

**BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
Tuesday, February 18, 2014
6 p.m.**

AGENDA

1. **CALL TO ORDER AND ROLL CALL**
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. Introduction, **first reading** and consideration of a motion to order published by title only, an **ordinance amending** Chapter 6-3, “**Trash, Recyclables and Compostables,” B.R.C. 1981**, by adding a new Section 6-3-12 **requiring bear resistant containers in a designated area** of the city; amending Section 6-3-2, by adding new definitions; adding administrative penalties for violations, amending Section 6-12-5, “Containers for Recycling or Composting Collection,” and setting forth related details
 - B. Introduction, **first reading** and consideration of a motion to adopt **Emergency Ordinance No. 7963, adopting Supplement No. 118, which codifies previously adopted Ordinance** Nos. 7832, 7910, 7912, 7913, 7914, 7916, 7920, 7922, 7925, 7929, 7930, 7931, 7938, 7939, 7941, 7945, 7946, 7949 and other miscellaneous corrections and amendments, as an amendment to the Boulder Revised Code, 1981
 - C. 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 and quitclaim deed for the property known as 3211 Pearl and a separate 1,820 square-foot portion of Pearl Street right-of-way** generally located east of the BNSF Railway Company crossing, near the western terminus of Pearl Street **along the frontage of 3211 Pearl Street**, and consideration of a motion to authorize the City Manager, pursuant to Section 2-2-8”Conveyance of City Real Property Interests,” to dispose of the vacated 1,820 square foot portion of Pearl Street and setting forth related details

Applicant: City of Boulder, Public Works – Transportation
 - D. **Second reading**, and consideration of a motion to adopt **Emergency Ordinance No. 7961 amending** Section 4-20-68, “**Flood Related Fee Waiver,” B.R.C. 1981**, to extend temporary authority **to waive certain fees to facilitate recovery and repair work resulting from flood impacts**

- E. Consideration of a **motion to approve disposal of 6,883 square feet** or approximately 0.16 acres of **Community Hospital Open Space land** described as a permanent easement to **Silver Lake Ditch and Reservoir Company** to allow the relocation and piping of a portion of the Silver Lake Ditch. This is a disposal of Open Space land under City Charter Section 177
 - F. Consideration of a **motion to renew the employment agreement of Boulder Municipal Court Associate Judge Jeffrey Cahn and to award a 3.5% merit increase**
 - G. Consideration of a motion to approve an **intergovernmental agreement** between the City of Boulder and Boulder County **for funding energy efficiency programs**
 - H. Consideration of a **motion** authorizing the City Manager **to convey the permanently affordable housing unit at 4330 Vineyard Lane**
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. 7958 designating** the building and property at **1815 Mapleton Avenue**, to be known as **the Beck-Ray-Schell House, as an individual landmark** under the city's Historic Preservation Ordinance
- B. **Second reading** and consideration of a motion to adopt **Ordinance No. 7960 approving supplemental appropriations** to the 2014 Budget
- C. **Second reading** and consideration of a motion to adopt **Ordinance No. 7957 amending Title 2, "Government Administration," Chapter 7, "Code of Conduct," B.R.C. 1981**

6. **MATTERS FROM THE CITY MANAGER**

- A. **Comprehensive Financial Strategy and CIP Update**

7. **MATTERS FROM THE CITY ATTORNEY**

None

8. MATTERS FROM MAYOR AND MEMBERS OF COUNCIL

A. Potential Call-Ups

1. **Landmark Alteration Certificate for 611 Concord Avenue** Information Packet

Date: February 18, 2014 Last Opportunity for Call-up: February 18, 2014

2. **Landmark Alteration Certificate for 2003 Pine Street** Information Packet Date:

February 18, 2014 Last Opportunity for Call-up: February 18, 2014

B. Regional Transportation Issues

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

This agenda and the meetings can be viewed at www.bouldercolorado.gov / City Council. Meetings are aired live on Municipal Channel 8 and the city's Web site and are re-cablecast at 6 p.m. Wednesdays and 11 a.m. Fridays in the two weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library. Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's Office at (303) 441-3002, 8 a.m. – 5 p.m. Monday through Friday. **48 hours notification prior to the meeting or preparation of special materials IS REQUIRED.** If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three days prior to the meeting. *Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 días antes de la junta.* Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 3:30 p.m. at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only, an ordinance amending Chapter 6-3, “Trash, Recyclables and Compostables,” B.R.C. 1981, by adding a new Section 6-3-12 requiring bear resistant containers in a designated area of the city; amending Section 6-3-2, by adding new definitions; adding administrative penalties for violations, amending section 6-12-5, “Containers for Recycling or Composting Collection,” and setting forth related details.

PRESENTERS:

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Paul J. Fetherston, Deputy City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Mark Beckner, Police Chief
Susan Richstone, Deputy Director of Community Planning & Sustainability
Lesli Ellis, Comprehensive Planning Manager
Valerie Matheson, Urban Wildlife Conservation Coordinator
Kara Mertz, Environmental Action Project Manager

EXECUTIVE SUMMARY:

The purpose of this memo is first reading and consideration of an ordinance that would:

- 1) require trash be secured in bear resistant containers;
- 2) apply initially only to certain neighborhoods west of Broadway (see Bear Zone One map at www.boulderwildlifeplan.net);
- 3) increase the minimum penalty to \$250: and
- 4) allow for notification of violations by posting a notice at the offending property, by telephone, email, or by mail to the property owner. The proposed ordinance (Attachment A) reflects council’s direction on options to secure trash and curbside compost from bears provided at its Jan. 21 meeting. This ordinance responds to

community concerns for four bears that had come to depend on trash in urban areas for food and were euthanized in Boulder last year.

STAFF RECOMMENDATION:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce on first reading and order published by title only, an ordinance amending Chapter 6-3, “Trash, Recyclables and Compostables,” B.R.C. 1981, by adding a new Section 6-3-12 requiring bear resistant containers in a designated area of the city; amending Section 6-3-2, by adding new definitions; adding administrative penalties for violations, amending section 6-12-5, “Containers for Recycling or Composting Collection,” and setting forth related details.

BACKGROUND:

Boulder has long faced the challenges presented by wildlife in the urban interface. Addressing these issues has been a long term priority for the city. The city has an Urban Wildlife Management Plan (UWMP). The first phase of the UWMP was the development of guiding principles, vision and goals for urban wildlife management accepted by City Council in January 2006. The guiding principles emphasize the use of humane, non-lethal control methods when wildlife in the city is in conflict with use or development of a site.

Phase II of the UWMP was focused on species-specific components of the plan. The first component, accepted by City Council in 2006, addressed the management of black-tailed prairie dogs in the city. On Oct. 18, 2011, the council adopted the bear and mountain lion component of the city’s UWMP. The bear and mountain lion component includes strategies to minimize human/wildlife conflicts and increase public awareness on how to better coexist with these animals.

In October 2011, council considered whether to require bear resistant containers in Boulder. There was both community support and resistance. Supporters advocated the containers to reduce bears’ dependence on urban trash. Opponents raised concerns about the cost. Based on the most recent estimates by Western Disposal, it appears that the cost of the containers can be reduced from the amounts presented to council in 2011. On Jan. 21, 2014 council directed staff to develop an ordinance to require trash and compost containers to be secure from bears at all times in most of the city west of Broadway.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - Proper storage of trash and preventing trash from being strewn by animals supports the aesthetic character and economic vitality of Boulder.
- Environmental -Unsecured trash is harmful to native wildlife. Trash that is easily

accessible invites bears to forage in town as opposed to adjacent natural areas. Trash consumption by bears results in cellophane, foil, and other non-digestible materials to be ingested by bears with food waste. Ingesting these materials is harmful to bears. In addition, bears in town that are repeatedly a nuisance, or pose a direct threat to public safety, are destroyed.

- Social - Though there have been no attacks on humans by black bears in the City of Boulder, the presence of these large predators in the urban area poses a safety threat to the community. Bear activity has been reported near areas where children congregate and along streets and alleys where children walk to school. In addition, bears that access trash often drag and spread household waste on streets, lawns and alleys, compromising basic neighborhood sanitation and aesthetics. Euthanizing bears compromises the civic value of living in harmony with the natural surroundings.

OTHER IMPACTS

- Fiscal - Staff's plan includes hiring additional code enforcement officers. The fiscal impact of the additional staffing will be addressed in a budget supplemental ordinance.
- Staff time - Current activities are covered by existing department work plans. Additional enforcement or introduction of bear proof trash containers will require additional staff time.

BOARD AND COMMISSION FEEDBACK

None.

ANALYSIS

In 2012, as part of the Black Bear Urban Wildlife Management Plan, staff undertook three action items. These items were:

- A **community survey** designed to uncover current attitudes, behaviors, and obstacles in living with black bears in western Boulder;
- Bear activity **monitoring** including systematic recording of bear/trash conflicts in select neighborhoods west of Broadway; and
- The **Bear Education & Enforcement Pilot** in partnership with Colorado Parks and Wildlife.

Major findings¹ of 2012 UWMP implementation included:

- The majority of residents in western Boulder currently take action to secure their trash from bears;
- Door-to-door education efforts did not significantly reduce trash storage violations;
- Warnings and citations issued for putting out unsecured trash to the street prior to the morning of trash pick-up seemed to positively impact the behavior;

¹ Staff included a more thorough presentation of the findings of the 2012 UWMP in an Information Packet Memorandum dated May 21, 2013. A copy of this memorandum is attachment B.

- Despite high levels of awareness and compliance by a majority of residents, unsecured trash by a minority of residents in western Boulder still creates a significant attractant to bears, and the city has limited ability to address impacts through law enforcement;
- Trash is more likely to be disturbed at rental properties; and
- Almost all waste containers disturbed by bears were trash containers as opposed to recycling or compost containers.

These findings support an enforcement based approach requiring secured trash in areas of the city where the most bear activity has been observed.

Responses to Council Questions

At the Jan. 21, 2014 council meeting, there were several questions posed. The following is intended to respond to those questions:

- 1. Can we use this opportunity to remove the exemption presented in the Boulder Revised Code that allows for residents with alley collection to store their unsecured trash and compost containers in the alley?***

Staff does not recommend that council address this exemption at this time. The proposed ordinance requires that trash be secured in all of the alleys in the designated area, which will address alleys where bears in trash have been an issue. There have been no reported bear sightings between 2009 and 2013 in the primary neighborhoods outside of the designated area with alley collection, which are downtown, Whittier and Goss Grove. Addressing alleys citywide presents several additional difficulties. 1) There is not consistent delineation between rights of way and private property in alleys throughout the city. 2) Residents with alley collection store trash in a myriad of different ways making a single solution difficult, if not impossible. If in the future, bear activity expands into other areas of the city outside of the designated area necessitating an expansion of the impact area for this ordinance, the requirement for bear resistant containers will equally apply to alley and curbside collections, effectively eliminating this issue.

- 2. Is there a way to contract with a single hauler for trash collection in order to spread these bear-resistant container costs across the larger community?***

If the City chooses to issue a citywide contract for trash, recycling and composting collection services, it would preclude the need for an ordinance; the requirement for the successful franchisee would simply be to provide bear-resistant trash and compost bins to all customers west of Broadway. Enacting this ordinance at this time represents a substantial investment by the current waste haulers in new bear-resistant carts. This investment should be taken into consideration if council intends, in the near future, to award a contract to a single hauler, thereby curtailing the companies' ability to recoup this investment over time. If Council desired to create a franchise for trash, recycling and compost collection, according to Article VIII of the City Charter, it would be subject to a vote of the electorate. Another option would be to create a municipal trash utility and

have that utility contract for trash services. Either approach would require substantial staff time.

3. *Is there a way to accommodate pre-paid bag customers in this ordinance?*

Currently, an affirmative defense against a ticket for violation of the existing Trash, Recyclables, and Compostables chapters of BRC is that "the trash was stored in hauler-provided pre-paid bags between the hours of 5:00 a.m. and 9:00 p.m. on the day of a regularly scheduled collection from the premises." The proposed ordinance would not be subject to this defense. Staff recommends that pre-paid bags be secured in bear-resistant containers or indoors until the time of collection. Currently there are 195 pre-paid bag customers in Zone One and 73 in the alley pick-up area west of Broadway (Bear Zone Three).

One way to reduce the impact on these customers would be to require that all haulers provide less-than-weekly trash service and charge a pro-rated fee according to the frequency of collection - including the additional charge for bear-resistant containers. Staff recommends addressing this as part of the update to the Zero Waste Master Plan, scheduled for council consideration in May (see Feb. 18 Information Packet memo). At that time, staff will ask for council's direction regarding the frequency of standard trash collection service (potentially moving toward a standard of every-other-week trash collection) and any desired changes to the Hauler Requirements contained in chapter 6-12 of the BRC.

4. *Will bears change their behavior and access unsecured trash containers that are put out for curbside pick up the morning of collection?*

Because bears are intelligent animals that can learn new behaviors, successfully securing trash from them can be challenging. The question is whether bears will change their behavior and become more active during the day if unsecured trash is put out the morning of pick up? The answer is yes, based on experiences and observations in Missoula, Montana and Vail, Colorado.

Some scientific evidence shows that bears will change their behavior to access trash when it is made more available. Jerod Merkle's 2011 study, titled: Human Black Bear interactions in Missoula Montana (http://greatbear.org/wp-content/docs/merkle_2011_thesis.pdf), found that the probability of a bear coming near a house during garbage night was 1.45 greater than other nights. This implies that bears change their behavior to come close to houses when trash has been put out. Similarly, Erin Edge, Defenders of Wildlife, and Jamie Jonkel, Bear Management Specialist for Montana Fish, Wildlife and Parks, have both observed bears taking advantage of unsecured trash the morning of pick-up in the Missoula area. Their experience has been that some bears learn trash is available the morning of pick up and access trash containers at that time.

Bears accessing trash the morning of pick up was a factor that lead to Vail's current trash ordinance which now requires bear resistant containers at all times. Prior to the current

ordinance updated in 2007, unsecured trash was permitted to be out at the curb the morning of pick up. According to Ryan Millburn, the Vail Police Officer tasked with enforcing wildlife trash codes: "It took a couple of years for the bears to change their behavior and start coming down on trash days during the day. This actually caused more law enforcement time to be taken up because during the day there is a higher probability of a human/bear conflict. At night people are in their homes when they called is as opposed to walking down the street with their kids or dogs."

Additional Cost Information

Western has provided cost estimates. The maximum container cost would range from \$2.78 to \$4.75 per month (container rental), depending on the size and quality of container (residences would need two containers, one for trash and one for compost). Western is working to bring the cost down. Cost is dependent on a variety of dynamic factors including: exact costs from manufacturers, bulk purchase cost, depreciation, number of customers, standardization of containers, quality, ongoing maintenance pricing, etc. In the Jan. 21, 2014 council memo Options to Secure Trash (<https://documents.bouldercolorado.gov/weblink8/0/doc/124472/Electronic.aspx>), the price range had a lower end, because it included a \$0.19 per month option (or \$53 purchase price) for a 32 gallon Bearicuda container. That model is not being further considered because of concerns about its quality, serviceability, and the style of container that has no wheels and a twist off lid. This information was not evident to Western in the original price proposal.

First Reading Question

The following is a question posed that will be addressed in the materials prepared for the second reading of the ordinance:

Should costs of bear resistant containers be spread throughout the city, or localized to the designated area where they are required? There is a statement in ordinance that allows trash haulers to charge for bear-resistant containers. If haulers were not able to charge for use of bear-resistant containers, would haulers presumably have to increase costs across the city?

Proposed Ordinance

The proposed ordinance is intended to implement council's policy direction. The major features of the proposed ordinance are as follows:

A. Area

The proposed ordinance would apply initially in an area bounded by the city's southern² and western borders, Broadway and a line through Wonderland Lake Park as if Sumac Avenue extended across Broadway to the city border (see Bear Zone One map at

² At the January 24, 2014 update, staff suggested that the southern boundary be Greenbriar Boulevard. Greenbriar Boulevard ends at Lehigh Street. To avoid confusion, staff recommends that the southern boundary extend to the city's southern border.

www.boulderwildlifeplan.net). The ordinance authorizes the city manager to adopt a rule extending the applicable area when necessary.

B. Requirement to Secure Trash.

The proposed ordinance requires that all trash in the area be secured at all times. Trash can be secured by being stored in a bear resistant container or enclosure. In addition, trash may be secured by storage in a garage or shed. If trash is stored securely in a garage or shed, it need not be stored in a bear resistant container. In such cases, the trash may be transported in a non-bear resistant container for pickup, but must at all times be attended by a person within fifteen feet of the container. This provision is intended to fulfill council's direction to allow for trash services that will collect trash directly from a garage or other storage area. The language would also allow for a resident to move the trash from a garage to the curb and wait with the trash for pickup.

C. Definition of Bear Resistant Container, Dumpster or Enclosure.

The proposed ordinance delegates to the city manager the authority to define "bear resistant." Some cities, such as Aspen, have included such language in an ordinance. Aspen's definition of "Wildlife Resistant Container" is as follows:

Wildlife-resistant refuse container means a fully enclosed container that can be constructed of pliable materials, but must be reinforced to deter access by wildlife. The container must employ a sturdy lid that has a latching mechanism preventing access to its contents by wildlife. Wildlife Resistant Containers must meet the standards of testing by the Living With Wildlife Foundation and a "passing" rating by the Interagency Grizzly Bear Committee (IGBC) as bear resistant for 60 minutes or otherwise be approved by a City-designated official.

Aspen Municipal Code § 12.08.010(2). Technology and organizations change. While the city's definition may be similar to that adopted by Aspen, it is better practice to include such definitions in rules that can be adjusted to address such changes.

D. Administrative Remedy.

Staff recommends that the proposed ordinance include an administrative remedy in addition to existing criminal penalties. This is the model employed for both rental licenses and snow removal. The principal reason for this recommendation is to facilitate service by posting rather than personal service. A criminal summons must be served pursuant to state court rules, which require either personal service or service upon a person at the residence of the offending party. An administrative remedy does not have similar requirements.

E. Minimum Fine.

The proposed ordinance includes a minimum fine of \$250. This is similar to a provision in the code section on snow removal. This removes any discretion from the hearing officer to reduce the fine in extenuating circumstances. This could result in some level of dissatisfaction among community members, as there would be no possibility of fine reduction for the facts involved in individual circumstances.

NEXT STEPS

Staff expects to return to council for second reading of the ordinance in March (tentatively scheduled for March 18). In addition, staff is developing a program of city assistance for members of the community who cannot afford the increased cost of bear-resistant containers; and an ordinance implementation timeline which will begin with alleys west of Broadway (see Zone Three map at www.boulderwildlifepan.net) in the spring of 2014.

Attachments:

Attachment A - Proposed Ordinance No. ____

Attachment B - May 21, 2013 Information Packet Memorandum

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 6-3, “TRASH, RECYCLABLES AND COMPOSTABLES,” B.R.C. 1981, BY ADDING A NEW SECTION 6-3-12 REQUIRING BEAR RESISTANT CONTAINERS IN A DESIGNATED AREA OF THE CITY; AMENDING SECTION 6-3-2, BY ADDING NEW DEFINITIONS; ADDING ADMINISTRATIVE PENALTIES FOR VIOLATIONS, AMENDING SECTION 6-12-5, “CONTAINERS FOR RECYCLING OR COMPOSTING COLLECTION,” AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Section 6-3-2, B.R.C. 1981, is amended to read:

6-3-2 Definitions.

The definitions in chapter 1-2, "Definitions," B.R.C. 1981, shall apply to this chapter, including, without limitation, the definitions of "Compostables," "Hauler," "Recyclable materials," "Trash," "Trash container," "Visible to the public" and "Wildlife-resistant container."

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

“Refuse Attractant” shall mean any trash or other substance which could reasonably be expected to attract wildlife or does attract wildlife, including, but not limited to, soiled diapers, sanitary pads, food products, pet food, feed, kitchen organic waste, food, food packaging, toothpaste, deodorant, cosmetics, spices, seasonings or grease. Attractants do not include recyclable materials properly enclosed in a recycling container, or materials that do not meet the definition of trash in section 1-2-1, “Definitions,” B.R.C. 1981 and is fruit associated with a fruit tree or bush, produce associated with a garden, or a bird feeder.

“Bear Resistant Container” shall mean a container that is resistant to being opened by a bear of a type certified by the city manager in a rule adopted pursuant to section 6-3-11 “City Manager Authorized to Issue Rules,” B.R.C. 1981

“Bear Resistant Dumpster” shall mean a dumpster that is resistant to being opened by a bear of a type certified by the city manager in a rule adopted pursuant to section 6-3-11 “City Manager Authorized to Issue Rules,” B.R.C. 1981

“Bear Resistant Enclosure” shall mean a fully enclosed structure that is resistant to being opened by a bear of a type certified by the city manager in a rule adopted pursuant to section 6-3-11 “City Manager Authorized to Issue Rules,” B.R.C. 1981

"Person" shall have the meaning set forth in chapter 1-2, "Definitions," B.R.C., and shall also include, without limitation, owner of any property or vacant land; occupant, owner, operator or manager of any single unit dwelling, multi unit dwelling, mobile home, mobile home park, private club or other similar property; or owner, operator, manager or employee of any business or business property.

Section 2. Chapter 6-3, “Trash, Recyclables and Compostables,” B.R.C. 1981 is amended by the addition of a **new section** 6-3-12 to read:

6-3-12 Bear Resistant Containers Required.

- (a) No private owner, agent appointed pursuant to section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult occupant of a single-family dwelling, a duplex, a triplex, or a fourplex shall fail to keep all refuse attractants in bear resistant enclosures, in bear resistant containers, bear resistant dumpsters or securely stored within a house, garage shed or other structure at least as secure as a bear resistant enclosure at all times, except when being transported from a house, garage or bear resistant enclosure for pickup. Refuse attractants transported for pickup shall be attended, by a person remaining within 15 feet of the container at all times.
- (b) This section shall apply to the area bounded by Broadway Street, the City’s southern boundary, the city’s western boundary and a line extended from Sumac Avenue due west through Wonderland Lake Park. Provided that the city manager may extend the area by rule adopted pursuant to section 6-3-11 “City Manager Authorized to Issue Rules,” B.R.C. 1981.
- (c) If a container or enclosure is damaged, allowing access by wildlife, repairs must be made within 72 hours after written notification by any city official, or such other time designated in the notice by the city official.
- (d) If the city manager finds that a violation of any provision of this section, 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 impose a civil penalty according to the following schedule:
 - (A) For the first violation of the provision, \$250.00;
 - (B) For the second violation of the same provision, \$500.00; and
 - (C) For the third violation of the same provision, \$1,000.00;
- (d) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, including but not limited to section 5-2-4,

General Penalties, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.

- (e) 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 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.
- (f) Notice under this subsection is sufficient if hand delivered, emailed, mailed or telephoned to such person, or by posting on the premises.

Section 3. Section 6-12-5, B.R.C. 1981, is amended to read:

6-12-5 Containers for Recycling or Composting Collection.

- (a) Haulers providing trash collection service to multifamily customers through centralized collection areas shall provide containers for recyclable materials at no additional charge. Containers shall be of a sufficient size to accommodate the regular accumulation of recyclables from that customer, but at a minimum, such containers shall be of a volume equal to one-half of the volume of the trash collection service. If the city manager requires the collection of compostables, haulers shall provide containers for that service of a sufficient size to accommodate the regular accumulation of compostables from that customer.
- (b) Haulers providing trash collection service to residential customers are not required to provide recyclables or compostables containers. However, if the hauler requires a specific type of container, then the hauler shall deliver such container at no cost to the residential customer. This provision does not apply to any container required by the city pursuant to section 6-3-12 "Bear Resistant Containers," B.R.C. 1981.

Section 4. 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 5. 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 18th day of February, 2014.

Attest: _____
Mayor

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this _____ day of _____, 20__.

Attest: _____
Mayor

City Clerk



**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
Susan Richstone, Deputy Director of Community Planning & Sustainability
Lesli Ellis, Comprehensive Planning Manager
Valerie Matheson, Urban Wildlife Conservation Coordinator
Kara Mertz Environmental Action Project Manager
Kelle Boumansour, Residential Sustainability Specialist

Date: May 21, 2013

Subject: Information Item: Update on the implementation of the Black Bear Urban Wildlife Management plan and expansion of the curbside compost collection program

EXECUTIVE SUMMARY

The purpose of this memo is to provide council with an update on the Black Bear Urban Wildlife Management Plan (UWMP) implementation efforts for 2012, and to inform council on how 2012 efforts will guide 2013 implementation activities. In addition, as part of ongoing improvements to the city's zero waste programs, staff is working to investigate the impacts of adding meat and dairy to the curbside compost collection service. In 2013, staff will coordinate UWMP implementation and the city's zero waste services.

This memo includes:

- Detailed information on the 2012 UWMP implementation efforts,
- Major finding of the 2012 UWMP implementation efforts, and
- An overview of the 2013 curbside compost collection pilot.

The 2012 UWMP implementation efforts included:

- a **community survey** designed to uncover current attitudes, behaviors, and obstacles in living with black bears in western Boulder;
- bear activity **monitoring** including systematic recording of bear/trash conflicts in select neighborhoods west of Broadway; and
- the **Bear Education & Enforcement Pilot** (BEEP) in partnership with Colorado Parks and Wildlife (CPW, formerly CDOW).

On October 18, 2011, council accepted the Black Bear and Lion Component of the UWMP which identifies an adaptive management approach to reducing the accessibility of trash to bears in Boulder. The approach includes a three-year monitoring and evaluation cycle and involves the following three steps:

Step 1: Monitor the issue and build community education and awareness (2012 & 2013)

Step 2: Evaluate results and success (2014)

Step 3: Make changes to approach based on evaluation results (2014)

Using the UWMP's adaptive management approach, a community survey and trash container monitoring were implemented to better understand the issue of trash accessibility to bears, and the BEEP was developed to explore the strategy of increased education and law enforcement for securing urban trash from bears.

Major findings of 2012 UWMP implementation included:

- the majority of residents in western Boulder currently take action to secure their trash from bears;
- door-to-door education efforts did not significantly reduce trash storage violations;
- warnings and citations issued for putting out unsecured trash to the street prior to the morning of trash pick-up seemed to positively impact the behavior;
- despite high levels of awareness and compliance by a majority of residents, unsecured trash by a minority of residents in western Boulder still creates a significant attractant to bears, and the city has limited ability to address impacts through law enforcement; and
- almost all waste containers disturbed by bears were trash containers as opposed to recycling or compost containers.

This information obtained from the 2012 BEEP, survey, and monitoring helped staff to slightly redesign 2013 program efforts. The changes in 2013 will include discontinuing the BEEP door-to-door education, and increase informational mailings. The UWMP implementation results for 2012-2013 will be evaluated at the end of 2013, and results of the two years will be used to propose options for improved trash storage to council in 2014.

The 2013 curbside compost collection pilot is intended to investigate the following:

- current community practices related to trash, recycling and composting,

- impacts of adding meat and dairy to the allowable materials for curbside composting, including:
 - quantity and quality of compost and trash collected;
 - impact on wildlife; and
 - barriers that need to be addressed.

Staff is working closely with area haulers and Colorado Parks and Wildlife to conduct a pilot, within 2-3 Boulder neighborhoods, that will provide information on the areas of interest noted above. One of the neighborhoods will be the same neighborhood evaluated in the 2012 UWMP implementation program to attempt to identify general trends. The pilot is scheduled to launch in the late spring of 2013 and continue through the end of 2013. Council will be updated about the pilot as part of study sessions and agenda items associated with the update of the Zero Waste Master Plan.

FISCAL IMPACT

Both the UWMP implementation strategy and the 2013 curbside compost collection pilot will be completed with existing staff resources and budget, and will not require additional funding.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** Proper storage of trash and preventing trash from being strewn by animals supports the aesthetic character and economic vitality of Boulder.
- **Environmental:** Unsecured trash is harmful to native wildlife. Trash that is easily accessible invites bears to forage in town as opposed to adjacent natural areas. Bears that eat trash also consume cellophane, foil, and other non-digestible materials with food waste. Ingesting these materials is harmful to bears. In addition, bears in town that are repeatedly a nuisance, or pose a direct threat to public safety, are destroyed. Since 2003, there have been seven bears destroyed in the City of Boulder. Securing trash helps protect the overall health and lives of bears. By adding meat and dairy to the materials allowable in the curbside compost program, the intention is to determine the best way to increase waste diversion while minimizing impacts on wildlife.
- **Social:** While there have been no attacks on humans by black bears in the City of Boulder, the presence of these large predators in the urban area poses a safety risk to the community. Bear activity has been reported near areas where children congregate and along streets and alleys where children walk to school. In addition, bears that access trash often drag and spread household waste on streets, lawns and alleys, compromising basic neighborhood sanitation and aesthetics. Education and outreach will lead to a better community understanding and appreciation of the relationship between people and the natural environment and bears in particular.

BACKGROUND

Bears are attracted to human-generated food sources such as trash, pet food and wild bird feed in urban areas adjacent to natural areas. In the City of Boulder, like in many other municipalities, trash has been identified as the leading urban attractant (representing 79 percent of 2012 sightings with identified attractants). Minimizing trash as an attractant has reduced nuisance bear behavior in other communities such as Mammoth Lakes, California; Juneau, Alaska; and Whistler, British Columbia. Public input provided during the development of the Urban Wildlife Management Plan (UWMP) indicated there was not widespread support for requiring bear-resistant containers in the city at this time, due to the associated costs. In the absence of bear-resistant container requirements, bears in trash will be addressed through the implementation of the UWMP. The following UWMP actions were identified for 2012:

- Enhance the city website to provide more information about bear activity and how to reduce attractants and safely live with bears in the city,
- Increase outreach and education to residents about living with bears and the availability and benefit of bear-resistant trash containers,
- Increase staff monitoring of bear activity related to trash,
- Continue to target education and outreach with use of bear volunteers in areas where bear activity is high, and
- Use information gathered in bear activity monitoring to inform Zero Waste Master Plan policy decisions and zero waste program planning.

ANALYSIS

Three projects developed to implement the UWMP 2012 action items include: a *community survey*; trash storage and bear activity *monitoring*; and the *Bear Education and Enforcement Pilot* partnership (BEEP) with Colorado Parks and Wildlife (CPW). All three programs were designed to reveal patterns of behavior that could be used to inform future policy and program development. These programs are intended to provide information that is largely based on observation and self-reporting, and are not intended to be statistically reliable or highly scientific.

Community Survey

A community survey was designed to understand the attitudes, behaviors and barriers associated with securing trash from bears. The purpose of the community survey was to uncover current attitudes, perceptions, behaviors, and obstacles in securing trash to develop more effective informational materials, and effective strategies to co-exist with bears in the City of Boulder.

The community survey questionnaire was available online from April-November 2012, and was mailed to the 518 residences in the BEEP program area (west of Ninth Street, north of Baseline Road and south of Pleasant Road) (see www.BoulderWildlifePlan.net > [Bear and Mountain Lion Component of the Urban Wildlife Plan](#) for Black Bear Monitoring and Community Survey report). The questionnaire was completed by 236 respondents, most of whom (79 percent) resided in the BEEP program area.

Major findings of the survey included:

- Most (58-77 percent) respondents make efforts to prevent bears from getting into waste bins (e.g., putting bins out the day of pick-up, keeping food waste indoors until the day of pick-up),
- Most (64 percent) respondents report no bear activity in their trash in 2012,
- Bear/trash disturbances are more of a problem with a minority of residences. Of respondents reporting disturbances:
 - 36 percent reported having a bear disturb their trash at least once in 2012;
 - 10 percent reported repeat trash disturbances (at least five times); and
 - an estimated 533 bear visits to trash containers occurred at 78 residences in 2012.
- Almost half (46 percent) of respondents support education and law enforcement of current laws as the primary strategy for reducing bears in trash conflicts.

Monitoring

Since 2009, the city has maintained a database of calls and e-mails received from Boulder residents regarding bear sightings and conflicts. Although this system provides useful data about bear sightings in the city, it is based solely on reported information. In order to gather more reliable data about the frequency and nature of bear and trash conflicts, staff initiated a monitoring program in 2012 in three residential neighborhoods (including the BEEP program neighborhood). The purpose of the monitoring program is to provide additional information to better understand urban bear behavior, identify patterns, and help develop solutions for bear-trash conflicts. The information gathered through the monitoring program will help determine if the BEEP had an impact in reducing the number of trash violations in relative to other neighborhoods on the west side of Broadway Avenue.

Staff monitored trash, compost, and recycling containers of 896 residences along a contiguous route in three areas west of Broadway for violations (i.e., overflowing trash) including evidence of bear activity. Monitoring was conducted 51 times from June through October, during the hours of 6:30 to 8:30 a.m. (see www.BoulderWildlifePlan.net > [Bear and Mountain Lion Component of the Urban Wildlife Plan](#) for Black Bear Monitoring and Community Survey report).

Major findings of the monitoring program included:

- waste containers were knocked over by bears in 20 percent of homes;
- 32 percent of bear activity in waste containers (177) occurred at rentals, though only 23 percent of units (207) in the monitoring area were rentals; and
- almost all (96 percent) of the 247 waste containers disturbed by bears were trash containers as opposed to compost or recycling.

Black Bear Education and Enforcement Pilot Program

Colorado Parks and Wildlife (CPW) and City of Boulder education efforts have been utilized in Boulder for years to educate residents about how to minimize human-bear conflicts. In 2012, CPW and the City of Boulder partnered to enhance education and law enforcement in an area of the city (535 residences) that experiences high bear activity through an Education and Enforcement program (BEEP). This program adds the additional tool of law enforcement to

reduce bear attractants and help change the human behaviors that invite bears into town. The purpose of this partnership is to explore the effectiveness of education, coupled with law enforcement as a strategy to improve the way trash is stored in western Boulder (see www.BoulderWildlifePlan.net > [Bear and Mountain Lion Component of the Urban Wildlife Plan](#) for the Black Bear Education and Enforcement Pilot program report).

The first part of the program (April- June) consisted of using various methods (i.e., media, email, public meetings) to inform the program area residents of bear behavior and local activity, trash storage requirements, and increased law enforcement for trash storage regulations. Educational efforts also included a team of 22 staff and volunteers from the City of Boulder and Colorado Parks and Wildlife that attempted to provide information to residents through a door-to-door effort. The second part of the program (July-November) consisted of law enforcement officers conducting heightened enforcement of an ordinance (B.R.C 6-3-5) that describes trash storage requirements.

The ordinance requires trash, recyclables, and compostables to be stored in a manner that they are not overflowing, and their contents are not scattered by animals; and prohibits containers being put out prior to 5:00 a.m. the morning of pick up. Residences that have alley trash pickup are exempted from the latter. The ordinance does not provide guidance on how trash must be stored as to not be scattered by animals, and can only be applied after trash has been disturbed. Enforcement of the trash ordinance requires an officer to serve a summons for the observed infraction directly to the resident or land owner. The limitations of this “direct serve” requirement is contact is attempted at the residence, and contact may not be made if residents are not home during contact attempts, or, residents do not come to the door when contact is being attempted.

Major findings of the BEEP program included:

- education alone did not seem to significantly effect behavior change: 15 percent of residents (49) contacted through the BEEP door-to-door education (336) violated the trash ordinance, as opposed to twenty percent of residents (40) that had not been contacted (199).
- Law enforcement staff made contact with roughly 10 percent of homes, issuing 45 warnings and 17 summons;
- the program was time consuming as Boulder Police Department Code Enforcement Unit staff alone spent 240 hours in the program area contacting, or attempting to contact residents for education and law enforcement purposes;
- warnings seem to effect change somewhat (58 percent) in the behavior of putting trash out to the curb the night before pick up. Of 24 warnings issued, ten of those residences were observed repeating the same behavior;
- summonses appeared to be much more effective (100%) as none of the residences that received summonses for putting trash out the night before pick-up were observed repeating the same behavior; and
- there was a significant increase in voluntary use of bear-resistant containers. Bear-resistant trash container use by Western Disposal customers increase from 24 in the

beginning of the program (April 2012), to 40 at the end of the program (October 2012).

Major Findings and Program Implications

Results from the 2012 UWMP implementation projects are being used to inform program modifications for 2013, the 2013 curbside compost collection pilot, and options for policy change in 2014. The major findings from the *community survey*; *monitoring*; and the *Black Bear Education and Enforcement* partnership (BEEP) are summarized in the following five statements, followed by program implications.

1. The majority of residents in western Boulder currently take action to secure their trash from bears.

Program Implications

Many residents comply with trash ordinances designed to protect bears, which indicates that residents are either aware of the concerns related to bears in trash or know about the laws. A consideration of current trash ordinance compliance rates is potential lack of community support for imposing new trash storage requirements. Public input provided during the development of the UWMP indicated there was not widespread support for requiring bear-resistant containers due to associated costs. Limited community support for bear-resistant trash container requirements expressed during the development of the UWMP may include residents who have self initiated successful ways to secure their trash (i.e. store trash in a secure trash enclosure, shed, garage or indoors until the morning of pick-up). A successful community-supported program that improves the way trash is secured from bears must consider current levels of awareness and understanding of residents and the actions and behaviors that have already been established.

2. Door-to-door education efforts did not significantly reduce trash storage violations.

Program Implications

Time invested attempting to contact each resident in the BEEP area for educational purposes (estimated 324 hours of primarily volunteer time) was significant. As there was little difference between the number of violations at residences that had been contacted in comparison to residences that had not been contacted, door-to-door education is not considered an efficient use of resources.

Adjustments to the 2013 program include replacing the door-to-door educational efforts and increasing informational mailings to continue to ensure awareness about issues related to bears and trash, rules, and possible measures.

3. Warnings and citations issued for putting out unsecured trash to the street prior to the morning of trash pick-up, seemed to change the behavior.

Program Implications

Law enforcement seemed to be the major component of improved trash storage practices in the BEEP area. For that reason, UWMP implementation activities for 2013 include continuing the BEEP partnership with CPW for an additional year.

- 4. Despite high levels of awareness and compliance by a majority of residents, unsecured trash of a minority of residents in western Boulder still creates a large attractant to bears, and the city has limited ability to address impacts through law enforcement.**

Program Implications

Approximately 20 percent of homes were not in compliance with current trash laws that specify trash must be secured from bears. Though that percentage is relatively low, the number of residents that need to be contacted by law enforcement is significant: there are an estimated 9,572 residences in the area of Boulder that is frequented by bears (west of Broadway Street, south of Wonderland Lake, and north of Table Mesa Avenue). Extrapolating the percentage of residences that experienced bear/trash conflicts in the monitored area to the area of the city frequented by bears, 1,914 residences would need to be contacted. That effort would be taxing at current staffing levels. For that reason the BEEP area is not recommended for expansion in 2013. Enforcement efficiency is being explored in 2013 by changing the required “direct serve” of summonses to an administrative citation, which does not require making personal contact to serve the citation. A long-term policy adjustment to consider in the future includes changing ordinance from reactive (a violation has occurred after the trash has been strewn by a bear), to proactive (specified requirement of how trash must be stored that prevents a bear from getting into it).

- 5. Almost all waste containers disturbed by bears were trash containers as opposed to recycling or compost containers (Current compost containers do not contain meat and dairy).**

Program Implications

Currently meat and dairy are not included in the single family curbside compost collection program due to concerns about attracting wildlife (compost is only collected every two weeks). Prior to 2012 monitoring, there was limited information on which specific waste cart was being disturbed by bears. *In 2013, wildlife and zero waste staff will work together to investigate various compost collection arrangements and educational initiatives to inform council, wildlife, and zero waste policy decisions in 2014 (see Attachment A).*

NEXT STEPS

The UWMP implementation work plan for 2013 includes:

Work Plan Item	Details	Time Line
Continuation of BEEP partnership with Colorado Parks & Wildlife	Adjust program to discontinue door-to-door education; increase informational mailings	Apr. – Nov. 2013
Implement pilot curbside compost program	Investigate the wildlife and waste diversion impacts of adding meat and dairy to the single-family curbside compost collection program	Apr. – Dec. 2013
Repeat trash storage monitoring	Based on staff availability	Jun. – Nov. 2013
Explore administrative changes to trash violation enforcement	Investigate the feasibility of changing the required “direct serve” of summonses to an administrative citation	Jul. – Nov. 2013

The UWMP implementation results for 2012-2013, as well as the 2013 curbside compost collection pilot will be evaluated at the end of 2013 and results of the two years will be used to propose options for improved trash storage and collection frequency to council in 2014.

ATTACHMENTS

- A:** 2013 Curbside Compost Pilot – Adding Meat and Dairy

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**2013 Curbside Compost Pilot – Adding Meat and Dairy
Draft Work Plan**

Background:

In 2007, City Council updated the trash tax ordinance to require residential waste haulers to provide curbside compost pick up to their customers as a part of the bundled trash and recycling collection system. When council adopted the ordinance, it exempted meat and dairy from the compost collection system due to concerns about attracting wildlife (compost is only collected every two weeks). Since 2007, businesses in Boulder have subscribed to food waste collection that includes meat and dairy. Since 2009, haulers operating in unincorporated Boulder County have also been required to provide food waste collection service (including meat and dairy) to residents in areas east of the City limits and in county enclaves adjacent to the City.

As Boulder continues to strive towards zero waste, staff is interested in evaluating if adding meat and dairy into the compost will further the community’s waste diversion efforts. The pilot will be designed to assess the following:

- What are the current practices around separation of food and yard wastes from the trash?
- Does adding meat and dairy to the compost collection program increase the quantities collected?
- Does adding meat and dairy to the compost increase the attractant for wildlife interactions?
- Are there other factors or barriers that need to be addressed to increase food waste collection or address any wildlife attractants?

May	June - October	November	Dec-Jan
<ul style="list-style-type: none"> - Work with city’s Urban Wildlife staff and Colorado Parks and Wildlife staff to develop pilot program. - Develop and send out survey to residents asking about existing composting behavior (to establish baseline). 	<p>Launch pilot program:</p> <ul style="list-style-type: none"> - Focus on 2-3 key neighborhoods - Conduct outreach and education; varying tactics to test effectiveness - Work with area haulers to track changes in food waste collected - Spot check compost and trash bins (once curbside) to assess effectiveness of education and diversion efforts - Work with urban wildlife staff to track/monitor behavior re: securing trash and compost containers; and wildlife activity - Update Council as appropriate along with ZWMP study session 	<p>Pilot review and analysis:</p> <ul style="list-style-type: none"> - Conduct post-pilot survey - Review and analyze data gathered from spot checks and haulers - Follow up with urban wildlife staff on residents’ behavior re: securing trash + compost containers; and wildlife activity 	<p>Report pilot finding to City Council.</p> <p>As part of the council meetings regarding the update to the ZWMP, make recommendation as to whether meat and dairy should be added to compost; whether every week compost collection should be investigated; and whether any modifications should be recommended to the adaptive management plan for wildlife.</p>



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE

Introduction, first reading and consideration of a motion to adopt Emergency Ordinance No. 7963, adopting Supplement No.118, which codifies previously adopted Ordinance Nos. 7832, 7910, 7912, 7913, 7914, 7916, 7920, 7922, 7925, 7929, 7930, 7931, 7938, 7939, 7941, 7945, 7946, 7949 and other miscellaneous corrections and amendments, as an amendment to the Boulder Revised Code, 1981.

PRESENTER:

Office of the City Attorney
Thomas A. Carr, City Attorney

EXECUTIVE SUMMARY:

The Boulder Revised Code (“B.R.C. 1981”) is the official book of laws of the City of Boulder. Four times a year (quarterly), the City Council is asked to adopt supplements to the B.R.C. 1981. An ordinance format is used to bring ordinances that the City Council adopted in the prior quarter into the B.R.C. 1981, and to ensure that there is no question regarding what constitutes the official laws of the City of Boulder. These supplement ordinances are approved as a matter of routine by the City Council.

Supplement ordinances may also contain non-substantive corrections to the B.R.C. Proposed non-substantive amendments for this supplement are provided in the Amendments portion of this memo, along with the reasons for the requested changes.

In order to generate the printed supplements to the B.R.C. as soon as possible, council is asked to adopt the proposed ordinance at first reading as an emergency measure.

The text of Supplement No. 118 has been previously adopted by the following ordinances:

- 7832 AN ORDINANCE AMENDING TITLE 9, “LAND USE CODE,” B.R.C. 1981, REGARDING STANDARDS FOR CONGREGATE CARE FACILITIES AND SETTING FORTH RELATED DETAILS.
- 7910 AN EMERGENCY ORDINANCE 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 QUESTION OF AMENDING SECTION 98, “TERM OF BONDS - DISPOSAL OF BONDS” OF THE CHARTER OF THE CITY OF BOULDER TO AUTHORIZE NEGOTIATED OR PRIVATE SALES OF BONDS, AND SETTING FORTH RELATED DETAILS. (Self implementing when approved by voters.)

- 7912 AN EMERGENCY ORDINANCE 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 QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.33 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 5222, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2018; AND BEGINNING JANUARY 1, 2019, 0.22 CENT OF EVERY DOLLAR TAXED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE, AND 0.11 CENT OF EVERY DOLLAR TAXED TO GENERAL FUND SERVICES SUCH AS FIRE, POLICE, LIBRARIES, PARKS, RECREATION, HUMAN SERVICES AND OTHER GENERAL FUND PURPOSES; AND BEGINNING JANUARY 1, 2035 0.10 CENT OF EVERY DOLLAR TAXED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE, AND 0.23 CENT OF EVERY DOLLAR TAXED TO FUND SERVICES SUCH AS FIRE, POLICE, LIBRARIES, PARKS, RECREATION, HUMAN SERVICES AND OTHER GENERAL FUND PURPOSES AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH RELATED DETAILS. (Approved by voters, but not self implementing – see 7949 for implementation.)
- 7913 AN EMERGENCY ORDINANCE 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 QUESTION OF, SHALL CITY OF BOULDER TAXES BE INCREASED BY \$4,482,200 EACH YEAR FOR THE PERIOD OF JANUARY 1, 2014 UNTIL DECEMBER 31, 2019 WITH 100 PERCENT OF THE REVENUES COLLECTED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES WITHOUT LIMITATION, SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES, AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH RELATED DETAILS. (Approved by voters, but not self implementing – see 7949 for implementation.)
- 7914 AN ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE QUESTION OF AMENDING SECTION 130 OF THE CITY CHARTER RELATING TO THE QUALIFICATIONS OF APPOINTEES TO CITY BOARDS AND COMMISSIONS; AMENDING SECTIONS 74, 157, 172, 185 IN A RELATED MANNER; SETTING FORTH THE BALLOT TITLE; AND SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS. (Self implementing when approved by voters.)
- 7916 AN EMERGENCY ORDINANCE 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 THE CITY OF BOULDER TAXES SHOULD BE INCREASED BY AN EXCISE TAX OF UP TO 10 PERCENT AND A SALES AND USE TAX ON RECREATIONAL MARIJUANA OF UP TO 10 PERCENT AND SETTING FORTH RELATED DETAILS. (Self implementing when approved by voters.)

- 7920 AN EMERGENCY ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE QUESTION OF SETTING A DEBT LIMIT FOR ACQUISITION OF ELECTRIC UTILITY ASSETS; AMENDING ARTICLE XIII OF 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, AND 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; SUPERSEDING ANY INITIATED BALLOT MEASURE TO THE CONTRARY; SETTING FORTH THE BALLOT TITLE; SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS. (Self implementing when approved by voters.)
- 7922 AN EMERGENCY ORDINANCE 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 QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, SHALL THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7301, BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2039, WITH 100 PERCENT OF THE REVENUES COLLECTED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES, SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES UNTIL DECEMBER 31, 2029 AND BEGINNING JANUARY 1, 2030, 100 PERCENT OF THE REVENUES COLLECTED TO FUND SERVICES SUCH AS FIRE, POLICE, LIBRARIES, PARKS, RECREATION, HUMAN SERVICES AND OTHER GENERAL FUND PURPOSES AND SETTING FORTH RELATED DETAILS. (Self implementing when approved by voters and clarified/amended in Ord. 7949.)
- 7925 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 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 NATIONAL ELECTRICAL 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.

- 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. (Ord. adopted Sept. 2013, but effective March 1, 2014. Noted here, but will not be codified until Supp. 119.)
- 7929 AN EMERGENCY ORDINANCE AMENDING CHAPTER 6-14, "MEDICAL MARIJUANA," B.R.C. 1981, TO IMPLEMENT AND COMPLY WITH THE REQUIREMENTS OF AMENDMENT 64 TO THE COLORADO STATE CONSTITUTION AND SETTING FORTH RELATED DETAILS.
- 7930 AN EMERGENCY ORDINANCE ADDING A NEW CHAPTER 6-16, "RECREATIONAL MARIJUANA," B.R.C. 1981 AND ADDING A NEW SECTION 4-20-67, "RECREATIONAL MARIJUANA BUSINESSES," B.R.C. 1981 TO IMPLEMENT AND COMPLY WITH THE REQUIREMENTS OF AMENDMENT 64 TO THE COLORADO STATE CONSTITUTION, AND SETTING FORTH RELATED DETAILS.
- 7931 AN EMERGENCY ORDINANCE ADDING SECTION 5-10-6 B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.
- 7938 AN EMERGENCY ORDINANCE AMENDING CHAPTER 6-3, "TRASH, RECYCLABLES AND COMPOSTABLES," AND TITLE 9, "LAND USE CODE," B.R.C. 1981, REGARDING TRASH REMOVAL AND ZONING STANDARDS FOR HOSPITALITY ESTABLISHMENTS, AND SETTING FORTH RELATED DETAILS.
- 7939 AN EMERGENCY ORDINANCE AMENDING SECTION 4-2-4, "STATE LAW PROCEDURES APPLY" OF THE B.R.C. 1981 BY CHANGING THE CLASS OF LIQUOR LICENSE FROM A HOTEL-RESTAURANT LICENSE TO BOTH A BEER AND WINE AND HOTEL-RESTAURANT LICENSE FOR PURPOSES OF THE EXISTING FIVE HUNDRED FOOT DISTANCE WAIVER, AND SETTING FORTH RELATED DETAILS.
- 7941 AN ORDINANCE CREATING A PILOT PROJECT ALLOWING ELECTRIC ASSISTED BICYCLES ON CERTAIN HARD-SURFACED, MULTI-USE PATHS BUT EXCLUDING THOSE ON OPEN SPACE AND MOUNTAIN PARK PROPERTY BY AMENDING DEFINITIONS IN SECTIONS 1-2-1 AND 7-1-1; AMENDING SECTIONS 7-4-16, 7-5-5, AND 7-5-9 TO SPECIFY SAFETY STANDARDS THAT WILL APPLY TO ELECTRIC ASSISTED BICYCLES; ADDING A NEW SECTION 7-5-26 AUTHORIZING ELECTRIC ASSISTED BICYCLES WHERE PERMITTED BY A RULE ADOPTED BY THE CITY MANAGER; ESTABLISHING A SUNSET DATE OF DECEMBER 31, 2014; AND SETTING FORTH RELATED DETAILS.
- 7945 AN ORDINANCE AMENDING CHAPTERS 3-8, 3-13, 4-20, AND 8-3 B.R.C. 1981, CHANGING CERTAIN FEES, AND SETTING FORTH RELATED DETAILS.
- 7946 AN EMERGENCY ORDINANCE ADDING A NEW SECTION 4-20-67, "FLOOD RELATED FEE WAIVER," B.R.C. 1981, AUTHORIZING THE CITY MANGER TO

WAIVE CERTAIN FEES; AMENDING SECTION 4-6-2 “LICENSED REQUIRED,” B.R.C. 1981 TO ALLOW FOR CERTAIN USES OF THE RIGHT OF WAY; AMENDING SECTION 5-6-10 “CAMPING OR LODGING ON PROPERTY WITHOUT CONSENT,” B.R.C. 1981 TO ALLOW FOR CAMPING BY EMERGENCY RESPONDERS OR RELIEF WORKERS AND ADDING A NEW SECTION 5-9-11 “FLOOD DEBRIS REMOVAL,” B.R.C. 1981 SUSPENDING THE NOISE ORDINANCE FOR TRASH REMOVAL BETWEEN 5 A.M. AND MIDNIGHT; AMENDING SECTION 8-6-8 “EXEMPT ENCROACHMENTS,” B.R.C. 1981 TO ALLOW FOR CERTAIN USES OF THE RIGHT OF WAY; AMENDING SECTION 10-12-6 “NONRESIDENTIAL USE OF MOBILE HOMES,” B.R.C. 1981, TO ALLOW THE CITY MANAGER TO WAIVE CERTAIN ZONING LIMITATIONS, ALL TO FACILITATE FLOOD RESPONSE; AND SETTING FORTH RELATED DETAILS.

7949 AN EMERGENCY ORDINANCE AMENDING SECTION 3-2-5, “RATE OF TAX,” B.R.C. 1981 TO IMPLEMENT THE TAXATION RATES, REVENUE SPENDING LIMITATIONS AND OTHER REQUIREMENTS APPROVED BY THE VOTERS PURSUANT TO ORDINANCE NOS. 7912, 7913 AND 7922 AT THE NOVEMBER 5, 2013 ELECTION; AND SETTING FORTH RELATED DETAILS.

FISCAL IMPACTS:

Budgetary: None
Staff Time: None beyond the time always allocated to code maintenance in the City Attorney’s overall work plan.
Economic: None

COUNCIL FILTER IMPACTS:

Ongoing code maintenance is an essential and largely administrative obligation of the city.

STAFF RECOMMENDATION:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Emergency Ordinance No. 7963 regarding Supplement No.118.

DISCUSSION:

This supplement includes ordinances that have been adopted by the City Council in the last supplement quarter, and ballot language ordinances that were adopted in the previous quarter, but approved by the voters in an election this quarter. They are added to the official version of the B.R.C. 1981 by way of the attached supplement ordinance. The City Council adopts a quarterly supplement ordinance to ensure that a clearly identifiable version of the Boulder Revised Code is legislatively adopted.

Unusually, no ordinances amending the B.R.C. were adopted during the third quarter (July – Sept.) of 2013. The last supplement ordinance was Ord. No. 7921, adopted Aug. 6, 2013.

Code amendments are reflected in strike out and double underline format along with a “Reason for Change” as part of this agenda item. Such amendments are intended to correct non-substantive errors discovered through review of these ordinances and/or which may have occurred in previously adopted ordinances already in the B.R.C. 1981. Major and/or substantive corrections or revisions are brought forward as a separate ordinance to City Council during the normal course of City Council business.

The printed supplements to the B.R.C. may not be distributed until the proposed adopting ordinance is effective. The laws of the city should be current and available to the residents of the City of Boulder as soon as possible, therefore, council is asked to adopt the proposed ordinance at first reading as an emergency measure.

AMENDMENTS:

1. Section 2-1-3, B.R.C. 1981 is amended as follows:

2-1-3 Council Member Benefits.

(a) The city council finds:

(1) Section 7 of the charter of the City of Boulder, as amended in ~~1999~~2012, sets the level of "compensation" for council members as "\$100.00 per meeting at which a quorum of city council is present, not to exceed ~~four~~fifty-two meetings per calendar ~~year~~month, plus an annual escalation"specified in the charter; and

(2) Ambiguities inherent in the term, "compensation," require that the council interpret Section 7 in a way that will best fulfill the charter's intent and purposes.

....

Reason for change: A Charter change to council compensation was approved by voters in 2012. The Charter was changed, but this related section of the B.R.C. was not updated to match, as was authorized by the ballot item (Ord. 7860, Section 4).

2. Section 9-7-1, B.R.C. 1981, "Schedule of Form and Bulk Standards," Table 7-1 is amended to add a footnote as follows:

Maximum cumulative coverage of all accessory buildings regardless of location ^(m)	For residential uses - no greater than coverage of the principal building
--	---

^(m) For nonstandard buildings or structures, refer to Section 9-10-3(a)(1)(B), B.R.C. 1981, for additional coverage limitations.

Reason for change: Similar to how footnote (l) refers to the additional height limitations for nonstandard buildings; the new footnote would alert users to the coverage limitations for nonstandard buildings and structures within section 9-10.

3. Section 9-8-1, B.R.C. 1981, “Intensity Standards,” Table 8-1 is amended as follows:

**TABLE 8-1: INTENSITY STANDARDS
(REVISED TO INCLUDE FORMER DISTRICT NAMES)**

Zoning District	Intensity Module	Minimum Lot Area (in square feet unless otherwise noted)	Minimum Lot Area Per Dwelling Unit (square feet)	Number of Dwelling Units Per Acre	Minimum Open Space Per Dwelling Unit (<u>square feet</u>)	Minimum Open Space on Lots (Residential Uses)	Minimum Open Space on Lots (Nonresidential Uses) ^(a)	Minimum Private Open Space (Residential Uses) (<u>square feet</u>)	Maximum Floor Area Ratio
-----------------	------------------	--	--	-----------------------------------	---	---	---	--	--------------------------

Reason for change: The change would be consistent with other columns that specify “square feet.” This would remove any confusion relative to whether the numbers are in square feet vs. a percentage.

4. Title 9 Appendix should be amended to replace two maps, as follows:

- Replace Appendix A with a map that does not reference Map 2.
- Replace Appendix G with a more legible map.

Reason for changes: Appendix A includes a reference to a “Map 2” which is not currently included, nor does the reference serve a purpose. Appendix A is intended to show major streets entering Boulder that may be considered for “gateway sites” at the interface of Area I and II. There are no other references to Appendix A in the code and therefore, the downtown streets are irrelevant. Appendix G is updated to provide a more legible map as the current version is hard to read.

5. Section 10-2-2, B.R.C. 1981, is amended as follows:

10-2-2 Adoption of the International Property Maintenance Code With Modifications.

....

(b) IPMC Appendix chapters A, “Boarding Standard,” ~~and~~ B, “Rental Housing Inspections,” and C, “Energy Efficiency Requirement – Existing Residential Rental Structures Energy Conservation,” are adopted.

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

**CHAPTER 1
SCOPE AND ADMINISTRATION**

PART 1 — SCOPE AND ADMINISTRATION

**SECTION 101
GENERAL**

101.1 Title. These regulations shall be known as the Property Maintenance Code of the City of Boulder, hereinafter referred to as “this code.”

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

....

Reason for change:

Paragraph (b) is changed to reflect that Appendix C was also adopted (text of Appendix C was added through a previous ordinance).

Paragraph 101.2 **Scope** is changed to clarify and provide parallel language.

6. Section 10-5-2, B.R.C. 1981, is amended to read:

10-5-2 Adoption of International Building Code With Modifications.

....

(g) 104.8, “Liability,” is amended to read:

104.8 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 person or property of such third parties as a result of the enforcement or non-enforcement of this code. The city assumes no duty of care by virtue of the adoption of this 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 the requirements of this code. It is the duty of the person owning, controlling, or constructing any building or structure to ~~insure~~ ensure that the work is done in accordance with the requirements of this code, and it is such persons and not the city who are responsible for damages caused by negligent breach of such duty.

....

(k) Section 105.3.2, “Time limitation of application,” is repealed and reenacted to read:

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned ~~180 one hundred eighty~~ days after the date of filing, unless such application has been pursued in good faith or a the permit has been issued; except that the building official is authorized to grant one or more ~~not more than two~~ extensions of time for additional

periods not exceeding 180 days each. The extension shall be requested in writing before the expiration date and justifiable cause demonstrated.

...

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

....

J103.4 No adverse ~~affects~~ effects. 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.

.....

Reason for change:

Changes correct scrivener errors unintentionally created when Ord. 7925 was drafted. With these changes, the code will reflect original, proper B.R.C. text.

7. Section 10-7-2, B.R.C. 1981, is amended to read:

10-7-2 Energy Conservation Code.

....

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

....

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 R402.1.1 or R402.1.3, and applicable portions of Chapter ~~10-7-5~~10-7.5 "Green Building and Green Points Program," B.R.C. 1981. The provisions of section R402.2 shall apply.

...

(p) Section R101.4.3, "Additions, alterations, renovations, and repairs." A new subsection 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 requirements of this code and Chapter ~~10-7-5~~10-7.5, "Green Building and Green Points Program," B.R.C. 1981 as applicable.

...

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

....

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~~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:

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~~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.

Reason for change:

Changes will correct inconsistent and incorrect references to B.R.C. citations.

8. Section 10-8-2, B.R.C. 1981, is amended to read, and subsequent paragraphs renumbered as needed:

10-8-2 Adoption of International Fire Code With Modifications.

....
(b) The Fire Code adopted by subsection (a) of this section is amended in the following places:

....
(3) Section 103.4, is repealed and reenacted to read:

103.4 Liability.

....
No employee of the city who enforces, attempts to enforce, or is authorized to enforce the fire code renders him or herself or the city liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or non-enforcement of the fire code. The city assumes no duty of care by virtue of the adoption 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-ensure~~ 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.

...
(e6) 105.6.43 is amended by the addition of the following:

105.6.43 Temporary membrane structures, tents, and canopies. An operational permit may be issued with the construction permit that will be issued by the building official.

(67) Section 105.7 is repealed and reenacted to read:

105.7 Required construction permits. All construction permits will be issued by the building official. The Division of Fire Safety will be the approving authority for following:

- (a) 105.7.1 Automatic fire-extinguishing systems
- (b) 105.7.6 Fire alarm and detection systems and related equipment
- (c) 105.7.7 Fire pumps and related equipment
- (d) 105.7.15 Standpipe systems

(78) Section 108, "Board of Appeals," is repealed and reenacted to read:

....
(44) A new Section 903.8, "Fire suppression systems," is added to read:

903.8 Fire suppression systems.

All existing structures in the following categories shall be protected throughout by an approved and supervised automatic sprinkler system installed in accordance with the provisions of Section 903.3.1 Except that any structure or portion thereof required by this

section to be so protected prior to the effective date of ~~this Ordinance~~ No. 7566 shall be immediately so protected:

....

(49) A new Section 5701.6, "Prohibited acts," is adopted to read:

.....

(e) Except to replace existing tanks, no person shall install any tanks used for the storage of any type of flammable or combustible liquid, or other hazardous material or waste in the floodplain as defined in ~~Section 9-9-2, Chapter 9-16~~ "Definitions," B.R.C. 1981. This prohibition is not retroactive, but no person shall use or maintain any tank installed in violation of this prohibition.

....

(51) A new Section 5706.2.8.2, "Safety devices required for outlets or locations accepting deliveries of flammable or combustible liquids, is adopted to read:

....

(c) Exceptions to ~~(1) and (2)~~ (a) and (b) above may be granted by the city manager for industrial installations if conditions warrant.

....

Reason for change:

Some changes in this section correct scrivener errors unintentionally created when Ord. 7925 was drafted. Paragraph re-numbering will clarify the code and ensure separate paragraphs are properly noted. Paragraph (44), (49) and (51) cross references are corrected or clarified.

9. Section 10-8.5-2, B.R.C. 1981, is amended to read:

10-8.5-2 Adoption of the International Wildland-Urban Interface Code With Modifications.

....

(e) Section 104.3, "Liability of the code official," is repealed and reenacted to read:

....

No employee of the city who enforces, attempts to enforce, or is authorized to enforce the Wildland Code renders him or herself or the city liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or non-enforcement of the fire code. The city assumes no duty of care by virtue of the adoption of the Wildland 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 Wildland Code. It is the duty of the person owning, controlling, or constructing any building or structure to ~~insure~~ ensure 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.

....

Reason for change:

Change will correct a scrivener error unintentionally created when Ord. 7925 was drafted.

10. Section 10-9.5-2, B.R.C. 1981, is amended to read as below, with subsequent paragraphs renumbered as needed:

10-9.5-2 Adoption of the International Fuel Gas Code With Modifications.

....

(b) Except as specified below, Chapter 1 is 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.

(1e) Section 101, "General," is adopted as an administrative provision with the following amendment:

(4i) Section 101.1, "Title," is amended to read:

101.1 Title. These regulations shall be known as the Fuel Gas Code of the City of Boulder or fuel gas code.

(2) Section 107, "Inspections and Testing," is adopted as an administrative provision.

(c3) Exceptions 2, 3, and 4 in Section 303.3, "Prohibited locations," are repealed.

.....

Reason for change:

Paragraph re-numbering will clarify the code and ensure subparagraphs are properly noted.

ATTACHMENT:

A - Proposed Emergency Ordinance w/Exhibits

ORDINANCE NO. 7963

AN EMERGENCY ORDINANCE ADOPTING SUPPLEMENT NO. 118, WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7832, 7910, 7912, 7913, 7914, 7916, 7920, 7922, 7925, 7929, 7930, 7931, 7938, 7939, 7941, 7945, 7946, 7949 AND OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS, AS AN AMENDMENT TO THE BOULDER REVISED CODE, 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Legislative Findings.

- A. Supplement No. 118 amending the Boulder Revised Code 1981 (“B.R.C.”) has been printed.
- B. The City Council intends that this supplement be codified and published as a part of the B.R.C.
- C. Supplement No. 118 to the B.R.C. is a part of this ordinance and contains all of the amendments to the B.R.C. enacted by the City Council in Ordinance Nos. 7832, 7910, 7912, 7913, 7914, 7916, 7920, 7922, 7925, 7929, 7930, 7931, 7938, 7939, 7941, 7945, 7946, and 7949. The City Council intends to adopt this supplement as an amendment to the B.R.C.
- D. The ordinances contained in Supplement No. 118 are available in printed copy to each member of the City Council of the City of Boulder, Colorado, and the published text of the supplement, along with the text of this ordinance, is available for public inspection and acquisition in the office of the city clerk of the City of Boulder, in the Municipal Building, 1777 Broadway, Boulder, Colorado.

Section 2. The City Council adopts Supplement No. 118 by this reference.

Section 3. The City Council orders that a copy of Supplement No. 118 as proposed for adoption by reference herein be on file in the office of the city clerk of the City of Boulder, Colorado, Municipal Building, 1777 Broadway, City of Boulder, Boulder County, Colorado, and may be inspected by any person at any time during regular business hours pending of the adoption of this ordinance.

Section 4. The annotations, source notes, codifier’s notes, and other editorial matter included in the printed B.R.C. are not part of the legislative text. These editorial provisions are provided to give the

public additional information for added convenience. No implication or presumption of a legislative construction is to be drawn from these materials.

Section 5. The B.R.C., or any chapter or section of it, may be proved by a copy certified by the city clerk of the City of Boulder, under seal of the city; or, when printed in book or pamphlet form and purporting to be printed by authority of the city. It shall be received in evidence in all courts without further proof of the existence and regularity of the enactment of any particular ordinance of the B.R.C.

Section 6. These provisions of the B.R.C. shall be given effect and interpreted as though a continuation of prior laws and not as new enactments.

Section 7. Unless expressly provided otherwise, any violation of the provisions of the B.R.C., as supplemented herein, shall be punishable by a fine of not more than one thousand dollars or incarceration for not more than ninety days in jail, or by both such fine and incarceration, as provided in section 5-2-4, "General Penalties," B.R.C. 1981.

Section 8. Section 2-1-3, B.R.C. 1981 is amended as follows:

2-1-3 Council Member Benefits.

(a) The city council finds:

(1) Section 7 of the charter of the City of Boulder, as amended in ~~1990~~2012, sets the level of "compensation" for council members as "\$100.00 per meeting at which a quorum of city council is present, not to exceed ~~four~~forty-two meetings per calendar ~~year~~month, plus an annual escalation" specified in the charter; and

(2) Ambiguities inherent in the term, "compensation," require that the council interpret Section 7 in a way that will best fulfill the charter's intent and purposes.

....

Section 9. Section 9-7-1, B.R.C. 1981, "Schedule of Form and Bulk Standards," Table 7-1 is amended to add a footnote as follows:

Maximum cumulative coverage of all accessory buildings regardless of location ^(m)	For residential uses - no greater than coverage of the principal building
--	---

(^m) For nonstandard buildings or structures, refer to Section 9-10-3(a)(1)(B), B.R.C. 1981, for additional coverage limitations.

Section 10. Section 9-8-1, B.R.C. 1981, “Intensity Standards,” Table 8-1 is amended as follows:

**TABLE 8-1: INTENSITY STANDARDS
(REVISED TO INCLUDE FORMER DISTRICT NAMES)**

Zoning District	Intensity Module	Minimum Lot Area (in square feet unless otherwise noted)	Minimum Lot Area Per Dwelling Unit (square feet)	Number of Dwelling Units Per Acre	Minimum Open Space Per Dwelling Unit (<u>square feet</u>)	Minimum Open Space on Lots (Residential Uses)	Minimum Open Space on Lots (Nonresidential Uses) ^(a)	Minimum Private Open Space (Residential Uses) (<u>square feet</u>)	Maximum Floor Area Ratio
-----------------	------------------	--	--	-----------------------------------	---	---	---	--	--------------------------

Reason for change: The change would be consistent with other columns that specify “square feet.” This would remove any confusion relative to whether the numbers are in square feet vs. a percentage.

Section 11. Title 9 Appendix should be amended to replace two maps, as follows:

- Replace Appendix A with a map that does not reference Map 2. (*See Exhibit A*)
- Replace Appendix G with a more legible map. (*See Exhibit B*)

Section 12. Section 10-2-2, B.R.C. 1981, is amended to read:

....
10-2-2 Adoption of the International Property Maintenance Code With Modifications.

....
(b) IPMC Appendix chapters A, "Boarding Standard," ~~and B~~, "Rental Housing Inspections," and C, "Energy Efficiency Requirement – Existing Residential Rental Structures Energy Conservation," are adopted.

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

**CHAPTER 1
SCOPE AND ADMINISTRATION**

PART 1 — SCOPE AND ADMINISTRATION

**SECTION 101
GENERAL**

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

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

....

Section 13. Section 10-5-2, B.R.C. 1981, is amended to read:

10-5-2 Adoption of International Building Code With Modifications.

....

(g) 104.8, "Liability," is amended to read:

104.8 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 person or property of such third parties as a result of the enforcement or non-enforcement of this code. The city assumes no duty of care by virtue of the adoption of this 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 the requirements of this code. It is the duty of the person owning, controlling, or constructing any building or structure to ~~insure~~ ensure that the work is done in accordance with the requirements of this code, and it is such persons and not the city who are responsible for damages caused by negligent breach of such duty.

....

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

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

...

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

....

J103.4 No adverse ~~affects~~ effects. 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.

.....

Section 14. Section 10-7-2, B.R.C. 1981, is amended to read:

10-7-2 Energy Conservation Code.

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

....
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 R402.1.1 or R402.1.3, and applicable portions of Chapter ~~10-7-5~~10-7.5 "Green Building and Green Points Program," B.R.C. 1981. The provisions of section R402.2 shall apply.

...
(p) Section R101.4.3, "Additions, alterations, renovations, and repairs." A new subsection 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 requirements of this code and Chapter ~~10-7-5~~10-7.5, "Green Building and Green Points Program," B.R.C. 1981 as applicable.

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

...
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~~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:

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~~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.

Section 15. Section 10-8-2, B.R.C. 1981, is amended to read, and subsequent paragraphs

renumbered as needed:

10-8-2 Adoption of International Fire Code With Modifications.

....
(b) The Fire Code adopted by subsection (a) of this section is amended in the following places:

....
(3) Section 103.4, is repealed and reenacted to read:

103.4 Liability.

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

person or property of such third parties as a result of the enforcement or non-enforcement of the fire code. The city assumes no duty of care by virtue of the adoption 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~~ ensure 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.

...

(e6) Section 105.6.43 is amended by the addition of the following:

105.6.43 Temporary membrane structures, tents, and canopies. An operational permit may be issued with the construction permit that will be issued by the building official.

(67) Section 105.7 is repealed and reenacted to read:

105.7 Required construction permits. All construction permits will be issued by the building official. The Division of Fire Safety will be the approving authority for following:

- (a) 105.7.1 Automatic fire-extinguishing systems
- (b) 105.7.6 Fire alarm and detection systems and related equipment
- (c) 105.7.7 Fire pumps and related equipment
- (d) 105.7.15 Standpipe systems

(78) Section 108, "Board of Appeals," is repealed and reenacted to read:

....

(44) A new Section 903.8, "Fire suppression systems," is added to read:

903.8 Fire suppression systems.

All existing structures in the following categories shall be protected throughout by an approved and supervised automatic sprinkler system installed in accordance with the provisions of Section 903.3.1 Except that any structure or portion thereof required by this section to be so protected prior to the effective date of ~~this Ordinance~~ No. 7566 shall be immediately so protected:

....

(49) A new Section 5701.6, "Prohibited acts," is adopted to read:

.....

(e) Except to replace existing tanks, no person shall install any tanks used for the storage of any type of flammable or combustible liquid, or other hazardous material or waste in the floodplain as defined in ~~Section 9-9-2, Chapter 9-16~~ "Definitions," B.R.C. 1981. This prohibition is not retroactive, but no person shall use or maintain any tank installed in violation of this prohibition.

....

(51) A new Section 5706.2.8.2, "Safety devices required for outlets or locations accepting deliveries of flammable or combustible liquids, is adopted to read:

....

(c) Exceptions to ~~(1) and (2)~~ (a) and (b) above may be granted by the city manager for industrial installations if conditions warrant.

....

Section 16. Section 10-8.5-2, B.R.C. 1981, is amended to read:

10-8.5-2 Adoption of the International Wildland-Urban Interface Code With Modifications.

....
(e) Section 104.3, "Liability of the code official," is repealed and reenacted to read:

....
No employee of the city who enforces, attempts to enforce, or is authorized to enforce the Wildland Code renders him or herself or the city liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or non-enforcement of the fire code. The city assumes no duty of care by virtue of the adoption of the Wildland 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 Wildland Code. It is the duty of the person owning, controlling, or constructing any building or structure to ~~insure~~ ensure 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.

....

Section 17. Section 10-9.5-2, B.R.C. 1981, is amended to read as below, with subsequent paragraphs renumbered as needed:

10-9.5-2 Adoption of the International Fuel Gas Code With Modifications.

....
(b) Except as specified below, Chapter 1 is 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.

(1e) Section 101, "General," is adopted as an administrative provision with the following amendment:

(4i) Section 101.1, "Title," is amended to read:

101.1 Title. These regulations shall be known as the Fuel Gas Code of the City of Boulder or fuel gas code.

(2) Section 107, "Inspections and Testing," is adopted as an administrative provision.

(3) Exceptions 2, 3, and 4 in Section 303.3, "Prohibited locations," are repealed.

.....

Section 18. 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 19. The printed supplements cannot be distributed until the adopting ordinance is effective. The laws of the city should be current and available to the residents of the City of Boulder as

soon as possible. Upon that basis, this ordinance is declared to be an emergency measure and shall be in full force and effect upon its final passage.

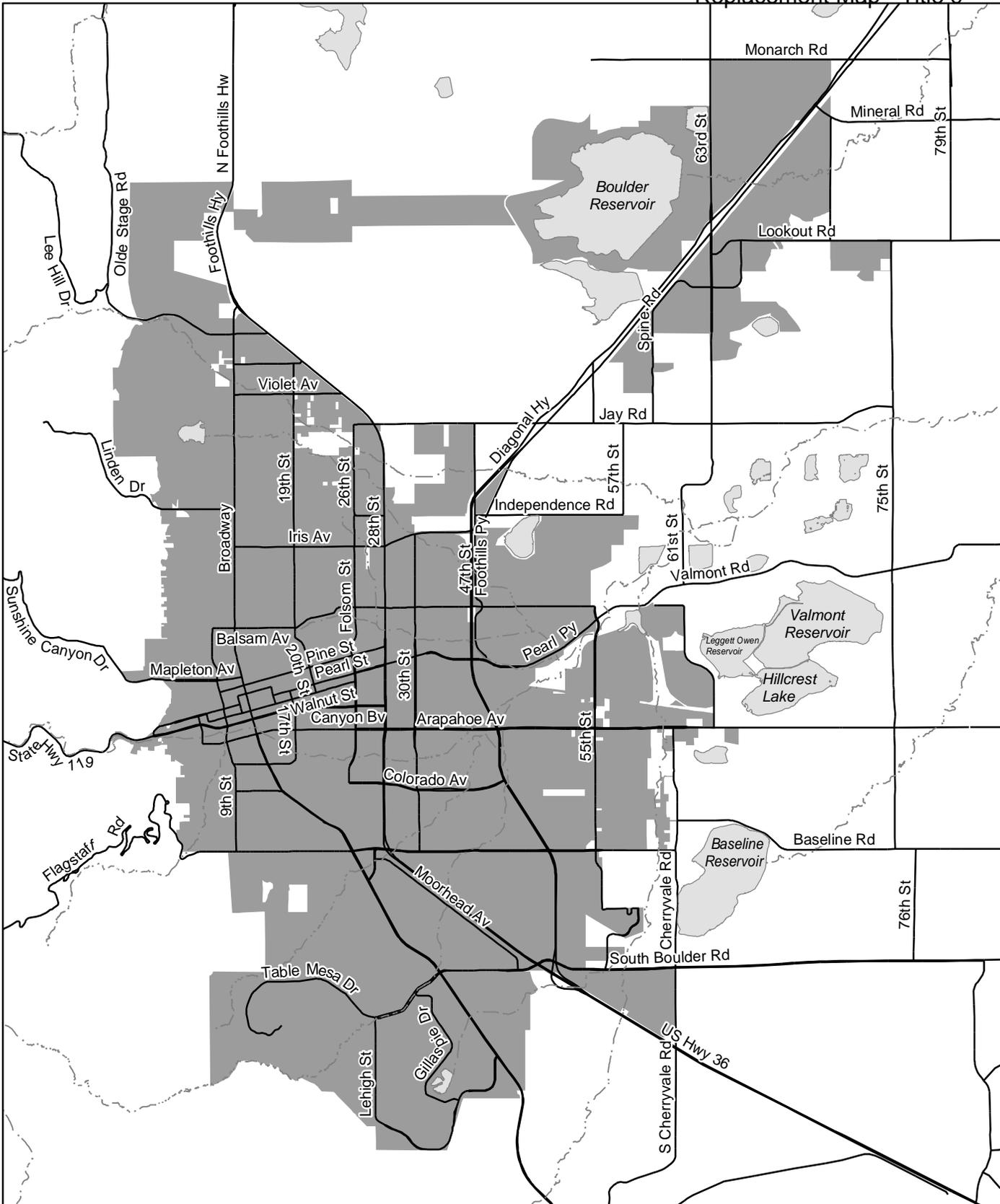
READ ON FIRST READING, PASSED, ADOPTED AS AN EMERGENCY MEASURE BY TWO-THIRDS COUNCILMEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of February 2014.

Mayor

Attest:

City Clerk

APPENDIX A: Major Streets Exhibit A to Ordinance Replacement Map - Title 9



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APPENDIX G: Transit Village Area Plan Boundary



- Legend**
- Area Plan Boundary
 - Ownership Parcels
 - Railroad
 - Highway
 - Road
 - Creeks, Ditches

0 250 500 Feet



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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE:

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 and quitclaim deed for the property known as 3211 Pearl and a separate 1820 square-foot portion of Pearl Street right-of-way generally located east of the BNSF Railway Company crossing, near the western terminus of Pearl Street along the frontage of 3211 Pearl Street, and consideration of a motion to authorize the city manager, pursuant to Section 2-2-8, "Conveyance of City Real Property Interests," to dispose of the vacated 1820 square-foot portion of Pearl Street and setting forth related details.

Applicant: City of Boulder, Public Works – Transportation

PRESENTER/S

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
Stephany Westhusin, Transportation Capital Projects Manager
Janet Michels, Assistant City Attorney
Alex May, Transportation Project Manager

EXECUTIVE SUMMARY

City staff and the applicant are requesting the vacation of City of Boulder interests in the property known as 3211 Pearl and a separate 1820 square-foot portion of roadway right-of-way generally located as shown in **Attachment B**. Please see **Attachment C** for a site plan depicting more detail for the subject area which is east of the BNSF Railway Company railroad, near the western terminus of Pearl Street along the frontage of 3211 Pearl Street. The proposed vacation is being requested in conjunction with related adjacent right-of-way and easement dedication in order to clarify and define uncertain

information in public records related to the north right-of-way line of Pearl Street between the BNSF Railway Company's railroad right-of-way, and the east property line of 3211 Pearl Street. The proposed vacation and conveyance boundaries, and resulting north ROW line of Pearl Street are highlighted on **Attachment C**.

Processing a deed of vacation for the affected parcel from the city, and processing a related quit claim deed for that separate affected parcel from the 3211 Pearl property owner to the city will result in a clear definition of the Pearl Street ROW and the private property line for these affected properties. This transaction will resolve ambiguities in the public land records, resulting in a public service and a benefit to the private property owner as well. This new boundary line will also result in the city's existing 38 year-old waterline being located within the newly defined ROW for Pearl Street. See **Attachment D** for the deed for the new dedication of ROW from the 3211 Pearl property owner, and **Attachment E** for the dedication of an adjoining easement from that property owner. See **Attachments A, F and G** for the Vacation Ordinance, the proposed Deed of Vacation and the Quitclaim Deed for the designated ROW parcel that the city is vacating its interests in.

To vacate a public right-of-way easement, the City Council would have to conclude that the criteria of subsection 8-6-9(c), B.R.C. 1981 are met and approve an ordinance authorizing the city manager to convey the city's real property interest. Staff has reviewed the proposal and has concluded that the request would meet the criteria, as indicated below in the "Analysis" portion of this memorandum.

STAFF RECOMMENDATION

Staff finds that the criteria of section 8-6-9, "Vacation of Public Rights-of-Way and Public Access Easements," B.R.C. 1981 is met and recommends that the City Council take the following action:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to:

Introduce on first reading and order published by title only an ordinance vacating and authorizing the city manager to execute a Deed of Vacation and Quitclaim Deed for the property known as 3211 Pearl and a separate 1820 square-foot portion of Pearl Street right-of-way east of the BNSF Railway Company railroad, near the western terminus of Pearl Street along the frontage of 3211 Pearl Street, and consideration of a motion to authorize the city manager, pursuant to Section 2-2-8, "Conveyance of City Real Property Interests," to dispose of the vacated 1820 square-foot portion of Pearl Street and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The area of undisputed ROW, in which the city is giving up interests (1820.0 square-feet), is roughly proportionate with undisputed fee ROW area

being dedicated by the 3211 Pearl private property owner (1440.0 square-feet), along with the access easement shown in Attachment E (9.0 square-feet). In addition, the city gives up possible other overlaying interests in the southerly portion of the 3211 Pearl property that are referenced in early County Road Books and other early property deeds, which helps to clear up title for this private parcel.

- Environmental – No impacts.
- Social – The related quit claim and easement deed from the 3211 Pearl property owner that will be jointly processed with the proposed vacation deed from the city will have positive social impacts by resulting in a clear definition for the north ROW line of Pearl Street, providing clarity to the public ROW and existing uses of it for current (roadway, waterline) and future public uses in the Boulder Junction area.

OTHER IMPACTS

- Fiscal – No significant impacts, other than survey consultant services related to survey and deed exhibit work.
- Staff time – The vacation application has been processed through the provisions of a standard vacation process and is within normal staff work plans.

BOARD AND COMMISSION FEEDBACK

Notification was sent to the Planning Board on Jan. 31, 2014 in advance of the Feb. 6, 2014 Planning Board meeting, in conformance with Section 79 of the Boulder City Charter. Planning Board did not have any comments on this item.

PUBLIC FEEDBACK

All notice requirements of section 9-4-3, “Public Notice Requirements,” B.R.C. 1981 have been met. Public notice of this proposed vacation was sent to property owners within 600 feet of the project on Jan. 31, 2014. Staff has received no comments or requests for additional information from neighboring property owners or the public. Notice and concurrence with this proposed vacation has been received from all affected private utility companies in the area.

BACKGROUND

This section of Pearl Street right-of-way originated as County Road 1 in 1865 (later renumbered to County Roads 52 and 53 in 1953) through dedication as a county road. The records of the time are uncertain as to whether this roadway right-of-way was dedicated as an easement or dedicated in fee. The records are also inconclusive as to the dedicated width of this right-of-way (most indications are 60'). Adjustments to the Pearl Street ROW were made in 1964, east of the 3211 Pearl property, with vague references to the ROW adjoining 3211 Pearl Street at that time. The City of Boulder constructed water and sewer mains in this section of Pearl Street in approximately 1975. In 1979, the 3211 Pearl property and many other area properties were annexed into the City of Boulder, along with existing roadway right-of-ways. In approximately 1982, the City of Boulder

relocated the Pearl Street crossing of the BNSF railroad tracks to the south onto newly constructed Pearl Parkway, eliminating the former Pearl Street railroad crossing, and essentially creating a dead-end street for Pearl Street, east of the BNSF railroad.

Staff researched the chain of title to the 3211 Pearl property adjoining the north ROW line of Pearl Street back to 1920, when it was part of a larger parent tract of land. Deed descriptions from 1920 through changes in ownership through 1968 identify the south property line of 3211 Pearl as the “centerline of Pearl Street Road.” In the 1960’s, a farm house and related out-buildings are visible in aerial photographs of the area, along with clear depictions of Pearl Street. Later deeds starting in 1976 omit references to the Pearl Street ROW overlaying a portion of the 3211 Pearl property. The current property owner acquired ownership interest in the 3211 Pearl property in 1976, and the current building was constructed on the site in 1979 following annexation of the property. Following the city’s relocation of the BNSF railroad crossing of Pearl Street in approximately 1982, this section of Pearl Street east of the railroad has been a dead-end street, losing many physical features defining the ROW in this area.

In the interest of clearing up this uncertain north ROW line for Pearl Street and in conjunction with early stages of construction planning for replacement of the existing waterline along the affected section of Pearl Street, City of Boulder staff initiated discussions with the owner of 3211 Pearl Street and initiated survey and property research work. The proposed vacation by the city is being requested in conjunction with related adjacent right-of-way and easement dedication by the 3211 Pearl property owner in order to clarify and define uncertain information in public records related to the north right-of-way line of Pearl Street between the BNSF Railway Company’s railroad right-of-way, and the east property line of 3211 Pearl Street. The resulting north ROW line of Pearl Street is highlighted on **Attachment C**, and includes area overlying the city’s existing 38 year-old waterline in this area.

See **Attachment D and E** for the deeds for the various parcels affected by the related conveyance of ROW and easement by the 3211 Pearl property owner.

ANALYSIS

In order for a public right-of-way to be vacated, the City Council must find that the criteria under subsection 8-6-9(c), B.R.C. 1981 are met and adopt an ordinance granting the requested vacation. Staff has reviewed the proposed vacation and has concluded that the criteria can be met as discussed below:

- (1) The applicant must demonstrate that the public purpose for which an easement or right-of-way was originally acquired or dedicated is no longer valid or necessary for public use;*

The 1,820.0 square-foot area proposed to be vacated was clearly a part of right-of-way/easement granted to Boulder County and later annexed to the City of Boulder in 1979. The resulting north ROW line of Pearl Street is highlighted on **Attachment C**. The portion proposed to be vacated has been reduced by a

portion to be retained for a future north-south local roadway connection included in the Transit Village Area Plan (TVAP) Transportation Connections Plan, along the east edge of the 3211 Pearl property. The city will vacate interests in any ROW/easement north of this new defined north ROW line of Pearl Street, retaining only a small utility easement to accommodate an existing guy pole owned by Public Service Company of Colorado, used to support electric distribution lines in the city right-of-way. There are no additional public uses or purpose for the portion of property to be vacated.

- (2) All agencies and departments having a conceivable interest in the easement or right-of-way must indicate that no need exists, either at present or conceivable in the future, to retain the property as an easement or right-of-way, either for its original purpose or for some other public purpose unless the vacation ordinance retains the needed utility or right-of-way easement;***

The proposed vacation of this ROW/Easement been evaluated by the Planning and Public Works Departments, and it has been collectively concluded that the public entities would have no conceivable future interest in the roadway right-of-way being vacated. Due to uncertainties in the definition of the prior ROW for Pearl Street, it is difficult to administer this vaguely defined ROW, creating confusion and a lack of clear understanding of where the definition between public ROW and private property exists. All existing utilities except for the previously mentioned utility easement that accommodates the existing guy pole (other than waterline) are located along the southerly portion of this section of Pearl Street, and would be unaffected by this action. Having this ROW accurately determined will result in a public service where administration and use of a clearly defined ROW will result.

Notice and concurrence with this proposed vacation has been received from all affected private utility companies in the area.

- (3) The applicant must demonstrate, consistent with the Boulder Valley Comprehensive Plan and the city's land use regulations, either:***

- (A) That failure to vacate an existing right-of-way or easement on the property would cause a substantial hardship to the use of the property consistent with the Boulder Valley Comprehensive Plan and the city's land use regulations;***
or

Not Applicable.

- (B) That vacation of the easement or right-of-way would actually provide a greater public benefit than retaining the property in its present status.***

The vacation of the requested right-of-way by the city and related adjacent right-of-way and easement dedication by the private property owner will

provide a greater public benefit than retaining the property in its present uncertain status due to the resulting clarification of the boundary that defines the north ROW line of Pearl Street and the boundary of this private parcel. This will make administration of the right-of-way more defined and clear up existing potential title issues to the affected private parcel. By retaining portions of right-of-way for the future North-South connection along the east side of the affected parcel (as outlined in the TVAP Transportation Connections Plan) and the small easement for the existing guy pole, all future public needs are also provided for.

ATTACHMENTS

- Attachment A: Proposed Ordinance to Vacate Right-of-Way
- Attachment B: Vicinity Map
- Attachment C: Site Plan Exhibit showing ROW and City Interests to be Vacated by City, and New ROW and Easement Areas to be Conveyed by 3211 Pearl Property Owner
- Attachment D: Deed Description with Parcel Map Showing New ROW Area to be Conveyed by 3211 Pearl Property Owner
- Attachment E: Deed Description with Parcel Map Showing New Easement Area to be Dedicated by 3211 Pearl Property Owner
- Attachment F: Deed of Vacation for ROW Area with Exhibit and Legal Description
- Attachment G: Quitclaim Deed for ROW area

1 particularly described on the attached **Exhibit A**, reserving an easement for utility purposes over
2 the property described on the attached **Exhibit B**.

3 Section 2. This ordinance and the vacation and disposal of property authorized herein
4 shall not become effective until the Deed of Vacation in the form generally shown on the
5 attached **Exhibit C** has been recorded in the records of the Boulder County Clerk and Recorder.
6

7 Section 3. The vacation of right-of-way anticipated by this ordinance is necessary to
8 protect the public health, safety, and welfare of the residents of the city, and covers matters of
9 local concern.

10 Section 4. The City Council authorizes the city manager to execute a Quitclaim Deed in
11 the form generally shown on the attached **Exhibit D** for the Property described on **Exhibit A**
12 concurrent with or after the vacation described in Section 2 of this ordinance becomes effective.
13

14 Section 5. The City Council deems it appropriate that this ordinance be published by title
15 only and orders that copies of this ordinance be made available in the office of the city clerk for
16 public inspection and acquisition.
17

18
19 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
20 TITLE ONLY this 18th day of February, 2014.

21
22 _____
Mayor

23 Attest:

24
25 _____
City Clerk

1 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
2 PUBLISHED BY TITLE ONLY this 4th day of March, 2014.

3
4
5 _____
Mayor

6 Attest:

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8 _____
City Clerk

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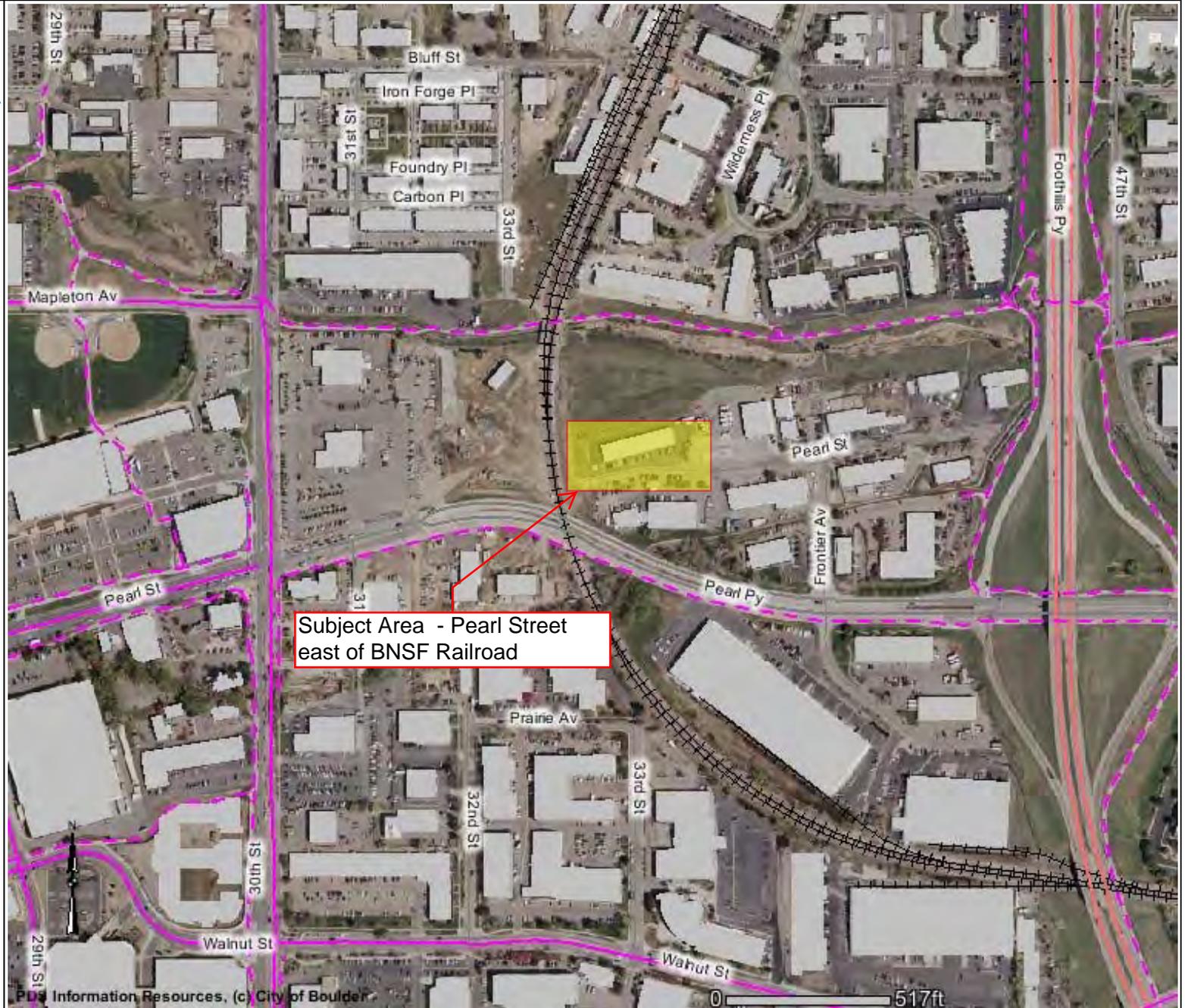
City of Boulder Vicinity Map

Map created with eMaps available at www.boulderplandevlop.net/maps
The legend for this map is available at [Legend](#)

These map products and all underlying data were developed for use by the city of Boulder for its internal purposes only, and were not designed or intended for general use by members of the public. The city makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement or location of any map features thereon. THE CITY OF BOULDER MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OF USE FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA. Any users of these map products, map applications, or data, accepts same AS IS, WITH ALL FAULTS, and assumes all responsibility for the use thereof, and further covenants and agrees to hold the city harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the city's having made this information available. Independent verification of all data contained herein should be obtained by any user of these map products, or the underlying data. The city disclaims, and shall not be held liable for, any and all damage, loss, or liability, whether direct, indirect, or consequential, which arises or may arise from these map products or the use thereof by any person or entity. eMap is maintained by the City of Boulder Planning and Development Services Information Resources Group. For information call (303)441-1880 or visit us on the web at <http://www.ci.boulder.co.us/pwplan/>.



Printed on 2.1.2013

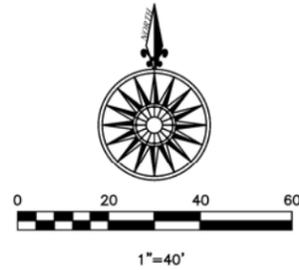


Public Information Resources, (c) City of Boulder

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ATTACHMENT C

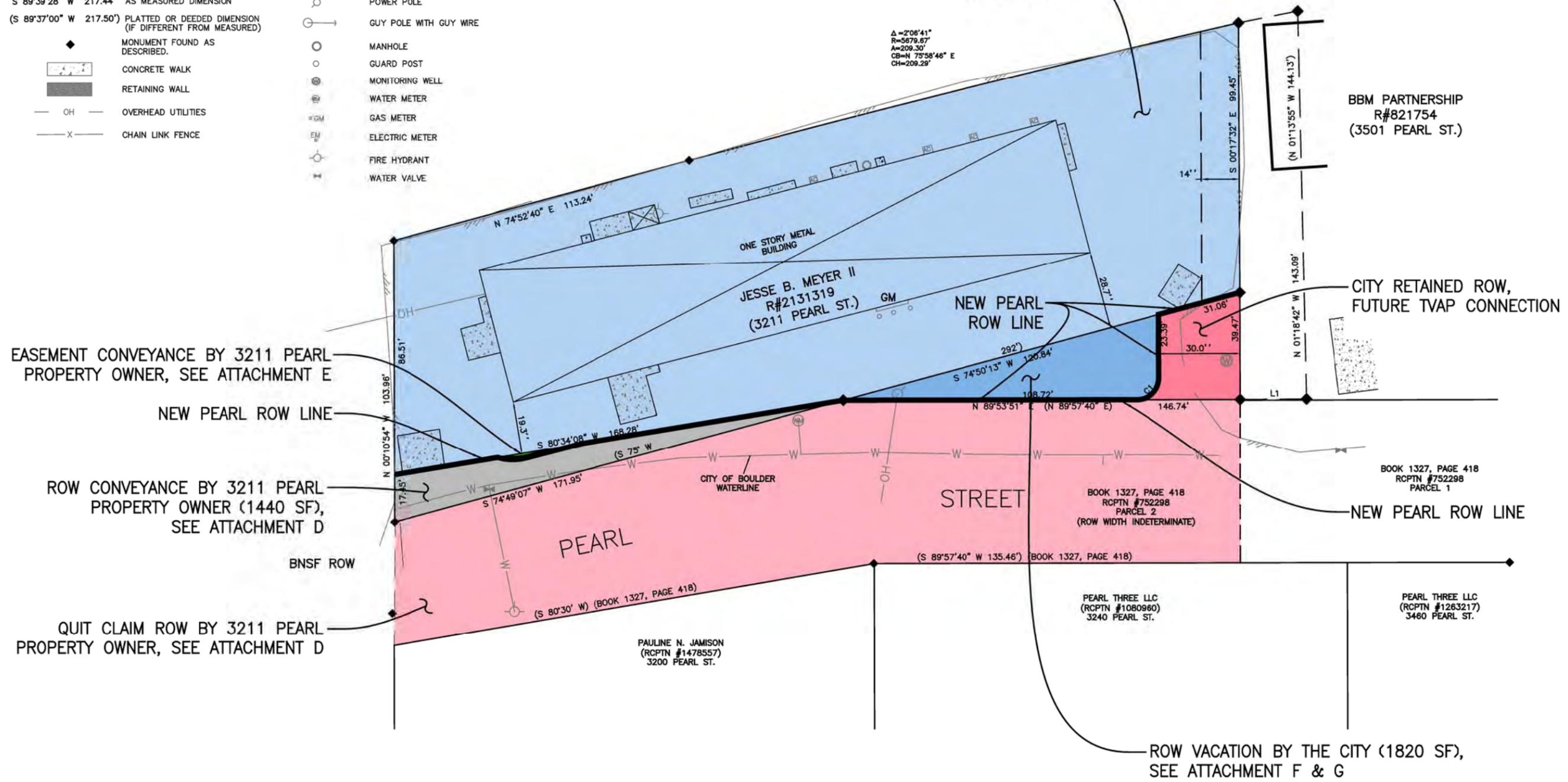
(3211 PEARL ST, BOULDER, CO)



LEGEND

- | | | | |
|-------------------------|---|--|------------------------|
| S 89°39'28" W 217.44' | AS MEASURED DIMENSION | | POWER POLE |
| (S 89°37'00" W 217.50') | PLATTED OR DEEDED DIMENSION
(IF DIFFERENT FROM MEASURED) | | GUY POLE WITH GUY WIRE |
| | MONUMENT FOUND AS DESCRIBED. | | MANHOLE |
| | CONCRETE WALK | | GUARD POST |
| | RETAINING WALL | | MONITORING WELL |
| | OVERHEAD UTILITIES | | WATER METER |
| | CHAIN LINK FENCE | | GAS METER |
| | | | ELECTRIC METER |
| | | | FIRE HYDRANT |
| | | | WATER VALVE |

3211 PEARL PARCEL VACATION OF ANY CITY INTEREST IN THIS PARCEL, SEE ATTACHMENT F & G



Attachment D - Deed Description/Parcel Map Showing New Pearl ROW Area

QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

PROPERTY DESCRIPTION:

A STRIP OF LAND SITUATED IN THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29; THENCE SOUTH ALONG THE EAST LINE OF THE SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29 465 FEET TO THE POINT OF BEGINNING, BEING A FOUND #5 REBAR WITH DREXEL, BARRELL & CO ALLOY CAP, SAID EAST LINE HAVING A BEARING OF SOUTH 00°17'32" EAST WITH ALL BEARINGS HEREIN RELATIVE THERETO; THENCE DEPARTING THE SAID EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29 SOUTH 74°50'13" WEST 31.04 FEET (L1); THENCE SOUTH 00°17'32" EAST 23.38 FEET (L2); THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA ANGLE OF 90°11'22", A RADIUS OF 8.00 FEET, A LENGTH OF 12.59 FEET, AND BEING SUBTENDED BY A CHORD BEARING SOUTH 44°48'09" WEST WITH A CHORD DISTANCE OF 11.33 FEET (C1); THENCE SOUTH 89°53'51" WEST 108.79 FEET (L3) TO A FOUND #5 REBAR WITH DREXEL, BARRELL & CO ALLOY CAP; THENCE SOUTH 80°34'08" WEST 109.39 FEET (L4); THENCE SOUTH 75°29'54" WEST 9.29 FEET (L5); THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA ANGLE OF 22°14'28", A RADIUS OF 20.20 FEET, A LENGTH OF 7.84 FEET, AND BEING SUBTENDED BY A CHORD BEARING SOUTH 86°37'08" WEST WITH A CHORD DISTANCE OF 7.79 FEET (C2); THENCE SOUTH 80°34'08" WEST 41.88 FEET (L6) TO THE EAST LINE OF THE COLORADO CENTRAL DEPOT GROUNDS AS DESCRIBED IN BOOK 57, PAGE 407; THENCE ALONG THE SAID EAST LINE OF THE COLORADO CENTRAL DEPOT GROUNDS SOUTH 00°10'54" EAST 17.45 FEET (L10) TO A FOUND #5 REBAR; THENCE CONTINUING ALONG THE SAID EAST LINE OF THE COLORADO CENTRAL DEPOT GROUNDS SOUTH 00°10'54" EAST 45.40 FEET (L11) TO THE NORTHWEST CORNER OF THE PAULINE N. JAMISON PROPERTY DESCRIBED IN RECEPTION #31478557; THENCE DEPARTING THE SAID EAST LINE OF THE COLORADO CENTRAL DEPOT GROUNDS AND ALONG THE NORTH LINE OF THE SAID JAMISON PROPERTY NORTH 80°20'25" EAST 179.76 FEET (L12) TO A FOUND #5 REBAR AT THE NORTHWEST CORNER OF THE PEARL THREE LLC PROPERTY DESCRIBED IN RECEPTION #1080960; THENCE DEPARTING THE SAID JAMISON PROPERTY AND ALONG THE NORTH LINE OF THE SAID PEARL THREE LLC PROPERTY NORTH 89°52'29" EAST 135.71 FEET (L13) TO A POINT ON THE SAID EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, SAID POINT BEING THE TRUE POINT OF BEGINNING OF PARCELS 1 AND 2 AS DESCRIBED IN BOOK 1327, PAGE 418; THENCE DEPARTING THE SAID NORTH LINE OF THE PEARL THREE LLC PROPERTY AND ALONG THE SAID EAST LINE OF THE WEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29 NORTH 00°17'32" WEST 59.96 FEET (L14) TO A FOUND #5 REBAR AT THE SOUTHWEST CORNER OF THE BBM PARTNERSHIP PROPERTY DESCRIBED IN RECEPTION #821754; THENCE CONTINUING ALONG THE SAID EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29 NORTH 00°17'32" WEST 39.74 FEET (L15) TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED STRIP OF LAND CONTAINS 20311 SQ. FT. (0.466 ACRES), MORE OR LESS.



NOTE:
THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY OR TITLE SEARCH PERFORMED BY BOULDER LAND CONSULTANTS, INC. THERE MAY EXIST EASEMENTS AND/OR OTHER ENCUMBRANCES AFFECTING THE SUBJECT PROPERTY THAT ARE NOT SHOWN HEREON.

THIS MAP WAS PREPARED BY
BOULDER LAND CONSULTANTS, INC.

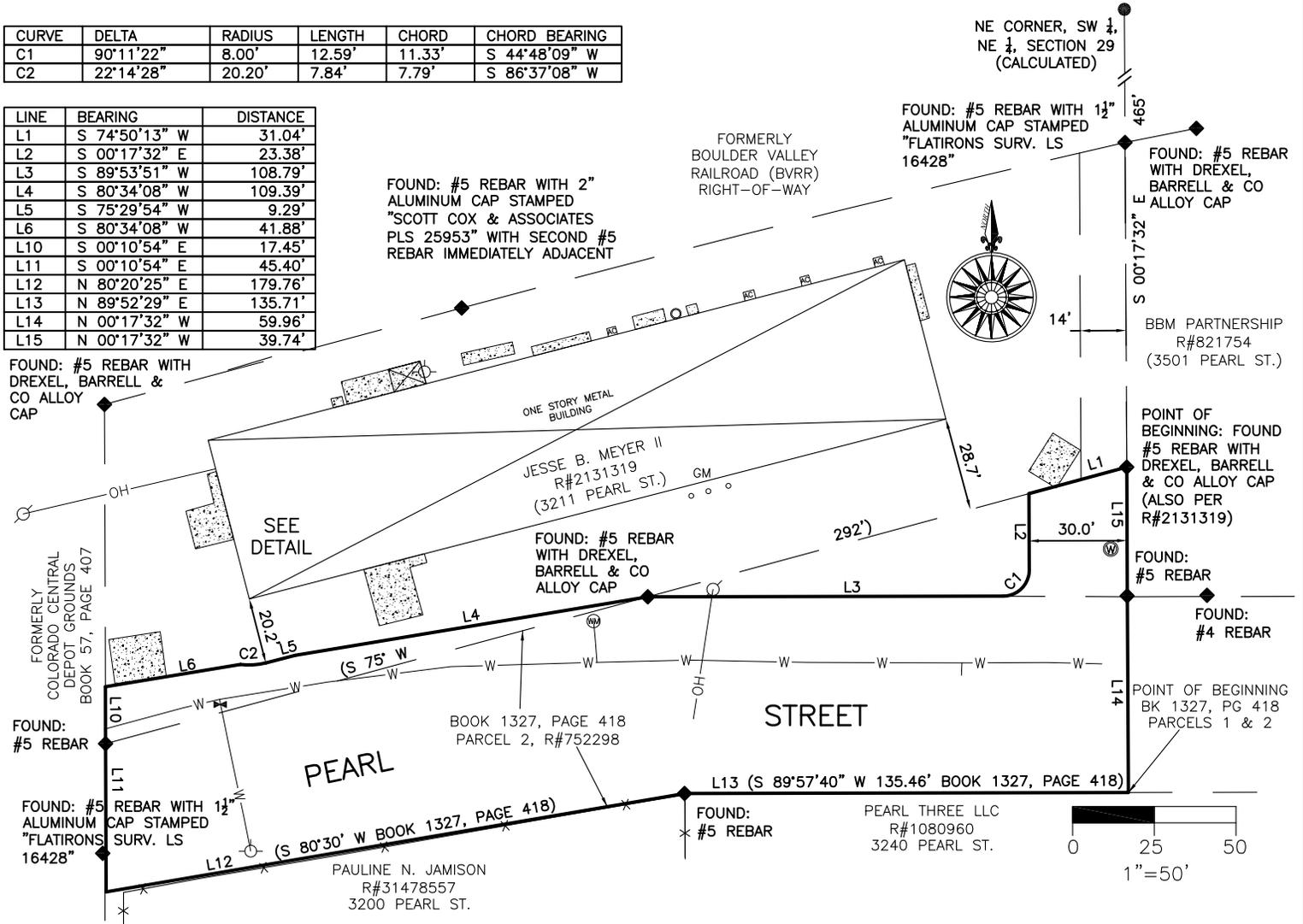
950 LARAMIE BLVD, UNIT D
BOULDER, CO 80304 (303) 443-3616
Agenda Item # 001 Page 15 of 15.com

Attachment D - Deed Description/Parcel Map Showing New Pearl ROW Area

QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 2 OF 2

CURVE	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	90°11'22"	8.00'	12.59'	11.33'	S 44°48'09" W
C2	22°14'28"	20.20'	7.84'	7.79'	S 86°37'08" W

LINE	BEARING	DISTANCE
L1	S 74°50'13" W	31.04'
L2	S 00°17'32" E	23.38'
L3	S 89°53'51" W	108.79'
L4	S 80°34'08" W	109.39'
L5	S 75°29'54" W	9.29'
L6	S 80°34'08" W	41.88'
L10	S 00°10'54" E	17.45'
L11	S 00°10'54" E	45.40'
L12	N 80°20'25" E	179.76'
L13	N 89°52'29" E	135.71'
L14	N 00°17'32" E	59.96'
L15	N 00°17'32" W	39.74'



NOTE:
THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY OR TITLE SEARCH PERFORMED BY BOULDER LAND CONSULTANTS, INC. THERE MAY EXIST EASEMENTS AND/OR OTHER ENCUMBRANCES AFFECTING THE SUBJECT PROPERTY THAT ARE NOT SHOWN HEREON.

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950 LARAMIE BLVD, UNIT D
BOULDER, CO 80304 (303) 443-3616
www.boulderland.com

Attachment E - Deed Description/Parcel Map Showing New Easement Conveyance

QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

PROPERTY DESCRIPTION:

A STRIP OF LAND SITUATED IN THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29; THENCE SOUTH ALONG THE EAST LINE OF THE SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29 465 FEET TO A FOUND #5 REBAR WITH DREXEL, BARRELL & CO ALLOY CAP, SAID EAST LINE HAVING A BEARING OF SOUTH 00°17'32" EAST WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE DEPARTING THE SAID EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29 SOUTH 74°50'13" WEST 31.04 FEET (L1);

THENCE SOUTH 00°17'32" EAST 23.38 FEET (L2);

THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA ANGLE OF 90°11'22", A RADIUS OF 8.00 FEET, A LENGTH OF 12.59 FEET, AND BEING SUBTENDED BY A CHORD BEARING SOUTH 44°48'09" WEST WITH A CHORD DISTANCE OF 11.33 FEET (C1);

THENCE SOUTH 89°53'51" WEST 108.79 FEET (L3) TO A FOUND #5 REBAR WITH DREXEL, BARRELL & CO ALLOY CAP;

THENCE SOUTH 80°34'08" WEST 109.39 FEET (L4) TO THE POINT OF BEGINNING;

THENCE SOUTH 75°29'54" WEST 9.29 FEET (L5);

THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA ANGLE OF 22°14'28", A RADIUS OF 20.20 FEET, A LENGTH OF 7.84 FEET, AND BEING SUBTENDED BY A CHORD BEARING SOUTH 86°37'08" WEST WITH A CHORD DISTANCE OF 7.79 FEET (C2);

THENCE NORTH 80°34'08" EAST 17.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED STRIP OF LAND CONTAINS 9 SQ. FT., MORE OR LESS.



NOTE:
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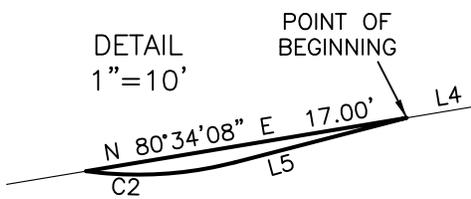
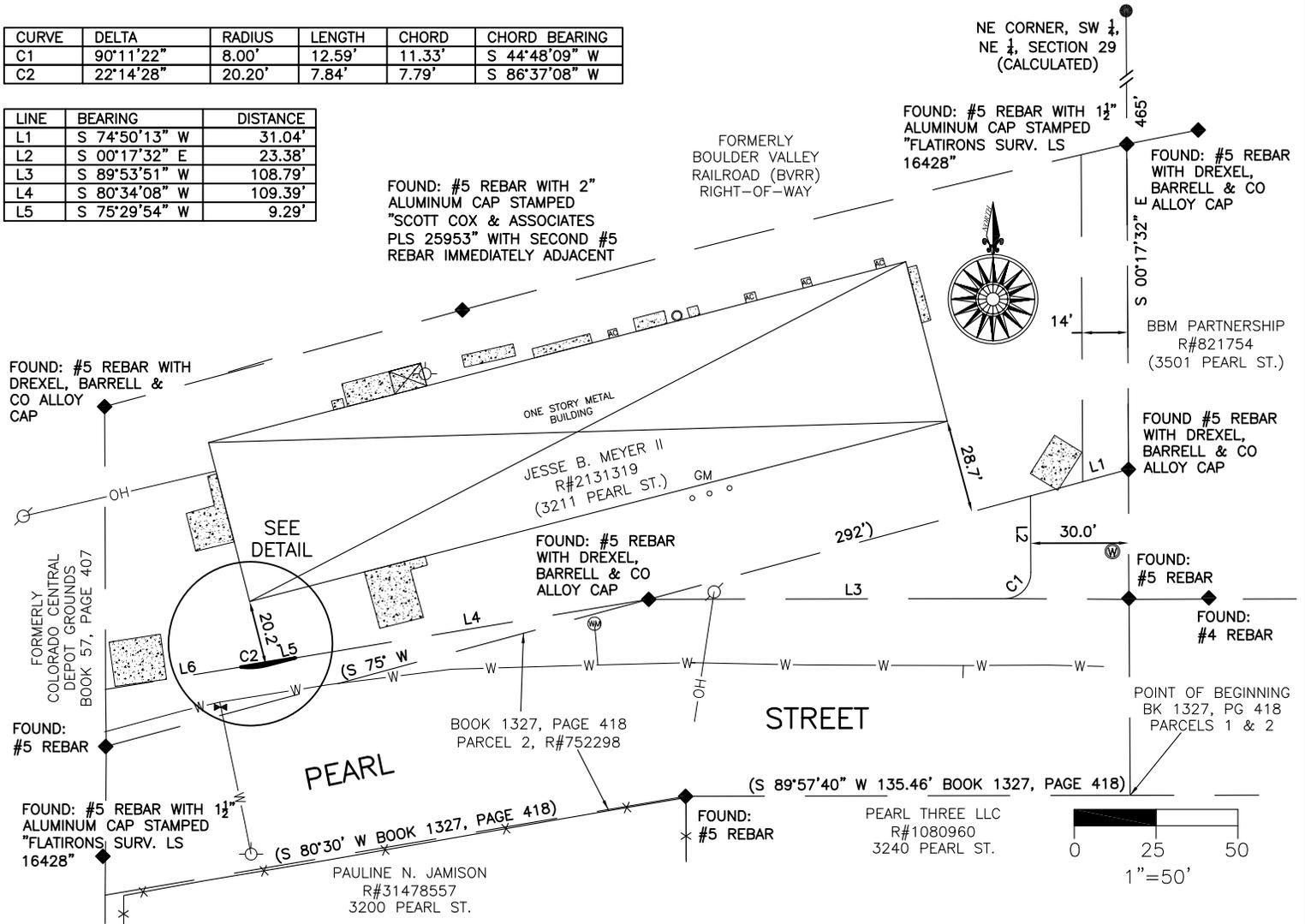
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Agenda Item # 001 Page 7 of 7

Attachment E - Deed Description/Parcel Map Showing New Easement Conveyance

QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH
 PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
 SHEET 2 OF 2

CURVE	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	90°11'22"	8.00'	12.59'	11.33'	S 44°48'09" W
C2	22°14'28"	20.20'	7.84'	7.79'	S 86°37'08" W

LINE	BEARING	DISTANCE
L1	S 74°50'13" W	31.04'
L2	S 00°17'32" E	23.38'
L3	S 89°53'51" W	108.79'
L4	S 80°34'08" W	109.39'
L5	S 75°29'54" W	9.29'



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For Administrative Purposes Only
Address: 3211 Pearl Street

DEED OF VACATION

The City of Boulder, Colorado, does hereby vacate and release to the present owner of the subservient land, in the manner prescribed by Section 43-2-302, C.R.S., any interest located within the boundaries of 1) the property generally known as 3211 Pearl and 2) a 1820 square foot portion of Pearl Street right-of-way that was originally was dedicated to the County of Boulder on the County Road Book # 1 and further defined by the deed recorded in the records of the Boulder County Clerk and Recorder at Book 1327 and Page 418 (hereafter collectively referred to as "Property") and said Property is more particularly described on the attached **Exhibit A**, reserving an easement for utility purposes over the property described on the attached **Exhibit B**.

The above vacation and release of said right of way at 3211 Pearl Street shall extend only to the portion and the type of right of way specifically vacated.

Executed this _____ day of _____, 2014, by the City Manager after having received authorization from the City Council of the City of Boulder, Colorado, pursuant to Ordinance No. _____, adopted by 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

Date

EXHIBIT A

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

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THE ABOVE DESCRIBED
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CONTAINS 32,554 SQ.
FT. (0.747 ACRES),
MORE OR LESS.



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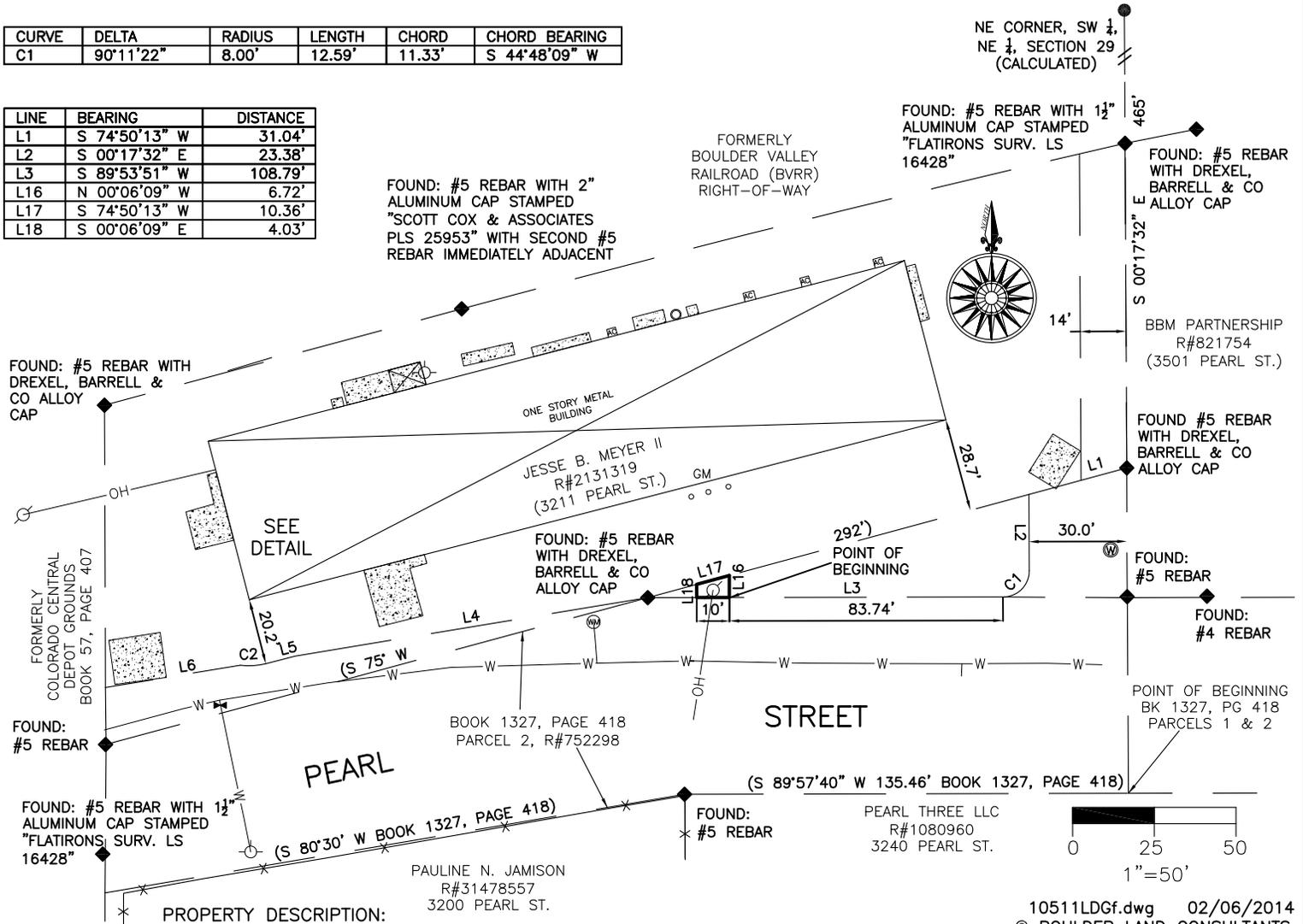
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EXHIBIT B

A STRIP OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO

CURVE	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	90°11'22"	8.00'	12.59'	11.33'	S 44°48'09" W

LINE	BEARING	DISTANCE
L1	S 74°50'13" W	31.04'
L2	S 00°17'32" E	23.38'
L3	S 89°53'51" W	108.79'
L16	N 00°06'09" W	6.72'
L17	S 74°50'13" W	10.36'
L18	S 00°06'09" E	4.03'



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 Agenda Item # 001 Page 22

QUITCLAIM DEED

THIS DEED, made this ____ day of _____, 2014, between the CITY OF BOULDER, a Colorado home rule city, duly organized and existing under and by virtue of the laws of the State of Colorado, grantor, whose legal address is 1777 Broadway, Boulder, Colorado 80302 and JESSE B. MEYER II, whose legal address is 3211 Pearl Street, Boulder, Colorado 80301, grantee.

WITNESS, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

SEE EXHIBIT A ATTACHED

except for the City’s easement for utility purposes over the property described on the attached Exhibit B.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

GRANTOR:

CITY OF BOULDER

By: _____
Jane S. Brautigam, City Manager

Attest:

City Clerk

[SEAL]

Approved as to form:

City Attorney’s Office

EXHIBITS

- Exhibit A Legal Description for Property (3211 Pearl and adjacent 1820 sf portion of ROW)
- Exhibit B Legal Description for Utility Easement area (excepted from quitclaim)

EXHIBIT A

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

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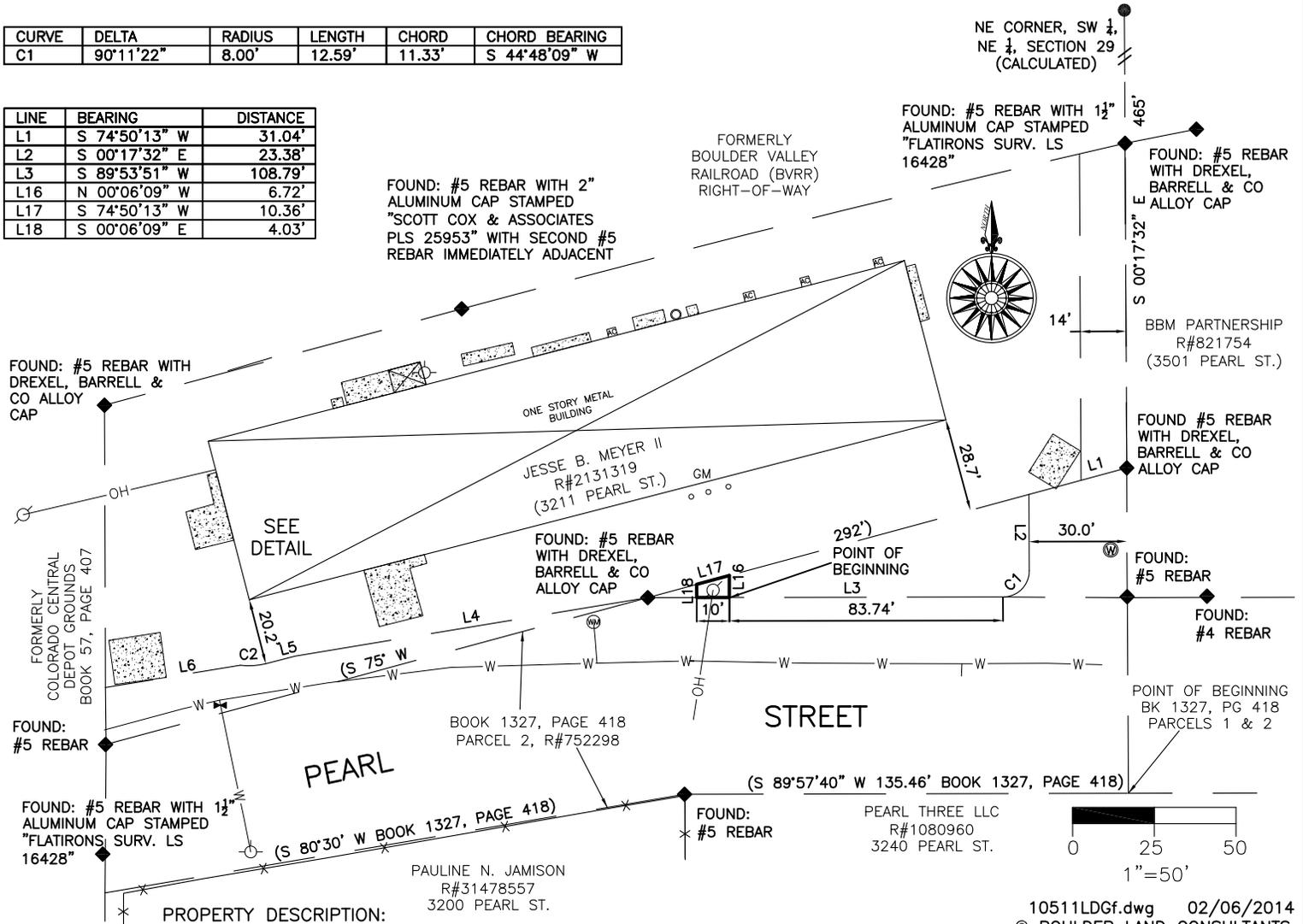
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 Agenda Item # 001 Page 28



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE:

AGENDA TITLE: **Second reading** and consideration of a motion to adopt Emergency Ordinance No. 7961 amending Section 4-20-68, “Flood Related Fee Waiver,” B.R.C. 1981, to extend temporary authority to waive certain fees to facilitate recovery and repair work resulting from flood impacts.

PRESENTER/S

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Tom Carr, City Attorney
David Gehr, Deputy City Attorney
Maureen Rait, Executive Director of Public Works
David Driskell, Executive Director, Community Planning and Sustainability (CP&S)
Hella Pannewig, Deputy City Attorney
Dave Thacker, Building Services Manager/Chief Building Official

EXECUTIVE SUMMARY

On Oct. 15, 2013, City Council adopted Emergency Ordinance No. 7946 authorizing the city manager to waive certain permit and application fees for permits applied for and applications made before Dec. 31, 2013. This emergency ordinance was adopted to facilitate recovery and repair work resulting from flood impacts.

At a first reading on Feb. 4, 2013, no questions were raised and the City Council voted to temporarily extend the authority to waive fees for flood-related permits and applications filed on or before March 1, 2015.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt on second reading and order published by title only Emergency Ordinance No. 7961 amending Section 4-20-68, “Flood Related Fee Waiver,” B.R.C. 1981, to extend the authority to waive certain fees to facilitate recovery and repair work resulting from

flood impacts.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

Economic: These changes will continue to expedite the flood recovery process and moderately impact city revenues during the next year. This ordinance reduces the economic burden on those seeking to obtain permits to restore the damage caused by the flood event.

Environmental: Waiving permit and application fees are meant to encourage compliance with applicable building codes and regulations as part of the recovery process. Structures that are repaired or built in compliance with city building codes are more environmentally sound, than building not build up to code.

Social: Rebuilding and repairing homes and restoring neighborhoods positively contributes to the social fabric of the Boulder community.

OTHER IMPACTS

Fiscal: See section on economic impacts above

Staff time: All work will be completed with existing resources.

Intergovernmental: None

PUBLIC FEEDBACK

Due to the urgent nature of the flood recovery tasks at hand, public feedback has not been sought for these emergency orders.

ANALYSIS

One of the exceptions of Ordinance 7946 gave the city manager authority to waive fees for certain permits and applications filed before Dec. 31, 2013, to facilitate recovery and repair work resulting from the flood.

Emergency Ordinance No. 7946 was found to be necessary to provide support for residents and businesses that have been affected by the September 2013 rain and flood event. The fee waiver provided financial relief to affected parties and encouraged residents and businesses to obtain building permits and inspection services.

From the September 2013 to date, 676 flood permits have been issued and fees waived total approximately \$202,000.

In 2014, applications for flood recovery and repair related permits continue to be filed. During 2014, staff anticipate receiving an additional 150 flood permits with a total approximate fee-waive cost of \$45,000. To continue to facilitate recovery efforts, staff recommends that the temporary fee waiver be extended to permits and applications filed on or before March 1, 2015. Extending till March 2015 aligns with the Federal Emergency Management Agency 18-month window for flood-related claims. Additionally, providing time to obtain fee-waived flood restoration permits will continue to encourage property owners to utilize city permitting and inspections services.

Once the fee waiver period has expired, staff can provide verified year-end totals.

ATTACHMENTS

A: Proposed Second Reading Emergency Ordinance

EMERGENCY ORDINANCE NO. 7961

AN EMERGENCY ORDINANCE AMENDING SECTION 4-20-68, "FLOOD RELATED FEE WAIVER," B.R.C. 1981, EXTENDING THE TIME DURING WHICH THE CITY MANAGER IS AUTHORIZED TO WAIVE CERTAIN FEES TO FACILITATE RECOVERY AND REPAIR RESULTING FROM FLOODING, AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that

A. Between Monday, September 9, 2013, and Tuesday, September 19, 2013, the City of Boulder received an estimated 17.2 inches of rainfall;

B. The city set daily precipitation records on September 10, 11, 12, 13, and 15. The 9.08 inches received on September 12 was the most rainfall ever received on a single day in Boulder since records have been kept. The rain also set records for the months of September and for annual precipitation;

C. The storm has been characterized as both a 100-year flood and a 1000-year event;

D. The storm inflicted severe damage on many homes, businesses, parks and on open space and public infrastructure;

E. On September 12, 2013, the city manager issued a Declaration of Disaster Emergency pursuant to the authority granted in Section 2-2.5-3, B.R.C. 1981, and Colo. Rev. Stat. § 24-33.5-709;

F. On September 17, 2013, the City Council approved the Declaration of Disaster Emergency and extended it until October 15, 2013;

G. On October 15, 2013, the City Council adopted Emergency Ordinance No. 7946 to facilitate disaster response in the city beyond October 16, 2013, the date when the powers of the city manager pursuant to Section 2-2.5-9, B.R.C. 1981 terminated.

H. Ordinance No. 7946 included city manager authority to waive certain fees for permits applied for and applications made before December 31, 2013, as set forth in Section 4-20-68, "Flood Related Fee Waiver," B.R.C. 1981.¹

¹ Ordinance No. 7946 provided for such fee waivers to be located in Section 4-20-67, "Flood Related Fee Waiver," B.R.C. 1981. Following adoption of Ordinance No. 7946, the Flood Related Fee Waiver section was included in the Boulder Revised Code in Section 4-20-68, "Flood Related Fee Waiver," B.R.C. 1981, as section 4-20-67 had also been approved by City Council for Section 4-20-67, "Recreational Marijuana Businesses," B.R.C. 1981.

1 I. Flood recover and repair work continue in the city; therefore, the City Council
2 deems it necessary to extend the authority to waive certain fees to continue to facilitate recovery
and repair work resulting from flooding.

3 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
4 OF BOULDER, COLORADO:

5 Section 1. Section 4-20-68, B.R.C. 1981, is amended to read:

6 **4-20-68. Flood Related Fee Waiver.**

7 For permits applied for or applications made before ~~December~~ March 31, 2015~~3~~, the city
8 manager may waive any fee required under any of the following sections to facilitate recovery
9 and repair resulting from flooding:

10 (1) Building Permit fees as required by Subsection 4-20-4(c) and Paragraph 4-20-4(f)(7),
Subsection 4-20-8(a), Subsections 4-20-13(c) and (d), and Subsection 4-20-15(b), B.R.C. 1981.

11 (2) Right of Way Permit fees as required by Subsection 4-20-6(b), B.R.C. 1981.

12 (3) Water Permit fees as required by Paragraphs 4-20-23(a)(3), (b)(1) and (b)(2), B.R.C. 1981.

13 (4) Water Service fees as required by Subsection 4-20-24(g), B.R.C. 1981.

14 (5) Wastewater Permit fees as required by Paragraphs 4-20-27(a)(1)—(3), (b)(1) and (b)(2),
15 B.R.C. 1981.

16 (6) Floodplain Development Permit fees as required by Paragraphs 4-20-44 (a)(2), (a)(4) and
17 (b)(1), B.R.C. 1981.

18 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.

19 Section 3. 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 Section 4. The City Council finds that public health, peace and safety justify the
23 adoption of this ordinance as an emergency measure.
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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 4th day of February, 2014.

Attest: _____
Mayor

City Clerk

READ ON SECOND READING, PASSED, AND ADOPTED AS AN EMERGENCY
MEASURE BY TWO-THIRDS OF COUNCIL MEMBERS PRESENT, AND ORDERED
PUBLISHED BY TITLE ONLY this 18th day of February, 2014.

Attest: _____
Mayor

City Clerk

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE

Consideration of a motion to approve disposal of 6,883 square feet or approximately 0.16 acres of Community Hospital Open Space land described as a permanent easement to Silver Lake Ditch and Reservoir Company to allow the relocation and piping of a portion of the Silver Lake Ditch. This is a disposal of Open Space land under City Charter Section 177.

PRESENTER/S

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Michael D. Patton, Director, Open Space and Mountain Parks
James Reeder, Land & Visitor Services Division Manager
Todd Doherty, Water Resources Administrator

EXECUTIVE SUMMARY

During the 2013 flood, significant amounts of sediment filled a portion of the Silver Lake Ditch located on Open Space and Mountain Parks (OSMP) Community Hospital property making the ditch inoperable (Attachment A). During reconstruction, the Silver Lake Ditch and Reservoir Company (the company) seeks to pipe and bury a portion of the ditch to allow for a more efficient flow of water. The proposed alignment of the pipe is more direct than the original open-channel ditch which will result in lower construction costs compared to piping the ditch along the original alignment (Attachment B). The proposed (shorter) alignment is located slightly outside of the company's claimed prescriptive easement and thus the company is requesting that the city grant a permanent easement (Exhibit B of Attachment C) to allow the construction, placement and maintenance of a pipeline for this portion of the ditch in a new location. In exchange for this easement, the company agrees to abandon and vacate (see Exhibit C of Attachment C) the portion of its prescriptive easement that will be 'by-passed' by the proposed pipe. To allow construction prior to this year's irrigation season, the company requested and was granted a nonexclusive revocable license (Attachment C).

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the disposal of 6,883 square feet or approximately 0.16 acres of Community Hospital Open Space land described as a permanent easement to Silver Lake Ditch and Reservoir Company to allow the relocation and piping of a portion of the Silver Lake Ditch.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Environmental:** OSMP is a significant community-supported program that is recognized 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:** OSMP 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 OSMP 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

- **Property** – The OSMP Department would realize a gain of approximately 60 linear feet of easement. In addition, the realignment will provide a 30-foot buffer between the ditch and the existing trail.
- **Staff time** – This matter has been handled by staff during its normal work hours.

BOARD AND COMMISSION FEEDBACK

At its Jan. 29, 2014 meeting, the Open Space Board of Trustees (OSBT) unanimously approved and recommended that the City Council approve the disposal of 6,883 square feet or approximately 0.16 acres of Open Space land for use by the Silver Lake Ditch and Reservoir Company as a permanent easement.

PUBLIC COMMENT AND PROCESS

This item was heard as part of the Jan. 29, 2014 OSBT meeting which was advertised in the *Daily Camera* on Jan. 26, 2014. There was no public comment regarding this disposal. A Notice of Disposal of Open Space lands was published in the *Daily Camera* on Jan. 17 and 18, 2014 pursuant to Section 177 of the City Charter.

This item is being heard as part of this public meeting advertised in the *Daily Camera* on Feb. 16, 2014.

BACKGROUND AND ANALYSIS

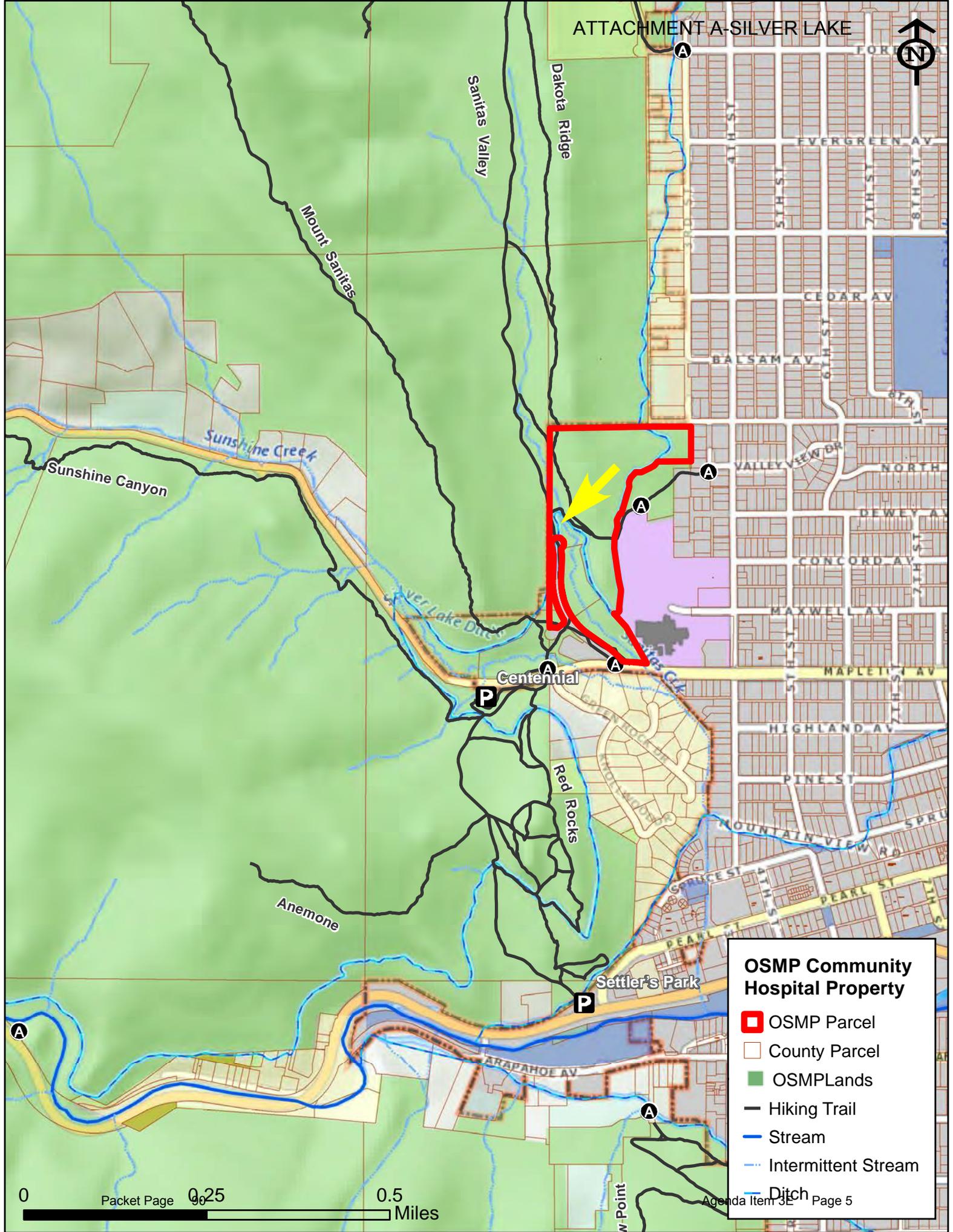
During the 2013 flood, significant amounts of sediment filled a portion of the Silver Lake Ditch located on OSMP's Community Hospital property making the ditch inoperable. The company has determined that piping and burying the ditch using a more direct and shorter alignment would be more efficient and cost effective. The proposed (shorter) alignment is located slightly outside of the company's claimed prescriptive easement. Consequently, the company is requesting that the city grant the company a permanent easement to cross OSMP's Community Hospital property to allow for the construction, placement and maintenance of a pipeline to contain this portion of the ditch in a new location. In the attached agreement with the Silver Lake Ditch and Reservoir Company (see Attachment C), in exchange for this easement the company agrees to abandon and vacate the portion of its prescriptive easement that will be 'by-passed' by the proposed pipe easement. By eliminating the open channel next to the trails, there may be public safety benefits realized.

Considering that completing disposal of an easement can take three or more months, on Jan. 29, 2014, the company requested that the OSBT recommend to the director of OSMP to issue a nonexclusive revocable license to allow construction prior to this year's irrigation season per Boulder City Charter: Article XII, Section 175(h). The director of OSMP issued a nonexclusive revocable license to the company. Once the disposal is complete, the license will terminate. Authority for this action is found in the Open Space Charter (Boulder City Charter: Article XII, Sections 171(a)) which allows the director to grant a nonexclusive revocable license. This license would allow the company to legally place the ditch across and/or the pipe under the Open Space land pending completion of the disposal. With the granting of the license, the company anticipates it will be able to get the work done in time to provide irrigation water deliveries by the start of the irrigation season which is approximately April 1.

ATTACHMENTS:

- A. Vicinity Map
- B. Site Map
- C. Ditch Relocation Agreement

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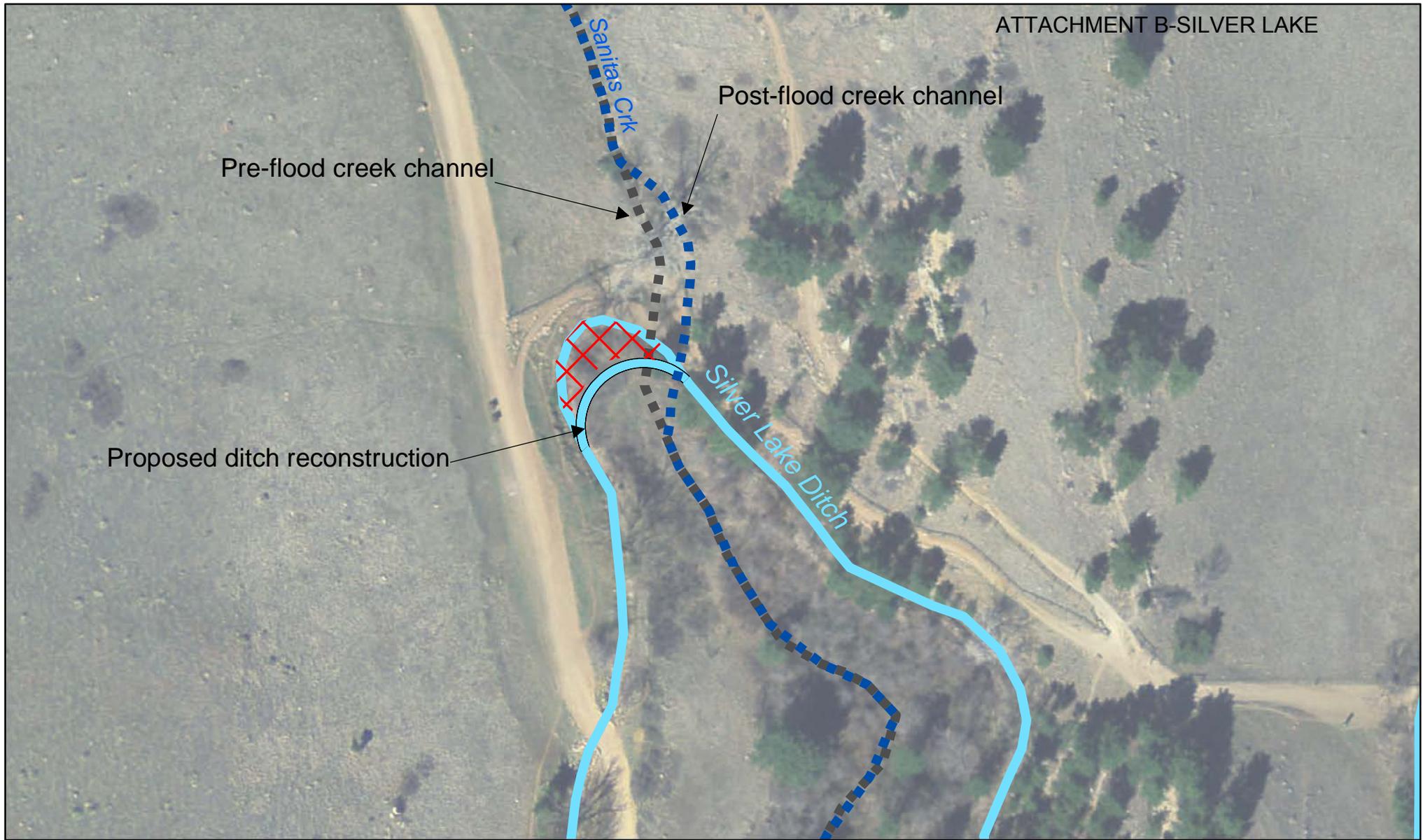


OSMP Community Hospital Property

- OSMP Parcel
- County Parcel
- OSMPLands
- Hiking Trail
- Stream
- Intermittent Stream
- Ditch

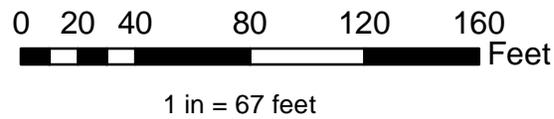


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Legend

- Post-flood stream channel
- Proposed SLD reconstruction
- Pre-Flood Sanitas Ck Channel
- Silver Lake Ditch
- XXXX Ditch channel destroyed in flood



Silver Lake Ditch at Sanitas Trail Reconstruction



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**CITY OF BOULDER AGREEMENT WITH SILVER LAKE DITCH AND RESERVOIR
COMPANY FOR DITCH RELOCATION AND PIPING
WITHIN COMMUNITY HOSPITAL OPEN SPACE**

This document states the agreement between or among **CITY OF BOULDER**, a Colorado home-rule city (called “City”), and **SILVER LAKE DITCH AND RESERVOIR COMPANY**, a Colorado mutual ditch company (called "Company") for a relocation of a portion of Company’s ditch and ditch easement on City’s Community Hospital open space land.

RECITALS

The parties make this Agreement considering the following:

1. City is the sole owner of various open space properties, including the City of Boulder Community Hospital open space land, Boulder County, Colorado, more particularly described in Exhibit A (“Community Hospital Open Space”):
 - 1.1. Company owns the Silver Lake Ditch (“ditch”), a portion of which is constructed within the Community Hospital open space. Company claims a 25-foot-wide prescriptive easement for the construction, operation, maintenance, repair and replacement of the ditch (“ditch easement”).
 - 1.2. September floods in 2013, filled in a portion of the ditch located on Community Hospital open space with sand and debris making the ditch inoperable. Rather than reconstructing the ditch in its previous location, Company desires to relocate a portion of the ditch and to construct and maintain piping and related structures (the Installation). The relocation will decrease Company’s construction costs and will allow a more efficient flow of water through the ditch. The location of the Installation will be within the corridor described in Exhibit B, (New Easement) within the boundaries of Community Hospital Open Space (Exhibit A).
 - 1.3. Company requires an easement within Community Hospital Open Space (Exhibit A) to construct and then operate, maintain, repair and replace the Installation and, in exchange, will abandon that portion of its ditch easement across Community Hospital open space that will no longer be used to deliver water to Company’s shareholders.
 - 1.4. City is willing to grant such an easement, subject to satisfaction of Section 177 of City of Boulder Home Rule Charter and related terms of the Boulder Revised Code, which will require approximately 90 days.
 - 1.5. In the interim, City is granting Company a nonexclusive license to construct, operate and maintain the Installation within the boundaries of the New Easement (Exhibit B).
 - 1.6. City wants to insure that Company's use of the Installation will not adversely affect City's rights in the Community Hospital Open Space.

- 1.7. City and Company wish to clarify their respective rights and obligations concerning such use of the Community Hospital Open Space.
- 1.8. In accordance with Boulder Home Rule Charter Section 176 and Subsection 2-3-9 (d), B.R.C. 1981 the terms and conditions of this Agreement will insure that Company's construction, operation and maintenance of the Installation on Community Hospital Open Space will:
 - 1.8.1. Preserve or restore natural areas characterized by or including terrain, geologic formation, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;
 - 1.8.2. Preserve water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;
 - 1.8.3. Preserve land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;
 - 1.8.4. Preserve agricultural uses and land suitable for agricultural production;
 - 1.8.5. Preserve the land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.
- 1.9. Under Section 171 of City of Boulder Home Rule Charter, the Director of the Department of Open Space, subject to Section 175 of the Charter, may grant nonexclusive licenses and permits to use City open space land.
- 1.10. Under Section 175 of City of Boulder Home Rule Charter, City of Boulder Open Space Board has recommended approval of this agreement.

AGREEMENT

In consideration for the terms, conditions and mutual promises stated in this Agreement and for other good and valuable consideration, the Parties agree as follows:

2. **LICENSE:** On the terms and conditions stated in this document, City grants to Company a nonexclusive license to install, operate and maintain the Installation within the corridor described in Exhibit B, (New Easement). Notwithstanding any references in Exhibit B to "easement," this agreement grants no easement, but only a nonexclusive license.
3. **CONSTRUCTION.**
 - 3.1. Company shall pay all costs associated with the construction of the Installation.
 - 3.2. Before beginning construction, Company must obtain City's written approval of plans and specifications for the Installation. Construction of the Installation is subject to inspection by City staff and shall conform to approved plans and specifications. Company shall schedule and perform any construction to avoid any interference with

City's use of the Community Hospital Open Space for its own purposes (including, without limitation, agricultural and recreational use by others under agreement with City). City's review of the plans and specifications is solely for its own benefit and creates no obligation on City.

- 3.3. Company shall reimburse City (or pay directly) for all engineering and legal costs City incurs in revising and approving the plans and specifications and entering into this Agreement, subject to a maximum of five hundred dollars (\$500.00). City will forward an itemized statement of the total costs chargeable to Company as billed. Company shall pay the amount of that statement to City within forty-five (45) days after the billing date.
- 3.4. Where compacting of earth materials is required around the Installation, the materials shall be compacted to standards required by City.
- 3.5. Except as modified by this Agreement, Company shall restore to its original condition all portions of the Community Hospital open space disturbed by Company's construction. Company shall replace all fencing and other facilities in a condition at least equal to the condition of such facilities and appurtenances before construction of the Installation.
- 3.6. Company shall notify City at least five (5) days before beginning work permitted by this Agreement. Company and City shall inspect the Installation or replacements of the Installation during the construction thereof, and Company shall reimburse City for all administrative and inspection costs incurred by City. For purposes of this Agreement, Company shall make reimbursement at the actual hourly rate for labor and equipment incurred by City. Payment shall be made as set forth in 3.1 above, but shall not exceed five hundred dollars (\$500.00) including amounts incurred under 3.1 above.
- 3.7. Upon completing the Installation, Company shall notify City. City shall accept or reject the Installation and may require Company to test the Installation by running water through it. Acceptance or rejection shall be in writing. City may not unreasonably withhold acceptance and may reject the Installation only if the Installation does not comply with the approved plans and specifications, or the Installation alters the Ditch so it causes flooding or other hazardous conditions.
- 3.8. Construction permitted by this Agreement shall proceed with reasonable diligence from the initiation of such construction to its completion. Company shall complete the Installation by December 31, 2014. If Company fails to complete the Installation by that date, Company's nonexclusive license expires and is of no force or effect.
- 3.9. City's right to inspect Company's construction of the Installation or the replacement of the Installation in no way relieves Company of its responsibilities related to the construction. City's inspection is solely for its benefit and creates no benefit or right in any third party.
- 3.10. Company is responsible for the carriage of water across Community Hospital Open Space, including drainage water, during construction of the Installation, including any

damages to Company, City or others resulting from failure of the Ditch or any part thereof to carry water because of the Installation.

4. OBLIGATIONS OF CITY. City shall provide access to the Installation for Company to engage in construction, operation and maintenance activities under this Agreement. The location of such access is at the sole discretion of City. Installation of gates or other structures to facilitate access shall comply with all applicable laws, ordinances, policies, rules and regulations, including, without limitation, the Open Space and Mountain Parks (OSMP) Gate/Access Policy.
5. USE OF INSTALLATION
 - 5.1. Maintenance of Installation. The Installation shall be the property of Company. Company shall at all times operate, maintain, repair or replace the Installation so as to avoid any hazards to persons or property, to prevent threatened or actual damage to or interference with the facilities or operations of others, including the public, City and officials, employees, and contractors of City, or to their facilities or operations. Except in an emergency, if Company fails to maintain the Installation accordingly, City may give notice to Company in writing of such defective or hazardous condition; and Company shall correct such defect or hazard within twenty (20) days. At City's option, if Company fails to make proper correction within that twenty (20)-day period, City may conduct its own maintenance, repair or replacement. Company shall reimburse City for the cost of such work within forty-five (45) days. If Company fails to maintain, repair or replace the Installation, it shall be responsible for any loss, damage or injury to City or others resulting from such failure. If City conducts its own maintenance, repair or replacement, it does not waive the right to hold Company responsible for damages caused by Company's failure to maintain, repair or replace.
 - 5.2. In case of an emergency, meaning a situation presenting an immediate threat to the public health or safety, Company shall respond immediately to any reasonable maintenance requests made by City. City may make such requests by telephone, followed by a written request. If Company fails to respond to an emergency request within twenty-four (24) hours of the telephone request, City may make necessary repairs. Company shall reimburse City for such repairs that are reasonable and necessary.
 - 5.3. Under no circumstances shall City be responsible or held liable for damage to the Installation resulting from City's or Company's maintenance, repair or replacement of the Installation under this Agreement.
 - 5.4. Jim Snow, Company's president, shall be Company's designated contact for maintenance related issues and problems. His telephone numbers are 303-442-7178 (home) or 303-845-0900 (cell). His email address is jlsnow519@gmail.com.
6. NOTICE OF DEFECTS. Each party shall notify the other of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims for damage or injury that come to its attention in connection with the use of the Installation.

7. GRANT OF NEW EASEMENT AND ABANDONMENT AND VACATION OF CURRENT EASEMENT.
- 7.1 Upon completion of the Installation as approved and accepted by City, if City receives no referendum petition under Section 177 of City of Boulder Home Rule Charter and related terms of the Boulder Revised Code, City intends to grant a new easement to Company by executing an easement deed substantially in the form attached as Exhibit B (“New Easement”).
- 7.2 Concurrent with City’s grant of the New Easement, Company will execute the Vacation and Abandonment of Easement (“Abandonment of Easement”), attached as Exhibit C. Company shall record the New Easement and the Abandonment of Easement in the real property records of the Boulder County Clerk and Recorder.
8. LICENSE TERM AND RENEWAL. Unless terminated sooner, Company’s nonexclusive license shall terminate upon conveyance of the New Easement referenced in this Agreement.
9. INDEMNIFICATION. City shall have no increased liability because of the Installation or any work or operations by Company, or its agents or contractors. Company will indemnify, defend and hold City harmless from all claims, demands, judgments, costs, and expenses (including attorney’s fees) for any injury to any person or property due (directly or indirectly) to or arising from acts or omissions of Company or its agents or contractors or its construction, use or maintenance of the Installation.
10. EASEMENT RIGHTS. Except as stated in this Agreement, the right granted to construct the Installation in no way affects Company’s prescriptive easement for the ditch or restricts Company’s right to the historical use of its easement to construct, operate, maintain and replace all existing structures and facilities of the ditch.
11. MISCELLANEOUS.
- 11.1 NOTICE. Any notice required by this Agreement shall be in writing, made by hand-delivery or first class mail, to the following:
- To City:
- City of Boulder Open Space Director
P.O. Box 1777
Boulder, CO 80306
- To Company:
- Silver Lake Ditch and Reservoir Company
c/o Company President
P.O. Box 19
Boulder, CO 80306

- 11.2 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties. Amendment of this Agreement requires a written document signed by all parties to this Agreement. Waiver of rights under this Agreement requires a written document signed by each waiving party.
- 11.3 AGREEMENT TO SURVIVE CLOSING. Except such terms, conditions, covenants and agreements under this Agreement that are, by their very nature, fully and completely performed upon execution and delivery of the New Easement and the Abandonment and Vacation of Current Easement and termination of the nonexclusive license, all of the terms, conditions, representations, warranties, covenants and agreements stated in this Contract shall survive those events and shall continue, thereafter, to bind and inure to the benefit of the parties, their heirs, successors and assigns.
- 11.4 ASSIGNMENT. Company may assign its rights under this Agreement only to subsequent purchasers of Company's assets and only with the express written consent of City.
- 11.5 NO THIRD PARTY BENEFICIARIES. The covenants and agreements contained in this Agreement are for the sole benefit of Company, its approved assigns and City only, and create no obligations or duties to others.
- 11.6 DISPUTES. The parties hereto agree to attempt to resolve any conflicts regarding enforcement or interpretation of this Agreement through mediation before initiating litigation.
- 11.7 GOVERNING LAW. Colorado law shall govern this Agreement and its application, construction and interpretation. Venue for any litigation involving this Agreement shall be the State District Court for Boulder County.
- 11.8 TERMINATION. Notwithstanding any other terms of this Agreement, City may terminate Company's nonexclusive license by delivering written notice of termination to Company at least thirty (30) days before the termination date contained in the notice.
- 11.9 WAIVER. No waiver of any breach under this Agreement shall operate as, or be construed as, a waiver of any subsequent breach of the same or any other terms of this Agreement.
- 11.10 COOPERATION. Each party shall perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.
- 11.11 ANNUAL APPROPRIATION. Any express or implied financial obligations of City under this Agreement in future fiscal years are subject to annual appropriation in accordance with Colorado law.
- 11.12 RESERVATION OF POLICE POWERS. Company's rights under this Agreement are subject to the police powers of City to adopt and enforce ordinances for the safety,

health and welfare of the public, and Company shall comply with all applicable laws and ordinances. City reserves the right to exercise its police powers and nothing in this Agreement shall constitute a waiver of said police power.

11.13 **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise specifically authorized herein.

11.14 **REMEDIES.** A court may enforce this Agreement by specific performance, including mandatory injunctive relief and damages, together with reasonable attorneys' fees to the prevailing party.

11.15 **EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.

11.16 **NO EFFECT ON PREVIOUS SETTLEMENT AGREEMENT.** This Agreement involves no violation of the Settlement Agreement between the parties, effective December 1, 2009 and recorded December 7, 2009 in the real property records of the Boulder County Clerk and Recorder at Reception No. 03046201. In case of any conflict between the terms of this Agreement and the Settlement Agreement, the terms of this Agreement prevail.

12. **INSURANCE.** Company and any of its agents or contractors accessing the Community Hospital Open Space under this Agreement shall procure and maintain, at no cost to City, the following minimum insurance coverage:

Coverage type	Coverage limits
A. Workers' Compensation and Employers' Liability	
i. State of Colorado:	Statutory
ii. Employer's Liability	Statutory
iii. Waiver of Subrogation	
B. Commercial General Liability	
i. Bodily Injury & Property Damage General Aggregate Limit:	\$1,000,000
ii. Personal & Advertising Injury Limit:	\$1,000,000
iii. Each Occurrence Limit	\$1,000,000
The policy shall be on an Occurrence Form and shall include the following types of coverage: Premises Operations; Personal and Advertising Injury; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided shall at least as broad as found in Insurance Services Office (ISO) form CG0001.	
C. Commercial Automobile Liability	
i. Bodily Injury & Property Damage Combined Single Limit:	\$1,000,000
ii. Medical Payments per person:	\$ 5,000
Coverage shall be on Business Auto, Garage or Truckers form. Coverage provided shall be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.	
Before the execution of this Agreement by City, Company shall forward Certificates of Insurance to City's Open Space and Mountain Parks Water Resources Administrator. Company shall procure and maintain the required insurance in full	

force and effect for the duration of this Agreement. Certificate Holder shall be City of Boulder at 1777 Broadway, P.O. Box 791, Boulder, CO 80306.

All insurance policies (except Workers Compensation) **shall include City of Boulder and its elected officials and employees as additional insured as their interests may appear.** The additional insured endorsement shall be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto Liability.

City requires issuance of all policies of insurance on a primary basis, non-contributory with any other insurance coverage or self-insurance carried by City.

City reserves the right to reject any insurer it deems not financially acceptable by insurance industry standards. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of at least A- VI.

Company, or Company's insurance broker, shall notify City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. Company shall forthwith obtain and submit proof of substitute insurance if of expiration or cancellation of coverage.

CITY OF BOULDER, COLORADO

By: _____
Michael D. Patton, Director, Open Space and Mountain Parks

By: _____
Jane S. Brautigam, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney

Company:
SILVER LAKE DITCH AND
RESERVOIR COMPANY,
a Colorado mutual ditch company

By _____
James Snow

ATTEST:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 2014, by James Snow as President and Catherine Long Gates as Secretary of the Silver Lake Ditch and Reservoir Company.

Witness my hand and official seal.

My commission expires: _____.

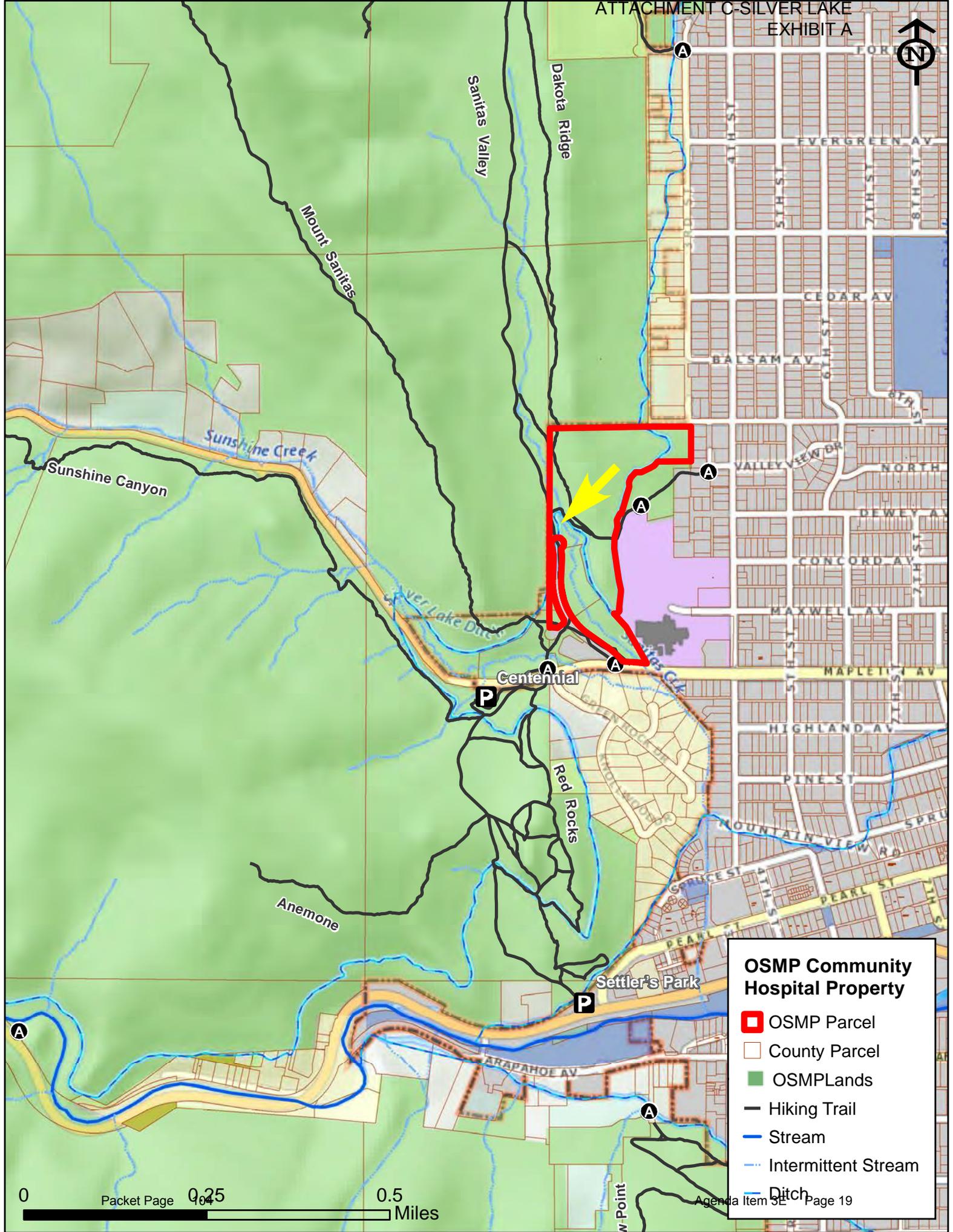
Notary Public

EXHIBITS

Exhibit A (Community Hospital Open Space) - Boundaries of City of Boulder Community Hospital Open space land, Boulder County, Colorado

Exhibit B (New Easement) - Easement Deed (including legal description)

Exhibit C (Vacation and Abandonment of Easement)



OSMP Community Hospital Property

- OSMP Parcel
- County Parcel
- OSMP Lands
- Hiking Trail
- Stream
- Intermittent Stream
- Ditch



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GRANT OF DITCH EASEMENT

THE CITY OF BOULDER, a Colorado home rule city ("Grantor"), whose address is 1777 Broadway, Boulder, Colorado 80302, for \$1.00 and other good and valuable consideration, does hereby grant, bargain, sell and convey to SILVER LAKE DITCH AND RESERVOIR COMPANY, a Colorado mutual ditch company ("Grantee") whose address is P.O. Box 19, Boulder, Colorado 80306, a 25 foot wide easement, being 10 feet from the ditch center line on the uphill side and 15 feet from the ditch center line on the downhill side, for the installation, construction, operation, repair, maintenance, and reconstruction of Grantee's ditch, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement, including access for ingress and egress, in and to, over, under, and across the following real property, situated in Boulder County, Colorado, to wit:

See Exhibit "A" attached hereto and incorporated herein by reference

Grantor hereby agrees that it will not place permanent structures or improvements on said easement that unreasonably interfere with Grantee's use of the easement.

Grantor warrants its ability to grant and convey this easement.

The terms of this easement shall be binding upon Grantor and its agents, lessees and assigns, and all other successors in interest and shall continue as a servitude running in perpetuity with the property described above or for as long as the Grantee's ditch is needed for delivery of water to its shareholders and not abandoned.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed as of this _____ day of _____, 2014.

GRANTOR:

CITY OF BOULDER, a Colorado home rule city

By: _____
Jane S. Brautigam, City Manager

Attest:

City Clerk

EXHIBIT "A"

LOCATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH,
RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

AN EASEMENT FOR THE RELOCATION OF THE SILVER LAKE DITCH OVER AND ACROSS A PARCEL OF LAND, LOCATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

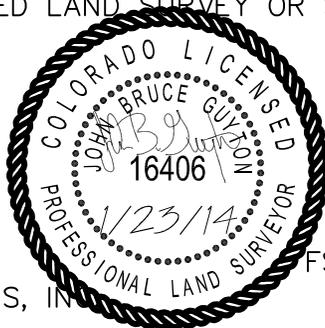
CONSIDERING THE WEST LINE OF OF THE NORTHWEST QUARTER OF SECTION 25 TO BEAR SOUTH 00°18'28" WEST, A DISTANCE OF 2643.89 FEET BETWEEN A FOUND ORIGINAL STONE 4-1/2"X9" AT THE NORTHWEST CORNER OF SECTION 25 AND A FOUND 8"X8"X8" STONE IN MOUND OF STONES MARKED "1/4" ON EAST FACE AND "+" ON TOP AT THE WEST QUARTER CORNER OF SECTION 25, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT SAID WEST QUARTER CORNER; THENCE NORTH 64°46'56" EAST, A DISTANCE OF 1528.47 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 04°16'46" WEST, A DISTANCE OF 32.87 FEET;
THENCE 9.16 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 18.75 FEET, AN INCLUDED ANGLE OF 27°59'59" AND SUBTENDED BY A CHORD BEARING NORTH 24°20'22" WEST, A DISTANCE OF 9.07 FEET; THENCE NORTH 42°50'12" WEST, A DISTANCE OF 13.85 FEET; THENCE 98.32 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 45.58 FEET, AN INCLUDED ANGLE OF 123°35'28" AND SUBTENDED BY A CHORD BEARING NORTH 42°37'23" EAST, A DISTANCE OF 80.33 FEET; THENCE 25.08 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 45.67 FEET, AN INCLUDED ANGLE OF 31°28'07" AND SUBTENDED BY A CHORD BEARING SOUTH 51°51'28" EAST, A DISTANCE OF 24.77 FEET; THENCE SOUTH 40°12'39" EAST, A DISTANCE OF 90.27 FEET; THENCE SOUTH 43°43'31" EAST, A DISTANCE OF 35.92 FEET; THENCE SOUTH 46°16'29" WEST, A DISTANCE OF 25.00 FEET; THENCE NORTH 43°43'31" WEST, A DISTANCE OF 36.69 FEET; THENCE NORTH 40°12'39" WEST, A DISTANCE OF 92.10 FEET; THENCE 46.48 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 19.01 FEET, AN INCLUDED ANGLE OF 140°05'30" AND SUBTENDED BY A CHORD BEARING SOUTH 64°53'39" WEST, A DISTANCE OF 35.74 FEET; THENCE SOUTH 42°50'12" EAST, A DISTANCE OF 9.62 FEET; THENCE 24.17 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 43.75 FEET, AN INCLUDED ANGLE OF 31°38'50" AND SUBTENDED BY A CHORD BEARING SOUTH 24°04'10" EAST, A DISTANCE OF 23.86 FEET; THENCE SOUTH 04°16'46" EAST, A DISTANCE OF 33.91 FEET; THENCE SOUTH 85°43'14" WEST, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 6,883 Sq. Ft. OR 0.16 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. 14-62,975

JOB NUMBER: 14-62,975
DRAWN BY: B. LUND
DATE: JANUARY 23, 2014

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



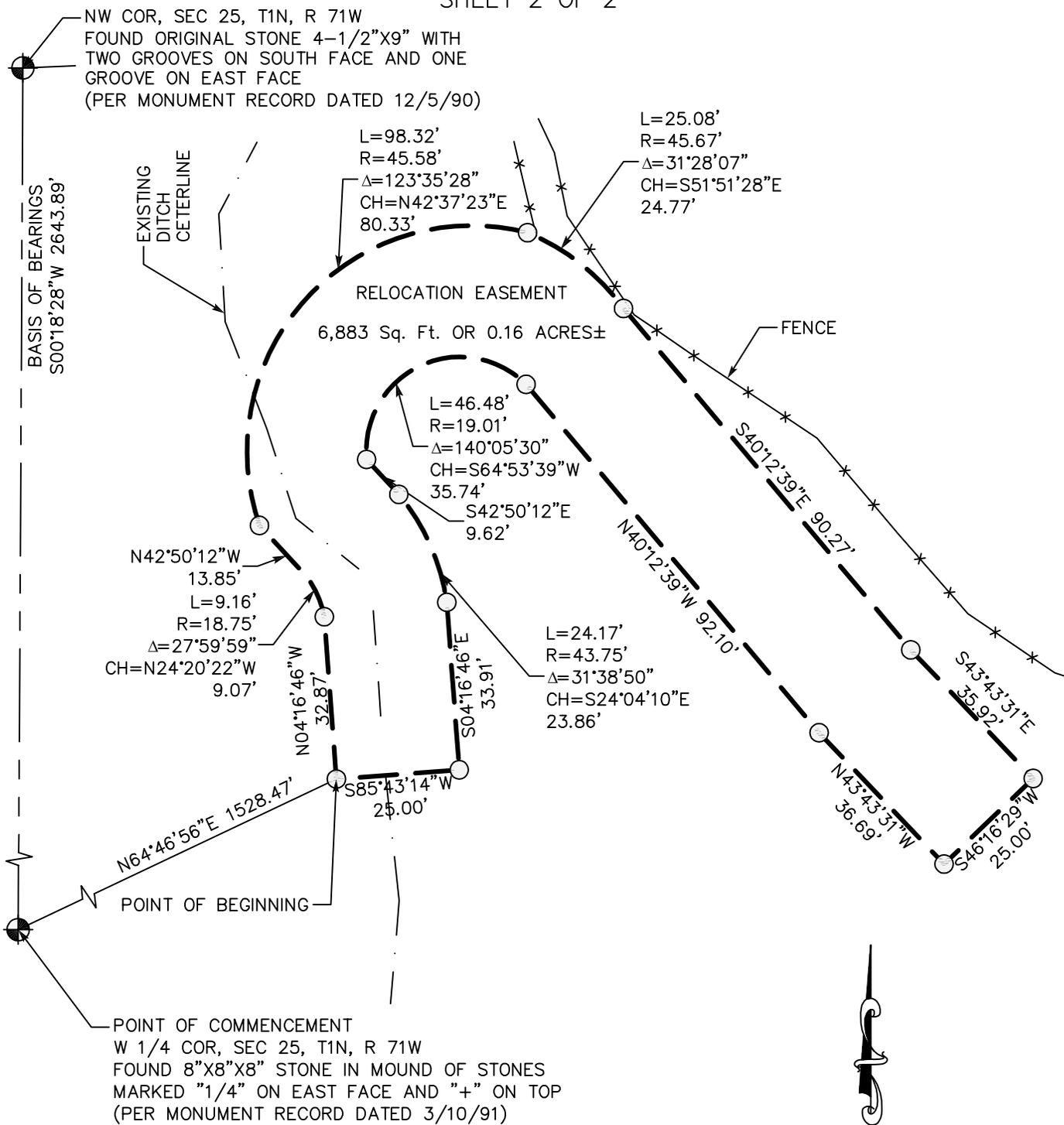
3825 IRIS AVE, STE 395
 BOULDER, CO 80301
 PH: (303) 443-7001
 FAX: (303) 443-9830
www.FlatironsInc.com

BY:BLUND FILE:62975-EXHIBIT-C13.DWG DATE:1/23/2014 3:38 PM

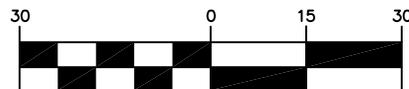
EXHIBIT "A"

LOCATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH,
RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2



GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.



JOB NUMBER: 14-62,975
DRAWN BY: B. LUND
DATE: JANUARY 23, 2014

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.

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BY:BLUND FILE:62975-EXHIBIT-C13.DWG DATE:1/23/2014 3:38 PM

VACATION AND ABANDONMENT OF EASEMENT

The SILVER LAKE DITCH AND RESERVOIR COMPANY, a Colorado mutual ditch company, (hereinafter “Ditch Company”) considering the following facts and circumstances, makes THIS VACATION AND ABANDONMENT OF EASEMENT:

Ditch Company owns the Silver Lake Ditch (“ditch”), a portion of which is constructed on property owned by the City of Boulder, Colorado (the “City”) within the boundaries of City of Boulder Community Hospital open space land, Boulder County, Colorado. Ditch Company claims a 25-foot-wide prescriptive easement for the construction, operation, maintenance, repair and replacement of the ditch (“ditch easement”).

Under that certain CITY OF BOULDER AGREEMENT WITH SILVER LAKE DITCH AND RESERVOIR COMPANY FOR DITCH RELOCATION AND PIPING WITHIN COMMUNITY HOSPITAL OPEN SPACE (the “Agreement”), the City has agreed to permit Ditch Company to relocate approximately 140 feet of the ditch located on the City’s property; and

Under the Agreement, Ditch Company has completed the “Installation,” as said term is defined in the Agreement, the City has accepted such Installation, and has granted to Ditch Company a new easement under that certain GRANT OF DITCH EASEMENT (“Deed”), recorded at Reception No. _____ on _____, 2014 in the real property records of Boulder County for the relocated segment of the ditch; and

Ditch Company now desires, under the Agreement, to vacate and abandon that portion of its ditch and ditch easement located on the real property owned by the City contained within the boundaries of the City’s Community Hospital open space land, upon which its ditch and ditch easement was configured before the relocation thereof, which equals approximately 140 feet, while reserving its rights as granted to it under the Deed for the relocated ditch and all other portions of Ditch Company’s prescriptive easement contained within the boundaries of the City’s Community Hospital open space land;

NOW, THEREFORE, the undersigned does hereby vacate and abandon all right title and interest to that portion of the ditch and ditch easement contained within the boundaries of the City’s Community Hospital open space land, upon which its ditch and ditch easement were located before the relocation thereof, which equals approximately 140 feet , and quitclaim to the City all of its right, title and interest in and to the ditch and ditch easement as configured before the relocation thereof located on the real property described in Exhibit 1 attached hereto and incorporated herein by reference, while reserving the undersigned’s rights granted to it under the Deed and all other portions of Ditch Company’s prescriptive easement contained within the boundaries of the City’s Community Hospital open space land.

Dated: _____



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE: Consideration of a motion to renew the employment agreement of Boulder Municipal Court Associate Judge Jeffrey Cahn and to award a 3.5% merit increase.

PRESENTER/S

Linda Cooke, Presiding Judge, Municipal Court
Lynne Reynolds, Court Administrator, Municipal Court

EXECUTIVE SUMMARY

The purpose of this item is to provide notice to the Council of Presiding Judge Linda Cooke's intent to renew the employment agreement of Jeffrey Cahn, Associate Judge for the Boulder Municipal Court. Unlike the Presiding Judge, the Associate Judge does not report directly to City Council. Rather, pursuant to both the Boulder Revised Code section 2-6-4(b)(6) and section 86 of the City Charter, the Presiding Judge is charged with hiring and supervising any associate judges. The Presiding Judge must provide notice to council of the appointment, evaluation, or removal of an Associate Judge.

Presiding Judge Cooke reviewed Associate Judge Cahn's performance using the City of Boulder's Performance Management process and template (See Attachment B). Application of that template can place a city of Boulder employee in one of four categories: Exceeds Our Highest Expectations, Fully Meets Our High Expectations, Meets Core Responsibilities, or Does Not Meet Expectations. While not reflected in Attachment B, each category correlates to a percentage increase in salary based on merit.

Judge Cahn's evaluation placed him in the Exceeds Our Highest Expectations category. An employee in this category receives "Excellent" ratings on all/ nearly all Goals and Behaviors assessed. Based on an assessment of Judge Cahn's performance which ranks him as Exceeds Our Highest Expectations, Judge Cooke recommends that Judge Cahn be awarded a 3.5% merit increase in accordance with the salary guidelines of the City of Boulder's Performance Management model.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

- (a) Motion to support the renewal of the employment agreement of Boulder Municipal Court Associate Judge Jeffery Cahn; and
- (b) Motion in support of the award of 3.5% merit increase to Associate Judge Jeffery Cahn

PUBLIC FEEDBACK

Judge Cahn receives extremely positive feedback from members of the public who have completed juror surveys and provided anecdotal feedback to court staff.

BACKGROUND

Boulder Revised Code section 2-6-4(b)(6) provides that the presiding judge of the municipal court shall supervise and evaluate associate judge(s) who are employed under a yearly contract with renewal at the discretion of the City Council, and transmit such evaluation, together with a recommendation concerning renewal of the contract and any adjustment in salary, to the City Council. Judge Cahn's evaluation and recommendation for contract renewal and salary adjustment through a merit increase are submitted pursuant to this provision.

ANALYSIS

The performance review process is a 360° process. Feedback is gathered from court staff, jurors, attorneys, and defendants who appear in court. The feedback is gathered using court user feedback, court employee surveys, supervisor observations, and an employee self evaluation. Judge Cahn's annual performance evaluation demonstrates that he delivers exemplary results as a judge and department leadership team member. He is a highly respected jurist whose expertise is widely relied upon by the Colorado Municipal Judges Association. Judge Cahn brings insights from his judicial responsibilities in other municipalities to bear on his work at the Boulder Municipal Court. This past year has presented a number of unique administrative challenges to our judiciary; Judge Cahn has been instrumental in assisting Judge Cooke in addressing those challenges. Once again, he has proven his value to the Municipal Court and the overall city organization.

ATTACHMENTS

- A. Employment Agreement for Jeffery Cahn
- B. Performance Management Individual PAF04

Attachment A

AMENDMENT TO EMPLOYMENT AGREEMENT with JEFFREY CAHN, ASSOCIATE
JUDGE, BOULDER MUNICIPAL COURT

DATED October 1, 2006

This Amendment is made as of the 5th day of February, 2014, by and between the City of Boulder, Colorado, a Colorado home rule city ("City"), and Jeffrey Cahn ("Employee").

The City and Contractor entered into a Contract dated October 1, 2006, to retain and employ Jeffrey Cahn as Associate Judge in the Boulder Municipal Court; and the parties wish to amend the terms of the Contract and to clarify the promises and obligations of the parties.

NOW THEREFORE, in consideration of the promises and obligations set forth below, the parties agree to amend the Contract as follows:

1. The parties agree to abide by the terms of the Contract, except as modified by this amendment.
2. The preamble of the Contract is replaced by the following section, to read:

This agreement is effective the 1st day of March, 2014, by and between Jeffrey Cahn, the "Employee," and the City of Boulder, a Colorado home rule city, the "City."

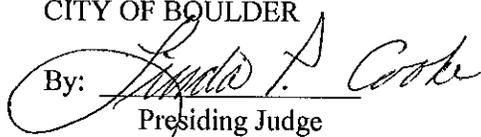
3. Section A of the Contract is replaced by the following section, to read:

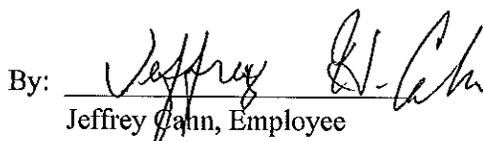
Basic Compensation Employee's base salary will be \$71.7445 per hour. Hours will be assigned by the Presiding Judge. Employee will work approximately 20 hours per week. This is an estimate only and shall not be deemed to create any contractual duty or right.

4. Except as amended herein, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands to this Contract on the day and year above first written.

CITY OF BOULDER

By: 
Presiding Judge

By: 
Jeffrey Cahn, Employee

Approved as to form:



City Attorney

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Performance Management Individual Plan

Employee Name: Jeffrey Cahn	Employee No: 000006665
Review: MERIT	Review Due: March 01, 2014

PAF04 Employee Review Form

Instructions for Managers: Please print only the two-page PAF04 (print button is below), then have employee and manager sign and date. If this is an Exceeds Our High Expectations Rating, it will also need your director's signature. Once signatures are obtained, e-mail to [HRSubmitForms](#). If you are unable to scan the document, please fax to 303-441-3049.

Employee Position Information

Distribution: 02000	Effective Payroll Number:
Name: Jeffrey Cahn	Employee No: 000006665
Hire Date: 09/03/2002	Title: Associate Municipal Judge
Position Code: 00003632	

Employee Payroll Information

Contract Grade: MGMT10	Current Rate: 69.3184
% to Max: 9.65	Range Distribution: Upper Third
Current Pay Range: \$49.9000 - \$76.0100	

The percent below is subject to proration if it has been less than 12 months since your last review.

Review Information

Type of Review: MERIT	Review Rating: Exceeds Our High Expectations	% Increase: 3.50
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To Be Completed By HR Department

Effective Date of Merit Increase: <u>3-1-14</u>	Retro PP: _____
Type of Next Review: _____	Next Review Date: <u>3-1-15</u>
Processed By: _____	Date: _____

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE: Consideration of a motion to approve an intergovernmental agreement between the City of Boulder and Boulder County for funding energy efficiency programs.

PRESENTERS

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Tom Carr, City Attorney
Debra Kalish, Senior Assistant City Attorney
David Driskell, Executive Director of Community Planning and Sustainability
Susan Richstone, Deputy Director of Community Planning and Sustainability
Elizabeth Vasatka, Business Sustainability Coordinator

EXECUTIVE SUMMARY

The purpose of this item is to seek City Council approval of the intergovernmental agreement (IGA) with Boulder County (county) for the continuation of the “EnergySmart” program, and authorizes the county to distribute commercial rebates to City of Boulder (city) businesses and property owners above and beyond the county allocation. The IGA is **Attachment A**.

The City of Boulder and Boulder County have partnered since 2010 to provide energy efficiency programs and services to residents and businesses through the joint “EnergySmart” program. This is the third IGA between the city and county to continue providing EnergySmart services to residents, businesses, and property owners.

This IGA covers the continuation of these services as outlined and endorsed by City Council in 2013 and aimed to improve the energy efficiency of the existing residential and commercial buildings in Boulder. While the Federal grant funding ended and met its goals by September 2013, the city and county are working together to continue the EnergySmart services at a reduced level through the duration of 2014. The county will continue to support the program using county general fund monies, and the city will supplement this funding with Climate Action Plan (CAP) Tax funds.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the City Manager to enter into this Intergovernmental Agreement between Boulder County and City of Boulder to fund energy efficiency programs.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The attached IGA is crafted to create efficiencies and to leverage intergovernmental resources in a way that benefits the Boulder community, its employees, residents and businesses.
- Environmental – The primary purpose of the IGA is to promote environmental sustainability in a way that leverages regional resources.
- Social – Within Boulder County, many people work in one community and live in another. By expanding the reach of the City of Boulder’s efficiency services in a way that serves the Boulder County community, recipients receive consistent quality services and messages that minimize confusion and costs -- no matter where a participant lives or works. Additionally, the “energy advisor” service delivery model is designed to cut through cultural and educational barriers to facilitate action.

OTHER IMPACTS

- Fiscal – The EnergySmart IGA commits a total of \$280,000 of commercial CAP tax funds towards rebates, administered by Boulder County and distributed to City of Boulder commercial EnergySmart customers. These funds have been accounted for in the commercial CAP tax budget.
- Staff time – No additional staff time will be required for the continued administration of commercial and residential EnergySmart services under the EnergySmart IGA. The staff time required for this partnership will be a continuation of existing work plan responsibilities of LEAD staff.

BACKGROUND

The background information on EnergySmart partnership and collaboration with Boulder County can be viewed in the [June 18, 2013 City Council memo](#).

Since the federal grant funding has ceased, the city and county are continuing to work together to provide EnergySmart services at a reduced level, through the duration of 2014.

ANALYSIS

The continued purpose of this third IGA with Boulder County is to distribute commercial CAP tax funds in the form of energy efficiency equipment rebates to City of Boulder business customers.

While the city will also be contributing residential CAP tax funds for rebates in the residential program, these funds will be paid directly to the program implementer (Populus) and therefore this funding is not outlined in the IGA.

2014 BUDGETS

Below please find the countywide EnergySmart 2014 budget along with the city's CAP tax budget.

Boulder County EnergySmart Committed Expenditures for 2014			
Program	2014 PE	2014 NPE	Total
Residential EnergySmart Services	\$86,450	\$716,000	\$802,450
Commercial EnergySmart Services	\$183,511	\$515,417	\$698,928
EnergySmart Communication & Mkting	\$66,500	\$53,000	\$119,500
EnergySmart Program Tracking & Evaluation	\$0	\$32,500	\$32,500
Total	\$336,461	\$1,316,917	\$1,653,378
Additional Non-City Specific Program Expenditures			
	2014 PE	2014 NPE	Total
Energy Loan thru Elevations Credit Union	\$ 86,450	\$ 3,904,707	\$ 3,991,157
Finance Staff	\$ 66,000	\$	\$ 66,000
Total			\$ 4,057,157

**Note: NPE for energy loan is the obligated Loan Loss Reserve*

City of Boulder CAP Budget Expenditures for 2014			
Program	2014 PE	2014 NPE	Total
CAP Admin	\$0	\$137,353	\$137,353
Market Innovation	\$0	\$180,000	\$180,000
Residential Energy Efficiency Services	\$192,385	\$280,000*	\$472,385
Commercial Energy Efficiency Services	\$183,404	\$677,000*	\$860,404
Communication	\$38,061	\$46,939	\$85,000
CAP Program Tracking & Evaluation	\$70,458	\$40,000	\$110,458
Total	\$484,308	\$1,361,292	\$1,845,600

**Note: NPE funds are for additional EnergySmart and SmartRegs advising and rebates available to city of Boulder customers above county service capacity.*

NEXT STEPS

Once the EnergySmart IGA is executed, the city can release funding for commercial program rebates to city applicants. The EnergySmart services will continue to be offered throughout Boulder County, and county staff will continue to administer aspects of the program with input from City of Boulder staff as outlined in the agreement. City staff will continue working with the county to execute appropriate and targeted communications to increase participation in EnergySmart services.

Staff will update City Council in the spring regarding the county's plan to propose a countywide sustainability tax in November, 2014. If the tax is passed by voters, EnergySmart will continue to be funded through the county post 2014. In addition, the sustainability tax would allocate a portion of the revenue back to Boulder County communities to support city/town environmental sustainability efforts. With these additional potential sources of funding countywide EnergySmart could continue to support SmartRegs compliance through its deadline of January, 2019.

ATTACHMENTS

- A:** Draft Intergovernmental Agreement Between Boulder County and City of Boulder Concerning the Funding of Energy Efficiency Programs

**Intergovernmental Agreement
Between Boulder County and City of Boulder
Concerning the Funding of Energy Efficiency Programs**

This Intergovernmental Agreement (this “Agreement”) is entered into by the County of Boulder, a body corporate and politic of the State of Colorado (“Boulder County” or “County”), and the City of Boulder, a Colorado home-rule municipality (the “City”). The County and the City may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. The Colorado Constitution Article XIV, Section 18(2)(a), provides that political subdivisions of the State may contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units.

B. Since 2010, the City and the County have partnered to provide energy efficiency programs and services to their respective residents and businesses through the joint “EnergySmart” program. Energy Smart includes such services as Energy Advisor services and contractor certification, social mobilization, job creation, whole neighborhood retrofits, the creation of a debt service reserve fund, microloans, and rebates.

C. The City and the County recognize the benefits of partnering to create a single point of contact for residents and businesses interested in applying to participate in energy efficiency programs. The City and the County further recognize that this partnership also permits the Parties to manage the delivery of these services county-wide and increases economies of scale.

D. The purpose of this Agreement is to provide the framework for the continued City/County partnership, describe which programs will be administered through the partnership, and determine the rights and responsibilities of each Party.

AGREEMENT

In consideration of the covenants set forth herein and the mutual benefits to be derived by the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Programs Subject to this Agreement. This Agreement concerns the following energy efficiency programs (the “Programs”):

A. The Residential EnergySmart program (the “Residential Program”), which includes:

- (1) Advisors that visit residences/multi-family homes to complete an EnergySmart audit or SmartRegs inspection, respectively, and, upon completion of the audit/inspection, advise the residents/owners of measures they can take to improve the residence’s energy efficiency (“Energy Advisor Services”);
- (2) Quick installations of energy efficiency measures (“Quick Install Measures”);

- (3) An EnergySmart Recommendations Report or SmartRegs Prescriptive Checklist;
 - (4) Contractor pre-certification, technical assistance, contractor advice, and information about the relative cost-effectiveness of energy efficiency measures included in the EnergySmart Recommendations Report; and
 - (5) Assistance with rebate and loan applications.
 - B. The Commercial “EnergySmart” program (the “Commercial Program”), which includes:
 - (1) High level energy efficiency walk-throughs and identification of energy saving opportunities (“Energy Assessments”);
 - (2) Referral to contractors to complete refrigeration, air compressor, and whole-building tune-up services; and
 - (3) Technical implementation and assistance for equipment change-out (“Commercial Technical Advisor”).
 - (4) Rebates for businesses that install approved energy efficiency measures (“EnergySmart Commercial Rebates”).
2. **County Administration of Programs.** The County shall administer the Programs in compliance with this Agreement. In its administration of the Program, the County shall:
 - A. Advise City residents and businesses that contact the County regarding energy efficiency programs (“City Applicants”) that they are eligible to participate in the Programs;
 - B. Provide administrative and coordination support for the Programs in which City Applicants desire to participate;
 - C. Assign an Energy Advisor to each residential City Applicant;
 - D. Manage and support the residential and commercial electronic customer management systems that can interface with each other and produce reports on agreed-upon metrics for gauging success (“Customer Management Systems” or “CMS”);
 - E. Manage and support a sustainability information management system (SIMS) that will take information on deemed and actual savings from Customer Management Systems and will be able to report out to the community on energy, cost, and greenhouse gas savings for peer comparisons and program success reporting.
3. **Program Funding/Reporting.**
 - A. The County will fund the Programs using County general fund monies and federal grant funds (“County Funds”). The City will fund the Programs using Climate Action Plan Tax funds (“City Funds”). County Funds for the Programs will be paid directly to or expended for the benefit of residents and businesses located in Boulder County on a first come, first-served basis. City Applicants will have access to the

Programs, rebates, and loans being funded by the County, whether or not separate City funding may be available to provide additional services, rebates, or loans to residents and businesses within the City. This will be the case even if the City has requirements that encourage participation in the Programs that go beyond any County requirements. The City has elected to contribute City Funds to the Programs, as provided herein. Such contributions shall be subject to annual appropriation by the Boulder City Council.

- B. In order to make County Funds for the EnergySmart Commercial Rebates available to the businesses of Boulder County in a fair and equitable manner, the County and the City agree on the following approach: the City agrees to provide \$100,000 of the City Funds for EnergySmart Commercial Rebates from the commencement of the IGA. Once City Applicants have received \$60,000 in EnergySmart Commercial Rebates paid from County Funds, the City shall contribute up to an additional \$180,000 of the City Funds for EnergySmart Commercial Rebates. All City rebate funds will be for the exclusive benefit of City Applicants. The City acknowledges that the EnergySmart Commercial Rebates will be processed through a third-party rebate processor and that the City shall pay to the County any processing fees charged to the County for EnergySmart Commercial Rebates that are funded by City Funds.
- C. The City Funds shall be used only for the benefit of City Applicants in order to provide benefits that are over and above the benefits funded by Boulder County (“Additional Benefits”). These Additional Benefits are only available to City Applicants; shall not exceed the amounts set forth in this Agreement, as amended from time to time; and shall be administered pursuant to City-approved guidelines.
- D. Consistent with the current Program structure, and subject to available funding, the County will use County Funds for the following:
 - (1) All personnel and administrative costs for the Programs;
 - (2) Contract management of residential Energy Advisor Services for each City Applicant;
 - (3) The cost and management of the residential and commercial Management Systems;
 - (4) The cost and management of the SIMS.
- E. Each month, the County will submit invoices to the City for the Additional Benefits it has provided to City Applicants. The invoices shall be accompanied by a detailed reporting of funds expended in order to receive payment from the City. The amount available to supplement the Programs is reflected in this Agreement. Payment shall generally be due within 30 days of receipt of the invoice.
- F. If the County Funds and City Funds have been expended prior to the expiration of this Agreement, the City and County staff will work cooperatively to provide recommendations to the City and County Energy Efficiency Executive Team on the appropriate next steps. The County may also request that the City identify any additional City monies that may be available to offer additional services to City

Applicants in accordance with this Section. As a last resort, the City and County staff may make a recommendation to cease offering certain Programs or loans to Program applicants, including City Applicants.

- G. The Programs will be funded by the City as provided in this Section, provided the following criteria are met:
- (1) The City and the County have identified and agreed upon specific deliverables attributable to that contribution that provide benefits to City residents and businesses;
 - (2) To the maximum extent possible without diluting messages, each event, print material, or item associated with these deliverables will credit the City with its contribution; and
 - (3) To the maximum extent possible, without diluting messages, the overall joint project bears the City name or source of funding when used within the City limits. The City shall identify certain of the City's proprietary trademarks that the County may use for this purpose.
- H. The allocation of City Funds described in this Section may be amended from time to time, at the City's sole discretion; provided, however, that the City must provide the County with adequate notice to allow the County to reasonably avoid expenditure of any City Funds on the Programs in reliance on this Agreement, before such funds are eliminated by the City's unilateral amendment pursuant to this subsection. The availability of the City Funds described in this Section is subject to the annual appropriation by the Boulder City Council.
- I. The County shall forward a copy of the Populus quarterly report regarding the Residential Program to the City upon its receipt from Populus.

4. City Support.

- A. To support the Programs, City staff will work cooperatively with County staff to:
- (1) Draft necessary requests for proposals, review proposals, and recommend contractors for selection;
 - (2) Recommend how County Funds will be distributed among the Programs;
 - (3) Make recommendations to the County staff regarding contractors' design and/or implementation of the Programs;
 - (4) Follow a comprehensive communications plan and outreach protocol for the Programs.
- B. City staff will participate in meetings to coordinate and collaborate with Boulder County Public Health, the City of Longmont, the residential program administrator, and Boulder County staff to guide and direct the activities and services described in subsection A, above.

- C. City staff will endeavor to support and advise County staff in other mutually agreed upon areas that are necessary to support the implementation of the Programs.

5. Access to Customer Management System.

- A. The County authorizes the City to access the County's EnergySmart CMS, currently administered by Salesforce.
- B. The City shall not disclose to outside parties any customer information obtained from the CMS, nor shall the County disclose any customer information of a City Applicant, except as follows:
 - (1) To the extent compelled by law;
 - (2) With the valid written consent of the customer; and
 - (3) In aggregate form, without personally identifying information.

6. Outreach and Marketing.

- A. County staff will be present at social and business network meetings, events, and other outreach opportunities to educate and market the commercial and residential programs to the community.
- B. The County will coordinate with the City for outreach and marketing within Boulder city limits.
- C. City staff may be present at social and business network meetings, events, and other outreach opportunities when they are held within city limits of Boulder to educate and market the commercial and residential programs to the Boulder community. Nothing herein shall prevent the City from also providing its staff or contractors to market the Programs or the City Programs to additional social and business networks within the City limits.
- D. The City and the County each hold a license to the EnergySmart logo (the "Logo") and, subject to the terms and conditions set forth herein, may each use the Logo and the goodwill appurtenant thereto, for the purpose of marketing the Programs. The Parties shall use the EnergySmart Logo in accordance with any and all logo usage guidelines in effect from time-to-time, as agreed upon by the Parties.
- E. The County and the City will both be credited for their partnership in any and all public communications regarding the success and effectiveness of the residential and commercial programming. The Communications and Marketing Protocol shall be followed by both parties to ensure Program credit is consistent and standardized on outreach materials.

7. **Not Agent or Representative.** Neither Party is an agent or representative of the other Party and shall have no authority under this Agreement or otherwise to make representations or commitments, verbal or written, on behalf of the other Party without that Party's express prior consent.

8. **Modification.** This Agreement may be altered, amended, or repealed only on the mutual agreement of the County and the City by a duly executed written instrument. The City Manager for the City is authorized to execute agreements modifying this Agreement on behalf of the City. The financial obligations contained in this Agreement may be adjusted from time to time, subject to annual appropriations of the governing Party.

9. **Assignment.** This Agreement shall not be assigned or subcontracted by either Party without the express prior written consent of the other Party.

10. **Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of the Parties.

11. **Choice of Laws.** The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this Agreement shall be initiated and pursued by the Parties in the Boulder Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

12. **Waiver of Breach.** Any waiver of a breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

13. **Integration.** This Agreement cancels and terminates, as of its effective date, all prior agreements between the Parties relating to the services covered by this Agreement, whether written, oral, or partly written and partly oral.

14. **Indemnification.** Neither Party indemnifies the other Party. The County and the City each assume responsibility for the actions and omissions of its own agents and employees in the performance or failure to perform work under this Agreement. It is agreed that such liability for actions or omissions of their own agents and employees is not intended to increase the amounts set

forth in the Colorado Governmental Immunity Act, now existing, or as the same may be later amended. By agreeing to this provision, the Parties do not waive nor intend to waive the limitations on liability which are provided to the Parties under the Colorado Governmental Immunity Act § 24-10-101 et seq., C.R.S., as amended.

15. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16. No Third Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the County and the City, and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Agreement that any person receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

17. Effective Date, Duration, and Withdrawal. This Agreement shall become effective on the date of signature and shall remain in effect until December 31, 2014. This Agreement may be extended for future years provided the Parties appropriate estimated costs for the future years. Either party may withdraw from all or part of this Agreement, which withdrawal shall be effective ten (10) days after the Party mails by certified mail, return receipt requested, a written notice to the other Party of its intent to withdraw. The withdrawing Party will then be released from its obligations hereunder. No additional subawards of City Allocated Grant Funds shall be made by the City to the County if this Agreement is terminated by either Party.

18. No Multiple-Fiscal Year Obligation. 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 obligation of each Party under this Agreement is subject to annual appropriation by the governing body of such Party.

19. Counterparts. This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals this ____ day of _____, 2014.

BOULDER COUNTY

Cindy Domenico, Chair

Board of Boulder County Commissioners

Attest: _____
Clerk to the Board

Date

[Further Signature Page to Follow]

CITY OF BOULDER

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Date: _____

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE: Consideration of a motion authorizing the City Manager to convey the permanently affordable housing unit at 4330 Vineyard Lane to an eligible buyer.

PRESENTERS:

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Jeff Yegian, Housing Division Manager
Bonnie Logan, Homeownership Program Manager

EXECUTIVE SUMMARY

The city, through its Division of Housing, purchased the permanently affordable home at 4330 Vineyard Lane on Nov. 1, 2013. The mortgage lender sent its first intent to foreclose to the owner in March 2013, and the Public Trustee scheduled the sale of the home at a public auction on Nov. 13, 2013. The city purchased the home to ensure its permanent affordability and plans to sell the home to an income-eligible homeowner.

STAFF RECOMMENDATION

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the City Manager to convey the permanently affordable housing unit at 4330 Vineyard Lane to an eligible buyer.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

Economic: The availability of affordable housing enhances Boulder’s economic vitality by assisting business’ recruitment and retention of employees.

Environmental: Providing affordable housing makes it possible for employees to live in the community in which they work, helping reduce commuting, traffic congestion and sprawl.

Social: Affordable homeownership contributes to the health, livability and diversity of the broad community, provides an opportunity to positively affect the lives of low- and moderate-income residents, and enhances the social fabric of the city.

OTHER IMPACTS

- **Fiscal:** Funds from the Division of Housing risk pool funded by Community Housing Assistance Program funds (CHAP) were used to purchase and rehabilitate this unit. Upon the sale of this unit, funds will be repaid into the risk pool.
- **Staff time:** This work is part of the normal work plan for the Homeownership Program.

BACKGROUND

The Division of Housing, with Council’s approval through the annual budget process, funds a \$500,000 risk pool for the purpose of retaining permanently affordable homes in the event of foreclosure. This enables the city to proactively intervene by acquiring the property to prevent a foreclosure from terminating the permanent affordability restriction on the home. As foreclosed homes typically have deferred maintenance and damages, the Division of Housing also utilizes the risk pool to rehabilitate the affordable homes the city acquires. Proceeds from the sale of the homes are reinvested in the pool. In all cases the goal is to sell the home in good condition and at an affordable price to a new eligible buyer.

4330 Vineyard Lane, a three-bedroom single-family home, is one of 16 permanently affordable homes in the Violet Hollow community in Boulder, built in 2000 by Habitat for Humanity. The Division of Housing contributed \$69,227 in HOME, CDBG and CHAP funds, making it possible for Habitat to build and offer the home as an affordable housing opportunity through its “sweat-equity” homeownership program, at a price affordable to a low-income household. Habitat also provided a 0% interest mortgage to the eligible buyer.

The original owner purchased this permanently affordable home in 2001. After the owner died in February 2012, the appointed representative of the estate defaulted on the Habitat loan in August 2012. Habitat did not commence foreclosure immediately but counseled the representative extensively on options for restructuring the debt to avoid foreclosure. The city’s homeownership program staff also advised the representative of the option of reselling to an eligible buyer per the permanent affordability covenant.

The representative chose not to work through the city's homeownership program to resell the home to an eligible buyer and, after receiving months of counseling, did not become current with the mortgage. Habitat sent its first intent to foreclose to the estate in March 2013 and filed the Notice of Election and Demand for Sale by the Public Trustee on July 2, 2013 for the outstanding debt of \$48,790.94. The Public Trustee scheduled the foreclosure sale for Nov. 13, 2013.

Before the foreclosure sale, the Division of Housing and Habitat received documentation that the appointed representative had transferred the home to a private investor in violation of the city's permanently affordable housing covenant and Habitat's deed of trust and note. To terminate the investor's interest without protracted legal action, avoid additional damage to the unit, and expedite the transfer of the home to an eligible buyer, the Division of Housing and Habitat partnered to purchase and rehabilitate the property.

The city purchased the home for \$85,000, the allowable price (after accounting for the excessive damage) had it been sold through the program. Through its volunteer and donated resources, Habitat completed the rehabilitation at nearly half of the original repair estimates. The city's total cost for purchase, rehab and resale will be approximately \$119,000. Upon council's approval, the Division of Housing intends to sell the home at a price affordable to a household of two or more members (giving preference to households with minor dependents), with an income at or below 60% of the area median income.

ANALYSIS

According to Boulder Revised Code 2-2-8, the Division of Housing must obtain City Council approval in order to resell permanently affordable properties to eligible buyers. The last time the Division of Housing sought council approval for this purpose was in October 2013, to resell a permanently affordable home it acquired in the Dakota Ridge community. The Division of Housing takes action on foreclosed permanently affordable homes and seeks council approval to convey permanently affordable homes one to three times per year. The foreclosure rate for permanently affordable homes has consistently been lower than that for market-rate homes and these actions are standard city policy.

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE:

Second reading and consideration of a motion to adopt Ordinance No. 7958, designating the building and property at 1815 Mapleton Avenue, to be known as the Beck-Ray-Schell House, as an individual landmark under the city's Historic Preservation Ordinance.

Owner/Applicant: Brad Schell

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 to allow the City Council to determine whether the proposed individual landmark designation of the property at 1815 Mapleton Ave. 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 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 October 7, 2011, and was heard by the Landmarks Board on December 4, 2013. The board voted 5-0 to recommend the designation to City Council. The City Council approved Introduction and First Reading of the ordinance on January 21, 2014. The second reading for this designation will be a quasi-judicial public hearing.

BACKGROUND:

On October 7, 2011 the city received an application from owner Brad Schell for individual landmark designation of the property at 1815 Mapleton Ave. The application was submitted after a demolition permit application was referred to the full Landmarks Board for review. In March of 2012, a proposal to rehabilitate and add to the historic house and to construct a garage at the rear of the property was conditionally approved by the Landmarks Board and a Landmark Alteration Certificate was issued at a subsequent Landmarks design review committee meeting. Work on this project has commenced.

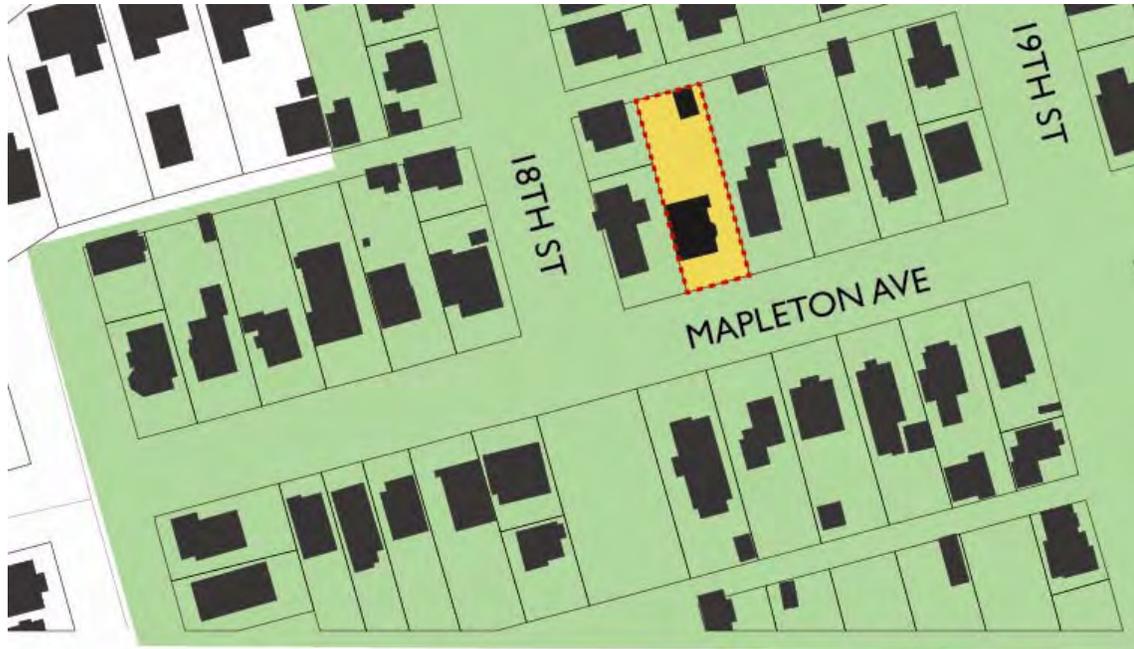


Figure 1: Location Map, 1815 Mapleton Ave.



*Figure 2: Photograph of 1815 Mapleton Ave., c.1919-1943
Photograph Courtesy the Carnegie Branch Library for Local History.*

PROPERTY DESCRIPTION:

The property at 1815 Mapleton Ave. is located on the north side of Mapleton Ave., between 18th and 19th Streets, and is located within the boundaries of the potential Whittier Historic District. An alley runs along the north edge of the property.

The one-story brick house has a hipped-roof, with a small front gable dormer with shingles and a small window with an architrave surround. A front porch is supported by classical columns and features a wooden balustrade. The windows on the façade and rear elevation feature segmental arches and stone sills. A bay window is located on the east elevation and has staggered brick corners. A wood-frame porch at the northeast corner (later enclosed) appears in the 1918 Sanborn Map. Its removal was approved as part of the 2012 Landmark Alteration Certificate. The blond brick used for the construction of the house is unusual for its speckled appearance, a result of a darker “clinker” probably having been added to the clay matrix before firing. All doors and windows on the house appear to be original.



Figure 3: South Façade, 1815 Mapleton Ave., 2011.



Figure 4: East Elevation Bay Window, 1815 Mapleton Ave., 2011

RECOMMENDATION:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance No. 7958, designating the building and the property at 1815 Mapleton Ave., to be known as the Beck-Ray-Schell House, 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: 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 December 4, 2014 the Landmarks Board voted 5-0 to recommend to City Council that the building at 1815 Mapleton Ave. 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.

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 1815 Mapleton Ave. will protect, enhance, and perpetuate a building reminiscent of a past era important in local history and preserve an important example of Boulder’s historic architecture. Staff considers the application to meet the historic criteria for individual landmark designation as outlined below:

HISTORIC SIGNIFICANCE:

Summary: The house at 1815 Mapleton Ave. has historic significance under criteria 1, 2, and 4.

1. Date of Construction: c. 1916

Elaboration: A building permit was issued to Elliot A. Van Dyke on April 1, 1916 to build a brick, 5-room, 1 bath, 1 water closet home at an estimated cost of \$2,190.00. The address first appears in city directories in 1918.

2. Association with Persons or Events:

Elaboration: The property has only had a handful of owners in its nearly 100 year history.

John and Carrie Beck owned and resided in the house from 1918 until Mr. Beck’s death in 1935. Beck, a Civil War Veteran, was a member of the Grand Army of the Republic and served as chaplain for the Nathaniel Lyon Post in Boulder. Mrs. Beck was active in the Daughters of Union Veterans Boulder Chapter and worked as a school teacher.

In April of 1943, the house was purchased by Frank and Ruby Ray, who lived there for 45 years and were careful stewards of the property.

From 1995 to the present, the property has been the home of noted software developer, Brad Schell. Schell started *LastSoftware* with Joe Esch which developed the immensely popular 3D architectural design *SketchUp* program.

3. Development of the Community: None observed

4. Recognition by Authorities: The 1987 Historic Building Inventory Form for this property identifies the house and barn as significant as representative of a “Boulder’s early, vernacular, middle-class housing,” and that it “adds to the architectural diversity of Mapleton Avenue and the Whittier neighborhood.”

ARCHITECTURAL SIGNIFICANCE:

Summary: The house at 1815 Mapleton Ave. has architectural significance under criteria 1 and 3.

- 1. Recognized Period or Style:** Vernacular/Queen Anne
Elaboration: The house is representative of vernacular building evidenced by its simple plan and relative lack of ornamentation. Queen Anne variants of this form feature an asymmetrical massing and decorative shingled gables. The Colorado Office of Archeology and Historic Preservation considers the simple Queen Anne form as a common type of residential building in Colorado.
- 2. Architect or Builder of Prominence:** Elliott Van Dyke was involved in the real estate business in Boulder, however he is not considered to be a builder of prominence.
- 3. Artistic Merit:** None observed
- 4. Example of the Uncommon:** The blond brick used for the construction of the house is somewhat unusual for its speckled appearance, a result of a darker “clinker” probably having been added to the clay matrix before firing.
- 5. Indigenous Qualities:** None observed

ENVIRONMENTAL SIGNIFICANCE:

Summary: The house at 1815 Mapleton Ave. has environmental significance under criterion 5.

- 1. Site Characteristics:** None observed
- 2. Compatibility with Site:** None observed
- 3. Geographic Importance:** None observed
- 4. Environmental Appropriateness:** None observed
- 5. Area Integrity:** The property is located in the potential Whittier Historic District, which retains its residential historic character.

OPTIONS:

City Council may approve, modify or not approve the second reading ordinance.

Approved By:

Jane S. Brautigam,
City Manager

ATTACHMENTS:

A: Ordinance No. 7958

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. 7958

AN ORDINANCE DESIGNATING THE BUILDING AND THE PROPERTY AT 1815 MAPLETON AVENUE, CITY OF BOULDER, COLORADO, ALSO KNOWN AS THE BECK-RAY-SHELL HOUSE, 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 October 7, 2011, property owner Brad Schell 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 December 4, 2013; and 3) on December 4, 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 February 4, 2014 and upon the basis of the presentations at that hearing finds that the building and the property at 1815 Mapleton Avenue 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 1916, its association with John Beck, Frank and Ruby Ray, and Brad Schell, and its recognition as a example of Boulder's early,

1 vernacular, middle-class housing 2) its architectural significance indicative of the
2 Vernacular/Queen Anne Style, evidenced in its simple plan, overall lack of ornamentation, with
3 asymmetrical massing and decorative shingles; and 3) its environmental significance for its
4 geographic importance within the potential Whittier Historic District, which retains its residential
5 historic character.

6 Section 5. The council further finds that the foregoing landmark designation is necessary
7 to promote the public health, safety, and welfare of the residents of the city.

8 Section 6. There is hereby created as a landmark the building and property located at
9 1815 Mapleton Avenue, to be known as the Beck-Ray-Schell House, whose legal landmark
10 boundary is identical to the boundary of the legal lots upon which it sits:

11 LOT 7 BLK 23 BOULDER NORTH, BOULDER COUNTY, COLORADO
12 as depicted in the proposed landmark boundary map, attached hereto as Exhibit A.

13 Section 7. The council directs that the department of Community Planning and
14 Sustainability give prompt notice of this designation to the property owner and cause a copy of
15 this ordinance to be recorded as described in Subsection 9-11-6(d), B.R.C. 1981.

16 Section 8. The council deems it appropriate that this ordinance be published by title only
17 and orders that copies of this ordinance be made available in the office of the city clerk for public
18 inspection and acquisition.

19 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE
20 ONLY THE 21ST DAY OF JANUARY 2014.
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25 Mayor

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Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY
TITLE ONLY THIS 18TH DAY OF FEBRUARY, 2014.

Mayor

Attest:

City Clerk

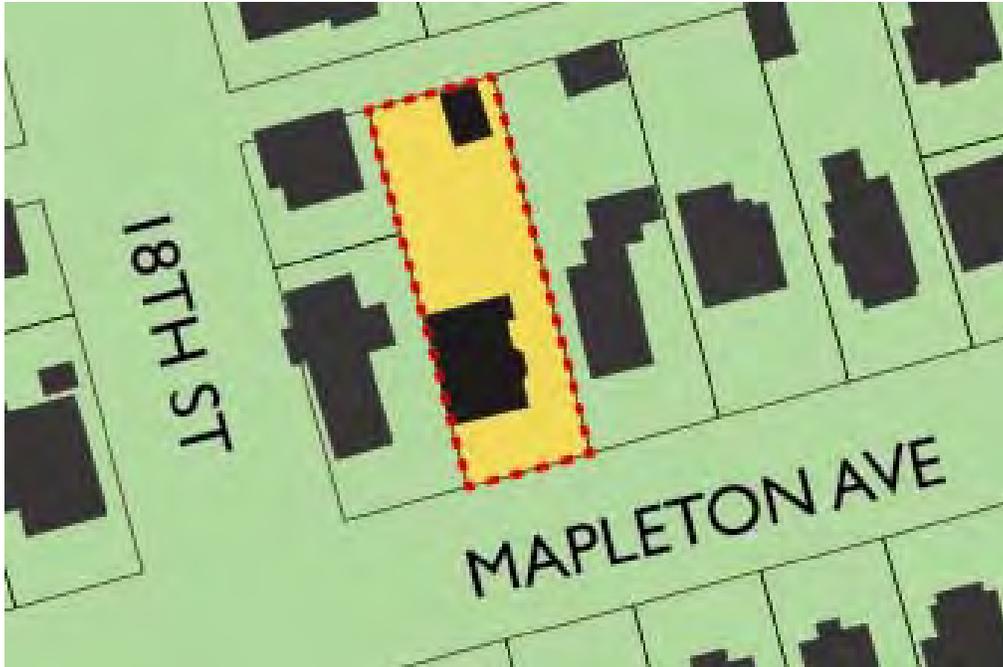


Exhibit A – Landmark Boundary Map for 1815 Mapleton Ave.

LOT 7 BLK 23 BOULDER NORTH, BOULDER COUNTY, COLORADO

**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: February 18, 2014

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance No. 7960 approving supplemental appropriations to the 2014 Budget.

PRESENTERS:

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichen, Chief Financial Officer
Peggy Bunzli, Budget Officer
Elena Lazarevska, Senior Financial Analyst

EXECUTIVE SUMMARY

This proposed supplemental appropriation ordinance (**Attachment D**) adopts the expenditures associated with the new taxes approved by the voters in November of 2013. Input was received from city council on this agenda item at the Jan. 21, 2014 city council meeting.

Attachment E contains the questions and staff responses to questions asked at the council meeting that needed further follow up and could not be answered at the meeting. Staff will return later in 2014 with a recommended method to allocate the education and the remaining contingencies.

Transportation Tax

The \$4.5 million in the restricted transportation fund is proposed to be appropriated in the following manner (additional detail can be found in **Attachment A**):

Pavement Maintenance	\$1,400,000
Routine Maintenance	\$ 700,000
Transit/TDM/Planning	\$ 400,000
Additional Capacity for Multi-Modal	\$1,000,000
Replenish Operating Reserve used in flood	<u>\$1,000,000</u>
Total	<u>\$4,500,000</u>

Non-medical marijuana taxes

Due to the staggered start of non-medical marijuana businesses, there is likely to be a slower start to revenue collections for this new category. In an effort to ensure the November 2013 ballot language complied with Taxpayer Bill of Rights (TABOR) requirements, \$3.3 million was identified as the amount that would be collected under the maximum tax rates that council could set in the first year. At the rate actually set (which was not at maximum), \$2 million in new marijuana taxes is projected for collection in 2014.

Due to considerable uncertainty about the expenditure impact of the new marijuana business on city operations, best estimates and projections have been made regarding staffing needs and workloads. Based on internal discussions regarding educational efforts regarding non-medical usage of marijuana, it became apparent that additional input and data is needed before final recommendations can be made. As a result, flexibility will be key with regard to staffing impacts, needs and revenue projections in 2014.

Toward that end, operating costs for known appropriations are proposed in **Attachment B**. In an effort to address unknown costs (such as operating, educational programs, etc), a contingency appropriation is proposed, which would be discussed and reviewed by council during the second quarter of 2014. The supplemental \$2 million appropriation is described in the analysis section of this memo for Council consideration.

Since initial council discussions regarding taxing marijuana, it has become evident that this is a unique business segment. It is a new sector with no empirical evidence regarding revenues and expenditures the city will incur. As a result, flexibility in the coming years will be key to deal with costs that will arise.

Staff recommends that all marijuana revenues be deposited into the general fund and all budget recommendations be paid by the general fund. Under that recommendation, any restricted funds that incur costs would request allocation for these expenditures from the general fund through the budget process. By doing so, the city can look across the organization to combine similar programs and costs relative to this new business segment. As a result, revenue allocations would be made.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance No. 7960 approving supplemental appropriations to the 2014 Budget.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic

Marijuana: The imposition of an additional tax on non-medical marijuana may cover the indirect costs to the city of marijuana use and allow the city to provide comprehensive substance abuse programs to mitigate the negative effects of abuse of marijuana.

Transportation: The safe and efficient movement of goods and people is essential to Boulder's economy. The costs of maintaining roads and other facilities are increasing as sales tax revenue and purchasing power are decreasing. Without additional funding for transportation, the condition of our transportation infrastructure will decline.

- Environmental

Marijuana: At this time none have been specifically identified. As this new business segment matures more will become known about the environmental impacts of non-medical marijuana.

Transportation: Safe, convenient and reliable transportation options are necessary to reduce single-occupant vehicle use and transportation-related emissions, and to otherwise meet the goals of the Transportation Master Plan (TMP) and Climate Commitment. Without additional transportation funding, there will be less money available to maintain and enhance the city's transportation system.

- Social

Marijuana: The social impacts of legalized non-medical marijuana have yet to be identified. The ordinance that accompanied the ballot measure for these new taxes was written to mitigate those impacts by using tax funds collected from non-medical marijuana businesses to fund education and treatment.

Transportation: A properly maintained multimodal transportation system benefits all members of the public.

OTHER IMPACTS

- Fiscal

In the **restricted Transportation Fund**, \$4.5 million would be appropriated from additional projected revenue due to the increased tax rate.

An additional \$2 million would be appropriated in the **General Fund** from projected revenue due to the new taxes.

- With regard to the marijuana impacts, when compiling and analyzing direct and indirect costs by departments, it was determined that all such costs are expected to be borne by those departments or programs that are supported and paid for by the general fund.

- Staff time
While some of the costs will be absorbed in the normal staff workload, the proposed supplemental appropriation ordinance will appropriate funding for the increased staff and other resources needed to implement the new programs and services.

BOARD AND COMMISSION FEEDBACK

The Transportation Advisory Board (TAB) reviewed and recommended the tax, level of funding and uses of funds. TAB hosted the Transportation Finance Task Force that helped deliberate on level of funding and uses of funds; had multiple public meetings; and deliberated about the level of funding and the use of funds as a part of their recommendation(s) to Council.

PUBLIC FEEDBACK

Significant public participation was received during the city council meetings when the new marijuana taxes were being vetted for the final ballot language and during the meetings when the time was set to start receiving marijuana licenses.

The first reading of this ordinance was held of February 4th, 2014. There were no questions from the public or City Council on this meeting.

BACKGROUND AND ANALYSIS

Expenditures and revenues for new taxes

On November 5, 2013, voters approved the following tax measures:

- (a) an increase in the tax restricted to Transportation; and
- (b) specific taxes on the sale of non-medical marijuana.

At the time the ballot passed, the 2014 budget had been previously adopted and it was not certain if and when new revenues would flow to the city if any of the taxes passed. Input received by staff at the city council meeting held Jan. 21, 2014 is reflected in the attached supplementary appropriations ordinance (**Attachment D**).

Transportation:

The approval by the voters raised the restricted transportation tax from .60% to .75%. The appropriation and treatment of revenues received for the new transportation tax is very straight forward. The revenues were approved to be used for transportation only so they will be deposited into the transportation fund and the proposed appropriation are all for transportation purposes that will be paid out of the transportation fund. The incremental revenue is projected to generate approximately \$4.5 million in the first year (rounded up from \$4.48 on the ballot).

Non-Medical Marijuana:

The new non-medical marijuana taxes are not as straight forward. One tax is for an additional 3.5% on top of the 3.56% for retail sales (total of 7.06%). A second tax is a

5.0% excise tax on all cultivation facilities. In addition, the state will share back a portion of the statewide sales based on City of Boulder amount of marijuana sales to total marijuana sales in the state.

With regard to expenditures, staff has made projections to determine the increased workload. To date, all of the costs are for programs that are in the general fund (police, fire, human services, licensing, planning) or will be paid by the general fund even though they are in another fund (building inspections).

While staff has worked diligently to identify all associated costs, it is likely that there will be unknown costs that will be identified during the first few years that will have to be addressed outside of the regular budget cycle. Additional work also needs to be done on educational programs regarding what the programs should be and what level of resources is needed to fund these programs.

Since the ballot language did not set a certain percentage or dollar amount for educational programs, staff suggests the development of a process to allocate funds for such programs. For the first year, staff recommends that \$250,000 (which represents 12.5% of revenues) be placed in an educational contingency for such programs and a process be developed to allocate the funds. While an amount had to be determined for 2014, staff does not recommend that a target amount or percentage be established for perpetuity based on the need for flexibility and agility to meet changing needs in the future.

While the projected revenue for the first year is \$2.0 million, the actual amount will be higher or lower. Due to several factors, the degree of variation one way or the other creates a significant challenge. As a result, flexibility and agility will be needed to respond if projections are significantly lower or higher than projected.

Since the start of non-medical marijuana businesses was staggered, the full impact of monthly revenue collections will not be known until at least the third quarter of 2014. There is approximately a 45 day lag from the end of a month until revenues are collected by the vendor, remitted to the city, and compiled and reported on by the city. Therefore, it is most likely that it will not be known until late 2014 if the \$2 million projection will be exceeded. As the revenue impact of this new business segment on current medical marijuana sales is unknown, it will be monitored closely by city staff during 2014.

As a result of these uncertainties and the need for flexibility, the supplemental appropriations ordinance as proposed would appropriate:

- operating costs in the amount that is based on the information known at this time (\$513,470),
- a city manager's contingency for direct and indirect costs unknown at this time that may occur in 2014 (\$400,000),
- an educational contingency to be allocated after an appropriate process is developed to meet city goals (\$250,000), and

- a separate contingency for the remaining amount up to the \$2 million projected revenue amount (\$836,530 if the projections are met). This final contingency would (1) act as a buffer if revenues fall short of projections, and (2) be used to fund other one-time costs during 2014 if revenue projections are being met.

In past council discussions regarding non-medical marijuana revenues and expenditures, staff has proposed that they both be treated annually as one-time in nature. The rationale for treatment as one-time is a result of the manner in which the federal government currently treats marijuana businesses – the industry is not recognized as legal under federal law. Under the best practices concept of using one-time revenue for one-time expenditures, it would mean that if the revenues were greatly reduced or eliminated by federal action, the matching one-time expenditures could also be eliminated or reduced to meet the new revenue level. To do this, costs need to be known at all times and an administrative budget process has to be in place that is flexible and can adapt as needed. The proposed process will meet these needs.

Key indicators of when these types of revenues will become ongoing revenues include: when a significant number of additional states (or several large states) legalize the use of marijuana for other than medical purposes, or the laws are changed at the federal level to legalize the sale of marijuana.

Where revenues will be deposited

Transportation:

The transportation tax will be deposited in the restricted transportation fund.

Non-medical marijuana:

According to the ballot language approved by voters, non-medical marijuana taxes were not restricted to a specific program or fund. The ballot language stated

TAX TO BE USED FOR PUBLIC SAFETY, ENFORCEMENT AND ADMINISTRATIVE PURPOSES AND FOR COMPREHENSIVE SUBSTANCE ABUSE PROGRAMS INCLUDING WITHOUT LIMITATION PREVENTION, TREATMENT, EDUCATION, RESPONSIBLE USE, INTERVENTION, AND MONITORING, WITH AN EMPHASIS ON YOUTH, AND WITH THE REMAINDER USED BY THE GENERAL FUND.

Due to the high interest from the public, the council and the media in revenues and expenditures associated with medical marijuana, a great amount of interest in non-medical marijuana revenues and expenditures incurred is anticipated. Calculating the revenue collected from medical marijuana is a simpler accounting effort for the city since the tax rate as any other retail item sold in the city.

The new marijuana taxes are more complex since there are separate types of taxes (excise and sales and use) with separate tax rates of their own (5.00% excise and 3.50% in addition to the 3.56% sales and use). Therefore, the city needs to have an efficient and

effective method to budget and account for both the revenues and the expenditures for this new and separate tax component.

ATTACHMENTS

- A. Transportation memo regarding proposed uses of the tax increase
- B. 2014 proposed costs and contingency appropriations for non-medical marijuana revenue
- C. Revenue projections for non-medical marijuana 2014
- D. Proposed supplemental appropriations ordinance for the 2014 budget
- E. Follow up on questions from the January 21, 2014 council meeting

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Transportation 2014 Overview

Staff is proposing a 2014 Transportation Budget Supplemental which aligns new Transportation Sales and Use tax revenues with adopted budget guiding principles and priority based budgeting. In concert with prioritized increases in the original 2014 budget, the focus is on safety, taking care of the existing infrastructure first - such as pavement repair, maintenance of the multi use path system, signs, markings, signals maintenance - with some capacity to improve the multimodal system.

There was significant process and community outreach that supported the package for voter approval and this subsequent budget supplemental. The Round One Capital Bond process identified capital investment priorities for the community and for Transportation, with top priority investments supporting maintenance and safety of the multimodal system with some capacity to expand the multi-modal system. A separate Transportation Funding Task Force and the Transportation Advisory Board process supported similar investment priorities and included capital maintenance and enhancement as well as operating and maintenance funding. Overall, council endorsed a level of funding with the first 16 years supported by sales and use tax and subsequent years to be supported with replacement funding that would be more tied to use (such as a VMT fee), to be determined through additional analysis and public process.

There were four categories identified for increased funding during the Transportation Funding process with a fifth category added since the September floods. There will be a combination of non-personnel expense, personnel expense, ongoing and one-time expenditures, and increased capital investment capacity. The following categories would be increased by the approximate levels noted below. Categories one through four would be considered ongoing investment and category five would be considered one-time.

Those categories are:

1) Pavement Maintenance	\$1,400,000
2) Routine Maintenance	\$ 700,000
3) Transit/TDM/Planning	\$ 400,000
4) Additional Capacity to Improve Multi-modal System	\$ 1,000,000
5) <i>Replenish Operating Reserve due to 2013 flood expenditures</i>	<u>\$1,000,000</u>

Total **\$4,500,000**

Transportation is likely to expend the entire 2013 transportation operating reserve on emergency response, debris removal and infrastructure repair related to the flood. Staff believes it is a priority to restore the operating reserve in 2014 in order to respond to unanticipated emergencies such as floods and blizzards. Fortunately, the new tax provides greater ability to replenish the reserve quickly. The ongoing plan is for the operating reserve to increase another 14% in 2015 and then incrementally increase over the next several years to build and maintain capacity to respond to emergencies. Prioritizing significant reserve restoration in 2014 allows time for the Transportation Master Plan (TMP) Update to inform other strategic investments for the 2015 budget process.

Most of the FTE's that are requested in this supplemental budget went through a process with the Capital Bond to determine sufficient staffing to support projects and programs approved by the voters. The latest Transportation funding approved by the voters will allow the city to continue and expand beyond the capital bond supported level of transportation maintenance and capacity building, on an

ongoing basis. The additional increment of staffing beyond the Capital Bond supports operations such as bikeway maintenance and street sweeping.

For additional context, the Transportation Division is not personnel intensive and has a strong track record for ongoing efficiency analyses and reallocations. The current supplemental budget represents an approximate 22% increase in ongoing funding for the division, yet the ongoing staffing increase is just 12%.

Brief explanation of each of the four remaining investment categories:

Pavement Maintenance – The increase allows for pavement maintenance to continue at 2011 capital bond-level investments and would maintain pavement condition ratings within the goal of 75-80 on a 100 scale, a preferred practice. There would be a combination of investments that would preserve pavement life including pavement overlay, chip and seal, major patching and crack filling. Prior to roadway resurfacing, repairs to concrete curb, gutter and sidewalk is typically required. Based on experience to date with the capital maintenance program and pavement management program, and guidance from a consultant on organizational change, this includes converting 1 fixed term FTE to standard and adding 1 FTE.

Routine Maintenance – A number of routine maintenance programs would be increased including signs, markings and signals; transportation system engineering and safety investments; bike path maintenance; extending funding for the existing snow pilot program to ongoing (currently has one-time funding); median maintenance; graffiti; and street sweeping. Staff is still evaluating personnel needs particularly in the signal maintenance program; however, at this time the Division's proposal includes 1 FTE for reallocation. The Division additionally proposes 1.5 new FTE to implement this higher level of service for bikeway maintenance (also keeping pace with additions to the system), street sweeping (on-street bike lane safety), safety engineering and signal system maintenance.

Transit/Travel Demand Management (TDM)/Planning – The TMP Update is currently evaluating the transit system and there are two transit services in need of funding in 2014 – the HOP and Via Mobility Services. In addition, due to program demand, Eco Pass program increases are warranted as well as other TDM program enhancements. Furthermore, this work group supports overall expansion and safety of the multi-modal system. Given ongoing staffing demands for project development and outreach, cross departmental efforts, and added/restored responsibilities, an existing, long-term temporary position is proposed to be converted to standard, ongoing position.

Additional Capacity to Improve the Multi-modal System – The supplemental includes an increase to the Capital Improvement Program (CIP) for multimodal improvements, partially reinstating previously reduced bicycle and pedestrian enhancements and increasing the city's capacity to leverage external funding. The TMP Update and the 2014 Transportation Improvement Program (TIP) process will help guide and refine high priority projects selection/submittal. This work group includes 2 existing fixed-term FTE proposed to be converted to ongoing. Also, based on guidance from an organizational consultant and workload evaluation, staffing recommendations include adding a 0.5 FTE to support this program.

Dept Name	2014 Expenditure Category	Total	Brief Description
City Attorney	Expenses to hire outside counsel	\$75,000	This funding will be used to contract with outside attorneys for any litigation related to appeals of license denials and/or challenges to the ordinance
Finance	Forensic Accountant - contract	\$100,000	This funding will be used to contract with a CPA firm to provide forensic accounting of non-medical marijuana revenue
Finance	Licensing Clerks	\$96,470	This funding will be used for additional licensing FTEs
Police	Vehicle	\$45,000	This funding will be used for a truck to remove and haul confiscated plants
Police	Underage Enforcement	\$20,000	This funding will be used for police officer overtime
Police	Equipment	\$2,500	This funding will be used for air masks
Police	Training	\$2,500	This funding will be used for training for code enforcement
Fire	Overtime costs for inspections and for training of staff to do the inspections	\$12,000	This funding will be used for training and overtime compensation for fire code inspections
Planning and Development Services	Building & Associate Zoning Plans Examiner FTE	\$85,000	This funding will be used for two-year fixed term building plans examiner position to prepare for the expected increase in non-medical marijuana permits and further expedite the issuance of other marijuana building permits
Planning and Development Services	Building Inspector/Enforcement FTE	\$75,000	This funding will be used for two-year fixed term building inspection/enforcement position to prepare for the expected increase in inspection activity related to the three phases of non-medical marijuana licensing and for new licensing once the moratorium expires
Subtotal, Operating Costs		\$513,470	
City Manager Office	Contingency	\$400,000	This is contingency funding for unexpected costs related to non-medical marijuana
Human Services	Educational program development and implementation	\$250,000	This funding will be used for to work with community partners such as Boulder County Public Health, BVSD and Mental Health Partners on scoping and developing educational programs aimed at children and youth. Implement educational program(s) based on community needs, strategic direction and partnerships. This funding could also support additional .5 FTE as well as NPE funding
TBD	Contingency to be allocated later in 2014	\$836,530	Additional contingency funding to be allocated at a later date in 2014
Subtotal, Contingency		\$1,486,530	
TOTAL		\$2,000,000	

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Non-Medical Marijuana Sales- Tax Generation Projections

	Current Sales	50% Increase over Current Sales	100% increase over Current Sales	200% increase over Current Sales
Medical Marijuana Sales (used as base for non-medical)				
Current and Projected Sales	\$ 24,000,000	\$36,000,000	\$48,000,000	\$72,000,000
Sales and Use Tax at 3.5%	\$840,000	\$1,260,000	\$1,680,000	\$2,520,000
Estimated City Excise tax collected				
Excise Tax at 5%	\$480,000	\$720,000	\$960,000	\$1,440,000
Projected Recreational Marijuana Sales	Based on Current Sales	50% Increase over Current Sales	100% increase over Current Sales	200% increase over Current Sales
Estimated non-medical sales	\$24,000,000	\$36,000,000	\$48,000,000	\$72,000,000
New state sales tax rate on non-medical marijuana	10.00%			
City shareback from state	15%			
Total sales tax received by the city from state shareback	\$360,000.00	\$540,000.00	\$720,000.00	\$1,080,000.00
Incremental non-medical amount if projections are met	\$1,680,000.00	\$2,520,000.00	\$3,360,000.00	\$5,040,000.00

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ORDINANCE NO. 7960

AN ORDINANCE RELATING TO THE FINANCIAL AFFAIRS OF THE CITY OF BOULDER, COLORADO, MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2014 SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS, Section 102 of the Charter of the City of Boulder provides that: "At any time after the passage of the annual appropriation ordinance and after at least one week's public notice, the council may transfer unused balances appropriated for one purpose to another purpose, and may by ordinance appropriate available revenues not included in the annual budget;" and

WHEREAS, the City Council now desires to make certain supplemental appropriations for purposes not provided for in the 2014 annual budget; and,

WHEREAS, required public notice has been given;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, that the following amounts are appropriated from additional projected revenues to the listed funds:

Section 1. General Fund

Appropriation from Additional Revenue	\$2,000,000
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Section 2. Transportation Fund

Appropriation from Additional Revenue	\$4,500,000
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Section 3. The City 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 4. If any part or parts hereof are for any reason held to be invalid, such shall not affect the remaining portion of this ordinance.

Section 5. 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 4th day of February, 2014.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this 18th day of February, 2014.

Mayor

Attest:

City Clerk

Questions from the Jan, 21, 2014 City Council Meeting

Q: What will be the city's priorities for improving street surfaces-which streets?

The transportation division completes a visual assessment and re-rates every street every three years. The street ratings are used to define the repair type, including crack fill, chip and seal, overlay, and reconstruction for the various streets. The ratings are used as an initial indicator and the program is determined annually working to coordinate with utility repairs, other capital projects and adjacent development projects while trying to organize the work in logical areas throughout the city, allowing flexibility for changing conditions.

The annual pavement management program repair list is posted on the website in the spring. A map of streets to be repaired in 2013 and a preliminary list for the 2014 program is included on the website at the following link <https://www-static.bouldercolorado.gov/docs/2013-map-street-resurfacing-reconstruction-1-201305131507.pdf> . The final 2014 list will be put on the website this spring prior to the work beginning and will include additional streets due to the additional \$1.4 million in funding. Prior to the work starting, a mailing is sent to adjacent properties that receive major pavement treatments like overlay and reconstruction. Adjacent property owners can contact staff or send questions to www.InspireBoulder.com if they have questions about their streets.

As noted in this and previous memos, the emphasis of the voter-approved tax increase and extension is on maintenance and operations of the existing multimodal system. Sufficiently funding the pavement repair program is a major component of this budget supplemental.

Also noted previously, a relatively small increment of the additional funding will allow for enhancements to the multimodal system. Given the need to restore Transportation Operating Reserve in 2014, the Transportation Master Plan (TMP) Update and DRCOG Transportation Improvement Program processes will help prioritize the incrementally available funds for multimodal improvements. A link to the TMP Update process is provided here: <https://bouldercolorado.gov/transportation/tmp-update>

Q. Why do we need a specialized truck for marijuana? It does not seem there will be much demand. Could a truck be borrowed from another city department or rented if needed?

The Marijuana Enforcement Officer (Bev Bookout) would be the primary driver of the truck. The City of Boulder currently has 54 marijuana related businesses with 11 pending applications. Bev is responsible for inspecting all of these businesses and ensuring that they are in compliance with state and municipal law. During the course of her duties she sometimes has to make seizures of marijuana and marijuana related products. In the past, the Police Department has borrowed the services of a Forestry truck and a Maintenance truck to haul seized plants to the dump. Several trips have been necessary on some occasions because of the number of plants seized. The Police Department needs a truck for the everyday inspection duties, but also for the more labor intensive seizures. Due to the pungent aroma of marijuana, Bev is unable to use any of our current vehicles because the smell stays in the seats and renders the vehicle unusable until it is aired out and professionally cleaned. If she had a truck assigned to her position, she would be able to transport the marijuana and marijuana related products in the bed of the pick-up with little fear of ruining the inside.

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE: Second Reading and consideration of a motion to adopt Ordinance No. 7957 amending Title 2, “Government Administration,” Chapter 7, “Code Of Conduct,” B.R.C. 1981 and setting forth related details.

PRESENTERS:

Tom Carr, City Attorney
David Gehr, Deputy City Attorney

EXECUTIVE SUMMARY:

On January 21, 2014, council considered and passed on first reading extensive proposed changes to the city’s code of conduct. These changes were developed based on council direction given at study sessions on October 9 and October 23, 2012. Council made no changes on first reading. Council members Matthew Appelbaum and Macon Cowles posted questions on the council hotline. This memorandum addresses those questions. The first reading memorandum can be found at the following link:

<https://documents.bouldercolorado.gov/weblink8/0/doc/124466/Electronic.aspx>

STAFF RECOMMENDATION:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt on second reading Ordinance No. 7957 amending Title 2, “Government Administration,” Chapter 7, “Code Of Conduct,” B.R.C. 1981.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic:
None identified.
- Environmental:
None identified
- Social:
Boulder’s community values support an honest, ethical and transparent local government. The intent of the proposed ordinance is to revise the city’s ethics code

to be more accessible through clarity. The proposed ordinance would strengthen the sanctions for dishonest behavior, while at the same time clarifying what is acceptable and appropriate behavior for city elected officials, employees and appointed volunteers.

OTHER IMPACTS

- Fiscal:
None identified.
- Staff Time:
None identified.

RESPONSES TO FIRST READING QUESTIONS:

The following issues were raised at first reading:

Regarding section 2-7-4(a):

1. *I would think that discounts off prices available to the public should also be prohibited.*

Discounts would be included in the current language as “anything of value.” Discounts could be added as one of the examples explicitly included if council sought to make the prohibition more clear.

Regarding section 2-7-4 (b):

2. *Should this section include a requirement that council be informed if a member accepts paid travel?*

The section requires that the council member certify compliance with the code provisions after travel. The challenge with this section is to strike a balance that does not deter members from taking opportunities for education and enrichment that could improve their performance as council members and benefit the city.

3. *Would there be cases where a for-profit organization (that also isn't “governmentally-related,” a rather broad description) might invite us to speak at an event that would be beneficial to attend, and pay our way? That seems to be prohibited here, even if council approved.*

The section as drafted only applies if travel expenses are paid by one of the identified third parties. If the city or the council member pays the travel expenses there is no restriction.

If council wants to broaden the third parties that could pay for travel expenses to include for-profit organizations as well, council should provide staff with direction as to which

organizations would be allowed to pay and the conditions under which the public official could accept payment for travel expense.

If council wishes to remove the limitation for reimbursement for governmental or non-profit organizations, it could remove the phrase “paid by a non-profit organization, government or governmentally related organization” from section 2-7-4(b)(5).

Council could also consider an approval process to allow for the payment of travel expenses by other persons or organizations that are not non-profits, governments, or governmentally related organizations. For example, a new subsection could be added to section 2-7-4(b)(5) to read:

- (F) If a public official wishes to have reasonable expenses paid by any person or organization that is not a nonprofit organization, government, or governmentally related organization, the public official shall request and receive the prior approval of the of the City Council before attending such convention, fact-finding mission or trip, or other meeting. The public official shall be required to comply with all of the requirements of this section.

Regarding section 2-7-5 (d), (e), and (f):

- 4. *As written, these seem to mean that the “official action” could have taken place at any time, including many, many years ago (say, in my case, in a previous term, 25 years ago); should there be a time limit of some sort, as there is in some other sections, of perhaps one year?*

The time limit in subsections (d), (e) and (f) is calculated from the date on which the official leaves office. Subsection (d) is a six month restriction and subsections (e) and (f) impose a twelve month restriction.

The policy reason for not participating in activities for which the public official has taken “official action” is to avoid the appearance of impropriety.

The time periods for the break from being a public official or public employee are relatively short. It is possible to consider limitations on time periods for how far back the city employee or official has to look for an applicable “official action.” As this is a matter of policy and the existing code represents the city’s long standing policy, staff would appreciate further direction.

- 5. *Six months is a very short time. I would think that one year would be more in line with other restrictions we have, such as the period of time that must pass after retirement before a former Council member can address the City Council.*

This is a policy choice that council can consider on second reading.

- 6. *What is the meaning of the last sentence of subparagraph (e) which reads “This prohibition shall not apply to persons who appear before the city in their capacity*

as an elected official following termination of their office or employment with the city.”

This language is in the existing code. It would appear to contemplate a situation in which a city official is elected to other office, such as the county commission or the state legislature. This section would permit such an individual to appear before their former colleagues.

Regarding section 2-7-6:

7. *These subparagraphs prohibit a public employee from participating in the decision to hire relatives for any City position. But this invites a broader question: What is the nepotism rule in the City? How many instances, and in what departments, do we have people working where there is a relative who also is employed by the City?*

A complete copy of the city’s nepotism policy is attachment B. The policy summary is as follows:

It is the City of Boulder's policy to limit the hiring and supervision of relatives and partners by city employees and to prevent disparate and inequitable treatment, potential abuse in hiring, or abuse in supervisory authority, or the appearance thereof. Further, employees are held to the code of conduct as addressed in the Boulder Revised Code chapter 2, or any successor ordinance.

The city enforces its nepotism policy. The city does not track situations in which employee relationships do not violate the police, for example when employees work in different departments with unrelated duties.

Regarding section 2-7-7(g):

8. *Does this really mean that if a city vehicle hit me I couldn't sue unless the council agreed to it?*

That is the intent of this section.

9. *I agree with Matt's statement that no consent of the council should be required for a public official to sue the City for a number of things: tort, breach of contract, etc. But I believe that to the extent consent is required, the requirement should apply to spouses and domestic partners of public officials as well.*

This is a policy choice that council can consider on second reading.

Regarding section 2-7-8(e)(8):

10. *This is written very broadly, as perhaps it should be, although taken literally (how else would one take it?) I think we'd need to disclose potential, indirect benefit on much of what we do. As an example, some of us own rental properties Fair enough that we should disclose that – as we always do, I think – but as discussed at the retreat, our handling of rental properties almost certainly “indirectly” affects the value of nearby properties, so that pretty much all residential property is affected. That is of course true of many other actions we take. While disclosure is not a particular problem, it becomes almost meaningless in this interpretation.*

One of the philosophical changes in this revision is to limit criminal penalties to violations of section 2-7-3. Other violations have lesser sanctions identified in section 2-7-11. This allows for the code to establish higher standards. Accordingly, these sections are written purposely broad.

In the present code of conduct, a person would not be required to disclose what is referred to as an “indirect financial or material benefit.” It would be treated as a matter that is “personal or private in nature” in the appearance of impropriety section of the code. As such the decision as to whether to disclose such matters is left to the discretion of the public official or public employee.

Additionally, section 2-7-8 replaces the “appearance of impropriety” section of the code. In the existing code of conduct, that section provides a basis for public officials to recuse themselves on matters that could lead one to conclude that participation in a matter would “lead to an appearance of impropriety.” All of the discretion is presently with the public official. In the proposed revision more objective standards are set for conduct. The sanctions for violating these standards are not criminal in nature and are less than the serious violations in section 2-7-3.

Options to address this issue could include the following:

1. Remove the requirement of disclosing matters that could result in an “indirect financial or material benefit.”
2. Change from a mandatory disclosure requirement to a principle that encourages disclosure of matters that could result in an “indirect financial or material benefit.”
3. Further define what constitutes a “direct benefit” and / or “indirect benefit” for the purpose of making a clear distinction between the two for the purpose of complying the code of conduct.

Regarding section 2-7-8(f)(5):

11. *This is the critical implementing section of (e)(8) above. It specifies only “direct” benefit, not “indirect,” although I think that differentiation is more than a bit fuzzy. Let's use the rental property example again. As written, this would*

appear to prevent anyone who owns such property from voting on rental issues – unless you think that any potential benefit is “indirect” since our action doesn’t specify specific properties; if that’s our interpretation, that’s fine, but if not then remember that nearby properties (which is Boulder is just about every property) could have similar benefit. Properties of course can benefit from all sorts of public infrastructure improvements – parks, libraries, roads, transit, etc. – but so long as these are not considered “direct” benefits then we don’t all need to recuse ourselves. So, is a “direct” benefit limited to actions that are specifically about an individual property, or a property that is in a certain location, or a “class” of properties, or what?

(Yes, I realize this doesn’t relate only to property, but that’s the simplest example.) We’ve generally been OK when an action refers to a “big enough class” of property; is that still the case?

Again, these sections are intended as guidance. As a prohibition, the intent is that city officials not take actions that benefit themselves. As noted in the question above, a direct benefit applies to actions that are specifically about an individual property, or a property that is in a certain location. If an action applied to a broad class of properties, and a public official owned such a property in the broad class of properties, it would be an “indirect” benefit .

“Direct” benefits tend to be about an individual property or individual benefit or advantage a public official or employee may own or realize from a relationship or an investment. It typically includes a financial stake in the outcome of the official action. If the official action is a decision which is legislative in nature that affects the entire membership of a class or a significant segment of the community in the same manner as the affected official, then the official would “indirectly benefit” from the situation. Under the new code, the official is required to disclose indirect benefits, but it does not necessarily disqualify the person from taking an official action.

Regarding section 2-7-8(f)(12)

12. I get the rationale, but it could make it even harder for someone who actually works for a living to serve on council/board. For example, as soon as someone “solicits” employment with a company that does business with the city, even if the job is a long-shot or needs to be kept quiet for obvious reasons, it would need to be made public.

This section also requires some level of balance. This limitation does not currently appear in the code. It is intended to prevent individuals from benefiting financially from their city position. Council will need to balance the constraint identified in the question with the benefit of having such a limitation.

Regarding Section 2-7-14(c):

13. How will rude be defined?

14. While rudeness should be discouraged, and is never helpful, and usually just pours fuel on the fire, should that be a punishable offense?

Sanctions under this section would not be criminal. Staff believes that it is important that city employees not be rude to constituents. Ideally, punishment would be appropriate to the level of offense. That is, for an employee it could range from counseling to discharge depending upon the circumstances.

Section 2-7-14 establishes examples that council requested be included in the ordinance. It is important that the examples comport with council's policy guidance.

Regarding Section 2-7-14(g):

15. We've agreed that we can have a single cell phone and use it for personal and city use so long as it is mostly used for city use; that's what I do, but it is very likely that, therefore, during the campaign, that city phone was used in a quite minimal way for campaign activities. If that is really not allowed, everyone will be forced to have two cell phones (I suspect that many/most do have two cell phones, but one is for business purposes; for those of us without visible means of support, a single cell phone really makes way more sense).

Use of a city phone in support of the election of a candidate could be a violation of the Colorado Fair Campaign Practices Act. C.R.S. §1-45-117(1)(a)(I).

Regarding section 2-7-14(k):

16. I have no idea what "expensive" means, since that by itself is not a violation of 2-7-8(f)(3). So long as an expense is within our standards, it's OK; although council members probably don't know it, and I don't use it, we can in theory get per diem based on federal rates, so it doesn't matter if one outing is "expensive" or not. Maybe 2-7-8(f)(3) is too broad – or I'm misinterpreting it – since I would consider eating or accommodation to be "personal use," but obviously OK when done on city business and following city rules.

This is intended as guidance for employees using city funds.

Regarding section 2-7-14(r):

17. Yes, but...we get invited to the CVB lunch and they pay since it would be very difficult to figure an individual price – and the CVB does business with the city. There are other, similar examples, of course – at certain events there is food available that can't easily, if at all, be paid for. Now these all may be covered by the gift provision in 2-7-4(b)(7), although these events are not always actually "open to the public."

If the lunch is “open to the public,” then it is eligible under the provisions of section 2-7-4(b)(7) as an event that is exempt from the gift prohibition. “Open to the public” has been interpreted to mean that a person from the public who wanted to attend could do so, even if he or she would be required to purchase a ticket for entrance.

The lunch could be exempt under the ‘less than \$53’ provision of section 2-7-4(b)(2)

Another option that council could consider is to draft another specific exemption for events such as those described above. The provisions of section 2-7-4(b)(2) for items of small value are intended to address this type of situation.

Regarding section 2-7-14(w)

18. I cannot find such a section in the Code, or in the proposed amendment. What is the correct reference?

The correct reference is to new section 2-7-8(f)(15), which formerly was section 2-7-9(15)

Regarding section 2-7-14(x)

I'm not sure why this is in the original code: if I endorse someone then my name and title can be shown, but if, say, a planning board member endorses someone because of that candidate's planning knowledge, the PB member's title can't be used? What are we protecting here?

The code recognizes the difference between council members who stand for election and board members who do not. It is a policy choice, which can be altered by council.

Attachments

Proposed Ordinance – Attachment A
City of Boulder Nepotism Policy– Attachment B

ORDINANCE NO. 7957

AN ORDINANCE AMENDING TITLE 2, "GOVERNMENT ADMINISTRATION," CHAPTER 7, "CODE OF CONDUCT," B.R.C. 1981, INCLUDING EXPANDING THE LEGISLATIVE PURPOSE, CLARIFYING THE PROHIBITIONS ON ACCEPTING GIFTS, AMENDING THE RESTRICTIONS ON APPEARING BEFORE CITY BODIES, SETTING FORTH PROHIBITED ACTS, ESTABLISHING EXPECTATIONS FOR PUBLIC OFFICIALS AND PUBLIC OFFICERS, SETTING FORTH EXAMPLES OF VIOLATIONS AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Title 2, Chapter 7 of the Boulder Revised Code, 1981 is amended as follows:

2-7-1 Purpose, Legislative Intent and Findings.

(a) Purpose: The purpose of this chapter is to protect the integrity of city government by:

(1) Defining and forbidding certain activities including bribery and profiteering from public office~~conflicts of interest that if left unchecked tend to compromise the ability of elected and appointed public officials and public employees to perform their duties without improper financial influence.~~

(2) Establishing high standards of conduct for elected officials, appointed board and commission members and city employees by setting forth certain expectations of behavior that all such individuals shall maintain while elected, appointed or employed by the City of Boulder. ~~Defining and discouraging certain actions that may create an appearance of impropriety that undermines public trust in the accountability and loyalty of elected and appointed public officials and employees.~~

~~(3) Protecting the integrity of city government by providing standards of conduct and guidelines for elected and appointed public officials and public employees to follow when their private interests as residents conflict with their public duties.~~

~~(34)~~ Fostering public trust by defining standards of honest government and prohibiting the use of public office for private gain.

(b) Legislative Intent: It is the intent of the city council to:

(1) Establish rules of conduct that meet or exceed the rules established by the Colorado State Constitution and the Colorado Revised Code. ~~Prohibit public~~

1 officials and public employees from acting on any matter in which he or she may
2 have a conflict of interest.

3 (2) Establish expectations~~aspirational guidelines~~ to encourage public officials and
4 public employees to maintain the highest standard of conduct to justify the public
trust that they enjoy~~avoid any appearance of impropriety~~.

5 (3) ~~Require adherence to any provision of state or federal law that imposes a higher~~
6 ~~standard of conduct than this chapter.~~ Exercise the City of Boulder's right to
7 develop laws related to ethics in local government and appropriate standards of
local conduct as matters of local concern as established by the Colorado State
Constitution in Article XX recognized by Article XXIX, § 3(6).

8 (c) Findings: The city council finds and determines that this chapter is necessary to protect
9 the public health, safety, and welfare of the residents of Boulder and is a matter of local
10 concern.

11 ~~2-7-2 Conflicts of Interest-Prohibited Acts.~~

12 (a) ~~Personal Benefit~~Conflicts Prohibited: No public official or public employee shall solicit,
13 receive or accept anything of value in exchange for performing or refraining from
14 performing any act associated with the official or employee's position with the city.
~~make or participate in the making of any official action in which he or she knows or~~
~~should have known that he or she would have a conflict of interest.~~

15 (b) ~~Disclosure Required: Each public official or public employee shall disclose any conflict~~
16 ~~of interest and disqualify him or herself from participating in the relevant action as~~
~~provided in section 2-7-10, "Disclosure and Recusal Procedure," B.R.C. 1981.~~

17 ~~2-7-3 Use of Public Office or Confidential Information for Financial Gain.~~

18 (ba) ~~Use of Position for Gain Prohibited: No public official or public employee city council~~
19 ~~member, employee, or appointee to a city board, commission, task force or similar body~~
shall use his or her public office or position for financial gain.

20 (cb) ~~Use of Confidential Information for Financial Gain Prohibited: No public official or~~
21 ~~public employee city council member, employee, or appointee to a city board,~~
22 ~~commission, task force or similar body shall use or disclose confidential information~~
23 ~~obtained as a result of holding his or her public office or position, to obtain financial gain,~~
24 ~~whether for personal gain; gain for his or her relative; gain of any property or entity in~~
~~which the official or employee has a substantial interest; or gain for any person or for any~~
~~entity with whom the official or employee is negotiating for or has any arrangement~~
concerning prospective employment.

1 2-7-~~34~~ Duty to Maintain the Confidentiality of Privileged Information.

- 2 (a) Duty of a Public Official~~Member Of City Council, Board, Commission, Task Force Or~~
~~Similar Body~~: No public official ~~city council member or appointee to a city board,~~
 3 ~~commission, task force or similar body~~ shall disclose privileged or confidential
 4 information without a public majority vote granting the permission of the council or
 5 similar body that holds the privilege. The sanction for a member of the city council,
 6 board, commission, task force or similar body shall be censure of the body, reached by a
 7 majority vote of the body, not including the member charged with disclosing such
 8 confidential information.
- 9 (b) Duty of a Public~~City~~ Employee: No city~~public~~ employee shall disclose privileged or
 10 confidential information, obtained as a result of holding his or her public office or
 11 position, unless the employee has first received approval by the city manager acting upon
 12 the advice of the city attorney.

13 2-7-~~45~~ Gifts to Public Officials and Public Employees.

- 14 (a) Gifts Prohibited: No ~~city council member or appointee to a city board, commission, task~~
~~force or similar body, or city employee,~~ public official or public employee or relative of
 15 such employee or official shall accept anything of value including, without limitation, a
 16 gift, a favor, or a promise of future employment if:
- 17 (1) The official or employee is in a position to take official action with regard to the
 18 donor; or
 - 19 (2) The city has or is known to be likely to have a transactional, business, or
 20 regulatory relationship with the donor.
- 21 (b) Exceptions and Items not Considered Gifts: The following shall not be considered gifts
 22 for purposes of this section, and it shall not be a violation of this chapter for a person to
 23 accept the same:
- 24 (1) Campaign contributions as permitted by law;
 - 25 (2) An unsolicited, occasional non-pecuniary gift of a maximum amount of \$530.00
 or less in value. The maximum amount will be equal to the amount established by
the state of Colorado pursuant to Colorado Constitution Article XXIX, Section 6.
~~adjusted on January 1, 2006, and annually thereafter to reflect changes in the~~
~~United States Bureau of Labor Statistics Consumer Price Index for the Denver-~~
~~Boulder Consolidated Metropolitan Statistical Area for all Urban Consumers, All~~
~~Goods, or its successor index;~~
 - (3) A gift from a relative;
 - (4) An award, publicly presented, in recognition of public service;

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- (5) Reasonable expenses paid by a nonprofit organization, other governments or governmentally-related organizations for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate in a panel, or represent the city provided that if travel expenses are paid:
- (A) The travel is for a legitimate city purpose;
- (B) The travel arrangements are appropriate to that purpose;
- (C) The expenses paid are for a time period that is no longer than reasonably necessary to accomplish the business that is its purpose;
- (D) The public official or public employee who will be traveling is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor; and
- (E) The public official reports compliance of the first four conditions to the city council and the public employee reports compliance with the first four conditions to the city manager.
- (6) Items which are similarly available to all employees of the city or to the general public on the same terms and conditions; and
- (7) A single unsolicited ticket given to a city council member and valued at not in excess of \$150.00 to attend events open to the public on behalf of the city, such as awards dinners, nonprofit organization banquets and seminars, provided that:
- (A) The ticket is offered only to the council member and has no resale value; and
- (B) The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the city; and
- ~~(C) The ticket is not for a sporting event~~
- (8) A single unsolicited ticket given to a council member and valued at not in excess of \$150.00 in each calendar year to attend a sporting event, concert or other event provided by a governmental entity or non profit organization, if the event is sponsored by the governmental entity or non profit organization, and the purpose of attending the event is to promote the relationship between the city and the other governmental entity or non profit organization.

1 2-7-65 Prior Employment, Outside Employment, and Subsequent Employment.

- 2 (a) Prior Employment: No person shall be disqualified from service with the city as a public
3 official or public employee solely because of his or her prior employment. Public
4 Officials and public employees shall not take official action with respect to their former
5 employers for a period of six months from the date of termination of the prior
6 employment.
- 7 (b) Disclosure of Employment and Other Business Activities: All public officials and public
8 employees, other than city council members~~selected officials~~, shall report existing or
9 proposed outside employment or other outside business interests that may affect their
10 responsibilities to the city in writing to their appointing authorities prior to being
11 appointed or hired. After being appointed or hired, all such people shall report any
12 changes of employment or changes to outside business interests that may affect the
13 person's responsibilities to the city, within thirty days after accepting the same. An
14 employee that has received permission from the city manager may engage in outside
15 employment or outside business interests.
- 16 (c) Disclosure by City Council Members: Members of the city council shall report any
17 change in their employment status that could give rise to a conflict of interest under this
18 chapter.
- 19 (d) Activities That Occur After Termination of Employment or Office: No former public
20 official or public employee shall seek or obtain employment concerning matters upon
21 which he or she took official action during his or her service with the city for six months
22 following termination of office or employment. This provision may be waived by the city
23 council or the city manager.
- 24 (e) Participation of Former Officials or Employees: No former public official or public
25 employee shall appear before, or participate in, a city board, commission, task force or
similar body on which he or she was a member or served directly as an employee
concerning any matter or on which he or she took official action during his or her service
with the city for twelve months following termination of office or employment. This
prohibition may be waived by the city council by appointment or vote. This prohibition
shall not apply to persons who appear before the city in their capacity as an elected
official following termination of their office or employment with the city.
- (f) Participation in Litigation After Termination: No former public official shall engage in
any action or litigation in which the city is involved on behalf of any other person or
entity, if the action or litigation involves a matter upon which the person took official
action during his or her service with the city for twelve months following termination of
service with the city.

1 2-7-76 Employment of Relatives.

- 2 (a) No public official or public employee shall appoint, hire, or advocate the appointment or
 3 hiring by the city any person who is his or her relative. In the event that an employee is
 4 concerned that the employee's decision to appoint, hire or advocate the appointment or
 5 hiring by the city a person who is the employee's relative may cause an appearance of
 6 violating this section, the employee may request that the city manager make such
 7 decision on the employee's behalf. Council-appointed officers may request the city
 8 council to make such an appointment or hiring decision on their behalf.
- 9 (b) The city may enter into transactions with companies, corporations or other business
 10 organizations that employ a relative of a city public official or public employee; provided
 11 that:
- 12 (1) The public official or public employee does not participate in the decision making
 13 that leads to hiring the company, corporation, or other business organization that
 14 employs his or her relative; or
 - 15 (2) The business organization is a publicly-traded corporation that provides its
 16 services or products to the city on nondiscriminatory terms justified by the market
 17 facts and circumstances of each transaction; or
 - 18 (3) The company, corporation, or business organization has been doing business with
 19 the city for at least one year prior to the date the city official's or employee's
 20 relative became employed by the company, corporation or other business
 21 organization, and the city official's or employee's relative is not directly employed
 22 upon matters involving the city and does not have his or her compensation tied in
 23 any manner to the success of the company, corporation, or other business
 24 organization, or its ability to obtain business or earn compensation from the city.

17 2-7-87 Representing Others Before the City Prohibited.

- 18 (a) City Council Members Barred From Representing Others: No city council member shall
 19 appear on behalf of himself or herself, or another person, before the city council or any
 20 city board, commission, task force or similar body. A city council member may be
 21 affiliated with a firm appearing on behalf of or employed by another person concerning
 22 any transaction with the city before such a body if the council member discloses the
 23 situation and recuses himself or herself pursuant to section 2-7-10, "Disclosure and
 24 Recusal Procedure," B.R.C. 1981. This prohibition shall not apply when a city council
 25 member is appointed by a majority vote of the council to represent the council before a
 board or commission.
- (b) Board, Commission or Task Force Members Barred From Representing Others: An
 appointee to a city board, commission, task force or similar body may appear or be
 affiliated with a firm appearing concerning any transaction with the city under the
 following circumstances:

- 1
- 2 (1) An appointee may appear on his or her own behalf before the body of which he or
- 3 she is a member to represent his or her personal interests, if the appointee
- 4 discloses the situation and recuses himself or herself pursuant to section 2-7-10,
- 5 "Disclosure and Recusal Procedure," B.R.C. 1981, or before the city council;
- 6
- 7 (2) An appointee may appear on behalf of another person before any city body except
- 8 the ~~city council or the~~ body of which the appointee is a member, except with
- 9 respect to a matter that has or may come before the board or commission on
- 10 which he or she serves;
- 11
- 12 (3) A firm with which an appointee is affiliated may not appear on behalf of or be
- 13 employed by another person concerning any transaction before the body of which
- 14 the appointee is a member unless the appointee discloses the situation and recuses
- 15 himself or herself pursuant to Section 2-7-10, "Disclosure and Recusal
- 16 Procedure," B.R.C. 1981.
- 17 (c) ~~City~~Public Employees Barred From Representing Others: No public~~city~~ employee shall
- 18 appear on behalf of or be employed by another person concerning any transaction with
- 19 the city or before the city council or any city board, commission, task force or similar
- 20 body. A public employee may appear before such a body on his or her own behalf or on
- 21 behalf of such employee's spouse, parent, or child. Nothing in this chapter shall be
- 22 deemed to prohibit the city manager from establishing additional policies and regulations
- 23 to prevent conflicts of interest between ~~city-public~~ employees and the city.
- 24 (d) City Council Members and Municipal Court: No city council member who is an attorney
- 25 shall appear on behalf of or be employed by another person or be affiliated with a firm
- appearing on behalf of or employed by another person concerning any matter before the
- municipal court.
- (e) ~~City~~Public Employees and Municipal Court: No citypublic employee who is an attorney
- shall appear on behalf of or be employed by another person or be affiliated with a firm
- that appears on behalf of or is employed by another person concerning any matter before
- the municipal court. A non-attorney employee may appear before the municipal court on
- his or her own behalf, and an employee other than a municipal court judge may appear on
- behalf of such employee's spouse, parent, or child to the extent otherwise allowed by law.
- This authority is intended to allow employees to assist family members in matters before
- the municipal court to the extent permitted by law but not to promote the unauthorized
- practice of law.
- (f) Board, Commission, or Task Force Member and Municipal Court: An appointee to a city
- board, commission, task force or similar body may appear before the municipal court and
- may be affiliated with a firm appearing before the municipal court.
- (g) Consent to Sue: No public official~~city council member or appointee to any city board,~~
- ~~commission, task force or similar body~~ shall be a party or by himself or herself or as an

1 affiliate of a firm appear on behalf of a party in a civil law suit in which the city is an
 2 adverse party, unless the public official~~member or appointee~~ first obtains the consent of
 the city council.

3 2-7-98 Appearances of Impropriety Discouraged Expectations.

- 4 (a) These expectations~~guidelines~~ are intended to establish ethical standards~~goals and~~
 5 principles to guide~~help~~ public officials and public employees~~city council members,~~
 6 employees, and appointees to a city board, commission, task force or similar body in the
 7 execution of their offices in a manner that will reflect well on the city and promote to
~~determine if their actions may cause an appearance of impropriety that will undermine~~
 the public's trust in local government.
- 8 (b) ~~Violations of this section shall not constitute a violation of this chapter. Compliance with~~
 9 this section will not constitute a defense for violation of another subsection or section of
 10 this chapter. Violation of this section may be considered as the basis for censure, or in
 11 the most serious cases, removal of a public official. Violation of this section may be the
 12 basis of disciplinary action, or in the most serious cases, termination of a public
 13 employee.
- 14 (c) A public official~~city council member, employee, or appointee to a city board,~~
 15 commission, task force or similar body who determines that his or her actions may be
 16 considered to be in violation of this section~~cause an appearance of impropriety should~~
 17 consider disclosure and discussion of the potential violation in a public meeting before
 18 the council, board, commission, task force or similar body on which the person serves.
- 19 (d) A public official whose participation in a matter would violate this section shall, but is
 20 not required to, disclose and recuse herself or himself as prescribed by section 2-7-910,
 21 "Disclosure and Recusal Procedure," B.R.C. 1981., in the following circumstances:
- 22 (1) ~~If the person is an employee of a state or federal government entity with a~~
 23 ~~substantial interest in any transaction with the city;~~
- 24 (2) ~~If the person has a close friend with a substantial interest in any transaction with~~
 25 ~~the city, and the council member, appointee, or employee believes that the~~
~~friendship would prevent such person from acting impartially with regard to the~~
~~particular transaction;~~
- (3) ~~If the person has an interest in any transaction with the city that is personal or~~
~~private in nature that would cause a reasonable person in the community to~~
~~question the objectivity of the city council member, employee, or appointee to a~~
~~city board, or commission;~~
- (4) ~~If the person is called upon to act in a quasi-judicial capacity in a decision~~
~~regarding any of the situations described in paragraphs (c)(1), (c)(2), and (c)(3) of~~
~~this section; or~~

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(5) ~~If the person owns or leases real property within six hundred feet from a parcel of property that is the subject of a transaction with the City upon which he or she must make a decision, and is not required to receive official notice of a quasi-judicial action of the City.~~

(e) A public official or public employee shall:

- (1) Strive at all times to serve the best interests of the city regardless of his or her personal interest.
- (2) Perform duties with honesty, care, diligence, professionalism, impartiality and integrity.
- (3) Strive for the highest ethical standards to sustain the trust and confidence of the public they serve, not just the minimum required to meet legal or procedural requirements.
- (4) Use sound judgment to make the best possible decisions for the city, taking into consideration all available information, circumstances and resources.
- (5) Act within the boundaries of his or her authority as defined by the city charter and code.
- (6) Treat colleagues and members of the public professionally and with courtesy.
- (7) Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the city.
- (8) Disclose any direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest in any matter requiring the exercise of discretion by the officer or employee.
- (9) Use city resources, facilities and equipment only for city purposes, except for reasonable incidental personal use that does not interfere with city business.
- (10) Disclose waste, fraud, abuse and corruption to appropriate authorities.

(f) A public official or public employee shall not:

- (1) Advocate or support any action or activity that violates a law or regulatory requirement.
- (2) Use his or her position or decision-making authority for personal gain or to seek personal advantage.

- 1 (3) Expend city funds for his or her personal use or benefit.
- 2
- 3 (4) Misrepresent known facts in any issue involving city business.
- 4
- 5 (5) Exercise authority or discretion in any matter in which he or she will benefit
6 directly as a result of that exercise of authority or discretion.
- 7
- 8 (6) Use city resources, facilities or equipment for personal profit, for outside business
9 interests or to access any inappropriate material, except if viewing such material
10 is a necessary and proper part of their duties.
- 11
- 12 (7) Participate in any decision to appoint, hire, promote, discipline or discharge a
13 relative for any position with the city.
- 14
- 15 (8) Supervise a relative in the performance of the relative's official powers or duties.
- 16
- 17 (9) Compel or induce a subordinate municipal officer or employee to make, or
18 promise to make, any political contribution, whether by gift of money, service or
19 other thing of value.
- 20
- 21 (10) Act or decline to act in relation to appointing, hiring or promoting, discharging,
22 disciplining, or in any manner changing the official rank, status or compensation
23 of any employee, or an applicant for a position, including appointment to a board
24 or commission, on the basis of the giving or withholding or neglecting to make
25 any contribution of money or service or any other valuable thing for any political
 purpose.
- (11) Solicit or accept anything of value from anyone doing business with the city.
- (12) Solicit or accept employment from anyone doing business with the city, unless the
 official or employee completely withdraws from city activity regarding the party
 offering employment, and the withdrawal is approved by the city council for
 members of the council, boards or commissions and by the city manager for
 employees.
- (13) Use his or her public position to obtain benefits for the official or employee, a
 family member, or anyone with whom the official or employee has a business or
 employment relationship.
- (14) Vote, authorize, recommend, or in any other way use his or her position to secure
 approval of a contract (including employment or personal services) in which the
 official or employee, a family member, or anyone with whom the official or
 employee has a business or employment relationship, has an interest.

1 (15) Use, or authorize the use of, his or her title, the name “City of Boulder,” or the
 2 city’s logo in a manner that suggests impropriety, favoritism, or bias by the city or
 3 the official or employee.

4 (16) Use, or authorize the use of, his or her title, the name “City of Boulder,” or the
 5 city’s logo in a manner that suggests or implies that the city supports or opposes a
 6 candidate or ballot measure, except that council members may identify
 7 themselves and their position as individual council members supporting or
 8 opposing candidates or ballot measures. This section does not apply to ballot
 9 measures that the city council has voted to support.

10 (17) Use, or authorize the use of, his or her title, the name “City of Boulder,” or the
 11 city’s logo in for personal profit or advantage.

12 (18) Use city resources, facilities or equipment to support or oppose any political
 13 candidate or ballot measure.

14 2-7-~~94~~ Disclosure and Recusal Procedure.

15 (a) Disclosure and Recusal: No person with an ~~conflict of~~ interest prohibited pursuant to
 16 ~~subsection 2-7-2(a), B.R.C. 1981, and no person described in subsection 2-7-78(a) or (b),~~
 17 ~~B.R.C. 1981, shall fail to give written notice of the interest described in such section or~~
 18 ~~subsection to the city council or the city board, commission, task force or similar body of~~
 19 ~~which the person is a member and the city manager as soon as reasonably possible after~~
 20 ~~the interest has arisen. However, no written notice is required if such person discloses the~~
 21 ~~conflict of interest on the record of a public meeting of the city council or the city board,~~
 22 ~~commission, task force or similar body of which the person is a member. The interested~~
 23 ~~council member, employee, or appointee shall thereafter:~~

24 ...

25 2-7-~~104~~ Enforcement.

26 ...

27 2-7-~~112~~ Sanctions and Remedies for Violation.

28 ...

29 (c) Sanction Recommendations: If the party conducting an investigation pursuant to section
 30 2-7-~~104~~, "Enforcement," B.R.C. 1981, finds that a city council member or an appointee
 31 to a city board, commission, task force or similar body, or employee has violated any
 32 provision of this chapter, the investigator shall provide its findings and recommendations
 33 to the city manager or city council, as appropriate, who or which in turn may take any of
 34 the following actions:

35 (1) In the case of a city council member, a motion of censure;

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- 2 (2) In the case of a ~~city~~ public employee, a motion for censure or a recommendation
- 3 that the employee's appointing authority consider disciplining or discharging the
- 4 employee;
- 5 (3) Removal as provided in subsection (b) of this section; or
- 6 (4) As an alternative or in addition to the sanctions imposed herein, the city council may
- 7 resolve that any person or entity causing, inducing, or soliciting a public official or public
- 8 employee to violate this chapter may not be involved in any transaction with the City,
- 9 including but not limited to the award of any city contract, grant, loan or any other thing
- 10 of value for a period of twelve months or that any such contract, grant, loan or thing of
- 11 value be terminated, repaid or forfeited.
- 12 (d) Civil Remedies: Any person affected by a city transaction may commence a civil action
- 13 in the District Court in and for the County of Boulder for equitable relief to enforce the
- 14 provisions of this chapter upon a showing of willful violation of any provision of this
- 15 chapter. Before filing such an action, the person shall present the claim to the city
- 16 attorney to investigate in accordance with subsection 2-7-11(c), B.R.C. 1981. The city
- 17 attorney or appointed special council shall have sixty days to act thereon. No civil action
- 18 in district court pursuant to this subsection may be commenced later than twelve months
- 19 after a violation of this chapter is alleged to have occurred.
- 20 (e) Criminal Sanctions: The city attorney, or special counsel authorized to act on behalf of
- 21 the city attorney, acting on behalf of the people of the City, may prosecute any violation
- 22 of section 2-7-3, "Prohibited Acts," B.R.C. 1981 ~~this chapter~~ in municipal court in the
- 23 same manner that other municipal offenses are prosecuted.
- 24 (f) ~~Defense: It shall be a defense to any charge of a violation of this chapter if the city~~
- 25 ~~council member, employee, or appointee to a city board, commission, task force or~~
- ~~similar body obtained an advisory opinion pursuant to section 2-7-13, "Advisory~~
- ~~Opinions and Outside Counsel Appointment," B.R.C. 1981, and was acting in accordance~~
- ~~with the advice provided thereby.~~
- 2-7-132 ~~Advisory Opinions and Outside Counsel Appointment~~ Role of the City Attorney.
- (a) ~~City Attorney to Provide Advisory Opinions:~~ Any city council member, employee, or
- appointee to a city board, commission, task force or similar body may request an advisory
- opinion of the city attorney whenever a question arises as to the applicability of this
- chapter to a particular situation.
- ~~The city attorney's advisory opinion may provide a specific defense from prosecution as~~
- ~~set forth in section 2-7-12, "Sanctions And Remedies For Violation," B.R.C. 1981.~~
- (b) Appointment of Outside Counsel: If a significant controversy arises under this chapter,
- the city attorney may appoint a neutral outside counsel to assist in resolving the issue.

1 2-7-143 Exemptions From Chapter.

2 ...

3
4 ~~2-7-154 Definitions. Examples of Violations~~

5 The examples in this paragraph are intended to provide guidance for the implementation of these
6 rules. These are examples only; behavior not listed here also can violate these rules.

7 The following acts would constitute a violation of this chapter:

- 8 (a) A person lies to a constituent in violation of paragraph 2-7-8(f)(4), B.R.C. 1981.
- 9 (b) A person favors a personal friend when awarding a city contract in violation of paragraph
10 2-7-8(f)(13), B.R.C. 1981.
- 11 (c) A person is rude to a constituent in violation of paragraph 2-7-8(e)(2), B.R.C. 1981.
- 12 (d) A person fails to disclose a professional relationship with a firm seeking to do business
13 with the city in violation of paragraph 2-7-8(e)(7), B.R.C. 1981.
- 14 (e) A person fails to disclose owning stock in a company involved in a matter that requires
15 the exercise of discretion by the person in violation of paragraph 2-7-8(e)(8), B.R.C.
16 1981.
- 17 (f) A person uses a city computer to operate a personal business in violation of paragraph 2-
18 7-8(e)(11), B.R.C. 1981.
- 19 (g) A person uses a city phone for a political campaign in violation of paragraph 2-7-
20 8(f)(18), B.R.C. 1981.
- 21 (h) A person fails to disclose fraud by a public employee in violation of paragraph 2-7-
22 8(e)(10), B.R.C. 1981.
- 23 (i) A person arranges a repaving project that benefits his or her neighborhood in violation of
24 paragraph 2-7-8(f)(2), B.R.C. 1981.
- 25 (j) A council member participates in a decision that affects the value of his or her real
property in violation of paragraph 2-7-8(f)(2), B.R.C. 1981.
- (k) A person travelling on business uses city funds to purchase an expensive dinner in
violation of paragraph 2-7-8(f)(3), B.R.C. 1981.
- (l) A person makes verbal attacks against someone who contacted the city for information in
violation of paragraph 2-7-8(e)(2), B.R.C. 1981.

- 1
2 (m) A person recommends that his or her department hire his or her niece in violation of paragraph 2-7-8(f)(7), B.R.C. 1981.
- 3 (n) A person supervises his or her spouse in violation of paragraph 2-7-8(f)(8), B.R.C. 1981.
- 4 (o) A council member seeks a campaign contribution from a public employee in violation of paragraph 2-7-8(f)(9), B.R.C. 1981 .
- 5
- 6 (p) A supervisor encourages employees to attend a campaign fundraiser for a council member in violation of paragraph 2-7-8(f)(9), B.R.C. 1981.
- 7
- 8 (q) A supervisor implicitly requires an employee to make a campaign contribution as a condition of receiving a positive evaluation in violation of paragraph 2-7-8(f)(9), B.R.C. 1981.
- 9
- 10 (r) A person accepts a lunch from a person seeking to do business with the city in violation of paragraph 2-7-8(f)(11), B.R.C. 1981.
- 11
- 12 (s) A person seeks employment with a contractor whom the person previously hired to work for the city in violation of paragraph 2-7-8(f)(12), B.R.C. 1981.
- 13
- 14 (t) A person obtains an internship for his or her son with a company doing business with the city in violation of paragraph 2-7-8(f)(13), B.R.C. 1981.
- 15
- 16 (u) A board member who is an architect participates in a decision in which his or her firm represents the applicant in violation of paragraph 2-7-8(f)(5), B.R.C. 1981.
- 17
- 18 (v) A board member who is an attorney participates in a decision in which his or her firm represents a party to the transaction being considered in violation of paragraph 2-7-8(f)(5), B.R.C. 1981.
- 19
- 20 (w) A person endorses a business using his or her city title in violation of paragraph 2-7-8(f)(15), B.R.C. 1981.
- 21
- 22 (x) A board member allows his or her name and title to be used in campaign literature supporting a candidate in violation of paragraph 2-7-8(f)(16), B.R.C. 1981.
- 23
- 24 (y) A person solicits work for his or her off-duty business, by advertising his or her work as a city of Boulder employee in violation of paragraph 2-7-8(f)(20), B.R.C. 1981.
- 25
- 26 (z) A council member solicits business by relying upon his or her position as a city council member in violation of paragraph 2-7-8(f)(20), B.R.C. 1981.

1 2-7-15 Definitions.

2 ...

3 ~~"Conflict of interest" shall mean any situation in which a city council member, an appointee to a~~
 4 ~~city board, commission, task force or similar body, or a city employee:~~

5 ~~(a) Has a substantial interest in any transaction with the City;~~

6 ~~(b) Has a relative with a substantial interest in any transaction with the City;~~

7 ~~(c) Has a substantial interest as an affiliate of a firm with a substantial interest in any transaction~~
 8 ~~with the City;~~

9 ~~(d) Has a substantial interest as an affiliate of a firm appearing on behalf of or employed by a~~
 10 ~~person with a substantial interest in any transaction with the City;~~

11 ~~(e) Is an officer of an organization that has taken an official position on any transaction with the~~
 12 ~~City, unless service on the board of the organization is required by city code, rule or contract;~~

13 ~~(f) Is on the board of directors of an organization that is substantially affected by a transaction~~
 14 ~~with the City, unless service on the board of the organization is required by city code, rule or~~
 15 ~~contract;~~

16 ~~(g) Is affiliated with a law, accounting, planning, or other professional firm that has substantial~~
 17 ~~interest in any transaction with the City; or~~

18 ~~(h) Is required to receive official notice of a quasi-judicial action from the City.~~

19 ...

20 ~~"Substantial interest" means a situation, including, without limitation, a financial stake in the~~
 21 ~~outcome of a decision in which, considering all of the circumstances, would tend to influence the~~
 22 ~~decision of a reasonable person faced with making the same decision.~~

23 ~~"Transaction" means a contract of any kind; any sale or lease of any interest in land, material,~~
 24 ~~supplies, or services; or any granting of a development right, any planning, zoning or land use or~~
 25 ~~review process that may precede granting of a development right, license, permit, or application.~~
~~A transaction does not include any decision which is legislative in nature that affects the entire~~
~~membership of a class or a significant segment of the community in the same manner as the~~
~~affected official or employee.~~

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.

CITY OF BOULDER

POLICIES AND PROCEDURES

Nepotism Policy

Effective Date: 3/1/92

Revised Date: 8/31/09



Jane S. Brautigam, City Manager

I. POLICY

It is the City of Boulder's policy to limit the hiring and supervision of relatives and partners by city employees and to prevent disparate and inequitable treatment, potential abuse in hiring, or abuse in supervisory authority, or the appearance thereof. Further, employees are held to the code of conduct as addressed in the Boulder Revised Code chapter 2, or any successor ordinance.

II. POSITION STATEMENT

The employment of relatives and partners increases the complexities of day-to-day supervision and compounds decision making in connection with selection, work assignment, evaluation, discipline and termination. It can create misunderstanding and resentment, give rise to the appearance of favoritism in the treatment of applicants, employees, and contractors, and lead to suspicion on the part of the public that the city may not be safeguarding the taxpayers' interests in a strictly impartial and objective manner. Also, actual or perceived disparate and inequitable treatment can adversely impact employee morale.

In addition, dating or intimate relationships between supervisors and their employees can be disruptive to the work environment, create a conflict of interest or the appearance of a conflict of interest, and lead to complaints of favoritism, discrimination, or sexual harassment.

Employees who engage in dating or intimate relationships with other employees in the same department must maintain proper office decorum and a level of professionalism expected of all employees.

III. SCOPE

This policy applies to the hiring and supervision of contractors and employees, new hire, transfer and promotion/demotion situations, and includes standard (including fixed-term), temporary and seasonal positions. This policy also applies to employment situations that develop between existing employees because of marriage or intended marriage, a common law relationship, being partners, dating or being in an intimate relationship. (Note: See also the Boulder Revised Code Chapter 2-7 or any successor ordinance, and the bargaining group contracts. In the case where the code or the bargaining group contract is more restrictive, the code or agreement governs.)

IV. DEFINITIONS

The following are definitions for purposes of this policy.

Dating or Intimate Relationship — A city employee involved in a romantic or intimate relationship with another city employee.

Department — A collection of employees, workgroups, or divisions headed-up by either a department head or an employee that reports to City Council.

Partner — One of two persons who are in an intimate relationship similar to that of a marriage or domestic partnership. (Also, see the definition of “relative.”)

Relative — (Includes any of the following related by blood, marriage, domestic partnership or adoption.)

- spouse, including common-law,
- partner,
- parents, including in-laws,
- children (including step-children) and their spouses,
- sisters, brothers, including in-laws,
- grandparents,
- grandchildren,
- aunts, uncles,
- first cousins, and
- nieces, nephews.

A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

Workgroup — Any formal workgroup within a department.

V. POLICY APPLICATION

A. Employment – Prohibited Situations

(Note: See the BMEA contract for information regarding situations where a BMEA employee would work in a department where a relative or partner is employed in a Management/Non-union position.)

1. All Employees

An employee cannot be in any of the following situations with a relative or partner (or intended spouse or partner), or another individual with whom the employee is in a dating or intimate relationship:

- Be in a position to exercise authority or participate in the decision-making to hire, appoint, discipline or fire the other person.
- Be in a position to exercise authority or participate in the decision-making for the city to hire a business organization that employs the other person.
- To advocate for the appointment or hiring of the other person.
- To audit, verify, receive, or be entrusted with money handled by the other person.
- To have access to the other person’s confidential information including payroll and personnel records.

2. Supervisors

A supervisor cannot be in any of the following situations:

- Supervise, either directly or indirectly, a relative or partner, or an intended spouse or partner.

- Supervise an individual with whom the supervisor is in a dating or intimate relationship.

B. Employee Notification Requirements

In any of the situations listed in section A, the employee affected must notify the Department Head, or designee, who will notify the Human Resources Manager assigned to that department. The Human Resources Director and the employee's Department Head, in consultation with the City Attorney's Office will review proposed alternatives on a case-by-case basis.

The city reserves the right to choose an action that serves the city's business needs.

Some actions include, but are not limited to:

- removal from the decision-making process or relevant action,
- requesting the City Manager to make the appointment or hiring decision,
- voluntary transfer,
- involuntary transfer,
- reassignment,
- demotion, or
- termination.

An employee who does not notify his/her Department Head, or designee, of being involved in any of the situations listed in section A may be subject to discipline, up to and including termination.

C. Independent Contractors

No independent contractor will be eligible for a contract with a department in which a relative or partner would supervise the contractor. In addition, a city employee who is a relative or partner of an employee of the contractor may not participate in the decision-making to hire the contractor.

VI. INTERPRETATION AND APPLICATION

Employees who have questions concerning the interpretation or application of this policy should contact the Human Resources Department.

VII. DISCIPLINARY ACTION

Disciplinary action may be imposed on any employee who violates this policy.

Violation of this policy will be grounds for disciplinary action, up to and including termination of employment.

Please note that civil remedies and criminal sanctions also may be imposed under the Boulder Revised Code.

VIII. EXCEPTIONS/CHANGE

This policy supersedes all previous policies covering the same or similar topics. Any exception to this policy that would not violate the Boulder Revised Code, may be granted only by the Human Resources Director or the City Manager. This policy may be reviewed and changed at any time. This document is not intended to be an employment contract.

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 18, 2014

AGENDA TITLE: Comprehensive Financial Strategy Update

PRESENTERS

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichen, Chief Financial Officer
City Management Team
Comprehensive Financial Strategy Team:
Cheryl Pattelli, Director of Fiscal Services
Chris Meschuk, Community Planning & Sustainability Planner II
Peggy Bunzli, Budget Officer
Jeff Haley, Parks Planning Manager
JR Clanton, Public Works Budget/Financial Analyst
Joanna Crean, Public Works Project Coordinator
Dave Bannon, Purchasing Manager

EXECUTIVE SUMMARY

The purpose of this item is to provide council with information related to the capital needs of the city as part of the Comprehensive Financial Strategy (CFS), and solicit feedback regarding initial funding strategies and project priorities.

As follow up to the work of the Blue Ribbon Commission (BRC) One and BRC Two, the city is developing a Comprehensive Financial Strategy (CFS). The purpose of the project is to (a) review and update BRC One and BRC Two findings and implementation efforts, and (b) develop a financial plan to meet the city's strategic needs over the next five years. The CFS will reflect current and projected economic and budgetary conditions, challenges and issues, and will evaluate many different areas affecting the city's ability to meet the short- and long-term needs and wants of the community.

During the first phase of the CFS, city staff compiled and prioritized the unfunded capital

needs of the city and examined the feasibility of a ballot initiative for a second phase of new capital funding. The initial findings and recommendations from this effort are presented in this memo. **Many of the cost estimates are preliminary, and may change as projects are further refined and scoped.**

During the second phase of the CFS, city staff will begin to explore ongoing strategies for revenue diversification and expenditure control, with an emphasis on providing high-priority programs and services and ensuring the long-term vitality and sustainability of the community.

BACKGROUND

In 2006, after a period of declining revenues, the City Council appointed a Blue Ribbon Commission (BRC One) to study revenue policy issues confronting the city. In its 2008 report to council, BRC One identified a significant gap between long-term revenues and expenditures and recommended a strategy of revenue stabilization to address this gap.

In following up on BRC One's recommendation to study expenditures, recognizing that sustained fiscal health would only be achieved through a balance of revenue stabilization and appropriate expenditure control, the City Manager's Office appointed a second Blue Ribbon Committee (BRC Two) in 2008. The BRC Two report to council in 2010 identified strategies to address rising costs, and provide efficient and effective use of public funds.

In 2011 the City Council initiated a Capital Investment Strategy, examining more than \$700 million in unfunded capital needs of the city. The initial phase resulted in Ballot Item 2A, which Boulder voters passed by a 3-to-1 margin and gave the city the authority to leverage existing revenues to bond for up to \$49 million to pay for necessary capital investments. Because the bond is paid for with existing revenues, the 2011 ballot item did not raise taxes. The \$49 million bond package has a 20-year payback, and 85 percent of the total is required to be spent by March 22, 2015. As of January 15, 2014, 61 percent of total funding has been spent or encumbered. The city is on track to meet the 85 percent spending requirement. Additional information on the bond fund and projects can be found at: [Capital Improvement Bond Projects](#).

As a follow up to the work of the BRC One and BRC Two, council directed staff to provide an update to the financial analysis done and progress on strategies identified by those commissions. The resulting CFS project work, which began in August 2013, involves a first phase focused on unfunded capital needs and capital investment strategies.

The September 2013 floods have impacted the city's planned capital improvement program (CIP) with approximately \$45 million damage or destruction of city infrastructure. To-date, approximately \$8 million has been spent in the response and recovery phase, some of which has helped make essential infrastructure operational. A significant task lies ahead of the city to manage the considerable increase in capital projects created by the flood, which will be in addition to the annual CIP projects

previously approved in the 2014-2019 Capital Improvement Program and those funded by the 2011 Capital Improvement Bond. The departments with the most projects impacted by the flood are Open Space and Mountain Parks, Parks and Recreation, and Public Works.

Flood Projects

The flood resulted in damage encompassing over 400 city sites and projects. It is anticipated that the FEMA Public Assistance program will reimburse the city 75 percent of eligible expenses to flood damaged infrastructure, with an additional 12.5 percent match from the State of Colorado. In conjunction with FEMA and the city's flood recovery consultant, the city is working to prepare the required grant submittals to FEMA and towards completing projects. All FEMA-funded flood projects must be completed within 18 months following the disaster declaration, or March 2015. The reimbursement and audit process could take several years.

The city's property insurance policy has covered \$1.8 million, primarily related to the downtown facilities. These claims have been processed and the city has received the insurance proceeds. Additional insurance proceeds estimated between \$500,000 and \$800,000 are anticipated.

Additional information on flood recovery can be found at:

<https://bouldercolorado.gov/water/boulder-flood-info>

2013 and 2014 CIP

To date, the city has used reserves and capital budget reallocations to fund flood-related repairs, including postponing or re-directing approximately \$4 million in 2013 and 2014 approved capital projects. As the city continues to address flood-related damage, project priorities will continue to change to ensure that essential services and critical repairs are made while managing city cash flow and resources.

Certain capital projects planned to occur before the flood will continue, such as ones funded by external grants (Federal grants, TIP, etc.), and those funded through the 2011 Capital Improvement Bond. In addition, the city has begun to see market and capacity impacts due to the flood, including:

- Construction Cost Increases: Recent bid openings have seen some construction costs far exceeding professional estimates.
- Contractor availability: The widespread and severe impacts from the flood mean that the city is competing with other governmental agencies, commercial interests, and private property owners for a limited pool of skilled contractors. The result is delays in completing work and some contractors declining work.
- Staffing: For many projects the lack of contractors has meant that standard and seasonal employees have been performing restoration projects. OSMP extended the terms of employment for seasonal employees for those willing to continue their employment. However, many departments continue to have needs for specialized skills, project management and other staffing needs to address the increase in capital projects.

Once the full assessment and cost estimates are understood for flood-related projects, additional changes to the current CIP and proposed 2015 – 2020 CIP will be presented as part of the budget process in 2014.

ANALYSIS

City Council feedback is requested on the initial prioritization of unfunded capital needs in the city.

As part of the Comprehensive Financial Strategy project, guiding principles and themes have been developed in order to efficiently organize and prioritize the many projects that are currently included in the city's unfunded capital project list. During the initial review of the projects, the guiding principles were incorporated to assist in determining projects that meet multiple goals to ensure only the most strategic projects are prioritized for funding. Secondly, themes were developed to assist in organizing and categorizing projects based on the overall scope of the project.

Proposed Guiding Principles for project selection

The following guiding principles combine language from the current CIP guiding principles, the initial Round 2 CIS guiding principles and the Sustainability Framework. Many aspects of these guiding principles can also be found throughout the various department master plans across the organization to assist in the prioritization and selection of capital improvements and additions to the city's assets and infrastructure.

Capital projects should:

1. *be innovative and further Boulder's unique sense of place by achieving the multiple outcomes of the Sustainability Framework by creating a community that is:*
 - a. *Safe*
 - b. *Healthy and Socially Thriving*
 - c. *Livable*
 - d. *Accessible and Connected*
 - e. *Environmentally Sustainable*
 - f. *Economically Vital*
 - g. *Has Good Governance*
2. *be included in current council approved departmental master and strategic plans.*
3. *leverage external funding through partnerships and identified community involvement.*
4. *have identified O&M costs and sufficient operating budgets to cover the total cost of facility ownership.*
5. *maximize efficiency of investment through coordination with other departments and agencies while demonstrating the cost/benefit analysis.*

Proposed Themes for Project Categorization

The following themes reflect broad categories that allow City Council to understand the type of project and its large scale benefit to the community.

1. *Emergency Preparedness*

Essential infrastructure that will maximize effective response and recovery from catastrophic events, which have been identified as needs, or are new needs discovered through recent disasters.

2. *Infrastructure Deficiencies*

Improvements, enhancements, or corrections to “take care of what we have” and achieve health and safety, maintaining industry standards, and or legal/ballot requirements.

3. *Placemaking*

Capital and infrastructure enhancements that impart new life and vigor to the community through innovative improvements that engage the community in shared vision through vibrant and unique public spaces.

Funding Strategy

During the first phase of CFS, different financing strategies were discussed that could be used to fund the proposed capital projects. Based on the discussion, staff recommends considering a combination of “pay as you go” financing and debt financing. The type to be used would depend on the fund building the capital project and the main method through which the fund receives its revenues. Utilities will often use bonding for large projects and tax supported funds use “pay as you go” financing and bonding.

“Pay as you go” financing

With “pay as you go” financing, capital projects are fully funded at the time of construction with cash from current revenues, accumulated reserves, or a new revenue stream. The city has used “pay as you go” financing on several occasions in the past. It is commonly used in the utility funds, open space, transportation, and parks and recreation for smaller capital infrastructure projects. An example from the general fund is when voters approved increasing the sales tax by .15 percent for the year of 2007 to pay for the shortfall in Phase I construction of the Fire Training Center (FTC). This “pay as you go” project initially was to be financed solely through a one-year county sales tax, but the accumulation of funds for the “pay as you go” project fell short of the amount needed.

Advantages of “pay as you go” financing include no interest or debt issuance costs, no debt covenants, and no concerns about issuance of debt or burdening future generations with too much debt. Both the City and County of Denver and Fort Collins have used this method successfully for a large variety of capital projects. When sales and use tax serves as the funding source in the City of Boulder, the amount contributed from people living outside of the city is approximately 50 percent of the total amount needed.

The major disadvantages of “pay as you go” financing are: collections can fall short of projections (so projects are not built), an economic downturn can reduce the amount collected, and inflation can increase the costs beyond the money that will be collected. In addition, some believe new facilities should be paid for over time by those who benefit from them (intergenerational equity) over the useful life of the project and should not place the full financial burden on current taxpayers.

Debt financing

Unlike “pay as you go” financing, debt financing requires the city to borrow money with the promise to pay it back over time with interest. Depending on the nature of the project, there are several types of available debt financing instruments. Examples include General Obligation Bonds, Revenue Bonds, notes, and Certificates of Participations (COPs). The interest on most municipal bonds is tax- exempt. However, certain projects would require the city to issue taxable bonds, which generally have a higher interest rate.

An advantage of debt financing is that it allows the debt burden to be paid over time by those who benefit from the projects; funds are available sooner so the project can be completed sooner and inflation is not as major of a concern. Many times an entity does not have the ability to accumulate the needed cash to fund certain projects (especially large projects), and debt financing provides an opportunity to do so.

Disadvantages of debt financing include interest and debt issuance costs (which means these funds cannot be used for anything else while the debt is outstanding), potential restrictive debt covenants, over reliance on debt, and burdening future generations with too much debt if debt financing is not properly controlled. A general rule for tax-exempt bonds is that every \$10 million borrowed will cost approximately \$800,000 annually in principal and interest.

It is common for entities to use a combination of “pay-as-you-go” and debt financing. What method should be used at any one time depends on the needs of the community, the type of projects, the fund building the projects, and if required to be a ballot item the willingness of the voters to approve the projects and funding method. In order to utilize both “pay as you go” and debt financing, council would need to consider asking voters to increase city revenues. In situations where tax supported debt would be used, voters would have to approve the issuance of the debt. Under the state constitutional amendment passed by state voters on 1992, called the Taxpayer Bill of Rights and often referred to as TABOR, all non-enterprise debt that is a multi-year obligation must be approved by the voters via a November ballot item.

Either funding mechanism will need a new stream of revenues to pay the costs. In some funds the current revenue streams are not sufficient to pay for new annual debt service, accumulate adequate funds for major “pay as you go projects, or cover new operating costs.

Types of revenue streams council may want to consider

Sales and use tax: Every one-tenth increase in sales and use tax generates approximately \$2.8 million annual in today's dollars.

Property Tax: Each mill of property tax generates approximately \$2.5 million annually in today's dollars.

Fees: the only current fees that would generate adequate funds to pay for either type of financing would be in the utility funds.

- “Pay as you go” financing options
 - Increase sales and use tax, property tax, or fee rates. The first two require voter approval.
 - The increase could be an ongoing amount for an indefinite or definite amount of time that would be used specifically for capital projects and operating costs.
 - Another option would be to prepare multiple themes (types of projects) and identify a new revenue source for a finite number of years that will fund the various groups of projects. Voters have the option to choose what set of themes they want to vote for or against. Staff will present examples of this method of funding when the topic is discussed on February 18. How to cover operating costs would need to be considered.
- Debt Financing
 - Depending on interest rates at the time of issuance, each \$2.5 million of new revenue will support from \$30 to \$35 million in new 20-year debt.

New ongoing operating costs

The major cause of failed capital improvement programs is the lack of a funding stream adequate to pay for the new operating costs associated with new capital projects. There have been numerous stories across the United States of new schools and prisons that have been built, or where funds are in place to build them, but there were no resources to pay for the new operating costs. If the voters approve investing in new or expanded projects, then new operating dollars need to accompany the approval of the projects if they cannot be absorbed with current resources. The amount will need to be sufficient to cover ongoing operation and capital maintenance funding in the future. There are various options to accomplish this and staff can provide these methods at a later date if there is sufficient interest in moving ahead with the capital projects.

Staff recommends City Council continue the funding discussion at a later date after projects have been through a process that will be determined in the near future. The economic climate and voter tolerance will need to be reviewed at that time as well.

STAFF RECOMMENDATION

During an April 22 study session, council will be presented with information regarding potential 2014 ballot issues for discussion. Council may consider amending the list as deemed appropriate. In anticipation of that discussion, the following recommendations

are provided to help inform the February 18 discussion. While council direction on next steps relative to the CFS process is requested on February 18, no specific council action is requested.

With regard to the CFS, staff recommends the following:

- 1. Continue to scope projects that could be funded through short-term, “Pay as you go” sales tax increases voted on in 2014. Increases would only last for three years and be set at 0.1 percent for each of the Themes of projects. 0.1 percent sales tax is about \$2.8 million/year, for a total of \$8.4 million over the life of the tax.**

Increases would be dedicated to specific Themes of projects:

- **Emergency Preparedness**
- **Infrastructure Deficiencies**
- **Placemaking**

Three different items would be considered on the 2014 ballot. The options below will not equal the proposed available funding. Projects will need to be further prioritized in the future.

Item 1, 0.1% Temporary Sales Tax for Emergency Preparedness

Option 1

- Replacement of the Fire Station Alerting Equipment, City-Wide Radio Infrastructure & Equipment Replacement, and Incident Command Vehicle Replacement- \$6 million
- Reduce Maintenance Backlog in Emergency Preparedness Infrastructure (public safety & fire stations) - \$2.8 million

Item 2, 0.1% Temporary Sales Tax for Infrastructure Deficiencies

Option 1

- City-Wide Building Energy Efficiency Improvements - \$2 million

Additional Options:

- Community Park Enhancements - \$8.5 million in total
- University Hill Commercial Area Street Tree Irrigation System - \$520,000
- Office Productivity Suite - \$1.3 million
- Flatirons Events Center Redevelopment and Golf Course Improvements - \$2 million to \$5 million

Item 3, 0.1% Temporary Sales Tax for Placemaking

Option 1

- Boulder Civic Area Park Improvements - \$4.8 million
- Boulder Junction – Continue Phase 1 Transportation Connections - \$4 million (identified \$12.2 million in total)

Additional options:

- University Hill Various Redevelopment Improvements (identified as \$7.4 million in total)

2. **Continue to scope larger projects that would require a tax increase to fund 20-year bonds, for consideration on the 2015 ballot. Depending on interest rates at the time of issuance, each \$2.5 million of new revenue will support from \$30 to \$35 million in new 20-year debt. Projects will need to be further prioritized in the future and may include:**

Emergency Preparedness

- Relocate Fire Station #3 Out of Floodplain (currently at 1585 30th Street) - \$19.2 million
- Public Safety Building Expansion/Renovation and IT Consolidation - \$7.9 million

Infrastructure Deficiencies

- Parks Operations Co-location with Public Works - \$5.2 million
- Quiet Zone Implementation at Railroad Crossing - \$5 million
- Recreation and Community Center Enhancements (\$14 million in total)
- Athletic Field Improvements (\$16.8 million in total)

Placemaking

- Valmont City Park Phase 2 - \$23.6 million
- Civic Area Buildings (13th Street, West Senior Center) - \$TBD
- Accelerated Housing Implementation Funding - \$15 million

More information on prioritized unfunded projects can be found in **Attachment A**

Questions for Council:

1. Does council want to include a major capital bond item on the November 2014 ballot?
2. Does council support pursuing the pay as you go approach for funding?
3. Are there specific projects of interest for which council would like to have additional information?

NEXT STEPS

1. If requested, staff will bring back additional information related to projects and/or funding approaches at a March meeting.
2. At the April 22, 2014 Study Session on potential ballot items, additional information will be presented, including additional information on funding options and timing of projects, incorporating feedback received on Feb. 18 and in March.

ATTACHMENTS

- A. Unfunded Project Prioritization by Theme

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Attachment A: Unfunded Project Prioritization by Theme

(Note: Many of the cost estimates are preliminary, and may change as projects are further refined and scoped.) This is a staff recommendation for Council discussion. Council may consider amending the list as deemed appropriate.

Project Prioritization within Emergency Preparedness Theme

High Priority Projects/Packages

1. **Emergency Communication Improvements** – includes the following projects:
 - a. **Replacement of the Fire Station Alerting Equipment \$500,000** – Current system is proprietary and decades old; repairs made in 2013 but system remains unreliable and will not allow city to take full advantage of new Computer Aided Dispatch system.
 - b. **City-Wide Radio Infrastructure & Equipment Replacement \$5.1 million** – Over the next five years, much of city's radio infrastructure will need to be replaced due to age or new narrow banding FCC requirement (anticipated by 2018). This replacement impacts multiple departments throughout the city that use radio equipment.
 - c. **Incident Command Vehicle (ICV) Replacement \$450,000** – Current ICV expected to be replaced in 2016 but increasing technology needs means that the funding for replacement is falling short.
2. **Emergency Building Improvements** – includes the following projects:
 - a. **Relocate Fire Station #3 Out of Floodplain \$19.2 million** – Currently located in 100-year floodplain. Combine new station with Fire Department's administrative offices (currently located in Public Safety Building) and additional storage.
 - b. **Public Safety Building Expansion/Renovation and IT Consolidation \$7.9 million** – Expand Public Safety Building along with associated renovations to the existing space and consolidate IT within the building.
3. **Reduce Maintenance Backlog in Emergency Preparedness Infrastructure \$2.8 million** – Facility Asset Management's (FAM) current backlog¹, currently \$8.5 million, is expected to grow to \$11.8 million by 2020. With an infusion of capital funding and increased annual funding, FAM would be able to achieve the funding goal of maintaining the backlog below \$4.3 million, which represents an overall "good" rating of the 135 facilities under FAM's purview. This project completes city facility repairs and upgrades currently on the city's backlog list associated with Emergency Preparedness infrastructure, and reduces the backlog to \$7.6 million in 2020.

¹ The 2005 FAM Master Plan sets an Action Plan goal of maintaining the city's maintenance backlog at less than \$4.3 million. This backlog is defined as an accumulation of uncorrected or deferred deficiencies that represent a liability (in both physical and financial terms) for a facility. These items include maintenance deficiencies, equipment or systems overdue for replacement. Future maintenance items, planned facility replacements, additions and efficiency improvements are not part of the maintenance backlog. The FAM Master Plan can be found on <https://bouldercolorado.gov/public-works/facilities-and-asset-management-fam>.

Other projects included in the Emergency Preparedness Theme, but not recommended as High Priority are:

Lower Priority Emergency Preparedness Projects		
Fire Training Center Phase 3	\$ 1.2 million	Add one classroom, five offices, a conference room and one "dirty" classroom that were all deleted from the original project scope to meet budget. This project is planned at 4,000 square feet.

Project Prioritization within Infrastructure Deficiencies Theme

High Priority Projects

1. **Office Productivity Suite \$1.3 million** – The office productivity suite [Microsoft Office] is in need of upgrade and replacement. While some funding exists in the Computer Replacement fund (CRF) for this purpose, it will not be sufficient to fund the entire purchase or the continuing on-going costs of the upgraded tools. This project, which would bring the city's desktop tools current and implement a plan to stay on more current releases going forward, may also include a city-wide collaboration tool.
2. **Parks Operations Co-location with Public Works \$5.2 million** – Relocate the Park Operations and Forestry service area into the Municipal Service Center (city yards) as part of the Valmont City Park, Phase 2. Additional structures, renovations of existing structures, and additional parking would be constructed. Co-location offers several potential opportunities for efficiencies in operations.

Medium-High Priority Projects

3. **Building Energy Efficiency Improvements \$2 million** – Complete energy efficiency projects and programs including: replacing single pane windows with double pane windows at the Municipal Building, Fire Stations, and other city facilities; installing building automation systems to remotely monitor and control building settings and performance; and fund a contracted service to provide 24/7 monitoring and analysis of a building's energy performance to maintain peak performance of existing systems. These are projects which could not be accomplished as part of the energy performance contracts due to the longer payback periods.²

² In June 2009, the City of Boulder partnered with the Colorado Energy Office on an Energy Performance Contract (EPC), which has enabled the city to make significant energy efficiency upgrades to 66 city facilities. Following a technical energy audit, the city of Boulder entered into a 2010 lease purchase agreement with McKinstry to implement efficiency upgrades that will be paid off over time using the guaranteed savings from reduced energy and water bills. The upgrades do not cost Boulder taxpayers any additional money and the community will benefit from reduced operations and maintenance costs. More information on the Energy Performance Contract can be found at <https://bouldercolorado.gov/public-works/energy-efficiency-upgrades-at-city-facilities-energy-performance-contract>.

4. **Community Park Enhancements \$8.5 million** – This recommendation includes the design and development of enhancements to community parks including: Foothills Community Park, Harlow Platts Community Park, and East Boulder Community Park. Based on Council feedback these parks can be split into individual projects. Each of these Community Parks has planned future phases that include additional amenities and recreation areas not including athletic fields:
 - a. Foothills Community Park: \$4.5 million
 - b. Harlow Platts Community Park: \$2 million
 - c. East Boulder Community Park (Phase II): \$2 million

5. **Recreation and Community Center Enhancements \$14 million** – The Boulder Parks and Recreation Master Plan outlines various improvements and enhancements to all recreation facilities and centers within the three funding priorities. Enhancements to recreation centers allow the department to meet critical goals relative to the community health and wellness and ensure facilities are maintained at an appropriate standard according to the department's asset management program. Proposed projects will provide facility upgrades and operational efficiencies to :
 - a. North Boulder Recreation Center: Weight room and program space, front desk and recycling facilities
 - b. East Boulder Community Center: Entry remodel / interior upgrades, additional gymnasium, multi-purpose art room/program areas, outdoor covered patio, concessions, expanded leisure pool and weight room, upgrades to office and meeting room space, restroom and recycling facilities.
 - c. South Boulder Recreation Center: Leisure and therapy pool, raised indoor running track, high-tech teen area, concessions, program, office and multi-purpose rooms, indoor playground, child care, platform tennis and recycling facilities.

6. **Athletic Field Improvements \$16.8 million** – Design and development of new or improved diamond and rectangular athletic fields at existing Parks and Recreation facilities in support of various team sports leagues and multi-use practice field needs. The following projects represent investments to improve athletic fields and associated infrastructure located at various locations throughout the city including the Stazio Complex, Pleasantview, and Foothills Community Park.

7. **Scott Carpenter Pool and Park Enhancements \$7.3 million**– Pending the outcome of the Parks and Recreation Aquatics Feasibility study, this project would provide funding for Scott Carpenter Pool improvements including: ADA compliant restroom facilities and bathhouse, landscape, turf, irrigation & hardscape areas, wetland regulatory compliance, improved outdoor pool plaza areas, upgraded pump house and filtration system, parking lot & access upgrades. Park improvements may include the land acquisition of the existing fire station at the corner of Arapahoe and 30th Street and redesign of the corner parcel to include a refurbished skate park, new park entry signage, landscape and irrigation improvements and the redevelopment of the existing pool to a new use.

Other Projects included in the Infrastructure Deficiency Theme, but not recommended as High Priority are:

Lower Priority Infrastructure Deficiency Projects		
Flatirons Events Center Redevelopment and Golf Course Improvement	\$2 to \$5 million (depending on option)	Demolition and reconstruction of an events center to address environmental, health and building code issues associated with the existing structure and to respond to potential market and revenue opportunities as defined by the Flatirons Golf Course business plan (2010).
Arapahoe Reconstruction	\$ 3 million	Reconstruction of Arapahoe, 15th St. to Broadway.
University Hill Commercial Area Street Tree Irrigation System	\$ 520,000	Install an irrigation system for all the street trees within the University Hill Commercial Area.
Library - Carnegie, Repair Masonry on Historic Structure	\$ 275,000	Complete masonry repairs for Carnegie Branch Library for Local History, constructed in 1906.
Historic / Cultural Facility Improvements	\$ 1.3 million	Conservation and preservation of important historical and cultural assets in the community that are managed by the Parks and Recreation Department.
Quiet Zone Implementation at Railroad Crossings	\$ 5 million	Implement Quiet Zones at the 10 railroad crossings within the city.
Play Court Improvements	\$ 4.8 million	Combination of maintaining and repair of existing play courts and the addition of new facilities to meet current and future demand.
Video Conferencing Capability	\$ 272,850	Fund a pilot and full rollout of video conferencing technology throughout the city.
Repair Municipal Service Center Parking Lots	\$ 800,000	Repair deteriorated parking lot and pavement areas at the Municipal Service Center.
Repair Public Safety Building Parking Lot	\$ 500,000	Repair deteriorated parking lot and pavement areas at the Public Safety Building.

Customer Relationship Management Replacement	\$ 210,000	Replacement cost for the web based customer relationship management system implemented in 2013. Projected replacement: 2019 – 2022
Web Site Refresh	\$ 100,000	Replacement cost for the city's website implemented in 2013. Projected replacement: 2019 – 2022
14th & Walnut Multimodal Transportation Center	\$ 4.1 million	Complete improvements at Boulder's downtown transit center, including bus operational improvements, pedestrian improvements, building retrofits, improved bicycle access and accommodations.
Main Library Renovation	\$ 2.2 million	Remodeling and refurbishing several areas of the Main Library.
Enterprise Document Management	\$ 1.6 million	Replacement cost for the document software system currently being installed. Projected replacement: 2028-2030.
Transform Boulder Business Initiative Replacement	\$ 7.8 million	Replacement cost for the city's financial system. Projected replacement: 2028-2030.
LandLink Replacement Project + replacement	\$ 3.9 million	Replacement cost for the database and permitting software system currently being installed. Projected replacement: 2028- 2030.
Reservoir Recreation Enhancements	\$ 7.5 million	Various improvements and enhancements at the Boulder Reservoir.

Project Prioritization within Placemaking Theme

High Priority Projects

1. **Boulder Civic Area Park Improvements \$4.8 million** – This project will provide enhancements and improvements to park areas within the Boulder's Civic Area as identified within the Civic Area Plan. The Civic Area meets several key themes of the Boulder Parks and Recreation Master Plan and the implementation of the Civic Area Plan allows critical department goals to be met. The projects will range in scale and complexity while consistently meeting the guiding principles and implementation strategies identified through the Civic Area planning process.
2. **Boulder Junction – Transportation Connections \$12.2 million** – This project would include the next phase of the unfunded transportation connections that are a part of the Transit Village Area Plan (TVAP) Transportation Connections Plan. Possible projects could include:

- a. Junction Phase I Bridge at Boulder Slough: \$3 million
 - b. Junction Phase I Roadway (Boulder Slough to 32nd St/Prairie Ave): \$2 million
 - c. Boulder Slough Multi-use Path (30th St to 3100 Pearl): \$500,000
 - d. Boulder Slough Underpasses at BNSF Railroad and at Pearl Parkway: \$5.5 million
 - e. North Goose Area Multi-use Path Connections: \$1.2 million
3. **Valmont City Park Phase 2 \$23.6 million** – Phase 2 of Valmont City Park, which will include the design and development of the area south of Valmont Road, may encompass a new sports complex with multi-use athletic fields, baseball/softball fields, a sprayground/splashpark, lighted play courts and potentially utilizing artificial turf. A permanent 18-hole disc golf course could be developed in the northwest portion of the site as well as improvements to existing multi-use pathways with proposed connections to other park trails. A Universally Accessible Play Area has been proposed in conjunction with an adventure play area using enhanced landscaping with efficient, water-conserving irrigation. The existing poultry barn north of Valmont Road will be considered for remodeling for multi-use events. Additional park amenities may include picnic areas, parking areas, potential skate area and an outdoor performance area. The development will incorporate sustainable construction and infrastructure with prairie dog relocation, stormwater management and efficient water conservation.
4. **Civic Area Projects**
- a. **Civic Center Plan Transportation Projects Implementation \$15 million** – The Civic Center Planning process, which is underway, may result in various projects including new and improved transportation connections to provide for transportation options to and through the civic center area. At this time, there is not funding programmed for these improvements. As these projects are still being defined, the scope and cost are unknown so a general place holder is estimated at \$15 million.
 - b. **City Service Facilities \$39 million** – Based on the implementation strategy for the Civic Area Plan, this could include capital projects towards replacement facilities for New Britain, Park Central, Atrium, 1301 Arapahoe, FAM, and the functions in the Municipal Building. Many of the existing facilities are located in the High Hazard Zone and have significant maintenance backlog and/or operational inefficiencies. The possible building size ranges from 55,000 to 110,000 sq ft. This project could also include parking structures to replace civic area surface parking lots currently in the High Hazard Zone. This would only include 200 spots for employee and city vehicle parking. As the scope of this project has yet to be fully defined, the estimate is a place holder pending further planning and study.
 - c. **West Senior Center Redevelopment \$28 million** - This project, part of the Civic Area plan implementation, would demolish the existing West Senior Center building, expand the footprint and build up three stories. The current facility is

15,800 square feet and does not make efficient use of either the lot or interior space. The new building would include a 21st century senior center as envisioned in the civic area plan and space to co-locate all human services department programs as a one-stop shop for human services. This would enhance customer service to the community while adding critical office space on the municipal campus. As the scope of this project has yet to be fully defined, the estimate is a place holder pending further planning and study.

5. **University Hill Various Redevelopment Improvements \$7.4 million** - Due to its small size and constrained location, the University Hill commercial district lacks public plazas, parks or similar areas for community gatherings and events. A section of Pennsylvania Avenue is proposed to be redesigned and retrofitted to become a multi-purpose event street that would accommodate festivals, special events and community gatherings. The Pennsylvania Event Street would be a pilot project that could incorporate many shared street concepts but be tailored to facilitate closure and production of events, such as special lighting, infrastructure for tenting and access to electricity, and could be used as a model for other commercial districts. During other times, it would continue to function as a transportation corridor and provide parking but could emphasize biking and pedestrians. The area has been used successfully for numerous special events (Hill 2K, Hill Flea, Snacks and Jazz).
 - a. Commercial District Event Street: \$700,000
 - b. Pedestrian Scale Residential Pedestrian Lighting: \$5.7 million
 - c. Gateway Features: \$500,000
 - d. Commercial District Tree Street Irrigation: \$520,000
6. **Accelerated Housing Implementation Funding \$15 million** – capital funding could be used to implement current housing opportunities throughout the city.
7. **Traveler Information System \$2 million** - Provide real-time information for system users to help inform travel choices. Provide in-depth information about system use for analysis and measurements. Includes real-time counters and cameras on multi-use paths and on key arterials which feed an on-line, real-time publicly accessible site. The system will use the data to estimate overall system use and travel delays.
8. **Access Management and Parking Strategies (AMPS) Enhancements \$2 million** - Provide enhanced facilities for AMPS. The AMPS study started, which started in 2013 and is continuing into 2014, has identified several capital investments for enhanced transportation, multi-modal incentives, and parking. These include investments into pedestrian and bike amenities, streetscaping, city-edge park and ride/bike, bike stations, electric vehicle charging stations, and opportunities for energy generation pilots in parking garages and surface lots.
9. **Multi-use pathway connections - second tier \$10 million** - Significantly increase connectivity in north and south Boulder by building new sections of pathway and new underpasses along the Greenway system. Several projects are included: missing links along the Wonderland and Fourmile greenway systems, new underpasses along Skunk

Creek (at Moorhead) and Bear Canyon Creek (at Table Mesa). It would also complete the northern section of a multi-use pathway along 28th Street.

10. **Housing Land Bank \$20 million** - Acquire and hold land to facilitate residential development that furthers the city's housing (and other) goals (e.g. 30th and Pearl). Would supplement dedicated affordable housing funding. Operation and management revenue could be positive if property is leased. If not, the city has minimal carrying costs.
11. **Library-North Boulder Branch \$4.2 million** - Construction, Furniture, Fixtures and Equipment for a 13,000-sq.-ft. library branch, including an opening day collection, in the North Boulder neighborhood. Annual operating and maintenance and staffing costs are also included. At this time a donated piece of land has been identified for this proposed project.
12. **Historical and Cultural Plan and Development \$5 million** – Plan and implement improvements to new and existing historic and cultural facilities through community partnerships and funding opportunities.
13. **Transit Stop Enhancements \$1.6 million** - Enhance transit stops by improving superstops and high-use stops and adding basic amenities at all stops. Provide funding for regular maintenance. Add bike share and car share connections at key locations to facilitate the final mile of travel.

Other Projects included in the Placemaking Theme, but not recommended as High Priority are:

Lower Priority Placemaking Projects		
Boulder History Museum	\$ 4 million	Donation to Boulder History Museum for the museum's capital campaign.
Public Fiber Optic Network	\$ 50 million	Funds to construct a city-wide fiber optic network to deliver service to city businesses and residents.
Park and Recreation Land Acquisitions	\$ 8 million	New parks and recreation land acquisitions that are required for critical growth areas to accommodate existing and future residential areas and subsequent level of service requirements in the community.
New Climate Action Plan Goal	\$ 42 million	This project would include various initiatives for city operations under the General Fund to meet the city's proposed new goal of 80% reduction in greenhouse gas emissions by 2050, from 1990 levels.

East Arapahoe Planning Implementation - East Campus Connections	\$ 15 million	There are two planning efforts underway or planned along Arapahoe - east of 28th Street - an East Campus Connections project, and one more narrowly focused on the area surrounding the Boulder Community Hospital.
Establish new high frequency transit service on 28th and Folsom	\$ 3 million	Launch the ORBIT, as identified in the Transportation Master Plan. Buses would run every 10 minutes, as on the SKIP, JUMP and BOUND. Consider including Folsom in the route.
Transform northern leg of 204 into high frequency service	\$ 380,000	Increase frequencies to 10 minutes mid-day.
City-Wide Eco Pass	\$ TBD	Provide a city-wide ecopass to all Boulder residents as an incentive to increase use of public transportation and achieve the city's alternative transportation goals.

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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.
- During a council meeting, any form of electronic messages, including emails and texts, that relate to matters being considered and which arrived at any time during that meeting shall not be read by council members, nor shall any messages on matters under consideration be sent by council members.

Council Communication:

- Council members agree to keep quasi-judicial roles scrupulously separate between members of boards and members of council, avoid expressing ideas to board members on things coming before the board, and carefully disclose or recuse themselves when there is involvement 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, through 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 responsive 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.

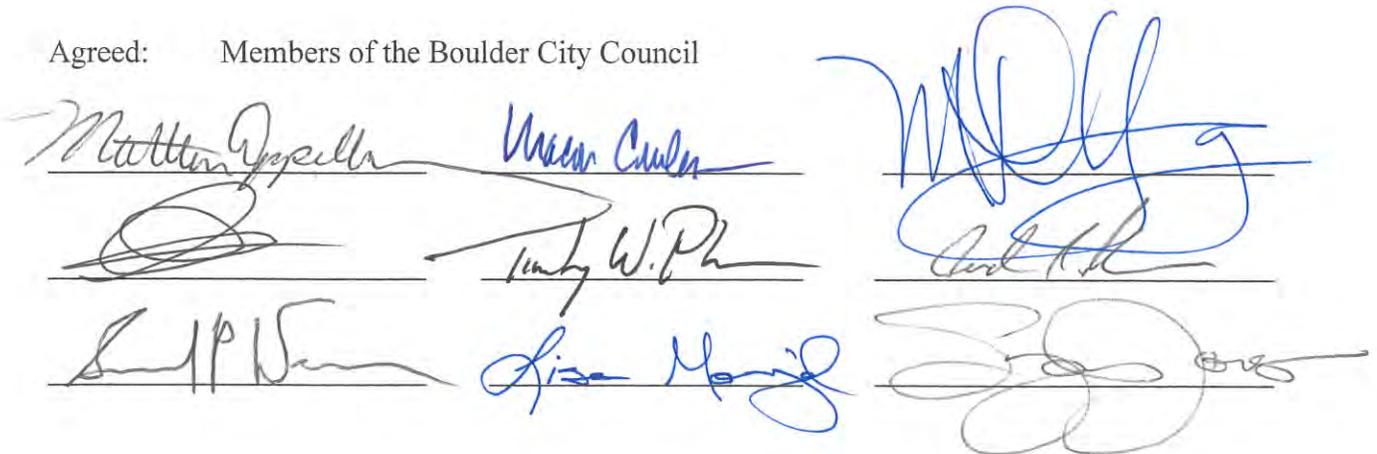
Council Committees:

- Council committee meetings will be scheduled to accommodate the council members on the committee.
- Notice of the times and places for each 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.

Selection of Mayor and Mayor Pro Tem:

- Council members will make a good faith effort to select the mayor and mayor pro tem in an open and transparent process.
- After the council election, members seeking election as mayor or mayor pro tem should:
 - make their interest in the positions known to their fellow members as soon as possible;
 - focus their communication with other council members on the positive attributes the member brings to the positions; and
 - refrain from any negative remarks about any person seeking election as mayor or mayor pro tem.
- Nominated individuals' presentations may include, but need not be limited to the following:
 - the skills and attributes the member would bring to the mayoral position;
 - the member's ability to efficiently run council meetings, respect the views of the minority while allowing the majority to rule, and perform other mayoral duties;
 - how the member would represent the city and city council and mayor position at gatherings outside of city council meetings
 - how the member would serve on and appoint other council members to regional and national boards and commissions; and
 - how the member would promote trust of the community and other council members.
- Council members should work to avoid divisiveness by being inclusive during the mayoral selection process.

Agreed: Members of the Boulder City Council

The image shows nine handwritten signatures in blue ink, arranged in three rows and three columns. Each signature is written over a horizontal line. The signatures are: Row 1: Matthew Appella, Warren Cauden, [unclear]; Row 2: [unclear], [unclear], [unclear]; Row 3: [unclear], Lisa Meryel, [unclear].

Approved by Council: January 21, 2014

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

GOAL: Boulder's Energy Future			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables ▪ Recommended strategies to achieve community's energy goals - Study Session and Public Hearing 	<ul style="list-style-type: none"> ▪ Boulder's Energy Future – based on the strategies approved by Council in 1st Quarter, ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables ▪ Municipalization Exploration Project Work Plan Phase 2 – Study Session 	<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables ▪ Study Session 	<ul style="list-style-type: none"> ▪ Boulder's Energy Future – ongoing analysis of municipalization and work on Energy Action Plan with updates to council at roundtables ▪ Study Session

GOAL: Climate Action Plan			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<ul style="list-style-type: none"> ▪ Boulder Canyon Hydroelectric Project ▪ Climate Commitment – RFQ for consulting assistance for targets and goal setting, development of new GHG inventory, and tracking and reporting tools ▪ Energy Efficiency: <ul style="list-style-type: none"> ○ Launch of 2013 program priorities ○ Upgrades in City Buildings – employee education and outreach project (IP) ▪ Disposable Bag Fee – implementation plan and revised budget (IP) ▪ Transportation Master Plan (TMP) – 	<ul style="list-style-type: none"> ▪ Commercial Energy Efficiency Strategy (CEES) - feedback on options (Study Session) ▪ Climate Commitment – Study Session to review program annual targets, short/ long term goals, tracking and reporting systems ▪ Electric/ Hybrid vehicles – project closeout ▪ Energy Efficiency – finalize Market Innovations approach (Study Session) ▪ Solar/ Wind Generation Facility Code Changes ▪ SmartRegs – code changes 	<ul style="list-style-type: none"> ▪ CEES – adopt Energy Rating and Reporting Ordinance ▪ Climate Commitment – policy integration with TMP and ZWMP ▪ Energy Efficiency – launch Market Innovations competition ▪ Zero Waste Master Plan (ZWMP) – draft 	<ul style="list-style-type: none"> ▪ Climate Commitment – policy integration with TMP and ZWMP ▪ Energy Efficiency <ul style="list-style-type: none"> ○ Upgrades in City Buildings – results of employee education and outreach (IP) ▪ SmartRegs – options for quality control of rental housing inspections



initial results of Transportation Funding Task Force (Study Session)			
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GOAL: Affordable Housing

1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
<ul style="list-style-type: none"> ▪ ADU/ OAU – study results (IP) ▪ Comprehensive Housing Strategy issues - stakeholder engagement process ▪ Density and Distribution of affordable and special needs housing - report ▪ Inclusionary Housing Rental Policy – consideration of ordinance changes following stakeholder engagement process ▪ Mobile Homes Parks – legislative agenda 	<ul style="list-style-type: none"> ▪ Comprehensive Housing Strategy <ul style="list-style-type: none"> ○ Stakeholder engagement process ○ Study Session 	<ul style="list-style-type: none"> ▪ Comprehensive Housing Strategy issues - stakeholder engagement process 	<ul style="list-style-type: none"> ▪ Comprehensive Housing Strategy issues - stakeholder engagement process

GOAL: Civic Area Plan

1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
<ul style="list-style-type: none"> ▪ Board and community input ▪ Council participation in Ideas Competition 	<ul style="list-style-type: none"> ▪ Council direction on preferred option(s) and strategies ▪ Draft plan <ul style="list-style-type: none"> ○ Development ○ Community input ○ Study Session ▪ Municipal Space Study Final Report 	<ul style="list-style-type: none"> ▪ Boulder Civic Area vision and plan <ul style="list-style-type: none"> ○ Study session ○ Public hearings on adoption 	



NEXT TIER PRIORITIES

GOAL: University Hill Revitalization			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<ul style="list-style-type: none"> ▪ 2013 action priorities confirmed by Council at January retreat ▪ Hill Residential Service District – update ▪ Innovation District - update 	<ul style="list-style-type: none"> ▪ Action on other priorities ▪ Hill Residential Service District – 1st reading of petition 	<ul style="list-style-type: none"> ▪ Capital infrastructure improvements for the residential and commercial areas – consider during CIP process 	

GOAL: Addressing Homelessness			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<ul style="list-style-type: none"> ▪ City and Community Efforts – Denver sleeping ordinance (IP) ▪ Housing First (1175 Lee Hill Road) – Statement of Operations (IP) ▪ Work plan check in and priority – Council retreat 	<ul style="list-style-type: none"> ▪ Analysis of funding for homeless services and alignment with the Ten Year Plan and unmet needs ▪ Ten Year Plan to Address Homelessness – progress update (IP) 	<ul style="list-style-type: none"> ▪ Analysis and recommendations regarding banning panhandling on street corners 	<ul style="list-style-type: none"> ▪ Ten Year Plan to Address Homelessness – progress update (IP)

GOAL: Boulder Junction Implementation			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<ul style="list-style-type: none"> ▪ Depot Square implementation – update ▪ MU-4 zone change - consideration ▪ TDM District Implementation Update (IP) ▪ Update on potential policy issues related to key public improvements and city owned site (as needed) 	<ul style="list-style-type: none"> ▪ Update on potential policy issues related to key public improvements and city owned site (as needed) 	<ul style="list-style-type: none"> ▪ Boulder Junction Access District Parking – update ▪ TDM Access District implementation - IP 	



OTHER

GOAL: Other City Goals and Work Plan Items			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<ul style="list-style-type: none"> ▪ 13th Street Plaza - IP ▪ 28th Street Multi-use Path and Bikeable Shoulders Iris to Yarmouth CEAP – potential call up ▪ Acquisition Plan Update - OSMP ▪ Alcohol/ Land Use Code Changes – options and recommendations ▪ Boating on Barker Reservoir ▪ Burke Park/ Thunderbird Lake – recommendations on lake water levels and enhancing park facilities ▪ BVCP Area III Planning Reserve Amendments (if approved by County) ▪ Chautauqua Guiding Principles, Next Steps –update on progress ▪ Civic Use Task Force – update from Council members ▪ Cultural Master Plan ▪ Design and Construction Standards Update – consideration of minor updates ▪ Development Review Projects: <ul style="list-style-type: none"> ○ Hogan Pancost – annexation and site review ○ Wonderland Creek Townhouses – potential call up ○ 28th and Canyon (Eads/ Golden Buff) – potential call up ○ Landmark Lofts II (970 28th Street) – potential call up ▪ East Arapahoe Study – potential action on limited zoning changes ▪ Economic Sustainable Strategies – 	<ul style="list-style-type: none"> ▪ Access and Parking Management Strategies – study session ▪ Alcohol Land Use Code Changes - action ▪ Baseline Underpass East of Broadway CEAP – Call up ▪ Bike Parking Ordinance Updates ▪ Capital Improvement Bond Projects status update - IP ▪ Capital Projects – carry over and first supplemental ▪ Critical Facilities Ordinance – public hearing and motion ▪ Education Excise Tax – consideration of City Manager funding recommendations ▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities ▪ Human Rights Ordinance – proposed changes regarding age discrimination ▪ Integrated Pest Management Program Changes - IP ▪ International Building and Energy Codes – public hearing ▪ North Boulder Subcommunity Plan - IP ▪ Old Hire Fire and Police Pension Plans – Study Session 	<ul style="list-style-type: none"> ▪ 2014 Budget Process ▪ Access and Parking Management strategies (update) ▪ Boulder Reservoir Site Management Plan – status of planning efforts and outcomes of community engagement (IP) ▪ Capital Improvement Program – study session ▪ Carter Lake Pipeline – thru CIP process ▪ Contractor Licensing – proposed changes (IP) ▪ Development Review Projects: <ul style="list-style-type: none"> ○ Blue Spruce Auto (4403 Broadway) – potential call up ○ Boulder Outlook Hotel Redevelopment (800 28th Street) – potential call up ○ Colorado Building Parking Lot (1301 Walnut) - ordinances ○ 1000 Alpine – potential call up ○ 3085 Bluff – potential call up ○ 3390 Valmont (Former Sutherlands Site) – potential call up ▪ Eco Pass- report on results of Joint Study with Boulder County on community-wide Eco Pass Feasibility ▪ FAM Master Plan – study session ▪ Harbeck-Bergheim House – Future Use Options (IP) ▪ North Trail Study Area – study 	<ul style="list-style-type: none"> ▪ Access and Parking Management Strategies – update ▪ Agriculture Plan (OSMP) – public hearing ▪ Capital Improvement Program – adoption of CIP; 2nd budget supplemental ▪ Contractor Licensing – consideration of proposed changes ▪ Design and Construction Standards Update – consideration of additional changes ▪ Development Review Projects: <ul style="list-style-type: none"> ○ Village Shopping Center Hotel (26th and Canyon) – potential call up ▪ East Arapahoe Study – check in on project scope and work plan (3/4Q) ▪ Energy Efficiency Upgrades in City Buildings – results of employee education and outreach project (IP) ▪ FAM Master Plan – consideration of acceptance ▪ Fourmile Canyon Creek Violet Avenue to Broadway CEAP – potential call up ▪ Human Relations Commission Work Plan update - IP ▪ Human Services Fund allocations - IP ▪ Light Response Vehicle Pilot Program - IP ▪ OSMP Natural Resources Overarching Issues – Study session



<p>study session</p> <ul style="list-style-type: none"> ▪ Education Excise Tax Allocation of Funds – refine RFP criteria ▪ Energy Efficiency Upgrades in City Buildings – employee education and outreach project (IP) ▪ Floodplain Management including Boulder Creek Mapping, South Boulder Creek Mitigation, and Critical Facilities ▪ Hazardous Materials Management IGA ▪ Hydroelectric operations and opportunities - IP ▪ Keep It Clean IGA ▪ Mobile Food Vending – options for ordinance changes ▪ Multi-hazard mitigation plan – possible consent item ▪ Nuisance Mosquito Control Pilot Project Evaluation - IP ▪ 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 ▪ Police Department Master Plan – Study Session ▪ State of the Court Presentation ▪ Sustainable Streets & Centers – update on proposed scope options, next steps and integration with TMP, East Arapahoe Area Plan and proposed Economic Sustainability Strategy ▪ Transportation Funding (SS) ▪ TMP Update – additional direction 	<ul style="list-style-type: none"> ▪ OSMP natural resources – overarching policy issues <ul style="list-style-type: none"> ○ Temporal Regulations ○ Penalties for violations ○ Multi-modal access and parking opportunities ○ Analysis of trail network and distribution of activities ▪ Parks and Recreation Master Plan ▪ Pearl Street Mall Code Changes ▪ Police Department Master Plan ▪ Randolph Center Condominium Declaration ▪ Recirculation of wastewater – CU Williams Village North (IP if necessary) ▪ Skunk Creek, Bluebell Creek and King’s Gulch Flood Mapping Update – public hearing and motion ▪ Smoking Ban on Pearl Street Mall - IP ▪ Snow and Ice Control Evaluation – study session ▪ Transportation Funding – study session ▪ TMP Update – additional direction ▪ Twomile and Upper Goose Creek Flood Mapping Update – public hearing and motion ▪ Water budgets – commercial, industrial and institutional – Council direction ▪ Water supply status – IP 	<p>session or dinner discussion</p> <ul style="list-style-type: none"> ▪ Old Hire Fire and Police Pension Plans – possible discussion during budget process ▪ Parks and Recreation Master Plan ▪ Regional Trail Connections (OSMP) – IP ▪ South Boulder Creek Flood Mitigation Study – public hearing and motion ▪ Transportation Demand Management Toolkit - IP ▪ Valmont Butte Future Use Discussions – study session ▪ Water Conservation Futures Study ▪ Youth Opportunities Funding allocations - IP 	<p>on remaining topics</p> <ul style="list-style-type: none"> ▪ Urban Wildlife – Consideration of Wildlife Protection Ordinance ▪ Water budgets – commercial, industrial and institutional – consideration of changes
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<ul style="list-style-type: none"> ▪ US36 Bikeway Maintenance – Enhancements IGA (tentative based on if extra community investments are desired) ▪ Urban Wildlife – Black Bear Education and Enforcement pilot program update ▪ Woodland Creek Diagonal to Winding Trail CEAP – potential call up ▪ Zero Waste Master Plan Update 			
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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 – 1ST AND 2ND 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 30th 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 29th 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. 16th 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 ACTIONS¹

- 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 28th 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
George Karakehian	Mayor Pro Tem
Macon Cowles	Council Member
Suzanne Jones	Council Member
Lisa Morzel	Council Member
Tim Plass	Council Member
Andrew Shoemaker	Council Member
Sam Weaver	Council Member
Mary Young	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
Jeff Dillon	Acting 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 (Castillo – staff alternate)
Boulder County Consortium of Cities	Morzel, Young
Colorado Municipal League (CML) – Policy Committee	Jones, Appelbaum (Castillo – staff alternate)
Denver Regional Council of Governments (DRCOG)	Jones, Plass
Housing Authority (Boulder Housing Partners)	Shoemaker
Metro Mayors Caucus	Appelbaum
National League of Cities (NLC)	Appelbaum, Cowles
Resource Conservation Advisory Board	Morzel (at large seat), Plass
Rocky Flats Stewardship	Morzel, Plass (1 st alternate), Castillo (2 nd alternate)
University of Colorado (CU) / City Oversight	Cowles, Shoemaker, Weaver
US36 Mayors and Commission Coalition	Appelbaum
US36 Commuting Solutions	Karakehian, Morzel (alternate)
Urban Drainage and Flood Control District	Karakehian

LOCAL ORGANIZATIONS

Boulder Museum of Contemporary Art (BMoCA)	Young
Boulder Convention and Visitors Bureau	Plass, Cowles (alternate)
Dairy Center for the Arts	Jones
Downtown Business Improvement District Board	Shoemaker, Weaver, Young

INTERNAL CITY COMMITTEES

Audit Committee	Cowles, Morzel, Shoemaker
Boards and Commissions Committee	Plass, Shoemaker
Boulder Urban Renewal Authority (BURA) Mayoral Appointment	Karakehian
Charter Committee	Karakehian, Morzel, Weaver
Civic Use Pad/ 9 th and Canyon	Karakehian, Morzel, Young
Council Retreat Committee	Jones, Morzel
Evaluation Committee	Morzel, Plass
Legislative Committee	Jones, Karakehian, Weaver, Young
School Issues Committee	Morzel, Plass, Shoemaker

SISTER CITY REPRESENTATIVES

Jalapa, Nicaragua	Jones
Kisumu, Kenya	Morzel
Llasa, Tibet	Shoemaker
Dushanbe, Tajikistan	Weaver
Yamagata, Japan	Plass
Mante, Mexico	Young
Yateras, Cuba	Karakehian
Sister City Sub-Committee	Morzel, Cowles, Karakehian