

**Boulder Junction Access District (BJAD)
 Joint Commission – Parking and TDM Meeting
 &
 Boulder Junction Access District (BJAD) – Parking Meeting
 December 17, 2015
 4 - 6 pm
 1777 West Conference Room, 1777 Broadway**

1. Roll Call
 - BJAD TDM: Hyde-Wright, Koval, Osborne, Pawlowski, Pedersen
 - BJAD Parking: Koval, Osborne, Pedersen, Shanahan, Wells
2. Disclosure of Conflicts of Interest
3. Public Participation
4. 2015 Meeting Minutes Status
5. Feedback from Both Commissions: Council 2016 Priorities
6. Feedback from Both Commissions: Scope of Update to Funds Projections
7. Matters from Staff
8. Adjourn as the Joint Commissions
9. Convene as the TDM Commission
10. Update on BCycle Station Funding
11. Matters from the TDM Commission
12. Adjourn as the TDM Commission
13. Convene as the Parking Commission
14. Feedback on Depot Square Plaza Rules
15. Update on the Parking Management System
 - Status of Garage Acceptance
 - Update on Liens
 - Permit Application and Rate
16. Matters from the Parking Commission
17. Adjourn as BJAD Parking Commission

Attachments:

- Memorandum and Attachments re: Depot Square Plaza Rules
- Memorandum and Attachment re: Permit Pricing and Draft Permit
- Memorandum Regarding Status of Depot Square Garage
- Memorandum re: Update and Analysis of Boulder Junction Forecast and Estimates

Upcoming Meetings/Topics

BJAD Joint Commission Meeting: January 21, 2016

Status of Bike Station

Commissioner Terms:

<u>TDM Commission</u>	<u>Term Expires</u>	
John Pawlowski-Chair	3/2018	Property Owner/Rep
John Koval-Vice Chair	3/2016	Property Owner/Rep
Alex Hyde-Wright	3/2020	Citizen at Large
Susan Osborne	3/2019	Citizen at Large
Scott Pedersen	3/2017	Property Owner/Rep

<u>Parking Commission</u>	<u>Term Expires</u>	
Susan Osborne-Chair	3/2019	Citizen at Large
John Koval-Vice Chair	3/2016	Property Owner/Rep
Scott Pedersen	3/2017	Property Owner/Rep
Jeff Shanahan	3/2018	Property Owner/Rep
Thomas Wells	3/2020	Citizen at Large

BJAD 2015 Priorities:

- Boulder Junction's new community implementation
- Planning on Pollard site
- Installation of quiet zones
- "Last mile" transportation strategies
- Council / Commission knowledge collaboration
- BJAD two boards' consolidation potential
- Informational sessions with City Council



MEMORANDUM

TO: Boulder Junction Access District Commissions

FROM: Molly Winter, Executive Director, Department of Community Vitality

RE: Proposed Depot Square Plaza Rules

DATE: December 13, 2015

Attached is a draft of proposed rules and regulations for the Plaza within the Depot Square development at Boulder Junction, see attachment A, as recommended by staff. The plaza is within the condominium community of Depot Square and while private property the plaza functions as a public area. The condominium declaration addresses the nature of the plaza and stipulates that rules be developed and adopted by the condominium board, see attachment B. As one of the unit owners and members of the condo board, staff is seeking your recommendations and thoughts about the proposed draft which is based on existing regulations in the city of Boulder code and drafted by the city attorney's office. The Boulder Junction Executive Team has already provided feedback as the city of Boulder is also a unit owner (the Depot).

As the basis of the draft plaza rules, staff used the regulations of the Pearl Street Mall as the starting point. While technically private property, the Condo Declaration states that while a mix of public land private ownership, the "plaza shall be designed and managed such that it is perceived and used as a single, unified space with specific activity zones." The Declaration also states that areas should be kept clear for travel through the plaza of different types. The rules will promote and regulate activities and organized events that will enliven the plaza and act as a gathering place for the surrounding neighborhood as well as a destination of visitors. And finally, the Declaration also states that nothing shall limit the right of the Association to regulate first amendment rights by reasonable time, place and manner restrictions.

Staff is seeking your feedback on the proposed plaza rules to present to the board of the Condo Association who will adopt the rules and its management company will implement them. Staff has highlighted questions in the margins. The Commission meeting in December is an opportunity to ask any questions and/or provide feedback. A formal public hearing will be held in January with a formal recommendation of the BJAD Parking Commission, as one of the unit owners.

Attachments:

Attachment A: Draft Depot Square Plaza Rules

Attachment B: Section 13.11 of the Condominium Declaration – Use of Plaza

Attachment C: Draft Plaza map

DEPOT SQUARE PLAZA RULES

I. INTENT OF PLAZA RULES.

1. While ownership of Units within the Project represents a mix of public and private ownership, the Plaza shall be designed and managed such that it is perceived and used as a single, unified space with specific activity zones identified through design and management techniques (e.g. zones that must remain clear for pedestrian and emergency vehicle access to all Units, vending areas if permitted by the Board, and areas for gatherings). The Plaza is surrounded by, and does not include, areas to be kept clear for ingress and egress of pedestrians, bicycles, service vehicles, and visitors to Depot Square (the “Ingress/Egress Zones”).

2. The Plaza Rules shall promote and regulate activities and organized events that will enliven the Plaza, support the Plaza’s role as a gathering area for the Boulder Junction neighborhood as well as a destination for visitors and the broader community, and contribute to the viability of all of the Units, provided that in no event shall activities that are a Nuisance be permitted. The design and management shall also support an attractive and comfortable space that works well for programmed events while also supporting a range of informal activities. The Managing Agent shall also consider opportunities for coordination of programming and activities between the Plaza and the adjacent Boulder Junction Park area.

3. It is not the intent of Depot Square to regulate or establish prior conditions of restraint upon the exercise of personal rights or individuals using the Plaza embraced by the First Amendment to the U.S. Constitution, and Article II. Section 10 of the Colorado Constitution. However, nothing in these rules shall limit the right of the Association to regulate these acts by reasonable time, place and manner restrictions to the fullest extent permitted by law, including requiring permits for various uses of the Plaza, requiring clear and safe pathways for pedestrian movement through the Plaza and to and from the Units, and limiting late evening, night or early morning activities that may interfere with users of the Units.

II. DEFINITIONS.

- A. “Ambulatory vendor” means a portrait, caricature or landscape artist using non-airborne mediums, or any person who engages in the business of selling balloons, balloon sculptures, flowers or shoe shines.
- B. “Association” shall mean Depot Square Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns. The Association shall act by and through its Board of Directors and officers unless the Articles, Bylaws or Community Declaration specifically requires otherwise.
- C. “Board of Directors” or “Board” shall mean the governing body of the Association.
- D. “Educational activity” means all noncommercial activity of any person or group directed at informing or persuading the public which is consistent with the provisions of this code and the laws of the state and the United States, and specifically includes the passage of petitions and the advocacy of candidates and issues in any election.

Attachment A: Draft Depot Square Plaza Rules

- E. “Encroachment” means a improvement, structure or obstruction extending into or located within, upon, above or under any plaza right of way or public easement.
- F. “Entertainment” means a performance or show designed to entertain the public but excludes services provided on a one to one basis.
- G. “Managing Agent” shall mean a person or entity engaged by the Association to perform certain duties, powers, and functions of the Association as the Board may authorize from time to time.
- H. “Noncommercial” means that which does not involve the sale of real or personal property or a service.
- I. “Nonprofit group” means an entity which has received a tax status determination by the United States Internal Revenue Service as a Section 501 tax exempt organization, or which is incorporated as a nonprofit corporation under the laws of the state of Colorado, or which is incorporated as a nonprofit corporation under the laws of another state and has been issued a certificate of authority by the secretary of state for Colorado to conduct affairs in Colorado.
- J. “Nuisance” shall mean the unreasonable, unwarranted, or unlawful use of the Plaza in a manner that substantially interferes with the enjoyment or use of another Unit's Boulder Junction property including and not limited to a violation of one or more Plaza Rules or City of Boulder noise restrictions as set forth in Chapter 5-9, "Noise," B.R.C. 1981.
- K. “Personal services” vendor means any person providing personal services on a one on one basis which does not involve the sale of goods.
- L. “Plaza” shall be described as the area depicted on the Community Map attached to these rules and have the meaning set forth in the Community Declaration of Depot Square recorded on July 29, 2013 or any subsequently adopted document. The Board may amend the Community Map from time to time to modify the locations of the Ingress/Egress Zones, including reducing the size of the Plaza, as it deems reasonably necessary to ensure clear access to the Units for owners, permittees, invitees and visitors of Depot Square.
- M. “Sale” or “sell” means the exchange of goods or services for money or other consideration, and includes the offering of goods or services for a donation except when a writing is offered for a donation to express bona fide religious, social, political or other ideological views, and the writing is carried by the person offering it and not set on the ground or any structure.
- N. “Smoke” or “Smoking” shall mean the lighting of any cigarette, cigar, pipe or activation of an electronic smoking device, or the possession of any lighted cigarette, cigar, pipe or activated electronic smoking device regardless of its composition.
- O. “Special entertainment” means any activity which involves the juggling, casting, throwing or propelling of a knife or burning projectile on the Plaza or involves the use of

equipment on the Plaza which is more than six feet above the surface of the Plaza when at rest or when bearing a load while being used in the act.

- P. “Special event” means an educational or cultural event of community-wide interest, including, without limitation, events involving sales, the primary purpose of which is not for profit, which is consistent with the intent of these Rules, and which is scheduled and approved by the Managing Agent, or an activity not involving sales and sponsored by a nonprofit group, that involves the use of a booth, blanket, table, structure, cart, or other equipment on the Plaza. It also means sales conducted as a fundraising activity by a nonprofit group.

III. ENFORCEMENT.

1. The Plaza Rules shall be managed and enforced by the Managing Agent or his/her designee.
2. Violators of Rules shall be provided with a written warning indicating the rule violated, the date and time of such violation, a photograph of the violation if possible, and notification that a subsequent violation of the same rule shall be grounds for a trespass order.
3. Written trespass orders shall be personally served on the person, shall indicate the violation that formed the basis for the trespass order, the expiration date of such order, and shall be signed by the Managing Agent.

IV. DESIGNATION OF ZONES.

1. In order to carry out the provisions of these Rules, the Plaza is divided into the following zones:

- a. Zone 1 consists of the ten feet of property directly adjacent to the north and south Plaza property lines.
- b. Zone 2 consists of the areas of Plaza property that have been designated for pedestrian traffic, emergency and service vehicles and street furniture.
- c. Zone 4 consists of all landscaped areas of the Plaza.
- d. Zone 5 consists of those areas where the Managing Agent may install a temporary or permanent structure which is managed to answer visitor questions about activities and services on the Plaza and within the City generally.

2. The boundaries of these zones are established as illustrated on maps entitled “Plaza Diagrams 1 through 4,” at the end of this chapter, which are incorporated by reference into this chapter.

Comment [sm1]: Seems like it might be a good idea to have zones to designate fire lanes, etc., and anything else that may be important

V. USES PROHIBITED WITHOUT PERMIT.

1. No person shall sell, display for sale or advertise for sale any goods or services to the public on the Plaza without a valid permit or lease therefor issued under these rules. This subsection does not apply to a sign, including, without limitation, a sandwich board, carried by a person and not set on or affixed to the ground.

2. This subsection does not apply to free distribution of information, flyers, pamphlets or brochures.

3. No person shall conduct any activity or enterprise that involves placement of a cart, unrolled blanket, booth, table, stage, movable structure or other similar equipment on the Plaza without a valid permit therefor issued under these rules.

4. This subsection does not apply to equipment that is intrinsic to an entertainment act, provided that the equipment:

- a. Can be carried or wheeled by the entertainer; and
- b. Is not over six feet in height when:
 - i. At rest; or
 - ii. Bearing a load while being used in the act; and
- c. Covers a rectangular area no larger than five feet by six feet.

5. No person shall install or construct an encroachment on the Plaza without a valid permit or lease therefore issued under these rules.

6. No person shall use amplified sound on the Plaza unless it is part of an approved Special Event permit issued under this chapter allowing such amplified sound.

Comment [T2]: Does the Board want to allow this?

7. No person shall juggle, cast, throw or propel a knife or burning projectile on the Plaza or use equipment which is more than six feet above the surface of the Plaza when at rest or when bearing a load while being used in the act, without a valid special entertainment permit issued under these rules.

8. No person issued a permit under these rules shall violate any term or condition of that permit.

VI. AMBULATORY VENDING PERMIT.

1. Ambulatory vending is permitted only in Zones _____.

2. An ambulatory vendor's permit is valid for a one-month period, as specified in the permit, upon payment of the fee prescribed by the fee schedule adopted by the Board.

3. No ambulatory vendor shall place any cart, unrolled blanket, tent, booth, canopy, stage, table, movable structure or other similar equipment on the Plaza except as otherwise allowed in subsections (d) and (e).

4. A permittee who is a portrait, caricature or landscape artist may use one easel, two chairs and one freestanding sign that does not exceed the size of an eighteen-inch by eighteen-inch board so long as the artist's equipment does not occupy an area of the Plaza larger than five feet by six feet.

5. A permittee may use one small stool.

6. Sales shall be limited to items created at point of sale.

VII. MOBILE VENDING CART PERMIT.

1. Mobile vending carts are allowed only in Zones 2, and 3.

2. The Managing Agent may issue as many mobile vending cart permits as the Managing Agent deems appropriate, but the Managing Agent shall not permit the operation of more than two mobile vending carts on the Plaza at the same time.

3. A mobile vending cart shall remain in operation during the minimum number of retail business hours specified in the permit. This shall not be less than five days per week and four hours per day during the months of May, June, July, August and September, and for such additional hours, which requirement shall not exceed the summer requirement, as the Managing Agent may specify in the permit.

4. A mobile vending cart shall not exceed a size of four feet in width by ten feet in length, excluding roof overhangs and wheels, by eight feet in height.

5. A mobile vending cart permit may be issued only if the proposed vending cart will benefit the public or enhance the ambiance of the Plaza. The Managing Agent may issue regulations establishing a merit system of review of mobile vending cart applications, which may include, without limitation, design quality of the cart, addition of diversity to products available on the Plaza, compatibility with Plaza activities, experience of the applicant, financial feasibility, cost and quality of product and the length of the season during which the product can be marketed.

6. No operator of a mobile vending cart shall conduct the operator's primary trade at locations other than those authorized in the permit. But the operator may sell goods in transit upon request. If an authorized location conflicts with a Special Event, the Managing Agent may temporarily relocate the vendor. The Managing Agent may also approve permanent changes of location as other locations become available, if two permittees agree in writing to exchange locations or temporarily on a month to month basis during September through May if the Managing Agent has reason to believe that the regular vendor will not be using the location.

7. A mobile vending cart shall be in operation as required in subsection (c) of this section or the permit will automatically expire.

Comment [sml3]: No sure if you wanted these type of vendors?

Comment [T4]: Does the Board want to make vendor cart selections or defer to managing agent?

Comment [T5]: Cart dimensions need to be smaller for the Plaza.

8. A permittee is responsible for maintaining the area within and in proximity to the permittee's cart in a neat, clean and hazard-free condition, including, without limitation:

- a. Disposing of all trash off-site; and
- b. Storing all mobile vending carts off the Plaza when not in operation.

9. A mobile vending cart permit is valid for a one-year period, beginning April 1 and ending March 31, with two options to renew for additional one-year periods, upon timely payment of the fee prescribed by the fee schedule. A mobile vending cart permit is not automatically renewable thereafter. A permittee who wishes to continue operating after the expiration of the permit shall follow the application procedures required of a continuing vendor as established by Managing Agent rule in accordance with the section titled "Application Procedures."

10. The holder of a mobile vending cart permit shall indemnify and hold harmless the Association, its officers, employees and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the permit comprehensive general public liability and property damage insurance, as prescribed by the section titled, "Insurance Required," naming the Association, its officers, employees and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the Association will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the Association.

11. Each cart shall display a sign at least one foot by one foot visible to the public which contains the required dates and hours of operation, the items for sale, and the prices of the items. The sign shall be presented to the Managing Agent for approval before it is used. All items must be approved by the Managing Agent as part of the application process. The Managing Agent may approve item changes or substitutions upon receiving written application for such change.

12. No person shall fail to maintain, and provide proof when requested, of the permit authorizing such use.

VIII. PERSONAL SERVICES VENDING PERMIT.

1. Personal services vending is permitted only in Zones 1, 2 and 3.

2. A personal services vending permit is valid for one calendar month, as specified in the permit, upon payment of the fee in the fee schedule adopted by the Board.

3. Only two monthly permits may be issued at any one time, at locations specified by the Managing Agent. No permittee shall vend at any location other than that for which the permit has been issued.

4. The permittee may place one table or one blanket, one advertising sign and other equipment intrinsic to the service, so long as all such equipment is hand carried in one trip onto and off the Plaza, and occupies a rectangular area of the Plaza no larger than five feet by six feet.

The advertising sign shall be no larger than eighteen inches by eighteen inches. The applicant shall indicate on the application what equipment is to be used as intrinsic to the service and who will be performing the service, and the Managing Agent shall list on the permit the equipment which is approved as intrinsic to the service and the persons authorized as vendors.

IX. SPECIAL EVENT PERMIT.

Comment [T6]: Allow private exclusive use events?

1. Special Event permits may be issued for zone #_____.
2. A Special Event permit is valid for the approved number of days upon payment of the fee prescribed by the fee schedule adopted by the Board and attached to these Rules.
3. A Special Event permit issued to a Board member is valid for one to ten days per year without a fee.
4. The Managing Agent may, by contract, provide for one or more series of artistic performances for the entertainment of the Plaza public, which series shall involve regularly scheduled performances over four weeks, with a minimum number of performances of once per week, with each performance lasting a minimum of one hour and a maximum of four hours. Such a contract shall serve as a Special Event permit, allowing the use of a stage or other equipment, and amplified sound, as specified in the contract.
5. The Managing Agent may only permit the use of amplified sound in connection with a Special Event, and only if the amplified sound is essential to the exercise of a use allowed under this chapter, and will benefit the public or enhance the ambiance of the Plaza. Every use of amplified sound will comply with City of Boulder noise restrictions as set forth in Chapter 5-9, "Noise," B.R.C. 1981. The managing agent may attach such other reasonable conditions on the use of amplified sound as may reduce friction among competing uses of the Plaza or serve the purposes of this chapter.

X. SPECIAL ENTERTAINMENT PERMIT.

1. Special entertainment permits may be issued only for Zones 1, 2 and 4.
2. The holder of a special entertainment permit shall indemnify and hold harmless the Association, its officers, employees and agents against any and all claims arising from any occurrence occasioned by the permitted use, and shall maintain during the period of the permit comprehensive general public liability and property damage insurance, as prescribed by the section titled "Insurance Required," naming the Association, its officers, employees and agents as insureds; providing that the insurance is primary insurance and that no other insurance maintained by the Association will be called upon to contribute to a loss covered by the policy; and providing for thirty days' notice of cancellation or material change to the Association. The Managing Agent may waive all or any part of this insurance requirement if the special entertainment permit requirement is based solely on the height of the equipment used, if the applicant demonstrates to the Managing Agent's satisfaction a history of safety with respect to the use of such equipment, and if the Managing Agent concludes that the nature of the equipment and its use is such that harm to other Plaza users or to property other than that of the applicant is unlikely to occur.

3. A special entertainment permit is valid for the period and the hours specified in the permit, which shall be for reasonable hours and a reasonable period no greater than one month per permit; no fee will be charged for its issuance. Such a permit is not an exclusive permit for use of the area of the Plaza designated therein. The managing agent may attach such other reasonable conditions on the use of a special entertainment permit as may reduce friction among competing uses of the Plaza or serve the purposes of this subsection.

4. If a special entertainment permit has been granted which involves the use of equipment more than six feet above the Plaza when at rest, the Managing Agent may authorize the permittee to attach or secure objects to Plaza property, and to climb on Plaza property if needed to do so, if the Managing Agent is persuaded that the safety and convenience of Plaza users, including, without limitation, other entertainers, public safety and the service life of Plaza property is not adversely affected thereby.

XI. GENERAL PERMIT AND LEASE REQUIREMENTS.

1. No person shall fail to maintain the area within and in proximity to the location of the leased premises or permitted location in a neat, clean, and hazard-free condition, including, without limitation, disposing of all trash off-site and according to zero-waste industry standards.

2. The Managing Agent may deny a permit, upon a determination that:

- (1) The application does not meet the purposes and requirements and intent of these Rules; would violate any law; or the proposed use would constitute a physical hazard to the public health, safety, or welfare;
- (2) The applicant has failed to supply any of the information required on the application;
- (3) The applicant has provided false information or misrepresented a material fact in connection with an application;
- (4) The applicant has failed to obtain required insurance;
- (5) The applicant has failed to pay the required permit fee or deposit;
- (6) The applicant has within the past three years, from application date, violated a law or condition in a permit governing the activities permitted by the permit;
- (7) The applicant has previously unlawfully conducted activities that require a permit without obtaining such permission in advance;
- (8) The applicant had a city issued permit revoked within the past three years;

- (9) The applicant is not qualified by experience, training, or education to engage in the activity authorized by the permit; or
 - (10) The applicant has been finally convicted of an offense and would create danger to the public health, safety, or welfare if the applicant were to engage in such offensive conduct after the permit were issued.
3. If the Managing Agent denies a permit application under this section, the Managing Agent shall notify the applicant in writing stating the specific grounds for denial. The applicant may thereafter appeal the denial to the **Board's designee for appeals** by submitting a written request for review on a form provided by the Managing Agent and under the procedures set forth in the same form. The Board's designee shall provide the applicant and Managing Agent a final response to the appeal within 3 business working days.

XII. APPLICATION PROCEDURES.

1. The Board shall review each application for a special event permit in accordance with the purposes and requirements of these rules and recommend to the Managing Agent approval, approval with conditions, or denial of the application.
2. The Managing Agent, after receiving a completed application and if applicable, a recommendation from the Board as provided in subsection (a) of this section, shall determine whether each application for a permit or lease meets the purposes and requirements of these rules and approve, approve with conditions, or deny the application.
3. The Managing Agent may require reasonable proof of authority from any person purporting to sign an application for the use of any person or entity other than the signator.
4. The Managing Agent may adopt additional rules and regulations establishing the process for accepting, reviewing and approving all permit and lease applications submitted pursuant to these rules, including the contents of such applications and the specific criteria that will be considered in the review process. Each applicant shall comply with such requirements.
5. Each applicant for a permit shall obtain all required building, health, sales tax or other permits or licenses from all applicable government departments.
6. The permittee shall prominently display the permit.
7. Whenever any permittee desires to change the use or the location of the activity authorized by the permit, the permittee shall follow the review and approval process required of a new applicant.
8. Applications for permits issued on a monthly basis shall be submitted to the Managing Agent between the first and the twenty-fifth day of the preceding month. Applications for daily permits shall be submitted no more than seven days in advance of the day for which

Comment [sm17]: This process needs to be fleshed out

they are to be exercised. No person shall be issued more than three permits of the same type in any seven day period.

9. Permit applications shall be made on the form provided by the Managing Agent for the permit sought, and shall contain all the information required by the form, including any required attachments or exhibits. The Managing Agent may reject incomplete applications.

XIII. TRANSFERS OF PERMITS AND LEASES.

A permit or lease issued under the provisions of these rules is not automatically transferable or assignable. The Board shall review a request to transfer or assign a permit or lease as a new application, and recommend approval, approval with conditions or denial of the request to the Managing Agent.

XIV. PROHIBITED CONDUCT.

1. No person on the Plaza shall ride upon the Plaza any skateboard, skates, coaster, or other similar device.
2. No person shall cast, throw, or propel any projectile on the Plaza. This prohibition includes, without limitation, throwing balls, boomerangs, bottles, darts, Frisbees, and other like devices, model airplanes, rocks, snowballs, and sticks.

This section does not apply to a juggler if the juggler does not cast, throw, or propel a knife, including, without limitation, a knife with a blade three and one-half inches in length or less, or burning projectile, or if the juggler is acting within the terms of a special entertainment permit issued under these Rules.

3. No person shall ride a bicycle in the Plaza.
4. No person shall smoke in the Plaza.

XV. UTILITIES.

A permittee or lessee using water, electrical or sewer service shall pay the costs of such services.

XVI. TERMINATION OF PERMITS.

1. (a) Any permit issued hereunder may be revoked by the Managing Agent, for any violation of law, or breach of a condition in the permit or as follows:
 - (1) The permittee fails to meet the qualifications required of an applicant;
 - (2) The permittee violates any provision of these Rules; or
 - (3) The permittee obtained the permit by fraud or misrepresentation.

(b) If the Managing Agent finds one of the grounds in Subsection (a) of this section or any other ground for suspension or revocation in this code, the Managing Agent shall determine whether to revoke the permit for the remainder of its term or suspend it for any shorter period according to severity of the disqualification, its effect on public health, safety, and welfare, and the time during which the disqualification can be remedied, if at all.

(c) No person whose permit is revoked under this title may receive a refund of any part of the permit fee paid for the permit.

(d) No person who has had a permit suspended or revoked under this title is entitled to obtain the same or any similar permit under this code during the period of suspension or revocation, either in the person's own name or as a principal in another business that applies for a permit. for any violation of law, or breach of a condition in the permit.

2. Upon revocation or expiration of any permit, the permittee shall immediately remove all structures or improvements from the permit area and restore the area to its condition existing prior to issuance of the permit.

3. If a permit is revoked, the permittee may not be approved for the same type of permit for three years after the effective date of the revocation. Approval of applications submitted subsequent to the three year ban are discretionary and subject to the applicant's ability to demonstrate rehabilitation and the likelihood of future permit compliance.

XVII. INSURANCE REQUIRED.

Whenever insurance is required of a permittee under this title, such permittee shall:

(a) At all times maintain workers' compensation insurance, public liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in aggregate.

(b) File with the Managing Agent a certificate signed by a qualified agent of an insurance company evidencing the existence of valid and effective policies of workers' compensation and public liability and property damage insurance naming the city and its officers and employees as an additional named insured on the liability policy at least to the limits required by Subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date, and expiration date of each policy, and a copy of an endorsement placed on each policy requiring ten days' notice by mail to the Managing Agent before the insurer may cancel the policy for any reason.

XVIII. AMENDMENT AND FEE SCHEDULE.

The Managing Agent may recommend Plaza Rule amendments to the Board. Unless indicated otherwise in these rules, the Board shall adopt any amendments to the rules and shall also adopt a **fee and deposit schedule**.

DRAFT

Attachment B: Section 13.11 of the Condominium Declaration - Use of Plaza

Hotel Unit rooms shall not be considered a violation of the commercial use restrictions imposed by this Section 13.7.

13.8 **PARKING USES.** The Parking Units and Parking Spaces may only be used for vehicular parking, storage of vehicles incident to maintenance activities of the Project, bicycle parking and utility functions in accordance with applicable provisions of this Declaration, the Parking Management Agreement and reasonable rules and regulations established from time to time by the Owners of the Parking Units as provided in this Declaration. The permitted use of a Parking Unit may not be changed to any use that would interfere with the use of or cause damage to the RTD Unit without the consent of the Owner of the RTD Unit.

13.9 **DECLARANT'S USE.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors, assigns and representatives, to perform such reasonable activities, and to maintain upon portions of the Project owned by Declarant such facilities as Declarant reasonably deems necessary, convenient or incidental to the completion and sale of the Units. Without limiting the generality of the foregoing, Declarant may maintain management offices, construction facilities and equipment, storage areas, signs, model units, sales offices, parking areas and lighting facilities upon such portions of the Project owned by Declarant. Declarant expressly reserves the right to locate any sales office, management office, or models within any Unit owned by Declarant (other than a Parking Unit) and designated from time to time. The rights retained by Declarant in this Section 13.9 shall terminate with respect to Common Elements other than those Limited Common Elements allocated exclusively to Units owned by Declarant one year after issuance of a certificate of occupancy for all Improvements on the Project. The rights retained by Declarant in this Section 13.9 with respect to Units owned by Declarant and those Limited Common Elements allocated exclusively to Units owned by Declarant shall terminate upon conveyance by Declarant of all of the Units (other than a Parking Unit) to Owners other than Declarant or ten years after the recording of this Declaration, whichever occurs first.

13.10 **PROHIBITED USES.** None of the Units shall be used as an adult bookstore, adult entertainment, adult photo studio, ambulance service, automobile or other vehicle repair facility, blacksmithing shop, bond or check cashing shop, bowling alley, electric substation, fire station, gas regulator station, "head" shop, mortuary, pawn shop, police station, "sex" shop, tattoo or piercing studio, utility pumping station, water reservoir, medical marijuana business (as defined by City law, ordinance, or regulation) or in any other manner that is inconsistent with the customary character of a first class mixed use real property development. Notwithstanding the foregoing, the provision of in-room pay-per-view movies to Hotel Unit rooms shall not be considered a prohibited use described in this Section 13.10.

13.11 **USE OF PLAZA.** Use and management of the Plaza shall be governed by the Depot Square Plaza Rules ("**Plaza Rules**"), which shall implement the intent expressed in this paragraph, and be adopted and amended by the Board. The Plaza Rules shall be managed and enforced by the Managing Agent. While ownership of Units within the Project represents a mix of public and private ownership, the Plaza shall be designed and managed such that it is perceived and used as a single, unified space with specific activity zones identified through design and management techniques (e.g. zones that must remain clear for pedestrian and emergency vehicle access to all Units, vending areas if permitted by the Board, and areas for gatherings). The Plaza is surrounded by, and does not include, areas to be kept clear for ingress and egress of pedestrians, bicycles, service vehicles, and visitors to the Project (the "**Ingress/Egress Zones**"). The Board may amend the Community Map from time to time to modify the location of the boundaries of the Ingress/Egress Zones, including reducing the size of the Plaza, as it deems reasonably necessary to ensure clear access to the Units for Owners, Permittees, invitees and visitors to the Project. The Plaza Rules shall promote and regulate activities and organized events that will enliven the Plaza, support the Plaza's role as a gathering area for the Boulder Junction neighborhood as well as a destination for visitors and the broader community, and contribute to the viability of all of the

Attachment B: Section 13.11 of the Condominium Declaration - Use of Plaza

Units, provided that in no event shall activities that are a Nuisance be permitted. The design and management shall also support an attractive and comfortable space that works well for programmed events while also supporting a range of informal activities. The Managing Agent shall also consider opportunities for coordination of programming and activities between the Plaza and the adjacent Boulder Junction Park area. It is not the intent of the Project to regulate or establish prior conditions or restraint upon the exercise of personal rights of individuals using the Plaza embraced by the First Amendment to the Constitution of the United States, and Article II, Section 10 of the Constitution of Colorado. However, nothing in this Declaration shall limit the right of the Association to regulate these acts by reasonable time, place and manner restrictions to the fullest extent permitted by law, including requiring permits for various uses of the Plaza, requiring clear and safe pathways for pedestrian movement through the Plaza and to and from the Units, and limiting late evening, night or early morning activities that may interfere with users of the Units.

13.12 USE OF COMMON ELEMENTS. Each Owner and Owner's Permittees and invitees may use the Limited Common Elements and Parking Common Elements allocated to the Owner's Unit and the General Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board may adopt Rules or Policies governing or restricting the use of the Common Elements. Each Owner and Owner's Permittee and each GCE/PCE Interest Holder, by acceptance of a deed or other instrument of conveyance or assignment to its Unit, agrees to be bound by any such adopted Rules or Policies. No Owner, Owner's Permittee or GCE/PCE Interest Holder shall cause, or further, an obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements, without prior written consent of the Board or if appointed by the Board, the Architectural Committee. No maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat may be performed or conducted on any Common Element. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board.

13.13 MIXED-USE NATURE OF PROJECT. Each Owner acknowledges and agrees that the Project is a mixed-use project and that traffic, noise, odors and commerce will exist at and within the Project for lawful commercial purposes. Such traffic, noise, odors and commerce will not, however, rise to the level of a Nuisance. The Board shall have the right to regulate or prohibit any use that would create a Nuisance or is prurient in nature. Notwithstanding the foregoing, under no circumstances will the provision of in-room pay-per-view movies to Hotel Unit rooms be considered a Nuisance.

13.14 ZONING RESTRICTIONS. No Unit shall be used for any purpose not permitted by the Site Plan, zoning ordinances of the City for the Project, this Declaration, or not in compliance with any local, state or federal applicable law, statute or other ordinance, regulation or rule.

13.15 RESTRICTIONS CONCERNING VEHICLES.

13.15.1 Abandoned or Stored Vehicles. No abandoned or inoperable vehicle of any kind shall be stored or parked on any of the Common Elements or the Parking Structure. An "**abandoned or inoperable vehicle**" shall be defined as any vehicle that is not capable of being driven under its own propulsion or does not have a registration that is or was valid within the previous six months. Stored vehicles are also prohibited from being parked on the Project. For purposes hereof, a vehicle shall be considered "**stored**" if it remains on the Project without being driven for fourteen (14) consecutive days or longer without prior written Board permission.

13.15.2 Vehicles and Property Prohibited within Project. Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and

Depot Square Plaza at Boulder Junction

NOTE:
ALL BIKE PARKING SHOWN MEETS COB
LAYOUT STANDARDS. SEE SHEET L6.0 FOR
DETAILS

AREA IN RR ROW
FOLLOWING
CONSTRUCTION

SEE ARCH FOR
RETAINING WALL

Access Area to Depot Housing RTD

PARKING
STRUCTURE
ENTRY

1 AS
4 AG
PATH AND STAIR
CONNECTION TO
GOOSE CREEK - SEE
CIVIL

SEE ARCH FOR BIKE
RACKS INSIDE
STRUCTURE

Depot "Plaza" Zone

Public Access

GOOSE CREEK
BRIDGE BY CITY

Main "Plaza" Zone

Emergency Access

Seat Wall "Plaza" Zone

NOTE:
FINAL LOCATION OF
TRASH RECEPTACLES
TO BE DETERMINED.
PROVIDE 2
LANDSCAPE FORMS
PLAINWELL
RECEPTACLES AND 4
LANDSCAPE FORMS
35 PITCH
RECEPTACLES

FUTURE POCKET PARK

MULTI-USE PATH
CONNECTION BY CITY

FUTURE POCKET PARK

NORTH

FUTURE SPRUCE
STREET

FUTURE LANDSCAPE

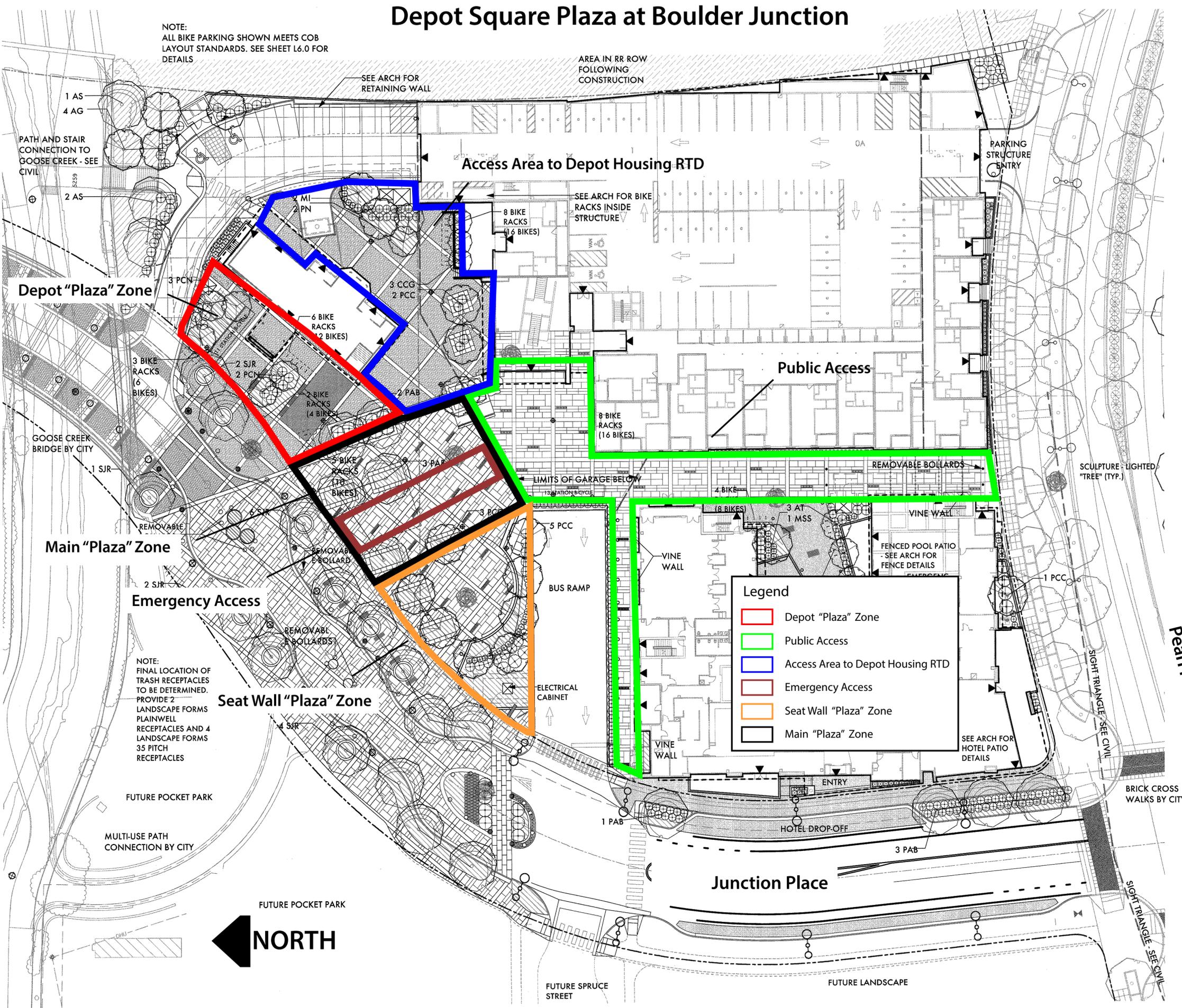
Junction Place

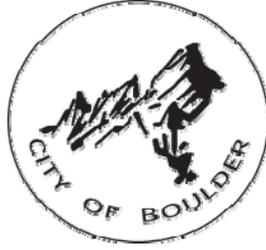
BRICK CROSS
WALKS BY CITY

Pearl Parkway

Legend

- Depot "Plaza" Zone
- Public Access
- Access Area to Depot Housing RTD
- Emergency Access
- Seat Wall "Plaza" Zone
- Main "Plaza" Zone





TO: Boulder Junction Access District Commission Members

FROM: Molly Winter, Executive Director, Department of Community Vitality
Kurt Matthews, Parking Manager, Department of Community Vitality

REF: Permit Parking in the Parking Garage

Date: December 17, 2015

BACKGROUND

The Parking District shares a parking structure with the other owners (Housing, Hotel, Depot, and RTD) in Boulder Junction. Each owner has an allocation of spaces for their own separate management. The district has 100 (90 spaces in the garage and 10 along the access road). As a part of the management of these spaces, we will be offering parking permits to customers as well as short-term availability. The permits are not a guaranteed place to park, only the ability to park without paying hourly rates.

Staff completed a recent survey of the owners, residents, and employers in the District to gauge current pricing and demand. Solana Apartments has 321 spaces total, these spaces are currently priced at \$25/month or \$50/month for two adjacent spaces. Solana currently has an availability of 29 spaces. The Boulder Hyatt employs 35 people, they are accommodating employee parking through their allotment of spaces. The housing units (71) currently have 49 units full and allocated the same number of parking permits, these permits are priced at \$90/month. There is one business at Solana that employs 7 staff. The Roadhouse at Boulder Depot recently opened. As a part of the condo declaration and ownership agreements, they have 10 spaces allocated. Management there has elected to take 10 permits and assign them internally. Nickel Flats is a 16 unit condominium project located on Junction Place just north of Depot Square (in the district). They have 17 parking spaces for their 16 units; occupancy is unknown at this time.

STAFF RECOMMENDATION AND PROPOSAL

Staff plans to begin the issuance of parking permits after the first of the year. Staff will be limiting the amount of permits available to 33 residential and 33 employee to begin with. We will also develop an allotment scheme to ensure one entity does not secure an unfair amount of permits. We have to plan for future growth in the area and ensure that there are permits available

as future projects enter the district. Initially, the residential permits would be allocated as follows: Solana with 79% of the units: 26 permits; Depot Square apartments with 17%: 5 permits; and Nickel Flats with 4%: 2 permits. As we understand the demand from both residential and commercial businesses, we will make modification

Staff is suggesting a price of \$75/month or \$225 per quarter. Permits will be sold/renewed on a quarterly basis. Eligibility will require the purchaser to prove residency or employment within the district. Should either factor change, the permit will need to be returned and a pro-rated amount will be refunded. The application form is attached to this memo for reference.

Each permit sold comes with a disclaimer that the permit may not be automatically renewed, nor will the price be guaranteed beyond the purchase price. This will allow staff to monitor market demand and prices and react accordingly.

REQUIRED DOCUMENTATION

RESIDENCY OR EMPLOYMENT

Proof of Residency within Boulder Junction Parking District:

Residence is established and supported by documents dated within 90 days, and addressed to applicant.

Service and mailing addresses must be on same page.

Acceptable Forms:

- Renewal notice AND any of the following;
- Lease with terms of lease, applicant name, residential address, and signature of all parties. Signatory names should be printed on address page or with affirming signatures.
- Sublease with original lease; as above
- Excel Energy Bill
- City of Boulder Utilities Bill
- Cable Bill
- Phone Bill
- Bank Statement

Unacceptable Forms:

- Unsigned or improperly executed lease
- Lease with illegible names
- Amended lease without updated signatures and date by landlord
- Insurance Card
- Driver's License
- Preprinted Checks
- Personal or general mail

Proof of Employment within Boulder Junction Parking District:

Permanent, employment is established and supported by documents dated within 30 days.

- Employment verification form; and
- Current Pay Stub

REGULATIONS

LIABILITY AND DECLARATION

- Any person or entity violating these conditions may have their permit revoked and will be ineligible to purchase another permit for one year.
- Vehicles are subject to ticketing and/or towing (at the owner's expense) if terms and conditions are violated.
- City of Boulder Parking Services reserves the right to revoke a permit for nonpayment or returned checks.
- Vehicles parked in permit locations are at the owner's risk. Articles left in vehicle are at owner's risk. The City of Boulder is not liable for damages caused by vandalism, theft, driver's negligence or acts of God, and is not liable for personal safety.

Based on the limited number of district parking spaces available and an equitable distribution of permits throughout the parking district, the number of employee and resident permits available by address/project will be proportionately distributed.

Since not all Boulder Junction projects are completed, there will be a reissuing of all permits when projects are completed. You are not guaranteed a permit past one quarterly renewal.



INFORMATION & APPLICATION

City of Boulder-Department of Community Vitality
Parking Services Division
1500 Pearl Street, Suite 302 • Boulder, CO 80302
Phone: 303.413.7300 • Fax: 303.413.7301
boulderparking.com

APPLICATION

DEPOT SQUARE GARAGE

Application for:
 Resident Business / Employee

Name (print) _____

Business Name: _____
(for business permit)

Address: _____

City: _____ State: _____ Zip: _____

Phone: (Cell) _____ (Work) _____

Please provide email if you would like renewal notice electronically:
 _____@_____

I have read and agree to the terms and conditions as stated herein. I verify by my signature that I am eligible for a Depot Square Garage permit as a permanent full-time resident or employee within the Boulder Junction Parking District. I understand this permit is only valid as long as residency and employment within District boundary conditions are met. This permit is the property of City of Boulder and is non-transferable. I am responsible for quarterly renewal. I understand City of Boulder Parking Services reserves the right to temporarily or permanently reassign any permit holder due to maintenance, construction, redistribution, or reorganization. RENEWAL IS NOT GUARANTEED.

 Applicant Signature Date

.....FOR OFFICE USE ONLY.....

Permit #s _____

FEES & PAYMENT

RENEWAL AND CONDITIONS

- **/Quarter.** Renewals by renewal deadline.
- \$15 replacement fee for lost, damaged or stolen permits.
- Accepted payments: Cash, Visa/MasterCard. Checks payable to: City of Boulder.

Quarter	Renewal Deadline
1 st January – March	December 31 st <small>(prior year)</small>
2 nd April – June	March 31 st
3 rd July – September	June 30 th
4 th October – December	September 30 th

Renewal Conditions:

- Renewal is not guaranteed.
- Must re-verify residency and/or employment.
- Renewal notice will be sent to address or email provided on application. It is the permit holder's responsibility to renew on time.
- Permit holder is required to notify City of Boulder Parking Services with contact information changes or employment or residency ineligibility.
- Permits not renewed by deadline will be revoked and offered to next applicant on Wait List.
- Renewal payments accepted by mail (indicate renewal notice number on check), by phone with a credit card, or in person. Mail renewals along with proof of residency and/or employment 15 days prior to the expiration date. Renewals must be received by the deadline.

CONDITIONS OF USE

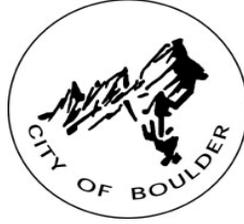
ASSIGNMENT AND TRANSFERS

Assignment

- Permit parking is available on a first-come, first-served basis.
- Leasing a permit does not guarantee you a space in the Depot Square garage
- Without a permit you will be charged the current parking rates.
- Vehicles parked for more than 72 consecutive hours may be towed at the owner's expense.
- Only one vehicle per permit may be parked in the garage at one time.
- Only one parking space is allotted per vehicle.

Transfers:

- Permits are the property of City of Boulder Parking Services; permits must be returned if revoked.
- Anyone suspected of unauthorized permit transferring is subject to revocation.



MEMORANDUM

TO: Boulder Junction Access District – Parking

FROM: Molly Winter, Director, Department of Community Vitality
Kurt Matthews, Parking Manager, Department of Community Vitality
Kathy Haddock, City Attorney's Office

RE: Status of the Depot Square Garage

DATE: December 14, 2015

This memorandum is an update to the on-going discussion regarding the status of the parking management system in the Depot Square Garage at Boulder Junction and the situation with the liens against the district.

Parking Management System

As you are aware, district has several amendments to the parking purchase agreement with 3001 Pearl regarding when the system is operable under the conditions set forth in the Parking Management Agreement. And at its special meeting on November 3rd, the Parking Commission respectfully declined the request by 3001 Pearl to waive the penalty request. The Commission also requested that I keep you updated on the status of the system.

On October 12, SP + the parking management company hired by the condo association determined that the parking access system was operational according to the contract and Parking Management Agreement. On November 18, Kurt and I met with representatives from SP+ and were satisfied that the parking system would work for our district purposes. On November 10, December 8 and again on December 14, I distributed a chart to all the unit owners in the garage for their response to identify the requirements of the Parking Management Agreement and to have the owners determine that the requirements were satisfied. Only the apartment owner has responded affirmatively. I am following up with phone calls.

Since the first and second amendments clearly state that the penalties cease when the garage system operates as “contemplated by the Parking Management Agreement” which addresses all users not just the district, all unit owners need to sign off on the system operability based on the agreement.

Staff is proceeding with working with the other unit owners on agreement on the system which will need to be resolved with the Condominium Board. Also, staff is preparing all the background information regarding permit pricing and procedures so we will be able to move forward with district parking operations when the district is satisfied with the completion of the terms of the Parking Purchase Agreement Amendments and the Agreement for Maintenance of the Parking Structure.

Liens

On Friday, a Motion to Dismiss was filed on behalf of the City and BJAD-P asking the court to dismiss them as parties and dismiss all of the property except from the residential unit from the mechanic's liens and the litigation. Craig Blockwick who represents 3001 Pearl realizes that the liens cannot be pursued against those properties or the city or BJAD-P because they are public properties. The attorney for AP opposed the Motion, but was not able to articulate to me why other than she thinks we don't have an ownership interest in any of the property since she doesn't understand the transaction. Attached is the Motion that was filed. The other parties have a few weeks to respond before the court will rule on it. Kathy Haddock will be at the BJAD Parking meeting at 5pm to answer any questions in this regard.

Attachments:

Attachment A: Depot Square Garage Completion Assessment

Attachment B: Motion to Dismiss

Depot Square Garage Completion Assessment

PMA Requirements ¹	Completion by 3001 Pearl	Comments by 3001 Pearl	Sign off by Unit Owner	Comments by Owners:	All Conditions Satisfied
The Parties intend that the system, or any individual system is added to the System as permitted by the PMA, operated as a unified parking system.			RTD: District: Depot: Residential Unit: Hotel:		Yes: _____ No: _____
Section 12: No system shall be purchased or installed without the written consent of each Party.			RTD: District: Depot: Residential Unit: Hotel:		Yes: _____ No: _____
Section 12.a The system shall be designed to: Track each vehicle entering and exiting the parking facility for purposes of determining the vehicle is an RTD user, an owner parker or a general public user			RTD: District: Depot: Residential Unit: Hotel:		Yes: _____ No: _____
Section 12.b The system shall be designed to: Determine the length of time the vehicle was in the parking facility.			RTD: District: Depot: Residential Unit: Hotel:		Yes: _____ No: _____
Section 12.c: The system shall be designed to: Determine when all of the district spaces are used so that the revenues generated from general public users in addition to those using district spaces can be allocated to the pool			RTD: District: Depot: Residential Unit: Hotel:		Yes: _____ No: _____

¹ As referenced in the Parking Management Agreement (PMA) dated July 26, 2013.

Depot Square Garage Completion Assessment

<p>Section 12.d: The system shall be designed to: Charge the vehicle upon exit for any feeds due by general public users</p>					<p>Yes: _____ No: _____</p>
<p>Section 12 e: The system shall be designed to: Produce monthly and quarterly reports of the use by each owner, the revenues collected from the general public users allocated among the district and other parties.</p>			<p>RTD: District: Depot: Residential Unit: Hotel:</p>		<p>Yes: _____ No: _____</p>
<p>Section 12: In addition, to the extent reasonably possible, the system shall integrate with the property management system and keycard locking system utilized by the hotel unit owner and shall permit in and out privileges for owner parkers... <i>Please see the attached PMA for the full language</i></p>			<p>Hotel:</p>		<p>Yes: _____ No: _____</p>
<p>Section 12: Further, if the RTD unit owner determines in its reasonable discretion that the system does not integrate with its management system in a manner sufficient to meet its needs, the RTD unit owner, at its cost and expense, may elect to install and operate its own separate system. <i>Please see the attached PMA for the entire language.</i></p>			<p>RTD:</p>		<p>Yes: _____ No: _____</p>
<p>Section 13: Regarding pooled parking: For any general public users</p>			<p>RTD: District: Depot:</p>		<p>Yes: _____</p>

Depot Square Garage Completion Assessment

entering the facility after the district spaces are full, the system shall count the vehicles and fees received for such pooled parking.			Residential Unit: Hotel:		No: _____
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DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 6th Street, Boulder, CO 80302	▲ COURT USE ONLY ▲ <hr/> Case Number: 2015CV31265 Division: 2
Plaintiff: AP MOUNTAIN STATES, LLC, a Colorado limited liability company, Defendants: 3001 PEARL, LLC, a Colorado limited liability company, et al.	
Attorney Name: Office of the City Attorney Thomas A. Carr, # 42170 Kathleen E. Haddock, #16011 Address: P.O. Box 791 Boulder, CO 80306 Phone Number: (303) 441-3020 Fax Number: (303) 441-3859 E-mail: carrt@bouldercolorado.gov haddockk@bouldercolorado.gov	
DEFENDANTS CITY OF BOULDER and BOULDER JUNCTION ACCESS GENERAL IMPROVEMENT DISTRICT – PARKING MOTION TO DISMISS	

CERTIFICATE OF COMPLIANCE

City Defendant’s counsel certifies that she has conferred in good faith with Plaintiff’s counsel and Plaintiff’s counsel opposes this Motion. City Defendant’s counsel has conferred with counsel for Respondent 3001 Pearl LLC, the Developer who is the party that contracted with the Plaintiff regarding the construction which is the subject of this litigation. Mr. Blockwick recognizes that by law the mechanics lien cannot be imposed on the properties owned by the City or the District.

The Defendants, City of Boulder and Boulder Junction Access General Improvement District-Parking (BJAD-P) (together the “City Defendants”), by and through their attorney, City of Boulder, Colorado, City Attorney’s Office, request that this Court dismiss this action against them pursuant to C.R.C.P. 12(b)(5), and as grounds therefore state as follows:

I. Introduction

This case involves a large construction project located in the City of Boulder, known as Depot Square and located at 3001 Pearl Street, Boulder, Colorado. Plaintiff, as the principal contractor for the project, believes that it has not been adequately paid for its work in connection with the project. The project is part of a condominium development in which several parties own Units, including public entities such as the City Defendants and the Regional Transportation District (“RTD”). All Unit Owners jointly own an undivided interest in the common elements.

Plaintiff brings this action against 3001 Pearl, LLC, (“3001 Pearl”) as well as numerous parties who have an interest in the project by ownership, as lenders to 3001 Pearl, or by contract with the Plaintiff. Plaintiff brings this action against the City Defendants as owners of property within Depot Square. The City Defendants are public entities. There is no allegation that either of them failed to pay money owed to Plaintiff. They are joined because they have property interests associated with the Depot Square project. However, the property interests of public entities are not subject to mechanic’s liens or to foreclosure. Plaintiff can achieve no remedy from the City Defendants, therefore, there is no reason that they should remain defendants in this matter.

For this reason, the City Defendants seek dismissal of the action against them.

II. Facts

The City of Boulder is a government organized pursuant to Article XX of the Colorado Constitution as a home rule city; Amended Complaint ¶ 7. Boulder Junction Access Improvement District-Parking (BJAD-P) is also a governmental entity. BJAD-P is a general improvement district organized and existing as a general improvement district under the laws of the State of Colorado and the Charter and municipal code of the City formed by the City of Boulder by Ordinance No. 7731; Amended Complaint ¶ 10.

Colorado Revised Statutes define public property as:

. . . any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality . . . or other governmental entity of this state.

Section 42-4-1802(8), C.R.S.

The land for Depot Square was jointly purchased by the City and RTD in 2004, for construction of a bus transit facility and the creation of a Transit-Oriented Development (“Project”). The City and RTD partnered with 3001 Pearl to construct the Project. The partnership included creating a condominium ownership of all of the Depot Square property by the Community Declaration recorded July 29, 2013 at Reception No. 3330983. The Community Map recorded on July 29, 2013 at Reception No. 3330984, created separate unit ownerships of (a) a RTD bus terminal on the lower level of a parking structure owned by RTD (“Unit T”), (b) 71 units of affordable housing apartment owned by 3001 Pearl LLC (“Unit R”), (c) a Hyatt Hotel owned by its operator (“Unit H”), (d) the Boulder Jaycees Historic Depot owned by the City

(“Unit D”), and (e) the Parking Units (all of which constitute the “Project”). The parking structure above the Unit owned by RTD is was divided into five separate Parking Units (“PSUs”) owned separately by different owners; one tied to the RTD ownership (PSU-D), one to the residential ownership (PSU-C), one to the hotel ownership (PSU-B), and one to the City ownership (PSU-E); and a separate parking Unit owned by BJAD-P (PSU-A1 through PSU-A7). Each of the Units were conveyed by the Declarant under the Community Declaration to the individual owners shown above by Special Warranty Deeds recorded on July 29, 2013.

Upon completion of construction and as contemplated in the original Declaration, the Declaration and Map were amended to reflect the precise locations and square footage of each Unit, which could not be done prior to construction. The First Amendment to the Declaration was recorded on August 14, 2015 at Reception No. 03467072 and the Amended and Restated Planned Community Map was recorded on August 14, 2015 at Reception No. 03467073.

Plaintiff was the Design-Build Contractor for a portion of the Project ¶ 16. The City Defendants did not execute any contracts with the Plaintiff for the design or construction of the Project.

Plaintiff has recorded multiple mechanics lien against the Project; Amended Complaint ¶ 27. The property encumbered by the mechanics lien is shown on Exhibit A; Amended Complaint ¶ 43. City Defendants are joined, because they own related property interests in connection with land upon which the Project is built; Amended Complaint ¶¶ 7 and 10; Exhibit A.

III. There is No Remedy Available for Plaintiff Against Public Entities in this Matter

Colorado courts strictly construe the mechanic’s lien statutes when determining whether the right to a lien exists. *Brannon Sand & Gravel Co. v. Santa Fe Land & Improvement Co.*, 332 P.2d 892 (Colo. 1958). When property belongs to a municipal corporation in its governmental capacity and is used for public purposes, that property cannot be subjected to a mechanic’s lien. *Fisher v. Pioneer Constr. Co.*, 163 P. 851, 853-54 (Colo. 1917); *W. Lumber & Pole Co. v. Golden*, 130 P. 1027 (Colo. App. 1913).

Because public property in Colorado is not subject to foreclosure, neither is it subject to mechanic’s liens. *City of Westminster v. Brannon Sand & Gravel*, 940 P.2d 393 (Colo. 1997). Applying such liens to public property would be contrary to public policy and would be incapable of enforcement because public property cannot be subject to forced sale. *W. Lumber*, 130 P. at 1028.

Exhibit A to the Amended Complaint includes property owned by the City Defendants, All of Units PSU-A1 through PSU-A7 are owned by BJAD-P. Therefore, Plaintiff’s First Claim for Relief against Units PSU-A1 through PSU-A7 must be dismissed.

The Common Elements included in Exhibit A to the Amended Complaint and identified as JUNCTION PLACE/PLAZA Parcels 1 and 2, PARKING GARAGE Parcels 1 and 2, and Parcel IV-B (described twice) under AFFORDABLE HOUSING PROPERTY refer to a compilation of properties, a portion of which are Common Elements, non-ownership sub-

designations of Common Elements, or property descriptions that have been superseded by the condominium regime. All of the Common Elements are partially owned by the City Defendants and RTD, another governmental entity. The interests of the City Defendants in the common elements are not severable and vary between 10% to 60% depending on the allocation of expenses and votes. Therefore, Plaintiff's First Claim for Relief must be dismissed against the common elements.

With respect to Plaintiff's First Claim for Relief, the only property that should be the subject of Plaintiff's claim is Unit R and PSU-C. Unit R is the Residential Unit and PSU-C is the parking unit associated with the Residential Unit. The Residential Unit and associated parking unit are the only portions of the Project subject to the allegations in the Second Claim for Relief.

IV. C.R.C.P. 12(b)(5) Motion Is Appropriate

A valid function of a C.R.C.P. 12(b)(5) motion is to test the formal sufficiency of a Plaintiff's complaint. *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). This motion is appropriately used to terminate "claims" for which there is no available remedy based upon the facts as pleaded. *Pub. Serv. Co. v. Van Wyk*, 27 P.3d 377, 386 (Colo. 2001). The motion should be granted where "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, (1957); *see also Johansen v. City of Bartlesville*, 862 F.2d 1423 (10th Cir. 1988).

Construction litigation arising out of large projects can be complex and expensive. It is contrary to public policy for public entities to be needlessly ensnared in such litigation, and therefore, required to expend public resources. While Colorado's mechanic's lien statute cannot be applied to municipal property, an alternative statutory remedy exists to protect those who perform labor or furnish material for public works projects; Section 38-26-101-107, C.R.S. The alternative remedy exists in large part precisely because the legislature did not intend for the Mechanic's lien Act to permit the attachment of a lien on municipal property. *See, e.g., City of Westminster v. Brannon Sand & Gravel Co.*, 940 P.2d 393 (Colo. 1997).

The mechanic's lien relief sought in this action can only be pursued against the Residential Unit and PSU-C. The Plaintiff has asserted a mechanic's lien on that portion of the Project as allowed by law. The Plaintiff is protected if it has not been paid by 3001 Pearl by the mechanic's lien on that property.

The City Defendants are joined in this case only because they own different property that is part of the same Project. The law does not permit the attachment of a lien to property owned by public entities. As a result, there is no justification for the continued presence of the City Defendants in this litigation. There is also no justification or legal basis for a cloud on the title of the Units or common elements owned by the City Defendants created by the mechanic's liens recorded by Plaintiff.

V. Relief Requested

Wherefore, the City Defendants request that:

1. All claims against them be dismissed with prejudice.
2. The “Property” as defined in Exhibit A of the Complaint and Amended Complaint on which this action is allowed to proceed be limited to Unit R and PSU-C, and the remaining property be dismissed with prejudice from this action.
3. The Plaintiff be ordered to release the cloud on the title created by the mechanic’s liens against all property except Unit R and PSU-C.
4. Such further relief as the court deems proper.

Respectfully submitted this 11th day of December 2015.

OFFICE OF THE CITY ATTORNEY

By: s/ Kathleen E. Haddock
Kathleen E. Haddock
City of Boulder
Attorney for City Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2015, a true and correct copy of the foregoing was served via ICCES to counsel of record appearing herein.

/s/ Lisa Thompson
Lisa Thompson



MEMORANDUM

TO: Boulder Junction Access District Commissions – Parking & TDM

FROM: Molly Winter, Executive Director, Department of Community Vitality

RE: Updated and Analysis of Boulder Junction Forecasts and Estimates

DATE: December 13, 2015

Attached is a proposal from Phyllis Resnick to update the built environment inventory, develop revised revenues and expenses, and assess the current mill levies and PILOT agreements. The foundation of the development and subsequent fund revenues and expenses were developed by EPS when the Boulder Junction Access Districts were created based on the best available information at the time. EPS has updated the rate and type of development in the following years.

At this point in time, the nature of the development of Boulder Junction projects and the timing of construction and completion has become more solidified and it is an appropriate opportunity to reassess the underlying financial revenue projections based on mill levies. Also, from an expenses standpoint, the types and scope of the TDM programs, as well as the parking unit expenses have also solidified. In addition, the TDM district was expanded to include the property of the upcoming Google development which was not originally included in the TDM fund projections.

Phyllis Resnick is recommended by the city of Boulder's CFO Bob Eichen, and has been a consultant with the city preparing long term funding city projections. The budget is estimated as a not to exceed contract of \$37,000 and would be proportionately allocated between the two BJAD funds.

Staff is seeking any input from the Commissions about the scope of the proposal.

PROPOSAL: UPDATE AND ANALYSIS OF FORECASTS AND ESTIMATES FOR FUNDING OF PROGRAMS AT BOULDER JUNCTION

Overview

The City of Boulder is involved in a multi-year redevelopment of the Boulder Junction area. According to the city's website (<https://boulder.colorado.gov/public-works/boulder-junction>), the 160 acre parcel, loosely bordered by Valmont Ave, Foothills Parkway, Pearl Parkway and 30th Street, "is being transformed into a mixed-use, pedestrian-oriented neighborhood with regional transit connections and public spaces that will benefit the entire community." As part of these redevelopment goals, the city has established two funds, the Parking fund and the Travel Demand Management (TDM) fund, to provide dedicated parking and travel demand management services to the residential and commercial residents of the district. City staff has requested consultative assistance with the estimation and forecasting of revenue and expenditures into the two funds.

At the time of the establishment of the Boulder Junction redevelopment area (previously referred to as the Transit Village) and the accompanying fund structure to support the parking and travel demand management services, Boulder staff contracted with Economic and Planning Systems, Inc. (EPS) for assistance with the initial revenue and expenditure estimates and forecasts. An integral part of this work was, and continues to be, establishing the connection between the future development plans (and now current realization of such) for the redeveloped built environment and the resulting revenue capacity and expenditure demands. The major sources of on-going revenue to the funds are property taxes and in the case of the parking fund, garage parking revenues. Expenditures are driven by the demand for eco-passes, car share and bike share services as well as for the on-going operations and maintenance of the parking garages in the district. As a result, the current estimates and forecasts for both revenues and expenditures to the funds are integrally related to the present and future realization of the "on the ground" buildout of the district.

Today, the EPS forecasts for both build-out of the built environment and the resulting revenue capacities and expenditure pressures on the district funds are in need of updating and validation. In the years since the original forecasts were completed, many projects which at the time of the forecast were in the planning and conceptual stage are now completed on the ground projects. Other projects have been modified or perhaps expedited or delayed through the development process. In addition, the intervening years have seen economic growth, particularly with respect to property values, that likely has deviated from the original EPS assumptions. As a result, the City of Boulder is seeking assistance with updating both the base assumptions about the built environment and its valuations and the expenditure and revenue forecasts for the district funds. This proposal outlines an approach for that update.

Specific Tasks

The following are the specific tasks to be completed in order to update the fund estimates and forecasts. After each task is an estimate of the hours for completion of the specific task.

- *Update the built environment inventory.* This includes assessing what is currently built, in the process of being built, and what is planned for the future. This will include meetings with and review of data from the county assessor both for type and size of structures as well as current valuations.

TOTAL HOURS: 40

- *Assess the impact, if any, of the two proposed ballot measures* on the ultimate buildout of the Boulder Junction development and thus the revenue and expenditure profile of the district.

TOTAL HOURS: INCLUDED IN TASK ABOVE

- Use the updated built environment inventory to generate *preliminary forecasts of revenues to the two funds* (Parking and TDM). This includes forecasts property tax and parking fees as well as the other smaller revenues. These preliminary forecasts will be completed under the assumption that nothing in the current policies will change (mill levies, charges for parking, PILT program, etc remain as in current law)

TOTAL HOURS: 60

- Use the built updated environment inventory to *forecast expenditure pressures on the funds.* Translate the uses into demand for eco-passes, bike and car share, and operational expenses at the garages.

TOTAL HOURS: 40

- *Assess the soundness of the new forecasts.* This will include the following steps:
 - Assess the current mill levies for their sufficiency in generating property tax revenue for the district. Make recommendations for changes, if necessary.
 - Assess the timing and sufficiency of PILTs currently in place for the district. Make recommendations for changes, if necessary.
 - Evaluation of the expenditure pressures on the two funds

TOTAL HOURS: 40

- Generate *final current period estimates and forecasts for revenue and expenditures to the Parking and TDM funds.* Pay special attention to any

forecast amendments that would result in the need for any adjustments to base in the current budget year.

TOTAL HOURS: 40

- *Work with City staff* to review methodologies, update of the build environment inventory, preliminary estimates and forecasts, and final forecasts.

TOTAL HOURS: INCLUDED IN HOURS OUTLINED ABOVE

TOTAL ESTIMATED PROJECT HOURS: 220

Budget

As with any project of this magnitude and relative uncertainty, some tasks likely will be completed more quickly than estimated while others will take longer. While I have made my best estimate of the time necessary to complete the project, there will likely be some deviation.

My current bill rate is \$200/hour. However, for this larger contract, I am willing to work at the rate of \$165/hour. At \$165/hour, the 220 hours above yield a project budget of \$36,300.

Given the uncertainty of estimating hours to completion, I propose that we structure this contract as an "hourly not to exceed" one. Specifically, I propose that we structure this contract at the rate of \$165/hour not to exceed a total contract ceiling at \$37,000.

OLD PROPOSAL – JUST USING IT AS A FORMAT GUIDE

Final Products

The final products to be delivered at the completion of the project are

1. A comprehensive list of revenue sources annotated with contextual concerns
2. A long-range revenue forecast. This forecast may be for a period of 20 or 30 years, dependant on the request from staff and the BRC members.
3. A narrative to accompany the long-range forecast
4. Presentations to the BRC covering the alternative revenue sources, the trend analysis affecting the future sustainability of the current revenue system, and the long range forecast.

City Staff Support Expectations

In order to best develop the long-range revenue forecast, certain data series and other sources of data and information will be necessary. In most cases, the best source for these data is City of Boulder staff, primarily in the Budget and Planning Offices. The following list outlines the data that will need to be collected from City staff. If any of these data series are not available, the consultant team will work with staff to best identify alternatives.

Data needs for Boulder Revenues Project

Property Tax

- 1) Assessed valuation by category (history)
- 2) Housing Stock (by type)
- 3) Nonresidential building stock
- 4) Mill levies & Collection (history for taxes we are forecasting)

Sales & Use Tax

- 1) Sales tax collections by category (history)
- 2) Sales or tax collections by industry (NAICS categories-history)
- 3) Use tax collections by category (history) Autos, bldg. materials, Business capital expenditures, etc.
- 4) Description of sales and use tax base
- 5) History of changes in rate or base

Other Taxes

- 1) History of collections
- 2) Changes in rates or bases

Economic & Demographic data (History & Forecasts)

- 1) Population by age
- 2) Households by age, type
- 3) Jobs by NAICS industry
- 4) Housing permits
- 5) Other Building Permits

- 6) Data of population and household makeup of city from 2000 Census-e.g. Households by age, income, type of household

Other Information

- 1) Planning figures for future population, households, commercial, retail and industrial development will help with forecasts.
- 2) Information about past developments that have had a significant impact on Boulder economy or tax collections. Examples of such developments include new shopping centers, closures of major local employers, or tax windfalls due to audits or other one-time developments.
- 3) Anticipated future developments of type described above
- 4) Most recent budget forecast of revenues
- 5) Tax forecasting models used by City

It is possible that, during the course of the project, additional data needs will arise. In that instance, consultant team will continue to work with City staff to find that data in the manner that is least staff intensive. Finally, it is expected that City staff will be available to answer questions and review appropriateness of base assumptions, as necessary.

Project Management and Communication

During the scope of the project, Phyllis Resnick will serve as the primary contact and manager for the tasks to be completed. She will be available for updates as requested by City staff and for any other communication necessary to make this project a success.

Budget

The total budget for this project will be \$18,000 with payment due in four increments. The first payment of 15% will be due upon commencement of the project. The second payment of 15% will be due at the completion of the September 27, 2006 BRC meeting and presentation of the alternative revenue options. The third payment of 30% will be due at the completion of the October 25 BRC meeting and presentations of the revenue forecast and trend analysis. The final payment of 40% will be due at the completion of the project, after final revisions to the revenue forecast and trend analysis and upon delivery of the narrative to accompany the forecast. The budget broken down by components is included in the summary table below.

Summary of Project Tasks, Schedule, and Assignments

This table serves as a summary of the project tasks identified above. In this table, the tasks are listed in the order of completion and with assignments and budget attached. *The scheduled completion dates are contingent upon beginning the project by September 8, 2006.*

<i>Task Number</i>	<i>Description</i>	<i>Consultant Assignment (Lead in BOLD)</i>	<i>Scheduled to be Completed</i>	<i>Budget</i>
6	Compile a <u>comprehensive list of taxes, fees and other revenue sources</u> in use in other municipalities across the region, state, and in some cases nation.	Resnick	By end of September	\$3,500
1	Collect <u>base information</u> about Boulder	Resnick and Kendall	By end of September	\$1,500
7	<u>Present the revenue options list</u> to the BRC	Resnick	September 27	Included
2	Translate the base information into a <u>trend analysis</u> for the City of Boulder.	Resnick	By mid October	\$3,000
3	<u>Present the trend analysis</u> to the BRC	Resnick	October 11	Included
4	Create a <u>general revenue forecast</u> for the City for a 20 or 30-year time horizon	Kendall and Resnick	By end of October	\$10,000
5	<u>Present the general revenue forecast</u> to the BRC	Kendall and Resnick	October 25	Included
8	<u>Attend the BRC meetings</u>	Resnick and Kendall	Throughout	Included

Principal Investigators

Short bios of Mr. Kendall and Ms. Resnick, the principal investigators for this project, follow.

Wilson (Bill) Kendall is the President of the Center for Business and Economic Forecasting. CBEF is a private firm, which since 1982 has specialized in analysis of the Colorado and regional economy. Mr. Kendall is widely recognized as one of the leading practicing economists in Colorado, and is widely cited and quoted on the Colorado

economy. Mr. Kendall will serve as Senior Economic Advisor and a contributing investigator, especially for revenue forecasting, on this project.

Mr. Kendall studied economics at the Massachusetts Institute of Technology and the University of Colorado. He has served as the chief economist for the Governor's Office of State Planning and Budgeting, where he was responsible for economic and revenue forecasting and tax analysis. With CBEF, he has authored a number of economic and tax analyses along with creating a number of economic and revenue models. He has taught economics in the MBA program at the University of Denver. Mr. Kendall was a member of the Colorado Futures Panel, focusing on the revenue sustainability of Colorado. Over the years, he has served on countless local, regional, and state-wide panels, task forces, and committees looking at revenues and economic issues.

Recently, Mr. Kendall served as a principal researcher for the City of Aurora's revenue study where he completed the 5 and 20-year revenue forecasts for the project. Prior to that, Mr. Kendall had developed the revenue model currently in use by the City of Aurora's budget staff. Mr. Kendall is currently serving as a consultant to DRCOG developing their 2035 economic and demographic forecast. The outcomes from this forecast will be principle inputs to DRCOG's transportation model update.

Phyllis Resnick is a consulting economist. In that capacity, she is leading the development of an on-line business tax estimator for use by site locators seeking to relocate business to the south metro region. This application will be the first of its type in the state of Colorado. Additional current projects include the long range economic and demographic forecast for DRCOG's 2035 transportation plan update and sponsored research into the effect of the Gallagher Amendment's form of limited market value on the property tax distribution across classes of property and regions of the state.

Recently, Ms. Resnick has also contributed to the structural revenue study for the City of Aurora. As a member of the consulting team, she was responsible for the presentation of the long-range economic forecast for the City to city managers and elected officials and the evaluation of revenue options available to the City. Among her other recently completed projects is the evaluation of the economic contribution of real estate to eight distinct sub-regions of the state. She currently serves nationally on the board of trustees of the Governmental Research Association.

Ms. Resnick is the former Director of Research for the Colorado Center for Tax Policy and has just completed an appointment as the lead economist for the Colorado Economic Futures Panel, a blue-ribbon task force convened by the University of Denver to consider the fiscal sustainability of the State of Colorado. She has led and authored a number of studies looking at state and local tax policy and burdens within Colorado and has spoken nationally on the impact of Colorado's TABOR Amendment and the role of the initiative process in formulating fiscal policy in Colorado.

Ms. Resnick studied economics at the University of Colorado. She is currently completing her Ph. D. dissertation, with her research focused on an econometric analysis of the relationship between the provisions of state tax and expenditure limitations (TEs) and the process and form of tax reforms in the states with TEs. Prior to her appointment with Center for Tax Policy and the Economics Future Panel, Ms. Resnick was a budget officer in the Parks and Recreation and Fire Departments of the City of Boulder. She has taught various economics and public policy courses at both the University of Colorado and the University of Denver.