the spring and summer of 2013, staff interviewed over 20 community members to ask about issues that this targeted plan update should address. Those interviewed included residents and neighborhood representatives, developers, land owners, arts community representatives, and community leaders. The

2013 Community Feedback Summary link on page 3 of this memo provides a detailed summary of these interviews.

In addition, staff sent a memo on June 6, 2013 to the Planning Board and community members to get feedback. The information at memo link on page 3 provides a detailed summary of these comments.

This feedback has informed the scope and process summarized in this memo.

It is important to note that community members have also raised additional North Boulder Subcommunity-specific issues that may fall outside of the geographic focus for this project. (See 2013 Community Feedback Summary link on page 3 for a detailed summary.)

Some common themes have emerged from this feedback that include:

1. **1995 Plan Vision.** The 1995 Plan's overarching vision is still valid (primary concepts include strengthening established areas; redevelopment with a focus on walkable, connected, and mixed use places; a diversity of housing choices; new community and civic attractions; improved design quality; an integrated network of parks and open space; and preservation and enhancement of sensitive environmental areas);
2. **North Broadway Area Village Center.** The North Broadway area has the most opportunity and potential for change. Interviewees support some type of anchor land use (either a grocery store or other anchor land use along Broadway) in the North Broadway area and seek to realize the Village Center vision;
3. **Housing.** Since 1995, a diversity of housing choices have emerged as called for in the plan, but the community believes there may now be an overconcentration of affordable and/or special needs housing (analysis from the Comprehensive Housing Strategy currently underway will help understand how this may relate to the project scope);
4. **Connections.** The 1995 Plan's vision for connectivity has not been fully realized—there are several missing multi-modal connections and the need for improved transit service; and
5. **Arts District.** The community supports a North Boulder Arts District concept.

Staff recognizes that the items identified during interviews are critical towards advancing the 1995 Plan's vision. Several of these items (such as a library) are being addressed. In addition, parallel initiatives like the new Comprehensive Housing Strategy may be more appropriate venues to address specific issues like housing. The Proposed Scope Items section above provides more detail on the geography and types of issues that the plan update will address.

**Figure 1: Draft Plan Update Process and Timeline**

The following table summarizes the anticipated tasks and timeline to complete the plan update in a focused, efficient, and responsive manner.

**North Boulder Subcommunity Plan Update Process**

| 2013   |     |      |      |     |      |     |     |     |     | 2014   |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
|--|-----|------|------|-----|------|-----|-----|-----|-----|--|-----|-----|-----|------|--|-----|------|-----|-----|-----|--|--|--|--|
| Apr  | May | June | July | Aug | Sept | Oct | Nov | Dec | Jan | Feb  | Mar | Apr | May | June | July   | Aug | Sept | Oct | Nov | Dec |  |  |  |  |
| <b>PHASE 1: INVENTORY &amp; KICK OFF</b>   |     |      |      |     |      |     |     |     |     | <b>PHASE 2: OPTIONS &amp; ANALYSIS</b>   |     |     |     |      | <b>PHASE 3: DRAFT PLAN &amp; ADOPTION</b>  |     |      |     |     |     |  |  |  |  |
| 1995 Plan Implementation Analysis ✓  |     |      |      |     |      |     |     |     |     |  |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
| Existing Conditions Assessment ✓   |     |      |      |     |      |     |     |     |     |  |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
| North Broadway Market Study ✓  |     |      |      |     |      |     |     |     |     |  |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
| <div style="display: flex; flex-direction: column; align-items: flex-start;"> <div style="margin-bottom: 10px;">  August 15 Discussion         </div> <div style="margin-bottom: 10px;">  Information Packet Item (9/17)         </div> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <b>Community Outreach</b><br/>           October:<br/>           1) Joint TMP Workshop/Plan Update<br/><br/>           2) Public Meeting: Issues, Opportunities &amp; Prelim. Goals         </div> </div> |     |      |      |     |      |     |     |     |     |  |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
|  |     |      |      |     |      |     |     |     |     | Policy and Land Use Options ✓  |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
|  |     |      |      |     |      |     |     |     |     | Draft Plan Amendments ✓  |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
|  |     |      |      |     |      |     |     |     |     | <div style="display: flex; flex-direction: column; align-items: flex-start;"> <div style="margin-bottom: 10px;">  Market study results and check in on options         </div> <div style="margin-bottom: 10px;">  Discussion item         </div> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <b>Community Outreach</b> Feedback on Choices &amp; Policy Options         </div> </div> |     |     |     |      |  |     |      |     |     |     |  |  |  |  |
|  |     |      |      |     |      |     |     |     |     |  |     |     |     |      | Final Plan w/ Implementation Scope & Schedule ✓  |     |      |     |     |     |  |  |  |  |
|  |     |      |      |     |      |     |     |     |     |  |     |     |     |      | <div style="display: flex; flex-direction: column; align-items: flex-start;"> <div style="margin-bottom: 10px;">  Plan adoption         </div> <div style="margin-bottom: 10px;"> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <b>Community Outreach</b> Feedback on Draft Plan Amend.         </div> </div> <div style="margin-bottom: 10px;">  Plan adoption         </div> </div> |     |      |     |     |     |  |  |  |  |
| <b>LEGEND</b>  |     |      |      |     |      |     |     |     |     | Planning Board   |     |     |     |      | City Council   |     |      |     |     |     |  |  |  |  |
|  |     |      |      |     |      |     |     |     |     | <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <b>Community Outreach</b> </div> Community Outreach (may include more than one meeting per stage)   |     |     |     |      | Deliverables   |     |      |     |     |     |  |  |  |  |

08/30/13

## NEXT STEPS

Next steps include the following:

|  |                             |
|--|-----------------------------|
| Inventory and Assessment   | Ongoing                     |
| “Storefront” workshop - North Boulder-Focused Transportation Master Plan | Late Summer 2013/TBD        |
| “Kickoff” event (with city staff from housing, transportation, library)  | Late Summer/Early Fall 2013 |
| North Broadway Market Study  | Completed October 2013      |

## ATTACHMENTS

- **Attachment A:** 1995 Plan Background and Plan Implementation Summary
- **Attachment B:** North Boulder Subcommunity Development Activity (1995-2013)
- **Attachment C:** North Broadway Market Study Summary

## **1995 Plan Background and Plan Implementation Summary**

The 1995 Plan overarching goals and objectives reflect a desire to strike a balance between preserving existing assets and to establish a vision for areas that had yet to develop at that time. A key theme throughout the 1995 Plan is also the goal of “complete, discernible neighborhoods.” It also aims to “preserve positive aspects of the subcommunity and ensure that future changes are beneficial both the subcommunity citizens and the city as a whole.”

The North Boulder Subcommunity Plan is the only such plan in the city. The original 3-year process took place from 1992-1995, involving stakeholders and steering committee. For the most part, the process followed a common set of steps from inventory and analysis, to recommendations, to public review and comment, to adoption before the Planning Board and City Council (August 1995). In 1993, the process was briefly put on hold to address citywide goals through the Integrated Planning Process (IPP).<sup>4</sup>

In 1996 and 1997, the plan was amended to address recommended land use patterns in specific locations. The table on the following page provides a more detailed, chapter-by-chapter summary of the 1995 Plan.

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<sup>4</sup> The Integrated Planning Process (IPP) in 1993 was a citywide effort that resulted in several broad goals and objectives (e.g., strengthening and supporting existing neighborhoods), and more specific goals like population targets. City Council requested the North Boulder Subcommunity Plan be suspended pending the outcomes of that project.

**Figure 2: North Boulder Subcommunity Plan Chapters and Key Concepts**

| Plan Chapter   | Summary and Key Concepts  |
|--|---|
| <p><b>Chapters 1-4</b><br/>Executive Summary, Introduction, History, Existing Conditions</p>     | <p>Chapters 1-4 establish the overall framework and process for the 1995 Plan. These chapters also establish overarching goals and objectives with a focus on smart growth principles like walkable, mixed use neighborhoods patterned after the character of historic neighborhoods.</p>   |
| <p><b>Chapter 5</b><br/>Neighborhoods</p>  | <p>Chapter 5 establishes an overarching set of goals and objectives for North Boulder neighborhoods and establishes neighborhood-specific development guidelines. This chapter also stresses the protection of the character of existing neighborhoods with guidelines for new neighborhoods. New residential neighborhoods should provide a diversity of housing types with a walkable and connected transportation network.</p>   |
| <p><b>Chapter 6</b><br/>Employment and Retail Centers</p>  | <p>Chapter 6 identifies current and expected employment and retail centers within each neighborhood. It includes additional goals and objectives that reflect the desire for “complete, discernible neighborhoods.” The focus areas are the Village Center around Yarmouth Avenue and Broadway and the Service Industrial Areas along Broadway and Lee Hill Road. This chapter identifies the Village Center area as the “symbolic heart” of the subcommunity, with a full complement of neighborhood-scale services. This chapter also recognizes the importance of existing industrial areas that serve a community need and provide affordable nonresidential space.</p> |
| <p><b>Chapter 7</b><br/>Community Facilities</p>   | <p>Chapter 7 sets forth recommendations for new community facilities like libraries, schools, police and fire stations, and social services, while preserving existing community facilities. This chapter also establishes related goals and objectives to better serve subcommunity residents, including a branch library, transit centers at key destinations, and several new parks.</p>   |
| <p><b>Chapter 8</b><br/>Transportation</p>   | <p>Chapter 8 sets forth recommendations for a transportation network with an emphasis on creating walkable and well connected streets and blocks. This chapter also includes an “Auto/Transit Improvements Right-of-Way Plan” that guides decision making for new infrastructure.</p>   |
| <p><b>Chapters 9-10</b><br/>Open Space and Natural Resource Protection, Parks and Open Lands</p> | <p>Chapters 9-10 set forth related goals and objectives for view protection, open space, topography, creeks, and irrigation ditches.</p>  |
| <p><b>Chapter 11</b><br/>Future Growth</p>   | <p>Chapter 11 contains a summary of the projections and build out analysis that was conducted as part of the Integrated Planning Project (IPP) is included in this chapter. The results of this analysis informed North Boulder subcommunity-wide and neighborhood-specific target density ranges and square footages. This chapter also includes the Land Use Map that summarizes the recommended future land uses.</p>  |

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## North Boulder Subcommunity Plan Implementation Summary

The North Boulder Subcommunity Plan contains numerous recommendations, many of which have been implemented. These recommendations range from new development and design standards, capital investments in civic facilities, and new transportation connections. Some of the key items from the 1995 Plan that the city has implemented include:

- **Five new zoning districts**, including a Business Main Street (BMS) district that was used for a rezoning for the Village Center area;
- **Numerous new parks** in accordance with the 1995 Plan, including Foothills Community Park and Holiday Neighborhood Park;
- **Several annexations** of county enclaves consistent with the 1995 Plan; and
- **New transportation connections** made in accordance with the 1995 Plan as redevelopment has occurred.

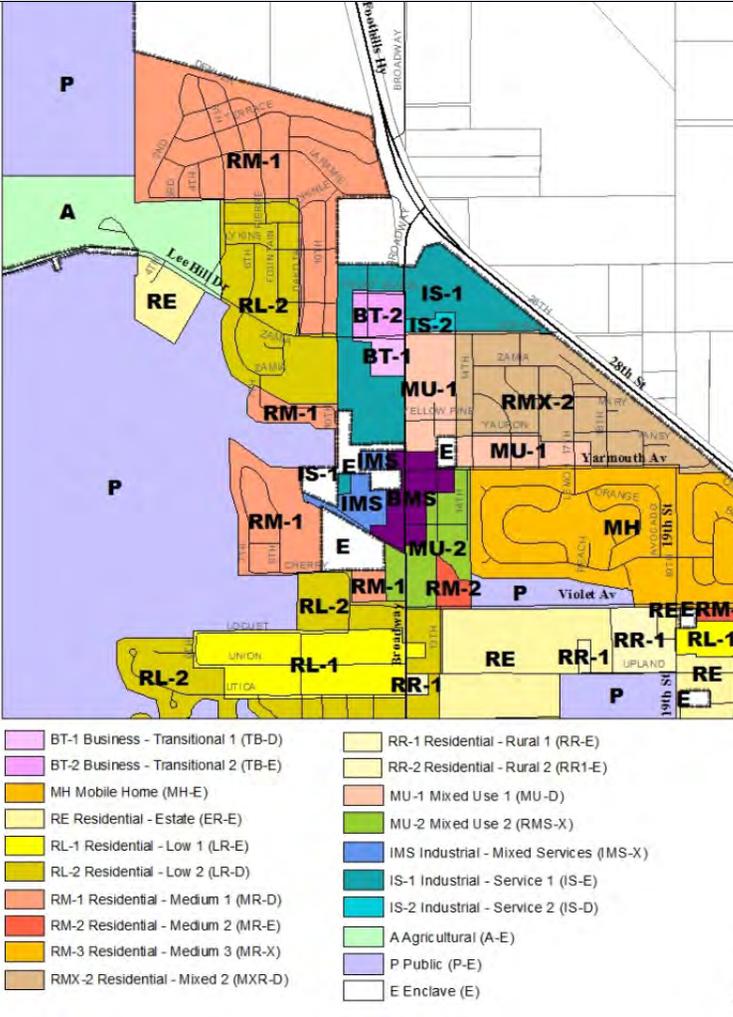
*\*\*NOTE: This is an updated version of the “1995 North Boulder Subcommunity Plan Implementation Status” section of the June 6, 2013 Planning Board memo.*

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**FIGURE 3: 1995 PLAN IMPLEMENTATION SUMMARY**

| Category                   | Implementation Item and Description   | Implementation Status  |                           |
|----------------------------|---|--|---------------------------|
| <b>Zoning and Land Use</b> | <p><b>New Zone Districts and Development Standards</b><br/>                     The 1995 Plan contains numerous recommendations for new North Boulder zone districts and development standards.</p> | <p>Five new zoning districts were created and properties were subsequently rezoned to:</p> <ul style="list-style-type: none"> <li>• A business main street zone, patterned after historic 'Main Street' business districts;</li> <li>• Three mixed use zones that provide a transition between the higher intensity business 'Main Street' and surrounding residential or industrial areas; and</li> <li>• A mixed density residential zone district.</li> </ul> | <b>CURRENT ZONING MAP</b> |

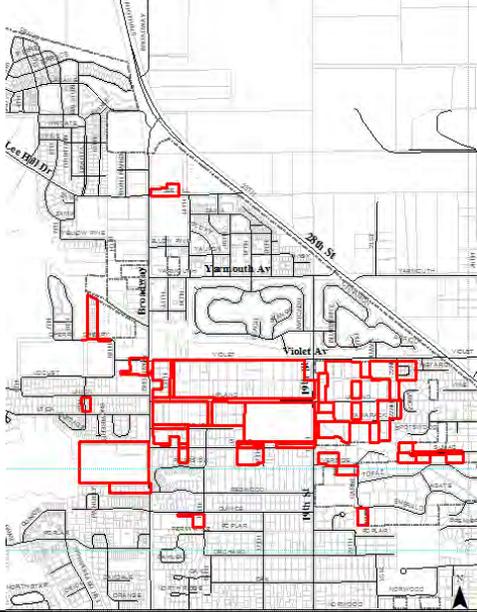
**FIGURE 3: 1995 PLAN IMPLEMENTATION SUMMARY**

| Category  | Implementation Item and Description   | Implementation Status   |
|---|---|---|
| <p><b>North Broadway Area (Village Center and Yarmouth North)</b></p> | <p><b>Village Center</b><br/>                     The 1995 Plan calls for a Village Center concept on both sides of Broadway at around Yarmouth Avenue.</p> | <ul style="list-style-type: none"> <li>• The city has rezoned properties in the Village Center and Yarmouth North areas to BMS, MU-1, and RMX-2 (see current zoning map to the right).</li> <li>• The east side of the Village Center has seen significant redevelopment, but the west side has not.</li> <li>• These redevelopment areas have been largely consistent with the plan’s goals for vertical mixed use and pedestrian-oriented design.</li> </ul>  |

**FIGURE 3: 1995 PLAN IMPLEMENTATION SUMMARY**

| Category   | Implementation Item and Description  | Implementation Status  |
|--|--|--|
| <b>Community Facilities, Parks, and Open Space</b> | <b>Parkland</b><br>The 1995 Plan recommends several new parks throughout the subcommunity.             | Since 1995, the following parks have been built or are in the process of being built: <ul style="list-style-type: none"> <li>• Foothills Community Park</li> <li>• Neighborhood Park on the Mann property</li> <li>• Holiday Neighborhood Park</li> <li>• The Elks Neighborhood Park is in the 2013-2018 Capital Improvements Plan</li> <li>• Dakota Ridge Neighborhood Parks</li> </ul> |
|  | <b>North Boulder Library</b><br>The 1995 Plan recommends a new Boulder Library branch in North Boulder | The Boulder Public Library Commission recently passed a resolution endorsing the concept of a North Boulder Library Station (570 square feet) operating in the Westview Apartment storefront in the vicinity of the Broadway and Yarmouth intersection. The library staff is currently evaluating costs and benefits of the proposed Library Station.                                    |

**FIGURE 3: 1995 PLAN IMPLEMENTATION SUMMARY**

| Category                              | Implementation Item and Description   | Implementation Status  |
|---------------------------------------|---|--|
| <b>Annexation</b>                     | <p>The 1995 Plan supports annexation of county enclaves (Area II properties) in the North Boulder Subcommunity.</p>   | <p>Since 1995, several county enclaves have annexed into the city in the North Boulder Subcommunity. The map below highlights these areas:</p> <p style="text-align: center;"><b>ANNEXATIONS SINCE 1995 (OUTLINED IN RED)</b></p>  |
| <b>Transportation and Streetscape</b> | <p><b>Development Compliance with Transportation Plan</b><br/>                     The 1995 Plan recommended a new requirement for compliance with the Transportation Plan during development or redevelopment.</p> | <p>The city adopted an ordinance that requires dedication or reservation of Rights-of-Way in conformance with the North Boulder Subcommunity Transportation Plan.</p>  |

## North Boulder Subcommunity Development Activity (1995-2013)

The 1995 Plan sets forth specific estimates for future growth in the North Boulder Subcommunity. Staff analysis of building permit records from 1995-2013 reveal the North Boulder Subcommunity is:

- **Approaching the 1995 Plan’s Estimate for New Residential Units** - The 1995 Plan approximated between 1,629-1,784 new housing units would be built within “about 13-17 years” in the subcommunity based on a number of factors.<sup>6</sup> According to city building permit records, approximately 1,700 new housing units have been built since the 1995 Plan. The city’s growth projections for the North Boulder Subcommunity estimate an additional approximately 550 housing units by 2035.<sup>7</sup>
- **Adding More Retail than the 1995 Plan Estimated** – The 1995 Plan estimated 85,000 square feet of new retail subcommunity-wide. Since 1995, about 178,000 square feet of new retail has been built.
- **Adding Office Space at Faster Rate than any other Land Use** – From 1995 to 2013, the amount of new office space increased by 291% from approximately 100,000 square feet to approximately 391,000 square feet, closely matching the 1995 Plan’s estimated new office space of approximately 299,000 square feet.

The tables that follow provide a more detailed summary of residential and nonresidential development activity since the 1995 Plan, along with existing land use and zoning.<sup>8</sup>

**FIGURE 4: LEE HILL ROAD CONCEPT**

1995 Plan Concept for Lee Hill Road Area

2013 Development Pattern



*The above images illustrate how the 1995 Plan helped shape development patterns.*

<sup>6</sup> These factors included Boulder Valley Comprehensive Plan density assumptions by zone district and growth rates consistent with the North Boulder projections from the Integrated Planning Project.

<sup>7</sup> The city’s growth projections use a variety of factors from current zoning to future land use, to more qualitative analysis of specific sites with growth potential.

<sup>8</sup> SOURCES: North Boulder Subcommunity Plan, city building permit records. The numbers reflect building permits where Certificates of Occupancy (C.O.) were issued between 1995 and 2013. There are several developments under review that have not received C.O.’s to date.

**Table 1: NORTH BOULDER SUBCOMMUNITY-WIDE RESIDENTIAL DEVELOPMENT ACTIVITY (1995-2013)**

|  | 1995 Total   | Percent of 1995 Total | 1995 Plan Estimate for Future Units | New Since 1995 | Total Units 2013 | Percent of Total Units 2013 | Increase 1995-2013 |
|--|--------------|-----------------------|-------------------------------------|----------------|------------------|-----------------------------|--------------------|
| <b>Attached Units</b>                                      | 1,084        | 27%                   | n/a                                 | 1,096          | 2,180            | 38%                         | 101%               |
| <b>Detached Units (includes mobile homes)</b>              | 2,930        | 73%                   | n/a                                 | 635            | 3,566            | 62%                         | 22%                |
| <b>Total North Boulder Subcommunity Wide Housing Units</b> | <b>4,014</b> | <b>100%</b>           | <b>1,629-1,784 New Units</b>        | <b>1,731</b>   | <b>5,745</b>     | <b>100%</b>                 | <b>43%</b>         |

**Table 2: NORTH BOULDER SUBCOMMUNITY NONRESIDENTIAL DEVELOPMENT ACTIVITY**

|                   | 1995 Count (sq. ft) | Percent of 1995 Total | 1995 Plan Estimate for Future Square Footage | New Square Feet Since 1995 | Total Square Footage 2013 | Percent of Total 2013 | Increase 1995-2013 |
|-------------------|---------------------|-----------------------|--|----------------------------|---------------------------|-----------------------|--------------------|
| <b>Retail</b>     | 200,000             | 27%                   | 85,000                                       | 178,177                    | 378,177                   | 30%                   | 89%                |
| <b>Office</b>     | 100,000             | 13%                   | 299,000                                      | 291,057                    | 391,057                   | 31%                   | 291%               |
| <b>Industrial</b> | 450,000             | 60%                   | n/a  | 45,969                     | 495,969                   | 39%                   | 10%                |
| <b>Total</b>      | <b>750,000</b>      | <b>100%</b>           |  | <b>515,203</b>             | <b>1,265,203</b>          | <b>100%</b>           | <b>69%</b>         |

## Existing Zoning and Land Use in the North Boulder Subcommunity

The following tables illustrate the current zoning and land use conditions in the North Boulder Subcommunity. Generally, the data shows that:

- Most of the subcommunity is zoned low or medium density residential;
- A significant portion of the subcommunity is zoned and used as public (open space, parks, etc);
- A higher percentage of land is *classified* as a commercial land use than the amount of land that is *zoned* for commercial, and
- A lower percentage of land is *classified* as an industrial land use than is actually *zoned* industrial.

**Table 3: EXISTING LAND USE BY LAND AREA, NORTH BOULDER SUBCOMMUNITY<sup>9</sup>**

| Name                 | Acres   | Percent |
|----------------------|---------|---------|
| Agricultural         | 1.0     | 0.07%   |
| Commercial           | 103.7   | 6.9%    |
| Industrial           | 3.7     | 0.2%    |
| Mixed Use            | 11.4    | 0.8%    |
| Residential          | 1,088.5 | 72.4%   |
| Public/Institutional | 204.7   | 13.6%   |
| Vacant               | 90.7    | 6%      |

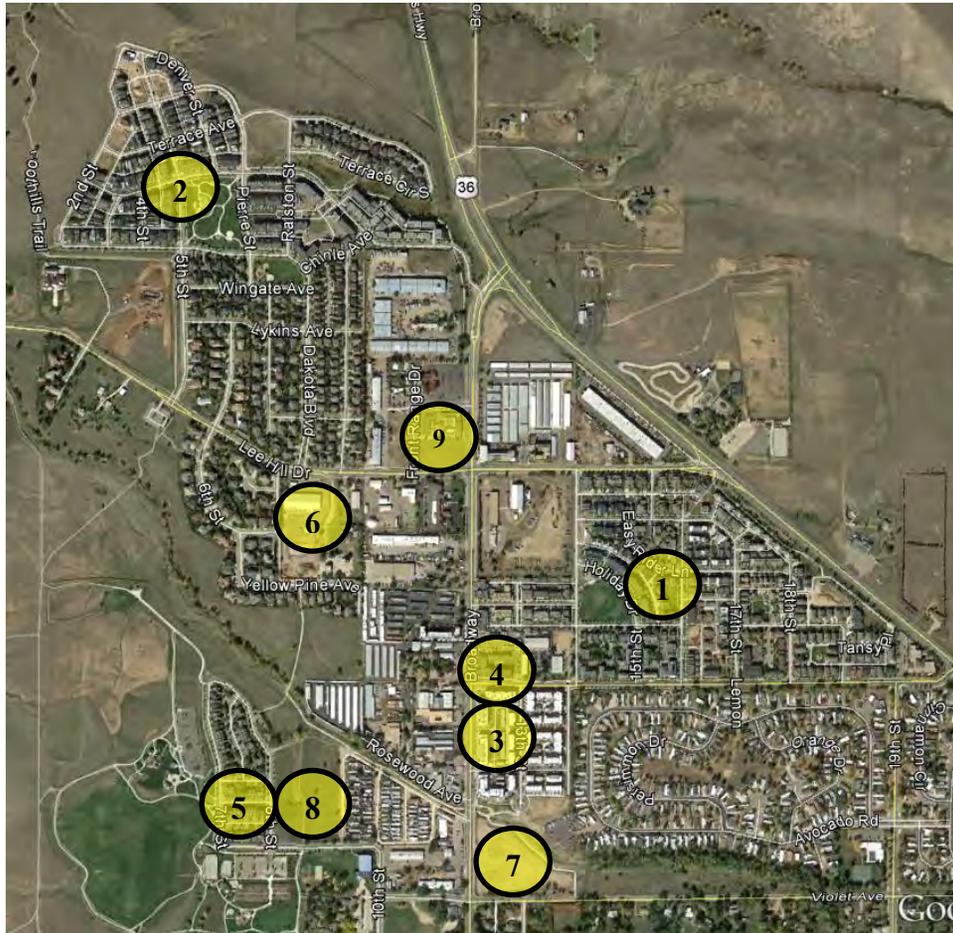
**Table 4: EXISTING ZONING BY LAND AREA, NORTH BOULDER SUBCOMMUNITY**

| Zone District Category | Acres   | Percent |
|------------------------|---------|---------|
| Agricultural           | 17.8    | 1.0%    |
| Commercial             | 23.9    | 1.2%    |
| Industrial             | 120.1   | 6.0%    |
| Mixed Use              | 34.8    | 1.7%    |
| Residential            | 1,391.1 | 69.9%   |
| Public/Institutional   | 222.5   | 11.2%   |

<sup>9</sup> SOURCE: Boulder County Assessors Office (based on how the county classifies land uses, which may not align with city zoning classifications).

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**FIGURE 8: MAJOR DEVELOPMENTS IN NORTH BROADWAY AREA (1995-2013)**



|  | Construction Date | Approx. Site Size | Characteristics  |
|--|-------------------|-------------------|--|
| <b>1. Holiday</b><br>         | 2003-2005         | 27 acres          | 324 residential units (187 market rate units and 137 permanently affordable units), 55,164 square feet of non-residential space and a 1.7 acre park.   |
| <b>2. Dakota Ridge</b><br>    | 2001 – present    | 42 acres          | 420 residential units composed of 195 apartments, 65 townhouses and 130 single-family homes, and 30 (possible) commercial area conversion units. In addition, 23,025 square feet of office/retail space is located in the Neighborhood Center. |
| <b>3. Uptown Broadway</b><br> | 2003, 2008        | 8.5 acres         | 223 residential units and 40,337 square feet of mixed use commercial space   |
| <b>4. Westview</b><br>        | 2011-2012         | 1 acre            | 34 permanently affordable residential units that meet the affordable housing requirements for the development for the Residences at 29 <sup>th</sup>   |
| <b>5. Foothills</b><br>      | 2001-2002         | 5 acres           | 75 permanently affordable units in duplexes, fourplexes, townhomes, apartments, carriage units, a group home and a community center  |
| <b>Pipeline/Under Review</b>   |                   |                   |  |
| <b>6. 820 Lee Hill</b>   | 2014 (expected)   | 6 acres           | 32 single family detached homes proposed   |
| <b>7. Violet Crossing</b>  | 2013 (expected)   | 4.7 acres         | 10 two- and three-story buildings that house 78 market rate apartments and 20 affordable apartments  |
| <b>8. 1000 Rosewood</b>  | 2013 (expected)   | 4.5 acres         | 18 dwelling units (16 single family units, 2 duplex units)   |
| <b>9. 1175 Lee Hill</b>  | 2014 (expected)   | 1.2 acres         | 2 story multifamily transitional housing with 31 units   |
| <b>Total number of housing units in pipeline/under review: 179 (including 31 transitional housing units)</b>     |                   |                   |  |

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## North Broadway Market Study Summary

The plan update should produce outcomes that are based on the current economic and market realities of the North Boulder Subcommunity. The Market Study will help inform the plan. ArLand Land Use Economics will prepare the Market Study that will achieve several purposes, including:

- **A Market Demand Analysis** – The market study will assess the current market demand in North Boulder for different land uses, with an emphasis on the role of an “anchor” land use such as a grocery store (and other potential anchor land uses). This will include focused interviews with developers, commercial brokers, and other area development interests.
- **Barriers Analysis** – The market study will analyze the related barriers towards redevelopment and plan implementation based on the market information.
- **1995 Plan Village Center and Yarmouth North Implementation** – The market study will analyze of the feasibility of fully developing the 1995 Plan’s Village Center concept and evaluate redevelopment potential in the Yarmouth North area.
- **Action Items** – The market study will result in a set of action items based on the market analysis and identified barriers towards realizing the 1995 Plan’s vision.

The schedule below briefly summarizes the anticipated market study schedule and key tasks.

**Table 5: Anticipated North Broadway Market Study Schedule**

| Task   | Outcomes   | Timeline                             |
|--|--|--------------------------------------|
| <b>Interviews/Roundtable Discussions/Public Meetings</b> | <ul style="list-style-type: none"> <li>• Interviews with area development interests</li> <li>• Public meeting presentation(s)</li> </ul>   | Ongoing                              |
| <b>Market Analysis</b>                                   | Establish Market Area and Analyze: <ul style="list-style-type: none"> <li>• Population and Demographics</li> <li>• Anchor Land Use Potentials</li> <li>• Office/Employment Potentials</li> <li>• Other Commercial Services and Mixed Use Potentials</li> </ul> |                                      |
| <b>Barriers to Redevelopment/Plan Implementation</b>     | Identify key market barriers and related actions towards realizing the 1995 Plan’s Village Center and Yarmouth North area vision   | Final Report – Expected October 2013 |
| <b>Redevelopment Strategy</b>                            | Recommendations for changes to Village Center and Yarmouth North concepts  |                                      |
| <b>Report and Presentations</b>                          | Final report summarizing the market analysis, findings from interviews, barriers, and recommendations to inform plan update  |                                      |





## INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, City Manager  
Paul J. Fetherston, Deputy City Manager  
Maureen Rait, Executive Director of Public Works  
Tracy Winfree, Director of Public Works for Transportation  
Mark Beckner, Police Chief  
Greg Testa, Deputy Police Chief  
Carey Weinheimer, Police Commander  
Felix Gallo, Transportation and Utilities Maintenance Coordinator  
Jennifer Riley, Code Enforcement Supervisor  
Cris Jones, Transportation Planner

Date: September 16, 2013

**Subject: Information Item: Snow and Ice Control Program and Sidewalk Snow Removal Enforcement**

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### EXECUTIVE SUMMARY

This year, the city's official "snow season," in terms of operational response preparation, begins Sept. 16, 2013 and lasts until May 30, 2014. With the onset of winter, questions arise from the public regarding the city's snow removal procedures. This memorandum provides City Council with information on the city's snow and ice control program, new residential road plowing pilot program, sidewalk snow removal enforcement, and the snow information brochure.

The goals of the city's snow and ice control program, as related to the Transportation Master Plan, are to:

1. Keep primary and secondary streets, on-street bike lanes and the off-street path system open.
2. Respond with enhanced service levels in the event that a significant snowfall impedes the mobility of the public in and around residential roads, sidewalks and bus shelters.

3. Use materials and equipment efficiently and effectively to help reduce the dangers of traveling in inclement weather.
4. Enforce the sidewalk snow removal regulations (section 8-2-13, B.R.C. 1981) that require all owners or residents of private property to have ice and snow hazards cleared from public sidewalks or walkways abutting their property no later than 24 hours after a snowfall or snowdrift.
5. Communicate any delayed opening or early release decisions in advance of city functions before impending severe weather impacts the ability of residents or employees to safely arrive at their destination within the city.

Snow and ice control program information is made available each year in news releases, a utility bill insert, the city's snow brochure and on [www.bouldercolorado.gov/public-works](http://www.bouldercolorado.gov/public-works) under "Winter Tips and Snow Removal." The city's snow brochure, which is provided to residents who request additional information, includes information on the snow and ice control program and provides answers to commonly asked questions about snow operations. A copy of this year's brochure is included in the 2013-2014 City of Boulder Snow and Ice Control Information packets that have been distributed to council members. Information from the packet is posted on the website mentioned above.

A new initiative for the 2013-2014 snow season is the snow and ice control analysis regarding the efficiency and effectiveness of current maintenance operations, as well as identifying and implementing short- and long-term improvements. The analysis was completed and presented to City Council at the April 9, 2013 Study Session. Council supported moving forward with a residential road plowing pilot program for the upcoming 2013-2014 snow season. Visit [documents.bouldercolorado.gov/WebLink8/0/fol/121321/Row1.aspx](http://documents.bouldercolorado.gov/WebLink8/0/fol/121321/Row1.aspx) to view the April 9, 2013 Study Session materials.

### **FISCAL IMPACT**

Each year, the Transportation Division's budget accounts for snow and ice control operations for normal weather patterns and events. The adopted 2013 budget for snow and ice control is \$911,347. Snow control on city streets is affected by the amount of snow, length of the storm, time of day, temperature and traffic conditions. The City of Boulder does not normally plow residential streets for two primary reasons: (a) most snow melts within a day or two in Boulder's climate and (b) this additional level of service would significantly increase costs and impact the city's ability to perform other high-priority services. However, during significant events, with snowfall exceeding 12 inches, the city will strategically service neighborhood streets to address known problem areas. Also, during regular snow events, the city deploys a "floaters" vehicle to respond to requests from public safety personnel and the community.

New for the 2013-2014 snow season is a targeted, residential road plowing pilot program to plow and treat identified residential roads that meet specific criteria for steep grades and solar shading issues. Initial funding for this pilot program will come from expected salary savings from a vacant Transportation Maintenance position. The initial costs are estimated to be \$77,000 in the first year and \$57,000 in the following years.

If this pilot program is found to be effective and efficient, the operational information gathered will be used to assist in the development of the Transportation Division's 2015 budget.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic:** The mobility of workers, residents and consumers is essential to the overall economic health of Boulder. The inability to maneuver impassable roads, unshoveled sidewalks and/or bus stops affects the city's overall economic health.
- **Environmental:** Snow and ice control operations and sidewalk snow removal efforts support multiple travel choices that directly impact the environment. The city's street sweeping program and selection of environmentally sensitive products also help achieve air quality and water quality goals for the city and region.
- **Social:** Mobility is key to independence, particularly for people with disabilities, seniors and schoolchildren who are adversely impacted when roads are impassable and sidewalks, bus-stops and multi-use paths are not adequately cleared of snow. The involvement of these populations in community activities, including employment, is essential.

## **BACKGROUND**

The snow and ice control program goals are achieved by having full crews available, equipment maintained and ready when needed, and providing a safe environment for employees. Each year, crews are provided with education and training on the use of snow removal materials and equipment, and plow operators are recertified on the equipment used to perform snow control operations.

In September of each year, two snow crew rosters are developed. During the snow season, mid-September through the end of April, each crew rotates on a weekly basis as the "first call" crew. A Transportation Maintenance employee is on snow standby 24 hours a day, seven days a week to track weather conditions and respond to notification of snow events. Working with the Boulder Police Department patrol officers and dispatchers, the snow standby person is notified when snow conditions occur after normal work hours or on holidays and weekends. Crews are expected to respond as quickly as possible and work rotating 12-hour shifts throughout a storm event.

A standard operating procedure guides communication and assists the City Manager's Office with decision-making regarding city facilities and programming. When an incoming severe weather event is forecasted that may impact the transportation system, Transportation and Utilities maintenance staff assess local roads, investigate the response of other agencies, and inform the City Manager's Office with a recommendation as to whether a delayed opening or early release of city functions or public meeting postponement is warranted. The decision to alter city functions or facility hours is made by the City Manager's Office.

An enhanced snow control response is triggered when snow accumulation is in excess of 12 inches (defined as a “significant” snowfall event). Available Transportation Maintenance staff is directed to inspect both residential roads and bus shelters for the public’s ability to drive vehicles out of residential areas and safely load and unload buses.

During snowstorms, 16 plow trucks are operating on Boulder streets. Fifteen trucks drive predetermined routes, while one “floater” truck responds to problem areas and complaint calls. Six trucks distribute a liquid deicer and four spreader trucks distribute traction materials. Seven trucks have dual systems to distribute either liquid deicer or traction materials. The floater truck is either a liquid deicer or a spreader truck, depending on the type of storm and type of material needed. Two plow trucks and operators cover the multi-use path system between 4 a.m. and 4 p.m. When path use is decreased, one plow truck and operator covers the path system between 4 p.m. and 4 a.m.

The Transportation Maintenance workgroup utilizes a “real-time” Automatic Vehicle Location (AVL) system to track the actual location, speed and plowing operation of the main route snow fleet. The Global Positioning System (GPS) allows supervisors to track and verify snow and ice control operations for dispatching efficiency adjustments, and for liability purposes.

In order to minimize environmental impacts of snow and ice control, the city uses alternative deicing and traction materials. No sand is used unless alternative deicing materials are not available from the supplier and public safety is an issue. The liquid deicing agent is a magnesium chloride solution. Magnesium chloride, a plant nutrient and soil stabilizer, is less corrosive than other deicing products. In 2008, the city switched to a different formulation of magnesium chloride called “Meltdown Apex.” Meltdown Apex, which costs slightly more than traditional magnesium chloride, is more readily available from the supplier and continues to be effective at lower temperatures. Staff continues to analyze new and less-corrosive liquid deicers.

The traction material used is a crystallized deicer, made up of complex chlorides, that dissolves over time and does not need to be swept. However, in keeping with the city’s commitment to air quality goals monitored by the Regional Air Quality Council (RAQC), the entire transportation system is swept within four days of a major storm event. City water quality staff have reviewed and analyzed all materials used and found no significant impact to Boulder’s water sources and distribution system.

Streets are sometimes pretreated with liquid deicer before a storm (depending on weather conditions) to help reduce the buildup of snow and ice. The material or combination of materials used during a storm event depends on existing and predicted weather conditions (i.e., the amount of precipitation and humidity) and pavement temperatures.

Standard operating procedures also provide for the proactive application of deicing materials on streets that have certain factors, such as steep grades and significant shading, which contribute to more challenging conditions and typically generate a high number of resident requests for attention.

## **Program Analysis and Pilot Program**

During the 2012-2013 snow season, a snow and ice control analysis was initiated and completed to review all aspects of the maintenance operation, compare it to other local municipalities, and review alternative service models for cost effectiveness, such as contracting of services. Visit [documents.bouldercolorado.gov/WebLink8/0/fo/121321/Row1.aspx](http://documents.bouldercolorado.gov/WebLink8/0/fo/121321/Row1.aspx) to view the April 9, 2013 Study Session materials,

The completed analysis indicated that the city is more similar than not to other local municipalities in terms of:

- the level of service regarding crew staffing and major road coverage;
- not plowing residential roads (unless a major storm has occurred);
- the use of identified chemical deicing products; and
- the use of contractual services during a major storm.

For the upcoming 2013-2014 snow season, a targeted, residential road plowing pilot program has been developed and approved by City Council. Utilizing data collected from resident service requests, this “spot plowing and treating” approach will occur at locations with atypical elevation gain/loss and/or solar shading. As part of the pilot, staff will track and document all operational responses to storm events, as well as capture resident feedback, cost information and other data.

There are trade-offs to be considered and evaluated if the pilot program is pursued on an ongoing basis. For example, some residents may prefer not to have snow plowed up against cars, driveways and sidewalks. Others may not desire to have materials applied to their neighborhood streets. Funding for a potential ongoing program would be considered as a part of the 2015 budget process.

### **Operational Efficiencies**

The Public Works, Parks and Recreation (P&R), Parking Services and Open Space and Mountain Parks departments continue to investigate operational efficiencies and potential areas of overlap, including snow removal work. To date, some changes in operational responsibilities have been made. For example, because some of the bikeways are in the city’s parks, P&R maintenance staff is able to efficiently maintain the mowing, pruning and snow removal along adjacent bikeways in the parks. The Bear Creek bikeway, heading north from Martin Street underpass, formerly maintained by Public Works, is now maintained by P&R (landscaping and snow removal). Public Works, in turn, has assumed responsibility from P&R for maintaining the full length of Elmer’s Two Mile Creek path from the Goose Creek bikeway to the north limits at Juniper Avenue, in coordination with other related maintenance work in the area.

Staffing efficiencies are also an important aspect of budget management. An operational efficiency was implemented between Transportation and Utilities maintenance crews by requiring some Utilities positions to participate in snow response. This change allows the city to “staff up” for larger events and to have smaller, more efficient crews during off-event periods.

Transit shelter maintenance continues to be a challenge for the city and the Regional Transportation District (RTD). With nearly 1,000 transit stops located within the city, the city and RTD are only able to provide regular maintenance at high-use transit stops to the extent that

human and financial resources permit. Specifically, snow removal is performed at the remaining RTD transit stops on a limited basis by city staff or city contractors, typically by request only. RTD's Adopt-a-Stop program utilizes community volunteers to remove trash and snow from designated stops.

### **SIDEWALK SNOW REMOVAL ENFORCEMENT**

Section 8-2-3, B.R.C., 1981 requires that sidewalks adjacent to both residential and commercial properties be cleared of snow and ice no later than 24 hours after a snowfall or snowdrift. Property owners, tenants and property managers can each be held responsible for failure to remove snow. Violation of the ordinance can result in a municipal court summons and fine (\$100 for first offense) or abatement, in which the city hires a contractor to clear the sidewalk at the property owner's expense. Enforcement of the sidewalk snow removal ordinance is handled by the Code Enforcement Unit in the Boulder Police Department.

The National Weather Service website, [www.nws.noaa.gov/data/obhistory/KBDU.html](http://www.nws.noaa.gov/data/obhistory/KBDU.html), is the official resource monitored for local weather conditions. The information is updated every 20 minutes. To learn when the 24-hour time period begins, community members can go to the website and look for the "Weather" column and corresponding time. The descriptions in the weather column will include "Overcast," "Fair," "Mostly Cloudy," "Light Snow," "Snow," etc. Code Enforcement may begin enforcing the snow removal ordinance 24 hours after the last mention of snow listed on this website. Residents may also call the code enforcement line at 303-441-1875 to learn the official time that snowfall stopped. During times of consecutive storms, the original stop of snowfall will be enforced when no apparent effort is made to keep the sidewalks cleared for safe passage.

When a Code Enforcement Officer identifies a violation of sidewalk snow removal, the officer attempts to make contact at that location to have the snow removed. If no contact can be made, a 24-hour notice of violation is posted on the front door of the property in violation. Only one notice per snow season will be issued to a property. After the expiration of the notice, an officer will re-inspect the property to confirm compliance. Should a property remain in violation and for repeat offences, the address will be added to a list that is forwarded daily to a contractor for abatement of the hazardous condition. The property owner is then billed for all snow removal charges and assessed an administrative fee.

The Code Enforcement Unit is partnering with the University of Colorado Off-Campus Housing and Neighborhood Relations department, as well as other community and neighborhood groups, for an educational campaign that will focus on the importance to "Make it Clear."

The campaign is scheduled to launch in October 2013 and will focus on:

- increasing community awareness of each person's role in ensuring that sidewalks are cleared and safely passable after snow events;
- the requirements of the sidewalk snow and ice removal ordinance; and
- the liability should a violation remain on private property.

Education will be in the form of detailed pamphlets being delivered door-to-door in identified areas that have a high volume of new residents each season and a history of repeat violations. Information will also be available on the city website and through outreach to local media sources. “Make it Clear” will also direct people to resources for snow removal assistance and to volunteer opportunities to assist others in the community.

Additional code enforcement information can be found on [www.inquireboulder.com](http://www.inquireboulder.com) under “Code Enforcement Unit,” which includes a link to the National Weather Service report for Boulder.

### **NEXT STEPS**

Snow and ice program information will be made available in news releases, a utility bill insert, the city’s snow brochure and on [www.bouldercolorado.gov/public-works](http://www.bouldercolorado.gov/public-works) under “Winter Tips and Snow Removal.” The utility bill insert with snow information will be distributed through the utility bill mailing in October 2013. The city’s snow brochure, which is provided to residents who request additional information, includes information on the snow program and answers commonly asked questions about snow operations. A copy of this year’s brochure is included in the 2013-2014 City of Boulder Snow and Ice Control Information packets that have been distributed to council members. Also included are detailed snow route maps and snow operations information.

As the results of the 2013-2014 snow and ice evaluation emerge, staff will implement changes and return to council to address meaningful budgetary changes or policy issues.

For more information about the snow and ice control program, please contact Felix Gallo at 303-413-7180 or [gallof@bouldercolorado.gov](mailto:gallof@bouldercolorado.gov).

For more information on the transportation planning effort regarding bus shelter maintenance, please contact Cris Jones at 303-441-3217 or [jonesc@bouldercolorado.gov](mailto:jonesc@bouldercolorado.gov).

For more information on code enforcement efforts, please contact Jennifer Riley at 303-441-1877 or [rileyj@bouldercolorado.gov](mailto:rileyj@bouldercolorado.gov).



**CITY OF BOULDER  
LANDMARKS BOARD  
July 18, 2013  
1777 Broadway, Council Chambers Room  
7:30 p.m.**

The following are the action minutes of the July 18, 2013 City of Boulder Landmarks Board meeting. An open house to review the draft Historic Preservation Plan was held from 6:00 to 7:15 p.m. A digital recording and a permanent set of these minutes (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). You may also listen to the recording on-line at: [www.boulderplandevlop.net](http://www.boulderplandevlop.net).

**BOARD MEMBERS:**

Mark Gerwing, Chair  
Liz Payton  
Kirsten Snobeck  
Nick Fiore  
Kate Remley  
Leonard May *\*Planning Board representative without a vote*

**STAFF MEMBERS:**

Debra Kalish, Senior Assistant City Attorney  
Lesli Ellis, Comprehensive Planning Manager  
James Hewat, Senior Historic Preservation Planner  
Marcy Cameron, Historic Preservation Planner  
Cindy Spence, Administrative Specialist

**1. CALL TO ORDER**

The roll having been called, Chair **M. Gerwing** declared a quorum at 7:23p.m. and the following business was conducted.

**2. APPROVAL OF MINUTES**

On a motion by **K. Snobeck**, seconded by **M. Gerwing**, the Landmarks Board approved (5-0) the minutes of the June 5, 2013 board meeting.

**3. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA**

**4. DISCUSSION OF LANDMARK ALTERATION AND DEMOLITION  
APPLICATIONS ISSUED AND PENDING**

**5. PUBLIC HEARINGS**

A) Public hearing and consideration to provide input on the draft historic preservation plan.

**Ruth McHeyser, 1123 Spruce St., co-president of Historic Boulder**, spoke in support of the plan and reiterated comments made in the organization's letter to the Landmarks Board.

### **Board Discussion**

The Landmarks Board provided feedback on the Draft Historic Preservation Plan, primarily focusing on the incorporation of community feedback throughout the development of the plan and the recommendation section.

## **B) PUBLIC HEARING AND CONSIDERATION OF A LANDMARK ALTERATION CERTIFICATE**

Public hearing and consideration of a Landmark Alteration Certificate to demolish a non-contributing building at 1023 Walnut St. in the Downtown Historic District and in its place construct a new four-story commercial building to be connected via a bridge to the proposed building at 1048 Pearl St., amending the Landmarks Board September 19, 2012 approval by the Landmarks Board with conditions (HIS2012-00181).

*Board members were asked to reveal any ex-parte contacts they may have had on this item.*

All board members made site visits. **M. Gerwing, L. Payton** and **K. Snobeck** reviewed the project at the Sept. 19, 2012 Landmarks Board meeting.

### **Staff Presentation**

**J. Hewat** presented a PowerPoint presentation to the board, clarifying that the board was reviewing an amendment to the September 19, 2012 conditional approval of a Landmark Alteration Certificate for the 11<sup>th</sup> and Pearl project (1048 Pearl St. and 1023 Walnut St.) and that the board was only considering proposed changes to the building at 1023 Walnut St.

### **Applicant's Presentation**

**Chris Shears, 365 Quail Circle, architect with Nichols Partnership**, spoke in support of the project and answered questions from the board.

### **Public Hearing**

No one spoke to this item.

### **Motion**

On a motion by **M. Gerwing**, seconded by **K. Snobeck**, the Landmarks Board approved (4-1, **L. Payton** opposed) the demolition of the non-contributing building at 1023 Walnut St. and in its place the construction of the proposed new building, finding that subject to the conditions below, they generally meet the standards for issuance of a Landmark Alteration Certificate (LAC) in Chapter 9-11-18, B.R.C. 1981, and adopted the staff memorandum dated 7.18.2013 as findings of the board. 3

**CONDITIONS OF APPROVAL:**

- 1) The applicant shall be responsible for constructing the project in compliance with the plans approved on July 18, 2013 (dated June 26, 2013) for 1023 Walnut St. and the plans approved on Sept. 19, 2012 (dated Aug. 27, 2012) for 1048 Pearl St. except as modified by these conditions of approval.
- 2) Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall revise the plans approved on September 19, 2012 (dated Aug. 27, 2012) to increase the setback of the west portion of the fourth floor adjacent to the west plaza and submit the revised plans to the Landmarks Design Review Committee (LDRC) for its final review and approval.
- 3) Details of all exterior materials, including a simplified fenestration pattern, windows, doors, railing, hardscape features, awnings, visibility and design of mechanical equipment enclosures, paving, brick, glass, metal, wood, color and the use of only natural stone, shall be reviewed by the LDRC to ensure that the approval is consistent with the *Downtown Historic District Design Guidelines*, the *General Design Guidelines*, the Historic Preservation Ordinance, and the intent of this approval.
- 4) Articulation of the primary masonry portion of the Walnut Street elevation to deemphasize its horizontality in keeping with the *Downtown Historic District Design Guidelines* and the Historic Preservation Ordinance, to be reviewed by the LDRC.

**L. Payton** did not support the motion. She did not object to the demolition of the building at 1023 Walnut St. or the proposed design of the new building, but voted against the motion because the amended conditions include reference to the building located at 1048 Pearl St. and she does not find the overall project to be consistent with the design guidelines or the intent of the Historic Preservation Ordinance.

**6. MATTERS FROM THE LANDMARKS BOARD, PLANNING DEPARTMENT AND CITY ATTORNEY**

- A. Update Memo
- B. Subcommittee Update
- C. Structure of Merit Booklet
- D. Civic Center Update
- E. Council Chambers Improvements

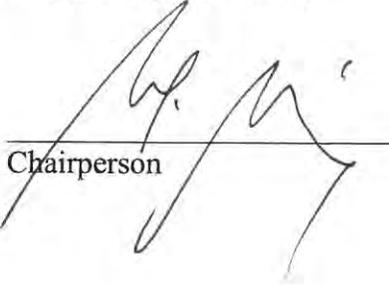
**7. DEBRIEF MEETING/CALENDAR CHECK**

**8. ADJOURNMENT**

The meeting adjourned at 10:16 p.m.

Approved on August 7, 2013

Respectfully submitted,



Chairperson

**CITY OF BOULDER  
LANDMARKS BOARD  
August 7, 2013  
1777 Broadway, Council Chambers Room  
6 p.m.**

The following are the action minutes of the August 7, 2013 City of Boulder Landmarks Board meeting. A digital recording and a permanent set of these minutes (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). You may also listen to the recording on-line at: [www.boulderplandevlop.net](http://www.boulderplandevlop.net).

**BOARD MEMBERS:**

Mark Gerwing, Chair

Liz Payton

Kirsten Snobeck

Nick Fiore

Kate Remley

\*Bryan Bowen                    *\*Planning Board representative without a vote*

**STAFF MEMBERS:**

Debra Kalish, Senior Assistant City Attorney

James Hewat, Senior Historic Preservation Planner

Marcy Cameron, Historic Preservation Planner

**1. CALL TO ORDER**

The roll having been called, Chair **M. Gerwing** declared a quorum at 6:04 p.m. and the following business was conducted.

**2. APPROVAL OF MINUTES**

On a motion by **L. Payton**, seconded by **K. Snobeck**, the Landmarks Board approved (5-0) the minutes as amended of the July 18, 2013 board meeting.

**3. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA**

**4. DISCUSSION OF LANDMARK ALTERATION AND DEMOLITION  
APPLICATIONS ISSUED AND PENDING**

**5. ACTION ITEMS**

- A.** Public hearing and consideration of a demolition permit for the building located at 428 Pleasant St, a non-landmarked building over 50 years old, per Section 9-11-23 of the Boulder Revised Code for buildings over 50 years old (HIS2010-00132). Applicant/Owner: Cooper Schell.

*Board members were asked to reveal any ex-parte contacts they may have had on this item.*

**K. Remley** made a site visit and reviewed the proposal at the Landmarks design review committee. She also revealed that in her father-in-law once owned and occupied the property.

**L. Payton** made a site visit.

**M. Gerwing** made several site visits.

**K. Snobeck** made a site visit.

**N. Fiore** made a site visit and reviewed the proposal at the Landmarks design review committee.

### **Staff Presentation**

**M. Cameron** presented a PowerPoint presentation to the board.

### **Applicant's Presentation**

**David Kahn**, 3 Chesebro Way, Eldorado Springs, CO, architect and representative of the owner, spoke in support of the application to demolish the house.

**Clay Ducell**, 107 Noland Ct., Lyons, CO, Melton Construction, contractor for the project, spoke in support of the application to demolish the house.

### **Public Hearing**

**Abby Daniels**, 1123 Spruce St., Historic Boulder, spoke in support of a stay to seek alternatives to the demolition.

**Jacques Juilland**, 3161 3<sup>rd</sup> Street, Boulder, CO, builder and friend of the owner, spoke in support of the application to demolish the house.

### **Motion**

On a motion by **M. Gerwing**, seconded by **L. Payton**, the Landmarks Board issued (5-0) a stay of demolition for the building located at 428 Pleasant St, for a period not to exceed 180 days from the day the permit application was filed adopting the staff memorandum with findings as listed below in order to further explore alternatives to demolishing the building. The 180 day stay period would expire on December 24, 2013. The Landmarks Board encourages the applicant to consider landmark designation of the structure and incorporating into redevelopment plans for the site.

A stay of demolition for the house at 428 Pleasant is appropriate based on the criteria set forth in section 9-11-23(f) B.R.C, in that the identified property:

1. May be eligible for individual landmark designation based upon its historic, architectural, and environmental significance;
2. Contributes to the character of the neighborhood as an intact representative of the area's past;
3. Has not been demonstrated to be impractical or economically unfeasible to rehabilitate and add onto the existing house.

- B.** Public hearing and consideration of an application to designate the house and a portion of the property at 2205 Broadway as a local historic landmark, to be known as the Boulder Masonic Lodge, as per Section 9-11-5 of the Boulder Revised Code, 1981 (HIS2010-00123).  
Applicant/Owner: Boulder Historical Society and Boulder History Museum.

*Board members were asked to reveal any ex-parte contacts they may have had on this item.*

**K. Remley** made a site visit.

**L. Payton** made several site visits.

**M. Gerwing** made several site visits and reviewed changes at Landmarks design review committee.

**K. Snobeck** made a site visit and reviewed changes at Landmarks design review committee.

**N. Fiore** made several site visits.

**B. Bowen** made several site visits and reviewed the proposed changes in a Planning Board hearing.

### **Staff Presentation**

**M. Cameron** presented a PowerPoint presentation to the board.

### **Applicant's Presentation**

**Nancy Geyer**, 1206 Euclid Ave., Boulder History Museum, Director, CEO and applicant, spoke in support of landmark designation.

### **Public Hearing**

**Abby Daniels**, 1123 Spruce St., Historic Boulder, spoke in support of the proposed application to landmark the Masonic Lodge.

### **Motion**

On a motion by **M. Gerwing**, seconded by **L. Payton**, the Landmarks Board voted (5-0) to recommended to the City Council that it designate the property at 2205 Broadway as a local historic landmark, to be known as the Boulder Masonic Lodge, finding that it meets the standards for individual landmark designation in Sections 9-11-1 and 9-11-2, B.R.C. 1981, and adopts the staff memorandum, including the following as the findings of the board:

The Landmarks Board finds, based upon the application and evidence presented, that the proposed designation application is consistent with the purposes and standards of the Historic Preservation Ordinance, and:

1. The proposed designation will protect, enhance, and perpetuate a building reminiscent of a past era and important in local and state history and provide a significant example of architecture from the past. Sec. 9-11-1(a), B.R.C. 1981.
2. The proposed designation will maintain an appropriate setting and environment and will enhance property values, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage. 9-11-1(a), B.R.C. 1981.

3. The proposed designation draws a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings important to that heritage will be carefully weighed with other alternatives. 9-11-1(b), B.R.C. 1981.
4. The building proposed for designation has a special character and historical, architectural and aesthetic characteristics. Sec. 9-11-2(a)(1), B.R.C. 1981.
5. The proposed designation is consistent with the criteria specified in Section 9-11-5(c), B.R.C. 1981.

### **C. STRUCTURE OF MERIT NOMINATIONS**

**M. Gerwing** presented fourteen Structure of Merit nominations to the Landmarks Board.

#### **Motion**

On a motion by **M. Gerwing**, seconded by **N. Fiore**, the Landmarks Board adopted (5-0) the following buildings are the 2013 Structure of Merit nominations.

- Tye Dental Building, 1150 Maxwell Ave., L. Gale Abels
- Sirotkin House, 575 Euclid Ave., Tician Papachristou
- Jesser House, 595 Euclid Ave., Tician Papachristou
- Sampson House, 1900 King Ave., Tician Papachristou
- Thron House, 430 Christmas Tree Dr., Hobart Wagener
- Easton Office Building, 1636 16<sup>th</sup> St., Roger Easton
- Willard House, 125 Bellevue Dr., Charles Haertling
- Volsky House, 711 Willowbrook Rd., Charles Haertling
- Dammann House, 460 College Ave., Charles Haertling
- Caldwell House, 415 Drake St., Charles Haertling
- Boulder Eye Clinic, 2401 Broadway, Charles Haertling
- Kahn House, 760 Flagstaff Rd., Charles Haertling
- Brenton House, 3752 Wonderland Hill Ave., Charles Haertling
- Davis House, 65 Bellevue Dr., Charles Haertling

### **6. MATTERS FROM THE LANDMARKS BOARD, PLANNING DEPARTMENT AND CITY ATTORNEY**

- A.** Update on Building/Energy Code Revisions – Dave Thacker
- B.** Historic Preservation Plan Update
- C.** Update Memo
- D.** Subcommittee Update

### **7. DEBRIEF MEETING/CALENDAR CHECK**

**M. Gerwing** requested that changes to motion language be made prior to the motion being made.

**8. ADJOURNMENT**

The meeting adjourned at 9:18 p.m.

Approved on \_\_\_\_\_, 2013

Respectfully submitted,

  
\_\_\_\_\_  
Chairperson



CITY OF BOULDER, COLORADO

**BOARDS AND COMMISSIONS MEETING ACTION SUMMARY FORM**

**NAME OF BOARD/COMMISSION:** LIBRARY COMMISSION

**DATE OF MEETING:** September 4, 2013 at Main Library

**NAME/TELEPHONE OF PERSON PREPARING SUMMARY:** Leanne Slater, 303-441-3106

**LIBRARY COMMISSION MEMBERS PRESENT:** Anne Sawyer, Celeste Landry, Donna O'Brien, and Anna Lull

**LIBRARY COMMISSION MEMBERS ABSENT:** None

**LIBRARY STAFF MEMBERS PRESENT:** Valerie Maginnis, Jennifer Miles, Leanne Slater, Aimee Schumm, and Kathleen Janosko

**CITY STAFF PRESENT:** Glenn Magee, Maureen Rait, Joe Castro, Jennifer Bray, David Mallett, Peggy Bunzli, and Paul Fetherston

**PUBLIC PRESENT:** David Mendosa and Peter Richards

**BOULDER TEEN ADVISORY BOARD (BTAB) MEMBER PRESENT:** Nick Bozik

**REPRESENTATIVES FROM STUDIOTROPE:** Designer Brigitte Kerr, Principal Designer Deva Montalbano, and Interior Designer Caitlin Bullock.

**Call to order:** The meeting was called to order at 6:00 p.m.

**Approval of Agenda:** Sawyer amended the agenda in order to provide for an update from the Deputy City Manager Paul Fetherston on the Library Arts Director interim plan and recruitment. Therefore, Item 6C, Library and Arts Director retirement search was moved after the Consent Agenda. Landry amended the agenda by changing the name of Item 5B under Matters from the Commission from Possible statement about tax options and library funding to City Council Charter Committee.

**Public Participation:** No public participation

**Consent Agenda:**

- A. Approval of Aug. 7, 2013 minutes- The Aug. 7, 2013 minutes were unanimously approved as amended (4-0).
- B. Commission Update (from memo)
- C. Library Update (from memo)

**Matters from the department:**

- A. Library and Arts Director retirement and search- Fetherston thanked Maginnis for her service and provided an update on the recruitment, information regarding the search for a new library and arts director, and the timeline for filling this position. Library Commission presented Valerie with a letter of congratulations on her retirement, thanking her for her service to libraries for 33 years, and more specifically for her dedication to the Boulder Public Library.

**Commission Priority Discussion and Input:**

- A. Main Library Renovation Project Design Advisory Group (DAG) Update (50 minutes) - The Library Commission acknowledged the extensive public engagement process and studiotrope's facilitation and documentation of the community's vision for the project. The expectation is that the desired scope of work can be achieved within the budget. The update provided about the cost estimates suggested that may not be possible. The commission desires to have more discussion about project alternates and priorities once bids are received. Renovation of the café/bridge, adding a second children's restroom, and the establishment of the technology lab adjacent to the teen space were identified as important to meeting the community's expectations.
  - o Update on RFID (10 minutes)
  - o Studiotrope presentation (1 hour & 5 minutes)

**Matters from the commission:**

- A. Preliminary Meeting Room Plan
- B. City Council Charter Committee

**Matters from the department (continued):**

- B. Review 2014 City Manager's recommended budget (18 minutes)
- C. Plan for target survey on library programming- deferred until October meeting.

**Announcement-** Commissioner Sawyer announced that applications for the vacant Library Commissioner appointment are being accepted until Sept. 23, 2013.

**Adjournment –** The meeting was adjourned at 9:04 p.m.

**Next commission meeting (rollover items):** Swearing in new Library Commissioner, Main Library renovation project Design Advisory Group regarding an update on the bid process plan, café vendor RFP process, review of the public art selection panel recommendation, Master Plan funding goal information review, city-based Library Commission webpage, and plan for target patron survey on library programming.

**ATTACH BRIEF DETAILS OF ANY PUBLIC COMMENTS (LIMIT TO ONE PAGE):**

**TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:** 6 p.m. on Wed., Oct. 2, 2013 at the Main Library, in the North Meeting Room, 1001 Arapahoe Ave.

DRAFT

## **Council Working Agreements**

### **Council Process:**

- The Council will work on general discipline in being prepared to ask questions and make comments.
- The Council asks the Mayor to intervene if discussion on agenda items extends beyond a reasonable time frame.
- The council will engage in the practice of colloquy to fully explore the different sides of a specific point.
- The Mayor will ask the city clerk to set the timer lights for council members if discussions begin to exceed efficient debate. Members should respect the lights as a time reminder, but will not be bound by them as absolute limits.
- Rather than restating a point, council members should simply say "I agree."
- The council agenda committee may, with advance notice, adjust each public speaker's time to two rather than three minutes during public hearings for items on which many speakers want to address the council.
- Council members will grant each other permission to mentor and support each other on how each person contributes to the goal of being accountable for demonstrating community leadership.
- In order to hear each other respectfully and honor the public, council will avoid body language that could convey disrespect, side conversations, talking to staff, whispering to neighboring council members, passing notes, and leaving the council chambers.
- Regarding not revisiting past discussions, the council should check-in with fellow members periodically to ensure that this is not an issue.

### **Council Communication:**

- Council members agree to keep quasi-judicial roles scrupulously clean between members of boards and members of council, like expressing ideas to board members on things coming before the Board, and carefully disclose or recuse themselves when they're involved with board members on a topic.
- Council agrees to e-mail the city manager about issues that they run into that staff or boards may be working on so that the manager can be actively involved in managing issues and keeping the full council informed well in advance of items coming before council for action.
- Members will keep the full council informed on issues from committees, public groups or other agencies that they are following, the a hot line e-mails, brief verbal reports at the end of council meetings or other means.
- The Council will find ways to support majority council decisions and adequately inform the public, through response letters that explain how divergent points of view were heard and honored in decisions, via standard e-mail responses for hot issues, by occasional council Letters to the Editor to clarify the facts, or by seeking out reporters after meetings to explain controversial decisions.

### **Council Committees**

- Council goal committee meetings will be scheduled to accommodate the council members on the committee.
- Notice of the times and places for each goal committee meeting will be noticed once per month in the Daily Camera.
- The council agenda will include time for reports from committees under Matters from Members of Council, noting that written communications from the committees are appropriate as well.

**2013**  
**Study Session Calendar**

| <b>Date</b>     | <b>Topic</b>      | <b>Time</b> | <b>Televised</b> |
|-----------------|-------------------|-------------|------------------|
| <b>11/26/13</b> | <b>No Meeting</b> |             |                  |
| 12/10/13        | Hold for CMO      |             |                  |
| <b>12/24/13</b> | <b>No Meeting</b> |             |                  |

| October 1, 2013   | Est. time | Timing Issues/ Comments         |
|---|-----------|---------------------------------|
| <b>Consent</b>  |           |                                 |
| August 13 Study Session   |           |                                 |
| Consideration of a motion authorizing the City Manager to convey the permanently affordable housing unit at 979 Laramie, Unit E   |           |                                 |
| First Reading, Electric Assist Bicycles Pilot Demo Project  |           |                                 |
| Disposal of OSMP property for easement for Community Ditch underpass project.   |           | Project Scheduling              |
| Motion amending the Benson Annexation agreement   |           |                                 |
| 1st Reading Grandview Bungalow Relocation Project   |           |                                 |
| 2nd Reading Hazardous Materials Management IGA with Boulder County  |           | Time sensitive                  |
| First Reading 500 Foot Rule & use Definitions/ BLA Structural Changes   |           |                                 |
| 5th Reading to adopt Ordinance 7832 for Congregate Care Facilities  |           |                                 |
| <b>Public Hearing</b>   |           |                                 |
| 2nd Reading Landmark Designation for 2205 Broadway  | 20 Min    |                                 |
| 5th Reading to adopt Ordinance 7832 for Congregate Care Facilities  |           | None                            |
| ERTL Acquisition, 2nd Reading   | 30 Min.   |                                 |
| Public Hearing on the proposed 2014 City of Boulder Budget first reading: adopting 2014 budget, establishing the property tax mill levies, appropriating money, amending chapters 3-8, 3-9 and 4-20 of BRC to change certain fees | 2 Hours   |                                 |
| <b>MATTERS FROM CITY MANAGER:</b>   |           |                                 |
| <b>MATTERS FROM CITY ATTORNEY:</b>  |           |                                 |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>  |           |                                 |
| <b>CALL-UPS:</b>  |           |                                 |
| Potential call-up of a vacation of a 2,280 square-foot portion of an existing fourteen-foot utility easement bisecting the property at 3737 Spring Valley Road.   |           |                                 |
| Potential call-up of a vacation of an existing utility easement for the existing fire hydrant located at 6655 Lookout Rd. to allow for redevelopment of the site as 68 attached residential units                                 |           |                                 |
| October 3, 2013   | Est. time | Timing Issues/ Comments         |
| <b>PUBLIC HEARINGS:</b>   |           |                                 |
| 2nd reading proposed Hogan-Pancost Annexation and request to vacate portion of right-of-way   | 4 Hours   | Scheduled per CAC               |
| October 8, 2013   | Est. time | Timing Issues/ Comments         |
| <b>CONSENT:</b>   |           |                                 |
| <b>PUBLIC HEARINGS:</b>   |           |                                 |
| Second reading of amended ordinances regarding Voice and Sight Control evidence tags  | 2.5 Hours | Moved from August Meeting Dates |
| USAPCC Boulder Venue Proposal   | 1 Hour    |                                 |
| <b>MATTERS FROM CITY MANAGER:</b>   |           |                                 |
| Ironman update - 2015 and Beyond  | 30 Min.   |                                 |
| <b>MATTERS FROM CITY ATTORNEY:</b>  |           |                                 |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>  |           |                                 |
| <b>CALL-UPS:</b>  |           |                                 |

| October 15, 2013   | Est. time | Timing Issues/ Comments |
|--|-----------|-------------------------|
| <b>CONSENT:</b>  |           |                         |
| 1st reading Boulder Jewish Commons Annexation, Site and Use Reviews  |           |                         |
| Consideration of a resolution approving an amended and restated Fire and Police Money Purchase Pension Plan and Trust Agreement of the City of Boulder and authorizing the City Manager to execute it on the city's behalf |           |                         |
| <b>PUBLIC HEARINGS: All Budget Items Will be Heard as One Public Hearing</b>   |           |                         |
| 2014 Budget Items  | 2 Hours   |                         |
| 2nd reading Alcohol: 500 Foot Rule & use Definitions/ BLA Structural Changes   | 2 Hours   |                         |
| <b>MATTERS FROM CITY MANAGER:</b>  |           |                         |
| Economic Sustainability Strategy   | 30 Min.   | None                    |
| <b>MATTERS FROM CITY ATTORNEY:</b>   |           |                         |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>   |           |                         |
| <b>CALL-UPS:</b>   |           |                         |
| <b>October 22, 2013</b>  |           |                         |
| October 22, 2013   | Est. time | Timing Issues/ Comments |
| <b>CONSENT:</b>  |           |                         |
| 2nd Reading Grandview Bungalow Relocation Project  |           |                         |
| <b>PUBLIC HEARINGS:</b>  |           |                         |
| If necessary: 3rd Reading Voice and Sight Control Ordinance  |           |                         |
| 2nd Reading, Electric Assist Bicycles Pilot Demo Project   | 3 Hours   |                         |
| <b>MATTERS FROM CITY MANAGER:</b>  |           |                         |
| <b>MATTERS FROM CITY ATTORNEY:</b>   |           |                         |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>   |           |                         |
| <b>CALL-UPS:</b>   |           |                         |
| <b>October 29, 2013</b>  |           |                         |
| October 29, 2013   | Est. time | Timing Issues/ Comments |
| <b>CONSENT:</b>  |           |                         |
| <b>PUBLIC HEARINGS:</b>  |           |                         |
| If necessary: Consideration of items relating to the 2014 budget   |           | Only if required        |
| If necessary: 3rd Reading Alcohol Changes (500 Foot Rule and BLA Structure)  |           | Only if required        |
| Tentative: Historic Preservation Plan  | 1 Hour    |                         |
| <b>MATTERS FROM CITY MANAGER:</b>  |           |                         |
| AMPS Update  | 1 Hour    |                         |
| Development of a Comprehensive Housing Strategy  | 1 Hour    |                         |
| <b>MATTERS FROM CITY ATTORNEY:</b>   |           |                         |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>   |           |                         |
| <b>CALL-UPS:</b>   |           |                         |

| November 12, 2013   | Est. time | Timing Issues/ Comments |
|---|-----------|-------------------------|
| Platform of Mayor and Mayor Pro Tem   | 1 Hour    |                         |
| <b>Consent</b>  |           |                         |
| Hold for CMO  |           |                         |
| <b>Public Hearing</b>   |           |                         |
| Hold for CMO  |           |                         |
| <b>MATTERS FROM CITY MANAGER:</b>   |           |                         |
| Hold for CMO  |           |                         |
| <b>MATTERS FROM CITY ATTORNEY:</b>  |           |                         |
| Hold for CMO  |           |                         |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>  |           |                         |
| Hold for CMO  |           |                         |
| <b>CALL-UPS:</b>  |           |                         |
| Hold for CMO  |           |                         |
| November 19, 2013<br>10 AM Special Meeting<br>Oath of Office  | Est. time | Timing Issues/ Comments |
| Certification of Election Results and Oath of Office for new members  |           |                         |
| November 19, 2013   | Est. time | Timing Issues/ Comments |
| <b>CONSENT:</b>   |           |                         |
| 1st Reading Food Vehicle Follow Up to April 16, 2013 IP   |           |                         |
| First reading of an emergency ordinance BRC Supplement 118  |           | Quarterly               |
| First Reading Three NPP Expansions (in east Ridge/Pennsylvania, Mapleton, Whittier zones) and One Street Removal (in Fairview NPP zone) |           |                         |
| First Reading of the Second Adjustment to Base Ordinance  |           |                         |
| <b>PUBLIC HEARINGS:</b>   |           |                         |
| 2nd reading Boulder Jewish Commons Annexation, Site and Use Reviews   |           |                         |
|   |           |                         |
|   |           |                         |
| <b>MATTERS FROM CITY MANAGER:</b>   |           |                         |
| Legislative Agenda  | 30 Min.   |                         |
| <b>MATTERS FROM CITY ATTORNEY:</b>  |           |                         |
|   |           |                         |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>  |           |                         |
|   |           |                         |
| <b>CALL-UPS:</b>  |           |                         |
|   |           |                         |

| December 3, 2013   | Est. time | Timing Issues/ Comments                               |
|--|-----------|---|
| <b>Consent</b>   |           |   |
| Second adjustment to Base - CAGID Resolution<br>Legislative Agenda   |           | On the agenda right after 2nd reading of adj. to base |
| Second Reading of Second Adjustment to Base of the 2013 Budget   |           | None  |
| <b>Public Hearing</b>  |           |   |
| Second Reading Three NPP Expansions (in east Ridge/Pennsylvania, Mapleton, Whittier zones) and One Street Removal (in Fairview NPP zone) | 15 min.   |   |
| <b>MATTERS FROM CITY MANAGER:</b>  |           |   |
| Legislative Agenda   | 1 Hour    |   |
| <b>MATTERS FROM CITY ATTORNEY:</b>   |           |   |
| <b>MATTERS FROM MAYOR AND MEMBERS:</b>   |           |   |
| <b>CALL-UPS:</b>   |           |   |
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## City Council Goals – 2013

### Top Priorities:

#### **1. Boulder's Energy Future**

The top priority for the City in 2013 is the development of a framework for planning the energy future for the city of Boulder. This framework will focus on the idea of localization, the overarching goal of which is:

**To ensure that Boulder residents, businesses and institutions have access to energy that is increasingly clean, reliable and competitively priced.**

#### **2. Climate Action Plan**

Outline the next generation of climate action efforts in Boulder

Consider extension of CAP tax

#### **3. Affordable Housing**

Receive report of the Task force created in 2010 to evaluate goals and the approach to affordable housing and Based on Council review and discussion of these recommendations, develop an action plan to improve the availability of affordable housing in the city

Consider policies regarding inclusionary housing for rental units

#### **4. Civic Center Master Plan**

Study and develop a master plan for the area between 15th and 9th Streets, with a focus on Farmer's Market and area between Broadway and 15th Street.

**Next Tier Priorities:**

**1. University Hill Revitalization**

Continue work of Ownership Group to develop comprehensive revitalization strategy

Investigate formation of a general improvement district, including the commercial area and part of the residential area to control trash and other problems

Change boundaries of BMS land use to coincide with UHGID through BVCP process

Support private development and investment in Hill area

Partner with CU to consider opportunities for properties in the Hill area

Provide an opportunity to explore big ideas

**2. Homelessness**

Participate in Ten Year Plan to Address Homelessness

Balance long term and short term approaches to address needs

Invest new resources in Housing First model

Work with partners, such as BOHO, to address approaches to immediate needs

**3. Boulder Junction Implementation**

Work with RTD and selected developer of site to maximize mixed use urban center

Invest in planned infrastructure

Achieve goals of plan while ensuring flexibility in working with developers

Prioritize city actions to facilitate private investment

Focus additional planning work on reconsidering use for Pollard site



**City Council  
2013 Work Plan by Council Goal**

**TOP PRIORITIES**

| <b>GOAL: Boulder's Energy Future</b>  |   |   |   |
|---|---|---|---|
| <b>1<sup>st</sup> Quarter</b>   | <b>2<sup>nd</sup> Quarter</b>   | <b>3<sup>rd</sup> Quarter</b>   | <b>4<sup>th</sup> Quarter</b>   |
| <ul style="list-style-type: none"> <li>▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables</li> <li>▪ Recommended strategies to achieve community's energy goals - Study Session and Public Hearing</li> </ul> | <ul style="list-style-type: none"> <li>▪ Boulder's Energy Future – based on the strategies approved by Council in 1<sup>st</sup> Quarter, ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables</li> <li>▪ Municipalization Exploration Project Work Plan Phase 2 – Study Session</li> </ul> | <ul style="list-style-type: none"> <li>▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables</li> <li>▪ Study Session</li> </ul> | <ul style="list-style-type: none"> <li>▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables</li> <li>▪ Study Session</li> </ul> |

| <b>GOAL: Climate Action Plan</b>  |   |   |   |
|---|---|---|---|
| <b>1<sup>st</sup> Quarter</b>   | <b>2<sup>nd</sup> Quarter</b>   | <b>3<sup>rd</sup> Quarter</b>   | <b>4<sup>th</sup> Quarter</b>   |
| <ul style="list-style-type: none"> <li>▪ Boulder Canyon Hydroelectric Project</li> <li>▪ Climate Commitment – RFQ for consulting assistance for targets and goal setting, development of new GHG inventory, and tracking and reporting tools</li> <li>▪ Energy Efficiency:               <ul style="list-style-type: none"> <li>○ Launch of 2013 program priorities</li> <li>○ Upgrades in City Buildings – employee education and outreach project (IP)</li> </ul> </li> <li>▪ Disposable Bag Fee – implementation plan and revised budget (IP)</li> <li>▪ Transportation Master Plan (TMP) –</li> </ul> | <ul style="list-style-type: none"> <li>▪ Commercial Energy Efficiency Strategy (CEES) - feedback on options (Study Session)</li> <li>▪ Climate Commitment – Study Session to review program annual targets, short/ long term goals, tracking and reporting systems</li> <li>▪ Electric/ Hybrid vehicles – project closeout</li> <li>▪ Energy Efficiency – finalize Market Innovations approach (Study Session)</li> <li>▪ Solar/ Wind Generation Facility Code Changes</li> <li>▪ SmartRegs – code changes</li> </ul> | <ul style="list-style-type: none"> <li>▪ CEES – adopt Energy Rating and Reporting Ordinance</li> <li>▪ Climate Commitment – policy integration with TMP and ZWMP</li> <li>▪ Energy Efficiency – launch Market Innovations competition</li> <li>▪ Zero Waste Master Plan (ZWMP) – draft</li> </ul> | <ul style="list-style-type: none"> <li>▪ Climate Commitment – policy integration with TMP and ZWMP</li> <li>▪ Energy Efficiency               <ul style="list-style-type: none"> <li>○ Upgrades in City Buildings – results of employee education and outreach (IP)</li> </ul> </li> <li>▪ SmartRegs – options for quality control of rental housing inspections</li> </ul> |



|  |  |  |  |
|--|--|--|--|
| initial results of Transportation Funding Task Force (Study Session) |  |  |  |
|--|--|--|--|

**GOAL: Affordable Housing**

| 1 <sup>st</sup> Quarter   | 2 <sup>nd</sup> Quarter   | 3 <sup>rd</sup> Quarter  | 4 <sup>th</sup> Quarter  |
|---|---|--|--|
| <ul style="list-style-type: none"> <li>▪ ADU/ OAU – study results (IP)</li> <li>▪ Comprehensive Housing Strategy issues - stakeholder engagement process</li> <li>▪ Density and Distribution of affordable and special needs housing - report</li> <li>▪ Inclusionary Housing Rental Policy – consideration of ordinance changes following stakeholder engagement process</li> <li>▪ Mobile Homes Parks – legislative agenda</li> </ul> | <ul style="list-style-type: none"> <li>▪ Comprehensive Housing Strategy               <ul style="list-style-type: none"> <li>○ Stakeholder engagement process</li> <li>○ Study Session</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>▪ Comprehensive Housing Strategy issues - stakeholder engagement process</li> </ul> | <ul style="list-style-type: none"> <li>▪ Comprehensive Housing Strategy issues - stakeholder engagement process</li> </ul> |

**GOAL: Civic Area Plan**

| 1 <sup>st</sup> Quarter   | 2 <sup>nd</sup> Quarter  | 3 <sup>rd</sup> Quarter  | 4 <sup>th</sup> Quarter |
|---|--|--|-------------------------|
| <ul style="list-style-type: none"> <li>▪ Board and community input</li> <li>▪ Council participation in Ideas Competition</li> </ul> | <ul style="list-style-type: none"> <li>▪ Council direction on preferred option(s) and strategies</li> <li>▪ Draft plan               <ul style="list-style-type: none"> <li>○ Development</li> <li>○ Community input</li> <li>○ Study Session</li> </ul> </li> <li>▪ Municipal Space Study Final Report</li> </ul> | <ul style="list-style-type: none"> <li>▪ Boulder Civic Area vision and plan               <ul style="list-style-type: none"> <li>○ Study session</li> <li>○ Public hearings on adoption</li> </ul> </li> </ul> |                         |



**NEXT TIER PRIORITIES**

| <b>GOAL: University Hill Revitalization</b>  |  |  |                               |
|--|--|--|-------------------------------|
| <b>1<sup>st</sup> Quarter</b>  | <b>2<sup>nd</sup> Quarter</b>  | <b>3<sup>rd</sup> Quarter</b>  | <b>4<sup>th</sup> Quarter</b> |
| <ul style="list-style-type: none"> <li>▪ 2013 action priorities confirmed by Council at January retreat</li> <li>▪ Hill Residential Service District – update</li> <li>▪ Innovation District - update</li> </ul> | <ul style="list-style-type: none"> <li>▪ Action on other priorities</li> <li>▪ Hill Residential Service District – 1<sup>st</sup> reading of petition</li> </ul> | <ul style="list-style-type: none"> <li>▪ Capital infrastructure improvements for the residential and commercial areas – consider during CIP process</li> </ul> |                               |

| <b>GOAL: Addressing Homelessness</b>  |  |  |  |
|---|--|--|--|
| <b>1<sup>st</sup> Quarter</b>   | <b>2<sup>nd</sup> Quarter</b>  | <b>3<sup>rd</sup> Quarter</b>  | <b>4<sup>th</sup> Quarter</b>  |
| <ul style="list-style-type: none"> <li>▪ City and Community Efforts – Denver sleeping ordinance (IP)</li> <li>▪ Housing First (1175 Lee Hill Road) – Statement of Operations (IP)</li> <li>▪ Work plan check in and priority – Council retreat</li> </ul> | <ul style="list-style-type: none"> <li>▪ Analysis of funding for homeless services and alignment with the Ten Year Plan and unmet needs</li> <li>▪ Ten Year Plan to Address Homelessness – progress update (IP)</li> </ul> | <ul style="list-style-type: none"> <li>▪ Analysis and recommendations regarding banning panhandling on street corners</li> </ul> | <ul style="list-style-type: none"> <li>▪ Ten Year Plan to Address Homelessness – progress update (IP)</li> </ul> |

| <b>GOAL: Boulder Junction Implementation</b>  |  |  |                               |
|---|--|--|-------------------------------|
| <b>1<sup>st</sup> Quarter</b>   | <b>2<sup>nd</sup> Quarter</b>  | <b>3<sup>rd</sup> Quarter</b>  | <b>4<sup>th</sup> Quarter</b> |
| <ul style="list-style-type: none"> <li>▪ Depot Square implementation – update</li> <li>▪ MU-4 zone change - consideration</li> <li>▪ TDM District Implementation Update (IP)</li> <li>▪ Update on potential policy issues related to key public improvements and city owned site (as needed)</li> </ul> | <ul style="list-style-type: none"> <li>▪ Update on potential policy issues related to key public improvements and city owned site (as needed)</li> </ul> | <ul style="list-style-type: none"> <li>▪ Boulder Junction Access District Parking – update</li> <li>▪ TDM Access District implementation - IP</li> </ul> |                               |



**OTHER**

| <b>GOAL: Other City Goals and Work Plan Items</b>  |  |  |   |
|--|--|--|---|
| <b>1<sup>st</sup> Quarter</b>  | <b>2<sup>nd</sup> Quarter</b>  | <b>3<sup>rd</sup> Quarter</b>  | <b>4<sup>th</sup> Quarter</b>   |
| <ul style="list-style-type: none"> <li>▪ 13<sup>th</sup> Street Plaza - IP</li> <li>▪ 28<sup>th</sup> Street Multi-use Path and Bikeable Shoulders Iris to Yarmouth CEAP – potential call up</li> <li>▪ Acquisition Plan Update - OSMP</li> <li>▪ Alcohol/ Land Use Code Changes – options and recommendations</li> <li>▪ Boating on Barker Reservoir</li> <li>▪ Burke Park/ Thunderbird Lake – recommendations on lake water levels and enhancing park facilities</li> <li>▪ BVCP Area III Planning Reserve Amendments (if approved by County)</li> <li>▪ Chautauqua Guiding Principles, Next Steps –update on progress</li> <li>▪ Civic Use Task Force – update from Council members</li> <li>▪ Cultural Master Plan</li> <li>▪ Design and Construction Standards Update – consideration of minor updates</li> <li>▪ Development Review Projects:               <ul style="list-style-type: none"> <li>○ Hogan Pancost – annexation and site review</li> <li>○ Wonderland Creek Townhouses – potential call up</li> <li>○ 28<sup>th</sup> and Canyon (Eads/ Golden Buff) – potential call up</li> <li>○ Landmark Lofts II (970 28<sup>th</sup> Street) – potential call up</li> </ul> </li> <li>▪ East Arapahoe Study – potential action on limited zoning changes</li> <li>▪ Economic Sustainable Strategies –</li> </ul> | <ul style="list-style-type: none"> <li>▪ Access and Parking Management Strategies – study session</li> <li>▪ Alcohol Land Use Code Changes - action</li> <li>▪ Baseline Underpass East of Broadway CEAP – Call up</li> <li>▪ Bike Parking Ordinance Updates</li> <li>▪ Capital Improvement Bond Projects status update - IP</li> <li>▪ Capital Projects – carry over and first supplemental</li> <li>▪ Critical Facilities Ordinance – public hearing and motion</li> <li>▪ Education Excise Tax – consideration of City Manager funding recommendations</li> <li>▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities</li> <li>▪ Human Rights Ordinance – proposed changes regarding age discrimination</li> <li>▪ Integrated Pest Management Program Changes - IP</li> <li>▪ International Building and Energy Codes – public hearing</li> <li>▪ North Boulder Subcommunity Plan - IP</li> <li>▪ Old Hire Fire and Police Pension Plans – Study Session</li> </ul> | <ul style="list-style-type: none"> <li>▪ 2014 Budget Process</li> <li>▪ Access and Parking Management strategies (update)</li> <li>▪ Boulder Reservoir Site Management Plan – status of planning efforts and outcomes of community engagement (IP)</li> <li>▪ Capital Improvement Program – study session</li> <li>▪ Carter Lake Pipeline – thru CIP process</li> <li>▪ Contractor Licensing – proposed changes (IP)</li> <li>▪ Development Review Projects:               <ul style="list-style-type: none"> <li>○ Blue Spruce Auto (4403 Broadway) – potential call up</li> <li>○ Boulder Outlook Hotel Redevelopment (800 28<sup>th</sup> Street) – potential call up</li> <li>○ Colorado Building Parking Lot (1301 Walnut) - ordinances</li> <li>○ 1000 Alpine – potential call up</li> <li>○ 3085 Bluff – potential call up</li> <li>○ 3390 Valmont (Former Sutherlands Site) – potential call up</li> </ul> </li> <li>▪ Eco Pass- report on results of Joint Study with Boulder County on community-wide Eco Pass Feasibility</li> <li>▪ FAM Master Plan – study session</li> <li>▪ Harbeck-Bergheim House – Future Use Options (IP)</li> <li>▪ North Trail Study Area – study</li> </ul> | <ul style="list-style-type: none"> <li>▪ Access and Parking Management Strategies – update</li> <li>▪ Agriculture Plan (OSMP) – public hearing</li> <li>▪ Capital Improvement Program – adoption of CIP; 2<sup>nd</sup> budget supplemental</li> <li>▪ Contractor Licensing – consideration of proposed changes</li> <li>▪ Design and Construction Standards Update – consideration of additional changes</li> <li>▪ Development Review Projects:               <ul style="list-style-type: none"> <li>○ Village Shopping Center Hotel (26<sup>th</sup> and Canyon) – potential call up</li> </ul> </li> <li>▪ East Arapahoe Study – check in on project scope and work plan (3/4Q)</li> <li>▪ Energy Efficiency Upgrades in City Buildings – results of employee education and outreach project (IP)</li> <li>▪ FAM Master Plan – consideration of acceptance</li> <li>▪ Fourmile Canyon Creek Violet Avenue to Broadway CEAP – potential call up</li> <li>▪ Human Relations Commission Work Plan update - IP</li> <li>▪ Human Services Fund allocations - IP</li> <li>▪ Light Response Vehicle Pilot Program - IP</li> <li>▪ OSMP Natural Resources Overarching Issues – Study session</li> </ul> |



|  |   |   |   |
|--|---|---|---|
| <p>study session</p> <ul style="list-style-type: none"> <li>▪ Education Excise Tax Allocation of Funds – refine RFP criteria</li> <li>▪ Energy Efficiency Upgrades in City Buildings – employee education and outreach project (IP)</li> <li>▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities</li> <li>▪ Hazardous Materials Management IGA</li> <li>▪ Hydroelectric operations and opportunities - IP</li> <li>▪ Keep It Clean IGA</li> <li>▪ Mobile Food Vending – options for ordinance changes</li> <li>▪ Multi-hazard mitigation plan – possible consent item</li> <li>▪ Nuisance Mosquito Control Pilot Project Evaluation - IP</li> <li>▪ OSMP Overarching Issues – discussion and possible action on Voice and Sight Tag Program, Commercial Use Program, Pilot Parking Permit Program; IP on timeline and process for evaluation of remaining topics</li> <li>▪ Police Department Master Plan – Study Session</li> <li>▪ State of the Court Presentation</li> <li>▪ Sustainable Streets &amp; Centers – update on proposed scope options, next steps and integration with TMP, East Arapahoe Area Plan and proposed Economic Sustainability Strategy</li> <li>▪ Transportation Funding (SS)</li> <li>▪ TMP Update – additional direction</li> </ul> | <ul style="list-style-type: none"> <li>▪ OSMP natural resources – overarching policy issues <ul style="list-style-type: none"> <li>○ Temporal Regulations</li> <li>○ Penalties for violations</li> <li>○ Multi-modal access and parking opportunities</li> <li>○ Analysis of trail network and distribution of activities</li> </ul> </li> <li>▪ Parks and Recreation Master Plan</li> <li>▪ Pearl Street Mall Code Changes</li> <li>▪ Police Department Master Plan</li> <li>▪ Randolph Center Condominium Declaration</li> <li>▪ Recirculation of wastewater – CU Williams Village North (IP if necessary)</li> <li>▪ Skunk Creek, Bluebell Creek and King’s Gulch Flood Mapping Update – public hearing and motion</li> <li>▪ Smoking Ban on Pearl Street Mall - IP</li> <li>▪ Snow and Ice Control Evaluation – study session</li> <li>▪ Transportation Funding – study session</li> <li>▪ TMP Update – additional direction</li> <li>▪ Twomile and Upper Goose Creek Flood Mapping Update – public hearing and motion</li> <li>▪ Water budgets – commercial, industrial and institutional – Council direction</li> <li>▪ Water supply status – IP</li> </ul> | <p>session or dinner discussion</p> <ul style="list-style-type: none"> <li>▪ Old Hire Fire and Police Pension Plans – possible discussion during budget process</li> <li>▪ Parks and Recreation Master Plan</li> <li>▪ Regional Trail Connections (OSMP) – IP</li> <li>▪ South Boulder Creek Flood Mitigation Study – public hearing and motion</li> <li>▪ Transportation Demand Management Toolkit - IP</li> <li>▪ Valmont Butte Future Use Discussions – study session</li> <li>▪ Water Conservation Futures Study</li> <li>▪ Youth Opportunities Funding allocations - IP</li> </ul> | <p>on remaining topics</p> <ul style="list-style-type: none"> <li>▪ Urban Wildlife – Consideration of Wildlife Protection Ordinance</li> <li>▪ Water budgets – commercial, industrial and institutional – consideration of changes</li> </ul> |
|--|---|---|---|



|   |  |  |  |
|---|--|--|--|
| <ul style="list-style-type: none"> <li>▪ US36 Bikeway Maintenance – Enhancements IGA (tentative based on if extra community investments are desired)</li> <li>▪ Urban Wildlife – Black Bear Education and Enforcement pilot program update</li> <li>▪ Woodland Creek Diagonal to Winding Trail CEAP – potential call up</li> <li>▪ Zero Waste Master Plan Update</li> </ul> |  |  |  |
|---|--|--|--|

**KEY**

|          |  |
|----------|--|
| ADU      | Accessory Dwelling Units   |
| BVCP     | Boulder Valley Comprehensive Plan  |
| CEAP     | Community and Environmental Assessment Process                                     |
| CIP      | Capital Improvement Program  |
| CU       | University of Colorado   |
| DUHMD/PS | Downtown and University Hill Management District/ Parking Services (City Division) |
| FAM      | Facility and Asset Management  |
| ICC      | International Code Council   |
| IGA      | Intergovernmental Agreement  |
| IP       | Information Packet   |
| OAU      | Owner Accessory Units  |
| OSMP     | Open Space/Mountain Parks Department   |
| RFQ      | Request for Qualifications   |
| RFP      | Request for Proposals  |
| TDM      | Transportation Demand Management   |
| TMP      | Transportation Master Plan   |
| ZWMP     | Zero Waste Master Plan   |



**CITY COUNCIL  
ACCOMPLISHMENTS – 1<sup>ST</sup> AND 2<sup>ND</sup> QUARTER 2012**

**TOP PRIORITIES:**

**GOAL: BOULDER’S ENERGY FUTURE**

**FIRST AND SECOND QUARTER  
2012 ACCOMPLISHMENTS**

- Hiring of Executive Director for Energy Strategy and Electric Utility Development
- Retention of FERC and acquisition legal counsel
- Initial work in developing appraisal of distribution system and preparing legal strategy
- Initial work on Phase 1 of a new Energy Action Plan, including demand side programs and renewables modeling
- Active participation at the PUC to advance Boulder’s energy goals and protect community interests
- Boulder Canyon Hydroelectric Facility Agreement: City Council authorized the dedication of easements to Public Service Company of Colorado to facilitate upgrades to the city’s Boulder Canyon Hydroelectric Facility.

**GOAL: CLIMATE ACTION PLAN**

**FIRST AND SECOND QUARTER  
2012 ACCOMPLISHMENTS**

- Third party review and evaluation of CAP tax funded programs to date
- Preparation of November 2012 CAP tax ballot options for Council consideration
- Initial steps to develop and refine a new Climate Action Framework consisting a renewed climate action commitment, five-year goals, annual targets, integration with appropriate master plans and city operations, and new reporting tools
- Initial work to identify priorities for the next generation of energy efficiency programs (as part of Phase 1 of the Energy Action Plan)
- Development of Commercial Energy Efficiency Strategy approach and stakeholder process (to be integrated as part of Phase 1 of the Energy Action Plan)
- Continued delivery of CAP programs and services to achieve annual targets (EnergySmart, Ten for Change, SmartRegs compliance, etc.)
- Energy Efficiency Upgrades in City Facilities - (a) Energy Performance Contract (EPC) – Phase III; (b) Lease purchase financing for energy conservation measures; and (c) Energy improvements, lease amendments, and payments. - Implemented the third phase of Energy Performance Contracts (EPC) for city facilities, including the installation of another 347 kilowatts of solar photovoltaic



at the Municipal Service Center buildings, Fleet Services, OSMP Annex and The Dairy Center for the Arts.

- Energy Efficiency Upgrades in City Facilities – Employee Education and Outreach Project (Information Packet) - A staff team participated in three workshops with McKinstry, the city’s Energy Performance Contractor, to help develop a new PowerED energy education and outreach program for employees. Program development will continue with other city staff focus groups through the end of December 2012.

**GOAL: AFFORDABLE HOUSING**

**FIRST AND SECOND QUARTER  
2012 ACCOMPLISHMENTS**

- Added 12 new permanently affordable homes to inventory
- Affordable housing agreement for Gunbarrel Town Center
- Affordable Housing Program Work plan - Council Consideration and Direction; new initiatives identified
- Analysis completed of affordable housing distribution
- Completed funding of major renovations to improve housing quality and economic sustainability of three BHP properties
- Development of voluntary affordable housing agreement for Depot Square project
- Inclusionary Housing Rental Policies – Council Consideration and Direction
- Thistle Community Housing completing fire sprinklers in all of its properties

**GOAL: CIVIC CENTER MASTER PLAN**

**FIRST AND SECOND QUARTER  
2012 ACCOMPLISHMENTS**

- Development of interdepartmental project team and approach; project goals and objectives; and public engagement strategy (reviewed at joint Planning Board / City Council study session in April)
- Detailed design of community visioning process and articulation of key project assumptions (reviewed with Council at June 12 study session)
- Preparation of baseline materials and launch of public engagement in July.
- The Municipal Space Study contract was awarded to StudioTerra on March 23. FAM and the consultants are interviewing city departments and conducting research on industry trends and standards for office space. Preliminary results of the space study, as it relates to the Civic Center Master Plan, will be presented at the July 31 study session.



## **NEXT TIER PRIORITIES:**

### **GOAL: UNIVERSITY HILL REVITALIZATION**

#### **FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS**

- Zoning change: Business Main Street (BMS) boundary to coincide with the University Hill General Improvement District boundary; rezoning of UHGID lots to BMS zoning (approved by Planning Board; scheduled for Council consideration in August)
- Continued work of the Hill Ownership Group to develop a comprehensive revitalization strategy.
- In coordination with a volunteer, stakeholder committee completed a proposal for a Residential Service District which includes: boundaries, scope of services, proposed budget, proposed governance structure, agreements for financial participation by tax-exempt sororities and fraternities, and a timeline for a 2013 Petition and Election process.
- Landmarking of Flatirons Theater building (and associated building renovation)
- 955 Broadway (Acacia Fraternity site redevelopment)

### **GOAL: ADDRESSING HOMELESSNESS**

#### **FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS**

- Council Consideration and Direction on: 1175 Lee Hill Project; added 31 permanent housing units for chronically homeless, disabled adults
- Continued Homeless Service Provider Coordination Project to develop action plans for case management, outreach and service coordination
- Continued implementation of Ten year Plan to Address Homelessness

### **GOAL: BOULDER JUNCTION IMPLEMENTATION**

#### **FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS**

- Developed and implemented a funding strategy to finance the acquisition of 100 parking spaces by the Boulder Junction Access District – Parking (BJAD-P) in the Depot Square parking garage including a Lease/Purchase Agreement between BJAD-P and the developer, and a City of Boulder/BJAD-P Cooperation Agreement
- Developed a strategy to manage parking in the parking structure through technology and a management agreement among the



users. The arrangement provides for parking spaces to be paid, unbundled, and shared in a manner to meet the needs of the various users of Depot Square (hotel, residential, RTD) and general parking in BJAD-P spaces. Agreement was reached with RTD regarding short term and long term parking management strategies given their current legislative mandate.

- Finalized the ownership structure for five different owners to coordinate management of their units and common areas through a Condominium Declaration for the Depot Square project
- Finalized a renovation agreement and lease consistent with guiding principles with Pedersen Development Corporation for the Depot
- Finalized legal agreements for joint public/private development of Depot Square (RTD facility, shared parking, affordable housing, hotel, public space and rehabilitation of historic depot
- Approved changes to the Transportation Network Plan in support of the Transit Village Area Plan (TVAP)
- Revised Street Design for Pearl Parkway and Connections Plan Revisions (adopted by Council January 17)
- Consistent with the TVAP connections plan and along with private redevelopment, a number of capital improvements are underway, including the installation of underground power lines, preparations for installing a traffic signal at Junction Place and Pearl Parkway, and portions of the Pearl Parkway multi-way boulevard
- Consistent with the TVAP connections plan, design work continues for the bridge over Goose Creek and the multi-use path on the north side of Pearl Parkway between 30<sup>th</sup> Street and Foothills Parkway
- Received a Federal Hazard Elimination Program grant award through the Colorado Department of Transportation (CDOT) that will allow installation of a traffic signal at 29<sup>th</sup> Street and Valmont Road, improving safety and implementing improvements identified in the Transit Village Area Plan (TVAP) (project will begin in 2014)
- Completion of engineering and building construction plan review for a 319 unit residential development at 3100 Pearl and the RTD Depot Square transit-oriented development



## **GOAL: OTHER CITY GOALS AND WORK PLAN ITEMS**

### **FIRST AND SECOND QUARTER 2012 ACCOMPLISHMENTS**

#### ***CAPITAL ITEMS***

- Anemone Trails (new) – design work completed
- Arapahoe Avenue (Folsom to 30th) - Multimodal Improvements Project Completed construction on the Arapahoe Avenue multi-use path project. The remaining street resurfacing and landscaping work will be completed in 2012.
- Boulder Creek and South Boulder Creek – restoration of grassland and riparian areas continued
- Broadway (Euclid to 18th) - Transportation Improvements Project - Made progress on the Broadway (Euclid to 18th) Transportation Improvements Project. 16<sup>th</sup> Street opened the first week of May and the Broadway underpass and the four lanes on Broadway (two in each direction) are scheduled for completion by early July.
- Broke ground in January for a new multi-use path on the south side of Baseline, connecting U.S. 36 and the Bear Creek Underpass, including a pedestrian crossing for Baseline Road at Canyon Creek. Completion of the multi-use path on the west end is underway through a redevelopment project.
- Completed a new sidewalk along Gillaspie Drive, connecting Greenbriar Boulevard and Juilliard Street connecting to Fairview High School
- Completed the course bunker renovation/playability project at Flatirons Golf Course by installing 19 new sand bunkers
- Continued work at Valmont City Park, including additional construction at Valmont Bike Park; outreach and design for Valmont Dog Park; and design and construction of the interim disc golf course
- Facility ADA Compliance - An Americans with Disabilities Act (ADA) consultant completed comprehensive ADA assessments for the Park Central and Municipal buildings. Costs for the recommendations are being identified and prioritized, with other buildings planned for assessment.
- Green Bear Trail Re-route – work in progress with one section completed and opened to public
- Gregory Canyon Trailhead Site Plan – initial site plan design work began
- Homestead Trail Re-route – work in progress with one section completed and opened to public
- Library Facility Upgrades and Enhancements (New Children’s Library and New Teen Space): The selection of a design firm is underway
- Linden Avenue Sidewalk Project (Safe Routes to School) - Completed a Safe Routes to School Project, providing a sidewalk on the north side of Linden Avenue between Fourth Street and Broadway.
- New Wildland Fire Facilities - Responses to the request for qualifications (RFQ) for facility designs were received on May 11. Requests for proposals (RFP) to be sent in early June
- Organic farming – agricultural contract written for 47 acres



- Replaced traffic signal incandescent lamps with sustainable, energy-saving light-emitting diode (LED) lamps
- Sanitas Stone Hut Repair – hut was reinforced and stonework repaired
- South Boulder Creek West Trailhead – Parking areas for cars and horse trailers completed and open to public; working through permit process for outhouse and kiosk installations; interpretive signs in production
- South Boulder Recreation Center - The contaminated sub floors from the gymnasium, racquetball court, and Pilates room have been removed and are expected to be replaced with new wood floors by early June 2012.
- Street repair expanded efforts – began the first of three years

### ***OTHER SIGNIFICANT ACTIONS<sup>1</sup>***

- Boulder B-cycle station at the North Boulder Recreation Center sponsored
- Boulder Community Hospital Expansion Rezoning
- BVCP: Area II study results and potential next steps (IP to City Council in July)
- BVCP Comprehensive Rezoning (scheduled for council consideration in August)
- BVCP 2010 Major Update: planning reserve policy changes (study session discussion with Council on May 29; Council and County Commissioner dinner discussion on June 14)
- Boulder Reservoir Master Plan completed
- Boulder Valley School District Faculty and Staff Eco Pass Program Expansion - Continued partnership with the Boulder Valley School District (BVSD) to expand the BVSD faculty and staff Eco Pass program.
- Chautauqua Stewardship Framework: Draft and Next Steps
- City Website Redesign Kickoff - Kicked off redesign with Vision Internet and the City of Arvada. Gathered a list of key stakeholders and surveyed them regarding elements the new website should contain.
- Code enforcement - reallocation of resources to the Boulder Police Department was fully implemented to ensure efficient and effective service delivery
- Community and Environmental Assessment Process (CEAP) for flood mitigation and transportation improvements along Fourmile Canyon Creek, near Crest View Elementary School completed, including a City Council call-up opportunity.
- Compatible Development implementation - annual report to Council
- Congregate Care code changes (pending further consideration based on Council direction)
- Constituent Relationship Management (CRM) procurement effort - Designed and implemented a staff engagement and procurement initiative to implement a new CRM application resulting in the unanimous selection of Government Outreach. Vendor contract negotiations are currently underway. This initiative is designed to significantly improve our customers' ability to request, track and ultimately receive more timely and effective services while providing staff with automated tools to better



manage these requests.

- Disposable Bag Reduction Ordinance: research and options presented to Council on May 15; work on nexus study underway
- Draft Fire-Rescue Master Plan completed and approved by Planning Board.
- Economic Sustainability Strategy: phase one study of primary employer space needs underway; presentation of results to Council scheduled for August
- Elks neighborhood park planning, outreach and design continued with construction and completion in 2013
- Family Resource Center opened at Manhattan Middle School in partnership with Boulder County Housing and Human Services
- FasTracks' Northwest Rail Plan - Approved guiding principles for developing and designing a hybrid approach to FasTracks' Northwest Rail Plan.
- Fire Master Plan – Council feedback on strategies (April 3, 2012); Planning Board recommendation for acceptance (May 17, 2012); Scheduled for Council consideration (June 19, 2012)
- Heather wood Trail Intergovernmental Agreement (IGA) - City Council authorized the signing of an intergovernmental agreement (IGA) with Boulder County related to the maintenance of a trail that crosses the Wastewater Treatment Facility property.
- Integrated Pest Management Policy Revision and Program Direction (Council provided direction on May 1)
- Landmarking of First Christian Church building (950 28<sup>th</sup> Street)
- Locomotive #30 narrow gauge historic cosmetic restoration completed
- Mesa Memorial Park design and development initiated
- Mosquito control annual report (Completed report on the IPM web site – link will be provided to council with first weekly mosquito report in June)
- Named number 3 on list of best cities for bicycling by *Bicycling Magazine*, in part due to the Valmont Bike Park and new path connections made possible by the capital improvement bond
- New Transportation Safety Ordinances - Approved ordinance changes to improve transportation safety in the city and initiated education and enforcement efforts to support the ordinance changes
- Organic turf and landscape bed program at six park locations launched
- Received a Safe Routes to School Grant to install a traffic signal at South Boulder Road and Manhattan Drive to create a safe crossing for middle school students taking transit, riding, or walking to and from school.
- RH-2 Zone District Changes (scheduled for council consideration in August)
- *Safe Streets Boulder* report published in February.
- SmartRegs - Continued the successful implementation of SmartRegs and the pilot program for rental housing licensing enforcement. The backlog of rental license compliance cases is almost entirely eliminated.
- Transportation Report on Progress, *Transportation to Sustain a Community* published in February.
- Valmont Butte – VCUP implementation commenced; excavation work began on April 4 with both the tribe-designated native cultural monitor and the city's archaeologist consultant present.



▪ Veterans and active duty military personnel recreation pass program developed

**Key:**

|   |
|---|
| ADA = Americans with Disabilities Act                 |
| BHP = Boulder Housing Partners                        |
| BVSD = Boulder Valley School District                 |
| BMS = Business Main Street                            |
| CAP = Climate Action Plan                             |
| CDOT = Colorado Department of Transportation          |
| EPC = Energy Performance Contract                     |
| EET = Education Excise Tax                            |
| FAM = Facilities and Asset Management (City Division) |
| FERC = Federal Energy Regulatory Commission           |
| IGA = Inter-governmental Agreement                    |
| IP = Information Packet                               |
| OSMP = Open Space/ Mountain Parks Department          |
| PUC = Colorado Public Utilities Commission            |
| RFP = Request for Proposals                           |
| RFQ = Request for Qualifications                      |
| RTD = Regional Transportation District                |
| TVAP = Transit Village Area Plan                      |
| UHGID = University Hill General Improvement District  |
| VCUP = Colorado Voluntary Cleanup Program             |

## **COUNCIL MEMBERS**

|                   |                |
|-------------------|----------------|
| Matthew Appelbaum | Mayor          |
| Lisa Morzel       | Mayor Pro Tem  |
| Suzy Ageton       | Council Member |
| KC Becker         | Council Member |
| Macon Cowles      | Council Member |
| Suzanne Jones     | Council Member |
| George Karakehian | Council Member |
| Tim Plass         | Council Member |
| Ken Wilson        | Council Member |

## **COUNCIL EMPLOYEES**

|                   |                 |
|-------------------|-----------------|
| Thomas A. Carr    | City Attorney   |
| Jane S. Brautigam | City Manager    |
| Linda P. Cooke    | Municipal Judge |

## **KEY STAFF**

|                        |   |
|------------------------|---|
| Bob Eichem             | Chief Financial Officer   |
| Alisa D. Lewis         | City Clerk  |
| Patrick von Keyserling | Communications Director   |
| David Driskell         | Community Planning + Sustainability - Executive Director              |
| Paul J. Fetherston     | Deputy City Manager   |
| Molly Winter           | Downtown, University Hill Management & Parking Services Director      |
| Heather Bailey         | Energy Strategy and Electric Utility Development Executive Director   |
| Larry Donner           | Fire Chief  |
| Mary Ann Weideman      | Housing, Assistant City Manager for Human Resources (Acting) Director |
| Karen Rahn             | Human Services Director   |
| Don Ingle              | Information Technology Director                                       |
| Eileen Gomez           | Labor Relations Director  |
| Valerie Maginnis       | Library and Arts Director   |
| Lynne C. Reynolds      | Municipal Court Administrator   |
| Michael Patton         | Open Space and Mountain Parks Director                                |
| Kirk Kincannon         | Parks and Recreation Director   |
| Mark Beckner           | Police Chief  |
| Maureen Rait           | Public Works - Executive Director                                     |
| Tracy Winfree          | Transportation Director   |
| Jeff Arthur            | Utilities Director  |

## 2013 City Council Committee Assignments

### INTERGOVERNMENTAL ORGANIZATIONS

|  |   |
|--|---|
| Beyond the Fences Coalition                        | Morzel, Plass   |
| Boulder County Consortium of Cities                | Karakehian, Wilson (alt)  |
| Colorado Municipal League (CML) – Policy Committee | Jones, Appelbaum (Castillo – staff alternate)                                   |
| Denver Regional Council of Governments (DRCOG)     | Becker, Jones (Alternate)   |
| Housing Authority (Boulder Housing Partners)       | Ageton  |
| Metro Mayors Caucus                                | Appelbaum   |
| National League of Cities (NLC)                    | Appelbaum   |
| Resource Conservation Advisory Board               | Plass, Morzel (at large seat)   |
| Rocky Flats Stewardship                            | Morzel, Plass (1 <sup>st</sup> alternate), Castillo (2 <sup>nd</sup> alternate) |
| University of Colorado (CU) / City Oversight       | Wilson, Jones, Karakehian   |
| US36 Mayors and Commission Coalition               | Appelbaum, Ageton (alternate)   |
| US36 Commuting Solutions                           | Ageton, Karakehian (alternate)  |
| Urban Drainage and Flood Control District          | Morzel  |

### LOCAL ORGANIZATIONS

|  |                            |
|--|----------------------------|
| Boulder Museum of Contemporary Art (BMoCA)   | Cowles, Becker (alternate) |
| Boulder Convention and Visitors Bureau       | Becker, Plass (alternate)  |
| Dairy Center for the Arts                    | Karakehian                 |
| Downtown Business Improvement District Board | Plass, Jones               |

### INTERNAL CITY COMMITTEES

|   |                                    |
|---|------------------------------------|
| Audit Committee   | Morzel, Becker, Cowles             |
| Boulder Urban Renewal Authority (BURA)<br>Mayoral Appointment | Becker (appointed through 2015)    |
| Charter Committee   | Morzel, Cowles, Ageton, Karakehian |
| Civic Use Pad/ 9 <sup>th</sup> and Canyon                     | Morzel, Jones, Becker              |
| Council Budget Action Plan Committee                          | Ageton, Becker, Plass              |
| Evaluation Committee  | Karakehian, Morzel                 |
| Legislative Committee   | Ageton, Karakehian, Wilson, Jones  |

### SISTER CITY REPRESENTATIVES

|                           |                |
|---------------------------|----------------|
| Jalapa, Nicaragua         | Jones          |
| Kisumu, Kenya             | Morzel         |
| Llaza, Tibet              | Ageton         |
| Dushanbe, Tajikistan      | Karakehian     |
| Yamagata, Japan           | Wilson         |
| Mante, Mexico             | Plass          |
| Yateras, Cuba             | Cowles         |
| Sister City Sub-Committee | Morzel, Cowles |